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UNIVERSITY OF CALIFORNIA, SAN DIEGO

**Anti-Karoshi Activism in a Corporate-
Centered Society: Medical, Legal, and
Housewife Activist Collaborations in
Constructing Death from Overwork in Japan**

A Dissertation submitted in partial satisfaction of the
requirements for the degree of Doctor of Philosophy

in

Sociology

by

Rika Morioka

Committee in charge:

Professor Christena Turner, Chair
Professor Richard Biernacki
Professor Steven Epstein
Professor Richard Madsen
Professor Masao Miyoshi
Professor Laurence Palinkas

2008

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Chair

University of California, San Diego

2008

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ABSTRACT OF THE DISSERTATION

Anti-Karoshi Activism in a Corporate-Centered Society: Medical, Legal, and Housewife Activist Collaborations in Constructing Death from Overwork in Japan

by

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Doctor of Philosophy in Sociology

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The claim that excessive work can cause death is increasingly recognized in Japan, where over 10,000 victims are believed to die annually from karoshi, death from overworking. This study explores the process in which the issue of karoshi became a major social problem in 1990s and continues to be a source of legal disputes in Japan. Through a year long participant observation of anti-karoshi activism and over 120 in-depth interviews with medical and legal professionals, labor unions, victims' colleagues and families, and government officials, it examines the complex multiple processes in which the concept of karoshi was constructed and mobilized as a resistance against corporate power.

Karoshi suddenly became a public issue in the late 1980s, mirroring the nation's self-reflection on what it means to be an affluent society. The "discovery" of karoshi was first made in the 1970s, as a result of medical summary of workers' knowledge, in which a group of pro-labor physicians defined the problem as a "rationalization disease" and coined the term as a warning against intensifying and mechanizing production processes.

After simmering in the background for 15 years, a group of progressive legal professionals successfully mobilized wives and mothers of karoshi victims for legal activism, framed the issue as a health concern of the average household, and institutionalized ways of addressing karoshi grievances. The participation of housewife activists, who emphasized their mother and wife-hood in gaining the support of the public, galvanized anti-karoshi activism.

Debates surrounding karoshi legal cases are infused with moral rhetoric of duty, responsibility and benevolence in labor relations. Capitalizing on liberal Japanese labor laws, anti-karoshi activists stress the moral and legal responsibilities of employers to protect employees' wellbeing. Despite their success in impacting law and policy, their emphasis on employers' duties ironically results in their inability to address the broader context of overworking and the root causes of the complex issue. Furthermore, their strategic focus on workers' compensation paradoxically results in affirming single-minded devotion to work required in corporate culture and the image of Japanese workers as "corporate warriors" that they set out to oppose in the first place.

CHAPTER 1

INTRODUCTION

My Dream

When I grow up, I want to be a doctor in science.
I will make a time-machine, like the one Doraemon has.
I will ride the time-machine, and go to the day before my father died.
And I will tell him, "Don't go to work."

- Fujita Hiroshi, 7-year old son of a city worker, who died of karo-suicide

I. DEATH OF A WORKER

On February 23rd, 1988, Hiraoka Satoru, arrived home at 9:30pm after a long day of toil. While having a late dinner and sipping Sake, Hiraoka chatted with his son about the professional baseball game of the day. Two hours later, he was found dead in his room. Hiraoka, a mid-level production manager of a major precision bearing company, Tsubakimoto Seiko, died of acute heart failure at the age of 48 years old. However, despite the seemingly natural cause of the death, his family made an astonishing claim that he was “murdered by the company”. Over the years, Hiraoka’s family had watched him work hard toiling for long hours. Over the previous year, his work had become especially intense due to the company’s policy of cutting labor cost by relying more on the overtime of existing workers. Hiraoka became chronically fatigued, sometimes too tired to eat and would fall asleep at the dinner table. Worried about his health, the family had been trying to convince him to take more days off. His wife had offered to work part-time so that he could reduce his work hours. Out of her concern, his daughter had bought piano concert tickets and asked him to go with her even if he might fall asleep in the chair. Yet, to none of his family’s pleas, did Hiraoka actually respond. It was because, in his wife’s words, “he possessed too much sense of responsibility”.

Despite his seemingly mindless devotion to the company, Hiraoka once believed in labor struggle and hoped to better the working condition in Tsubakimoto. In 1959, Hiraoka left his first job in his local home town to work for Tsubakimoto. He switched his job because he wanted to belong to a company with an organized labor union. In the midst of rapid economic growth in the 60s, he led Tsubakimoto’s production line as a skilled worker with a strong sense of pride and belonging. During his time in the

company, the number of employees in Tsubakimoto grew from 120 to 720, and the corporation became a leading producer in the ball-bearing industry. Despite the success, however, Hiraoka began to despair about a year before his death. He began expressing his desperation and thoughts of resignation to his colleague. So-called “lean production” management operated the 24-hour production line with a minimum labor force, compelling workers to put in long and irregular hours. Hiraoka’s younger subordinates kept leaving the company after receiving their training, forcing Hiraoka to perpetually train new recruits. He knew this was not working and was searching for solutions alone. His diary found after his death revealed his inner struggle: “I want to instigate 48 hours...., but 60 hours is the reality”, “in reality, we can’t use paid holidays...”, “we need union-management negotiations...” He was clearly aware of the necessity of shorter hours and rest, and was frustrated with the management and labor unions that ignored the cries of the production workers. Yet, he kept working.

After Hiraoka’s death, the company and its enterprise union not only ignored his family’s complaint that Hiraoka’s death was work-related, but treated them with increasing hostility. The family’s request for the record of Hiraoka’s work hours was first met with a harsh rejection, and then a gag order was placed on their employees by the company. In desperation, the family began producing their own calendar of Hiraoka’s work hours prior to his death, gathering information from their own recollections and friends’ statements. As they marked night and weekend shifts and filled the calendar, they couldn’t help but be flabbergasted by the number of hours, which they thought they knew. Hiraoka worked 12-19 hours a day during his shifts, and his work hours totaled astonishing 3700 hours (an average of 308 per month) with overtime of well

over 100 hours per month during the year prior to his death. During 51 days immediately prior to his death, not a single day-off was found on the calendar.

Outraged by the employer who insisted that Hiraoka “worked at his own free will without any orders” [*katteni hataraita*], his wife began seeking a way to apply for workers’ compensation without the employer’s cooperation. By coincidence, she found a small ad for “Karoshi 110 hotline” in the newspaper organized by a small group of volunteer lawyers. When she dialed the hotline, she found most sympathetic listeners who would later become the strongest allies in her battle against the company. For the first time, she learned the meaning of the term “karoshi”, death from overwork, from them, and could not stop her tears. She later recalled, “I couldn’t believe that there was a word that so perfectly described my husband’s death”. For the next three months, Hiraoka’s family gathered more evidence with the assistance of the lawyers, and filed for workers compensation. By then, a network of supporters consisting of lawyers, doctors, labor activists, academics, students and teachers was supporting the family. After winning workers’ compensation in 1989, Hiraoka’s family made a decision to sue the company for their responsibility for Hiraoka’s death. They and their supporters maintained a series of protest and awareness-raising activities, including demonstrations in front of the company, for the next 6 years. In November 1994, the civil court supported the plaintiff’s claim, and ordered the company to issue the statement of apology as the family demanded, and to pay the compensation of 50,000,000 yen (USD 500,000). Hiraoka’s case became the first civil lawsuit that delineated the responsibility of employers for karoshi death of employees.

II. BACKGROUND

Heart attacks, strokes or suicides of workers can lead to long and arduous litigations against the government and corporations in Japan. The claim that excessive work can cause death is accepted in Japan, where over 10,000 victims are believed to die annually from overworking. The word, *karoshi*, literally means “overworking to death”, and expresses the link between overworking and heart/brain diseases. Medical diagnoses usually include acute heart failure, ischemic or hemorrhagic stroke. The definition of *karoshi* has been controversial. The originators of the term have defined it as a socio-medical concept which describes life-threatening health statuses caused by the exacerbation of existing conditions such as high blood pressure and arteriosclerosis due to unsound health practices brought by overworking.¹ *Karo*, overworking, is viewed as a work-related risk factor that causes medical abnormality.

The Ministry of Social Welfare and Labor has defined *karoshi* in terms of overtime hours. According to their workers’ compensation guidelines, to be considered work-related, one must have worked 100 hours of overtime one month prior to the onset of disease or death or average over 80 hours per month 2-6 months prior to the onset of disease or death. While the ministry insists that decisions are made based on overall measure considering multiple factors affecting each individual case, in practice, workers’ compensation for *karoshi* is unlikely to be given if overtime is less than 80 hours per month. However, the families of *karoshi* victims almost always face difficulties in documenting the overtime hours of the victims due to the lack of an official record showing accurate work hours.

¹ Hosokawa, Tajiri, Uehata, *Karoshi*, 1982

Who Dies of Karoshi?

While official statistics of karoshi are not available, doctors and lawyers in anti-karoshi activism have compiled their cases over the years and have suggested certain characteristics of karoshi victims.² Most victims fall into the age categories of between their late 30s and late 50s, but the cases in the 20s are increasing in recent years.³ The majority of the victims are men although incidences among young females, particularly among nurses and school teachers, are also on the rise.⁴ In terms of occupational categories, karoshi is widespread across different types of occupations. Among white collar jobs, those who engage in sales, finance, technical skilled jobs, the press, and advertisement, stand out as vulnerable. Among blue collar workers, manufacturing and construction workers as well as those who work irregular and night shifts such as taxi/truck drivers are numerous. Among all categories, those who hold mid-level management positions seem particularly at higher risk. Karoshi occurs in organizations regardless of their business size, from large multi-national corporations to small family-owned businesses. Interestingly, public sector is not immune to karoshi. On the contrary, an increasing number of victims are those who work in public institutions such as school teachers, civil servants, and employees of public agencies.⁵

² For example, National Defense Counsel for Victims of Karoshi (Ed.). 1991. *Karoshi: When the Corporate Warrior Dies*. Tokyo: Mado-sha. Uehata, Tetsunojo. 1993. *Karoshi no Kenkyuu [Research on Karoshi]*. Tokyo: Nihon Planning Center.

³ Yomiuri Weekly 9/28/2003

⁴ For the purpose of simplification and clarity, this study mostly focuses on karoshi among male workers. This does not indicate the authors' disinterest in the existence of karoshi among female workers. On the contrary, the author stresses the need for future studies regarding differing social processes surrounding karoshi among female workers.

⁵ In this chapter, as in most of this dissertation, my data are gathered from observation, interview, and as in this case participation in organizational activities. I attempt to give citations where appropriate. Almost all of my accounts are based on original data collected in field work.

According to anti-karoshi activists, class element has not been salient among karoshi victims. As noted earlier, the types of victims' jobs are spread across occupational categories. Whether it is an elite banker or a truck driver delivering packages, workers suffer from long working hours and inadequate rest and sleep. In one study, the class disparity actually showed in reverse of what might be expected of an occupational disease that typically attacks lower income occupations. Out of 203 karoshi cases, 70% of white collar workers (N=107, 52%) worked more than 60 hours per week and put in more than 50 hours of over time per month, while 58% of blue collar (N=96, 48%) worked the same hours.⁶ Another study reported that out of 2551 deaths reported to karoshi 110 hotline between June 1988 and May 1995, 4% was company executives, 25% company managers, 27% workers in the field, 22% in sales and desk workers, 10% drivers, 8% technicians, 7% public workers, 3% others.⁷ Class structure in Japan has been noted to have obscure boundaries and be characterized by lower consciousness. Throughout the postwar period, 90 percent of all respondents in public opinion surveys in Japan have been identifying themselves "middle class" (Ishida 1993). While in reality class disparity does exist, the difference is less likely to appear in work hours, vacation days, and the level of work related fatigue. Karoshi, in other words, is believed to concern the vast majority of average workers, rather than a particular segment of the society.

⁶ Tetsunojyo Uehata, *Karoshi no Kenkyu* [Research on Karoshi], 1993

⁷ Hiroshi Kawahito, *Karoshi to Kigyo no Sekinin*, [Karoshi and Corporate Responsibilities], 1995

Context of Karoshi: Long Work Hours

While information on work hours in Japan can reveal the context within which the concept of karoshi came into being, the long work hours of Japanese workers do not easily reveal themselves in official surveys. According to most official statistics, the Japanese actually do not work any more than workers in other nations. For example, a 1999 international comparison by International Labor Organization reports that Japanese workers work 1,889 hours per year, 77 hours *less* than American workers⁸. The number comes from a Ministry of Labor's statistic⁹, which underreports the hours by excluding the widespread unpaid overtime that leaves no record of actual work hours. In reality, Japanese workers work much longer than any other industrialized western nations. According to the statistic based on workers' claimed hours, the average work hours of the Japanese is estimated as around 2,400¹⁰ hours per year. According to anti-karoshi activists, karoshi victims typically work 3,000 to 3,500 hours per year before they collapse, and 57% of them work over 14 hours a day during the month prior to their deaths often with few day-offs.¹¹ Even with the average numbers produced by the government statistics, Japan was the only nation among five industrialized countries (Japan, US, Germany, France, England) whose free-time¹² was shorter than work hours. The average free time of Japanese male worker was 2 hours 28 minutes per day during weekdays, while the average of the other four nations was 4 hours and 11 minutes. Even

⁸ Time Magazine, 10/18/1999

⁹ Monthly Labor Statistics Survey by the Ministry of Labor or the international comparisons of work hours in ILO News underreport the number failing to include widespread unpaid overtime, and claim that the average work hours has declined from 2,500 hours in 1970s

¹⁰ Labor Force Survey by the Office of Prime Minister

¹¹ The Yomiuri Newspaper, 7/8/1993

¹² Excluding commuting, sleeping, eating, and other time necessary for life maintenance

when not working, Japanese men spent their time with work-related relations 5 times longer than the average of the others. On the other hand, their time spent with family and friends was 1/20 of the Americans and Europeans.¹³

There are many organizational and structural factors that forces long work hours. For example, most workers in Japan depend on overtime wages to maintain their current standards of living. They need overtime wages because of their low base-salary, a wage structure designed to provide employers with flexibility to adjust labor cost in case of reduced profitability. Another factor prompting long work hours is a loophole in the labor law. While the Labor Standards Law stipulates a maximum of 40 hour workweek, a loophole clause known as “36 agreement” (Article 36 of the law) allows employers to establish an agreement with the representative of workers or labor union to nullify this law in practice. For example, in Tsubakimoto introduced in the beginning of this chapter, the company forged an agreement with so-called “representatives” of their in-house labor union to allow as much overtime as 15 hours per day. This in practice allows the company to ask workers, whose regular work hours are 9 hours, to work 24 hours a day.¹⁴ Workers, without labor unions’ real protection, have little power to resist the pressure for overtime even when their employers do not pay for overtime for full hours – a rampant practice called *service zangyo* [unpaid overtime].

There are many signs that the hard work is taking a toll among exhausted Japanese workers. On June 24th, 2003, the Ministry of Social Affairs and Labor announced that its “Fatigue Accumulation Level Check List” provided on the internet

¹³ Koji Morioka, *Kigyo Chuushin Shakai no Jikan Kouzou*, [the Time Structure of Corporate Centered Society], 1995

¹⁴ Koji Morioka, *New Labor Forum*, vol. 8, 2003

went ‘down’ and out-of-service due to the overwhelming number of hits on the website.¹⁵ Three years earlier, the Japanese government had announced that one-third of the working age population was suffering from chronic fatigue. Even in a small local town of Saku, 32% of patients hospitalized in the internal-medicine and psychology ward were being treated for chronic fatigue syndrome in the absence of any known organic illnesses¹⁶ According to the Ministry, the number of workers whose periodic health check-ups showed abnormality rose from 23.6% in 1990 to 44.5% in 2000.¹⁷ A survey conducted among 87,000 workers working in small to mid-sized businesses revealed that 56.4 % of the employees suffer from work fatigue which lasts more than one day, and among 12% of workers who were ordered to take time from work by medical doctors, 73.4% failed to do so due to work responsibilities.¹⁸ Reflecting the high stress environment that has been compared to that of medical internships, political campaigns, and military combat in the American context,¹⁹ the word “sutoresu [stress]” has been chosen as the most well known foreign word adopted into the Japanese language by the Japanese.²⁰ 61.5 % of 16,000 workers who answered a survey in 2004 complained that they suffer from a strong level of job anxiety, distress and stress.²¹ Over 8,000 workers²² every year actually kill themselves due to job stress in Japan.²³

¹⁵ The Asahi Newspaper, 6/23/2003

¹⁶ New York Times, February 21, 2000

¹⁷ *Roudou Undou* [Labor Movement], No. 456, August 2002.

¹⁸ Zenkoku Shoukou Dantai Rengoukai, *Kyozai Jyoho*, No.16, May 2003

¹⁹ See for example, *Japanese Women*, 1989

²⁰ NYTimes.com, 6/20/2003

²¹ The Yomiuri Newspaper, 5/2/2004

²² The figure is likely to be much higher due to unreported cases

²³ The Yomiuri Newspaper, 5/2/2004

III. ANTI-KAROSHI ACTIVISM

We formed a network of lawyers “attracted” by the issue of karoshi, together with physicians, workers, scholars, volunteers, and victims’ families and survivors, and created a resistance culture against the corporate society.

-Matsumaru Tadashi, anti-karoshi activist lawyer²⁴

Anti-karoshi Activism and their accomplishments

A growing number of legal cases against government agencies and employers have been won by anti-karoshi activists in recent years. Anti-karoshi activist coalitions of legal and medical professionals, labor unionists, and victims’ families form anti-karoshi activism, and have been instrumental in challenging existing corporate practices and state responsibilities. The activism is characterized by only rare participation of workers who are entrenched in the system of production, and have little time, energy or worker consciousness to battle against employers. Interestingly, it is their wives and mothers with exiguous political and economic resources who stand up against powerful government and businesses. The activists initiate lawsuits against the Labor Standard Bureau contesting their decision to deny workers’ compensation for karoshi victims, and bring charges against employers in civil courts. The number of worker’s compensation suits filed and awarded for karoshi has been gradually increasing over the years [Table 1]. In the year 2003, for example, 819 applications were filed for karoshi, which was a 19% increase from the previous year, and a 61% increase from 1987.²⁵ The rate of

²⁴ *Dohyo: Karoshi Mondai Renrakukai No Ayumi*, Osaka Karoshi Mondai Renrakukai, 1998, p254

²⁵ The Yomiuri Newspaper 6/11/93.

compensation has also increased from approximately 4 % in 1987 to 38% in 2005.²⁶ Furthermore, an increasing number of employers face civil charges after their employees' death.

Anti-karoshi activism evolved from the isolated occupational activism of a labor union to a broad coalition of multiple actors. Although most media reports portray karoshi as a contemporary phenomenon, the term was first introduced in the early 1970s by medical doctors as part of larger labor movement that began a decade earlier. The origin of the term was rooted in the experience of workers faced with rapidly mechanizing and intensifying industrial practices in the fast growing economy. The industry based union played an important role in drawing the attention of the sympathetic doctors, and demanding workers' compensation. Despite the efforts of the labor union and doctors in this period, as the labor movements in general declined, anti-karoshi activism also dwindled in the late 1970s. At the height of corporate power in the bubble economy, the 1980s saw the term karoshi nearly disappear. Then, at the end of the decade, the word *karoshi* suddenly exploded in the media after simmering in the background for almost 15 years. A karoshi-hotline and symposium organized by volunteer lawyers in April 1988 drew wide media attention, and helped it grow into a major public problem in the 1990s.

The popularization of the term and the increasing number of litigation victories suggest that anti-karoshi activism has triggered a change in the way people see work and a work-centered lifestyle. Prior to the spread of the concept of karoshi, the effects of

²⁶ The numbers includes the applications for occupational injury, and the actual ratio of compensation solely for karoshi compensations is slightly higher. As the compensation trials take more than one year, the rate of compensation is an approximate estimation derived from the number of applications and compensations in a given year.

work pressure were rarely publicly discussed and the practice of long work hours had not been considered a serious health problem. Today, the term *karoshi* appears throughout popular media as well as academic, medical and legal sources, providing a gateway to discussions about the problem of overworking and its consequences for worker's health. In the mid-1980s, an energy drink commercial on TV asked the nation's corporate warriors "Can you fight for 24 hours?" reflecting the work-centered lifestyle in the thriving bubble economy. Twenty years later, posters in train stations read "Quality Work Begins with Quality Vacation" urging the corporate warriors to slow down. Interestingly, the advertisement was not from a tourist agency, but from the Ministry of Labor.²⁷ The way hard-work is perceived has changed over the twenty years, and the change, for the most part, has been triggered by anti-*karoshi* activists.

As will be seen in the following chapters, the government and its agencies have been antagonistic to those who claim *karoshi* as a cause of death. However, as the increasing number of judicial decisions is made in favor of plaintiffs' claims, the Ministry of Labor has been forced to gradually relax its guidelines for workers' compensation since the mid-1980s. The activists' alliances with the members of political parties, especially through the affiliations of labor unions with the communist party members of the Diet, have been instrumental in taking the issue to the Parliament Assembly. Although the government had been refusing to acknowledge *karoshi* as a valid medical or legal concept and always qualified the term *karoshi* with "so-called" in their official documents, the series of legal decisions and strong public reactions to the issue have

²⁷ The Ministry of Labor merged with the Ministry of Health and Welfare in 2001, and is now called the Ministry of Health, Welfare and Labor.

prompted them to accept the concept and to use the term without the qualification beginning October 1990.

The activists' pursuit for corporate responsibilities for karoshi has resulted in the accumulation of legal precedence in the civil and criminal courts sometimes costing defendant corporations over 100 million yen (one million US dollars) for karoshi compensations. The number of workers' compensation cases won by the plaintiffs multiplied by nearly three fold in 2003 compared to the previous year, assisted by the changes in the workers' compensation guidelines. These legal cases and the publicity by the media have also helped to shift people's perceptions about taken-for-granted corporate practices such as unpaid overtime. The Japanese government received a record 30,000 complaints concerning illegal unpaid overtime in 2002 and ordered 19,000 businesses to pay back 8.1 billion yen (81 million US dollars) between April 2001 and September 2002.²⁸ As the direct and indirect results of the activism, the increasing number of corporations is interrogated by the Labor Standard Offices for their excessive illegal unpaid overtime. In January 2003, the activist lawyers' collaboration with a whistle-blower resulted in forcing Toyota Corporation to pay back unpaid overtime wage of 10 million yen (100,000 US dollars) to 83 workers. The increased public awareness and sympathetic public opinions, in turn, have been providing the activists crucial leverage in pressuring those in power to make legal and policy changes.

²⁸ The Akahata Newspaper 2/4/2003

Social Context of their Victories

The legal victories of anti-karoshi activists are extraordinary, given the fact that the immediate causes of deaths are cardiac and cerebral failures. The plaintiffs have managed to blame businesses for heart-attacks and strokes of individuals and extract workers' compensations from the government. But the battle has not been easy for the activists. As seen in Table 1.1, the chances of winning workers' compensation for karoshi has been, in fact, extremely slim in the earlier decades with only 5-10% of applicants actually receiving the reparation. Pressing civil charges against employers has been even more difficult and arduous, and most families have been hesitant to try in the earlier period.

Table 1.1: The Number of Workers' Compensation for Karoshi

Year	Number of Compensation Applications (Number of applications for circulatory diseases=karoshi)	Total Compensation Cases	Compensation for Injury Cases	Compensation for Overwork-related Cases – Circulatory Diseases	Remarks
1984	438	54	N/A	N/A	
1985	441	39	N/A	N/A	
1986	506	63	N/A	N/A	
1987	499	49	28	21 (4%)	Compensation guidelines partially amended
1988	676	81	52	29	First nation-wide Karoshi-Hotline
1989	777	110	80	30	
1990	597	92	59	33	
1991	555	93	59	34 (6%)	
1992	458	74	56	18	
1993	380	72	41	31	
1994	405	92	60	32	
1995	558	140	64	76	Compensation guidelines partially amended
1996	578	116	38	78	
1997	594 (539)	119	46	78	
1998	521 (466)	134	44	90	
1999	568 (493)	132	51	81	
2000	685 (617)	137	52	85	
2001	750 (690)	199	56	143 (20%)	
2002	(819)	N/A	N/A	317	Compensation guidelines partially amended
2003	742 (705)	N/A	N/A	314	
2004	(816)	N/A	N/A	294	
2005	(869)	N/A	N/A	330 (38%)	

Source: based on information provided by Ministry of Social Welfare and Labor to various sources

Note: As the compensation process takes more than a year, the number of application minus the no. of compensation is not equal to the no. of uncompensated case. Similarly, the compensation ratio only serves as an approximate indicator, and not accurate proportions for the applications made in particular year.

Casual observers in the US have attributed monetary compensation as the reason for the increasing number of litigations, and thus the increased number of karoshi. While conceivable, the fact that receiving compensations requires much investment in terms of time, energy and money, as well as emotional anguish on the part of victims' families makes it unlikely, at least so far. Until recently, the possibility of receiving workers' compensation has been extremely low due to the government's stringent policy. The process also requires plaintiffs to sustain long and painful years of legal battle: searching for evidence and witnesses willing to testify, writing legal statements, filling the courts with an audience, organizing a public gathering to draw the support of those interested in the issue. Litigations in Japan also demand substantial financial resources from plaintiffs in the form of government taxes, lawyers' fees, administrative expenses etc.²⁹ Far from being a source of quick financial resource after the death of a breadwinner, the plaintiffs in karoshi trials often end up using their life-time savings or being in debt to the lawyers who are willing to assist them without immediate compensation. Bringing a lawsuit in Japan in general also carries a certain stigma of being "selfish", and can be taxing in terms of emotional and social costs.

Just how remarkable these legal victories won by anti-karoshi activists are becomes even clearer when one considers workplace norms in Japan. Long work hours and self-sacrifice for work have not only been taken-for-granted notions, but have also been regarded as commendable in Japan. Historical studies have traced the origin of Japanese work ethics to the conscious efforts of large corporations and the government to

²⁹ A typical karoshi case (workers' compensations and civil lawsuits) is likely to require approximately 3,000,000 yen (appx. USD 30,000) up front for a plaintiff to start the legal process. A plaintiff in karoshi litigation, for example, paid 501,600 yen (appx. USD 5,000) in the form of tax alone in order to ask for a compensation of 127,086,489 yen in the litigation.

control organized labor and increase productivity. Organizational emphasis on harmony and cooperation, for example, were brought about by the elites of the Meiji period forward to facilitate an industrial ideology that would domesticate capitalism (Kinzley 1991). Andrew Gordon (1998) argues that Japan's postwar quest for economic development gave way to the "unusually total hegemony of a corporate-centered society". Despite the resistance of student and environmental movements in the 1960s, by the 1980s powerful corporations gradually succeeded in creating the social milieu in which a broad array of social institutions such as government policies, schools, and families, operate around the aim of creating a productive work-force. Gordon also describes how large businesses integrated the social worlds of employee and enterprise "in a remarkably total fashion" despite numerous labor tensions existed throughout its modern history. As Gordon claims, the idea that society is managed for business became a taken-for-granted notion among Japanese whose social security depended more on employers than on the state, and whose educational system trains them to accept the "natural virtue of meritocratic competition" and win through "examination hells" and eventually climb their career ladders.

The essence of the corporate hegemony can be seen in the attitudes and ideology of the people. In his attempt to explain the historical origin of the Japanese attitude towards work, Robert Cole (1979) described the industrial innovations orchestrated by the Japanese government and corporations in the mid-20th century that integrated new work practices with the traditional ideology of labor. The dominant ideology considered work as a moral act that transcended personal life and contributed to public good. The outcome of long efforts in the modern history of Japan, on the part of nation's leaders, to

create a productive and cooperative labor force can be seen in the modern labor force. As the description of Japanese society by Kodansha (1994) read, “the company is clearly the highest priority, and the morality of membership is judged in terms of loyal service to the company”. Patricia Boling (1990) also observed, “In the case of conflicts between domestic or personal commitments and job responsibilities, valuing or choosing private commitments over public ones is usually seen as unmanly, weak, embarrassing, and shameful.” The assertions of personal needs have been indeed regarded as a ‘selfish’ act that disregarded the needs of collective. Similarly, career achievements have been regarded as a status of one’s entire being, rather than one aspect of life, and corporate and business growth has been synonymous with the public good (Lebra 1976:166). Hard-work required to increase corporate profitability has been viewed as being beyond the matter of private interests.

As manifestations of these attitudes, one may find conditions in Japan that may appear strange to outside observers. Workers’ unwillingness to use paid vacation provides an example. An average Japanese male worker takes only a few days of paid leave per year (NDCKV 1991:67), and the Japanese government actually took steps in the 1980s to encourage workers to take their *paid* vacations (Brinton 1993:110). Other examples include the acceptance of work conditions that demand the average 450 hours of unpaid overtime per year, or the reluctance of individuals to complain about violation of labor laws when recorded work hours are routinely altered to avoid legal complications (NDCKV 1991:56). The practice of prioritizing work over private needs has been hegemonic, and any attempt to resist would not only risk one’s hope for promotion but also incur immediate consequences such as a transfer to a less promising

position or even loss of jobs. Akio Koiso, the author of *Memoirs of a Fuji Bank Employee*,³⁰ writes about the abuses he endured from his superiors and colleagues when he decided to improve his private life by refusing to put in overtime. His efforts were first met by the criticisms of colleagues. He was ostracized and harassed, and finally transferred to a remote northern town where he was denied the use of a company car and made to visit clients by bicycle in snow in temperatures that reach minus 10 degree.

In the nation where the needs of work organizations are given priority, how then did the concept of karoshi come to be accepted as a legitimate medical, legal, and social problem? Who created the concept of karoshi and how did they disseminate the idea? As labor unionism declined in the face of powerful corporations, one would expect anti-karoshi activism to have disappeared or remain an isolated issue of a small activist group. Instead, the issue became a mainstream public problem to be debated by many including scholars, politicians, and journalists. What did anti-karoshi activist do to trigger this change? In fact, the activists have not been always successful in their claim-making in the courts. It is only in the last decade that they gradually began to receive positive verdicts supporting their claims. How did the plaintiffs in karoshi trials manage to convince the court that long overtime, not physical maladies in the heart or brain, killed their loved ones in a society in which a worker's needs for rest or private life are equated with 'selfishness'?

IV. THEORETICAL TOOLS AND ARGUMENTS

Internal Process of Social Change

³⁰ Koiso, Akio. 1991, *Fuji Ginko Koin no Kiroku*. Tokyo: Banseisha.

This study investigates the emergence of a medical and legal concept *karoshi*, and the rise of public concern towards the issue as a manifestation of discontent toward the “society managed for business”. Anti-*karoshi* activism initiated by concerned professionals and victims’ families represents the growing sense of wariness towards “corporate-centered society” [*kaisha chuushin shakai*] in which the interests of corporations are prioritized over those of individuals. Informal but rampant neglect of labor rights by employers, condoning of businesses’ labor law violations by the state, and dwindling power of enterprise unions to protect workers’ health in day-to-day practice all have exacerbated the sense of alarm among average workers and their families. In this social context, the network of pro-labor professionals led by lawyers and doctors played a significant role in making *karoshi* a public concern. Their alliance with victims’ families formed the core of anti-*karoshi* activism, and enabled them to propound their view towards corporate power through legal cases and media.

Drawing on approaches from sociology of health and illnesses, social movements, and cultural and Japanese studies, this study examines the process in which an isolated labor issue of sudden deaths among workers evolved into a major social concern of *karoshi*. There would be two kinds of analyses that would illuminate the process. One would be the analysis of *external* socio-political and –economic processes that affect the trajectory of the phenomenon. The broader social, politico-economic and cultural contexts of *karoshi* suggest several important factors for the emergence of *karoshi* as a public problem. At the macro-level, the issue of *karoshi* echoed the increasing social concern towards the “corporate-centered society” that prioritized business and economic interests over the quality of life of working people and their

families. The intensification of workloads caused by the industrial strategy of lean operation, which was accelerated by global economic integration and worldwide recession in the 1980s, and general dissatisfaction towards lifestyle dictated by work demands shifted the mood of the society. The unprecedented national wealth produced by the bubble economy of the 1980s and international criticisms of Japanese “economic animals” also triggered a self-reflection on what it means to be a “rich nation” and questions about the meaning of affluence. At the meso-level, the failure of organized labor to offer effective protection against health consequences of overworking made the problem salient. The fact that little was being done for the nations’ overworked and fatigued workers increased the sense of urgency to the experience of average working families. The impotence of labor unions eventually prompted the legal professionals and housewives to take the matter to the court, drawing the attention of the media.

Instead of the larger structural issues external to the process of karoshi construction, this study focuses on *internal* processes in which the phenomenon of karoshi is ‘discovered’, claimed, and framed as a social problem. The study views social problems as products of collective definition process, and looks at the emergence and resurgence of anti-karoshi activism triggered by the shifts in larger economic, political and social contexts. It draws on social constructionism that brings a symbolic interactionist approach to the study of collective action by emphasizing the role of framing activities and cultural processes in social activism. The critical role of physicians in utilizing medical authority to name and frame the problem, the leadership of legal professionals in galvanizing anti-karoshi activism, and the strategies of housewives in making their claims heard provide the foci of analyses in the process. The

community of pro-labor professionals has always been at the center of anti-karoshi activism, and their leadership has expanded the coalition of supporters and succeeded in winning the interest of the public through the active engagement of the media. The professionals have learnt the legal and medical technicalities of karoshi over the years, and are now in the process of institutionalizing karoshi-related grievances. Another factor critical to the internal process is the active involvement of the wives and mothers of karoshi victims. Without their willingness to challenge employers in the court, despite social stigma of doing so, and to endure the hardship involved in the process, anti-karoshi legal activism would not have been successful in drawing public attention to the issue. In the chapters to follow, this study details these internal processes initiated by the activists.

Social Problems, Social Movements, and Culture

1) Social Problems

Through examining the issue of karoshi, this study probes the question of why some conditions found in societies are defined as problems that command a great deal of public attention, whereas others equally harmful or dangerous are not considered a social problem. Social problems are constructed through various interpretations of “reality” and the fixation of responsibilities for the problem. As Joseph Gusfield (1981) points out, problems “do not spring up announcing themselves” into the consciousness of people, but rather, is the result of a process by which events are construed as a problem of societal concern to be acted upon by social actors. Not all situations become matters of public activity and targets for public action, nor are they given the same meaning at all times by all people. The problems that are considered worthy of public attention shift overtime. What may be a salient social problem in one period of time may not be so in another

according to the larger social contexts of the period. In deed, despite the fact that the problem of karoshi was “discovered” during 1960s, karoshi as a problem that drew public attention did not manifest itself until the late 1980s. The issue of karoshi in Japan provides an excellent site where a student of social problems can observe how an issue comes to be regarded as a social problem after simmering in the background for a long time.

2) Framing and Frame Resonance

One of the key conceptual tools in understating the success of anti-karoshi activism is the approach that sees social problems as projections of collective sentiments rather than simple mirrors of objective conditions in society. I argue that the phenomenon of karoshi became a major social problem of the time because the collective action frame brought forth by activist professionals resonated well with the concerns of the broader society. Frames are principles of interpretation, emphasis, and comprehension about what exists and what is at issue (Snow and Benford 1988, Gamson and Wolfsfeld, 1993). Events gain their significance only when they are put into a context in which the meanings of events are embedded (Gusfield 1987). Social movements frame, or assign meaning to relevant events and conditions in order to signify what is important to them and mobilize potential supporters (McAdam 1994). Social movements are not simply a group of protesters who want to redress their grievances. But instead, they engage in the framing of reality. Anti-karoshi activism illustrates the process by which a problematic condition comes to exist in a society through meaning attribution and interpretations of events. In the process of making karoshi a problem, what has been considered the moral act of working hard is transformed into a social

malady that signifies the danger of intensifying an economic production system and the disregard for labor rights in the “corporate-centered society”.

A frame is said to be “resonant” if the target audience find its interpretation of grievances compelling, and likely to be successful if it is articulated by cultural symbols that “appear natural and familiar” (Gamson 1992). The success of anti-karoshi activists lies in their ability to frame overworking [*hatarakisugi*] as a life-threatening health risk of average workers, which resonate with the health concerns of workers and their families. The term *karoshi* that described sudden deaths of otherwise healthy workers has become a symbol of work-related stress and health issues that mothers and wives in an average household worried about in their everyday life. In 1989, 46% of 500 workers who answered a survey thought that they could die of karoshi.³¹ The resonance of karoshi frame can be also observed in a widow’s reaction when she heard the term karoshi for the first time. She recalled, “I couldn’t stop my tears. I couldn’t believe that there was a word that so perfectly described the way my husband died. It made me cry.” Snow and Bedford (1992) identify “empirical credibility” and “experiential commensurability” as two of several factors that affect frame resonance. In order to resonate with target audience, a frame must make sense with the way people see the world, and be congruent with their everyday experience. The testimonies of workers and their families in the following chapters reveal strong “empirical credibility” and “experiential commensurability” of karoshi frame with their everyday concerns.

³¹ A survey conducted by Fukoku Insurance Company in 1989.

3) Frame Transformation

The content of karoshi frame is constantly transforming as social movement entrepreneurs “align” the frame to increase the resonance of their frame. Snow and colleagues (1986) identified “frame transformation” “frame extension” and “frame amplification” as some of the frame alignment strategies that movements use. Anti-karoshi activists have shifted the understanding of the issue and meaning of karoshi as the political and social climate of the time change. Karoshi was first framed as an agenda of organized labor in the late-1960s, viewing the problem as an occupational disease of mechanization and rationalization in the modernizing economy. The frame then was “transformed” twenty years later to the health risk of average workers, especially of the middle-aged *sarariman* (Salary man or white collar workers). By actively involving the mothers and wives of karoshi victims, anti-karoshi activists expanded the frame as a problem that can affect virtually every household. Their “amplification” of the frame through “karoshi 110” telephone hotline to market the frame, actively providing the media news coverage and analyses of specific legal cases also helped to *align* the frame and increase the resonance. In the 2000s, the karoshi frame continues to evolve as it involves new types of cases. The karoshi frame now includes deaths of daughters and sons in their twenties, suicide among young professionals in their thirties, as well as non-vascular diseases such as asthma, as the activists raise the banner of “no more karoshi” and propound their goal of a “society free of karoshi” in the broader society.

4) Duty, Responsibility and Benevolence as Cultural Symbols for Framing and Moral Resources

Based on the cultural expectation for employer benevolence often found in employment relations in Japan's labor history, anti-karoshi plaintiffs successfully suggest that the legal as well as moral responsibility for karoshi lies in the hands of employers. Anti-karoshi activists' grievances are permeated with the language of moral responsibilities and duties [*sekinin to gimu*] in the employment relationship that are taken for granted in the society. At the center of their argument is the legal and social responsibility of employers to "manage" workers' health [*kenko kanri gimu*]. In their assertions, the legal concept of employers' "duty to consider safety" [*anzen hairyo gimu*] is broadened and transformed to include the daily monitoring of employees' health and the adjustment of their workloads according to each individual's health status. While actual labor practices remain a far cry from the expectation, their assertions resonate with the wider sentiment of the society, and have prompted the courts to increasingly support the plaintiffs' claims in recent years.

The assumption that an employer holds a broad moral responsibility over the wellbeing of their workers has been widespread throughout Japan's labor history. Ronald Dore (1985) has described similar notion arguing that basis of employee obedience in Japan is the assumption of employer goodwill towards employees. During two and a half centuries of Tokugawa period, the peasant rebellions were always protest rebellions based on the premise that rulers ought to be benevolent, and that a desperate life-risking protest might call them back to the path of virtue. Thomas Smith (1988) coined the term "right to benevolence" to describe the moral overtone of workers' demands for improved treatment in prewar Japan. Workers appealed to employers and the public to right the wrong of not only "economic oppression" but also of "moral

oppression” by stressing their dependence upon the employer. Yet, workers consciously avoid any challenge to the legitimacy of hierarchy within their firms to preserve the “moral claim to hierarchical justice”. The term “dependent revolt” has been used to describe the similar notion by Ishida Takeshi (1984). In contemporary Japanese labor disputes, Christena Turner (1995) also noted the lack of “consideration” on the part of an employer as a basis of labor protest for Japanese workers. Workers’ anger against their employers who suddenly filed bankruptcies and put them out of work was aroused not by the fact of bankruptcy, but by the owner’s lack of thoughtfulness to at least discuss the situation with their representatives before hand. What they wanted was the “responsible gesture” of the owners which showed that they cared about workers’ livelihood. While gradually changing among younger generations, the cultural expectation for employer benevolence towards employees is still present in Japan, and has an impact on the way anti-karoshi activists frame their grievances.

The assumption of employer benevolence serves as a ‘moral resource’ for anti-karoshi activists that allows strategic contention against powerful state and corporations. Their claims on “duty” [*gimu*] and “responsibility” [*sekinin*] in employment relationship are embedded in the moral assumption of employer benevolence in return for the dedicated devotions of workers. Social movements are burdened with producing “rhetorical packages” that appeal to target audiences within the boundaries of cultural legitimacy. In order for frames to be “resonant”, they often need to be meshed with basic cultural assumptions and draw upon the narratives of the dominant culture (Snow and Benford, 1992). The notions function as cultural symbols of ‘moral resources’, and allow them to assert their claim within the boundaries of cultural legitimacy. Resource

mobilization theory in the field of social movements explains the critical role of resources in the emergence of social movements. Economic and human resources, or social infrastructure supportive of movements such as media, institutional nexus, and preexisting networks are often the focus of investigations (Zald and McCarthy, 1994). However, little has been explored about the role of moral beliefs as a resource in explaining the emergence and strategies of social movements. The success of efforts to propound social movements' views is often dependent upon the "cultural resonance" of the frame advanced by organizers (Gamson, 1992; McAdam, 1994). It is an act of "cultural appropriation" seeking to tap highly resonant idea in mainstream society as a way of galvanizing activism.

The collective action frames of movements do not always have "oppositional" character. In order to frame an issue in a way that resonates with potential sympathizers' understanding of the world, movements often "appropriate" symbols of dominant culture, rather than building exclusive oppositional subcultures. Fantasia and Hirsch (1995), for example, discuss the social processes through which a cultural object – the veils of Muslim women – is appropriated, and its meaning actively transformed by Algerian women in their efforts to defy French colonialists. Noonan's 1995 exploration of traditional womanhood in Chilean mothers' activism under the oppression of the Pinochet regime provides another example. Their emphases on the cultural meaning of cultural symbols serve as an "oppositional appropriation" of traditional sentiments providing moral and cultural resources. In this perspective, culture itself is seen as a "terrain of struggle" for collective action (Fantasia and Hirsch, 1995), suggests why it seems difficult to construct truly oppositional symbols (Steinberg, 1999). In the societies

where non-democratic political and social oppression is rampant, framing tactics that deemphasize oppositional character are especially necessary (Noonan, 1995; Noaks and Johnston 2005). The case of anti-karoshi activism that appropriates the traditional notions of employer duty and benevolence, I argue, is one such example.

5) Paradox of Employer Duty and Benevolence, and the Image of the *Kigyo Senshi* [Corporate Warrior]

Anti-karoshi activists' "oppositional appropriation" of dominant cultural symbols is full of paradoxical consequences. Marc Steinberg (1999) argues that the development of collective action discourses is both facilitated and limited by the ways in which claims and alternative visions can be represented within a larger discursive field. Frame development is limited because meaning production is bounded by the larger field of relevant discourse in which meanings are produced. The "networks of messages" in which a frame is embedded, as Steinberg stresses, impose structured constraints on what can be represented. Anti-activists' focus on the employers' neglect of moral and legal duties results in their inability to consider broader social contexts of overworking and address root causes of the complex issue. Anti-karoshi activists' emphasis on the responsibility of employers to "consider" [*hairyo*] workers' health, and their focus on workers' compensations as a symbol of "honor" divert their attention from the complex social and political contexts in which workers are left powerless against the abusive corporate practices. The problems of rigid employment structure, industrial policies that impose harsh working conditions on workers, and the lack of political freedom for individual employees in the dominant corporate culture are seldom mentioned in their discourse.

The appropriation of dominant corporate culture by anti-karoshi activists points to another constraint that discourse itself imposes on their efforts. Their emphasis on the benevolence of employers in protecting workers' health not only prevents them from questioning the employers' power and control over workers, but also force them to present the victims as deserving of the benevolence. In their efforts to prove that their loved ones' sacrificed their lives for work, and therefore, are entitled for employers' recognition, benevolence and apologies lead them to stress the victims' loyal devotion to their work responsibilities. As will be discussed in detail in chapter 5, their emphasis on the victims' dedication, paradoxically, results in affirming Japanese workers' single-minded devotion to work responsibility and corporate culture that demands self-sacrifice for collective achievements. In their effort to present the image of victims that resonate with the dominant culture, they ironically create the image of the victims as loyal devoted "corporate warriors", the very notion that they set out to eliminate in the first place. While anti-karoshi activists have managed to draw political and public attention to the issue and prompt administrative and policy changes, the constraints created by their appropriation of dominant cultural narratives limit their ability to impact actual corporate practices that lead to long work hours and unhealthy lifestyle.

Sociology of Health and Illnesses

This study also relies on various theories and concepts from sociology of health and illness. It reflects my underlying interest in health and illnesses as a site through which social realities are constructed. Perspectives that emphasize active, collective and competitive construction of illnesses as a social problem guide this study. Drawing on

the social constructionist approach, the study examines the emergence and mainstreaming of the new medical concept of *karoshi* that frames debates about work, health and the nation. The processes of creation, legitimization, and dissemination of *karoshi* provide the site through which we can observe how multiple social forces shape our understanding towards health and disease. By tracing the evolution of the concept of *karoshi*, this study also explores how political orientation of medical professions and their view of the world shape the discovery, naming, and public recognition of a new medical phenomenon, and how medical debates over *karoshi* reflect the broader moral concerns and on-going debates about the state and corporate power in Japan.

1) Illness as Social Malady

Illnesses are not merely the condition of an individual in sociological perspective, but often mirror social maladies reflecting a complex set of social issues within a larger social order. The emergence of a new health problem such as *karoshi* provides a site through which underlying social conflicts, moral issues and the process of imputation of responsibility can be observed. Social constructionists interested in health and illnesses argue that social actors often use illness to criticize a problematic social environment and provide a powerful rationale for social action (Rosenberg 1992). Social actors often use the difference between “normal” and extraordinary sickness as an implicit accusation of problematic social environments and provide a powerful rationale for social action. Barbara Smith (Smith 1981), for example, examines how the criteria for the category of “occupational diseases” were achieved for “black lung” through negotiations between many actors with different social, political and economic interests. “Black lung” was deemed dangerous to coal miners’ health only after years of political conflict between

unions, various health professionals, and mine owners. Her study reveals the process of constructing an occupational disease “black lung” by showing how miners and their allies worked to develop public awareness, to confront owners and officials who deny the existence of the disease, and to take the conflict to the national political, legislative, and media stages.

2) Medicine as a Social Practice

By tracing the evolution of the medical concept of *karoshi*, created, adapted, and transformed through legal and occupational health debates, this study builds on the approach that views medicine as a social practice. Sociologists interested in social constructionist view regard medicine as a form of social activity rather than purely scientific act, and consider medical knowledge as a product of collective negotiations rather than as a series of hypotheses about disease and the body. Instead of taking the autonomy of medical knowledge as given, the approach addresses the questions of how knowledge comes to be constituted as a separate abstract entity in contrast with practical activity. Unlike the traditional biomedical view of medicine, medical and social worlds are no longer seen as autonomous of each other. The nature of medicine is not self-evident or unaffected by the struggles between various interested parties for the status of medical. In this perspective, medical knowledge making is seen as a subject to the influence of social elements such as power inequality, political ideology and moral assumptions. Studies have revealed that medicine can construct a concept of sickness that is far from being neutral and scientific, but much closer to a moral judgment that evaluates normality and desirability.

Medical professions, in this sense, act as social agents of “moral entrepreneurs” who make medical enterprise out of moral concerns.³² Elizabeth Armstrong’s (Armstrong 1998) investigation reveals how moral entrepreneurship of physicians played a key role in the diagnostic history of fetal alcohol syndrome (FAS). She found that the physicians who worked to define FAS tended to focus on maternal use of alcohol as the sole cause of the observed phenomenon. Their focus emphasized the moral meaning of alcoholism and the responsibilities of mothers, but ignored the social context of maternal alcohol use. The physicians even resorted to moral rhetoric from classical mythology, philosophy, and the Bible to magnify the importance of FAS in medical literature. In the process, FAS became a moral as well as a medical diagnosis that reflected the broader social concerns towards environmental threats to health, the development of fetal medicine, images of “the perfect child,” and a growing paradigm of maternal-fetal conflict. In anti-karoshi activism, the physicians sympathetic to workers act as “moral entrepreneurs” who employ their medical authority as a way to correct what they see as an industrial injustice. Their medical authority, in this sense, is a tool for them to defy dominant power in the society and help to “right the wrong” of the corporate-centered society.

Investigation into the trajectory of anti-karoshi activism also provides an insight into how karoshi caused by long working hours come to be regarded as a medical issue in Japan. The social constructionist view takes as problematic how a certain area of human life is regarded as ‘medical’. It is interested in the means by which the established

³² Howard Becker first described “moral entrepreneurship” in his book *Outsiders* (1963). Becker notes that moral entrepreneurs see themselves as “moral crusaders typically want to help those beneath them to achieve a better status.” “They derive power not only from the legitimacy of their moral position, but from their own superior position in society” (149). The physician typically possesses this power.

boundary between medical and non-medical is maintained (Wright and Treacher, 1982).

Medicine holds the authority to label one person's complaint an illness and another's complaint not. Freidson (1970) compares medical authority to law and religion: "the judge determines what is legal and who is guilty, the priest what is holy and who is profane, the physician what is normal and who is sick." He argues that medicine has established its jurisdiction "far wider than its demonstrable capacity to cure."

Irrespective of its capacity to deal with the disease, the medical profession first claims jurisdiction over the label of illness and anything to which that label may be attached. It is the everyday practitioner's task, according to Freidson, to assign a medical label to symptoms that laymen have already singled out as undesirable. This study sheds light on the process through which karoshi came to be regarded as a medical issue, and how the internal politics of the medical community affected the status of karoshi.

Medicalizing Work into Deviance as Karoshi

Karoshi complicates the notion of medicalization, transforming the meaning of hard-working from "good" moral behavior to deviance. As Peter Conrad (1992) points out, increasing faith in science and medicine transforms more and more behaviors considered "bad" into sickness. Alcoholism, homosexuality, drug addiction, and suicide are the examples of such "disapproved" behavior labeled as "sickness." In the case of karoshi, medicalization turns the moralized notion of "hard-working" prescribed by the state and businesses into the deviance of "overworking". Unlike the medicalization of alcoholism, the fault is found not in individuals who engage in the act but in the powerful businesses and the government who impose the deviant behavior on the powerless. As

discussed earlier, the alliance of the state and big business in Japan has created and reinforced the work ethics of self-sacrifice necessary to drive its quest for economic prosperity. As Lock (1989) illustrates in the case of menopause, one's duty to contribute to the society by working hard is often accentuated to override any physical discomfort felt by laboring individuals. The "discovery" of karoshi by the physicians problematizes the behavior of hard-working hitherto considered moral into a social and medical malady to be solved. Without the medical concept of karoshi, the act of overworking is not publicly recognized as a social or medical "problem." The biomedical event of death from cardiac and cerebral failure provides a turning point in the transformation of work from a moral social behavior to the anomaly of karoshi. The act of "working hard" that evokes unconditional cultural and social approbation in Japan turns into a social problem when the worker's physical body ceases to represent the social virtue of "hard-work."

Social Actors in Multiple Social Worlds

1) Multiplicity of Social Actors and Complexity of Disease Construction

This study attempts to demonstrate the complexity of the processes surrounding the construction of karoshi as a major public health problem, and the multiplicity of social actors involved in the process. Anti-karoshi activism illustrates the process in which multiple groups of social agents from different "social worlds," in addition to medical professionals, bring their understandings of the issue. As they interact, discuss and work out issues, they together construct a new interpretation of karoshi. In the efforts to highlight the diversity of social forces that combine to create and modify a medical phenomenon, Phil Brown (Brown 1996) suggests investigating both the

construction of medical knowledge and the lay experience of illnesses. The approach allows us to link the interactional and interpretive aspect of social constructionism that highlights the importance of human agency in people's exchanging meanings and structural/political-economic factors that point to the context of interactions and discourse. He urges us to take a critical look at the world of medicine that is part of larger social and political forces without losing sight of the interactive definition-making component. In this study, I draw on Brown's insights by investigating the process of medical knowledge construction of karoshi in chapters that focus on medical and legal professionals, and the lay experience of karoshi in the chapter on mothers and wives of karoshi victims.

2) Ownership and Institutionalization of Karoshi Grievances by Professionals

In the absence of workers' participation, legal and medical professionals take central roles in addressing the problem of karoshi. Through the process of public consultation, evidence appraisal, and compensation application, the lawyers have established a system of addressing karoshi-related grievances, and by doing so, they claim the issue as part of their occupational territories. Doctors also participate in the process by offering medical opinions to support or refute legal cases depending on their opinions, contributing to further medicalization of the issue. Professionalism is considered a main way of institutionalizing expertise in industrialized countries.³³ Over the years, the attempts to redress karoshi have been increasingly systematized and claimed as an expert territory by a group of legal and medical professionals. As the legal arguments come to involve more and more specialized knowledge, it takes "karoshi

³³ Andrew Abbot,t, *The System of Professions: An Essay on the Division of Expert Labor*, Univ. of Chicago Press, 1988.

specialists” who possess specific knowledge of labor laws and stress-related cardio- and cerebral-diseases to handle cases. Hilgartner and Bosk (1988) discuss how social problems are embedded within a complex institutionalized system of problem formulation and dissemination by “the communities of operatives”. The authors point out the “ownership” of social problems by networks of social agents who center around particular problem promoting and controlling particular issues. The concept of “social problem communities” is useful in thinking about the social actors. Within the “problem community” which works to promote the issue of karoshi, there exists a variety of social actors whose interests and motivations widely vary. Over the years, anti-karoshi activism experienced the shift in the main “ownership” of karoshi problem from pro-labor medical specialists to legal professionals within the community. As the central actors shifted, the forms of protest and strategies also shifted from labor activism to legal activism, encompassing a wider range of litigation cases including white collar management jobs. By investigating the identities, motivations, and strategies of these professional operatives in karoshi problem community, this study attempts to delineate the process of claiming the problem “ownership” through institutionalizing karoshi expertise.

Why Not Workers’ Protest?

Anti-karoshi activism emerged as a protest against employers who treat their employees as “disposable” [*tsukaisute*]. Yet, curiously, the individuals who lead the struggle against corporations are not workers who are on the verge of overworking to death. Instead, the unique coalitions of professionals and housewives whose lives otherwise share little commonalities lead the struggle. The emergence of anti-karoshi

activism led by professionals and housewives was prompted by the same condition in which the phenomenon of karoshi itself came into being - the underlying lack of labor power. Violations of labor rights are often ignored due to legal and administrative loopholes or informal social pressures in everyday work life. Common corporate practices such as unused sick leave and paid vacation, extremely long working hours, and unpaid overtime, all symbolizes structural and informal constraints to exercise workers' rights. The Labor Standards Law is considered the most neglected law in Japan.

One of the major factors in this neglect is the close alignment of state and corporate interests that provided substantial leeway to the operation of large corporations throughout the modern history of Japan. The state and corporate alliance eventually succeeded emasculating organized labor that run counter to their economic interests.³⁴ Labor unions in Japan now take a “cooperative track” that avoids overt confrontations and prioritizes organizational gains that are believed to eventually benefit individual workers. As a result, most contemporary labor unions avoid touchy issues such as occupational health, and are incapable of directly addressing problems pertaining to harsh working conditions and abusive practices. Apart from the notable exceptions of a few industry-based unions of teachers, medical workers, public employees and broad casters that belong to *Zenroren* (National Confederation of Trade Unions), most labor unions take little action to fight against karoshi.

A closer look at the rise and fall of labor movements between 1960s and 1990s provides further insight into why contemporary anti-karoshi activism is not led by

³⁴ Andrew Gordon (1998) describes the historical process of the state and corporate alliance and emasculation of labor unions in Japan.

workers. In the late-1960s, the socio-medical concept of overworking to death was originally born out of labor activism against rationalization and mechanization during the rapid economic development. Labor movements flourished in the earlier decade still provided the organizational resources, motivations and will to protect workers- mostly blue-collar laborers- from industrial hazards and exploitative labor practices. Medical doctors who were concerned with occupational health in the shifting industrial environment worked with progressive labor unions to fight against deaths from overwork. However, the labor unions continued to decline in the 1980s and 1990s. Relatively more progressive union federation, Sohyo, faced dissolution in the late 1980s and was merged into Rengo, the conservative “cooperative” federation. The number of organized workers continued to steadily decline since the height of labor unionism in the post-war period. As the power of labor unions diminished, the form and nature of anti-karoshi activism also shifted. Meager resistance against occupational health hazards and increasingly harsh labor practices catalyzed the resurgence of anti-karoshi activism led by lawyers and housewives.

V. RESURGENCE OF KAROSHI - WHY 1988?

It was a time when the individuals began to fight without labor unions. Indeed, families and those who are outside of corporations rose up together saying that something was wrong with the corporate society. We began to realize that we need wider networks of people, not just enterprise unions, to change the society.

-Takahashi Masato, Lawyer in anti-karoshi activism

The fact that the phenomenon of karoshi became a major social problem at the end of 1980s after the concept and activism have existed for almost two decades begs the

question of why then. Why did the problem of karoshi resonate with the public sentiment at the height of the bubble economy that produced unprecedented aggregated wealth of the nation, and triggered institutional and cultural changes? Though the focus of this study is on the interactional processes in which karoshi is constructed into a public problem, this section briefly considers the larger structural context of the emergence of karoshi.

The concepts of “Political Opportunities” and “Cultural Opportunities” for movement emergence found in social-movement literature help explain why anti-karoshi activism experienced its resurgence in the late 1980s and early 1990s. Scholars of social movements have established the notion that social movements often emerge in response to an expansion in the political opportunities available to a particular challenging group.³⁵ It has been argued that social movements are less the product of organizational level mobilization efforts than they are the beneficiaries of the increasing political vulnerability or receptivity of their opponents or of the political and economic system as a whole. In this perspective, the emergence of social movements is seen as a response to the “expansion” in political opportunities (McAdam 1995).

While acknowledging the importance of structural factors, many scholars in social movements in recent years have also noted the significance of cultural factors in constraining or facilitating the emergence of social movements. They highlight the importance of subjective meanings the leaders of social movements attach to their situations as a mediating factor between opportunity and action. The causal importance of

³⁵ See for example, Charles Tilly (1978), Sidney Tarrow (1994), Doug McAdam (1982), Theda Skocpol (1979)

expanding political opportunities is then seen as inseparable from the collective definitional processes by which the meaning of these shifts is assigned and disseminated. Doug McAdam (1995), for example, points out the importance of “expanding cultural opportunities” as a stimulus to action, and urges to incorporate two tasks in the analysis of movement emergence: 1) to account for the structural factors that have objectively strengthened the movement, and 2) to analyze the processes by which the meaning and significance of shifting political conditions is assessed. McAdam’s suggestion is useful in thinking about why anti-karoshi activism was triggered in the late 1980s despite the “discovery” of karoshi almost two decades earlier.

Expansion of Political Opportunities – The Ebb and Flow of the Sentiments against “Corporate Centered Society”

The coining of the term karoshi at the end of 1960s and the resurgence of anti-karoshi movement at the end of 1980s coincide with the shift in the political mood against what Andrew Gordon (1998) described “the unusually total hegemony” of corporations in Japan. The emergence of anti-karoshi activism can be thought of as a result of the karoshi frame intersecting with what Zald and Garner (1987) described as “the ebb and flow of sentiments”, the shifting level of supporting sentiments in the society. The periodic shifts in the political sentiments against corporate hegemony have created more favorable conditions for karoshi framing of the problem. To fully understand larger factors that affected the trajectory of anti-karoshi activism, it is essential to delineate the historical contexts of the development of *kigyo chuushin shakai* [corporate centered society] in Japan and public reactions to the rise of corporate power. There are four critical periods to consider: the period of national reconstruction in post-

war period, the period of rapid economic growth in the 1960s, the “oil shock” period in the 1970s, and the period of bubble economy and its collapse in the 1980s and the early 1990s.

During the postwar period in Japan that faced urgent need for national reconstruction, the opinions of political leaders came to a consensus that re-building and protecting private corporations was a way to economic recovery.³⁶ State policy that protects large firms and suppresses labor resistance was a crucial element for large corporations to gain immense economic and political power. The close tie between the state and private firms has been pointed out before. Andrew Gordon (1998), for example, reveals the collaborative process between the state authority and corporations in postwar Japan in subverting organized labor and emasculating labor unions through “cooperative unionism.” Uchihashi (1992) discusses *kaisha honi shugi* [corporate-centered-ism] and argues that Japanese corporations function as an implementing agency for state authority. He asserts that Japan is one of few nations whose national goals and corporate interests unusually and closely match. The close relationship can be seen, for instance, in corporations assisting the incumbent party not only through monetary contributions but also through the mobilization of employees in elections. The state, run by the conservative Liberal Democratic Party (LDP) since 1955, in turn protects firms through its administrative authority such as tax exemptions, and governmental actions beneficial to businesses. Japan is said to be unique in the extent to which its business community is

³⁶ Uchihashi, Okumura, Satake, ‘*Kaisha honi shugi*’ o dou koeru, 1992

organized and has close ties to the incumbent political party, the only party to have governed Japan.³⁷

The policy of ‘protected economy’ proved to be effective in boosting the Japanese economy, and the tripartite alliance of the state, corporations and labor eventually led to the astonishing two digit GNP growth in the 1960s. During the 1970s, however, Japanese citizens began to realize the high price of “economic miracle” manifested in the form of environmental destruction, pollution and unsafe products. Strong criticisms rose up against irresponsible corporations, and consumer and anti-pollution movements gained momentum in the 1970s. Grass-roots movements were showing their potential as a possible check against corporate power. In this anti-corporation climate, the “discovery” of sudden death from overwork and the coining of the term *karoshi* were made in the early 1970s. The phenomenon of “sudden death at work” caught the attention of labor unions and activist doctors, and began to emerge as an occupational health issue among progressive unions. However, the public opinion at that time was much more concerned with unsafe consumer products and severe pollution that caused a series of deformity and diseases. In the 1970s, reflecting the dwindling labor movements, the problem of *kaorshi* took a backseat in the protests against socially irresponsible corporations.

The political climate shifted again in the late 1970s with the coming of oil crises. The “oil shock” that shook the nation in the 70s painfully reminded the Japanese of their status as “the country with no natural resources.” Once again, the consensus from all sides was that corporations must be protected to survive the crisis. The notion that individual workers would benefit the most when the interests of companies are protected

³⁷ Glen Fukushima, “Corporate Power”, *Democracy in Japan*, 1989

became the mainstream opinion. The ability of labor unions to influence the production process was drastically reduced by the end of the 1980s. From this time on, Japanese corporations found little opposition to “lean production” and “rationalization” that prioritized corporate gain. Labor unions wholeheartedly supported the ideology of “cooperative unionism” and posed no real threat to the corporate hegemony. Throughout the 1980s, the idea that employees were best served by devoting themselves wholeheartedly to company goals became widespread, and intensified the old problems of long work hours and unpaid overtime (Gordon 1995). Japan became the industrial country with the fewest strikes by the end of the 1980s, when progressive union federation Sohyo was absorbed by conservative pro-business federation Rengo. The organized rate of the Japanese workers continued to decline from 35.4% in 1970 to 26.8% in 1988.³⁸ Throughout the bubble economy of the 1980s, Japanese corporations produced unprecedented aggregate wealth making its economy the largest in the world. International appreciation for Japanese style production and management further reinforced the legitimacy of corporate practices.

Yet the tide once again gradually shifted. As the unparalleled growth of Japanese multi-national corporations created an extraordinary level of trade imbalance in the global trade competition and fueled investments abroad, domestic and international criticism against Japanese corporations grew stronger. Particularly in the United States, strong anti-Japanese sentiment led the US government to place heavy pressure on Japan to open up its long-protected domestic market. The term “Japan Bashing” from the 1970s in the media and the animosity towards the Japanese intensified their image as

³⁸ Koji Morioka, “The life style of Japanese workers” in *Karoshi*, 1990

“economic animals”. At the same time, internal dissatisfaction was growing among the Japanese. For one thing, the Japanese were working harder than ever. By 1988, the Japanese work force was putting in more than twice the amount of overtime hours as they did in 1975, and the average work hours in Japan was ranking the longest in the world.³⁹ The world wide recession began in 1987 heightened the pressure on workers as fewer were hired. Yet the quality of life for the vast majority of the Japanese was not improving. Despite the “chorus of affluence” by the national leaders and the media, an average Japanese was “working like mad” to maintain the life without *yutori* [extra, leeway, leisure]. The domestic criticisms against corporations were heightened with the burst of the bubble economy in the early 1990s. The debates and books on the excess of corporate power and the problem of “corporate-centered society” multiplied during this period. The resurgence of anti-karoshi activism coincided with this wave of criticism against corporate hegemony that created political and cultural opportunities for the activists to advance their grievances.

Expansion of Cultural Opportunities for Anti-Karoshi Activism in the late 1980s

McAdam (1995) in his analysis of cultural factors in movement emergence suggests distinct cultural opportunities in which framing efforts can be set in motion. Some of them include ideological or cultural contradiction, dramatization of system vulnerability, and the availability of master frames. The concepts are helpful in further elaborating why anti-karoshi activism began making impacts in the society in the late-1980s.

³⁹ The Labor Force Survey 1988

1) Ideological or Cultural Contradiction

This type of cultural opportunities, according to McAdam, involves events that dramatize a contradiction between a highly resonant cultural value and conventional social practices. For example, in the case of women's rights movements in the 19th century, the movement was triggered by the contrast between the egalitarian rhetoric and the sexist practices of the early American abolitionist movement.

Cultural contradiction plays a role in the resurgence of anti-karoshi activism. In the late 1980s and early 1990s, the new acclaim of Japan as one of the world's most wealthy nations, and the international criticisms against Japan as "economic animal" triggered self-reflection in the minds of the Japanese. The criticisms from abroad provoked public concerns for long work hours and the quality of life that did not seem to have improved despite their single-minded economic efforts and "economic success" achieved in previous decades. Books such as "What is Affluence?" [*yutakasa towa nanika*] (Teruoka 1989) and "Let's Go Home, Today I am for Myself after 5pm" [*Saakaero, kyowa 5jikara jibunjin*] (Osaka After-5 Association, 1993) filled bookstore shelves reflecting nagging dissatisfactions of the overworked population. The contradiction was salient to foreign observers as well. US TV network ABC broadcasted "Rich Japan, Poor Japanese" in its popular program *Twenty-Twenty* in June 1990. The TV show pointed out the poor quality of life in Japan introducing small but expensive housing, crowded public transportation, and long unpaid overtime. In this atmosphere, the issue of karoshi provided the gateway to express the brewing dissatisfaction and concerns of ordinary workers towards their uncompensated hard work under severe working conditions.

2) Dramatization of System Vulnerability

Another cultural opportunity that can stimulate framing and mobilization is dramatization of system vulnerability. The concept refers to events or processes that highlight the vulnerability of one's political opponents. McAdam stresses that the cultural aspect is not to deny the structural roots of the crisis, but to elucidate the fact that crisis need to be transparent if it is to serve as "a cue" for collective action. The example he brings is the 1954 decision of the US Supreme Court in *Brown v. Board of Education*. The decision that declared racially segregated schools unconstitutional convinced the black community of the political and legal vulnerability of the southern segregation system and accelerated the pace of civil rights movement.

In 1988, the sudden death of Hiraoka Satoru, a supervisor of a major precision bearing production company described at the beginning of this chapter, led to highly publicized workers' compensation and civil lawsuits. The case drew unexpected media attention, and triggered public debates about harsh working conditions of most average workers. Major Japanese newspapers, TV network news, journals and magazines reported the death of Hiraoka as a symbol of corporate labor exploitation in the midst of the most "affluent nation" in the world. The phenomenon of *karoshi* and the irony of Japanese affluence spread further as international news. Chicago Tribune (11/13/1988), for example, reported Hiraoka's case on the front page with the headline "Japanese live... and die... for their work".

A crucial factor in dramatizing system vulnerability and shifting frame is the role of the media. The making of *karoshi* as a major public concern owes significantly to the media's portrayal of the issue. Following Hiraoka's case, reports on *karoshi* continued to

flood the media. For example, 31 newspapers throughout the nation carried an 8-day series of reportage on karoshi titled “Aren’t You Tired – the Scenes of Karoshi” in November – December 1989. The articles reported the individual cases of karoshi, investigating work realities of corporations that led to paralysis, suicides, and death of workers, and criticized the “logic of corporations” that attempt to manage increasing workloads with a minimum number of personnel. On TV, the public broadcasting network, NHK, broadcasted a documentary “Karoshi, Wives Charge” [tsumatachi wa kokuhatsu suru] in June 1989, questioning the health of the society in which one must work till you drop despite the economic prosperity enjoyed by the nation.

Under the intense public debates, the government began responding to the criticisms and acknowledging that all was not well despite its economic prosperity. For example, in 1991, Council for Nation’s Livelihood, a government agency established to examine the economic life of citizens, urged ministries to reform the “corporate-centered society” in its report titled “Aiming for a Society that Prioritizes Private Life”. The report warned that “the excessive emphasis on economic efficiency of the corporate-centered society” was bringing about workplace phenomena that were unheard of in other countries such as extreme long work hours, “company man” [people whose life and concerns are wrapped only around work and company], work transfer without family members.

3) Availability of Master Frames

McAdam points out cultural opportunity prompted by the availability of master frames which legitimate collective action. A ‘master protest frame’, he argues, serves as a source of ideological understanding and cultural symbols for social movements that

tend to cluster in time and space. The major movements in the 1960s in the United States, for example, were not independent entities but offshoots of a single activist community with its roots in the civil rights movement. McAdams asserts that most social movements rest on the ideational and broader cultural base of ideologically similar past struggles. Anti-karoshi activism similarly has its long and deep root in citizens' movements that swept the nation from the mid 1960s to the mid 1970s. Among the array of social protests that occurred during the 'protest period' in Japan, anti-pollution, minority rights, consumer safety, labor and student movements in particular laid the foundation for anti-karoshi activists. One of the "discoverers" of karoshi was a doctor who devoted his life to industrial medicine, and the term was disseminated by a group of physicians who were concerned with industrial democracy and had close affiliations with organized labor. The resurgence of anti-karoshi activism in the late 1980s was due to the persistent efforts of the professionals who had spent their young adulthood in the mist of student movements in the 1970s, and worked on labor issues as apprentices. Their ideological orientation is clearly leftist, and many belong to professional organizations that specifically promote "rights of the labor. As McAdam points out, these established networks are themselves embedded in long-standing activist subcultures capable of sustaining the ideational traditions needed to revitalize activism following a period of movement dormancy.

VI. IS KAROSHI REAL? A NOTE ON SOCIAL CONSTRUCTIONIST APPROACH

While I find social constructionist approach a useful tool in understanding how social forces influence scientific knowledge making and the emergence of public

problems, in this study, I do not imply that the phenomenon of karoshi does not actually exist. Instead, during my research, I saw much correspondence between the narratives of victims' experiences provided by their families and the descriptions of work life experienced by workers under pressure. After listening to numerous stories about the debilitating physical and mental consequences of intense and long work hours both from the families of the dead and from those who are working, I could almost outline the process of dying from overwork. I was very much interested in the working conditions of the victims and processes leading to karoshi. However, as a researcher, I faced the dilemma of not being able to assume that workers really die from overwork with the current level of – ironically – “scientific” knowledge on the issue. In fact, like activist themselves, I had no way of showing that the social phenomenon of overworking accounted for the physical reality of death. The question of whether people can actually die from overworking is still an on-going medical and legal debate, and requires much more investigation before we fully understand the consequences of overwhelming stress and fatigue. The constructionist approach, I believe, provides us with a valuable tool delineating the social context of the phenomenon, the knowledge we need to understand the issue in its entirety, without assuming the validity of the claim over karoshi.

VII. DATA SOURCES AND LIMITATIONS

This study relies on a variety of types of data gathered during my twelve months of participant observation in anti-karoshi activism mainly in the Osaka area. The data sources include the following: 1. One hundred twenty seven interviews with the families of karoshi victims, lawyers, doctors, academics, labor unionists and activists, government

officials, and workers in a range of occupations; [Rika – can you separate these into numbers for each group?] 2. Participant observation in activist and professional meetings, forums, demonstrations, public consultations, court hearings and sessions, official negotiations and other events; 3. Publications and documents including newspapers, magazine articles, activist publications, petitions and depositions, court decisions, and other legal documents; 4. On-line resources such as web-sites and email correspondence from an activist mailing list group.

In assessing how the social reality of karoshi is constructed, I tried to consider different versions of reality described by multiple social actors. Naturally, however, certain agents are more inclined to discuss the issue than others. While litigants tend to compete for attention to their cases corporations and companies generally refused to comment on karoshi cases. The same can be said for the government officials and agents who dislike disclosing their views. I was able to interview some people from the government and corporate sectors relying on the extensive networks of activists and professionals who could direct me to those who were willing to provide information. The number of individuals interviewed in these groups was far smaller than the number from the activist organizations. As these individuals were reached through the networks of people who were connected to the activists, however remotely, the views of these individuals may not be completely representative of their groups. Furthermore, as activists tended to focus on more egregious violations of social codes and laws, the illustration of corporate practices described in this study might be extreme cases of disrespect for individual civil liberties and human and labor rights, and may not represent all Japanese firms. However, other studies of Japanese workers such as Christena

Turner's 1993 article that cites overnight work as routine in a "normal factory" suggest the correspondence of my data with the general tendency.⁴⁰

My efforts to include workers' versions of realities also faced similar difficulties. Colleagues of karoshi victims, for example, had difficulty making their time available because they themselves were working long hours. Workers in general, both in public and private spheres, tend to work long hours, and were not readily available to discuss issues on karoshi and overwork. Those who work for the employers involved in legal suits were also wary of management surveillance and hesitant to talk about the issue. Some faced gag orders by their employers. As a consequence, those who were willing to take time and discuss the issue with me tended to have strong opinions on the issues, and were skewed towards more radical views.

The vast majority of the data in this thesis was gathered through my interviews interviews and participant observation conducted in 2002-03 in Japan and South Korea, and 2004 in China, and from primary source materials collected during that period of field work. Almost all of my accounts are based on original data collected in field work, and I attempt to give citations where appropriate. To protect their privacy, unless their names have been already cited in other publications or their own published works are cited, most names are disguised. The primary documents gathered include court records, publications by the activists such as booklets, leaflets, flyers and court case descriptions. All the translations of the primary documents and interviews were done by me. When Japanese names are mentioned, their last names are written first and then first names.

⁴⁰ Other authors who discuss Japanese workers' long overtime include Kumazawa Makoto (1996), Kamata Satoshi (1983), Brian Morean (1985).

VIII. CHAPTER DESCRIPTIONS

The chapters that follow in this study examine the process of karoshi construction at the movement level from the perspectives of both knowledge making by professionals and the experience of karoshi described by the survivors of karoshi victims. The question that binds the chapters together include how each group of social actors in anti-karoshi activism understand and interpret the problem, and frame the issue so that it has become a major public concern of the day. By exploring the identities, motives, and strategies of social actors who contribute to the promotion of karoshi as a social problem, the following chapters examine in detail the process through which the physical event of sudden death became the social malady of karoshi through the activism of social movement entrepreneurs in the medical and legal fields and victims' families.

The first three chapters are organized by the main social actors in the activism. Chapter 2 focuses on the medical doctors who coined the term karoshi in the late 1960s, and how their political inclination and surrounding medical institutions influenced their "discovery" of the disease. The chapter also describes collaboration between lay workers and the medical doctors in which lay knowledge is appropriated by experts and the feedback to lay people. Contrary to the commonplace idea that medical knowledge percolates down from expert, the chapter reveals much more dynamic interactions between lay people and experts. Chapter 3 examines the role of legal professionals in triggering and leading the resurgence of anti-karoshi activism since the late 1980s. It explores their moral, ideological, and professional convictions in galvanizing anti-karoshi activism and making the issue a widely debated social problem. The chapter also describes the declining role of labor unions in protecting workers' health and how the

lawyers' frustration with them motivated them to act as a protector of labor rights.

Chapter 4 investigates the perspectives of plaintiff women – the wives and mothers of karoshi victims in anti-karoshi legal activism. The chapter traces the process in which the identity of women is transformed from “naïve and ignorant housewives” to litigant activists who sustain long and difficult legal battles against powerful corporations and the government. Their motives, strategies and difficulties in becoming litigant activists will be examined. Chapter 5 focuses on the debates surrounding karoshi legal cases. It explores how anti-karoshi activists manage to convince the judges that the cardiac and cerebral failures of the victims are “work-related” and that employers are responsible for their deaths. Their arguments based on the moral assumptions of “duty”, “responsibility” and “benevolence, as well as paradoxical consequences of their arguments that prevent them from addressing root causes of the problem and empowering workers are examined.

The concluding chapter considers some of the effects of anti-karoshi activism, and implication for future work-related health problems including the international dissemination of karoshi. The spread of anti-karoshi activism in neighboring countries in East Asia, and the possibility of karoshi becoming an international phenomenon that symbolizes resistance against dominant corporate power are discussed.

CHAPTER 2

DOCTORS FOR “DEMOCRATIC MEDICINE”: THE “DISCOVERY” OF KAROSHI IN THE EARLY 1970S

The term “karoshi” now known worldwide was born out of labor struggle.

-Dr. Tajiri Shunichiro, one of the discoverers of karoshi¹

¹ Itsudemo Gennki Min-Iren, 4/2004

I. INTRODUCTION

Death of Takebayashi and the Newspaper Industry Union, Newspaper Industry Union

On December 12th, 1969, Takebayashi Katsuyoshi, a 29-year-old worker at the shipping division of Asahi Newspaper Company in Osaka suddenly died of a hemorrhage stroke at his worksite. He had been healthy and never had missed extended workdays for health reasons before. But he was working over 200 hours, sometimes close to 250 hours a month, with only an average 1.9 days a month days off. His work shifts were extremely irregular, and Takebayashi often had to work two shifts both day and night due to the increasing volume of newspaper production and coverage in the late 1960s. At the time when Takebayashi collapsed, the competition for advertisements among newspaper companies was growing fierce due to the Osaka World Exposition scheduled in the following year. The Asahi Newspaper increased its morning edition from 16 pages to 20 ~ 24 pages, and the work force was compelled to work longer shifts in order to run the operation that extended almost 24 hours a day. Takebayashi's section operated with a minimum number of staff without clear work schedules. Their work hours often changed depending on the workload of the day. When increased pages were installed or a shortage in labor occurred, workers had to begin their night shift early at 1 pm instead of 6 pm or to end their shift at 4:30 am instead of 12 am or 1:20 am. Over 80 hours of monthly overtime was common, and many workers were developing health problems including severe back pain, stomach ulcers and debilitating fatigue (Hosokawa, Tsujimura, and Mizuno 1975).

One of the most serious concerns among the workers in the newspaper industry in the late 1960s was, in fact, the increasing number of deaths on the job. The labor union in the Asahi Newspaper Company in Tokyo reported that the number of work-related deaths in 1965 amounted to 19 people that year, a two-fold increase in 5 years.² In 1966, Newspaper Industry Union, an industry wide labor union in the newspaper industry, issued “White Paper of Newspaper Laborers’ Health” with a shocking subtitle, “Death Report on Which Ink Never Dries Up.” The white paper introduced in details the deaths of 12 workers in recent years and warned about sudden deaths on the job. The number of work-related diseases and injuries were also increasing in an alarming rate, according to the report. For example, in Asahi Newspaper Company, according to the corporate report, one incidence of occupational injury or disease occurred every two days. The paper condemned newspaper companies as “manufacturers of diseases and injuries.” In the midst of this heightened awareness towards occupational health and safety, the death of Takebayashi epitomized the problem and triggered the labor unions to mobilize their resources.

Takebayashi’s case became the first well-documented workers’ compensation case of “death from overwork” in which a team of lay workers, labor unions, and medical professionals collaborated. Takebayashi’s labor union and his family filed for workers’ compensation for his death as part of their battle against exploitation of labor. The plaintiff team sought to strengthen their claim by asking for medical opinions of Drs. Hosokawa Migiwa and Tajiri Shunichiro.³ The doctors in the later years would be

² Nihon Shimbun Roudo Kumiai Rengo. 2000. *21 Seiki eno Aratana Chosen [New Challenges towards 21 Century]*. Tokyo, Japan: Rodo Kyoiku Center.

³ Osaka Rodosha no Seimeito Kenko o Mamoru Jikkō Inkaï. 1974. *Roudou to Kenkou*, Vol.6.

regarded as the “discoverer” of *karoshi*. During the 4-year legal battle, movement against sudden deaths on the job took off in the newspaper industry. Newspaper unions were among the few labor unions that took occupational health and safety seriously. Similar activism to Takebayashi case began to take place in many other newspaper companies. During the 1970s, Newspaper Industry Union –industry wide newspaper union federation - managed to win all 23 workers’ compensation struggles they waged for the victims of sudden deaths. Their 100% success rate drew much attention of labor unions in other industries, and the movement spread to TV, publishing, theater productions, insurance and many other companies where labor unions eventually won the compensation for sudden deaths. The movement spearheaded by Takebayashi’s supporters evolved into the anti-*karoshi* activism that later popularized the socio-medical term “*karoshi*” in Japan and the world in the 1990s.^{4 5}

Social Construction of Disease – *Karoshi*

By tracing the origin of the concept of *karoshi*, this chapter explores how the issue of overworking came to be regarded as a medical issue, and how groups of workers, labor unions, and medical professionals with similar and sometimes conflicting interests, influenced the evolution of *karoshi* in the late 1960s through the 1970s. In examining the medical concept of *karoshi*, this study builds on a sociological view that does not assume that the special status of ‘medical’ comes from a scientific investigation of the nature. It

⁴ In this chapter, as in most of this dissertation, my data are gathered from observation, interview, activists’ writing, and participation in organizational activities. I attempt to give citations where appropriate. Almost all of my accounts are based on original data collected in field work.

⁵ The term *karoshi* was newly added to *the Oxford English Dictionary Online* in January 2002 explained as “death brought on by overwork or job-related exhaustion.”

instead looks at how a certain area of life comes to be regarded as medical and how that process is affected by many of social factors. Controversial illness discoveries and designations often provide a site through which we can observe how the issues of health and medicine revolve around social concerns of the time.

In this chapter, I argue that the initial medicalization of death from overwork was prompted by labor activists who were alarmed by the rapidly changing labor conditions under the ‘rationalized’ economy of the 1960s and 1970s, and that the physicians with a leftist orientation actively constructed the concept of *karoshi* in order to assist workers who were suffering from harsh working conditions. Medicalization of *karoshi* was part of the physicians and progressive labor unions’ efforts to strategically utilize the authority of medicine and medicalize the issue to render credibility to workers’ claim about dying from overwork. Following Peter Conrad’s (1992) broad definition, the term medicalization is used to mean “the emergence of medical definitions for previously non-medical problems” and the application of a medical frame to understand or manage a problem. Studies on “moral entrepreneurship” in the field of medicine have shown that the discoveries of new diseases are sometimes the result of physicians’ efforts to “impress their moral vision on the rest of society.”⁶ The medicalization of *karoshi* is one such case in which physicians who created the term did so not only out of professional interests but also as an accusation against the exploitative practices of Japanese businesses and the Ministry of Labor who was unwilling to grant workers compensations to the victims.

⁶ Howard Becker (1963) *Outsiders*. See also Stephen Pfohl (1977), Peter Conrad (1975), Frances McCrea (1986), Elizabeth Armstrong (1998) for the studies of moral entrepreneurship in medicine.

This chapter also touches on the ironic consequence of the medical “discovery” of karoshi by pro-labor doctors. Thirty years after the coining of the term, the issue has been increasingly medicalized by clinical doctors whose “scientific” and technical explanations blur the fundamental issue of labor conditions which the original investigators of karoshi intended to address. Eliot Freidson (1970) has pointed out that the saturation of biomedical model leaves physicians and their allies in government less able to perceive health and illness through the lay point of view. Margaret Locke (1988) also warns the danger of medicalization that often blurs social, economic, and political causes of disease that are at the root of a problem. The recent medicalization of karoshi based on biomedical theories and models by clinical doctors provide an example of this point.

Factors Influencing the Discovery of Contested Diseases

According to Phil Brown (1996), discoveries of contested diseases often contain common elements such as lay initiation, social movements, professional factors, and organizational and institutional factors. The processes surrounding the discovery of karoshi described in this chapter reflect the influence of similar factors.

1) Lay Initiation and Medical Authority

The dominant view of scientific knowledge provides the “top-down” models of expert knowledge dissemination.⁷ Medical knowledge is assumed to be formed by a relatively small group of experts with scientific theories and observations⁸. However,

⁷ Stephan Hilgartner (1990) “The Dominant View of Popularization: Conceptual Problem, Political Uses”

⁸ For example, see Collins (1992) *Changing Order: Replication and Induction in Scientific Practice*

studies indicate that the creation of a new medical knowledge and category often involves more than simply medical doctors declaring their “discovery”. Medical ideas are frequently the product of social processes involving numerous social forces with scores of underlying social issues. Laypeople with no medical training are one of them. For example, Steve Epstein’s (1996) study of AIDS provides compelling evidence that people involved in AIDS activism are crucial contributors of scientific knowledge of AIDS causation and treatment. Similarly, Hilary Arksey’s study of Repetitive Strain Injury (1994) illustrates how patients who are commonly believed to be lacking technical knowledge can be experts in health matters, and how specialists learn to recognize conditions originally identified by lay ‘expert’. Lay persons’ practical experience and ‘insider’ knowledge have potential to act as an active shaping force in medical “fact” building.

While laypeople, through their direct experience, are often aware of problems that medical professions do not routinely pay attention to, they lack credibility and authority to put forward their claims. Medicine possesses cultural authority to define reality and redefine cultural meanings.⁹ For example, Friedson’s (1970) claim that medical practitioners possess cultural authority to assign a medical label to symptoms that laymen have already singled out as undesirable. According to him, medicine has established its jurisdiction “far wider than its demonstrable capacity to cure.” Irrespective of its capacity to deal with the disease, he argues, the medical profession first claims jurisdiction over the label of illness and anything to which that label may be attached.

⁹ See, for example, Write and Treacher (1982), Brown (1996), Conrad (1992)

The issue of overworking took the form of medicine because the labor unions and sympathetic physicians needed the cultural authority of medicine to convince others of the existence of the problem and to redefine what was considered “private disease” [shibyō] as “rationalization disease” [gorikabyō]¹⁰ of the 1960s and 1970s. By virtue of the lay source, however, lay discovery is likely to conflict with biomedical and other societal authority. Lay discoverers are often compelled to convince the medical world and relevant social institutions creating disputes with medical professionals. In the case of *karoshi*, the activist workers and physicians who supported them were also forced to battle with the Ministry of Labor and medical professionals from clinical and industrial medicine through workers’ compensation cases.

2) Social Movements

Phil Brown (1996) argues that social movements are central to the process of disease discovery and often follow lay initiation. Once a sufficient number of individuals recognize and act on a disease, they form activist organizations to press their claims leading to a larger social movement. These movements include women’s health, environmental health, occupational safety and health, civil rights, and disability rights. These movements seek government and medical recognition of unrecognized or under-recognized disease (black lung sickle-cell anemia, post traumatic stress disorder), affirmation of yet-unknown etiological knowledge in already recognized diseases (DES and cervical cancer), overturning of medicalized definitions as mental illnesses (homosexuality, LLPDD), and acknowledgement of unrecognized effects and side-effects (silicon breast implants). Similarly, the discovery of *karoshi* was not only prompted by

¹⁰ The term by Hosokawa in *Gendai no gōrika to rōdō igaku [Modern Rationalization and Occupational Medicine]* 1978

the movements of labor unions, but also followed by social activism of labor unions, doctors and lawyers who led the efforts to make the issue known to the public and recognized by the government.

3) Beliefs, Values, and Ideology

The processes surrounding the discovery of karoshi by the physicians reveal how the creation of a new medical category can be closely tied to doctors' ideologies and world views outside of the medical realm. Sociological studies of medicine show the way in which medicine enforces dominant ideologies of the time. Elizabeth Armstrong's work (1998) on the creation of the diagnostic category of Fetal Alcohol Syndrome, for example, shows how the "discovery" of FAS reflected the moral judgment against women's alcohol consumption during pregnancies and cultural concerns for maternal responsibility and "perfect child." The construction of karoshi provides a case in which medical doctors take an active role in representing ideologies counter to dominant hegemonic values. The doctors' strong beliefs in labor movements and their desire to practice medicine for workers were not typical in the medical community but crucial factors in the "discovery" of karoshi. Without their inclinations towards the ideals of labor activism, they were unlikely to investigate the workers' claims about sudden deaths caused by work overload. Their leftist ideological orientations and sense of duty to assist workers suffering from poor working conditions helped to overcome their initial doubts about death from overwork and motivated them to investigate the cases.

4) Professional and Institutional Factors

Professional factors can trigger both discovery and resistance to discovery of a new disease. Intra-professional rivalry and competition can be an important factor. For

example, changes in DSM diagnoses have been due to the triumph of biopsychiatry over psychoanalysis and community psychiatry (P. Brown 1990; Kirk and Kutchins 1992). The competition can also lead to expansionism. Obstetricians, for instance, have used prenatal diagnosis to increase the detection of conditions labeled dangerous, and hence enlarge the area of obstetrical interventions (Rothman 1989). Organizational and institutional factors are also relevant in determining the type and amount of conditions discovered. Phil Brown (1996) points out that self-perpetuation, as when alcohol treatment facilities locate more cases of alcoholism, and organizational and institutional resistance, as with professional resistance, has much to do with the construction of disease. Occupational physicians working for unions will be likely to diagnose diseases as caused by occupational hazards, while corporate physicians will be more likely to either not recognize the disease, or to attribute it to personal habits (Walsh 1987). Thus coal company physicians claimed that black lung was really asthma and emphysema brought on by tobacco smoking (Smith 1987).

The initial resistance to the concept of *karoshi* in the Japanese medical community was partly due to the fact that the discoverers were doctors who specialized in occupational medicine. Clinical doctors who supported the government and industrial physicians working for private companies resisted the concept of death from overwork stating that such phenomenon has not been scientifically proven and the definition was vague. What was hidden in the debate, in reality, was the intra-professional rivalry not only between doctors working for businesses and labor, but also clinical and occupational medicine. There was also strong prejudice against pro-labor occupational physicians. The doctors in clinical medicine disliked the fact that the discovery was made by those in

occupational medicine, generally considered less “scientific” and inferior. Physicians who supported workers were also considered politically “radical” and viewed with antagonism by physicians in industrial medicine. The concept of karoshi, in other words, was deemed not “scientific” or “prestigious” enough by the opponents.

Karoshi - “Pollution” in Medical Science

Karoshi has been a controversial term in the field of medical science, especially in the earlier period when the legal verdicts have not supported the claim of anti-karoshi activists. At the time when the word karoshi began to appear in the media and popular publications, as well as in academic journals and scholarly books, some doctors in clinical medicine expressed their skepticism towards the concept of karoshi. They regarded the term as a murky misleading concept that oversimplifies the etiology of vascular diseases for the sake of workers’ compensation award. Stephen Hilgartner (1990) points out that the dominant view of science regard popularization of scientific knowledge as ‘pollution’ that distorts and oversimplifies ‘genuine’ scientific knowledge. The view, he asserts, helps to demarcate the boundary between ‘real science’ from ‘popularized science’ and “shores up an idealized view of genuine, objective, scientifically-certified knowledge.” The dominant view, as he claims, grants scientists the authority to determine which simplifications are ‘appropriate’ and usable, and which are ‘distortions’ and useless. Scientists perform “boundary work” to set boundaries between what is internal and what is external to science¹¹. Karoshi is a “boundary object” in this sense, for which actors from different “social worlds” compete to advance

¹¹ See for example, Thomas F. Gieryn (1983, 1995), Star and Griesemer (1989)

their understandings of the phenomenon. Within the field of ‘medical social world’, the opinions of clinical doctors with a certain tie to the dominant political power clash with those of activist doctors who support the labor.

II. BEGINNING - PHYSICIANS IN TAKEBAYASHI WORKERS’ COMPENSATION LAWSUIT

The work-related sudden deaths that prompted the workers compensation struggles by workers and labor unions were unlikely to become a broader public health concern without the medical authority and credibility of doctors who supported them. The doctors defined the problem in a medical term, using medical language to describe it and adopted a medical framework to understand the problem that was originally put into the context of labor resistance. Thus their professional knowledge and authority provided the key link between workers’ experience, labor activism and the ‘discovery’ of a new disease, karoshi.

Despite the efforts made by Takebayashi’s colleagues and labor union, the struggle for workers’ compensation proved to be long and arduous. The Labor Standard Office was not ready to accept Takebayashi’s death as work-related, and did its best to fight against the claim. They submitted the medical opinion of Dr. Shirai from Niigata Hospital to support their decision to turn down the application. The opinion stated that the cause of death was likely to be subarachnoidal hemorrhage due to cerebral arterial aneurysm, and stressed that cerebral arterial aneurysm were unlikely to be caused by work overload but mostly by individual predispositions to the disease. He further argued that it was difficult to believe that Takebayashi’s work had significant negative impact on

the victim's predisposition to the disease. Thus he concluded that the death of Takebayashi was not work-related. Decades later these medical assumptions would be challenged by plaintiffs and their doctors in the court. However, in this period, Shirai's argument represented widely held understanding of the relationship between work-related fatigue and diseases.

The application was first rejected by a local Labor Standard Office in 1970, and then by Osaka Workers' Injury Insurance Referee in 1972. The officials' reason was that Takebayashi had been at the job for over ten years and was used to the night shift, and that arterial aneurysm that caused subarachnoidal hemorrhage was congenital, not related to work. The denials made it clear that the most difficult challenge for the supporters of Takebayashi was to prove that the seemingly 'private' [shibyō] and ordinary death caused by a common brain stroke was actually due to occupational strain. For this, it was essential to make clear the reality of working conditions and to create a new understanding of the relation between labor and disease. The knowledge and credibility of medical professionals were critical for this purpose.

During Takebayashi trial from 1970 to 1974, the newspaper labor union asked three times for the opinions of medical professionals to be submitted to the judges. Among them, Dr. Hosokawa Migiwa had written two opinions from the point of view of public health. Since the time in the medical school, he had been interested in illnesses of occupational origin, and had been investigating numerous cases of work-related diseases. In his opinion, Hosokawa presented the results of his survey conducted with Takebayashi's 170 coworkers in Osaka Asahi Newspaper, and argued that the work overload and long work hours, especially night shifts, had rapidly worsened the health

statuses of workers in the last few years. In addition to this general increase of physical and mental strain at work, he claimed that, during a month prior to his death when Takebayashi was already showing the signs of extreme fatigue, the workload became beyond his “physiological limit” due to the irregular night shifts and the lack of day off caused by the increased numbers of newspaper pages and absentees in his workplace. The last straw for Takebayashi, according to Hosokawa, was the especially long and continuous night shifts he worked despite his ill health and sick leave during the last ten days of his life.

To enhance his argument, Hosokawa requested his colleague Dr. Tajiri Shunichiro to write his opinion from the stand point of clinical medicine. Tajiri had been sympathetic to laborers suffering from occupational diseases, and built a reputation as a “doctor for workers.” Similar to Hosokawa’s opinion, Tajiri emphasized the “anti-physiological” nature of long and irregular night shift at the belt-conveyer, which stressed cerebral and autonomic nervous systems. He argued that Takebayashi’s cerebral arterial aneurysm was caused by the strained systems which created sudden and continuous rise and drop of blood pressure due to the failure of blood pressure adjustment, which severely worn down the blood vessels. After four years of struggle, the earlier decision to deny workers’ compensation to Takebayashi’s family was overturned in Osaka District Court. Central to the victory by the workers and labor union was the collaboration of medical doctors.

Coining of the Term Karoshi

The term “karoshi” was coined right after the legal victory in Takebayashi’s case. The credit for inventing the expression of karoshi is usually given to Hosokawa Migiwa , Tajiri Shunichiro , and Uehata Tetsunojyo, who together published a book entitled Karoshi in 1982. But in reality, the term was being used as early as in 1975 by Hosokawa. As Hosokawa studied the cases brought to him in the 1960s and 1970s, he noticed commonalities among the victims of work-related sudden death that were different from ordinary clinical sudden deaths,¹² even though the immediate causes in all cases were either the failure of the cardiovascular system, central nervous system, or respiratory organs. He summarized his observations on the victims of work-related sudden deaths as follows¹³:

- 1) The work-related fatality usually does not suddenly attack healthy individuals, but the victims often have previously complained of symptoms such as “extreme fatigue” “no energy” “shaking body” “chest pain” “dizziness”. Families and friends often note victims’ loss of energy and restlessness before their deaths.
- 2) In the case of work-related sudden deaths, it is usually not the case that family, coworkers, and especially the victim himself have no clue as to the cause of sudden disease/death. Instead, from one to three months prior to the occurrence, victims find it unbearable to face the amount, quality, length, shift hours, responsibilities and demands of work, as well as the style and quality of work and leisure life. Many victims have written letters and diaries about their fears and difficulties about it.
- 3) The victims do not see doctors even they have conditions such as high blood pressure, arteriosclerosis, high fat content in blood, irregular pulse, cardiac hypertrophy, and angina pectoris. They often do not have time or are afraid to see doctors. Even if they realize it is better to take time off, they do not do so or only take one day off.

¹² “Sudden death” is a clinical concept which the Japanese strictly define it as death within one hour of onset due to the failure of cardiovascular, central nervous or respiratory system, while the WHO defines it as death within 24 hours on onset.

¹³ Hosokawa

- 4) After the death or the on set of the disease, those who know the victim suspect work as the cause, and feel that it is a case for workers' compensation. Yet, they are still astonished to find out the terrible reality of the victim's work conditions such as heavy responsibilities and sales goals, long work hours including working at nights and on weekends/holidays, shortage of personnel and extreme time pressure, frequent business trips, business troubles, and lack of support.
- 5) Medical doctors often face difficulties in diagnosing them because doctors do not know the prior conditions and situations of the victims. They have little knowledge about the realities of work conditions and can not understand anything beyond the limits of clinical textbook, yet they "guess" a clinical disease as a cause. Corporations try to conceal the incidences, often hiding even the actual hours worked. The Labor Standard Offices demand the clear evince of accident or work as the cause (Hosokawa 1999).¹⁴

He felt the need for new terminology that differentiated work-related sudden deaths from other deaths, and coined the term *karoshi*.

The term first appeared in his co-authored publication on occupational health and safety, Rosai, Shokugyoubyo Tousou no Kadai [Issues Surrounding Workers Compensation and Occupational Disease] in 1975. It contained Hosokawa's analysis on Takebayashi case. The word *karoshi* appeared in an unexaggerated manner as a part of subheading written as "the experience and the meaning of winning workers' compensation for *karoshi*," with the parentheses that explained the term as brain stroke. There was no "scientific" introduction, no definition or special commentary offered on the term. The unpretentious style reflected the inventor's intent. In a interview, Hosokawa told me that his purpose in creating the term was simply to "get it recognized as an occupational disease" by "emphasizing work as the cause." He felt that the term

¹⁴ Translated by Rika Morioka

“sudden death” did not convey enough the occupational origin of the problem and wanted to create a new language that emphasized work overload as the ultimate source of the problem.¹⁵ Hosokawa invented the word “karoshi” to suit this purpose, even though Tajiri thought, as he told me later, the term sounded “darn harsh” [dogitsui]. The term was then introduced to the Association of Japan Industrial Medicine when 17 cases of karoshi with circulatory diseases were presented in its annual conference in 1978 by Uehata.¹⁶

III. EARLY CASES OF KAROSHI

Early Pre-Karoshi Cases in the 1950s and the early 1960s

In reality, workers’ compensation legal cases involving sudden deaths existed as early as in 1948. Yet, the number remained very few and most had been dismissed until the coalition of labor unions and doctors became involved in the 1970s. The cases that were granted compensations involved either some kind of accidents on the job causing trauma to the victims or severe physical environments such an extreme climate which was said to trigger heart failure or brain hemorrhage. For most cases, without on-site accidents, it was difficult to receive workers’ compensation for deaths from cardiac or cerebral diseases, which were considered the only direct causes of sudden deaths. In 1961, the Ministry of Labor’s Labor Standard Bureau had issued workers’ compensation award standards for deaths specifically caused by the failures of central nervous and

¹⁵ Interview conducted by R. Morioka, 2002-03

¹⁶ Ibid.

cardiovascular systems. However, it still required, in practice, the occurrence of occupational accidents in order to be compensated.

One typical case that was similar to present-day *karoshi* involved a case of truck driver who died of a heart attack at home after working for months without a day-off in the early 1960s. The decision of the first trial to deny the compensation revealed the following reasons: 1) since the victim was at home when he died, he was not under the control of the employer [*gyomutsuikousei*], 2) There were no strenuous physical activities, mental shock, or accident involved on a day before death [*saigaisei*], 3) The task did not require repetitive physical labor or continuous mental strain for prolonged duration of time, 4) The victim was not the only one who was working long hours for continuous period of time, but his colleagues were working under the same condition, 5) There is no existing medical theory that accumulated fatigue can cause sudden failure of cardiovascular system.

Throughout the next three decades, anti-*karoshi* activists, not only the physicians, but lawyers, workers, and families of the victims, would work hard to rebut these arguments detailing the process leading up to death and constructing theories of “deaths from overwork”. At the time, however, these legal cases and workers’ compensation standards were unknown to most people, and the problem was deemed as minor both by the Ministry of Labor and the majority of medical professionals.

Rapid Economic and Social Changes in the 1960s and 1970s

Although the term *karoshi* was coined in the mid-1970s and popularized only in the 1990s, the idea of “death from overwork” existed as early as in the 1960s when the

problem of occupational health and safety became a social issue in the midst of rapid industrialization, market competition and subsequent workplace changes. The nationwide efforts for economic growth, industrial rationalization, and technological innovation brought faster production pace, repetitive physical labor, heavier workloads, and responsibilities. Along with the sweeping industrial transformation, the mounting cases of work-related injuries and deaths in the 1960s brought greater awareness towards occupational health and safety. Between 1962 and 1968, the number of workers' compensations awarded for occupational injuries and deaths actually doubled from 874,000 to 1,700,000 (Hosokawa 1999). Many occupational diseases hitherto unknown such as cervicobrachial disorder/repetitive strain injury [keikeiwan shogai], vibratory white fingers [hakurobyo], lumbago/back injury [youtsushou], whiplash injury [muchiuichishou] came to be known in this era. The explosion of Miike coalmine and the accident of National Railways that took hundreds of lives in 1963 also caused nation wide uproar against "rationalization murder." After the first oil shock in the early 1970s, the deterioration of work condition was further intensified by the large scale restructuring and massive lay offs that were set in motion by the so-called slow growth economy.

These changes, on the other hand, also led labor unions and medical professionals to work together in their efforts to combat occupational threats to health. Labor unions in newspaper and taxi and truck industries, for example, began to suspect that the increasingly number of sudden deaths among their workers were related to new industrial practices, although they had no scientifically credible proof to substantiate their concerns. In their efforts to make their claim recognized, labor unions began filling for workers' compensations for sudden deaths due to cardiac diseases and circulatory system disorders.

In most cases, however, their attempts have been dismissed in the 1960s as showing no clear medical proof linking work and deaths.

Three Stages in the Development of Karoshi

Investigation into the evolution of karoshi illustrates how medical knowledge making is often tied to structural issues related to the economic and political conditions of the time.¹⁷ Socio-political form of illness experience is often illustrated in the studies of the community response to illnesses caused by pollutions. Lay people experiencing toxic waster contamination recognize symptoms attributed to the contamination, and they notice disease clusters and push health providers and public health officials to investigate.¹⁸ The “discovery” of karoshi was also a social event as well as medical reflecting the broader socio-economic concerns of the time in which it was created. It was closely related to the rapid changes in the production and employment systems and the rise of organized labor that Japan experienced in the 1960s and the early-1970s. The subsequent decline of labor unions that proceeded in the 1980s and the 1990s then shifted the stage of dispute to the court of law where conservative and progressive medical and legal professionals with opposing views argued against each other.

Thus the development of karoshi has three distinct stages [See Table 2.1 below]: anti-karoshi movement began in the late 1960s and early 1970s as part of union-led labor activism, and the citizen’s activism led by legal professionals and victims’ families that popularized the term karoshi in the late 1980s and the 1990s. As labor unions and

¹⁰ Phil Brown (1992)

¹⁸ Ibid.

sympathetic medical professionals made headway in workers' compensation cases in the mid-1970s, the term *karoshi* was introduced in the field of industrial medicine and occupational health and safety. The notion was still isolated knowledge known only to labor activists and occupational health professionals. In this era, most victims of *karoshi* were, not surprisingly, blue-collar laborers who were struggling with the changing lifestyle and faster pace of production brought by "rationalization."¹⁹

Table 2.1: The Development of Karoshi and Anti-Karoshi Activism

	Pre-Karoshi Phase
1948~1950s	Earliest recorded cases of sudden deaths on the job for which workers compensation was requested
1961	Ministry of Labor issued workers compensation criteria for sudden deaths due to heart and nervous system failure
	First Phase – <i>Union led activism</i>
1969~1974	Takebayashi case: the first workers' compensation won by the coalition of labor unions and doctors
1975	The term "karoshi" first appeared in a publication by Hosokawa
1978	The term was introduced to the Association of Japan Industrial Medicine by Uehata
1981	Osaka Sudden Death Workers Compensation Council established
1982	Book <i>Karoshi</i> was published by Hosokawa, Tajiri, Uehata
	Second Phase – <i>Lawyer led activism</i>
1988	Hiraoka case: the workers' compensation won, and the first civil lawsuit against employer, high publicity Karoshi hot-line drew public attention
1989	National Defense Counsel for Victims of Karoshi founded by lawyers
	Third Phase – <i>Institutionalization of karoshi complaints</i>
2001	Labor Standards Ombudsman established by lawyers in Osaka
2001	Revisions in Workers' Compensation Standards for deaths due to cardiac and cerebral diseases

The second phase of *karoshi* began in 1988 when the *karoshi*-hotline conducted by volunteer lawyers was bombarded with the calls from concerned families, and attracted media attention. In the 1990s, *karoshi* became a broader social concern involving ever growing middle-class white collar population as workers' compensation

¹⁹ No statistics are available for this period, but the list of workers' compensation cases shows this trend.

litigation against the Labor Standard Bureau²⁰ and civil lawsuits suing private corporations came to be institutionalized. The late 1980s and the early 1990s was a time of reflection on the consequences of their single-minded economic efforts in the 1960s and 1970s. By the late-1980s, Japanese work force was putting twice the amount of overtime hours as they used to in 1975, and the average work hours in Japan was ranking the longest in the world (Morioka, 1998). International criticisms towards Japan as “economic animal” provoked public concerns for long work hours and the quality of life that did not seem to have improved despite their “economic success.” Books such as *What is Affluence?*[yutakasatowa nanika] (Teruoka 1989), *The Labor-Economic Analysis of Affluence* [yutakasano rodokeizaigakuteki bunseki] (Sakagawa 1990) filled bookstore shelves reflecting nagging dissatisfactions of the overworked population.

The third stage from the late 1990s to 2000s is currently in the making. The record breaking unemployment rate and the demands of global competition is further worsening the working conditions. As the changes in the “traditional” Japanese employment system create the environment for cut-throat competition, work-related mental health problems and suicides are becoming endemic in contemporary Japanese workplaces. The number of people who committed suicide or tried to kill themselves has doubled between 2003 and 2008, according to a government survey.²¹ Japan ranks the highest in suicide rate among developed nations, 19 out of every 100,000 Japanese, and the number of workers compensation applications for work-related mental illnesses reached to a record 952 in 2007.²² In this social context, karoshi litigation for workers’

²¹ United Press International,, 5/24/08

²² The Economist, 5/1/2008

compensation and corporate responsibility, as well as activism surrounding litigations are being further institutionalized. Encouraged by the recent increase in winning cases, more families are willing to take the matter to the court. After the “epoch-making” changes in the Workers’ Compensation Standards in 2001 which recognized “accumulated fatigue” [*chikuseki hirou*] as a causal factor for death, an increasing number and a wider variety of cases are also being recognized as *karoshi* and compensated.

IV. ROLE OF LABOR UNIONS

The role played by the workers and labor unions was important in the early development of *karoshi*. It highlights the socio-political form of illness experience that can lead to the creation of a new medical category. Phil Brown (1996) asserts that lay experience and knowledge of illness often have to do with political institutions that are pressured to make changes in the existing understanding of illnesses and related social policies. The social construction of *karoshi* was closely tied to organized labor in the 1960s and 1970s during which the large scale economic and social changes brought active labor unionism in Japan.²³ In this period, labor unions heightened the awareness of workers towards occupational health and safety. Many unions began to ask “whether the deaths brought by psychoneurosis, disease of internal organs, heart and other circulatory diseases were in reality occupational diseases” and strongly urged companies “to provide countermeasures including prevention, compensation, treatment and routine health management” (Nihon Shimbun Roudo Kumiai Rengo 1980). While work-related sudden

²³ The rate of union membership rose from 32.2 % of the work force in 1960 to 35.4 % in 1970, the highest in the history. The number has dropped to 19.6 % in 2003. (The Japan Institute for Labor Policy and Training: <http://www.jil.go.jp>)

deaths may have existed long before they were identified, it was significant that the workers in this era recognized the symptoms, attributed them to work, and claimed that the diseases (i.e. heart attacks and strokes) which had been considered unrelated to work to be occupational diseases. Their recognition was crucial to the subsequent development of karoshi that pushed labor unions, medical doctors and the government officials to investigate and take actions.

Labor unions' contribution to the "discovery" of karoshi also illustrates the importance of socio-political factors in medical "fact" building. Although Western biomedicine is often regarded as scientific knowledge based upon objective observations of bioscientific reality, medicine in reality is often the science of "likelihood" infused with limitations and uncertainty.²⁴ Diseases caused by occupational and environmental exposures often highlight the limitation of biomedicine and are frequently subject to contestation.²⁵ The limitations in medical knowledge create the space for social and political factors to play significant roles. Karoshi is one of these medical conditions in which circumstances under which deaths occur are generally accepted, yet no widely applied medical definition has not established. As Dr. Tajiri frequently and openly admits, doctors simply do not know what really causes the sudden deaths among workers in karoshi or which death is caused by overwork. Under this circumstance, the anti-karoshi activism led by labor unions proved to be a crucial force in recognizing and acting on the disease.

²⁴ See for example, Renee Fox (1989) "Training for Uncertainty", Write and Treacher (1982) *The Problem of Medical Knowledge*

²⁵ Phil Brown (1995) constructs a typology of conditions and definitions of disease with four categories in which occupational disease is categorized under "Contested Definitions."

The Network of Newspaper Industry Union

A key factor to the victory in Takebayashi case was the professional network that the doctors and labor unions mobilized. When the appeal was made to the Labor Insurance Referee Board in Tokyo after the second denial in Osaka, Osaka Asahi Newspaper's labor union along with its Tokyo headquarters sought assistance of Shinbun Roren, an industry wide labor union. Shunsuke Miyano from Shinbun Roren was a de-facto leader in workers' compensation struggles in the newspaper industry and had an extensive network of government officers and experts in Tokyo. As the team of labor unions, lawyers and doctors focused their argument on how the onset of the congenital arterial aneurysm was triggered by the strenuous night shifts, Miyano managed to bring to the Referee Board, Dr. Saito, the director of Labor Science Research Center who was an expert in the study of the physiological impacts of night shifts as a witness.

Saito's opinion from the point of view of labor physiologist effectively strengthened the medical opinions of Hosokawa and Tajiri presented earlier. He showed the detrimental physiological effects of night and shift work in: 1) that shift work impact both on health condition and lifestyle of workers, 2) that shift work causes the accumulation of fatigue since it interrupts natural physiological rhythm of day and night, as well as sleep during the day tend to be easily disrupted, 3) that along with the irregularity of meals, the mental pressure of irregular shift work tend to cause malfunction of digestive system, 4) that the impacts on sleep and nutrition can cause fatigue accumulation and deterioration of general health, 5) that in shift work ample rest between shifts is essential, and when the rest between shifts is short, the recovery from fatigue tend to be insufficient. Saito (1974) concluded that in Takebayashi case, the

hours between the shifts were often too short and the possibility existed that his fatal disease was triggered by insufficient recovery from fatigue.

The Referee Board consisted of six members, three from labor background and the other three from the corporate side. In addition to getting Saito involved, Miyano told me in an interview that he managed to individually contact half of the board members who were sympathetic to the workers' cause and convinced them to support. In the review meeting, in the end, another referee from corporate background pointed out the unfairness of requiring additional events to be present to qualify for workers' compensation when the victim already routinely engaged in strenuous shift work. The decision of the board upheld labor's contention²⁶ that whether work was overly strenuous should be considered from the personal condition of the victim not in comparison with his coworkers.²⁷ (Although the Takebayashi case created a legal precedence, this point continues to be a critical issue in the present court cases - to be discussed in the following chapter.) In July 1974, Takebayashi became the first of the thousands of subarachnoidal hemorrhage victims whose deaths were awarded with workers' compensation.

In sum, the question of whether Takebayashi died of subarachnoidal hemorrhage triggered by his own predisposition to arterial aneurism or strenuous workload was largely determined by the labor unions' ability to demonstrate the harsh working conditions and mobilize medical opinions and professional network to show the link

²⁶ Katsuyoshi Takebayashi Case Appeal to the Labor Insurance Referee Board [sai shinsa seikyu] in *The Decision of the Labor Insurance Referee Board*: The Labor Insurance Referee Board. 1974.

²⁷ Despite the precedence of Takebayashi case, this point is still an issue at present day legal cases. I will discuss the issue in detail in the chapter that describes the legal and medical arguments.

between work and deaths. The process of “determining” rather than “discovering”²⁸ the etiology for karoshi in the court of law would continue for decades after Takebayashi case was closed.

V. LAY ORIGIN AND THE PHYSICIANS’ POLITICAL ORIENTATION

The case of karoshi provides an example of medical summary of lay knowledge in which doctors assign medical labels to the symptoms already pointed out by lay people. The “discovery” process of karoshi narrated by the doctors reveals that the concept of karoshi was not born out of medical observations, but of lay understanding of occupational risk rooted in their daily experience. The three doctors who labeled karoshi were all initially skeptical about the relationship between the fatal diseases and overwork. They required workers’ drawing attention and investigations on workers’ claims before they publicly declared the existence of such a phenomenon with medical and cultural authority. What was critical was the doctors’ leftist political orientation and their concern for laborers’ health which prompted them to investigate on the claims of workers.

Dr. Hosokawa

Dr. Hosokawa Migiwa, who coined the term karoshi, was concerned with the health of workers from early on in his medical career. He began his career in occupational medicine in 1947 when he joined a social medicine research group as a first year medical student in Kyoto University. His first study was on the steam engine drivers

²⁸ Suzanne Kessler, in her study of medical construction of gender for intersexed infants, describes the two roles of the doctors “the physician as discoverer” and “the physician as determiner” who attempt to find the gender of the infants.

who were suffering from the coal dust they shoveled to fuel the train. Carrying an airbag, he visited their work site and collected the coal gas, the mix of oxygen and carbon dioxide, that they were inhaling. By surveying the workers, the team also discovered that their calorie intake was far below the daily minimum of 3400 calories. Unlike doctors in clinical medicine, he was committed to learning the effects of work environments on workers' health by physically seeing patients in their work environments. During his career till his retirement, he had visited countless workplaces such as banks, day care centers, railroads, schools, power plants, automobile manufacturer, tobacco factories, mines and timber lands to name a few. Furthermore, Hosokawa was a student activist during his school years and came to share the ideals of labor activism in the 1960s. Even after advancing in his career in medicine, he still envisioned labor activism that “centers around protecting worker’s life and health” and urged labor unions to maintain “rage, courage, independence, and solidarity” in their struggle for the prevention and compensation of occupational diseases (Hosokawa 1999, 133). Hosokawa was essentially a labor activist ‘in white’.

When Hosokawa was contacted by Zenjiko, an industry wide automobile drivers’ union in the mid-1960s, he was a professor of public health in Kansai Medical University and a leading figure in the studies of repetitive strain, whiplash and back injuries. In the efforts to win workers compensation for the increasing number of sudden deaths among the drivers, the union hired Hosokawa to obtain professional assistance from medical experts. Prior to the discovery of karoshi, Hosokawa took an interest in taxi and truck drivers because he realized many of their health problems were a consequence of rapid modernization and economic change. The increasing number of automobiles on the

roads and the introduction of productivity-based wages in the 1960s were creating new strain on drivers causing health problems. Hosokawa found that despite the 3.5 fold increase in the number of automobiles between 1960 and 1966, the roads constructed during the period only increased by 9% (Hosokawa 1978). Furthermore, it was not uncommon for drivers to have a shift from 8am to 2am, driving 18 hours a day on the poorly maintained road conditions. But that was not all. After working all day, they would have to report to the office, wash cars, take a bath and meal, and have a short sleep from 4am in their office. Under the newly introduced wage system that calculated at a percentage rate, the drivers were compelled to work these long and irregular hours in order to make a living wage even when they were not in good health. Under this increasingly unfavorable work condition, it was not surprising that labor unions in the transportation industry made occupational injury and work-related ill health one of their major points of struggle.

The first hint to Hosokawa of the phenomenon of death from overwork, therefore, came from the concerned labor union. He recalls how the grievances of the labor union made him aware of the higher rate of deaths among drivers in his hospital. At the time, his duties at his university hospital included emergency care at night. There Hosokawa came to realize that many of the patients brought to the emergency room were taxi drivers who were working through the night. These drivers were suffering from chronic lack of sleep and accumulated exhaustion, and finally brought to the hospital with heart or brain conditions. Despite their ill health, many of these workers were unable to seek health care due to their tight work schedule until they finally suffer serious heart attack or stroke. Hosokawa became convinced of the labor union's claim that their workers died

of overwork, and began conducting surveys in the industry and writing medical opinions for workers' compensation trials.

Although Hosokawa was already an expert in occupational medicine and possessed a good sense of work place reality, he still was not aware of the problem of work-related sudden deaths when he was consulted by a labor union. Hosokawa openly acknowledges that the notion of death from overwork was not his idea, but "it was all labor unions" who brought the cases to him. As Friedson describes the social nature of naming diseases, he in effect simply named the phenomenon that was first brought to his attention by lay workers. However, his scientific observations and confirmation with medical credibility was essential in creating the new perspective on the relationship between work and disease. While workers' experience and labor unions' efforts were central to the initiation of the problem, the doctors' knowledge and authority medicalized the issue and created a social problem out of workers' experience.

Dr. Tajiri

Dr. Shinichiro Tajiri was junior to Hosokawa in Kyoto University's Medial School, and they had collaborated on projects on Tuberculosis and other diseases that are rooted in social conditions. It was Hosokawa who introduced Tajiri to the world of occupational and public medicine. Tajiri was an earnest student activist when he was a university student in the 1960s, and kept his radicalism all through his life as a doctor. When he graduated, he sought a position in a hospital that belonged to leftist medical

organization Miniren²⁹ that provided “medical services to working people.” Out of his belief in workers’ movements, he continued helping workers’ compensation cases which brought him no or little monetary compensations. He described himself as “a decent ally of laborers” [ippashi no rodosha no mikata], and “could not say no” when labor unions brought sudden deaths cases to him. Tajiri’s strong belief in labor activism can be seen in his oft-quoting of Hosokawa’s statements made decades ago that moved and encouraged him through his battle against karoshi: “Here too are workers and labor unions, with warm blooded comrades that struggle together to rectify one worker’s death”.³⁰

The experience of Tajiri also confirms the lay origin of the concept. Despite his strong conviction to help workers, Tajiri’s initial reaction to the concept of death from overwork was a doubtful one. He did not think that sudden deaths could be caused by overwork. “When I was asked to write a medical opinion by Dr. Hosokawa, I thought to myself how can an ordinary disease like subarachnoideal hemorrhage be a reason for workers’ compensation.” In fact, he had very little idea about the problem. “At the time, I didn’t believe that subarachnoideal hemorrhage and work have anything to do with each other. When the labor union came to talk to me about the worker who died of cerebral hemorrhage, I was the one who asked them how that can be.” But his belief in “democratic medicine that cared for workers” [Hataraku hito no tameno minshuteki iryou] motivated him to investigate further. “As I kept going back to their workplace and listening to what workers had to say, I began to see the medical problem and the meaning

²⁹ Japan Federation of Democratic Medical Institution [Zennippon Minshu Iryoukikan Rengokai]: Medical and welfare organization established in 1953 to augment the state “neglect” of medical responsibilities towards working citizens.

³⁰ quoted by Tajiri in “*The present, past, and future of karoshi and karo suicides*” 2001; p.23

of the movement.” After over a year of research that included on-site observations, surveys, and archival studies, he wrote the first of his numerous medical opinions on karoshi in July 1971.

Dr. Uehata

The third ‘discoverer’ of karoshi was Dr Tetsunojyo Uehata. Although Uehata was much younger than Hosokawa and Tajiri, and was based in Tokyo where less “radicalism” was found, he shared the similar belief about doctors’ responsibilities for workers and chose a career path that indicated his progressive attitude. Uehata specialized in cardiovascular and circulatory system in medical school, yet he was also interested in occupational and industrial health. After working in a corporation as an industrial doctor, he realized it was “futile” to pursue industrial health in business, and began working with labor unions. Most doctors in industrial medicine worked for businesses, and it was extremely unusual for them to work with labor unions. He was seen as a black sheep in the bourgeois culture of medical community.³¹

Everyone thought I was strange. Although there were doctors from Miniren who were on the side of Communist party, with whom I also had good relationship, there was no one among university researchers who would do things like this. I was probably the only one in entire Tokyo...You see, it was the time when you were not supposed to be on the side of workers. You were not supposed to get behind things like labor unions.

He saw workers being laid off due to corporate rationalizations after the first oil shock in 1974 and forced to find a job under harsh working conditions to survive. He felt he could

³¹ Vicente Navarro (1983) calls medical knowledge “bourgeois science” in which bourgeois dominant ideology is submersed into the positivist and mechanistic ideology and determines what occurs in the realm of scientific knowledge.

not ignore the situation and began helping taxi drivers. At the time, in the taxi industry was full of workers who were laid off from corporations. “They were forced to risk their health in order to make a living. So I thought I had to do something at least about the taxi industry.” With the help of labor unions, he began conducting series of medical research projects including a study of the physiological effects of night shifts. Like Hosokawa and Tajiri, he physically investigated actual work sites and talked to the workers. Night after night, his project brought him to work sites along with his medical university students. It was during this time when the problem of sudden deaths at work which he called “pokkuri byo” [sudden death disease] was brought to his attention in the mid-1970s.

The initial reaction of Uehata to the notion of sudden deaths from overwork was also similar to that of Tajiri. He was skeptical. “It was around the beginning of 1975. At the time, I had a strong doubt that cerebral hemorrhage and work could be related.” He was interested in circulatory disease and epidemiology, and had a wide variety of experience in industrial medicine. Due to these interests, he was already well connected to many labor unions and experts in the field when his first case of work-related sudden deaths was brought to him by Shimbun Roren, the newspaper industry union that worked on the Takebayashi case with Hosokawa. Yet, he was still unprepared for the idea of death from overwork at the time. “I first thought how could this be a case for workers’ compensation. I learned in the medical school that acute heart failures are related to individual predispositions, so I had believed that the main cause was hereditary.” Though partially in disbelief, he went on to investigate the victim’s work shifts that kept him at work day and night. He researched medical literature about the relationship between circadian rhythm, fatigue, and circulatory diseases though very few existed at

the time. He approached the question by investigating the relationship between the victim's predisposition for thymus lymph and acute heart failure. When he found that extreme fatigue had been previously linked to fatal thymus lymph, he began to suspect that deaths from overwork could be a "real thing." He spent six months writing his first medical opinion on his first case. Their claim for workers' compensation in the end, however, was rejected and the victim's family gave up on the case.

Uehata's connection to the newspaper union brought him many cases of death from overwork from various industries after the first case. Relatively radical unions, by conservative Japanese standards, that were related to the Sohyo labor union confederation³² such as industry wide chemical, metal, taxi and newspaper unions brought their cases to him. Soon his office became a "haunt" for the consultation of death from overwork, and next thing he knew, he was working on numerous workers' compensation cases. He remembers his feeling of astonishment at the rapidly growing problem. "After a while, I couldn't help wondering why suddenly there were so many workers' compensation cases of death from overwork." He did not find the statistic that showed a sharp increase in the number of deaths due to circulatory diseases among middle age males. There were no sufficient data available to show an increase in deaths rates within certain occupational categories. He was then only left to investigate what really had happened before deaths, one by one, case by case. By the time he reported these cases to the Association of Japan Industrial Medicine in 1978, he had adapted the word *karoshi*. "The victims' families kept saying 'died of overwork [*karo*], died of

³² Sohyo, the General Council of Trade Unions of Japan, Japan's most progressive union federation, was dissolved in 1989 and taken over by the conservative federation, Rengo

overwork’, so I thought we might as well call it karoshi” (Uehata 1994). Hosokawa was the one who originally coined the term, but Uehata worked to introduce it to the larger medical community.

VI. RESISTANCE OF MEDICAL COMMUNITY

It is impossible for people to die from overworking as an immediate cause. As a doctor, I don’t want people to lightly use the term ‘karoshi’.

- Dr. Kata Yasuo, Health Insurance Union, Matsuda Electronics,
Health Management Center, Deputy Director

The majority of doctors must be thinking that there can’t be any such thing as karoshi. There is no way one can die from fatigue.

- Dr. Kawada Tadashi, Clinical Doctor

The concept of karoshi has been controversial in the medical community especially since the term began to appear in the mass media and popularly used. Stephen Hilgartner (1990) describes how non-experts, including scientists, are vulnerable to having their understanding of science judged as ‘popularization’ and ‘distortion’ of science. ‘Genuine’ knowledge of science is guarded by the ‘experts’ who consider their knowledge the “gold standard” and other form of simplification or publicly-available representations of science as “counterfeit. In the dominant view of science, according to the author, the expert disdain of popularization serves as a powerful tool for sustaining the social hierarchy of expertise. The resistance of clinical doctors in accepting the concept of karoshi can be understood in this view of karoshi as “pollution” in the field of vascular diseases brought by non-experts. Attributing deaths from complex heart and

brain diseases to a simple cause of overwork represents the oversimplification of medical knowledge considered 'genuine' and 'pure'. The term karoshi to clinical professionals symbolizes a distortion of their expert knowledge and an unqualified invasion of their expert territory by those who engage in occupational medicine. The status of occupational medicine is generally regarded as less prestigious in the "social hierarchy of expertise", and clinical experts reject the concept as "ambiguous" and "misleading". As a result, those who coined the term karoshi have been forced to qualify the new term as "socio-medical term" and "not clinical term" assuring the boundary of their knowledge within existing demarcation.

Similarly, the refusal of the medical community to accept karoshi as a clinical concept can be accounted for by the approach of karoshi doctors whose open admittance of medical uncertainty and the use of "common sense" threatened the authority of clinical doctors which was based on the demarcation between technical and lay knowledge. The authority of medicine rests on the popular belief that medicine's "legitimate complexity" is inaccessible to "common sense."³³ Specialized knowledge that professionals possess is a valuable asset that grants them the status of the powerful.³⁴ The popularization of karoshi and the karoshi doctors' emphasis on "common sense" in explaining the phenomenon threaten the cultural authority of medical doctors.

The disagreement among the medical professionals and the struggle over workers' compensation, in reality, is a clash between professionals with two different world views. On one hand is the clinical physicians who had less regard for occupational medicine and

³³ Paul Starr (1982)

³⁴ Wright and Treacher (1992)

its ‘oversimplified’ approach and the government officials who preferred to ignore karoshi which has a potential to grow into a larger social problem and antagonize businesses. On the other are occupational health and pro-labor doctors and labor unions who sought to protect workers’ health from the exploitation of businesses by making karoshi a legitimate medical and legal concept.

Initial Medicalization of Karoshi by the ‘Discoverers’

I firmly believe that no difficult medical debates are needed in karoshi workers’ compensation cases. It is because if we fall into the labyrinth of medical science arguments that are full of unsolved questions, the relief [of the workers] would be impossible.

- Dr. Tajiri Shunichiro, one of the originators of karoshi

Although the three doctors were the ones who initially brought the issue to the realm of medicine, they have been struggling to keep the concept of karoshi as simple as possible in order to highlight the fundamental cause of the problem – harsh working conditions. The simplicity of the original definition reflected the doctors’ intention in coining the term. In order to differentiate work-related sudden deaths from deaths caused by non-work-related “private disease” [shibyō], Hosokawa defined the phenomenon as “a condition in which overwork brings the disruption of biorhythm and results in the fatal breakdown of life-maintaining mechanisms” (1999). Their main concern was to show the causal relation between work overload [kajyū rōdo] and fatal diseases, rather than to further understand the physiological manifestations of exhaustion from overwork [karo].

³⁵ The doctors thought that the terms like sudden and acute deaths and acute circulatory disorder did not clearly convey the problems they had been seeing in numerous cases: fatal exhaustion caused by work overload. Rather than explaining the physiological mechanism of karoshi, the doctors sought to stress work overload as a cause of death. By coining the term karoshi, the doctors wanted to emphasize the background of the diseases that triggered the fatalities such as heavy physical labor, irregular shifts that destroy circadian biorhythm, and heavy job demands that cause extreme work-related stress. Consequently, the explanation they offered in this period was much less technical and “scientific.” The doctors consciously tried to avoid complicated medical arguments that might blur the underlying labor issue. The doctors felt that in karoshi trials “less science the better” because the highly technical language of biomedicine, despite its uncertainty, would make it hard to point out what they deemed as the root cause of the problem – irresponsible rationalization and business practices that disregarded workers’ health.

Their strategy was working in the earlier period. Tajiri, for example, managed to derive high success rate in the 1970s among the cases for which he wrote medical opinions. He recalls how the government officers were new to the issue in the 1970s and not as defensive as they are now. Unlike today, the doctors did not have to present highly specialized medical scientific arguments but could argue with “common sense”. He claimed that all they needed to show was that “the workload was too heavy for that individual.” He saw the futility of emphasizing “medical evidences” when science can not explain the phenomena, but felt, instead, the need for social justice and “common

³⁵ The concept of Karo (physical manifestation of exhaustion from work) had existed as an accepted clinical term as early as in the 1960s in fatigue research in Japan.

sense” in workers’ compensation cases. He repeatedly stressed the inability of scientific medicine to prove the causal relation between work overload and disease, as well as to find the workers with the risk in advance and prevent them from toiling for long hours. The blame and responsibilities, therefore, he argued, should lay on the failure of medicine itself, and “the workers should not be punished [meaning denied of workers’ compensation] for the incapacity of medical science” (Tajiri 1998). Clearly, his view of medicine differed from most clinical doctors.

Reaction of the Medical Community

The criticisms and boundary struggle within the medical community, however, complicated the development of *karoshi*, and accelerated its medicalization. Further scientizing of *karoshi* came from both sides of the debates: Initially, from the clinical physicians writing opinions for the ministry and businesses, and later, ironically, from pro-labor doctors who were compelled to rebut those opinions. As the term *karoshi* gradually came to be known in the medical community, the creators of *karoshi* were forced to retract from their original intent and provide more medicalized definition to counter the criticism of the medical community. Hosokawa recalled, “Rather than addressing medical concerns, my original intention was to emphasize work as the cause of the deaths. But gradually there was criticism that it was not ‘medical’ enough... so I wrote it like this, listing some characteristics of *karoshi*, because unless explained in a medical scientific way to some degree, things like this would not become a social problem.” Medical doctors possess, what Paul Starr calls “cultural authority” which rests on the likelihood that a “particular definition of reality and judgments of meaning and

value will prevail as valid and true.”³⁶ The authority of medicine was needed to legitimate karoshi as a social issue worthy of public scrutiny. Hosokawa strategically attached the definition of the term from the medical point of view to turn the issue into a public problem. Despite Hosokawa’s effort to dodge the criticism of medical community, however, the problem of definition continued to be an issue.

Uehata who was in Tokyo closer to the government and in the university research community was especially exposed to the critical eyes of the medical community that saw him as a “radical” [*kageki*] who assisted labor unions and “defied” [*tatetsuku*] authorities. A hint of trouble came as early as in 1976. Uehata tried to publish his findings from his investigations on sudden deaths in a mainstream occupational health journal *Industrial Medicine*. However, apparently, the subject of deaths from overwork was not suitable for industrial medicine which in reality existed for the benefit of businesses. The journal refused to accept his article saying there was “no precedence in publishing this type of studies.” The same article was instead published in *Science of Labor* whose philosophy was to promote “citizens’ health which is the bases of production”, and was naturally more sympathetic to workers’ cause.

Most criticism came from clinical doctors who complained that the unclear definition of the term may bring confusions and misuse of the concept. Uehata later acknowledged that they had not extensively discussed the definitions of karoshi since their intention in coining the term was to emphasize the problematic labor practices that risk workers’ health (Uehata, Kouno, Masatoshi, and Iwane 1991). The medical community was also reluctant to accept the notion of karoshi when the concept of fatigue

³⁶ Paul Starr (1982) *The Social Transformation of American Medicine*

and the physical manifestations of fatigue were not clearly understood. Clinical doctors criticized that the fatigue was a vague empirical observation and the physiological state of fatigue had not been fully understood, let alone the mechanism of *karo* - the physiological manifestations of exhaustion from overwork. Even if *karo* could be explained, they complained, the question of whether fatigue could kill a person was still far from clear. Furthermore, doctors found it problematic that there were individual and occupational differences in the perception of overload and the quality of fatigue. Some were worried that in time the vague concept of *karoshi* might start appearing in clinical charts and diagnostic records. Their general consensus was that medical professionals and state officials should not use such vague concepts like *karoshi* (Uehata, Kouno, Masatoshi, and Iwane 1991).

The hostility of clinical doctors also targeted towards their colleagues who allied themselves with labor unions and the physicians in occupational medicine. Rendering assistance to workers' compensation trials for *karoshi* was seen as a betrayal because their expert knowledge was not to be used to support faulty medical concepts such as *karoshi*. For example, Dr. Nitta, the director of a hospital unit, was asked to write a witness opinion for the legal case of a worker who died of subarachnoideal hemorrhage. When Nitta was a doctoral student in medical school, out of his interest in occupational health, he conducted research among wood cutters. He observed the physical strains of their work in the timberlands and came to recognize the importance of occupational impacts in general health. In the court, he presented his opinions based on his theory on brain hemorrhage that helped to overturn the earlier decisions which denied workers' compensation. However, he later discovered that his superior was one of the physicians

who had provided an opinion arguing against a karoshi case. With the criticism of his colleagues and bosses, his prospect for promotion vanished despite his professional competence. In the end, he was compelled to seek a position in a different city.

The originators of karoshi realized that the negative reaction tapped into the sensitive boundary issue and spent much energy trying to “straighten the confusion.” Uehata explained, “In every occasion, I kept stressing that it was a socio-medical term... but complains about the definition kept coming from clinical medicine.” The doctors emphasized that the concept intended to stress prevention and relief, rather than a diagnostic process, and that a separate clinical diagnose for karoshi should be given to each case. They tried to appease the complaints by emphasizing the demarcation between social medicine (public health, legal and preventive medicines) and clinical medicine (treatment of diseases) in their explanation, and by clarifying that the concept of karoshi was not meant to encroach the authority of clinical medicine.

The definition of karoshi became more complicated over time reflecting the doctors’ efforts to answer the questions raised in the medical community. In *Karoshi* published in 1982, Uehata pointed out the difficulty of defining karoshi because the notion of “fatigue” had not been clearly understood. Yet he went on to explain that the term can be understood in three perspectives: socio-medical, industrial-medical and clinical. As a socio-medical term, karoshi was defined as a “condition in which preexisting disease such as high blood pressure and arteriosclerosis is aggravated by worker’s unhealthy life habits triggered by overwork.” The study of ‘karo’ was at the forefront of fatigue research in industrial medicine. Uehata further explained the use of the term: ‘Karo’ concept was understood as physical conditions under which some health

problem was triggered by the accumulation of fatigue while 'karoshi' referred to more serious cases that were life-threatening. The concept of karoshi was also linked to clinical diagnoses like ischemic heart and brain diseases, myocardial infarction and cerebrovascular disorder, acute cardiovascular system disorders such as acute heart failure, as well as stomach ulcer and esophageal vascular rupture. The term was again redefined by Uehata in 1990 as "a permanent disability or death brought on by worsening high blood pressure or arteriosclerosis resulting in disease of the blood vessels in the brain such as cerebral hemorrhage, subarachnoidal hemorrhage and cerebral infarction, and acute heart failure and myocardial infarction induced by condition such as ischemic heart diseases (IHD)" (Uehata 1990) [See Figure 2.1 below]. Paradoxically, their efforts in making the concept accepted and improving the working conditions of workers accelerated the further medicalization of karoshi that turned the issue away from the fundamental socio-economic cause of the problem.

In the following three decades after coining of the term, the medicalization of karoshi worsened to the extent that workers' compensation depended on the plaintiffs' ability to produce technical papers based medical science. Yamaguchi from Occupational Health and Safety Center who has been supporting the plaintiffs in karoshi compensation cases lamented.

We can't compete with the defendants who hire big-name specialist doctors. On top of that, there are very few brain/heart specialists who would write their opinions [for workers]. There is no way of knowing the truth without checking up the patients' bodies. Notwithstanding this, the legal debates keep asking about the "possibilities", only pursuing specialized medical technicality. The whole thing is meaningless.

The authority of medicine that the workers relied on to alert the public to the existence of the social problem paradoxically created the ‘science of karoshi’ which depoliticized the issue and disregarded the social context of overwork that the originators emphasized. A 10-year legal battle involving the death of a 42-year old nurse provides a glimpse of the medicalization process. In the debates, the plaintiff team argued that the heavy workload and night shifts in the emergency section of the hospital worsened her existing aneurysm beyond the extent of normal disease progression. However, doctors supporting the defendant argued that cerebral arterial aneurysm is often congenital, and it is unlikely that the nurse’s aneurysm is caused by the heavy workload. A good part of the legal debates from then on became the congenitality of cerebral arterial aneurysm and the level of cerebral vascular rehabilitation by the lowered blood pressure during night rest. In reality, the cause of cerebral aneurysm was not clearly known in the medical science, and there was no way of knowing the truth. The debate came to involve a new medical theory presented by a Ph.D. in cranial nerve surgery, a theory that was so new that no medical expert could validate or refute the argument. After years of investigation and debates, the court in the end handed a decision recognizing her death as “work-related”. While the theories could not be medically proven or disproved, the court accepted the argument that the heavy workload at night accelerated her death. Though this case in particular led to the victory of the plaintiff team, as Tajiri feared, the focus on medical science diverted the debates from the issue of labor rights and working conditions to medical technicality.

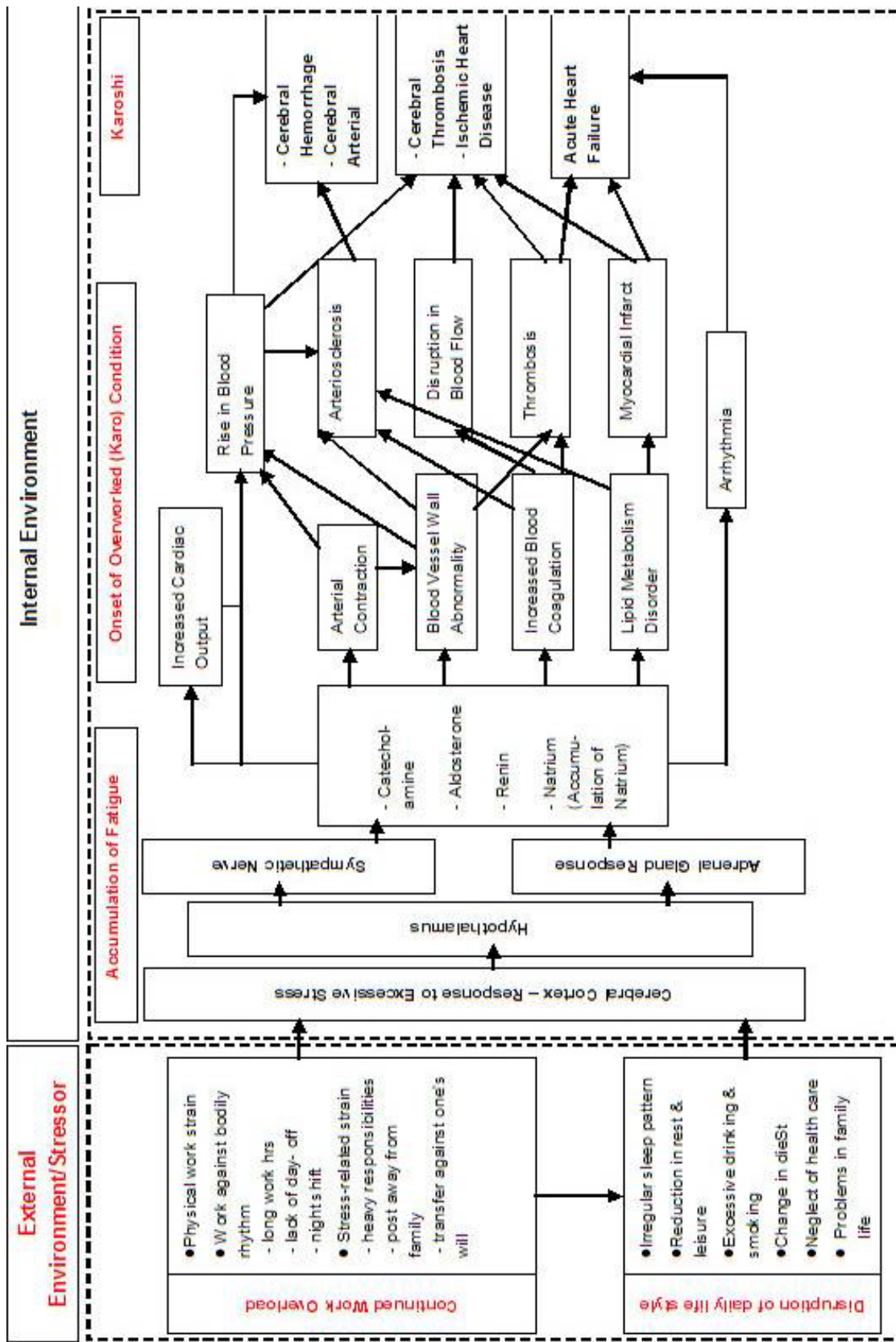


Figure 2.1: Pathophysiology of Karoshi

Source: Translated from Tetsunori Uehata, Karoshi no Kenkyu [Research of Karoshi], 1993

Rebuttal against Clinical Doctors

The discoverers of karoshi had a criticism of their own towards the practice of clinical doctors who often completely disregarded occupational factors in their diagnoses and treatment. Hosokawa, for example, complained that these doctors did not understand the problem “beyond the limits of textbooks,” yet they did not hesitate to “guess clinical diagnoses” (Hosokawa 1999, 102). The process of defining karoshi was even more complicated by the politics of workers’ compensation administration involving the medical community and the Labor Standard Bureau. The worst part for Hosokawa was that these clinical doctors “who share the interests of the powerful” [goyo ishi] kept “insisting on their groundless medial opinions” in Labor Standard Offices which, based on these invalid arguments, deny workers’ compensation” (1999, 74).

Uehata also complained about how the Labor Standards Bureau and Offices used the opinions of clinical doctors who have no knowledge of occupational health. He criticized the tendency of the Labor Standard Bureau to value the opinion of clinical doctors and ignore the opinions of doctors in occupational medicine. He made the following remark when he gave a lecture to the labor union within the Ministry of Labor that was relatively sympathetic to the idea of karoshi.

I have a mixed feeling being here: one is the feeling that I am causing a lot of trouble to those of you who work in the Bureau and the Office, and the other is that I am being bullied by you... In the cross-examinations in the court, I am often told that without the experience of treating diseases, I would not understand this kind of disease. In fact, I think that is indeed a problem...Clinical doctors do have experience in treating diseases, but they have no experience in examining how work relates to the occurrence of diseases. Yet these doctors provide medical opinions for the authorization of workers’ compensation...I think we need to rethink the bureau’s medical advisory system...It has a problem...There are

occupational health medical advisors in the bureau, but I found that their opinions had never been solicited on the issue of karoshi (Uehata 1994).

The issue was not just the medical uncertainty about fatigue and overwork, but who claimed the new medical knowledge and for whom the knowledge was to be used.

VII. POLITICS OF KAROSHI IN MEDICAL COMMUNITY

Medical Emphasis

Despite the concerns of the doctors in anti-karoshi activism, karoshi has been increasingly medicalized in contemporary karoshi legal suits. In order to determine the causal relationship between work and disease, the administration heavily relies on medical explanation in justifying their decisions in workers' compensation awards. The Ministry stated that in order to receive workers' compensation, the fact that "the onset of disease is triggered by the factors of work" must be "medically recognized", and "in evaluating daily workload, the opinions of medical specialists will be given the most weight".³⁷ Thus during the course of long administrative reviews and lawsuits, the main issues are often focused on the evaluation of medical causality and its relation to work routine. As the arguments become scientific and technical, it is not uncommon to see more than a few medical opinions presented by a number of doctors in one case.

Medical Uncertainty and Political Factors

There is no reason why workers should be disadvantaged just because of the impotence of the medical science.

- Tajiri Shunichiro, Activist Doctor

³⁷ Quoted in Okamura Chikanobu, *Karoshi, Karojisatsu Kyuusai no Ronri to Jitsumu*, 144, 2002

In spite of the heavy emphasis on medial opinions placed by the administration, medically proving and disproving work-related causality is nearly an impossible task. Doctors admit that there is no way of knowing for sure. Dr. Tajiri, one of the originators of the term *karoshi*, stated frankly: “We doctors always present very complicated medical arguments and theories, but the truth is that we just don’t know.” The Ministry of Health, Welfare and Labor itself has admitted its impracticality in their heavy medical emphasis and stated: “It is often the case that showing causality from the point of view of medical experience is difficult. Thus, cases in which we are actually able to prove the causality are extremely rare.”³⁸ Yet, medical opinions continued to be placed at the center of the administration’s reasoning. For example, a noted physician and the honorary director of a national hospital, Dr. Ueshima, had written his opinion rejecting the causal relationship in a workers’ compensation case. His opinion became the basis of rejecting the case by the administration in the first trial. Yet, when he was cross-examined in the second trial and was demanded to further clarify his judgment on the causality, he was forced to admit the medical uncertainty stating, “as a clinical doctor, I can not really say [whether the causal relationship exist or not].”³⁹ It became apparent in the court that his medical opinion could not have been the basis of the rejection for worker’s compensation. Later, the decision in the first trial was overturned.

The medical uncertainty made apparent in the legal process creates a space for political and institutional factors to play a role. Rather than being ‘purely’ scientific, the

³⁸ Ibid., 133, 2002

³⁹ Ibid., 93, 2002

medical opinions of the doctors, in reality, often depend on their views towards the issue of karoshi and labor rights. As noted above, some doctors are critical towards the medical concept of karoshi, and others are more sympathetic depending on the types of affiliated hospitals and training backgrounds. In general, the doctors who are associated with Industrial Medicine, medical practices supported by the businesses, provide the opinion that rejects the causal relationship. Clinical doctors in general, as discussed, are not very supportive of the notion of karoshi. However, doctors who are sympathetic to labor, especially those associated with *Rosaibyouin* [industrial accidents hospital] and *Miniren*⁴⁰ [the association of doctors for laborers affiliated with the Communist Party], provide medical opinions supporting the causal link. The Labor Standards Office typically commissions the doctors from the former group and anti-karoshi activists request assistances from the latter.

The typical battle between the two sides can be seen in the case of an administrative lawsuit that took 15 years of medical arguments.⁴¹ Murakami Toshio, a 40-year old employee of a book retailing company was paralyzed by a cerebral hemorrhage in 1983. In the course of workers' compensation review processes and the final legal suit, six experienced medical doctors wrote their *ikensho* [opinions] arguing for the existence or non-existence of the causality. To the application submitted by Murakami's family, after a year and 4 months of neglect, the local Labor Standards Office suddenly handed over a decision to deny the compensation. Their decision was

⁴⁰ Japan Federation of Democratic Medical Institution [Zennippon Minshu Iryoukikan Rengokai]: Medical and welfare organization established in 1953 "to augment the state neglect of medical responsibilities towards working citizens."

⁴¹ Source, Okamura Chikanobu, 2002, *Karoshi, Karojisatsu Kyuusai no Ronri to Jitsumu*, 144

solely based on the medical opinion of Dr. Furuta from the University of Industrial Medicine. He stated:

[The victim's] work was extremely busy, and we can observe that he was physically and mentally exhausted due to his work.... Therefore, we could not deny the possibility of his work causing his blood pressure to rise and triggering the cerebral hemorrhage. However, *blood pressure by nature is unstable, and shifts during normal daily activities*. It is difficult to say that only work-related fatigue is the factor ... Under the current system... worker's compensation can be applied only to those cases in which we can identify that sudden mental and physical *work-related pressure* that does not exist in normal routine work *causing blood pressure to shift considerably*. Therefore I believe it is difficult to apply workers' compensation [to this case].⁴²

Murakami and his lawyer argued that according to Dr. Furuta's logic about blood pressure, no workers' compensation for brain and heart diseases can possibly be provided. They appealed to Workers' Compensation Hearing Officers [Rosai Hoken Shinsakan] and requested an evaluation of the case by Dr. Handa, the director of Hamamatsu Industrial Accident Hospital, whose recent publication explained the causal relationship between stress and brain stroke. However, the administration did not respond to Murakami's appeal, and after four years and four months, suddenly mailed their decision to reject their appeal.

The careful reading of the decision by Murakami's lawyer revealed that two years prior to the decision, the officer in charge actually consulted Dr. Handa without notifying the victim. It turned out that Dr. Handa had written an opinion in favor of granting worker's compensation.

The applicant's work hours, due to the nature of his job, is extremely long, especially 2 – 3 weeks prior [to the onset of the acute disease] was very

⁴² Translation and italics by Rika Morioka

irregular. It is clear that high level of physical and mental stress were exerted on him... In addition, if we consider the day of the onset, on which he reported to work at 9:45 am and the acute symptom began around 5:30 pm while he was working, it is reasonable to think that his existing condition of high blood pressure and the heavy workload have acted together, and aggravated his condition beyond the natural progression of the disease. Therefore, I believe that it is reasonable to say the causal relationship between his work and disease exists.⁴³

The administration, however, ignored Dr. Handa's opinion, and eight months later, requested another medical opinion from Dr. Inoue from the University of Industrial Medicine Hospital, the same hospital as Dr. Furuta who provided a recommendation to deny the compensation four years earlier. Predictably, the opinion was unfavorable to the applicant. In the plaintiff's lawyer's words, he presented "the exact same logic of the administration" that stressed the guidelines requiring the existence of unusual work events immediately prior to the onset of the disease. Murakami's lawyer criticized the opinion that "could not be considered a medical opinion". The opinion of Dr. Inoue, however, became the bases for the rejection of the compensation by the *Rosai Hoken Shinsakan* in April 1990.

Seven years after the onset of the disease, Murakami and his family again appealed to the last and highest administrative referee for workers' compensation, the Workers' Insurance Hearing Committee [Rodo Hoken Shinsakai]. In addition to the request for re-investigation of the case, they also petitioned the evaluation of Dr. Inoue's opinion by Dr. Handa. However, the Committee ignored the petition of the family, and left the case for another four years before finally making their decision to deny the compensation.

⁴³ Translation by Rika Morioka

Murakami and his family had exhausted all the means of administrative appeal at this point, and made the decision to bring the case to the court of justice against the three administrative offices in 1994. The litigation, according to their lawyer, was also meant to question the accountability of the administrative offices which neglected their responsibilities as relief agencies. To the district court, the plaintiff provided the medical opinion of Dr. Funakoshi from Kyushu Social Medicine Research, who provided a detailed analysis of Murakami's work condition from the point of view of occupational medicine.

...A month before the onset of the disease, the victim's workload and his level of fatigue had worsened compared to the earlier period. In April 1983, a month prior to the onset, the company discovered that the sales manager, section manager, and other main sales staff were about to resign and start a business together in the same industry... As a result, in addition to the expansion of responsibilities as a manager and the loss of support from the sales staff, the victim became responsible for rebuilding the sales department by giving trainings to newly recruited staff. The victim was put under the condition that exposed him to "extreme stress". Moreover, it was during the season when the business becomes the busiest every year... his work hours reached to 15 hours a day, and he was critically lacking sleep... According to an epidemiological research... The risk of brain and heart disease for 50 year old male taking medication for high blood pressure is increased by 4.1 times for managers, 2.1 times for those who are working more than 10 hours a day. The victim's work hours exceed far beyond 10 hours a day, and this study indicates the link between his cerebral hemorrhage and workload.... Brain surgeons, Handa et. al. emphasize the importance of physical and psychological stress as the risk factor for brain stroke... "For those with higher blood pressure, sympathetic nerves become extremely sensitive and increase the Epinephrine in urine by responding to psychological stress, and can easily and significantly increase blood pressure. Therefore, severe stress among those with high blood pressure causes worsening of the symptom, and can trigger brain stroke."... Therefore, it can be determined that the victim's disease was caused by his work.⁴⁴

⁴⁴ Translation and italics by Rika Morioka

Against this opinion, the defendants brought an opinion of a noted physician, Dr. Ueshima mentioned above. His statement, however, in the plaintiff's lawyer's word "was based on agnosticism." "It must be true that the victim's stress level was high", Dr. Ueshima wrote. "But it is difficult to say how much stress affects blood pressure to what degree in general because of individual differences. For the plaintiff, whether his work condition directly triggered the brain hemorrhage is clearly unknown." The plaintiff's lawyer argued that the assertion for unknown can not be an evidence for the negation of the causal relationship. The verdict of the district court supported his argument and stated that "we did not see in the evidence that there was any factor other than physical and mental stress from work that caused the disease in this case." In June 1998, the district court finally awarded the plaintiff long sought worker's compensation. Despite the principle of "fair" and "speedy" relief, it was 15 years after Murakami's Brain stroke.

Murakami's case reveals the struggle between two groups of physicians with opposing attitudes towards workers' compensation for karoshi. On one hand are professionals in industrial and clinical medicine, who reject the concept of karoshi and assist the government officials acting as gatekeepers of workers' compensation. On the other hand are doctors in clinical and occupational medicines who are sympathetic to labor. While the former stresses the necessity for technical and scientific causal explanation based on "the principle of medical experience" [igaku keiken ron] in granting workers' compensation, the latter argues for the necessity of "common sense" procedures based on "the principle of general experience" [ippan keiken ron] that takes into consideration the knowledge borne of everyday life and experience. A doctor who supports anti-karoshi activism criticized the "scientific" approach of the medical doctors

who refuse to accept the causal relationship between overwork and heart and brain diseases.

It is common sense to laypeople, but an absurdity to medical doctors... Patients understand diseases in relation to everyday life and workplace. But medical doctors are miles away from life and work...What is the use of 'pure science' if it is cut off from real life and labor.⁴⁵

The activists insist that the purpose of the process is not to arrive at a “medical conclusion” [igaku hantei] that elucidates physiological mechanism of karoshi, but to “legally determine” [houteki handan] the appropriateness of providing workers’ compensation. Therefore, the issue of causality should not be about the existence of medical causality, but about legal causality in which medical knowledge is limited to just one of many evidence. Yet, the professional rivalries within the world of medicine make it impossible for workers’ compensation process for karoshi to be a ‘neutral’ process.

XII. CONCLUSION

The “discovery” of karoshi, despite the popular image of the phenomenon as a problem of modern workaholics, was made almost 40 years ago by the coalition of doctors, workers, and labor unions. The discovery was a reflection of a broader social disorder mirroring rapidly changing socio-economic conditions of the 1960s and 1970s in Japan. The mechanization and rationalization of workplaces were changing the nature of work strain, and threatening the health and economic well-being of workers and their families. The invention of the medical term karoshi reflected the fears and concerns of the workers struggling to keep up with the faster and more intense mode of production. It

⁴⁵ Dr. Matsuba Kazumi in “Karoshi, Karojisatsu Mondai no Kenzai,, Kako, Mirai”, March 2002.

was also a reflection of the vigor of labor unionism in the 1960s and 70s in which a struggle for the health and safety of workers could be initiated, appropriating the authority of medicine to label the problem as a legitimate condition, to improve the working conditions of workers.

The “discovery” of *karoshi* was also a result of medical appropriation of lay knowledge. The physicians who coined the term *karoshi* did so based on the workers’ initial intuitions born out of day-to-day work experience, describing the phenomenon as a “rationalization disease”. In doing so, the physicians inadvertently triggered the medicalization of the phenomenon in which ‘scientific’ explanations ironically blurred the social, economic and political cause of the problem that they aimed to address. The debates over *karoshi* within the medical community manifested professional territorial rivalries and opposing political positions: On one hand was the anti-labor attitude of elite clinical physicians, who supported Labor Ministry and denounced *karoshi* as an ‘illegitimate’ medical concept, demanding more scientifically rigorous definition of the term. On the other hand were the pro-labor doctors with leftist political ideology that emphasized medical uncertainty, “common sense” and social cause of the problem. Although the labor coalition managed to point out the problem and pave the way for workers’ compensation for victims, the issue of state and corporate responsibility for *karoshi* remained unresolved for decades. As we shall see in the next chapter, the labor unionism declined in the late 1970s to 1980s, and anti-*karoshi* activism rooted in the labor movement also lost its momentum. The activism remained precarious until legal professionals took over the issue and reignited the movement in the late 1980s. The change in activist leadership also meant a new trajectory for *karoshi*. The site of

negotiation over the meaning of karoshi was shifted from the medical realm to the court of law. The next chapter explores the process of this shift and the legal activism led by the legal professionals.

CHAPTER 3

LEGAL PROFESSIONALS: THE CONSTRUCTION OF KAROSHI IN COURT

In today's nonunion climate, the courts and state legislatures are becoming the most effective champions of employee rights.

–Business Week, July 8, 1985

If labor unions were stronger, judiciary decisions on karoshi wouldn't have been necessary. The judges know that. There is nobody who would regulate overtime, the judiciary which knows that fact, is shouldering the burden.

- Matsuda Takashi, Activist Lawyer

I. INTRODUCTION

The courtroom was filled with tension. No seats were left empty as people packed the room to hear the cross examination of an expert witness, a physician, by plaintiff lawyers. The people in the gallery were mostly from the teachers' labor union, Daikyoso, and from the Association of Karoshi Victims' Families. They attended the hearing to show their support for the plaintiff, the wife of a school teacher, Aoki, who suddenly died 14 years ago. She had brought a lawsuit in 1999, after a series of rejections from civil service workers' compensation agencies, to contest their decisions that Aoki's death was not work-related. Earlier, the judges in the lower court had agreed with the defendant, rejecting the influence of work overload on Aoki's death based on the diagnosis of cerebral thrombosis caused by the hardening of an artery in the brain. The plaintiff lawyers made a strategic decision for the higher court trial to launch a medical argument and to maintain that Aoki did not die of cerebral thrombosis, but instead, of cerebral embolism that was formed in his heart and later moved to the brain. With the diagnoses of cardiac-cerebral embolism, it would be easier for the plaintiff team to show the link between Aoki's workload and his death. The plaintiff team had requested the examination of the defendant's expert witness physician, intending to show that the earlier diagnosis of thrombosis was not sound.

- Lawyer: According to your medical opinion, the victim, Aoki Toru's cerebral infarction was caused by thrombosis. Can you tell us exactly where the thrombosis was formed in the brain?
- Doctor: It is not clear... where the thrombosis appeared...
- Lawyer: According to the report submitted by the police at the time of the death, Mr.Aoki's cerebral infarction occurred suddenly. Doesn't that mean that his infarction was actually not due to thrombosis, but embolism?

- Doctor: How Mr. Aoki's cerebral infarction was caused is not clearly understood medically...
- Lawyer: You stated that Mr. Aoki's cerebral infarction might be caused by external injury, did you not?
- Doctor: I meant that the possibility was strong. Whether or not there was cerebral embolism caused by injury, I don't think we can really tell...

The strategy of the lawyers was brilliant. Earlier, the plaintiff lawyers had met with the judges and explained the importance of the diagnosis on which the impact of the work overload really depended. At the cross examination, the plaintiff lawyers first focused on showing the improbability of the earlier verdict on the diagnosis, compelling the defendant witness to admit his uncertainty. They then pointed out the sudden onset of his infarction which would support their claim for embolism as the cause of death. Their well-planned questions and presentation of the evidence in the end not only convinced the judges but forced the defendant team to agree that the cause of Aoki's cerebral infarction was embolism, not thrombosis. By the time two other physicians on the witness-stand completed their testimonies supporting the plaintiff team's claim, it was clear that the lawyers managed to change the diagnosis on the cause of Aoki's death. It was a death that occurred 14 years before, and the plaintiff team, of course, had no chance to examine the body. A year later, the higher court overruled the earlier decisions and claimed that Aoki's death was due to work overload and ordered the state agency to award workers' compensation to Aoki's family. The victory in Aoki's case was one of many lawsuits the lawyers have been winning in recent years. Since the group of lawyers began actively working on karoshi related lawsuits, the rate of workers' compensation awarded among applicants during a year increased from approximately 5% of all applications in the late-1980s to over 35% in mid-2000s. Their legal and medical

expertise on karoshi, skills to gather needed evidence and build convincing arguments, capacity to mobilize professional and lay supporters, all proved to be crucial factors in convincing judges and ultimately appealing to the public to make karoshi a widely-debated social problem.

Legal Professionals as Social Movement Entrepreneurs

Anti-karoshi activism presents an interesting anomaly to social movements. Most social movements are ‘owned’ by subordinate groups such as victims, minorities and women. Members of the groups discover their common problems, construct a collective definition of the sources of their oppression, and note the limits of routine means of redressing grievances (Fantasia and Hirsch, 1995). The trajectory of contemporary anti-karoshi activism also followed a similar track, *except* that it was not a subordinate group but elite lawyers who initiated the struggle without the participation of the beneficiaries - workers. Lawyers are the central social movement entrepreneurs in contemporary anti-karoshi activism. Hilgartner and Bosk (1988) argue that social problems are embedded within a complex institutionalized system of problem formulation and dissemination by the “communities of operatives”. The networks of specialist operatives form “problem communities” exerting control over the interpretation of situations and conditions deemed to fall under their jurisdiction. The contemporary problem of karoshi is embedded in the legal system on which not only the issue of compensations but also regulation and prevention depend on. It is the legal “specialist operatives” in the judiciary system who form the core of the “karoshi problem community” and exert the control over the interpretation of the situations.

Legal professionals generally have been deemed to provide ineffective leadership in social movements. Legal tactics are often considered less effective in social change because they elevate the status of lawyers within movements, who in turn tend to favor further litigation and discourage other forms of grassroots action. Lawyers' leadership in litigation has been also pointed out to fragment social movements into individual disputes between discrete parties atomizing movements (McCann 1994; 293). Furthermore, the impact of judiciary process on social change has been seen as minimal as courts lack the institutional capacities to develop and administer effective reform policies. Thus, litigation is often regarded as "a waste of reformers' time."¹ Similarly in the context of Japanese Studies, scholars of law and social change have been concerned primarily with demonstrating the insignificance of judiciary processes, emphasizing Confucian ideals of social harmony and antipathy toward law. Until recently, Japanese are believed to be extremely nonlitigious, preferring informal, mediated settlement of private disputes.² As a result, the role of lawyers in social change has been largely neglected by the scholars of Japanese Studies.

Despite the general tendency to ignore law's role in social change, some scholars have begun to pay more attention to "legal mobilization" as an important social movement tactic during the last decade. Michael McCann (1994) argues that litigations may not lead directly to policy changes and protection of rights, but legal cases do have symbolic power in providing activists with vocabulary and strategy around which to organize their movement, and advertise their goals, and broadcast their victories. Paul

¹ See for example, Dolbeare and Hammond 1971, Horowitz, 1977, Rosenberg 1991

² See Haley 1978, Kawashima 1963, Noda 1976, for more comprehensive debates

Burstein (1991) also points out that the scholars of social movements tend to focus on political behaviors “outside the system” such as demonstrations, strikes, and boycotts when institutionalized channels of protest such as legal proceedings and lobbying are either unavailable or ineffective. They tend to emphasize the process in which those using outsider tactics gain access to power holders and influence their decisions. Yet, in reality, as Burstein argues, successful movements generally utilize both “proper channels” of political demands, as well as “politics of protest” outside of the proper channels. While the distinction of two types of action is useful, the mobilization of law as a protest tactic can not be ignored if we are to fully understand the process of social and political change. Burstein furthermore stresses that court decisions have the power to impact hitherto taken-for-granted social norms and beliefs. The decisions of a federal judge that undermines the hegemony of white-supremacist ideology in Mississippi (Harding 1984) and a Supreme Court decision on segregation having a critical effect on the bus boycotts (McAdam 1983) are examples. As Burstein contends, the mobilization of law should be considered a form of political participation potentially useful to the disadvantaged in their struggles for rights and benefits.

Notwithstanding the tendency to dismiss the impact of courts on the society in Japanese Studies, Frank Upham (1987; 27) contends that litigations in Japan can be a vehicle for the transformation of diffused discontent or isolated instances of individual conflict into social issues. The judicial process provides the plaintiff media access to the public, as well as the rhetoric of legal argument to connect their particular grievances to universal norms like benevolence shared to some extent by all Japanese. He also point out that litigation can help disparate groups recognize common interests and form

alliances, and associate these interests with wider social values. The capacity of legal system and professionals in accomplishing “what labor unions have been trying to do through strikes” is also pointed out by Andrew Gordon (1998). The courts in Japan established as a legal doctrine that a company can dismiss workers only as a last resort. While recognizing the “business necessity” to fire, the courts over decades have established very high standards for an economic “need” to fire, thus, protecting workers from employers’ abusive exercise of a right to dismiss employees. The process described in this chapter underlines these scholars’ observations on the importance of judicial process in social change in Japan. The lawyers’ active promotion of karoshi litigations both within the community of karoshi activists as well as in the broader public arena through media helped to redefine the isolated occupational safety issue into a larger social problem. The legal arguments of the plaintiffs in the court, which emphasize the moral and legal obligations of employers over employee’s welfare, resonate with the widespread assumptions of employees’ right to employer’s benevolence³ and help to win the sympathy of the public and legitimacy. Karoshi litigation also provides a locus of resistance in which the unusual coalitions of lawyers, plaintiff families, doctors, unions, scholars, occupational health and safety NGOs and sympathetic journalists come together and create a social movement that impacts public opinions, labor policies and law. The legal cases are critical instruments in transforming the diffused discontent of karoshi victims’ and their families into a public problem, and it could not have been accomplished without the leadership of the lawyers.

³ See chapter 5 for further discussion of the legal arguments in the court and the norm of “right to benevolence”.

But who are these lawyers and how did they manage to achieve current success? By investigating the identities, strategies, and motivations of the lawyers, this chapter examines the role of progressive legal professionals in leading social change, and explores why lawyers, not workers, are working to protect the lives of workers in contemporary Japan.

Anti-Karoshi Activist Lawyers

The lawyers who lead anti-karoshi activism are a group of progressive lawyers with leftist political orientation. Frustrated with the inability of labor unions to protect workers from karoshi, these lawyers have taken the matter into their own hands and organized legal activism aiming to build a resistance against corporate power utilizing the power and authority of the legal system. Their professional activities surrounding karoshi extend well beyond the ordinary activities of lawyers including organizing karoshi hotlines, street demonstrations, symposiums, victims' families' groups, labor ombudsman etc. Based on these activities and years of collective experience in karoshi cases, they have accumulated special knowledge and skills to lay out informal grievance procedures for karoshi compensation. Professionalism is found to be the main way of institutionalizing expertise in industrialized countries (Abbott 1988). Anti-karoshi activist lawyers have institutionalized the process of legal complaints over karoshi and, in effect, marked karoshi as part of their professional territory. Another result of the lawyers' leadership is the extension of their professional expertise into the medical realm, and the expansion of the definition of karoshi. Through the lawyers' efforts in legal cases, the range of diseases recognized as a possible direct cause of karoshi, conventionally

brain and heart diseases, has expanded to include non-cardiovascular diseases such as diabetes, asthma and suicides. As Write and Tracher (1982) noted, the accepted boundary between law and medicine is not given, but is the contingent outcome of negotiation between many social forces. The professional boundary between medicine and law in karoshi has been blurred as the legal professionals try to push forth their medical arguments on the official causes of deaths in the court.

Professional Territorialism or Moral Entrepreneurship?

Lawyers' motivations in leading anti-karoshi activism are complex. Simple explanations of quest for monetary rewards or philanthropic idealism alone do not explain their long term involvement in a wide variety of volunteer activities. Some theories of profession⁴ emphasize the motivations of professionals as the desire to defend their market positions and territories. Others⁵ suggested that professionals tend to hold liberal views and draw upon the values and world views of their professions to critique the inequalities surrounding their occupations. Lo (2000) in his study of Taiwanese physicians in their resistance to colonialism, he found the tendency of the physicians to both defend their market position and the potential to resist social inequalities. The motivations of the lawyers in anti-karoshi activism can be best described by the middle path approach of Lo. On the one hand, the lawyers' behave like "moral entrepreneurs" described by Howard Becker (1963). According to Becker, moral entrepreneurs see themselves as moral crusaders who typically want to help those beneath them to achieve

⁴ For example, Abbott (1988), Freidson (1970)

⁵ Hoffma (1989), Kennedy (1990), Lo (2000) summarizes the recent debates on profession.

a better status, and derive power not only from the legitimacy of their moral position, but from their own superior position in society. One can observe their desire to impact social inequalities based on their moral values and beliefs nurtured through their professional experience. Prohibitionists and temperance movements are two of the examples of moral entrepreneurs taken by Becker. While the lawyers in anti-karoshi activism do not justify their actions with self-righteous and holy moral reformer rhetoric like Prohibitionists, the lawyers do act to right the wrong of powerful corporations in order to make the life of ‘powerless workers’ better. At the same time, the legal professionals can not maintain their moral crusades over a long term just by being a humanitarian philanthropist. The karoshi legal specialists sustain their efforts as movement entrepreneurs because it serves their professional interests, allowing them to interpret situations within the boundary of legal terrain, defending and expanding their market opportunities.

II. BEGINNING OF KAROSHI LEGAL ACTIVISM

The central actors of anti-karoshi activism gradually shifted from the alliance of workers and medical doctors in the early-1970s to pro-labor lawyers in the late 1980s due to the decline of organized labor. The shift was accompanied by the transformation of the karoshi frame from the issue of hazardous working conditions of blue-collar laborers to a broader public concern for overworking and its health consequences. As the power of organized labor steadily declined and the leadership role of the volunteer lawyers increased, the focus of the activism also gradually shifted from poor working environment to the widespread violations of Labor Law and legal responsibility of employers for karoshi. Similar to medicine, law possesses the cultural authority to define

reality and to redefine existing cultural meaning (Freidson 1970) and can be mobilized by individuals and social movements to address social issues and seek changes in public policies and social practices (McCann 1994). Anti-karoshi activism that appealed to judiciary authority gradually succeeded in framing karoshi as a social problem, gaining media attention and mobilizing legal legitimacy.

In the beginning of anti-karoshi activism in the 1970s, only a handful of lawyers were interested in the issue. Matsuda Takashi and Oohashi Koichi were spirited young apprentice lawyers who had keen interests in labor rights and occupational health issues when they discovered the problem of death from overwork. As legal apprentices fresh out of law school, they organized occupational safety and health sessions in the annual Assembly of Rights Discussions [Kenri Touron Shukai] sponsored by the Democratic Law Association [Minshu Horitsu Kyokai] in 1977. In the session, they were shocked to hear many union representatives reporting “as if it was ordinary”, the deaths of their workers due to overwork.⁶ They were determined to “do something about it” and sought the advice of Dr. Tajiri, who was an authority on occupational medicine in Osaka, and who would later become one of the authors of the book, *Karoshi*⁷ in 1984.

The meeting of the doctor and the lawyers, who would be regarded as authorities on karoshi in later years, formed the core of new anti-karoshi activism that would later become independent of labor unions. The two young lawyers began to join monthly meetings that included Tajiri, progressive labor unions, and union related occupational health organizations. The group later formally named themselves “Osaka Sudden Death

⁶ Interview conducted by R. Morioka in 2002-03

⁷ Hosokawa, Migiwa, Shunichiro Tajiri, and Tetsunojo Uehata. 1984. *Karoshi*. Tokyo: Rodo Keizaisha.

Workers Compensation Network” [Osaka Kyuseishitou Rosai Nintei Renrakukai] in 1981 and renamed in 1982 “Osaka Karoshi Problem Network” (Osaka Karoshi Mondai Renrakukai). The lawyers sought inspiration and advice from the group, and the group also welcomed the lawyers’ legal knowledge that was vital to the application of workers’ compensation.⁸ Tajiri expressed to them his concern that there were a very limited number of legal actions taken in combating the problem, and encouraged the young lawyers to explore more possibilities in the legal field. At the same time, Tajiri emphasized his view that clinical doctors were incapable of seeing overwork as the root cause of diseases, and that seemingly ordinary diseases such as ulcer, cardiac infarction, and cerebral hemorrhage were often related to patients’ work conditions.⁹ While commonsensical, Tajiri’s view was at odds with the mainstream medical opinions, which often traced the etiology of such diseases in hereditary elements. The difference in the medical opinions would be later taken to the court as one of the main arguments in karoshi trials.¹⁰

1988 - “The First Year” of Anti-karoshi Activism

Year 1988 is considered “the first year of karoshi” [Karoshi Gannen] by many. It was the year in which victims’ families, and lawyers and doctors who supported them joined together and began their resistance. It was also the time their activism drew wide attention of the media making the term karoshi a popularly used word. Prior to 1988, the Osaka Karoshi Problem Network formed in 1981 had been barely surviving due to weak

⁸ Interview conducted by R. Morioka in 2002-03

⁹ Ibid.

¹⁰ Chapter 5 details the legal arguments and medical opinions.

public response to the problem in the height of corporate power and the bubble economy of the 1980s. The issue had not spread to the broader society and some members were beginning to think that karoshi could be an isolated problem of unusual workplaces. Despite the down-drift, however, the lawyers continued searching for opportunities for action. A chance came when the Ministry of Labor announced new workers' compensation standards for sudden death, which removed the condition of working under an "unusual" circumstance or in an accident at the time of death. It also allowed taking into consideration work hours and other working conditions one week, instead of one day, prior to death. Without much expectation for a large turn out, the group organized a "Karoshi Symposium" on April 19th 1988 and invited some representatives from the media to discuss the change. The response was sudden and astonishing. The room was not only filled with participants from a variety of backgrounds, but also crowded with TV and newspaper reporters. In the midst of TV cameras and flashing lights, excited Tajiri and the lawyers provided talks on karoshi and the new workers' compensation standards. Encouraged by the success of the symposium, a few days later, the lawyers in Osaka organized "Karoshi 110" hotline (the emergency telephone number 911 in Japan) for the first time in history. The several telephone lines prepared for the day kept ringing for the entire day among the crowd of TV camera crews and the lawyers. Seizing the momentum, within two months, lawyers in Tokyo appealed to the network of lawyers from various cities and organized a nationwide "Karoshi 110" hotline on a same day. In October 1988, in order to pursue workers' compensation and civil lawsuit cases brought to them by the hotline callers, nearly 300 lawyers from every prefecture in Japan organized "National Defense Council for Victims of Karoshi (NDCVK)".

The large number of calls received mostly from wives during the hotlines concerning many different types of occupations and industries solidified the lawyers' conviction that karoshi was a grave and pervasive social problem which plagued a wide variety of occupations affecting not only workers but their families. In the earlier period of the activism in the 1970s, karoshi was situated as an occupational health threat of rapid industrial growth to low-income blue-collar workers. The originators of anti-karoshi activism in the earlier period discussed karoshi as a "problem of underclass laborers [teihen rodosha] toiling under harsh working conditions." However, the strong response of the media and the public to the hotline and symposium in 1988 made the lawyers certain that the problem was no longer just a narrow issue of the underclass or unique working environments but of the entire nation. Matsuda became certain that karoshi was a problem "with generality and universality" that contained "fundamental issues that are linked to the way workers work and live".¹¹ The gravity and prevalence of the problem made him realize "the urgent need for appealing to public opinion" whose support would greatly enhance their ability to impact judicial decisions as well as corporate behavior.

Seeing labor unions' decline, the lawyers in anti-karoshi activism also realized their role in the movement. They recognized their potential ability, with the authority of law, to take on powerful corporations and to create a social movement that impacts the society.

Labor unions have become extremely weak... Even Rengo has a small number of members. On the other hand, lawyers have the best abilities to work on labor issues. We have legal tools, and can charge employers including on the issue of working conditions. And unlike in the past, these days we can also win workers' compensation cases to some extent. This

¹¹ Interview conducted by R. Morioka in 2002-03

provides a symbolic meaning, and it becomes easier to talk about corporations' ways of making employees work [hatarakasekata].

- Activist lawyer

The lawyers in anti-karoshi activism realized that by strengthening the activism, they could better serve the victims and their families than labor unions, and even pressure the government for changes. "It's not helpful just to work on individual cases. We have to make the issue a social problem", one lawyer spoke enthusiastically. "Look how fast the Ministry of Labor changed after karoshi became a social problem. I feel like asking them, 'what were you saying 10 years ago?'" The ministry who had been unwilling to recognize the problem of karoshi finally began to take action and relaxed the workers' compensation standards in the late 1990s. The shift in the ministry's attitude was the fruit of years of efforts through legal activism.

III. IDENTITY OF THE LAWYERS

Leftist Lawyers – "The Protector of Social Justice"

Lawyers in Japan are elites of the society, most being graduates from the nation's top universities. Selected through a fiercely competitive national exam with 2% passing rate, less than one thousand highly motivated and bright students are accepted into publicly-sponsored legal apprenticeship every year. They spend next two years in law offices and courts nationwide to eventually become lawyers, public prosecutors and defenders, and judges. While Japanese lawyers do not specialize in any particular area, most strive to find their specialization that characterizes their work and professionalism. The lawyers in anti-karoshi activism are a fraction of lawyers who took interest in labor

law. They are a group of leftist lawyers who are often acquainted with one another through research and study groups in labor issues. Some are loosely connected to labor union federation, Zenrodo, which is linked to Japan's Communist Party. They view their involvement in karoshi litigation for the greater good of the society and treat their cases as a vehicle for social change. The lawyers in karoshi cases are frustrated with the decline of labor unions that are increasingly incapable of protecting workers, and feel compelled to provide their assistance to workers and their families. These lawyers' involvement in karoshi litigation has to do with their need to create a battleground against corporate power that has seen little opposition since the height of labor unionism in the 1960s. The rest of the chapter provides the accounts of the lawyers' "leftist" orientation, their moral justifications in helping victims' families, the origin of their involvement in karoshi, their frustration with labor unions and general ignorance of public towards the Labor Standards Law, and finally their activist strategies involving the Labor Standard Ombudsman, symposiums, and media reports in popularizing the notion of karoshi.

The lawyers who are engaged in karoshi cases are highly civic-minded and concerned with social justice. Frank Upham (1987; 156) has argued that compared to American activist lawyers, Japanese lawyers are much more political in the sense that they view their cases as contributing to social change rather than as correcting flaws in the legal order. The lawyers in anti-karoshi activism view their work in karoshi cases as not only to represent the plaintiffs, but also to lead social and political changes through their cases. Their stated aim in karoshi litigation include to create a "society without karoshi" [karoshi no nai shakai], and to help those "in socially weak positions" [yowai tachiba] rather than to innovate novel legal arguments for the sake of law. Asked about

the most important work of lawyers, one lawyer that revealed the sense of moral duty they carry in his professional pride: his reply was to “protect the rights of the socially weak” [shakaiteki jyakusha no kenri yougo katsudo]. Those who know them well also recognize and respect them as a group of “bright reliable lawyers who realize social justice” [seigi wo jitsugen shitekureru tanomoshi sugureta bengoshi]. A young lawyer who recently passed the national bar examination admired the lawyers in anti-karoshi activism. “There are all sorts of lawyers, but they are one grade higher. If they want to earn more money, they can easily do that, but they have been working [on karoshi] for a long time.” In his view, they are “one grade higher” because of their sense of social justice and righteousness, and their willingness to sacrifice for their ideals.

In addition to karoshi, these progressive lawyers are often involved in a wide range of civil and human rights and community issues. Examples of cases they are working on include corporate life insurance against employees’ lives, stockholder ombudsman, corporate political donations, Japanese children left behind in China after WWII, unjustifiable college entrance fees and apartment security deposit, human rights for Korean children in Japan, and protection from water hazards for children. They see social and political injustices in these cases, and are actively seeking to change what they consider social maladies [shakai no mondai].

The lawyers explain their motivations in involving karoshi as both “the sense of justice” [seigikan] and “occupational challenge” [shigoto no yarigai] as a lawyer. Many lawyers regard karoshi as their “life-work”, and express their vision of a “society with no karoshi” [karoshi no nai shakai] that allows workers to lead “the life of a human-being” [ningen rashii seikatsu]. One young lawyer in karoshi litigation described his motivation

to be a lawyer. “I learned about karoshi while I was a law student. I felt how unreasonable the society is and wanted to become a legal professional who could do something about this unrighteousness. I want to work for those who are in the weak position in the society.” One could look at the statement as a young lawyer’s idealism, but this idealism and enthusiasm to be a deliverer of social justice are also shared by senior lawyers in the activism. A lawyer who has been fighting against karoshi for 17 years explained reason why he became a lawyer and involved in social problems.

Being a lawyer allows me to help oppressed individuals live with dignity and pride... I feel I have to do something about the problems as a legal professional. I can’t ignore the situations in which these people live... I really don’t think about whether we win or lose.

-Murayama Yuji, Lawyer

The idealism alone would not keep them at the problems for a long time. In addition to their sense of justice, they also find professional satisfaction in tackling difficult cases and being able to impact the society. Another veteran karoshi lawyer who also won a case on illegal political contribution after years of legal battle expressed his satisfaction in being able to “exert influence by pushing” [oshitara ugoita] on tough issues which he once thought almost impossible to change. He explained that while without “the sense of justice” [seigikan], it is impossible for them to engage in these cases, it is also impossible to keep at it without the professional challenge and satisfaction.

I am not doing karoshi cases out of *seigikan* [righteousness]. It [righteousness] is the kind of thing that will follow you. There are issues that make me think and question. I want to try and see what I can do about them. I want to challenge them as a lawyer.

- Matsuda Takashi, activist lawyer

Both a sense of justice and professional satisfaction are essential elements for the lawyers to continue working at the issue. Their spirit of challenge, ‘what can we do next’, keeps them working for social change for *yoru yoi shakai* [a better society].

Japan Labor Counsel

Many lawyers in anti-karoshi activism belong to Japan Labor Counsel [Nihon Rodo Bengodan], an organization of lawyers previously funded by a progressive labor union federation, Sohyo (General Council of Labor Unions). Formerly called Sohyo Bengodan, the counsel assisted labor unions and individual workers who fought for workers’ rights in courts. The formal statement of Sohyo Bengodan declared that the organization was consisted of lawyers who “would stand on the side of the working class and work for the workers”, and that the counsel was formed not only to assist Sohyo labor unions and their members, but also “to protect all Japan’s laborers and labor unions” (Nihon Rodo Bengodan 1997). When Sohyo was dissolved in 1989, the counsel reorganized itself as an independent organization with 1,300 members registering 10 % of all lawyers across the nation. The organization still maintains the liberal principle of Sohyo with its “historic duty” as “protecting workers’ rights regardless of ideology and belief ...as long as the labor rights disputes of workers and labor unions exist.”

While the lawyers’ in anti-karoshi activism share the enthusiasm and liberal ideals of Japan Labor Counsel in their beliefs in workers’ rights, they have a more inclusive vision of labor movements than conventional labor lawyers. They see themselves apart from traditional labor lawyers who only work on the cases pertaining to the violations of labor rights of union members. The lawyers who work on karoshi cases want go beyond

the narrow confinement of labor unionism and reach the broader segment of workers who do not belong to or do not have access to labor unions. A lawyer in anti-karoshi activism expressed his disinterest in union related legal disputes. “Labor lawsuits brought by unions are only for a portion of workers who are already awakened to their rights. You can’t see the whole society through the cases.” The lawyers see karoshi as an issue beyond the framework of traditional labor disputes, but a phenomenon that taps into an underlying problem of the society as a whole.

Empathy of the Lawyers

Comparing to activist lawyers in the US, Frank Upham (1987; 42) observes that Japanese lawyers in social movements are more than “detached legal advocates”. They often share the moral outrage of the plaintiffs and their faith in the legal system’s ability to function as an instrument of moral justice. They also consider, as Upham contends, that personal involvement in the victims’ life is necessary because the courts for them is the forum for barring the victim’ suffering and the moral condemnation of the defendants. By sharing the suffering of the victims, the lawyers could impart it to the court, and present the public drama of the litigation. The empathy and moral outrage of lawyers are important, according to Upham, because without it, litigations would degenerate into legal formalities and fail to facilitate and strengthen social movements.

The lawyers in anti-karoshi activism mirror Upham’s observations. As winning a workers’ compensation suit for karoshi requires a day-to-day reconstruction of the worker’s life for six months to one year prior to death, the lawyers come to know the life and character of the victim quite well. As the lawyers trace the life of the victims, they

often grow to have empathy for the victims. A lawyer could not help seeing his own life in that of the victim. One of the lawyers expressed his feeling to me: “As one of the ‘busy-bees’ who work in the same ‘corporate-society’, though I have more freedom, I could not help sympathizing with the victims and feeling that this is not someone else’s problem.” In the process of karoshi trials, the lawyers also form close relationships with the victims’ families and share their anguish and anger. “Shouldering the disparate pleas of the victim’s families, we organized the team of lawyers, support networks, and sometimes even handed out flyers in front of the labor standard office with them.” A lawyer recalled the earlier period in the activism when he hardly saw legal victories. “We kept asking ourselves how we could win and share the joy with the families. Like the families, we too were desperately trying.”

Defendant Lawyers

The attitude and ideological orientation of the lawyers in anti-karoshi activism can be contrasted with the lawyers who work with corporations and the government. While not openly antagonistic to karoshi lawyers, they represent the general attitude of non-labor lawyers in Japan. These lawyers often possess a conservative political outlook and disapprove of labor unions which bring labor disputes. They are distrustful of karoshi plaintiffs’ claims that the victims’ died due to work overload, and regard court decisions supporting plaintiffs as too “lenient” [*amai*]. Many still do not recognize karoshi as a legitimate concept and refuse to use the term. A defendant lawyer who represented the government workers’ compensation agency in a school teacher’s case, regarded the suit as a plot of the school teachers’ labor union, left-wingers’ unnecessary

complaint. There were stark differences in his recognition of workplace realities with those of the plaintiff lawyers.

If they can't bring witnesses who say it was a difficult job, I think there is something wrong with their evidence. It shouldn't be hard to find witnesses in public servants' cases... They are just complaining, and I doubt that there is any truth in their claim... I think that evidence is forged, but the administration can't prove that... Just think about school teachers when you were a child, with your common sense, you know that they are not overworked... If I look at the lawyers faces in a labor dispute, I can tell if the supporting labor union is with the Communist Party or the Socialist Party.¹²

The plaintiff lawyers, who ultimately won the case of the school teacher in the higher court, criticized the rejection of the earlier trial in the publication of an occupational safety and health center. Their criticism echoed the biased attitude reflected in the defendant lawyer's words. The plaintiff team criticized the decision as "full of unfounded prejudice against school teachers' workload in general" and one can tell that "there was a conclusion first that teachers' workload is not heavy" and "in order to reject the claim of the plaintiff, it accepted the defendant's medical argument that was not thoroughly debated."¹³ The attitude of the defendant lawyer mirrored the content of the criticism.

Pro Bono Work

The activist lawyers often regard karoshi cases as part of their service to the society rather than a source of income. Until the recent wave of legal victories, karoshi litigations often brought little or no revenue to the lawyers. Not only had cases been pro

¹² Interview conducted by R. Morioka in 2002-03

¹³ Osaka Rosai Shokugyobyō Taisaku Renrakukai, 2003. Roudou to Kenkou. Vol. 179

bono work, their efforts to raise public awareness towards karoshi sometimes incurred monetary expenses for pamphlet publications and public symposia, which they paid for out of their own pockets. “Nobody takes up karoshi cases hoping to make lots of money,” said a lawyer. “We make money from other kinds of cases.” Since karoshi plaintiffs are often in financial crises after losing their breadwinners in their families, in the past many lawyers have accepted their cases with no or reduced advance fees with little chance of winning the case. “I could not afford the initial fee to my lawyer”, a plaintiff mother who also lost her husband recently confided in tears. “It was hard for me to tell him [lawyer] that I did not have the money when I went there to ask for a help. All I had was one fourth of the fee that is normally given, but he said it was ok with him. He was very kind and understanding.” It was only in the late 1990s when they slowly started to see legal victories, and the lawyers could expect some financial payoffs.¹⁴ Unlike litigations in the United States, legal cases in Japan take years to close. Early karoshi cases involved over 10 years of waiting. While the process has been getting quicker in recent years, it is often years before the lawyers finally see their monetary compensations, that is only if they are lucky enough to win the case. Yet, partly due to the better prospect of winning and partly due to the senior lawyers’ efforts to expand the pool of interested lawyers, more lawyers are willing to engage in karoshi issues in recent years. For the ‘pioneer’ lawyers who are at the core of anti-karoshi activism, however, the professional satisfactions derived from tackling important social issues and the elevated

¹⁴As of 2003, the average reward for the lawyers (often shared by a group of 2 to 6 lawyers) of a winning karoshi case was 15 % of the total compensation which were normally between \$100,000 to 1,000,000 (USD). The average initial fee was \$10,000 – 20,000 (USD). However, as cases take years of investigation, the lawyers do not receive any compensation till the end of a case. According to one lawyer, their average annual income was between 80,000 to 150,000 (USD).

sense of moral contentment in “helping the weak”, rather than monetary rewards, were what motivated them the most.

Regional Differences

While the general propensity of the descriptions of the lawyers in anti-karoshi activism is true, there are regional differences in what a lawyer describes the “temperature” of the activism. Historically, the Kansai area that includes Osaka and Kyoto is “hot” in social movements. Being away from the capital, the political atmosphere is comparatively relaxed and provides space for progressive activism. It is an important political ground for the Communist Party, particularly in Kyoto. Many of large scale environmental and social movements have originated in western Japan, and anti-karoshi activists in Kansai pride themselves in being “action oriented” and “warmhearted” [ninjyo]. The ties of network among the lawyers, victims’ families, and other activist groups, for example, are stronger in Kansai area compared to other regions, and as a result, they together organize a variety of activities including symposia, hotlines, study retreats, street protests and appeals, and support groups for court hearings.

In contrast, the “temperature” of the eastern region centered in Tokyo is “cool” according to the activists. The lawyers are much more “scholarly” and produce many “analyses” of karoshi problems. Their networks tend to center on professional “research groups” [kenkyuukai], rather than “activist groups”, and take actions only through “proper” routes. “When something needs to be done, we try to do anything we can do by jumping into it without worry, but people in Tokyo would first discuss the problem, research it further, and in the end, write articles or books”, Dr. Tajiri from Osaka Karoshi

Network also described the regional difference with the pride of an activist. “I consider myself a true activist, and I like the way it’s done in Osaka.” When asked about the reason for the difference, however, he could only point to the centrality of Tokyo being close to “*okami*”, the government.

The humanitarian and philanthropic orientation of the lawyers described above naturally varies in their extent. The victims’ families often express the perceived differences in their degree of helpfulness in terms of regional differences. A wife whose husband was paralyzed due to myocardial infarction, and who has won a workers’ compensation case in Nagasaki after 10 years of struggle wrote,

In Nagasaki, there is also “Karoshi Defendant’s Counsel” with apparently twenty lawyers or so. Five of them formed a counsel for my defense, but they demanded initial fees of five hundred thousand yen [5,000 USD] per lawyer plus another five hundred thousand yen for an expense fee... Even then, they did little for me, and I wasted one year. I have heard that the lawyers in Karoshi Defendant’s Counsel are willing to help those families who have lost their breadwinner even when the cases do not bring substantial income. But it seems that that is not the case in Nagasaki.¹⁵

Regional cities tend to be conservative and still have relatively little understanding of karoshi. In a smaller city like Nagasaki where a few big businesses dominate the local economy and provide the majority of jobs in the city, people can be hostile to those who file for workers’ compensation and pursue corporate responsibility for karoshi. The lawyers who take up karoshi cases in these cities also tend to be less sympathetic and charitable to the plaintiffs.

¹⁵ Interview conducted by R. Morioka in 2002-03

IV. STRATEGIES OF THE LAWYERS

Frame Process by Social Movement Entrepreneurs

From the social movements' perspective, the primary role of the social movement entrepreneur is understood as communicating the movement's frames to current potential constituents. The ways they accomplish this task, according to Benford and Snow, are through processes of *Articulation* and *Amplification*. Social movement entrepreneurs articulate frames by connecting and aligning events "so they hang together in a relatively unified and compelling fashion." They create "rhetorical package" to explain their movement by meshing together old and existing ideas strategically "punctuating and encoding" certain ideas, events, and beliefs. Lawyers in anti-karoshi litigations frame and reframe the issue so that their intent can be communicated to potential adherents. The core contents of the package include the use of the term "karoshi" as a symbol of corporate abuse of workers, the emphasis on "*rosai*" [workers' compensation] as a means of redress grievance, as well as the focus on "*kigyo sekinin*" [corporate responsibility] in civil court as a way to address the ultimate responsibility of employers over workers' health and safety.

The notion of amplification refers to the strategic choices of highlighting and accenting issues, events, or beliefs from the broader interpretive repertoires of the movement. A set of symbols that carries movement frames quickly and efficiently provides movement entrepreneurs tools to amplify their core messages and intent. Noakes and Johnston (2005) compares the notion to the bumper sticker that crystallize the essential components of the frame in an "easily recalled clip". The authors points to

historical examples, metaphors, visual images, and symbolic objects as examples of amplifiers that can extend beyond simple discursive processes.

Some of the powerful amplifiers developed by the lawyers in anti-karoshi activism are “karoshi 110” hotlines, the slogans of “no more karoshi” [*no moa karoshi*], “society free of karoshi” [*karoshi no nai shakai*], and their descriptions of the movement as “battles to eradicate karoshi” [*karoshi o nakusu tataikai*] and “improve overworking society” [*hatarakisugi shakai o kaizensuru*].

Institutionalization of Karoshi Complaints

As the “ownership” of karoshi problem shifted from the alliance of doctors and labor unions to legal professionals within the “problem community”, the nature of protest also shifted from labor activism to legal activism. The attempts to redress karoshi have been increasingly systematized, and claimed as an expert territory of a group of ‘karoshi specialist’ during the 1990s. The lawyers have established a system of addressing karoshi-related grievances from the recruitment of potential cases to the filing of formal complains to the announcement of legal victory. As their struggles come to involve more and more technical expertise requiring specific knowledge and skills of labor laws, stress-related diseases, evidence collection, as well as the use of support network, in effect, they mark karoshi as an expert territory of their own.

While not strictly followed, the process of redressing karoshi grievances more or less involves similar steps: 1) case finding through hot-line consultation, 2) evidence appraisal through individual consultation, 3) evidence collection for formal legal processes, 4) establishment of medical argument, 5) filing of formal complaints, and 6)

formation of support groups. Though not always, the process often starts with the recruitment of potential legal cases through karoshi-hotline setup periodically for workers and their families to consult experts, mostly volunteer lawyers. The public consultation over the phone allows the lawyers to screen cases with strong evidence and potential to win legal suits. Consultations that are deemed strong cases are invited to individual face-to-face discussions with the lawyers for evidence appraisal. The existence of enough evidence to back up the claim of karoshi is crucial, and the ability of potential clients to provide evidence is evaluated during this discussions. Once legal action is deemed possible, a group of lawyers form a plaintiff team and begin the collection of evidence together with the family. In order to present a convincing case, evidence collection can take over a year before filing of a formal paper. A physical mechanism that brought the victim to death is also determined in this process often involving physicians' opinions. If necessary, supportive opinions written by sympathetic doctors are also brought in the process. Once all the arguments and evidence are prepared, the plaintiff team files a formal request for compensation, either to workers' compensation system or a civil court, or both. The provisions of counter arguments and additional evidence continue throughout the legal process, which sometimes can take as long as over 10 years. In recent years, it is becoming increasingly common for a plaintiff team to form a support group involving related industry-wide unions, occupational health organizations, and other sympathetic individuals. The existence of support group not only helps plaintiffs sustain long and arduous legal process, but sometimes play a crucial role in collecting evidence, or pressuring the court to provide a fair trial.

Medical Fact Building - Blurred Boundaries of Medicine and Law

The likelihood for a person's death to be recognized as due to work overload in the court or by the labor administration depends on the abilities of lawyers who present their arguments and their capacity to gather supporting evidence. The fact that the "medical truth" on the cause of death can not be known retrospectively years after the death means that the courts are making decisions based on the most probable arguments with most convincing evidence presented to them. This extends to the arguments on the mechanism of death from stress to fatal diseases through 'medical-fact building'. One of the crucial group contributing to this process is the lawyers in karoshi cases. They are the experts in the field of karoshi litigations who possess the knowledge and skill needed to build arguments, gather evidence, and mobilize people in their networks of supporters who are like-minded.

Medical arguments presented by the lawyers in the court offer an insight into the process of medical fact building negotiated at the intersection of law and medicine, blurring the boundary between the two realms. For karoshi, diagnoses on the cause of death, ordinarily assumed to be in the realm of medicine, often takes place in the court of law involving legal professionals. Write and Tracher (1982) point out that the distinction between medical and legal judgments is not intrinsic to the nature of medicine and law but is the outcome of various social forces which have caused any particular question to be regarded as the proper concern of one profession or the other. In karoshi trials, it is in the court, not in medical laboratories, the 'science of karoshi' is formulated, and it is the judges, not physicians, who make the final 'diagnoses' on the deceased based on the evidence presented by lawyers. As illustrated in the vignette in the beginning of

this chapter, medical uncertainty surrounding the direct cause of karoshi opens up room for workers' compensation politics to play a role in the court. Pro-labor lawyers with the assistances of doctors with similar political orientation push for a version of "medical facts" and pursue the responsibility of the state and employers for karoshi. The cultural authority of medicine can reshape social and political realities determined in the court. The negotiation processes taking place in karoshi cases shed light on the shaping of the "official" version of medical "reality".

The social nature of medical fact building is illustrated in the process of diagnosis in the court for karoshi victims. With the assistance of medical expert witnesses, the lawyers present their medical argument over the mechanism of a death triggered by work overload. Depending on the circumstances presented during the trial, the diagnosis can shift from one disease to another, often years after the occurrence of the death. The case of Aoki introduced above provides a good example. The lawyers strategically changed the diagnosis on the cause of Aoki's death, from cerebral thrombosis in the first trial to cerebral embolism in the second trial, in order to refute the earlier trial's decision that Aoki's thrombosis was not caused by the work overload before the death. The defendant team managed to present enough evidence to convince the judges that the cause of death really was embolism and his work overload did cause the onset of the disease.

Medical and legal knowledge intersect each other in karoshi-science building. Medical arguments presented in the court are often the result of long and arduous collaboration between the lawyers and doctors who support them. The legal and medical professionals in the karoshi problem community, who share similar leftist political view on the issue exchange their expert knowledge in medicine and law to advance their

arguments. The activist lawyers and doctors in Osaka, for instance, regularly meet to hold a “study session” to discuss medical link between work overload and diseases, and how to legally prove it in the court. The lawyers explained their motivations: “In order to explain what caused the cerebral arterial aneurysm to burst in a case, we need to clarify the link to work overload.” “People are working extremely long work hours, but the current medical practice completely ignores this fact. This (the medical practice of ignoring overworking) in and of itself is odd, isn’t it?” Medical practitioners sympathetic to the issue of overworking are also learning from the process. Young doctor who participated in the study group expressed his excitement: “I learned the relationship between work and disease for the first time. There is no discussion like this in the medical school.” “Not even doctors from Miniren¹⁶ ask patients about their work backgrounds.” As a result of their efforts over the years, their arguments presented in the courts are shifting the medical common knowledge that heart attack and cerebral disease are “personal disease” of hereditary nature to a view that incorporates the effects of stress and work conditions.

Extension of Karoshi Frame

Another consequence of legal activism by the lawyers is the recruitment of a wider variety of cases, and as a result, the expanding definition of karoshi. Unlike the earlier period which focused on “the lower strata of laborers” in blue collar occupations, legal activism by the lawyers is non-occupation specific. Karoshi legal cases now

¹⁶ Japan Federation of Democratic Medical Institution [Zennippon Minshu Iryoukikan Rengokai]: Medical and welfare organization aiming to augment the state “neglect” of medical responsibilities towards working citizens.

involve workers in any position in a wide variety of industries from middle-aged truck drivers to young novice graphic designers to experienced vice presidents of companies. The types of diseases and events considered immediate causes of death also have expanded considerably over the years. The original cases of *karoshi* only involved sudden deaths due to acute cardio- or cerebral- vascular diseases. As the results of the lawyers' efforts to provide workers' compensations to "even one more" [*hitoridemo ooku kyuusai suru*] in the last two decades, the types of immediate causes come to include asthma, diabetes, suicides, and even traffic accidents. In particular, the number of suicide cases caused by work-related depression has increased so dramatically that it prompted the Ministry of Social Welfare and Labor to instigate workers' compensation guidelines specific to suicide cases. Also, while the term *karoshi* literally means "death" from overwork, the cases involving survivors of *karoshi* who suffer paralysis and disability have also increased.

Media-Savvy Lawyers

On September 7th, 2001, Labor Standards Law Ombudsman simultaneously brought charges against seven businesses for their illegal long work hours and unpaid overtime in order to gain publicity and draw the attention of the media. Over the years, the lawyers have learned the importance of "the backing of public opinion" [*yoron no atooshi*], and they often invite media reporters to their organized activities. They are conscious of the needs of the media for news, and try to provide the novel aspects of their activism that can be easily turned into a "news" report. "We need to come up with a selling point [*kirikuchi*] for the media", one of the leaders among the lawyers asked the

others to provide an idea for the media reporting on their next symposium. They make sure to inform newspaper and TV companies the intentions of their actions and newsworthiness before they launch actions. Examples include “street protests by the widows of karoshi victims”, “symposium on karoshi in the banking and financial industry” and “overwork suicides among school teachers.” Even the scenes in TV news of filing for workers’ compensation in the Labor Standard Office or of a victim’s family and supporters entering into the courthouse are often directed by TV cameramen and reporters who have been informed of the events beforehand by the lawyers. These media reports have been a vital tool for the lawyers to create the public opinion supportive of their cause.

“Filling the Courtroom”

According to the lawyers, the attitudes of the judges in the judiciary have become much more understanding towards the plaintiffs compared to earlier in the activism a couple decades ago. It reflects anti-activists’ effort to ‘create public opinions’ that are sympathetic to their cause and to pressure the courts to provide fair trials. In addition to the use of the media, the lawyers use another tactic to pressure the judges. They mobilize labor unions and other supporters to fill the courtroom, and let them know that ‘people are watching’. The result of the pressure is sometime visible. One young lawyer was amazed at the difference in their demeanors: “The pressure is working! The tension created by the filled seats makes them hesitant to hide any information. Usually, they don’t politely give us opportunities to ask questions like that. They feel they are being watched, so they are willing to listen to us more attentively.” As discussed earlier, the

judiciary is becoming more aware of their role as a protector of labor rights in the absence of counter power that would balance the corporate control. While the judges in Japan are known to be politically conservative, they are increasingly pressured by public concern towards ‘shigoto chushin shugi’ [work-centered-ism] and ‘ningen raishii seikatsu’ [lifestyle more like that of human being]. An increasing number of judges is willing to overturn the decision of the labor administration to deny compensation for karoshi, and make “epoch-making” decisions in the higher courts including accepting criminal charges against corporations for karoshi and punishing employers for employees’ suicides.

V. GOING BEYOND COMPENSATION

Weaknesses of the Legal Strategy

One of the limitations of anti-karoshi activism is their inability to directly intervene corporate practices to prevent karoshi. As pointed out earlier, courts lack capacity to develop and administer reform policies, and the impact of legal decisions on day-to-day work practice has been less than ideal. The Labor Standards Law that regulates work hours continue to be ignored by many workplaces. The corporate buildings in which office lights are lit well past mid-night, and the witnesses of taxi drivers waiting in front of these buildings for the businessmen who missed the last train provide copious evidence of persistent illegal overtime in Japan. Similarly, the discourse of anti-karoshi activists rarely addresses non-legal factors of karoshi such as employment structure and workplace practices that compel workers to overwork. The lawyers have many cases on their hands and are themselves overloaded with tasks. In their efforts to

make immediate impacts on the problem, the issues of work practices that require long-term efforts to change tend to be neglected. As they view the violation of the labor laws as the central cause of the problem, questions such as why workers continue to work extreme overtime and how to raise workers' awareness and change their behaviors are seldom discussed by them. Instead, workers are seen as potential victims of corporate exploitations with little ability to control their circumstances, and the activists are generally uninterested in strategies that require workers' initiatives to change workplace practices.

In a number of occasions, the lawyers in anti-karoshi activism expressed their frustration towards the businesses' disregard for labor laws: "if only the Labor Standards Law was obeyed by the businesses, problems like karoshi would not exist." They find the root of the problem in the inability of labor unions and government agencies to enforce laws against illegal business practices, as well as the lack of awareness of workers and employers towards occupational health, laws and legal rights. An occupational health expert lamented, "Still, one third of the companies don't even have the mandatory workers' compensation insurance. Smaller establishments and service industry are the worst... They are ignorant of the law and occupational health issues. Even public service workers and national institutions do not obey the law at all." There are hardly any mechanisms to seriously enforce the law especially in the area of occupational health and safety. Labor Standard Bureaus and Offices in charge of monitoring businesses tend only to act symbolically on the worst form of violations, and are even less agile when it comes to health and safety issues.

Labor Standards Ombudsman

In order to augment the compensation-oriented legal strategy and their inability to prevent karoshi, the lawyers and supporters in Osaka area established the Labor Standards Law Ombudsman in June 2001 as an offshoot of anti-karoshi activism. In the environment where little is done to promote and enforce the labor laws by the government or labor unions, the group aimed “to protect the health and lives of workers” through the reduction of illegal overtime by bringing charges against employers who do not obey the Labor Standards Law. The lawyers’ sense of mission was apparent in their official indictment of an illegal labor practice sent to the Labor Standard Bureau. In the notification letter, they identified themselves as lawyers “who protect basic human rights and hold the realization of social justice as their duty.” The representative of the Ombudsman urged the public in a newspaper to establish the social norm of obeying the law “in order to take back work and life that are more like those of human beings” [ningenrashii roudou to seikatsu o torimodosu] (Akahata Newspaper 7/8/2001). Specifically, their strategies included supporting whistle-blowers who contact them, notifying violations of the labor laws to the Labor Standard Bureau, and in some cases, bringing criminal charges against employers. As anti-karoshi activism had been focusing on the compensations for the victims’ families and the corporate responsibilities for the cases that have already occurred, the Ombudsman hoped to address the need for prevention of karoshi and monitoring illegal corporate practices, especially *service zangyo*, unpaid overtime.

Unpaid-overtime [*Service-Zangyo*]: From Convention to Crime

One of the strategies of the Labor Standard Ombudsman has been to raise awareness towards illegal “service-zangyo”, unpaid overtime. In order to raise awareness towards the unlawful corporate practice, the Labor Standards Ombudsman published a book entitled “I Do not Do or Let Them Do Service Overtime” [Shinai Sasenai Saabisu Zangyo] in 2002 featuring the basics of the laws on work hours, questions and answers, model cases and letters of appeal, and legal document references. The book is sold at major book stores nationwide and at Amazon.com, and is raising the awareness of people. For instance, a security guard who has read the book and sued his former employer for unpaid overtime reported to the Ombudsman. Following the instructions in the book, he wrote his own official letter of complaint and represented himself in the summary court. In the end, he succeeded in getting back 80 percent of his unpaid overtime wages. His action and success would have been unthinkable ten years earlier when unpaid overtime was taken for granted. Complaining and whistle-blowing are still risky for an employee, and the majority of those who claim overtime pay are the ones who have already resigned from their jobs. Most Japanese are unwilling to assert their rights unless the hope of continuing “a superficially harmonious relationship” is abandoned (Feldman, 2000). In this regard, the actual changes in the workplaces may be less visible, but the movement against unpaid overtime triggered by the lawyers is clearly initiating a change.

The increasing awareness towards *karoshi* and “service-overtime” is shifting the meaning of *Service Zangyo* from a workplace convention to a crime. In February 2003, a whistle-blower’s consultation to the Labor Standard Ombudsman resulted in, for the first time in the history, the criminal arrest of an employer who neglected to pay over hundred

million yen [1,000,000 USD] in overtime wage. Some employees were putting 160 hours of overtime a month with no pay, and many had resigned due to overwork related health problems. A former employee complained that “it was no atmosphere that one could ask for overtime payment” and even when she asked others to demand for the pay together, most were too afraid of dismissal and refused to join.

Big, well known businesses such as Toyota Corporation are not exceptions when it comes to the violation of labor laws. The wife of a worker testified that her husband used to “leave home for work on Monday carrying 4 days worth of underwear” and talked to her via his cell-phone email. The record of his cell-phone calls sent to her at past mid-night including on weekends provided a proof for his extremely long work hours. Despite over 100 hours of his actual overtime every month, his wage records showed only 30 to 40 hours of paid overtime. After many months of worrying over his health, she gathered her courage and made an appeal to the Labor Standards Bureau with an assistance of an NGO, New Japan Women’s Association.¹⁷ Her appeal, though anonymous to the employer, led to the doubled amount of paid overtime wage for the month, and her husband coming home at least by 11 pm from work. While not completely satisfactory, the positive change gave her confidence. “I realized that things can change if we try to do something about them”, she stated. As the following chapter shows in detail, along with the lawyers, the wives and mothers of karoshi victims act as engine of social change in anti-karoshi activism.

Despite the existence of its in-house labor union, Toyota, a trend setter in auto industry, has rather a shameful record in regards to service overtime. A series of karoshi

¹⁷ See chapter 4 for more detailed discussion of the role of women in anti-karoshi activism.

and unpaid overtime lawsuits involving the Toyota Group have been brought to the Labor Standard Bureau in the last several years. Toyota's auto-parts manufacturer was made to pay back 170 million Japanese yen [1,700,000 USD] for unpaid overtime to 2,000 workers in January 2003. Toyota Automobile, Domestic Sales Department in Nagoya was also ordered to pay over ten million yen [100,000 USD] to its 83 employees in 2000 and faced another similar charge in 2003. For years, Toyota's sales profit has been ranking one of the highest among the Japanese companies. Yet, its enterprise union not only failed to assert basic rights for overtime pay, but has declared that they would not ask for base-wage increase due to the "economic crises" since 2003. The series of lawsuits on karoshi and overtime suggest that the large leap in profit by the corporation is at least partially supported by the long and unpaid work hours of workers, many of whom could be on the verge of death from overwork.¹⁸ The increasing number of charges brought against the corporations like Toyota indicates that the efforts of anti-karoshi activists and the Labor Standards Law Ombudsman in raising general awareness towards karoshi and service overtime are not futile.

Pushing the Envelop: 36-Agreement

The lawyers are constantly in search for ways to extend the frame of karoshi, pushing the envelope in their attempts to "take back work and life that are more appropriate for human beings. " In 2003, the Ombudsman brought a charge against Labor Standards Bureau for refusing to release the information on the so-called "36

¹⁸ In 2003, the High Court decision recognized the suicide death of a Toyota employee in 1988 as due to overwork and ordered the Labor Standard Bureau to compensate his family according to the Workers' Compensation Law.

agreement”, contract between labor union and employer. The number 36 refers to Article 36 of the Labor Standards Act, a loophole allowing employers to strike an agreement with a labor union or a representative of workers on the upper limit of overtime hours.

The 36-agreement states that if an employer wishes to make employees work more than 8 hours a day, 40 hours per week, the employer must establish an agreement with the representative of workers and report to a Labor Standards Office. While the upper limit of the agreed overtime hours is set as 15 hours/week, 45 hours/month, 360 hours/year, employers are allowed to extend the limit if they have a “special circumstance” that requires longer overtime hours.¹⁹

Anti-karoshi activists criticize the article as it allows employers to make agreements with workers to work long overtime hours, even up to 24 hours a day. The Labor Standards Bureau protects the interest of corporations and does not disclose to the public the details of such agreements. Names and types of the businesses are kept private and only the hours agreed upon are released. Matsuda Takashi, the lawyer who led the charge against the Bureau, explained his rationale: “It is the kind of information only *goyou kumiai* [unions hired and manipulated by companies] have. I want to bring the facts to the citizens, and the information to be managed publicly.” The verdict of the Osaka District Court supported his claim though not fully. It gave a ruling that the Bureau must disclose the names and the types of businesses, but is allowed to keep the information on the types of work and the number of workers undisclosed in order to avoid “disadvantaging” companies in business competition.

¹⁹ <http://www-bm.mhlw.go.jp/houdou/2007/11/h1130-1b.html>

VI. WHY NOT WORKERS AND LABOR UNIONS?

Despite the increasingly severe infringements against the rights of labor in the growing power of the corporate society, the number of legal labor disputes is declining. I believe it is because the conduit from labor unions that used to bring legal cases to labor lawyers was damaged and became beyond usage. It is time for us to create a new network that links labor lawyers and workers who suffer from the infringements of rights and promote the rise of individual workers.

- Kamogai Yoshiaki, Lawyer

Even among those organizations that are thought of as “unions that fight”, when it comes to the issue of ‘life and health’ of members, there are very few that set up special section and work at it. There has been little progress on this issue.

- Nakayama Kanji, Member of Seamen’s Union ²⁰

Unwilling Unions

In May 2004, the enterprise union in SCC Corporation in Tokyo, along with the employer, was sued by a karoshi victim’s family for neglecting its duty to reduce harmful long working hours and prevent karoshi (Yomiuri Shimbun, 5/14/2004). This is the first time in karoshi litigation history a civil lawsuit was brought against a labor union. It was the activists’ warning against enterprise labor unions whose cooperative strategies with corporations are not only failing to prevent karoshi but exacerbate the problem of overworking.

Despite the labor origin of anti-karoshi activism, most labor unions have had little knowledge or interest in the problem of karoshi in the 1980s and 1990s. Many refused to render support to worker’s compensation investigations because their employers do not

²⁰ Osaka Karoshi Mondai Renrakukai. 2002. "Karoshi, Karojisatsu Mondai no Genzai, Kako, Mirai [the Present, Past, Future of Karo, and Karo-suicide Problem].

approve of the applications as “qualified”. The utterance of a union officer to the wife of a victim shows an extreme but not uncommon attitude. She was not only denied of their assistance but told that it was inconvenient because he died in a “troublesome way” [shinikata ga meiwaku] for the labor union. Since labor unionism rapidly lost its foothold in Japan in the 1970s and took ‘employer-worker cooperation track’ [roshi kyocho rosen], the ability of labor unions to influence management decisions was drastically reduced. By the 1980s, the unions that had sought a voice in decision-making process through shop-floor activism became marginal actors, and Japan became the industrial country with the fewest strikes (Gordon 1998). Their cooperation strategy backed by the notion that workers’ interests are best served by devoting themselves wholeheartedly to company goals became, as Andrew Gordon puts it, “a widespread article of faith.” As illustrated in karoshi disputes, the extent of “cooperation” especially in enterprise unions in contemporary Japan is such that it is sometimes difficult to distinguish the opinions of corporations and labor unions.

In the area of occupational health and safety, the feebleness of labor unions becomes even more apparent. Traditionally labor unions have focused their energy and resources mainly on wage and unfair dismissal issues, and dealt with occupational health and safety halfheartedly without serious efforts for the improvement of working conditions. An officer from Rengo, the Japan Trade Union Confederation, the largest labor union confederation in Japan, lamented the general lack of knowledge of labor unions on health and safety.

To tell you the truth, I think they are very dense [nibui]. There are all kinds of labor unions including enterprise and industry based, but they are all ignorant when it comes to occupational health... Their attitude is ‘we

exist because the company exists' [kaisha atteno roso]... Occupational Safety and Health Laws are just papers. Nobody knows the law. When I ask for a person in charge of occupational health in an enterprise union to talk to, many, especially smaller companies say 'what occupational health?' 'Well, that would be the president of the company'. We often talk about the responsibility of corporations, but I think labor unions need to be more responsible as well.

In addition to their generally low level of interest and knowledge towards occupational health and safety, labor unions reluctance to work on the issue of karoshi reflects their strategy of survival. One union officer confided to me why labor unions tend to neglect health and safety issues. "Occupational health and safety is a touchy issue. We wouldn't be able to discuss it without pointing out corporate responsibilities for workers' health and safety." Occupational health and safety is integral to labor and management's struggles over control of the workplace (Rosner and Markowitz 1987). The labor unions on the "cooperative-track" are reluctant to antagonize employers by digging into a sensitive issue as occupational health and safety, let alone the responsibility for karoshi. Thus, labor unions, especially enterprise unions, position themselves on the side of employer against litigant families of karoshi victims and their supporters, often prohibiting colleagues of the victims, formally or informally, from speaking with victims' families and their supporters. Even at the national federation level, when asked about their measure against karoshi, the response of Rengo, the largest union federation in Japan, was "almost nothing is done" [hotondo nanimo dekitenai].

The lack of labor unions' interest in occupational health issues is exemplified by Rengo that absorbed progressive confederation Sohyo and represents over 65 percent of organized workers in Japan. According to Andrew Gordon (1999), Rengo's official plan

to shorten work hours in 1989 were even less ambitious than that of the government. Rengo announced its goal of reducing annual work hours from 2,100 to 1,800 hours by 1993 when the Ministry of Labor set to achieve the same goal by 1992. As stated above, occupational health is not simply an agenda for labor unions, but tends to be a touchy issue where labor and capital struggle over the control of workplace. It is not surprising that conservative Rengo kept turning its blind eye to the issue of overwork and karoshi until recently. Until 1992, Rengo national center did not only collect information in the area of occupational health among its members, but it has been refusing to use the term karoshi in its official publication. In the Rengo office in the western region, there was not a single officer in charge of occupational health issue until 2001. Seeing the increasing public concern over karoshi and work-related health, Rengo Western Japan finally decided to supplement its lack of knowledge and action in the area of occupational health. As they found “no appropriate person” knowledgeable enough on the issue of occupational health to take the position within the organization, they had no choice but to fall back on Tada Shigeru a former employee of Sohyo, a progressive union federation absorbed by Rengo in 1989. Tada identifies himself as “the left of Sohyo”, but was acting independently after Sohyo’s dissolution. He is now the only individual in Rengo Western Japan who is in charge of occupational health issue. An officer from Rengo explained to me that as the number of consultation about karoshi workers’ compensation increased both inside and outside of its membership, the Rengo national center finally began to conduct the survey albeit once for every three years.

The absence of labor unions’ leadership in karoshi issue symbolizes the extent to which organized labor is made powerless in the area of occupational health, and the

prevalence of corporate ideology that prioritizes work responsibility over workers' rights and health. Contemporary labor unionism that embraces "labor-management cooperative track" regards occupational health and safety issues as one of the lowest priorities on labor union's agenda. It is not surprising that many enterprise labor unions and workplaces not only do not consider karoshi as a collective concern of labor unions, but also see it as unworthy of compensation or prevention efforts.

Examining the union movements in the steel industry from 1950s to 1980s in Japan, Makoto Kumazawa (1995) points out the dramatic shifts in the positions of labor unions. He argues that Japanese workers have been integrated into the corporation over time, and the ability of the postwar labor unions to resist assimilation has drastically diminished in the quarter-century.

First, unions stopped resisting capitalist rationalization. Second, the workplace diminished in importance as a battleground between union and company. Third, the basic means to deal with labor-management issues shifted from collective bargaining to joint consultation. Fourth, resistance to transfers within the company weakened. And fifth, it seems that regular workers no longer felt any compunction about excluding workers who were not regular employees from the union and its remaining benefits.

The changes are hard to pinpoint in official documents and statistics, as Kumazawa argues, since it took place below the surface in workplace society. Yet, the positions that enterprise unions take in dealing with the problem of karoshi support Kumazawa's observation that workplace society has been integrated into corporations.

The low involvement of workers in contemporary anti-karoshi activism is also related to the attitudes of workers whose worker consciousness were shaped by the Japanese-style management, which by the end of 1980s succeeded in preventing labor

unions from constraining production and personnel management. Christena Turner (1993), through her ethnographic account of Japanese factories, showed how the process of learning to work overlaps with learning to identify with the company's goals and living up to management's expectations beyond the realm of job performance. Her exploration of workers' consciousness revealed how both the management and workers justify their long overtime by emphasizing workers' strong "spirit" that allowed them to work "just like everyone else." "The use of the notion of spirit to unite people behind the company's goal casts their acceptance of working conditions in a particular light", Turner wrote, "one which throws the onus of problems back on their own personal character." Kumazawa Makoto (1996) has also persuasively contended that the ultimate source of the competitive strength of Japan's economy lies in the "fusion" of labor and management at the site of production, as well as at the level of worker society and the nation. He reveals how the value systems of corporate management and predominantly enterprise-based labor union are remarkably similar, and how this discourages labor unions from taking organized actions such as strikes. "The common sense of the nation at large permeates the thinking of organized workers", he writes. "A struggle for cultural hegemony between working-class values and middle-class or bourgeois values is simply absent here." It is this fusion of union and management values that, at least partially, prevent workers' participation from anti-karoshi activism.

An example of the fused consciousness can be seen in the issue of widespread unpaid-overtime. Working overtime without pay is prohibited in the Labor Standards Law, yet it has been a taken-for-granted labor practice for decades, causing Japanese to work one of the longest work hours in the world. Employers often set a maximum

number of overtime hours which workers can claim for pay regardless of actual working time. As a result, there is no cost-reduction incentive for the employers to monitor work hours of their employee, and workers routinely put unpaid overtime in order to manage their work overload. Taking employees' overtime and unused paid leave for granted, employers typically hire only a minimum number of employees. The consequence is the social phenomenon in which an average employee put 360 hours of unpaid overtime per year.²¹ As a result of recent concern for karoshi and the campaign against the illegal practices, the staggering 8.1 billion yen were paid back between April 2001 and September 2002,²² revealing both the magnitude of the problem and the changing attitude.

Workers' justifications for unpaid-overtime also reveal the cultural hegemony of management ideologies. According to the statistics released by the Japan Institute for Labor Policy and Training on March 31st, 2005²³, 61.3 % of 3,000 respondents work overtime because "the amount of work given is more than they could handle within official work hours". Among those who work overtime unpaid, 23.2% said they do not ask for pay because they work overtime in order to produce results they are happy with, and 38.4% said because they would not be paid even if they ask for it. The statistics also revealed that 40% are "constantly" or "often" feeling extreme fatigue due to overwork, and 60 % are worried about their health due to overwork. Japanese workers are overworked and fatigued, yet they struggle to get their work done "because it is their duty" even if it is without pay. Almost one out of four workers in the survey refrains

²¹ <http://www.yomiuri.co.jp/iryuu/ansin/an352302.htm>

²² Akahata Newspaper 2/4/03

²³ <http://www.jil.go.jp/institute/reports/2005/022.html>

from asking for overtime pay because they just want to do a good job. The same “regulated consciousness” which Kumazawa explains why there are few strikes in Japan also seems to explain why people work overtime even when they are fatigued and not paid, and why the majority of workers and labor unions are not involved in anti-karoshi activism.

Lack of Awareness towards Labor Rights: Rights vs. Morality

As seen in labor unions, workers themselves often lack the awareness of occupational health and safety and their rights. In the workplace atmosphere that emphasizes collective achievements, asserting individual rights tend to be associated with selfishness and self-centeredness in general. Reflecting the union ideology of employer-worker cooperation, the idea that what is good for the collective goal is good for the individual is widespread among general working population. The issues of karoshi, workers’ compensation, and labor rights are often seen as self-centered concerns that would harm their companies and ultimately themselves. A lawyer in anti-karoshi activism articulated his observation about workers’ attitudes towards asserting rights:

Workers lack the awareness that a decent working condition is their right, or to protect own working environment is their right. If only they realized that to assert their own benefits or to ask for compensation for damages done is linked to the benefits to all and to the systematic protection of overall labor rights, they could overcome their feeling of being self-centered or the fear of being accused of acting selfish. But they haven’t progressed that far. I believe it is a lawyer’s job to make them realize this.

- Ota Koichi, activist lawyer

The assertion of labor rights is often viewed as the expression of moral defiance in Japan. Filing for workers' compensation or resorting to the court for labor dispute is often seen as an immoral act of defiance and carries a certain level of stigma in the society. As discussed in the following chapter in detail, litigant women of karoshi lawsuits often endure severe criticisms and social pressure to discontinue their legal battles, especially in the earlier period of the activism before karoshi was accepted as a "legitimate" social problem. Among the most severe critics tend to be none other than victims' colleagues and enterprise unions. The plaintiffs who seek support from them are often met with harsh responses. Their typical accusation has to do with the immorality of rebelling against own employer whose existence and generosity made workers' livelihood possible. Workers who support this view tend to deny karoshi as a cause of death and blame instead individual victims for not being able to manage own health.

Layers' frustrations towards labor unions

The lawyers in the activism are disillusioned by labor unions, especially with enterprise unions who are "*goyo kumiai*" [unions hired and manipulated by companies]. They often express their frustrations and disappointments towards labor unions' inability to improve working conditions and protect workers from karoshi. In the late 1980s when karoshi became a public issue through media reports, the lawyers in anti-karoshi activism initially expected labor unions, both enterprise and industry-wide, to lead more preventive and supportive actions. However, unions not only proved to be apathetic towards the issue, they were hostile towards those who brought the problem to them. A lawyer who worked on earlier karoshi legal cases recalled:

At that time, labor unions were not at all willing to help us. We personally visited and asked them for their support. But they said that they did not think overworking was the cause of deaths, or pointed out that the victim was not a member of the union. Some of them even blamed the victims and said that it was the fault of those who willingly worked and died. They were very unfriendly to us.

Not only uninterested, some enterprise unions that karoshi victims belonged to took the side of employers and interfere the lawyers and plaintiffs' efforts. Some labor unions refused to talk to the families and lawyers, and some ordered their employees not to make any contact with them or not to accept any information handed out to them in front of their companies.

The conservative labor unions' response to karoshi, which represented more of their employers' opinions rather than those of workers, made the victims' families and the lawyers angry, and questioned the unions' "meaning of existence" [sonzai igi]. "Labor unions are dead!" An 18 year-old son of a karoshi victim expressed his anger in the courtroom against his father's labor union that refused to help his family for workers' compensation application. The union's justification stated: "the union can not support a case which the company does not deem as a workers' compensation case." One of the lawyers who represented the case sighed and declared that it was "impossible to expect anything from labor unions."

Many lawyers believe that one of the reasons why the problem of karoshi continues to exist is the conservative and pro-business labor unions who have taken little action to change the grim severity of workplace. One of the leaders of anti-karoshi activism in Tokyo, Chikanobu Okamura (2002) wrote in a labor journal;

In our society, karoshi naturally exists because the power to control the cogs of the corporate-centered society is very feeble... All the labor unions that exist in this country should put the meaning of their existence at stake, and work on the problem of karoshi and karoshi suicides.

At the same time, lawyers in anti-karoshi activism feel that the problem of karoshi should be labor unions' agenda, and that they did not have to lead the battle against karoshi if only labor unions took the issue of occupational health and safety more seriously and demanded better working conditions to employers. One lawyer in anti-karoshi activism expressed his opinion that legal professionals having to lead anti-karoshi activism is in and of itself a "problem". He wrote, "We need to discuss the fact that we are working on the issue that is primarily under the jurisdiction of labor unions and the government administration".²⁴ The lawyers feel that their leadership is needed in anti-karoshi activism because labor unions and government agencies are unwilling and/or incapable of tackling the problem that taps fundamental issue of the "corporate-centered society"—the severe workplace practices and control over employees' lives. In the earlier days, the lawyers and doctors have called Karoshi Problem Network a *kakekomidera*, refuge temples who had no other to ask for help. The activist professionals wanted to keep the network available for the families of karoshi victims when there were few labor unions and government offices willing to listen to their grievances and offer assistances. While the issue gained more public awareness and larger activism, the lawyers still take pride in providing a *kakekomidera*, refuge for the families.

²⁴ Ikeda Naoki in *Karoshi, Karoshi-jisatsu Mondai no Genzai, Kako, Mirai* [The Present, Past, and Future of Karoshi Problem], 2002

New Trend of Cooperation between Lawyers and Labor Unions

Despite the general lack of interest in karoshi by labor unions, there are a few unions willing to work on the issue: They are “neutral” labor unions that do not belong to any federation or those belong to the other two smaller federations, Zenroren (National Confederation of Trade Unions) affiliated with Japan Communist Party or Zenrokyo (National Trade Union Council) with no political affiliations. The organizational structure of labor unions in Japan is complex. Roughly speaking, there are in-house enterprise unions, industry-wide/occupation-based unions, district-based unions, and three labor union federations. The cold and even hostile attitudes of labor unions toward anti-karoshi activists introduced in this chapter are mostly of enterprise unions often under the umbrella of the largest but conservative federation, Rengo. As the issue of overwork and karoshi become a wider public concern and subject to media coverage, some relatively progressive industry-wide and district-based unions grew sympathetic to karoshi victims and their families. Although those who are involved in anti-karoshi activism are still a small minority of labor unions, their occupational health and safety organizations mainly in Kansai area are beginning to show their strategic interests in the issue and willingness to support in karoshi legal cases.

These unions typically form support groups [shien no kai] for the plaintiffs of legal cases in their industries, and orchestrate attendance at the court hearings to show their support to the judges. The collaborations were initiated by a few leading lawyers in the activism in Osaka who, over the years, formed an extensive network with labor activists and unions. For example, a meeting of the support group for a recent civil lawsuit against Mitsui Life Insurance had over ten labor unions and litigant groups in the

financial industry linked to the Communist Party affiliated union federation, Zenroren. In another case, the death of a manager in a home construction company in 1998 drew a support of 24 district and industry unions and occupational health organizations linked to the network of Zenroren which together collected over 7,000 signatures of support from the public to be submitted to the court during its 6 years of trial.

However, labor unions' support, confined to filling the courtroom, obtaining signatures of support, and holding meetings for the litigants, they remain in a strictly "supportive", rather than leadership role on the issue. At a support meeting for a litigant, participants being mostly from Zenroren's district labor unions, senior lawyer Matsuda made a speech voicing both his frustration and encouragement to the union members.

It is not enough to form support groups for the families. The families and friends can do that and fill up the courtroom themselves. There are many other things that labor unions can do. I want each of you to think about what unions should do now to make a progress. I want you to think now about what labor unions should be like.

Interestingly, it was a lawyer who was addressing the problem of labor unions and encouraging them to take action. Being one of the pioneers of karoshi activism, he saw the rise and fall of labor unions in the last three decades, and is frustrated with current labor unionism but still maintains contacts with labor unions. Many "pioneer" lawyers serve as a contact point among the network of union leaders and NGOs. As the problem of karoshi becomes a larger social concern, their existence as a center of support groups among labor unions is increasingly important in anti-karoshi activism.

VII. CONCLUSION

The case of anti-karoshi activism that involves little worker participation suggests that the issue of occupational health in Japan is shifting from labor unions' agenda to the realm of civil activism centered around legal suits. Despite the general tendency to discount the legal tactics and the role of legal professions in social movements, anti-karoshi activism reflects the importance of progressive legal professionals in social change, and the crucial role of well-publicized litigation in creating public discourse on an issue that may otherwise remain isolated.

The process of addressing karoshi grievances is gradually being institutionalized by the lawyers who make the full use of cultural authority of law in their activism. In the process, the legal professionals expand their professional territory into the construction of karoshi science, leading medical fact-building in the court. Their active contribution impacts the medical understanding of the relationship between work, stress and diseases which tend to be neglected in the world of biomedicine.

The shift in karoshi struggle from labor unions' agenda to legal confrontations between the citizens' group and businesses symbolizes the changing trend in the way labor rights and occupational health are promoted. The "legal mobilization" by the lawyers in anti-karoshi activism against powerful corporations and government agencies indicates that the central issues of labor movements are changing from basic labor rights issues such as rights to organize and to earn a living wage to those of independent citizens whose human rights, freedom and equality must be acknowledged and respected. As organized labor continues to decline and loses its power to protect the rights of

workers, the increased role of law and legal professionals as a form of labor resistance gain greater importance and must be a subject of further study.

Legal activism and the leadership of the lawyers, however, would not work if there was no one willing to fight against karoshi along side of the legal professionals. The legal strategy would allow the lawyers to take the lead only if there were litigants willing to bring lawsuits against powerful corporations and government agencies. Surprisingly, it is housewives with little knowledge of law or medicine and often with limited financial resources who take up the challenge. They are the mothers and wives of karoshi victims, and without them, the issue of karoshi would not have become a major public concern in contemporary Japan. Who are these women, and what are their motives in suing their husbands' and children's employers, despite the fact that these behaviors completely go against the conventional expectations for housewives in Japan? The next chapter explores these questions.

CHAPTER 4

LITIGANT “HOUSEWIVES”: BATTLE OF THE MARGINALIZED

The ones who fought through this difficult path were not the powerful labor unions or able lawyers. It was the women who rose up for the sake of their fallen husbands and sons despite the heartless criticisms of the society... Their voices became an engine for social change.

-Anzai Tomokazu, activist lawyer

Though I knew that my husband's suicide was due to work, it took one year to summon the courage to fight. I called 'Karoshi 110' being ready to do anything, but the burden of facing my husband's death was beyond my imagination. The preparation for workers' compensation application took two years because we couldn't get witnesses' cooperation... Yet, the Labor Standard Bureau kept asking for additional information, additional testimonies, additional opinion, and so on. It was a difficult battle. When I was driven to the point that there was nothing else I could submit, I realized that all I can do is to appeal to public opinion. I accepted TV interviews, though I had been having a hard time talking about it, out of desire for others to know about the case. I collected signatures of support, and desperately went anywhere to appeal to the society.

-Nishida Emiko, litigant wife of a karo-suicide victim

I. INTRODUCTION

Litigant Women in Anti-Karoshi Activism

In the midst of a business district in Osaka near the city hall, among well-dressed men and women in business suits on the street, a group of women put on rally jackets with slogan ‘no more karoshi!’ and began handing out flyers on Karoshi 110 Hotline. A woman picked up a speaking trumpet and started speaking to the passers by. “My husband died of karo-suicide!” She continued:

But he did not choose to die. He was forced to die! My husband was working as a manager of Takeda chain restaurant, but was suffering from severe depression due to overwork. I am now fighting a civil lawsuit against the company in order to make clear the responsibility of the employer. Are *you* alright? Karoshi and karo-suicide can attack anyone, suddenly. It is not someone else’s problem. You might be a victim tomorrow. There will be Karoshi 110 Hotline this week. Please call if you need a help!¹

Mothers and wives of karoshi victims play an important role in anti-karoshi activism. At the time when most labor unions showed little interest in addressing the problem of karoshi, the women organized themselves in the early 1990s and formed the network of victims’ families to support each others’ legal battle against powerful corporations and government’s Labor Standards Offices. They are mostly housewives who possess little political means to make their voices heard. Facing nearly insurmountable barriers to full participation in the labor market,² housewives in Japan are

¹ In this chapter, as in most of this dissertation, my data are gathered from observation, interview, and as in this case participation in organizational activities. I attempt to give citations where appropriate. Almost all of my accounts are based on original data collected in field work.

² Female work force in Japan has been described as ‘reserve army’ (Steven 1986, 192) which functions to buffer male workers from unemployment in times of economic crises. The discrimination against female workers stems from what Kumazawa sees as “a remarkably enduring gendered division of labor that does not readily reveal itself in statistics” (1996, 162). Women are generally restricted to low-level job

often dependent on their husbands' income and lack financial independence. Confined to the realm of local community and domestic life, most ordinary wives lack political ties necessary to organize themselves,³ let alone technical legal knowledge necessary to battle in courts for labor rights. Yet, interestingly, it is these marginalized women who bring forward resistance against corporate establishments and the unhealthy practice of overwork, while their husbands are completely incorporated into the existing work structure and dying from overwork. The overwhelming majority of the consultations brought to Karoshi-110 hotline and Labor Standards Ombudsman is from wives and mothers who are concerned with the working conditions of their husbands and children.⁴ They are alarmed by the work practices of corporations that overburden workers and threaten their health. Why, then, is it politically marginalized “housewives”, not workers, who see overworking as a health risk and a public problem, and attempt to mobilize resources to challenge powerful corporations and government agencies? How do they manage to challenge powerful corporations and government agencies, and trigger a series of social, legal and policy changes surrounding karoshi?

This chapter explores the process in which the “non-political” wives and mothers of karoshi victims become involved in anti-karoshi legal activism and lead social change. It reveals how their identity of litigants in anti-karoshi activism is embedded in their being “ordinary housewife” [hutsuu no shuhu], and how their initial sense of dismay and

assignments and often excluded from promotion to higher level positions. They are formally and informally pressured to ‘retire’ when they marry or have children, and when women are in their 30s and 40s and their children become of school-age, they are rehired as part-timers or temporary workers with substantially lower wages, less job stability, and often no fringe benefits.

³ A major exception to this is New Women’s Association [Shin Fujin no Kai], a women’s organization linked to Japan Communist Party possessing a wide network in local communities.

⁴ Participant observation conducted by R. Morioka in 2002-03

isolation shift to the strength of organized litigants who sustain years of difficult legal process. Women's motivations, strategies and difficulties in participating in anti-karoshi activism are deeply embedded in their cultural assumptions about work, family and gender. Their sense of responsibility and rage as a wife and mother play a central role in how they struggle to make their claims heard.

Japanese Women and their Agency

Women's role in social and political change, especially in Asia, has been a neglected area of study till recently. Even in the Western contexts, women's contributions have been, in Guida West and Rhoda Blumberg's words (1990), "ignored, misrepresented, or erased from history in a patriarchal world" despite the historical reality of resistance by women. Women are generally seen as "apolitical" and participation in social protests is considered as an "unnatural practice" of women. As Sim (1988) points out, we are likely to overlook women's involvement in social movements and protests as long as political actions are considered narrowly as participation in formal "power from above".

The resistance of women in karoshi activism reveals "power from below" and the agency of Japanese women who occupy marginalized positions in the society. The strength of these women lies in the paradoxical fact that they are not entrenched in the employment relations and corporate system that make their husbands and sons tied to workplace obligations. The women's relative autonomy derived from their exclusion and marginalization in the society ironically enables these housewives to bring forward resistance against corporate establishments through activism and lawsuits. Kumazawa

Makoto (1991) uses the term “the freedom of the discriminated” to describe a certain kind of liberty Japanese women enjoy due to the labor force participation pattern created by a traditional gender-based division of labor throughout society. The freedom refers to the condition in which women are freed from the severe pressures endured by the majority of male fulltime workers⁵. Japanese women are pressured, formally and informally, to resign from their jobs at their child bearing and rearing age no matter what their qualifications are. When they return to the labor force as their children reach school-age, they are forced to take up only jobs that are available to them, part-time work with no prospects for future advancement. The barriers to women’s full participation in the labor force results in the extremely small number of women in managerial or any decision making positions. In Japan, the “glass-ceiling” that working women often face is felt more like a “cement-ceiling” (Kora 2004). Although marginalized and discriminated against, women who devote themselves to domestic responsibilities or who take up part-time jobs to supplement their husbands’ income find themselves free from the stress of workplace competition and responsibilities. In contrast to their husbands’ life, married women not only enjoy considerably more control over their time and lifestyle afforded by their husbands’ income, but also mental freedom, as we will see in the following pages, away from corporate education and indoctrination.

⁵ This severe work condition for male employees suggest a reason why most victims of karoshi are male, though the number of female victims in their twenties and thirties are rapidly increasing recently.

Power Within and With

The shifts in identity, confidence and social awareness that the litigant women experience highlight the two modes of empowerment: “power within” and “power with”. According to feminist literature,⁶ *power within* refers to affirmation of the individual that may come about through formal and informal education, acquisition of skills and expertise. It is the heightening of social and personal understanding and awareness, involving transformation of one’s image of the self. Not only speaking up against those with power, power within leads the disadvantaged to perceive themselves as able and entitled to make decisions.

The notion of *power with* refers to collective action of self-confident individuals that may initiate social change, and has mutually reinforcing quality to the idea of *power within*. As women’s self-confidence in their knowledge of rights grows, they are more willing to participate in public action. Their participation in the new forms of social relationships strengthens collective organizations, and in turn, it reinforces the individual sense of self-worth. As Hannah Arendt (1970) asserts, power is the capacity to see, redefine, and act, and it can not be acquired or exerted alone. Many wives and mothers of karoshi victims gain power within and with through the difficult process of the litigation.

The notion of empowerment has been defined as the process of accumulating power (Troutner and Smith, 2004). While having resources and status to exert ones’ own will over another is an element of power. Being able to influence the political agenda and nature of conflicts is also understood as another important component of power. In

⁶ For example, Jo Rowlands (1970), Nelly Stromquist (2002), Naila Kabeer (2001)

order to achieve the power to set agendas, according to Troutner and Smith, less powerful actors such as women tend to raise issues closer to their daily lives and attempt to move the conflicts from disadvantageous arenas to more promising ones. Women, thus, often initially focus on private concerns, such as children's education, and elder care, and then transfer such concerns to the public domain. The women in anti-karoshi litigation have followed this pattern. Mothers and wives of karoshi victims raised the issue of overworking through their concern for the health of their husbands and children. The issue then was later transferred to the public realm through civil litigation concerning labor law and corporate responsibility over worker's health.

Female agency is less likely to be expressed through gender-specific articulations in Asia, and gender identity on its own is unlikely to become a space for political mobilization of women. As such, gender politics are often entwined with other issues organized around other axes creating specificities that complicate the issues of gender (Yeoh et al. 2002). The agency of the litigant wives and mothers in anti-karoshi activism is intertwined with the issues of occupational health, corporate responsibility, as well as women's role as caretaker. Their power comes from their responsibility for their family and is expressed through their desire to redress their husbands' and children's sufferings and protect their "honor" as "corporate warrior". The articulations of their grievances, therefore, reveal the cultural model of work and gender relations in which the problem of karoshi is embedded.

Empowerment Based on Mother-& Wife-hood

While the litigant women in anti-karoshi activism lack political and financial power, they derive moral strength from their status of being mothers and wives of the victims. Japanese women are socialized to be good mothers and wives who look after their husbands and children. It is taken for granted that their main responsibilities are in their households looking after the health and wellbeing of their families. The women in anti-karoshi activism emphasize their caretaker role as mothers and wives in blaming employers for their loved ones' deaths. The identity of "wife and mother", as pointed out above, is the only mode appropriate for most ordinary women to engage in public life. Their housewife identity of the litigant women helps to solicit sympathy and support as they present themselves as "inexperienced and naïve" [sekenshirazu] housewives yet determined to fight the powerful in order to rectify injustice done to their husbands and children. Marysa Navarro (1989) traced the motivation of Argentine mothers, whose children were kidnapped, in confronting the repressive junta. She found that the act of defiance for the women was "a coherent expression of their socialization, of their acceptance of the dominant sexual division of labor..." Though seemingly paradoxical to their socialization to be passive and obedient, the act of suing employers and the government for the women in anti-karoshi activism similarly is a logical extension of their mother- and wife-hood in which the women find moral legitimacy for their action.

From Dismayed Housewives to Litigant Activists - Identity, Agency, and Injustice

The litigant women go through an often emotional and difficult process of transformation from troubled observers of deaths to litigant activists. In the process, they

negotiate their perceptions of themselves as “ignorant housewives”, their lack of confidence in sustaining long and difficult legal battles and win, and their sense of self-blame and doubts about the cause of death. William Gamson (1992) in his analysis of framing, points out less strategic aspects of framing by those on the receiving end of framing strategies. Highlighting the system of meanings available to them in translating experience and events in political contexts, he emphasizes identity, agency and injustice as essential components of a collective action frame. His “identity component” specifies an aggrieved group with shared interests and values, establishing the “we” and the “them”. The “agency component” recognizes that the grievous conditions can be changed and encourage them to become agents of change. The injustice component refers to the moral indignation expressed in the form of political consciousness. Going beyond intellectual judgment about what is equitable, it is laden with emotion and consciousness of motivated human actors. In anti-karoshi activism, the women who were mobilized by the activist framing of karoshi adjust their perceptions of themselves and learn to become an activist. They emphasize their common identities as mothers and wives of karoshi victims who help each other to get the victims’ deaths recognized as work-related. In the process, they come to see compensations as a matter of justice and honor that they deserve, and see themselves as capable of winning the battle. For the litigant women in anti-karoshi activism, culprits of the problem and their sufferings are made clear: the irresponsibility of state agencies and businesses.

Diversity of Women's Background – Housewife as a Common Identity

As karoshi occurs in a range of occupations and industries, the litigant women also come from a wide variety of backgrounds. Some are wives of corporate executives with college degrees while others come from less privileged backgrounds married to blue collar workers. Class elements in Japan, however, are known to be ambiguous in the society.⁷ For example, Kenichi Tominaga (1989) argues that only a small proportion of the population can be characterized as occupying consistently low or high statuses in Japan, due to the distribution of reward and resources by pluralistic criteria. While the disparity among classes are widening in recent years, when viewed from a macro perspective, as Tominaga explains, what can be seen as a 'diverse middle class' emerges out of workers with inconsistent statuses in Japan. Accordingly, while a wide variety of victims' occupational backgrounds are found, the class elements among the housewives seem to play less salient role in anti-karoshi activism.

Despite the diversity of their background, they have organized themselves transcending class divisions and differences in life experience and values, based on one common identity as mothers and wives of karoshi victims. Starting in Nagoya in 1989, the "Association of Families Who Reflect on Karoshi" [Karoshi o Kangaeru Kazokuno Kai]⁸ began to form in ten major cities. In November 1991, the local associations of karoshi families assembled and established a nation-wide organization. The purpose of the association was to gather their strength together as "wives and mothers with the same sorrow", and "change the administration and win workers' compensation". They demand,

⁷ See for example, Steven (1982), Wright (1980), and Tominaga (1977 & 1989) for the analyses of status inconsistency and contradictory class locations of Japanese workers.

⁸ It is often abbreviated to "Karoshi Families' Association"

“We want our husbands and son’s deaths recognized as work-related,” “Don’t let our children’s generation inherit karoshi”. Their common identity of housewife allows them to transcend their differences including the diverse nature of their cases. The women’s statements invariably include their traditional roles as *tsuma* [wife] and *hahaoya* [mother], and emphasized their common identity of “housewife” in public statement, even when the label of housewife does not perfectly fit everyone, as some possess other identities such as a nurse or a teacher. Robin LeBlanc (1999) argues that the status of *housewife* is a public identity in Japan, and the “wife and mother” components of housewifery are markers of the definition of a public role for women, rather than their exclusion from the public sphere. As she asserts, the label “housewife” paradoxically possess inherently public quality based on the roles of the sexes in Japan, and provides a way to a socially recognized public position for Japanese women.

II. STRENGTH OF THE MARGINALIZED: GENDER DIFFERENCE IN CONSCIOUSNESS

“I’m your wife. What is my name?” “...” Keiko Yamaguchi’s 42 year-old husband collapsed with cerebral hemorrhage due to overwork and had been unconscious. When he awoke, he could not respond to his wife’s questions. “What is your family name?” “...” “What is your son’s name?” “...” “What is your company’s name then?” Without giving much thought, she asked the question. He then suddenly responded. “Jaa-paan A-air Co-on-dition-eers.” His wife recalled her astonishment. “It was

ridiculous. He couldn't even remember his family's names, but he remembered his company's name. I wondered what his family meant for him. It was shocking.”⁹

The consequence of having to be completely incorporated into the corporate structure as a “salary man” is not simply a matter of work behavior but often extends to their attitudes. Men often deny health consequences of overwork and rationalize their situations. Many justify their overworking by pointing to the norm of ill-health in their workplace and compare themselves to others who are in the similar situation. “I am not the only one. If we all had a proper health check-up, there won't be anyone who is healthy.” Yamaoka Satoru told his worried wife before he died of karoshi in 1988 after working day and night, 4,160 hours, 357 days a year. His wife could not bear watching her husband's health deteriorate, and demanded that he take a day off. She had even hidden his alarm clock while he was sleeping wanting him to rest longer. But he never took time off despite his debilitating fatigue. No matter how terrible he felt physically and mentally, taking off from work to care for health when he was needed at work was not simply an option for him.

The different attitudes can be observed not only between husbands and wives, but between sons and mothers as well. A karoshi-suicide victim, Nishi Takuya painfully expressed his dilemma to his wife before leaving home for work on his last day. “There are just not enough people working. In my workplace, no one can take off unless he collapses...” He committed suicide that afternoon due to severe depression caused by overwork. Nishi's wife is now worried about her son's karoshi who routinely comes home at one or two o'clock in the morning from work. Her son once responded to his

⁹ The Kobe Newspaper 11/22/1989

mother's worry. "I'm different from my father. My father was forced to work, but I like my job, and there is a sense of satisfaction in my work [yarigai]." She was outraged hearing this and said to him, "why can't you see that's how people end up being made to overwork [yarasareteiru]?" When one is in an environment where total devotion to work is taken for granted and working till mid-night is *atarimae* [natural and usual], the distinction between ordinary and extraordinary blurs. Even Nishi's son, whose father was a victim of karo-suicide, sees it differently from his mother and follows his father's footsteps. In contrast, the wives and mothers of karoshi victims are often aware of health consequences of overwork and warn their loved ones of the danger. Their warnings are, however, typically ignored and ill-health is often explained away as "everyone else" is working in a similar condition and it is their "responsibilities" [sekinin ga aru] to get work done.

The different attitudes towards overworking and health between husbands and wives often result in communication impasse and create tension in their relationships. A wife's desperate plea to her husband, "you will end up dying if you work more" [kore ijyou hataraitara shinde shimau], is often met with his evasive response mixed with his sense of responsibility and resignation, "it can't be helped because it is my work" [shigoto dakara shikataganai]. Men typically find it difficult to listen to their wives' demands to work less and rest when they themselves see no way out of their situations except to "persevere" [gambaru] and hang on. In the end, the couples often end up frustrating each other and quarreling.

Women's concerns are strong enough to motivate them to contact anti-karoshi activists. Worried, yet unable to persuade their husbands and sons to change their

behaviors, some try to seek assistance outside often without the men's knowledge. In their search, after many years for some, they finally find the network of anti-karoshi activists. A consultation from a 33-year-old wife brought to anti-karoshi activist lawyers in Labor Standards Ombudsmen reveals a typical interaction between a husband and a wife before the wife decides to seek an outside assistance without her husband's consent.

In July 2003, she wrote to the Ombudsmen:

He told me he wants to be "a man of work rather than a man of family". Because I bugged him out of concern, and we already had fights several times, he ended up telling me to leave him alone. His employer eliminated the use of timecard and decided to pay only 30,000 yen [USD 300] a month regardless of his real overtime hours. Then, my husband was made something like an "assistant chief" and began coming home on the last train [around 12am], or sometimes not making it home at all. His salary became almost one third of the last year's pay, during which his overtime was being paid fully. My husband was stolen by the company, and his salary, which is supposed to compensate his family for it, was drastically reduced. Isn't this an attack of a corporation on a family? I have not been able to regularly write down the hours he gets home at night, and don't have much material [evidence] to work with [to take a legal action]. On top of that, I can no longer get my husband's cooperation [in collecting evidence and recording work hours]. I thought about this hard, and decided to meddle with his business for the last time, keeping my consultation to you secret from my husband. Please contact me via email at my work or my cell-phone... Please do not leave a message in my home phone.

The callers to Karoshi Hotline and the Labor Standards Law Ombudsmen are almost always women, and want to keep their consultations secret. They are either concerned women whose husbands and sons are still alive but being overworked or widows and mothers who suspect that their loved ones have died of karoshi. Though men continue to work long hours with a sort of resignation, their wives and mothers are searching for ways to change the working conditions of men. It is women who question the injustice of

the system and seek to act, while their husbands and sons are entrenched in the system and made unable to help themselves in their employment relations.

III. BECOMING AN ACTIVIST: FROM “IGNORANT HOUSEWIFE” TO LITIGANT ACTIVIST

The Hunch – Framing a Death

Some of the women who contact anti-karoshi activist lawyers become plaintiffs and involved in anti-karoshi activism. The accounts of becoming litigant activists given by the litigant women shed light on the process of cognition and interpretation of events surrounding their loved ones’ deaths that prompts them to make a decision to act. This element of perception and consciousness has been pointed out by those interested in framing process as an essential part in understanding how social movements are mobilized. As Noaks and Johnston (2005) elucidate, “Before anyone leaves the house to go protest in the streets, there are processes of cognition and interpretation that invariably occur. These intervene between the objective pressures and opportunities that are shaped by social-structural relations and the decision to protest or to join a social movement.”

The process begins with a hunch that her husband or child did not die simply due to a disease. This initial hunch, later supported by others with similar views, grows into a strong conviction that gives them strength to sustain long arduous legal battle. At the time of death, a victim’s family is given a medical diagnose specifying the causes of death, typically heart or brain diseases. Yet, the wives and mothers of karoshi victims are haunted by their feelings that the deaths are rather related to the victims’ heavy workloads and long work hours. The nagging feeling that the victims did not die of a

“private disease” [shibyō] but “of work” [shigoto de shinda] initially propels them to seek more information about karoshi. As most women at first have little knowledge of karoshi or workers’ compensation system, they begin randomly asking around without knowing exactly where to go and what to do.

I was a naïve and ignorant housewife. I knew nothing about karoshi or workers’ compensation. But I had this feeling that his death must somehow have to do with his work since I knew my husband was working extremely long hours, and I was worried about him day-in and day-out. But I didn’t know anything about karoshi or what to do. Still I felt compelled to do something...Then he [a colleague] told me since my husband died because of work, his death must qualify for workers’ compensation. I began thinking about it.

- Yamase Yukiko, 43, wife of an engineer in a machine manufacturer

After searching for information and assistance for some time, the women, one way or another, find the lawyers or other plaintiffs in anti-karoshi activism.

I had no idea about who to contact. I was in shock for four months. Out of desperation, I began making a chart of his work hours, though I didn’t know what to do with it. Then one day, I saw a small article in the newspaper about the karoshi symposium that the lawyers were organizing. When I went there, for the first time, I heard the word “karoshi.” The word perfectly described the way my husband died. It made me cry, and I couldn’t stop.

- Yamaoka Sachiko, 63, wife of a section chief in a bearing manufacturing factory

Although the women often go through a difficult and desperate time before finding sympathetic ears that can offer concrete advice for action, their strong feelings about the victims’ work and wanting to “do something” about it make them persist. When they find anti-karoshi activists through media, internet, word of mouth etc., they finally find other women who share similar agony as well as the lawyers who understand the problem and can provide technical support.

The hunch of mothers and wives of karoshi victims that the victims did not simply die of a disease but were killed by work overload, and their willingness to take action despite social pressure against it, suggest why the new legal and medical concept of karoshi became so widely accepted in Japan. The phenomenon of karoshi has become a public problem in Japan partly because the notion reflects their social and cultural expectations and meaning of work and employment. Unlike some medical discoveries remote from the knowledge and experience of lay persons, the concept of karoshi deeply resonates with the daily sentiments and experience of workers and their families.

Housewife Identity and Motherhood as a Moral Legitimacy

The women's approach to karoshi litigation and anti-karoshi activism provides a glimpse of how politically marginalized women in Japan gain moral legitimacy and support for their cause. Suing an employer or a government agency is an audacious act by any standard in Japan, but it can be considered especially inappropriate when the action is taken by a woman. Bringing a claim to court can be considered "selfish" and "greedy" and generally discouraged through both informal social pressure and formal legal structure in Japan (Harley 1978, Upham 1987, Boling 1990, Feldman 2000).¹⁰ Whereas the Westerners tend to "assert their rights as a matter of course," the same behavior in Japan can be perceived as "acting like a trouble maker" (Boling 1990).

In this social environment, the litigant women in anti-karoshi activism assert their claims by emphasizing their "housewife" identity and raising issues that are traditionally

¹⁰ The cultural cause for "Japanese aversion" towards litigation has been a topic of debate for decades. It is generally agreed that litigation is discouraged by the relatively small number of lawyers and legal institutions available to the citizens, and their tendency to prefer informal means of conflict resolution over formal means.

considered women's concerns - the health of their husbands and children. Most litigant wives in anti-karoshi activism describe themselves as an "ordinary housewife" [futsuu no shufu] who had been dependent on their husbands for their livelihood and important decision-making. Until their husbands' deaths, being involved in the affairs of law and litigation was unimaginable to them, let alone challenging powerful corporations and the Labor Standards Bureau in court. They see themselves as traditional house wives comfortable with their role in the domestic realm:

Until my husband died, I had been an ordinary housewife. Taking care of my husband and children, cleaning, laundering, preparing meals, I had never thought much about passing of a day. I took it for granted that my husband would "go to work and return", and things would remain the same.

-Matsuda Katoko, 35, wife of in an insurance company employee

Given the stigma of litigation, the plaintiff women in karoshi legal suits often feel compelled to explain that they are making a difficult decision to fight in court, especially when they are without their husbands and possess little resources and knowledge. The wife of a banker, Nishino Yukiko, explained herself in court as following.

As I have been an ordinary housewife who lived relying on my husband, I hesitated about the lawsuit. Having lost the loving shield of my husband who would protect the family unconditionally, I had to make the big decision on my own. It has been a difficult two years during which I kept stumbling into dark mazes. But even while in the midst of the maze, I could not understand or accept the decision of Labor Standards Office [to deem my husband's death] as 'unrelated to work' [gyoumugai]. It would be even more painful to live with this, so I made the decision to bring a lawsuit.

The tendency to downplay the activist role and emphasize housewife identity can be found in almost every case. For example, Kato Yoko recently concluded her eleven-

year legal battle against Mitsubishi Heavy Industry in Nagasaki. The settlement brought her 100 million yen (approximately 1 million USD) in compensation for her husband's paralysis caused by his heart attack, as well as official letters of apologies from his employer, former supervisor and colleagues. Kato also managed to extract from the giant corporation a written promise to protect workers' health in the future. It was an extraordinary legal battle involving a series of street appeals and media reports, and the mobilization of activist groups. Yet, Kato describes her battle against one of Japan's largest corporations and the most powerful employer in the city as "a battle for an ordinary housewife to return to an ordinary housewifery" [hutsuu no shufu ga, futsuu no shufu ni modoru tatakai].¹¹

The women emphasize their role as caretaker in the family. The litigant wife of a corporate employee, in addition to blaming the company, also blamed herself for not being able to "detect his physical limit" and was not unable to mourn because she did not "know how to grieve" in her guilt. Furthermore, in their effort to protect their children from becoming other victims, their caretaker role provides compelling moral legitimacy for their action.

To us what is important is not only the compensation, but also the guarantee for our children not having to die. In order for those who work diligently not to be killed by companies, in order not to let our children make the same mistake as their fathers did, I want to make the responsibility of employer clear and have a guarantee that they don't have to die. In order to prevent karoshi and karo-suicide, in order not to let other families go through the same pain, I have to continue fighting.

-Nishida Emiko, 49, wife of a restaurant manager

¹¹ <http://www.toyoko-home.com/>

Women in activism in general are known to begin addressing problems by raising practical matters that affect their ability to perform traditional women's roles (Troutner and Smith 2004). The litigant women also emphasize in their appeals their duty to protect their husbands and children's health by providing healthy meals, and how their critical role is hampered by corporate exploitation.

The health management at home is often brought up as an issue [in karoshi trials]. How is a wife supposed to manage the health of a husband who shows up at home only once in a while? They tell me that preparing healthy meals is important, but how am I to control the food for my husband who is absent from home all the time?

- Matsuda Katoko, wife of a karoshi victim

Hirota Kazuko who lost her 21-year old son working in a magazine publisher made a speech to a group of supporters describing how she was concerned about her son's diet and how she tried to provide him healthy food at midnight.

He was working without taking proper meals. He was eating potato chips at his desk while he was at work. He told me that he couldn't lose time by eating, and that since everyone is working this way, he alone couldn't take time to eat. So every night, I prepared his meal and waited for him till past mid-night. If I fell asleep, he wouldn't wake me up. So, I used to lie down at the entrance hall so that I could wake up and feed him when he comes home. But he was too tired to eat, not even hamburger steak, his favorite food that I prepared for him.

With her lawyers, she visited labor unions, occupational health organizations, and media reporters who might be interested in her case, and told the same story over and over urging them to provide their signatures of support to her legal case. The traditional role of woman as a caretaker allows the wives and mothers to go public and demand justice. By linking their agonies as a mother and wife to the larger concern of employer and

government responsibilities, they gain moral legitimacy for their action and are able to publicly express their political opinions.

Ambivalence and Agency

In the beginning, many women are not confident about their abilities to sustain the long and difficult legal process. The women's demands for workers' compensation and employers' apologies are simultaneously permeated with the feeling of ambivalence created by the clash between the assertion of individual rights and traditional gender relations. A litigant woman, Wada Yoko, wife of a gas company manager, described her uncertain feelings. In the beginning, I wasn't sure if it was a right thing to sue the company my husband was so proud of. My husband lived the life of *shigoto hitosuij* [devoted only to work] dedicating his life to the company." Her husband, according to Wada, went to work on Saturday, Sunday and even on national holidays, yet, she never complained because she understood from her young age that "work is the most important thing for men" and took it for granted all her life. Her home was often transformed into a meeting room by her husband and his colleagues who would gather after work. She not only did not complain but supported him by cooking dinner and providing domestic comforts for them. After her husband's death, she felt hesitant to criticize the company that he worked so hard for, and felt uneasy telling her lawyers negative things that she knew about his employer. Yet, despite her ambivalent feelings, she eventually got over her doubts and filed for workers' compensation in the end. Her wish to prove that her husband "died of work" and protect his "honor" outgrew the feeling of ambivalence. Meeting with the lawyers and other women in Karoshi Families' Association allowed her

to pursue her initial hunch about her husband's death as karoshi, and to solidify her identity as litigant activists.

The case of Shimoda Yumi provides another illustration of how litigant women's ambivalence and lack of confidence is overcome by the elevated sense of agency, injustice and activist identity through their participation in anti-karoshi activism. When Shimoda met the lawyers and other litigant women, she was in a horrible emotional state far from the image of tough litigants willing to fight against corporate power. Her husband was a hotel chef, who collapsed with acute heart failure during a meeting, yet according to the plaintiff team's investigation, he was left on the floor among corporate executives who went on with the meeting. In addition to the tragedy, she had a traumatic experience at the Labor Standard Offices to which she sought assistance. When she consulted a local Labor Standards Office in her precinct in Okayama prefecture, an officer verbally abused her saying "in spite of being a woman, what did you come here for" [Onnadaterani nanishini kita]. She was not only given wrong information about the qualification for workers' compensation, but was also insulted by the officer who told her that her husband was probably lying about his work hours in order to have affairs with other women behind her back. From the shock of his abusive words, she had a nervous breakdown that made her unable to speak and was hospitalized for weeks. She continued to suffer from psychiatric disorders for years. Although she and her sons managed to file workers' compensation application, she repeatedly expressed her lack of confidence in going on. "Once I wrote a letter to my son saying, 'though the application was made with other people's kindness, I am unable to proceed. I will call off the process.' He became very angry."

It is often the lawyers and other litigants who support and encourage the women who are facing personal crises. As mentioned in the earlier chapter, the activist lawyers often form close relationships with the plaintiff families. Shimoda's lawyers acted as mediators between she and her son, and mended their relationship. They also encouraged the family to keep fighting in the court.

[The lawyers] communicated with my sons gently, gently so that I could reconcile with him. They made it possible for me to talk to him on the phone. I am so grateful that they even did this kind of thing... When I heard that Mrs. Ono brought a civil charge leaving workers' compensation for later, I asked my lawyer about it. He said 'You too have to try it in time. Your son is ready for it.' I said, 'Oh really? But I really don't have any confidence.' He kindly said to me 'everything will be alright.'

After years of legal battle, she not only won the workers' compensation and civil lawsuits, but filed a civil charge against the officer in Labor Standards Office who had mistreated her. With the support of the lawyers, she found enough strength to file the first legal case brought against misconducts of LSO officers. The district court supported her claim, and ordered the administration to pay her USD 5,800. The defendant officer was demoted and transferred to other office.

Over the years, she gradually came to see herself as a person capable of acting and helping others.

If I talk about my experience to others, it would be useful to others. The reason I was able to recover from depression is because of the Families' Association. I have been supported by others, I want to be useful. I want to do what I can do to help others.... I have a lot of life experience... I want to be active for others.

Her utterances in the interview with me revealed her confidence and the sense of empowerment, seeing herself as someone who not only can stand up for herself, but who can be “useful” to others. Her explanation for suing the LSO officer revealed even more clearly the shift in her identity seeing herself as a member anti-karoshi activism. “I did not do it necessarily to win, but to represent many other women who had suffered similar mistreatments from LSO, as well as to draw public attention to the problem.” She saw herself as a representative of mothers and wives of karoshi victims, as well as someone who is capable of acting to change the situation.

Building Activist Identity: Public Speech Making

One of the activities that transform the litigant women’s identity from “ordinary housewife” to that of litigant activist, personally and publicly, is the speeches they make in meetings and assemblies. Along with the lawyers, the litigant women are often invited to various meetings such as other litigants’ support groups, labor unions’ assemblies, and various study groups on karoshi related issues. In these meetings, the lawyers almost invariably make time for the women to introduce themselves, and in a sense, force them to speak in front of the people. The women typically line up in front of the audience and speak up, one by one, with surprising confidence and clarity. Their statements are personal stories of mothers and wives who lost their husbands and children to the exploitation of uncaring employers.

I am Kusaoka Seiko. My husband was working for Matsuda Home Franchise, and in 1998, he died of ischemic heart disease... Everyday he came home past mid-night, and there was hardly any day-off for him. Gradually, he lost energy, and I often used to get close to my husband who were sleeping and made sure he was breathing. As his wife, I can’t

forgive the company which negated his devotion and efforts... We are progressing towards 'no more karoshi'. In order to recover my husband's honor, and not to produce any more victims, I will do my best.

By speaking about their personal tragedies and anger in public spaces, they transform their private and personal statement into a public and political act. The women invariably express the anger against the employers who forced their husbands and children to push themselves over the edge, and link their outrage to the sense of mission in their struggle. While they are initially afraid to speak in front of people, who are predominantly men, they gradually build confidence in appealing, and find a meaning in their activism.

In the beginning, I was not sure if I, a full-time housewife, would be able to pass out flyers and make public speeches of appeal. The reason why I managed was because Koji [her deceased son] supported me from the back. Even if my workers' compensation case might not be approved, I thought I would do all I should do as a mother. We mustn't produce the second, third victims.

-Kikutani Saeko, 64, Mother of a manufacturing company employee

The public speaking helps to dispel their ambivalence and fears, and give them strength to sustain years of legal battle. The women who could not speak in public and explain their cause at first become well-versed in their speeches after many "practices" introducing their cases, and are able to articulate their concerns and appeal to audiences. They also recognize strategic merits in appealing their cases in public, and eventually come to eagerly seek opportunities to speak. Many often decide to appear on TV and in newspapers with their actual names. They consciously become aware of how their

personal victories in their legal battle are closely tied to their ability to set the problem of karoshi as a social and political agenda in the larger society.

Expanded Awareness: Meeting with Other Litigant Women in Families' Association

Through speaking in public and meeting with others, the women solidify their identity as litigant activists and expand their awareness toward the larger meaning of their activism beyond individual cases. Meeting with other women in Families' Association who are in the similar situation is one of the most important experiences in becoming an activist. By sharing their thoughts and pain with others, they gain strength and comfort, as well as awareness and knowledge that connect their personal lives to larger social concerns.

I used to think that my husband's case was an isolated case due to his special circumstance. But as I met other women through the Families' Association, and learned that many people are dying of overwork regardless of age, region, or occupation... Many people helped me with collecting signatures and funds, and some went to the company with me to request their cooperation for the workers' compensation application. I was very much encouraged, and began to feel that I could no longer keep whimpering. I also learned that those who helped collect the signatures did so out of their own urgent fear that "tomorrow it might be [them]" [asuwa wagami]... People are gathering for the activism pushing for my workers' compensation recognition... I want to convert my anger, the anger that only a wife whose husband's life was snatched away knows, that is flowing from the core of my body, into a warning against the overworking society. And I would be happy if I could be of help, even a little, to eradicate karoshi.

– Shimoda Yumi, 53, wife of a hotel chef

Interactions with other women in similar situations also provide critical emotional support to the plaintiff women. Many women mention one or two other litigant women's names as the key persons who gave them strength and inspiration to fight against employers. The mother of Kikutani Koji, a victim of karo-suicide, for example, was hesitant to make her son's suicide public with his real name in the media. Suicide is highly stigmatized in Japan and most families choose to hide the fact. What made her decide to go public was the resolute attitude of another plaintiff mother, Kawata Etsuko, who was also fighting for her son in the court. After seeing Kawata, she swore to herself that as his mother, she would do anything "to wreck [my] son's vengeance"[urami o harasu].

Participating in activism and offering assistance to others also gives them strengths and meaning to their own lives, and helps them go on with their litigation. Working on individual lawsuits can be lonely and scary, but when I work together with other families, I feel I am not alone, and feel the warmth around me that gives me more courage. As I try to tell people [during the street activism] about 'Karoshi 110', I remember when I did not know who to consult and felt uncertain and worried. I think it is all the more meaningful to offer a 'hand' who is feeling the same.

– Onoda Eiko, 57, wife of a vice president of a mid-size manufacturer

Many women continue to participate in the meetings of the Karoshi Families' Association to help others after their own legal cases are over. Some attend court hearings of karoshi cases and families' meetings for years after the completion of their own cases. These women make it their life-time mission to change "the corporate-centered society" [kigyo chuushin shakai] and create the "society without karoshi"

[karoshi no nai shakai] through sharing their own experience and supporting others in litigation.

Though my litigation is over, I want to be a help of others. The painful experience I went through will help others. Karoshi will not disappear unless we fight against it.

-Tsuda Keiko, Wife of a chemical engineer/ researcher

This year's national assembly marks my 12th participation. Because of the people in the Families' Association and those who support us, we were able to continue... The pain and sadness we experience can not be understood unless one goes through it. Those who are already done [with the litigation] will put our hearts together and stand up to confront karoshi that keeps coming after us.

-Kubota Sachi, Mother of a trading company employee

Many women gain strength in their own battle knowing that sharing their experience will help others and benefit society as a whole. The wife of a karoshi victim wrote to a plaintiff who is still uncertain about the litigation and the long battle ahead.

Trust your lawyer and tell him everything that happened to you, so that you can punish the company. As what you are doing is a brave act that benefits the society, be confident and begin appealing little by little with patience. What you have experienced is something only you can tell to the world and ask for justice. What you are doing is an act of justice.

- Onoda Eiko, 57, wife of a vice president of a mid-size manufacturer

Since most litigant wives had taken for granted the sexual division of labor between husbands and wives, they initially know little about labor issues. Yet, as the reality of harsh working life comes to be uncovered through their litigation, the women often develop a critical view towards labor relations and occupational health responsibility of employers. Over time, the "ordinary housewives" who knew nothing

about “complicated matters” [muzukashii koto] gradually develop an understanding towards larger social and political issues in which their lives and experience are embedded.

The case of Yamaoka Sachiko, one of the first litigants of karoshi cases in the late 1980s, provides a good example. Before her husband's death, she used to deem her duty to be “staying home” and “taking care of her husband and children”. As she filed for worker's compensation and sued her husband's employer, the 42-year widow began attending “Laborer School” [rodosha gakko], a course sponsored by the Japan Communist Party teaching labor issues. The evening courses taught her, among other things, labor history and Marxist philosophy. There she gained the knowledge about workers' rights, and later joined working women's study group called “I love Marx.” She was excited with her new knowledge. “I was amazed to learn that the story about the workers in England a hundred years ago can apply to contemporary Japan. It felt like Marx was talking about my husband's life.” She wrote on the margin of a magazine which featured an article about her litigation, “of the people, by the people, for the people”, the famous utterance of an American President, Abraham Lincoln, on the principle of democratic governance. Her new knowledge helped her to maintain her fighting spirit during her six-year legal battle. Her case became one of the monumental cases that won both workers' compensation and a civil lawsuit that clearly located the responsibility of the company for her husband's death and ordered the employer to formally apologize to her.¹²

¹² Interview by R. Morioka and litigant support group publication.

The Leadership and Support of the Lawyers

“Who is going to speak first? What is the order?” “Tell me the contents of your speech.” “You have to make your speech more concise. If you discuss too many details, there won’t be time for others to speak.” Every year around Labor Appreciation Day on November 23rd, litigant women from all over the nation gather in Tokyo. They request a meeting with representatives from the Ministry of Social Welfare and Labor, and directly demand relaxing of workers’ compensation approval for karoshi, and faster and fairer system of relief for the families. A protest demonstration in front of the ministry building usually follows the event. The lawyers in anti-karoshi activism take the lead in organizing and guiding the plaintiff women.

The leadership and guidance of the lawyers is a critical factor for the litigant women in anti-karoshi activism. Without practical guidance of the lawyers, the women who are politically inexperienced would not be able to mobilize people and take actions. The women’s association, the Association of Families Who Reflect on Karoshi, itself was organized based on the lawyers’ local and nation-wide professional networks. The lawyers first created the local associations in 10 cities, and then assembled them into a nation-wide association. Their purpose was to support the litigants as well as to increase the political strength of the movement by mobilizing victims’ families. In addition to local chapter meetings, they hold annual national meetings.

The collaboration between the lawyers and the women are mutually beneficial, and they need each other to advance their own interests: The plaintiff women need the lawyers’ technical knowledge and skills, the lawyers need plaintiffs to take legal actions.

In order to win legal cases, the plaintiffs have to devise legal strategies depending on the availability of evidence, likelihood of workers' compensation awards, and the nature of legal violations, as well as to create activism around their cases. Without the practical advice and the encouragement of the experienced lawyers, the women would be at a loss.

In the beginning, I didn't understand why I needed to collect the signatures of people who did not know my husband... but my lawyer said, "The signatures are reflections of the public opinion. You have to go to the front line and appeal to the public opinion. Since you also need to earn a living, you shouldn't miss work for that. Let's work on weekends. If you have no choice but to take a day off, then you can put the blame on me. As you are alone, I'll go to your workplace and explain the situation for you. Also, don't avoid the media, but try actively talking to them."... I was dismayed and worried at first, but I decided to bet my life and appeal what is on my mind to the public. ¹³

–Iida Chizuko, 48, Wife of a precision instrument operative

While the women benefit both from the technical advice of the lawyers as well as from their idealism and moral entrepreneurship, the lawyers gain professional challenges and opportunities to try new legal and non-legal tactics to push the envelop against "corporate-centered society".

I was so lucky to find my lawyer. He believed and was confident that my son died of work. Even before workers' compensation was awarded – they made me wait six years for it –, he asked me to bring a civil lawsuit as a new strategy. I wasn't sure about it since workers' compensation had not been approved and I did not have enough money. But he said he would not take money if we lost, and would hang in till workers' compensation is approved. He then formed the support group with labor unions and other families for me. Without the support of great people like them, I would not have even thought of doing this.

-Hirota Kazuko, 46, Mother of a graphic designer

¹³ Tampopo [Dandelion] 2003. Iijima Chieko. Kyoto: Kamogawa.

The women are fully aware of the professional motives of the lawyers. Asked about it, Hirota coolly answered that “for lawyers, it is for their names and victories that they want to be famous and recognized as excellent lawyers.” While the relationship between the lawyers and plaintiff women is symbiotic, the women truly appreciate the guidance, support and leadership of the lawyers. At the time when the women are still in shock and pain of loosing their loved ones, the existence of lawyers who provide a variety of practical advice gives them strength. Kimura Yasuko who lost her only son wrote, “I was often on the verge of falling apart. But as the lawyers formed the support group for me and provided the valuable aid both materially and emotionally, I became stronger and was able to go on.”¹⁴ Another young plaintiff widow, Sanada Ayako, stated, “It’s difficult, but I’m not fighting alone. I have the lawyers whom I can count on, and people in the Families’ Association warmly support me. In the beginning, I was overwhelmed with things beyond my knowledge like workers’ compensation and lawsuits. But now, at last I feel like I know where I am.”

From the perspectives of the lawyers, dealing with the plaintiff women who tend to be emotional after a loved one’s death, and lack the basic understanding of legal process can cause frustration. They complain that the women do not understand that lawyers are not “therapists”, and that they themselves have to be the main actor in the process. A lawyer lamented: “Some plaintiffs think that once they hire lawyers, they don’t have to do anything, and can sit back and just watch. It’s not like that. They have to realize that they are the heroines [shujinko]”. He produced a three page document with

¹⁴ Shinuhodo taisetsuna shigototte nandesuka. [What is Work So Important and Worth Dying for?] 1997. National Network of Families Who Think about Karoshi. Tokyo: Kyoikushiryō Shuppansha.

diagrams for new plaintiffs to understand the role of plaintiffs, lawyers, doctors, and support groups. The plaintiff women are advised, in the paper, to “do everything they can do” and to understand the larger issue, “feelings as human beings”, and to have “the will to win”. They were provided with a document not just on how to bring a lawsuit, but rather on how to form anti-karoshi legal activism.

The Relationship with Labor Unions

In contrast with the relationship with the lawyers, the plaintiff women have some ambivalent feelings about their relationship with labor unions¹⁵ that have begun to offer support to the plaintiffs in recent years. Typically, the industry wide and district-based unions help gather evidence and witnesses, collect signatures of support, and fill the court for hearings to pressure judges for fair trials. In return, if they win, the litigant women typically produce a booklet that chronicles their battle to record the unions’ assistance, create new union banners (which cost US\$1,000 a piece) for them, and donate US\$3,000 – 5,000 to the labor unions. The litigant women are sometimes ambivalent not so much about these monetary and other form of compensations, but because of the attitude of some union members who seem to be there for *otegaratori* [to take credit] and sometimes “*nottori*” [to hijack] the case. One plaintiff women expressed her ambivalence towards forming a support group with the labor unions:

My lawyer recommended forming a support group because the opponent is ‘big’. Other women warned me that the support group would increase my jobs and make my life difficult. But there were so many things that I didn’t know, as I am *seken shirazu* [ignorant and naive]... I was also worried that if they went to the company and directly demanded a

¹⁵ See chapter 3 for more detailed discussion about the labor unions

settlement, the plaintiff would react badly. But I couldn't say anything to them because they were working hard for my case.

Despite their concerns about unions' credit seeking behaviors and their hijacking of the cases, many women choose to form alliances with labor unions because they recognize the limitation of what they can do alone and the advantage of forming larger activism surrounding their cases.

IV. MOTIVATIONS OF THE LITIGANT WOMEN AND THE MEANINGS OF WORKERS' COMPENSATION

I pray from the bottom of my heart that a day will come when I can say "my husband died due to work." I'll try little by little patiently so that someday I can tell my children, 'your father died because of work'.

- Watanabe Keiko, 45, wife of a banker

What Set the Litigant Activists Apart?

Not all the mothers and wives who lost their loved ones to *karoshi* are willing to file for workers' compensation and bring lawsuits. According to the lawyers in anti-*karoshi* activism, the number of *karoshi* workers' compensation and litigation represent only the tip of the iceberg of *karoshi* deaths. If so, what differentiate the litigant activists from other women? A key to the question lies in their motivation to fight against the government and corporations. What the activist women have in common is their strong desire to prove that their loved ones 'died of work' rather than of *shibyō* [diseases caused by internal/private causes] after devoting life to work responsibilities. The intensity of that desire depends on their knowledge of the victims' suffering and pain at work before

his death. Those who were aware of the victims' suffering are confident of their claim on karoshi and likely to seek ways to prove occupational cause of death. On the other hand, those who have less knowledge of victims' daily work life are unlikely to go through the stigmatized and difficult process of workers' compensation case. According to William Gamson, the sense of "injustice" forms a basic component of a collective action frame. A "hot cognition" that something is wrong and should be changed is an essential component of mobilizing potential adherents. The realization of injustice places the blame for grievances on the individuals and/or institutions that compose the "them" and sparks members of the "we" to respond.¹⁶ The key difference between activist and non-activist widows and mothers of karoshi victims is the disparity in the temperature of "hot cognition" of injustice based on the level of knowledge about the suffering experienced by the victims in their daily work life. Similarly, the litigant women invariably mention that they want to restore the victims' "honor" that has been damaged by the labor standards officers' and employers' denial of the victims' industriousness and diligence. For the activist women, the award of worker's compensation is a means to redress this injustice while non-activist women see it simply as a monetary compensation.

Knowledge of Workplace Realities and their Confidence in the Claim for Karoshi

The women who take legal action are in touch with the victims' work life and aware of difficulties the victims went through. They have witnessed and known how hard their loved ones worked before they died, and feel that if they do not apply for workers' compensation and fight in court, their husbands and children's sacrifices would

¹⁶ Noakes and Johnston, "Frames of Protest: a Road Map to a Perspective", 2000

be left unrecognized. “My eyes were the only eyes that watched him work in the middle of the night. I was the only one who knew it. If I don’t tell others, nobody would ever know the truth.” Many families have witnessed the agonies that the victims endured before their deaths.

From about a month prior to his collapse, my husband was unable to sleep because of stress. In the middle of the night, he used to cry aloud and shout ‘I will be murdered by the company’. He wanted to quit, but he couldn’t leave only young inexperienced ones behind at work... I was worried about suicide. One time, I even followed him. I could see in his face extreme fatigue and weariness. I thought he might jump from somewhere and kill himself, so I followed him to his work by car. He stopped his car and went into a market, so I felt little better thinking he was going to work.

- Shimoda Yumi, 53, wife of a hotel chef

They are certain that the victims did not just die of a natural cause. It is their experience and interactions with the victims that make them sure about karoshi.

One day my husband told me some problem arose at his work. He became plowed under with work, and had to work on Saturdays and Sundays. He continuously went on overnight business trips and meetings. He was only able to come home once a week in the evening. And one day, we lost contact with him after his last call saying, “I can’t go home because the company is in big trouble.” We frantically looked for him, but he was found dead.

- Tajima Yoko, wife of a corporate employee

They watched their loved ones’ health deteriorate over time and intuitively knew that overwork led them to their deaths.

I saw my son getting thinner and thinner losing his weight from 70kg to less than 60kg in a few months when he began to work in the company. When he came home, due to extreme fatigue, he was often unable to speak except to tell me he was tired. He, who was very warm hearted and kind to his mother, began telling me to get out of his room and leave him alone because he was too tired to talk.

- Hirota Kazuko, 52, mother of a magazine publisher employee

Corporations often counter argue that the victims voluntarily chose to work long hours without any specific orders from their superiors. But the women are aware that the pressure to sacrifice private and health needs for work duties and the “rationalization” that maintains only a minimum number of personnel on one hand, and the victims’ sense of responsibility on the other, “compel [them] to work voluntarily” [jishutekini hatarakuyou kyousei sareta].

On the second day of the business trip, he told me on the phone that he could not stay still because of his severe headache and had to keep moving. The third day, he kept complaining about his headache to his colleague all day long. There were two days of abnormal headache during which his life could have been saved. But nothing was done because there was nobody else to take over his job. He lost his life in vain due to his work without receiving any medical attention.

They claim that their loved ones’ did not “work” [hataraita] for excessive long hours because they wanted to, but rather were “forced to work” [hatarakasareta] by the pressure they were placed under. This knowledge give the women confidence to go public and make the claim that the victims died of karoshi. Secure in the knowledge that their loved ones were forced to work, the plaintiff women do not hesitate to claim that the victims were “killed” by the company [kaish ni korosareta] or “pushed to death” [shini *oikomareta*] for the sake of work in the line of duty.

My husband who committed suicide did not ‘choose death’, but was ‘cornered to death’.

-Nishida Emiko, 49, wife of a restaurant manager

I can't forgive the company, as his wife, who impudently lie in the court after committing this kind of murder.

- Kanayama Fumiko, 52, wife of a chemical company employee

Knowing their husbands' self-sacrificing efforts and suffering, they find their loved one's *karoshi* "unreasonable" [*rifujin*], and the sense of injustice pushes them to take action. They persist in the face of difficulties because they can not let their loved ones' deaths become *inujini* [die in vain to no purpose].

Non-Litigant Women's Doubts

In contrast to the litigant women, those who decide not to act on the compensation are not convinced that an injustice has occurred. The objective deaths and their intuitions that the deaths are due to work exist just as the cases for the litigant women. Some even have concrete opportunities to file for workers compensation after attending meetings of the *karoshi* families and receiving necessary knowledge and emotional support from others. Yet, in the end they give up on the idea. What they seem to have less, compared to the litigant women, is the concrete knowledge of victims' work life and the vivid image of their suffering. Therefore, they are not as angry as the litigants. In other words, their temperature of "hot cognition" is cooler. They lack the sense of injustice done which the litigant women constantly express even years after the victims' deaths.

One manifestation of the difference can be found in their assessment of the coercive nature of work. While the women in anti-*karoshi* activism are certain that their husbands and children were forced to work long hours, non-litigant wives are often uncertain about the involuntary nature. Rather than blaming harsh working conditions,

some women attribute the cause of death to individual traits. Tomita whose husband worked for Mitsubishi Corporation was hesitant to apply for workers' compensation though she felt that overworking was the cause of his death.

My husband had a weak character. He could not say no to anyone, not even to his own family. He probably took in all the work on his own. If he worked himself to death, I don't understand why he could not refuse work.

Despite the rumor that five other colleagues of her husband have died of karoshi, she still did not see how he could not "resist" [hanko] at his work. Some wives, especially prior to the investigation on the victims' working conditions, lack concrete knowledge of their husbands' day to day work lives, and are unable to see how their work realities, embedded in a larger social, cultural and economic context, compel them to work for long hours. Accepting karoshi requires an understanding that overworking is not an isolated individual problem but closely related to how businesses exploit the cultural norm of hard work and occupational responsibility, as well as the lack of labor power to protect workers' health. The litigant women, by comparison, are much more aware of the harshness of their husbands' workplace realities and firm in their claim that the victims had no means to save themselves from their situations.

Immediately after their loved ones' deaths, some women go through a period of uncertainty about the cause of death. They typically blame themselves first for not being able to help their husbands. "When my husband died, I couldn't help thinking it was my fault. I couldn't do anything for him to save him." Some then wonder about their husbands' physical strengths and mental fitness. "As my husband's character was very serious and diligent, I wonder if he willingly took all the work." One woman expressed

her reservation for applying for workers' compensation even after flying from a remote town to Tokyo to attend a meeting of Karoshi Families' Association. Another widow, Yamada Satoko, also wrote to Karoshi Families' Association and expressed similar feeling: "Is my husband's case really karoshi? Could it be that my husband was simply weak? I wonder if I was responsible. When I think of these things, I can not make a decision to file for karoshi." The initial uncertainties of some litigant women disappear as they discover the severity of the victims' work demands through investigations. The awareness of workplace realities is the basis of their confidence and decision to file for workers' compensation.

Meaning of Worker's Compensation: Challenge to Employers

The key to understanding the motivation of the litigant women is the meaning they attribute to workers' compensation. Workers compensation in Japan, just as in the US, is an insurance system design to protect the livelihood of workers who have been injured at work. It is also meant to provide a relief to their families who rely on the income of their breadwinners. However, for those who are involved in karoshi litigation, *rosai* [workers' compensation] is more than just an insurance system, laden with meanings that produce various social and cultural consequences. It officially certifies a death as work-related. It challenges employers. And it also protects the "honor" of the dead.

"Workers' compensation is scary," a plaintiff woman explained. It is frightening because an individual, a woman, a housewife, must confront a "big one" [big corporation]. Filing for workers' compensation can mean a challenge to an employer. A

woman in Osaka whose husband worked for a large pharmaceutical company was “threatened by the Labor Standards Office” and told that if she applies for workers’ compensation, it would mean a “battle” against Fujisawa Pharmaceuticals. Family members of karoshi victims often complain that they have been treated like “war criminals” guilty of treason in their communities as soon as they filed for workers’ compensation. It officially certifies that a victim’s death was due to work-related cause. While the system is not meant for locating responsibilities of the employer for occupational diseases and accidents, it tacitly implies that health and safety measure of the company was inadequate. In the society where corporations wield hegemonic power, claims for the compensation can be seen as an act of rebellion not only by the employer, but by an entire community.

However, it is not just the women who are afraid of worker’s compensation. Employers are quite wary of it as well. Japanese businesses tend to be extremely sensitive about their public images and dislike exposing anything negative about their company however minor. Employers often consider having a workers’ compensation case a mark of disgrace in terms of their safety standard, and try to avoid it as much as they can. Though illegal, it is not uncommon to find “rosai kakushi” [hiding of worksite injuries] in which employers try to convince injured workers not to apply for workers’ compensation, with or without monetary compensation. In 2000, estimated 136,000 cases of occupational injuries and diseases, that were supposed to be claimed under the workers’ compensation system, were treated with the national health insurance.¹⁷ Unlike

¹⁷*Rodoshu no Kenri* [Rights of Workers], vol. 245, Oct. 2002

worksite injuries, the cause of death for karoshi is not obvious, and employers are more likely to resist claims for workers' compensation.

Karoshi victims' families often go through an emotional turmoil deciding to file for the compensations. Some are concerned about the consequence of waging a battle against a powerful corporation that can affect their families and relatives due to its stigma. An example is a predicament of a victim's wife in a small town of Okayama. She was considering giving up her application when she confided, "I know my husband died of karoshi. But there is a relative among his superiors in the company. I feel hesitant to apply for worker's compensation." She was reluctant because the filing would put the relative in an awkward position, and might even ruin the career and livelihood of the relative. If worker's compensation was simply an insurance system, they would not have to be concerned about the impact of their application on families and relatives. Another woman expressed a similar concern.

I really suffered through painful time until I finally made the decision to apply for workers' compensation. I kept wondering how I could cause more pain to those who are still alive, how I could give more troubles to my family and relatives. I also wondered if my husband, who maintained good relationships at work, would have wanted this.

- Shimada Yoko, wife of a metal manufacturer employee

Applying for workers' compensation can be especially frightening in a smaller town where one company can wield much power as a major employer in town. It can bring negative consequences to a plaintiff's livelihood. A lawyer in anti-karoshi activism described workers' compensation application in a smaller town as being equivalent of rebelling against the lord of *kyokamachi* [castle town] who rules the township. "A

company can be a scary thing,” he said. “They can do a lot of damage to you and your family’s life.” Corporations that control economic activities of smaller towns have the power to jeopardize future job prospects not only for the applicant of workers’ compensation, but also for their children and relatives. The threat was very real for Nishimura Satoshi, a truck driver of a major distribution company, who nearly became a *karoshi* victim. When he applied for workers’ compensation after recovering from a life threatening heart condition, he felt necessary to hide himself in a friend’s house for half a month out of fear for the company’s harassment.¹⁸ Despite all the concerns, the litigant women choose to file because of their strong indignation towards employers who “overwork their employees to death” [*shinumade hatarakasete*], but “pretend to have nothing to do with it” [*shiran kao suru*]. By filing for workers’ compensation, they dare to locate the cause of death in work and challenge employers when they are unwilling to admit it.

Protecting the Honor of the Dead

For the litigant women, workers’ compensation officially certifies the hard-work and dedication their husbands and children made. They see the compensation as a means to prove that those who died were martyr to duty and to protect their “honor” [*meiyo*]. Through workers’ compensation, they vow to establish the fact that the victims worked “risking their lives” [*inochigakede hataraita*] and sacrificed their lives for their duties.

I wanted people to know that he worked hard for the company. I want them to know that he really was trying his best. I want to restore my husband’s honor. I want to make it clear that he died because of work.

¹⁸ Interview conducted by R. Morioka 2002-03

- Shimoda Yumi, 53, wife of a hotel chef

The expression of joy by a plaintiff who has received a verdict supporting her claim shows what the victory meant to her.

Yesterday, I received the ruling. It was clearly written, just as I claimed, that my husband died not because of his [weak] character, but because of the harsh work condition. The truth was recognized, and I could not hold my tears.

- Watanabe Sachiko, wife of a karo-suicide victim

For many women, the resolution to fight in the court is triggered by hearing employers' and managements' words discounting the sacrifice and efforts made by the victims. As mentioned above, employers are often eager to avoid workers' compensation. Anxious to keep away legal problems, they often try to deny the possibility of karoshi as the cause of death by down playing the amount of work and efforts the victims put in. They assert that the victims were not working hard enough and blame victims' behaviors in private life or their physical and mental weaknesses as the cause of death. One small-sized manufacturing company sued by the wife of a sale manager, for example, claimed that the employee was staying in the office late at night drinking alcohol at his desk. The employers' defensive attitude infuriates the wives and mothers of the victim who believe in the victims' dedications and watched their suffering.

A person's life does not expire so easily. I wonder how much difficulty my dear husband had to go through. I want those in the company to apologize to him. Why did my husband have to work till midnight every day? I might have wanted them to say 'he did well'. But the branch manager said, 'He could have been playing games when he was using the computer at night.' When I heard this, I was overwhelmed with anger and sadness I could not express.

The attacks of the employers on the victims' devotion to and sacrifice for their work responsibilities lead to the women's strong desire to protect the "honor" of their husbands by proving that they died of nothing but work. In order to do so, the women make decisions to go through years of legal battle in the court. A litigant wife Shimada expressed her anger and resolution in a meeting.

My husband died due to extreme hard work. If I gave up the litigation now, I end up accepting the company's claim that he wasn't working hard. Through this litigation, I want my husband to be remunerated even if it is too little and too late. In order to protect my husband's honor, I will try hard. So please support me.

- Shimada Yoko, wife of a metal manufacturer employee

For them, more than monetary compensations, workers' compensation brings back the honor of recognition that the victims dedicated their lives to their work responsibilities. Their strong desire to do so motivates the litigant women even when the chance of winning is slim and the legal process is long and difficult.

Meaning of Workers' Compensation to Non-litigant Women: Monetary Compensation

Comparisons with those who do not apply for workers' compensation highlights what set them apart. Those who decide not to file for the compensation often equate the act with money. Their typical explanation includes the statement, "I don't want to do anything that exchanges my husband's death with money" [inochi o okane ni kaeru]. A widow, whose husband suddenly died at work, declared her resolution not to apply for it despite her suspicion because she did not want others to think that she was wanting of

money. “There is no way I could apply for workers’ compensation”, she said. “I don’t want to be misunderstood that I’m doing it for money.” Unlike the women in anti-karoshi activism, she saw financial assistance as a principal meaning of workers’ compensation, and her fear for criticism superseded her wish to certify her husband’s death as work-related. While the litigant women see workers’ compensation as a symbol of honor and recognition, non-litigant women see the application as opportunistic act of gluttony and some criticize the litigant families for trying to make money out of tragedy. What set the applicant/litigant women from non-litigant women is their intense desire for retribution based on their intimate knowledge of victims’ work realities and suffering, and the meaning they attribute to workers’ compensation as a means of redress.

V. SOCIAL COSTS OF BEING A LITIGANT ACTIVIST

The casual observers of karoshi litigation, especially in the United States, often assume that the plaintiffs are motivated solely by the financial gain of compensations. The monetary compensation is certainly an important consideration for the women who have just lost the breadwinners in their families. However, when we consider the women’s sustained activism after the completions of their individual legal cases, and their strong desire to publicly redress injustice done to their husbands and children suggest that their motivations are more complex than simple acquisition of financial compensations. In his investigation on pollution cases in Japan, Upham (1987) also found that plaintiff women’s disinterest in monetary compensation. According to the author, the concept of a right to compensation or of the defendant’s duty to pay did not appear in published discussions of the plaintiffs, and their disavowal of money itself as

even a secondary motivation seemed “absolutely convincing”. For the plaintiff women, the legal suits provide the only place where they can express their political agency based on their anger. Furthermore, engaging in karoshi lawsuits involves immense social, emotional, financial burdens to the women, in addition to the uncertainty of the trial outcomes. In some cases, the costs of legal battle seem to even outweigh the amount of financial compensations that they are likely to receive even if they win. The following section discuss the criticism and difficulties that the plaintiff women face prior to and during their litigation, highlighting the cultural meaning of work, gender, and hegemonic practices in the “corporate-centered society.”

Criticism from Family

While karoshi now is a popular term accepted as a public concern, workers’ compensation and litigation for karoshi still provoke criticisms against the litigant women. After the victims’ deaths, their wives are often accused of not fulfilling their responsibility to care for their husbands and blamed for the deaths. These criticisms reflect the traditional gender relations and the cultural expectation for the role of married women. While husbands are expected to devote themselves to work, women are entirely responsible for the care of family members even when they are employed fulltime outside of home. As a care taker, the responsibility for a man’s health, especially for a husband, is often placed not on himself, but on his wife.¹⁹

¹⁹ In the discourse of karoshi, the responsibility for male workers’ health is often placed on others outside of workers’ themselves (i.e. employers, wives). Chapter 5 explores the point in court arguments.

After my husband died, I was once told that only wife can prevent husband's karoshi. I was full of remorse thinking I should have done this or that.

- Sagi Michie, 60, wife of an advertisement director

A young widow confided, "My husband's family thinks his death was my fault. They say to me 'he worked to death in order to feed you, and you could not protect his health. They think that I am responsible for his death.'" Despite changing values and women's participation in labor force, the traditional expectation of division of labor between the sexes is persistent in Japan. The wives of karoshi victims often express remorse in asking for their husbands' participations in childrearing and domestic work. Although they gradually gain confidence throughout the legal procedure, the women, especially in the beginning, blame themselves concerning the deaths of their husbands.

I've heard my mother-in-law telling others that I made my husband help with housework and children. I am mortified to hear that, but at the same, part of me thinks that it was I, after all, who pushed him to death.

- Fujita Seiko, 58, wife of a telephone company employee

Another woman also expressed her regret, "There was much pressure on him. I too asked for his help in things like childrearing. I really did wrong to him." They suffer both from the accusations of in-laws and self-blame in not only being able to help their husbands, but also somehow contributing to his demise.

The uneasy relationships with in-laws are often made worse when the women decide to file for workers' compensation or civil lawsuits. Many women lose contact with their in-laws' due to their criticism against their legal actions.

My husband's relatives distanced themselves right away as soon as I filed for workers' compensation. They told me they have no intention of

helping me with the litigation or giving me their signatures for a petition. Instead they said, ‘if you didn’t let your daughter take piano lessons (to pay for), he didn’t have to die.’ They told me I was the one who made him overwork.

-Okada Taeko, wife of a banker

Most in-laws express discomfort or oppositions to their daughter-in-law’s decision to file for worker’s compensation and/or civil lawsuits. Many accuse the women for trying to “exchange their husbands’ lives with money” [otto no inochi o kane ni kaeru]. Some plaintiff wives themselves feel a degree of hesitation. In their decision to resort to legal means, the women often have to face the painful criticisms of others in addition to the pain of losing their loved ones.

Criticism from Community

The women also sometimes face anonymous criticisms from their community and even harassment. The most common criticism they receive is that they are “repaying the employer’s kindness with ingratitude” [on o adade kaesu] after the employer had looked after her husband and family. The wife of a Mitsubishi Heavy Industry employee, Tomita Mikiko who lives in a small conservative town began receiving numerous anonymous calls after visiting the company’s labor union inquiring about workers’ compensation for her husband’s sudden death.

Sometimes there were calls very early in the morning more than twice or three times in a day. They say things like, ‘you just want money, don’t you? You must be already receiving the survivors’ pension. What more do you want!’ ‘The company has been taking care of you and your family. It has done a lot for you. If I were you, I wouldn’t do such a stupid thing.’ ‘Haven’t you given a job by the company after your husband died? Stop being so ungrateful!’ Two women told me, ‘I know my husband also died of karoshi, but I wasn’t greedy for money like you.’ ‘I also lost both my

husband and son. But [unlike you] I chose to suffer in silence without complaining.’ It was a workplace with a lot of karoshi. There were at least five deaths that I knew.

By filing for workers’ compensation and civil lawsuits, the women are considered to be “making trouble” when they are supposed to “endure in silence” [damatte gamansuru].

Suing one’s own company in demand of own rights is often considered “selfish” and perceived as threatening to fellow workers in Japanese workplace. Upham (1987) found similar community responses in Yokkaichi pollution case almost twenty years ago. Examining the lawsuit brought to Sumitomo Cement based on Equal Employment Opportunity Act, Upham also found that the Japanese workers often oppose and even ostracize those who stand up against employers in demand of fair treatments.

...peer support for the plaintiffs, already nonexistent among male colleagues because of the union’s opposition, is steadily declining... the psychological effect of such isolation can be extremely difficult to withstand – suing one’s own company while still a member is a radical, threatening act to fellow employees as well as to management- and is a severe limit on the number of available, willing plaintiffs.

After more than two decades since Upham’s investigation, the experiences of the karoshi plaintiffs indicate that suing an employer is still considered a threat to work community and security, regardless of whether the plaintiff is an employee himself or his family.

The Difficulties of Collecting Evidence

The burden of proof in worker’s compensation and legal cases is on the plaintiff. Once the women make their decisions to apply for the compensation and/or bring a lawsuit in civil court, they face further challenges in collecting evidence for the trials. The success in the legal procedures largely depends on the plaintiff’s ability to provide

evidence for the victims' long work hours and heavy workload. A litigant wife lamented, "My case does not go forward. My husband's overtime hours are not especially many, and we can not grasp enough about his job. It is a difficult case. Though I know my husband was killed by work, I can not prove it, and I'm spending frustrating days." At minimum, they have to prove the victims' work hours and conditions two to six months prior to death. Yet, in most cases, there are no official records of the victims' accurate work hours, and the employers are not only reluctant to provide evidence but often hostile to the families who apply for workers compensations. It is not uncommon for employers and supervisors to dispose of all the evidence in their possession immediately after victims' deaths in anticipation for legal suits. The following experiences of the women are not unusual.

The documents my husband kept in his office [that might have revealed his workload and hours] were all taken by the company. The computer he used in his office was his personal computer, but I could see the clear trace of deletion. When he brought back his computer to work at home, I saw the numerous file-holder icons on the screen. But when I received the computer after he died, they were all deleted.

- Fujita Seiko, 58, wife of a telephone company employee

The president of the company said to us, 'we are inconvenienced by his suicide... There was no reason at work, and there must have been problems outside of work.' I want to find out what happened at work, but all his belongings have disappeared. I asked for his notebook he used to write his work details, but the company only gave me very old ones. They told me he must have taken the other ones to heaven with him. The company is doing their best to hide facts and provides no evidence that might work to their disadvantage. We have no information and the truth is left in the darkness.

- Asada Yukiko, wife of karo-suicide victim

The past experiences taught the plaintiffs and lawyers that it is crucial to subpoena evidence in victim's office as early as possible before they are disposed. However, by the time the wives and mothers find the lawyers and make their decisions to take legal actions, evidence is often discarded by the employers. While the women know certain evidence has existed, there is no way for them to prove that the employers have hidden or destroyed it. Therefore, the lawyers often urge women to act immediately before it is too late.

The women do not just hire the lawyers and sit back as clients. The lack of cooperation and evidence force the women, with the guidance of the lawyers, to investigate the victims' work life as if they are detectives. In order to reveal the victims' harsh work conditions, the women must reconstruct the victims' daily schedules and details of work activities. The process usually takes a year or more. Over the years, the lawyers have found innovative ways to compile evidence, but the actual work of obtaining them falls on the women's shoulders. They contact victims' friends, colleagues, and clients, and try to find any clue that might provide the concrete evidence of their work conditions. These often include the hours and contents of cell-phone calls, fax and email sent by the victims. The mother of a victim, Murata Kazuko, for example, found that her daughter working in a hospital had been sending email messages to one of her friends. After long negotiations with the telephone company, she managed to obtain the copies of the email messages. The time of the messages indicated the victim's extreme work hours, and the contents showed her deepening anguish and sense of fatigue prior to death. Email sent at one o'clock in the morning read:

I am very, very tired. I haven't slept much last couple days. I finished my night shift at 12am but I had to remain and do some overtime. After that, I had to go straight back to another morning shift immediately without sleep. I am too tired to move. I don't know what I am working like this for.

These messages became vital evidence for her work hours and harsh work condition which were not officially recorded.

Searching for witness is another difficult task for the plaintiffs. Most colleagues are unwilling to help the families of karoshi victims for fear of retribution by their superiors. Employers and bosses often try to interfere with the women's efforts by placing gag orders among their employees. A karoshi survivor, Nishimura Satoshi, who won his workers' compensation suit and civil lawsuit, warned the difficulty of gathering evidence to a woman who is in preparation for her husband's worker's compensation application.

It is very difficult to find and protect those who are willing to help us. I don't think they [the company] will do anything to you directly, but indirectly, they will intensify their efforts to pressure those who are willing to help with your worker's compensation application. This is something everyone experiences. You win workers' compensation by overcoming these things. Do your best. It is also hard on those who are employed in this time of recession. You have to understand that the colleagues are in a weak position against tacit threats to destroy their livelihood.

Since finding witnesses among currently employed colleagues is nearly impossible, they search for former employees who have worked with the victims and might know about his/her workload. Even if found, it takes much patience and sincere pleas to convince them to testify or even to write a testimony letter. It is not unusual for one and only witness to refuse cooperation. In these cases, the litigant women are forced to prove

heavy workload with other types of evidence. For an extreme but telling example, Shimada Yoko, wife of a sales manager, could not convince any witness who would testify in the court. Like many others, most evidence that would have revealed her husband's work condition and hours were destroyed by the company. The situation forced her to rent an apartment in front of her late husband's office and record the daily work schedules of his successor and colleagues by observing them from a window for months. Without these long arduous efforts, it is unlikely for the women to receive workers' compensation or a positive verdict in the court. An eighty-six year old woman who had won her lawsuit years ago said, "If you, the plaintiff, don't show your willingness, others won't come around and help you." It is an extremely stressful process for the women, and many succumb to illness at some point in the process. Only those women who are resolute enough can go through the long difficult process knowing the uncertainty of outcomes.

Despite the employers' interferences, the women sometimes find information and assistances from unexpected sources. Business partners and contractors who worked with the victims sometimes provide vital information. As business relations are often based on personal ties, the relationships between business partners can be unusually strong in Japan. The wife of a construction company employee told her experience with the contractors who worked with her husband.

Last week, contractors came to my house to pay their respects. They told me that the company refused to tell them where my house was, and insisted that an employee from the company accompany them. Looks like a gag order has been already issued, and the employees are worried about themselves [job security]. On Thursday, another president of a building material company came and said, 'Okusan [Mrs.], this is a case of rosai [workers compensation]. He won't be able to go to heaven if his death is

left as it is. I'll help you, so why don't you try.' He told me about how extreme my husband's workload was, about the difficult contractors' meetings that he had to oversee, and about his colleagues going home as early as at 7 or 8 pm. On Friday, an employee from my husband's office came to accompany the contractor, so he couldn't tell me any detailed stories. I'm sure the company is worried about the contractors putting ideas into my head.

It is difficult to collect information and evidence mainly because companies put informal and formal pressures on employees not to cooperate, and employees are generally unwilling to "cause problems." However, as seen in the contractor's comment, those who worked with or knew a victim's workload often possess intuitive feeling that "the victim died because of his work" [shigotode shinda].

Another difficulty that the women often face is financial. Although the lawyers in karoshi litigation are often willing to negotiate their fees with the families and agree to a workable payment plan, hiring lawyers for karoshi law suits involve substantial expenses for the women. While many lawyers, though not all, offer to receive most of the initial fees only when a lawsuit results in actual payment of compensation, initial fees for a lawyer can range from five thousand to twenty thousand US dollars. (Additionally, if they win their civil lawsuits, about 20 to 30% of the total compensation is given to a team of lawyers, usually 2-5 lawyers). In addition, there are administrative fees to the court and Labor Standards Office, informal fees to remunerate doctors and labor organizations who render assistances, and transportation and other expenses that can cost thousands of dollars. For many of the women who have just lost their husbands and left with their children, the cost of the legal process is a major expense. In some cases, the women resort to the money saved for their children's education or their pensions for the legal

expenses. A plaintiff woman in Osaka, who did not have enough financial resources, went to her husband's parents and asked for their permission to use her husband's retirement fund in order to bring a lawsuit in court. The women's decisions to use their limited financial resources for workers compensation or civil lawsuit, especially when the outcomes of the litigation are extremely uncertain, reflect their motivations that go beyond financial compensations.

Difficulties with the Labor Standard Offices

Another difficulty that many women go through is dealing with officers in the Labor Standards Offices (LSO) who can be antagonistic to those who apply for workers' compensation for karoshi. In the midst of their grief, not knowing what to do with their suspicions about karoshi, many women "summon their courage" [yuuki o dashite] and go to their local Labor Standards Offices (LSO). Most women visit the office naively expecting to receive information and advice about worker's compensation application. However, their hopes are often shattered by the quick and cold discouragement of the officers. Nishihara, whose workers' compensation application was left abandoned for over four years in the LSO, and was finally rejected as soon as she hired expert lawyers, recalled her shock.

How many times did I go to the Labor Standards Office and plea naively believing that they were on the side of workers [rodosha no mikata]! My shock was severe [when I realized that they were not] because I thought they were laborers' allies... It is only on the surface that Japan seems to be a country of happiness. I pity workers.

- Nishihara Shoko, 62, wife of a truck driver

In the LSO, the women are often provided with misinformation about qualifications for compensation and discouraged by the officers who tell them that the prospect of receiving the compensation for them is next to none.

When I went to the office for the first time alone, the uninterested officer at the counter simply told me it was impossible. He was unwilling to listen to my story and did not even look at my face. He then told me that this kind of compensations had to be filed by the businesses. But months later when I went there with the lawyers, they made us sit, listened to what we had to say, and accepted our application.

-Fujimoto Mikoko, 53, wife of a TV program producer

The discriminating attitude of the officers towards the women is routinely reported in the Karoshi Families' Association meeting, especially when a woman goes to the office alone. Their attitudes are starkly different between when the women are alone and when they are accompanied by male lawyers. Some officers even rudely turn them back saying that there is no way for them to qualify.

The members of Karoshi Families' Association often complain that the Labor Standards Office screens applications in order to reject them, rather than to assist workers and their families. Nishimura, a survivor of karoshi and a victor of workers' compensation and civil lawsuits, observed. "It's because the officers don't want more work for them. They are guarding so that you would not apply for workers' compensation." Each case requires investigations and a difficult decision making. Chronically short-stuffed local Labor Standards Offices may have an incentive to discourage and reject applications.

I asked the Labor Standards Office to investigate my case over and over, but they ignored me and simply gave a decision to deny the workers' compensation. It was like keep hitting a tennis ball against a wall. I

strongly wish that the officers nationwide understand the feelings and efforts of the families, and perform their duties.

- Tanabe Kuniko, wife of a gas company manager

These experiences of the women suggest the Labor Standards Office's partial and careless operation.

The discriminatory attitudes of the officers cause added pain and anger to the women who are already suffering from the deaths of their loved ones. The mother of a publishing company employee, Hirota, expressed her pain. "I went to the Labor Standards Office escorted by my brother and daughter, but an officer said to me 'it is not bad enough' [Korekurai ja damedesuyo]. I was outraged by his words. If death was not bad enough, what does he think would be enough?" Shimada whose husband died of brain hemorrhage at work managed to submit application with some evidence, but the Labor Standards Office in her district investigated the case by asking questions only to the management of the company who were relatives of the company owner. The Office's decision was, not surprisingly, to reject her application. They justified their decision by saying his long work hours were due to his "idle talk" and "habit of drinking alcohol" after work hours in the office, therefore not related to his duty. On the day he died, he called her at 10 pm saying he would work little longer. But his official timecard recorded 0 hours for overtime. After 6 years and 7 months of pains taking effort to collect more evidence and building support for her case, Shimada managed to overturn the decision in the court.

To be sure, not every officer in the Labor Standards Office is antagonistic and abusive to the victims' families. There are variations in the women's experiences. Some

women report being “lucky” in running into a “good person” who is sympathetic and polite to them. Some others report courteous and helpful assistance they received. But their experiences with LSO are generally negative, and the descriptions of their difficulties indicate a biased attitude of the officers towards women who file for workers’ compensation for karoshi.

Larger Political Perspective

For many of the women, their experiences with the Labor Standards Office provide an opportunity to think about issues that they have never thought about. The women who previously had little knowledge about workers’ rights begin to question the labor administration of the government.

At the local Labor Standards Office, an officer pointed to one meager day-off between two business trips and said, ‘it’s no good because there is one break here’. Until then, I had thought that the Labor Standards Office existed in order to supervise the work conditions of the businesses and help workers. But the Labor Standards Office actually sounds like to encourage [illegal work hours] and as if to say ‘not enough, work, work more. Work till you die of karoshi!’

The widow of a worker from Hitachi Corporation expressed her frustration in terms of dissatisfaction against the government.

They demand and say ‘show us proofs’. I can’t stand being treated like a liar, and resent their doubtful attitude of ‘we will check you out’. Can’t we do anything so that [workers’ compensation trials] would not take long 10 years? I want to change them somehow. We have to appeal to the international community and ask for help. Otherwise, the Japanese government will not change at all as the way it is.

Some women have witnessed illegitimate links between the businesses and the officers in the Labor Standard Office. In order to escape from the scrutiny of local Labor Standard Offices and to avoid workers' compensation cases, businesses often maintain personal connections with local officers. For example, Wada Yukiko whose application was rejected in 1986 by a local office in Hiroshima strongly suspected that the link between her husband's employer, a major gas company in the city, and the Labor Standard Office which successfully thwarted her application. Her case was left for years without any investigations, and when she went to ask about the progress of her case in the office, she was repeatedly harassed by officers who verbally abused her and refused to give her any information. After seven years, she suddenly found a notice of denial of the compensation from the Labor Standard Office physically delivered at her door without any post-mark. She later heard of the tie between the Labor Standard Office's superior and the gas company, and suspected that the decision had been made years before she was notified.²⁰

Another example is the experience of Shimoda Yoko, wife of a chef in a major resort hotel. Her husband used to tell her about lavish "entertainment dinner" that he was obliged to prepare every time officers from the Labor Standard Office came to "inspect" the hotel. She remembers her husband complaining about having to go to special markets to acquire unusual delicacies and wine for the officers.²¹ These stories only provide anecdotal evidence of the link between the Labor Standard Office and businesses. Yet, bribery by businesses may not be uncommon in the Ministry. Frequent and constant

²⁰ Interview conducted by R. Morioka, 2002-03

²¹ Ibid.

bribery in the form of entertainment, “taxi money”, gift coupon etc. received by the Ministry of Welfare and Labor’s another agency -Social Insurance Office- was exposed by the Asahi Newspaper in July 2003.

Through the issue of karoshi, the litigant women often become face to face with larger social and political issues that affect their lives. Many are not only angry at the pro-business Labor Standards Office, but at the government that allows this kind of partial administration. As an act of desperation against the unresponsive government, a few groups of litigants have written to and directly appealed to United Nations’ agencies for help. UN Human Rights Committee, for example, actually responded and corresponded with the Japanese government. But the administration has been refusing to disclose the content of the correspondence despite the request of the families.

Perspectives of Labor Standards Office (LSO) and Labor Ministry

The Labor Standards Office as a gatekeeper of an insurance system is burdened with decisions for workers’ compensation awards. The officers have to make a decision on a large volume of cases according to the standards set by the Ministry. The perpetual shortage of manpower in their office has been reported. For example, in the city of Fukuchiyama, where a case of 22-year old employee was filed in 2003, there were only two officers in charge to oversee over 5,000 businesses.²² The standards that the officers are supposed to follow, in addition, are inadequate to reflect the variety of workplace realities. The workers’ compensation administration, as a result, has been criticized as rule-driven and lacking room for “common sense”. Ueno Tadashi, a LSO officer in

²² 3/30/2004 Newspaper Akahata

Osaka, explained during an interview that they have to judge the cases mechanically because if they consider individual cases it will be “endless” [kiriganai].

Workers' Compensation Standards don't reflect realities. With a minor mismatch, it gets rejected. If one applies the Standards strictly, the decision would be away from common sense [jyoushiki]. For example, if someone loses a hand from forearm his application is approved, but if another loses a hand from wrist the application is rejected. Some officers try to use common sense and try to consider the situation, so decisions become incoherent... People told me this job was difficult, but I discovered that it really wasn't so hard. If you make judgments following the Standards, nothing is difficult.

But the use of “common sense” is not just to provide room for “consideration” in the face of the stringent standards. Ueno admits that he uses it to reject cases.

If someone in his twenties dies with a heart attack in a bathtub, with a common sense, you know that it is not because of his job. If this was 10 years ago, an application for a case like this would not be even accepted.

His statements reveal the arbitrariness of the officers' decisions, and the prejudice against cases that do not match with their understanding of health problems and work realities – their “common sense”. What seems to be common among those unsympathetic to the notion of karoshi is their preconceived notion, “common sense” about the level of workload among certain occupations (e.g. teachers, chefs, civil servants). Investigations in karoshi trials that often reveal the harsh working conditions of these occupations suggest that the nature and workloads of these occupations have changed and intensified in the last few decades. The workplace realities of these occupations do not match with the “common sense” of LSO officers, yet, their preconceived notions prevent them from providing fair investigations.

At the Ministry level, their general reluctance can be explained by the larger implication of workers' compensation awards. The recognition of "work-related" status for a karoshi victim through a workers' compensation award suggests that the particular working condition is hazardous to the health of other workers in that workplace. With this verdict, the employer is in effect obligated to improve the working condition that produced the problem. For the ministry to recognize a quantity of karoshi cases as "work-related" means that they risk challenging the tenet of "lean production" management and "rationalization" policies that take long work hours and work overload for granted. The labor Ministry that historically has been the ally of big corporations in labor control to promote the economic growth of the nation is doing their best to avoid facing this dilemma.

Protecting Businesses, not Workers

The general approach of the labor administration suggests the pro-business orientation of the Ministry. Makoto Ishida (2002) claims that the labor law system in Japan gives "precedence to respecting the autonomy" of private businesses. Their tendency to trust the claim of the businesses regardless of the reliability of the claim is apparent. An officer from the statistics department of the Ministry who is gathering data on five-day week system from businesses confided the double standards they are applying.

As we have requested businesses to report accurate data, we can't go back and say they are not [accurate]. So we just use whatever the data as they are... I am not sure if we ever investigate the actual conditions...

The investigations regarding workers' compensation are often made in the same spirit. The officers tend to trust the claims of the businesses more than those of workers and their families. A young officer in the Labor Standards Office told me of a "suspicious worker's compensation application." He received a case in which a construction worker claimed an accident at two o'clock in the morning. In the end, he rejected the case because "the employer maintained that there was no such work." He never investigated the actual work hours of the construction company.²³

The tendency of the ministry to protect businesses and distrust the claim of labor is reflected in their rejection of *karoshi* as a legitimate concept. The director of Labor Standard Bureau insisted on not using the term "*karoshi*" saying that:

Those of us who serve in the administration consider the term '*karoshi*' not only lacks a precise definition, but also contains the risk of various misunderstanding. Therefore, we do not use the term '*karoshi*' at all."²⁴

Until the mid- 1990s, the Ministry refused to acknowledge *karoshi* as a legitimate work-related medical problem, and had been calling it "so-called" *karoshi*. The antagonistic attitude of the officers in the Labor Standards Office is attributed by most activists to the Ministry's pro-business orientation and general suspicion towards *karoshi* as a legitimate labor issue.

The recent trend of judicial support for *karoshi* victims and the wide spread acceptance of *karoshi* by the media and mainstream society, however, are prompting the Ministry to reevaluate its standards for workers' compensation for *karoshi*, and to accept *karoshi* as a work-related hazard to be compensated. The attitudes of the officers in the

²³ Interview conducted by R. Morioka, 2002-03

²⁴ Quoted in Makino Tomio, "*Nihon teki roushi kankei to karoshi*" 1991, p.52

Labor Standards Offices are also gradually shifting especially in larger cities, as the increasing number of verdicts is given in favor of the families' claims, and the public opinion is recognizing karoshi as a grave social problem. In the words of Ueno from Labor Standards Office, in rejecting workers' compensation applications for karoshi, just saying "no is not enough any longer."

VI. CONCLUSION

The wives and mothers of karoshi victims who initially possess little knowledge of karoshi and legal matters grow into the active agents of social change through anti-karoshi legal activism. Unlike men who are entrenched in the economic and employment system, women in Japan enjoy relative freedom from the social webs and responsibilities that bind men to work organizations. Paradoxically, the marginalized status of women, particularly married women, allows them to hold differing attitudes from men who are immersed in the work-centered lifestyle. Women with families are seriously concerned with the overwork problems of husbands and children, and some are willing to take action. The Litigant women in karoshi lawsuits become indispensable fighters in the battle to create "the society without karoshi." Under the common identity of "mothers and wives" of karoshi victims, anti-karoshi activist women transcend disparities and organize themselves. The shared label of "housewife" interestingly allows them to act political when social norms expect them to be apolitical. Their emphasis on caretaker role helps them to link their grievances to their traditional role as mothers and wives, and to gain moral legitimacy to challenge corporate and state authorities.

While many other potential litigants coil from taking legal actions due to social stigma, the litigant women in anti-karoshi activism dare to do so out of strong desire to prove that their loved ones “died from work” in the line of duty. At the basis of their decisions is their deep intimate knowledge of the victims’ sufferings for which the women feel obligated to rectify on behalf of their husbands and children. Non-litigant women, on the other hand, tend to be uncertain about the cause of death because they lacked concrete knowledge of their loved one’s work life, and therefore, give in to the general prejudice against workers’ compensation and litigation. In contrast, workers’ compensation for the activist women provides the means to protect the victims’ “honor”, and civil lawsuits to clarify the responsibility of the employers who neglect their moral and legal duties to protect the health of their employees. Through the processes of their litigation and experiences of activism in public, the women gradually gain a wider knowledge of labor rights issues, ineffective labor administration and the abuse of corporate power. The women also learn to become activists outside of the court with the guidance of the lawyers, appealing to the public through media, collaborating with labor organizations, and forming support groups.

With the assistance of lawyers, supporters, and other litigant women in the activism, the litigant women make hard decisions to fight against powerful corporations and the state and sustain their efforts. But how do they manage to win such difficult lawsuits? What are their arguments in the court and how do they convince judges that their loved ones’ did not just die of diseases but actually were “murdered” by work overload forced by corporations? The next chapter describes in detail how the litigant

women and lawyers rely on the “traditional” notions of masculinity, work, and employer-responsibilities to interpret the labor laws to their advantage.

CHAPTER 5

DEBATES: THE POLITICS OF DUTY, RESPONSIBILITY AND BENEVOLENCE

It's the responsibility of companies to stop workers from overworking and to make sure that they don't die because workers fulfill their duties risking their lives.

-Nishida Shouko, plaintiff wife

He fulfilled his duty as a corporate warrior. Why shouldn't it be recognized officially?

- Yamazono Keiko, 55, wife of a vice-present in a mid-size company

Japanese labor administration exculpates corporations for their responsibilities for karoshi by refusing to provide workers compensations for karoshi.

- Kawahito Hiroshi, activist lawyer

I. INTRODUCTION

Since the resurgence of anti-karoshi activism in the 1990s, the number of legal victories in karoshi trials has steadily increased. As long work hours and their health consequences are increasingly viewed as a social problem, the labor administration and courts have been pressured to take the matter seriously and provide fair trials. In 2005, 869 circulatory diseases-related workers compensation applications has been filed and 330 cases saw legal victories in the same year (38%¹). The number has increased from 685 applications and 85 compensations in 2000 (12%). How do the plaintiffs in karoshi litigation manage to win compensations for heart attacks and strokes of their family members? How do they make employers responsible for employees' overworking when workers willingly put in long overtime? This chapter examines legal debates and discourses surrounding karoshi cases, and offers an insight into the ways in which anti-karoshi activists assert their claims against powerful corporation and the state.

“Unique” Japan or “Normal” Japan?

In exploring law and rights in Japan, it has been common to argue that the assertion of rights is fundamentally incompatible with Japanese legal, political, and social norms. “Unique” Japanese culture that values group goals rather than those of individuals, a preference for consensus over conflict, a propensity to feel shame and resort to indirect communication in situations of tension are common explanations for

¹ Since a legal case usually takes more than a year, the number does not represent the exact rate of compensation against the number of applications filed in a given year.

why Japanese fail to assert their individual rights.² Others blamed Japan's distinctive legal structural barriers such as limited number of legal professionals strictly controlled through the bar examination, the high court filing fees to initiate litigation, and a long and burdensome legal process.³ For the most part, the observers of contemporary Japan, with few exceptions, have stressed the view that Japanese rarely assert rights or engages in forms of legal behaviors. In their efforts to counter the "myth of Japanese uniqueness", others have gone to the other extreme. Steven Reed (1993), for example, has asserted that Japan is not "uniquely unique" requiring a special category, but Japan that is like every other place where "normal" means conforming to a standard.

In view of these arguments, Eric Feldman (2000) attempts to bring the pendulum to a balance. In challenging the "myth" of Japanese aversion to the rhetoric of rights and the legal means of conflict resolution, he urges scholars of Japan to be attentive to both the uniqueness and commonalities with other cultures in their rights assertion. He writes:

Countervailing forces like a strong state bureaucracy willing to intimidate or suppress rights assertion, institutional barriers that make using the courts difficult, conservative judges and a hierarchical court structure that moderates judicial innovation, statutes or administrative guidance that require conciliation, and a 2,000 year history, all shape the assertion and recognition of rights in Japan. These differences are real; but they do not justify the all too common claims about the insignificance of rights in Japan.

While acknowledging that Japanese aversion to rights assertion is "significantly overstated", Feldman also asserts, "it would be unwise to ignore the view that there is

² For example, Kawashima, Takeyoshi. 1967. *Nihonjin no hō-ishiki* [Japanese legal-consciousness]. Tokyo: Iwanami Shoten.

³ For example, e . John O. Haley, 1978. "The Myth of the Reluctant Litigant." *Journal of Japanese Studies*. 4.

something inherent in Japanese culture that minimizes the importance of rights and the resonance of rights assertion.” While challenging, it is more fruitful according to the author, to identify when and how people in Japan articulate their grievances.

Following Feldmans’ insights, this chapter pays particular attention to the ways social actors frame and discuss the issue of *karoshi* and make their claims in the court. The assertion of labor rights in the context of Japanese work culture is filled with complexity and paradox intertwined with the meaning of work. In the social environment in which overt assertions of individual rights are discouraged, Japanese assert their rights in ways different from how it may be done in the US, for example. In the debates surrounding *karoshi*, the term “rights” [*kenri*] is rarely found either in public or private discourses. Instead, their grievances are articulated in the language of duty and responsibility that bind employment relationships. The plaintiffs in *karoshi* litigation strategically claim their rights to compensation relying on the moral assumption of employer “benevolence” over the wellbeing of employees.

Politics of “Duty and Benevolence”

Anti-*karoshi* activists’ framing of the problem as the matter of employer “duty” and “responsibility” in their assertion of labor rights resonates well with the society’s cultural assumptions on employer benevolence. The importance of cultural compatibility between a social movement frame and basic assumptions of dominant culture has been pointed out for movement success (Snow and Benford, 1992; Noakes and Johnston, 2005). The term “narrative fidelity” describes the synchronicity of a social movement frame with the narratives, myths, and “cultural stock” of the target group. The rhetoric of

“duties” and “responsibilities” provides anti-karoshi activists narrative fidelity and moral sanction to assert their rights and views in a way otherwise be deemed ‘selfish’. By appropriating the cultural symbols of the dominant group, the activists circumvent the cultural constraints and stigma attached to asserting workers’ rights against employers. The language of duty and responsibility and the cultural assumption of employer benevolence that underlie their claims provide anti-karoshi activists a vocabulary and strategy around which to organize their movement and assert their views within culturally legitimate boundaries. With this framing tactic, anti-karoshi activists have won the series of verdicts supporting their claims, forcing the Labor Ministry to review their policies and compensation standards, as well as to increase the level of pressure on businesses to obey the labor laws, no matter how inadequately. Conversely, the fact that anti-karoshi activism had a relatively small impact on the day-to-day corporate practices can be explained by the fact that the frame of karoshi itself did not resonate with workplace culture and the sentiment of workers whose consciousness had been shaped by the long years of corporate logic and rhetoric throughout the modern history of Japan.

Paradox of Moral Argument

The anti-karoshi activists’ emphasis on “duty and benevolence” paradoxically has produced the effects of preventing activists from addressing larger social issues linked to karoshi (e.g. employment structure that relies on the overtime of existing work force), and of undermining their goal of creating a “society free of karoshi.” In their efforts to present the images of the victims as dutiful and hardworking employees who deserved better care and concern from their employers, the plaintiff teams reconstruct the ideal

masculine image of loyal “corporate warrior” [*kigyo senshi*] who sacrificed their lives for work duties. The constructed image and their narratives also allude to the fulfillment of cultural expectations about the gendered division of labor in which men’s masculine identities and honor are intertwined with the notion of work. Yet, the affirmation of corporate warrior image ironically weakens the plaintiffs from questioning the unsound work and occupational health practices that are at the root of the problem of overwork and *karoshi*. The plaintiff women are also prevented from asserting the redefinition of traditional gender roles that push men to overwork and bar women from full participation in economic activities. The issue of lifestyle dominated by work duties and family life marked by men’s absence from home, for the most part, remains a secondary issue and rarely discussed.

Marc Steinberg (1999) in his analysis of frame theory stresses the non-strategic aspects of collective action framing that constrain and limit discourse of social movement agents. The opposition groups, he points out, are burdened with establishing a “requisite moral integrity” which serves as the foundations of mutual understandings that explain the justice of their claims and actions. Their framing of issues partly depends on “the veracity” of the discursive repertoire they appropriate, and never completely stand outside the meanings imposed by dominant fields. Therefore, while opposition groups seek to appropriate and transform “hegemonic genres”, as Steinberg asserts, the agents are “always captive to the truths these genres construct.” The appropriation of model worker image and the moral discourse by anti-*karoshi* activists provides telling evidence for his argument. Their discursive strategy limits their success by not only constraining their ability to challenge fundamental causes of the problem, but ironically reinforces the

“corporate warrior” image of workers that they set out to oppose. As a consequence, despite the recent trend of legal victories and the changes in law and labor policies, the fundamental work practices that directly harm wellbeing of workers remain unchallenged by anti-karoshi activists.

Limited Impact on Work Practices

Litigation that are likely to challenge the prevailing social norms and order on a general rather than a particular level have more potential to become a broad movement with implications beyond the particular dispute.⁴ Karoshi lawsuits do have the potential of challenging widely held assumptions about long work hours and the prioritization of work responsibilities over private needs. However, despite their success in appealing to the media and shifting public opinions and government policies, the activists have little success in bringing fundamental changes in work practices. When asked in an interview with me, most activists admit that little has changed in the way people (over)work.⁵

Upham (1987) has noted that the political independence found in judiciary decisions in Japan does not translate into an effective review of administration decisions to initiate political and social change. Anti-karoshi activism relies on the legal system in which there is no effective administrative mechanism to enforce labor law or legal decisions. Control over workers is often ensured through informal means and sanctions. The court decisions could only exert their influence in the formal realm of legal spheres. Although

⁴ Frank Upham, *Law and Social Chang in Postwar Japan, 1987*, 3

⁵ In this chapter, as in most of this dissertation, my data are gathered from observation, interview, and as in this case participation in organizational activities. I attempt to give citations where appropriate. Almost all of my accounts are based on original data collected in field work.

the Labor Standards Ombudsman formed by the activist lawyers⁶ is one of few civilian efforts to augment this judicial and administrative weakness, the initiative, mostly led by the lawyers rather than the labor, involves too few activists to solicit large scale change in a short term.

Although a public health issue often mirrors social maladies reflecting complex set of social issues, interventions of professionals and activists necessarily turn multifaceted causal factors into a narrowly focused problem. In his exploration of drinking and driving problem, Joseph Gusfield (1981) has pointed out the tendency of public debates to center on a single factor. He wrote, “In focusing almost exclusively on the factor of alcohol, [the debate] necessarily turns one element in a complex pattern of ‘causes’ into a single major factor”. In the process, the causes of a problem that are embedded in the society become effectively hidden and overlooked. The debates surrounding karoshi cases narrowly focus on the factor of work hours and employers’ responsibilities over it. By doing so, manifold issues related to karoshi such as problematic employment and wage structures, gender relations and discrimination, inflexible educational system, inadequate state protection against poverty, the quality of labor democracy are rarely addressed in the debate.

Gap between the Law and Corporate Realities

While workplace practices may not be easy to change, it is not difficult to prove the violation of the labor law by the businesses once evidence is obtained. The gap

⁶ Please see Chapter 2 for more detailed accounts of Labor Standards Ombudsman led by the activist lawyers

between the liberal law in regard to protecting workers' health and the realities of workplace practices is immense and obvious. The recent legal victories of anti-karoshi activist capitalize on this gap, asserting that the employers' legal "duty to consider" the health of workers in assigning jobs is not fulfilled. Employers are obligated to provide periodic health check-ups by law and adjust each worker's workload according to the results of the health check-ups. Yet, the investigation of work and health status among workers reveal how the health needs of workers are deemed a matter of less importance in corporate culture. It reveals how the masculine quality of workers are exaggerated and manipulated to extol the sacrifice and devotion of workers. The metaphor of war and the image of "corporate warrior" [*kigyo senshi*] widespread in the discourse of work and health also highlight the harshness of workplace realities. The cries of workers and their families in their statements on work and health provide moral resources to anti-karoshi activists.

Assumption of Little Worker Agency and Powerlessness

Anti-karoshi activists' portrayals of workers are characterized by the attribution of little agency and power, and the courts are increasingly willing to support this view. With the exceptions of the defendant companies' attempt to blame workers and their families for the deaths of their employees, workers are often viewed as powerless with no ability to help themselves in the dire work situations in which they find themselves. In the debates, the responsibility for workers' health is described as either on employers or families, particularly, on mothers and wives, as workers lack power, energy and time to protect themselves from ill health. Christena Turner (1989), in her investigation of

democratic consciousness among Japanese, found that the sense of powerlessness is pervasive among Japanese workers. Workers associated the notion of democracy to the absence of tyranny, and frequently linked tyranny with “the daily coercion” they experienced. The debates surrounding the responsibility for overworking and health reveal similar assumptions. Workers in their view are informally “coerced to work willingly” by the work conditions they are made responsible for, even when they appear to work and put in extra hours of overtime at their will. In their arguments, anti-karoshi activists strive to show the coercive elements in victims’ work, which are subtly disguised in the ‘harmonious’ employment relationships or hidden in corporate incentive system. The courts in recent years are increasingly willing to support the views that workers are powerless with little ability to impact own work life conditions and are forced to work over their physical and mental limits.

In the following sections, the chapter first introduces the rationale surrounding workers’ compensation and civil lawsuit decisions. The legal procedures and arguments presented in the process are examined. The chapter then discusses the moral nature of the activists’ arguments and the paradox of karoshi trials, followed by the discussion on the corporate culture that radically differs from the legal spirit of the labor laws. The masculine image of “corporate warriors” and the metaphors of war are highlighted. The remainder of the chapter then investigates the debates concerning the responsibility for workers’ health and overworking as the result of coercion or free will.

II. Workers' Compensation System and Lawsuits

Anti-karoshi activists' legal strategies include two types of legal actions: workers' compensation and civil lawsuits. The purpose of the workers' compensation system is stipulated in the Labor Standards Law as to provide "speedy", "fair", and "minimum protection" to guarantee life "humane". The purpose of the compensation, therefore, is not to compensate damages inflicted, but to guarantee minimum livelihood of workers and their families regardless of the existence of fault and negligence.⁷ On the other hand, the purpose of a civil suit is to determine whether or not an employer has neglected to fulfill its legal responsibilities, and to compensate the damages inflicted by the neglect under the civil code. As such, the fundamental purposes of the two compensations differ from one another.

What is at Stake

The central debate in workers' compensation litigation hinges on determining whether the cause of death is related to work overload [gyomu kiinsei]. Only a limited number of karoshi cases are able to prove the link between "obvious work overload" and diseases. In determining the causality, the administration requires "reasonable causal relationship" [*soutou inga kankei*] between work events and the onset of acute disease/death to be demonstrated. When other factors such as non-work related stress or preexisting conditions such as high blood pressure exist - which is often the case due to overworking - the administration requires work events to be proven as the most significant contributing factor in accelerating the progression of an existing condition and

⁷ Okamura Chikanobu, "Karoshi, Karojisatsu Kyuusai no Ronri to Jitsumu", 159, 2002

leading to the onset of acute disease (See Figure 5.1). For this, an applicant must present a detailed description of work condition and daily activities 6 months prior⁸ to the onset of disease, and a medical explanation on the causality based on the presented work condition. It has to be medically shown that work overload “suddenly and significantly aggravated the natural progression of circulatory disorder and caused the onset of the disease”. While the administration is required to investigate each case before making decisions, the burden of proof is on the applicants.

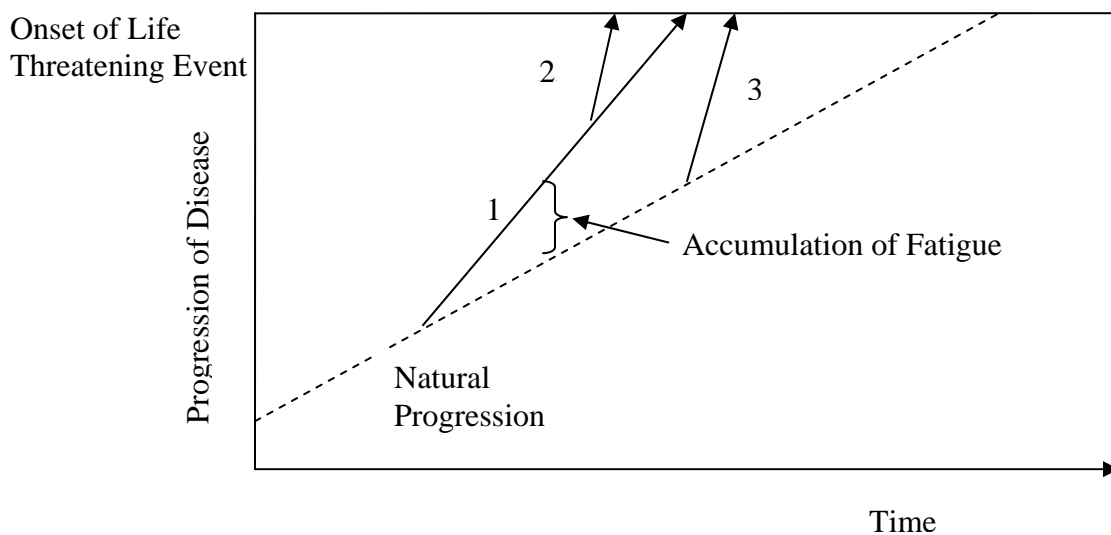


Figure 5.1: New Guidelines for Workers Compensation on Overwork-related Cerebral and Heart Diseases⁹

1. Significant deterioration of vascular disease due to work-related fatigue
2. Onset of disease triggered by acute work-related stress
3. Onset of disease due to acute work-overload

⁸ The time frame of 6 months considered relevant for consideration was extended in 2001 from previous guideline which specified only 1 week prior to death to be relevant for legal consideration.

⁹ Translated from Ministry of Social Welfare and Labor: Report from the Special Commission on Workers Compensation Guidelines Related to Cerebral and Heart Diseases 11/15/2000

Official Compensation Guidelines [Nintei Kijyun]

In evaluating cases, the administrative offices heavily rely on the authorization guidelines [nintei kijyun] set by the Ministry of Labor¹⁰. Although the Ministry relaxed the criteria in 2001 in response to the increasing number of judiciary rulings against the administration, the guidelines remain difficult hurdles to clear for karoshi victims and families. The guidelines define three types of “obvious work overload” [gyoumuniyoru akirakana kajyuhuka] that can be considered causally related to brain and heart diseases. They are 1) unusual events, 2) short-term work overload, and 3) long-term work overload. Originally, according to the guidelines set in 1961, only the cases caused by “unusual events” such as accidents were compensated. The second category of short-term work overload was added in 1987, but in reality, the compensation was limited to an extremely small number of cases due to the administration’s continued emphasis on accidental events. The third criterion that takes “accumulated fatigue” [chikuseki hirou] into account for 6 months prior to the onset of disease was instigated in 2001. The acceptance of the notion of “accumulated fatigue” is considered “epoch-making” as it marks a shift from the accident-oriented compensation policy that had been rejecting long-term work-related fatigue as a cause of brain and heart diseases. The following provides further descriptions of the three types of work overload specified by the most recent guidelines.

¹⁰ The Ministry of Labor merged with the Ministry of Health and Welfare in 2001, and is now called the Ministry of Health, Welfare and Labor.

1) Unusual events [Ijyou na dekgoto]:

Within *one day* prior to the onset of the disease, it must be shown that the victim had encountered an unusual event, of which the time and place can be clearly identified. This includes mental overload such as extreme trauma, tension, and fear, physical overload such as emergency-related physical stress, and changes in work environment such as extreme heat and coldness.

2) Short-term Work Overload

Within a short period, approximately one week prior to the onset of the disease, it must be shown that the victim was continuously engaged in especially heavy workload, compared to usual workload. This requires not having a day off within the period, and engaging physically or mentally especially strenuous work immediately prior to the onset.

3) Long-term Work Overload

It must be shown that the victim was engaged in especially heavy workload for a long period of time that caused accumulation of fatigue [chikuseki hiro]. The causal relationship is considered stronger when the overtime is longer beyond 45 hours per month one to six months prior to the onset. The guidelines specify approximately 100 hours of overtime one month prior or an average 80 hours of overtime 2 to 6 months prior to be the “karoshi line”.

In addition to these criteria, the Ministry lists other work factors such as types of work (irregular work hours, jobs with frequent business trips, shift and night work), work environment (temperature, noise, time differences), and mental stress (routinely tense work, stressful events). The official guidelines stipulate that all these factors can be taken into consideration for overall compensation decision.

Grievances against the State “on the Business Side” and its Guidelines

The Ministry of Labor and its Labor Standard Bureau have been criticized as being “on the businesses’ side” by the activists. The function of Labor Standard Bureau is to monitor private businesses for fair and safe labor practices and to protect workers from harmful work conditions. In making compensation decisions, the Bureau is supposed to be a neutral referee if not a supporter for the labor. However, the Ministry has approved only about 5-15% of compensation applications for vascular diseases in the 1980s and 1990s, and less than 20% in the early 2000s. Activist lawyer Kawahito (1995) expressed his opinion in his book as to why the Ministry is reluctant to provide the compensations.

I believe what the Ministry of Labor fears is, more than the financial implication for the compensation system, the impact of workers compensations for karoshi on workplaces... An increase in the number of compensations for karoshi means a criticism from the Ministry against the realities of working conditions created and led by Japan’s large corporations. This can possibly lead to a situation in which the foundation of labor management of many Japanese corporations, which take work overload for granted, is threatened.

The Ministry engages in blatant efforts to fight against applicant families and win the compensation lawsuits. Anti-karoshi activists are often taken aback by their unabashed

alliance with corporations. For example, the Ministry/Bureau officially enlists victims' employers as "assistant participants for the defendant [the Bureau]" to aid them in their legal suits.¹¹ From the activists' point of view, as one lawyer expressed his rage in a meeting, the Ministry, whose official stance promotes the shortening of work hours, in reality, approaches the problem of karoshi "siding with the companies."

The workers' compensation guidelines for brain and heart disease have also been an object of intense criticism by the activists. The basic approach of the administration towards karoshi is criticized as "the policy of rounding off" [karoshi kirisute seisaku] that dismisses the problem and desert karoshi victims and families. Even the latest revised guidelines, in which the Ministry accepted the notion of "accumulated fatigue" as a causal factor after a series of lost cases in the higher court, are seen as a means to superficially fix the obvious discrepancies with the decisions of the judiciary in the lawsuits. From the point of view of the activists, the guideline continues to contain many unnecessary restrictive conditions that limit the possibility for compensation. For example, the period prior to the onset of disease that is considered relevant for the evaluation is limited to one week for "short-term overload" and one to six months for "long-term overload". The activists charge that there is no rational reasoning in these limitations. Hosokawa Migiwa, one of the doctors who coined the term karoshi, criticized the arbitrariness of the criteria. "[The criteria of] one week is just to give a range, and there is no scientific reasoning whatsoever in and of itself. It is extremely

¹¹ For example, in Nishihara Michiyasu's administrative lawsuits in Osaka District Court (workers' compensation awarded in 1999), the Bureau listed his employer Meito Unyu as an "assistant participant" to support their claim.

worrisome if they stamp ‘authorized’ for 7 days, and ‘rejected’ for 8 days.”¹² The activists see the criteria nothing other than for the convenience of the administration if not a means to make the compensation difficult.

The Strict Application of the Guidelines by the Administration

Another frequent complaint from applicants for worker’s compensation is the administration’s strict adherence to the guidelines and their rule-driven nature. An applicant whose application was rejected complained. “I went to the office to ask about the reason for the rejection, but the officer in charge kept reciting ‘the guidelines this, the guidelines that’ as if they were a mantra. But it wasn’t clear to what degree they really understand the case.” The activists complain that the mechanical application of the criteria by the administration leads to judgment and reasoning divorced from the “common sense” of workers. A lawyer expressed his amazement with the logic of the Labor Standards Office in rejecting one of his cases.

In 1989, he was working from 6am to 9pm every single day for the whole year except the first two days of the new-year holiday. His working condition almost made me think that it was an act of suicide. But the Labor Standards Office decided that the case was “not related to work” [gyoumu gai]. And the reason for this decision was explained as “because the long work hours was a routine pattern for the victim, the causal relationship between work and the disease could not be found”. I was dumbfounded when I heard this.¹³

The guidelines at the time required victims to be engaged in “especially heavy workload comparative to usual work” within one week prior to the onset of disease. Even though the victim’s work was constantly overloaded and obviously harmful to his health, the

¹² *Gekkan inochi*, 254 (1987), 13

¹³ Lawyer Tsuzumi Koichiro in “Karoshi, Karojisatsu Mondai no Kenzai,, Kako, Mirai” March 2002.

administration narrowly applied the guidelines to the case, rather than using “common sense”.

The arbitrariness of the criteria in determining the existence of causal relationship between work and disease was made obvious when the Ministry relaxed the guidelines in 2001. The administration had been refusing to compensate Nishida for her husband’s death for 11 years insisting that there was no causal relationship between work and his cardiac infarction. When the guidelines were amended in 2001, while the case was in trial, the administration suddenly changed its decision and approved the case as “work-related” [gyoumu jyou]. Dr. Azuma, who wrote a medical opinion for the case, expressed his ambivalent feeling towards the administration’s sudden change of mind.

I am stunned that the Labor Standards Bureau made a sudden turnaround and changed their decision for workers’ compensation just because the evaluation criteria [nintei kijyun] has changed. Should the relationship between overwork and circulatory diseases be manipulated so easily like this? Through this case, we can see how the guidelines hold no truth in them.¹⁴

Nishida’s lawyers had been hearing a rumor about a strong pressure put on the Labor Standards Bureau not to approve the case by the labor Ministry because the Ministry had been resistant to consider “accumulated fatigue” as a causal factor for karoshi. However, a couple of Supreme Court decisions against the Ministry in the previous year forced them to reconsider its policy and Nishida’s case. The incident made it clear that the process of determining the medical causal relationship between work and death, so central to compensation decisions, really depends on the political climate within the Ministry of Labor.

¹⁴ Dr. Azuma Mikio in “Karoshi, Karojisatsu Mondai no Kenzai,, Kako, Mirai”, March 2002.

The activists' anger against the labor administration is closely related to their moral belief that having a person die from karoshi is a "crime of the society" [shakai teki hanzai]. They stress the "unreasonableness" [rifujinsa] of having to die of overwork when workers wholeheartedly dedicate their lives to work [seishin sei hataraita]. The irresponsibility of corporations and the administration that hide the reality of "inhumane labor" [hiningenteki roudou] is strongly denounced by the activists. Against the Labor Standards Bureau which "stubbornly" refuses to compensate karoshi victims, the activists protest that the least the society could do for those who died is to "save and help" [kyuusai] their families with workers' compensation. Toyoshima, one of the lawyers in Nishida's case, a legal suit which took 11 years before finally receiving the compensation due to amendment in the guidelines, emphasized the immorality of the administration's previous decisions:

I couldn't help feeling that offering assistance to the family required too much time. When her husband died, her daughter was a small child. The family needed the financial assistance then when the daughter was growing up, going to the elementary, middle, and high schools. The amendment of guidelines is an internal issue of the administration. Is it right to allow the families of karoshi victims to suffer so long and be left at the mercy of internal administrative problems?

Underpinning the demands for workers' compensation is the activists' conviction that offering assistances to the families of karoshi victims is a matter of moral justice in the society. The administration which refuses compensation to karoshi victims and their families are seen as an unfair gatekeeper who needlessly torment families who are in need of help. But another object of their anger is the businesses that made the victims "work till die" [*shinumade hatarakaseta*].

III. CIVIL LAWSUITS AGAINST CORPORATIONS

Anti-karoshi activists regard karoshi as a social problem [shakai mondai] that epitomizes the evil of “corporate-centered society” [kigyō chuushin shakai]. As discussed above, while the officers in the Labor Standard Bureau and the medical doctors who support them emphasize the physiological mechanism of karoshi in the trials, the activists regard karoshi as a result of the “erosion of human dignity” [ningen no songen] in workplace. Karoshi to them is a manifestation of the lack of *shakai seigi* [social justice and righteousness] in the society taken over by corporate interests. Activist lawyer Okamura expressed his view:¹⁵

The reason that the number of karoshi deaths does not at all decline lies in the fact that corporations not only control internal affairs [of their businesses] but rule the entire society with their mighty power. As if it is an inevitable consequence, corporations are having estimated over 10,000 workers die of karoshi every year. Yet, the victims and their families are not compensated for it, and the assailant corporations are not being held responsible.

Anti-karoshi activists see karoshi movement and trials as a means to correct the problems of the society that prioritizes corporate interests. Arguing against an opinion that the anti-karoshi movement is “limited” only offering “individual and private solutions” and unable to “change the society itself”, Okamura offered his view of the movement.

Our efforts in each karoshi case are indeed “individual and private solutions”. However, these efforts raise the question about the ways of “corporate-centered society”, and seek changes in its consciousness and the system. For, the key to the social change is how the workers, who are the target of contradictions of the “corporate-centered society”, participate

¹⁵Okamura Chikanobu, 2002. *Karoshi, Karojisatsu Kyuusaino Rironto Jitsumu*. Theory and Practice of Assisting Karoshi, Karo-suicide Cases Tokyo: Junpousha

[in the change] and become the leaders of the reformation. Aside from this movement, social movements (or a means) that “eliminate the root-cause of the corporate society’s contradiction”, in reality, do not exist anywhere else.

Using the momentum of the anti-karoshi movement that was building up, he urged people to create a labor movement that is capable of a “struggle for securing worker’s life that would be more like that of human being” [ningen rashii roudousha no seikatsu o kakuhosuru undou]. In his mind, the culprit of the problem was clear. Commenting on a monumental karo-suicide case won in the Supreme Court, the activist lawyer denounced the criminality of corporate practices.

This lawsuit raises the issue of the ruleless capitalist, corporate-centered society of this nation which commits “social murder” through depression-related suicide [and karoshi.] The trial warns against its criminality, and raises the question about the urgent need for establishing work rules. ¹⁶

Laws designed to protect labor rights and regulate employment practices do exist in Japan. Yet, the government authority in charge, the Ministry of Welfare, Health and Labor and the Labor Standards Bureau, lack the political will and practical means to enforce the laws.¹⁷ The secretary-general of Osaka Occupational Health and Safety Center [rodo kenko anzen center] lamented this fact. “Common to every karoshi case is the fact that the victim did not have to die if only his employer obeyed the Labor Safety and Health Laws....” Labor laws are neglected by the businesses to the extent that many employers and managers are not even aware of the existence of the laws. As discussed

¹⁶ Okamura Chikanobu, *Karoshi, Karojisatsu Kyuusai no Ronri to Jitsumu*, 432, 2002

¹⁷ Andrew Gordon (1998) has described the history of the collaboration between businesses and the State in curving labor rights and power.

further below, anti-karoshi activists tactfully utilize this fact and the liberal contents of the laws as tools for challenging powerful corporations.

The Legal Arguments in the Court

Anti-karoshi activists' arguments in civil lawsuits focus on the responsibility of employers in preventing the sudden deaths of the victims. The clause 65 of the Industrial Safety and Health Laws stipulates that employers' are obligated to "take into consideration" the protection of workers' life and health from the hazards in their business operation. The anti-karoshi lawyers argue that according to the law employers are bound by four concrete "duties to consider safety" [*anzen hairyo gimu*] in order to prevent karoshi. Okamura (2002) summarizes the duties as follows:

1) Duty to maintain reasonable work conditions [tekisei roudou jyouken sochi gimu]

In order to prevent health problems due to work overload and onset of karoshi, employers are obligated to adjust work hours, the timing and place of breaks, days off, intensity of labor, number of workers, and work environment etc. For example, in case of night shifts, employers must arrange work schedules so that continuous night shifts can be avoided in a week.

2) Duty to monitor health of employees [kenko kanri gimu]

Employers are obligated to provide health check-ups (minimum at the time of hiring and once a year) including examining blood-pressure, anemia, heart-beat, liver diseases, fat

content level in blood, urine test. Employers are required to grasp each worker's health condition at all time and detect health problems.

3) Duty to assign proper type of work [tekisei roudou haichi gimu]

For employees with health conditions (including common diseases such as high-blood pressure) and those with the possibility of health problems, employers are obligated not to assign duties that might worsen their health conditions, to lighten work duties (to avoid night shifts and overtime, shorten work hours, and reduce workload etc.) and to adjust tasks and places of work accordingly.

4) Duty to provide care and treatment [kango, chiryo gimu]

To employees who have or might have experienced the onset of disease due to overwork, employers are obligated to provide proper care and treatment (sending to a hospital with an ambulance etc.).

In karoshi legal cases, the plaintiffs argue that the employers have neglected to fulfill these legal obligations and are responsible for the deaths of the victims. The court decisions that support plaintiffs' claims also accept the activist lawyers' interpretation of the laws about employers' duties in preventing karoshi. Osaka District Court, for example, supported the claim of Nishida, whose husband had died of a heart attack after working from 4:30am to 6pm everyday. His work involved loading and unloading of 480 packages that weighed a total of 7200 kg and driving the distance of 230 km everyday.

The District Court ordered the defendant to pay 48,860,000 yen (approximately 436,250 USD) with the following justification.

...It can not be said that the defendant was in a position which prevented them from considering Michio's [the victim] health condition and properly adjusting Michio's workload early on by changing the delivery course and method, or suitably having [the victim] take days off. And, it can be said that if the defendant had taken these measures, Michio could have avoided the onset of the disease... In spite of this, the defendants (concretely, the manager of Sakai branch office) forced the heavy workload to the victim for over 7 years and led him to suffer the onset of the disease. Thus, the court deems that the defendants neglected their obligation to protect Michio's health...

According to the decisions of the court, employers are legally obligated to monitor and “consider” [hairyo suru] their workers' health condition and adjust work hours and workload in accordance with individual health statuses. The interpretation of the law is very liberal and provides broad protection to workers. However, the liberalness of the statutes is contrasted with the realities of workplaces that often neglect the labor laws. The laws designed to protect individual workers with liberal principles run counter to repressive workplace practices. Upham (1987) has observed that the legal norm in Japan “assumes social behavior and attitude considerably more individualistic, egalitarian, and assertive than many Japanese feel comfortable.”¹⁸ This means that with a willing judge and enough evidence, prosecuting an employer for neglecting his legal obligations to protect workers' health is rather easy as the realities of Japanese workplace, as shown below, are a far cry from the liberal mandate set forth by the court.

¹⁸ Japanese Constitution was drafted by the American Commission in 1946 during their post-war occupation. The foreign imposition of the laws, as well as the conscious imitations of foreign laws on the part of the Japanese can be attributed to its liberal nature.

IV. Moral Arguments and the Paradox of Karoshi Trial

The plaintiff teams in anti-karoshi litigation manage to win the support of the judges and legal victories by linking their grievances to the wider social value of benevolence that penetrates employment relations. The debates surrounding karoshi trials highlight the responsibilities of employers over workers' health. The activist plaintiffs stress the moral and legal responsibility of employers in sincerely caring for employees' well-being while workers dedicate their lives to their work duties. The relationship, they stress, is bound by reciprocal obligations to each other's welfare, and therefore, employees are entitled to their benevolent care. The importance of moral arguments in Japanese court cases and social change has been noted by Frank Upham (1987). He wrote, "The judges' proclamations of support in the form not only of plaintiffs' victories but also of moralistic opinions endorsing the plaintiffs' cause are crucial to the political and social progress of the movement". Appealing to the widely held moral expectation of employer generosity that rewards worker commitment, anti-karoshi activists frame karoshi into an epitome of moral decay brought by the tyranny of corporate power and the state that supports it.

Strong moral indignation often serves as an important drive in Japanese litigation. Examining pollution cases against corporations in Japan, Upham (1987) noted the plaintiffs' "innocent faith" in the legal system's ability to function as an instrument of moral justice, and the total absence of the language of either legal rights or monetary compensation. The plaintiffs of karoshi litigation similarly see the legal process as a means to redress moral injustice they suffered. Victorious plaintiffs often ask for formal

statements of apologies and promise to improve working conditions from the defendant employers and management as part of their compensation. They assert that the demands are to rectify the moral injustice they suffered from the employers' invalidation of the victims' dedication and hard work.

The arguments put forth by the plaintiff teams reveal fundamental moral assumptions about employer responsibility over workers' welfare. The plaintiffs complain that *karoshi* is "unreasonable" [*rifujin*] because a victim dies when he is fulfilling his duty devotedly and responsibly while his employer does not fulfill his responsibility. They assert that employers are obligated to assess each individual employee's health status and adjust workloads accordingly [*kenko kanri gimu*]. If a worker has a chronic condition of high blood pressure, for example, according to their argument, his employer is obligated to monitor his condition and adjust his workload. While far from actual practice, their interpretation of *kenko kanri gimu* takes one step further from protection against obvious industrial hazards, and places the onus of day-to-day health management on employers.

According to the plaintiffs, employers are to take responsibilities for workers' health and prevent workers from overworking precisely because employees devote their lives to work. Workers dedicate their every waking minute to work to fulfill their duties, the plaintiffs assert, and are thus unable to maintain their own health. Therefore, they assert that it is up to the *kaisha* [company] to draw a line as to how much work is beyond safety for each employee. The plaintiffs insist that workers loyally fulfilled their duties even when they were in poor health. This obliges employers, in return, to take a moral responsibility in protecting them.

My husband died because he put himself in the company's position before protecting himself... He considered his work most important. That's why he couldn't run away, and died... But all the shacho [president] did was to try protecting himself. All he said was 'I didn't mean this' 'I didn't know that' 'I didn't make him do it'... He didn't mention a word about his responsibilities and duties. He kept evading and saying that he has nothing to do with it... I couldn't believe the stark difference between my husband's attitude who worked himself to the bone for ten years and the attitude of the shacho. Between my husband who worked hard and the shacho, I know my husband was right, and I am the only one who can prove that.

- Nishida Shouko, 47, plaintiff wife of a restaurant manager

What matters the most to the plaintiffs is often the employers' moral integrity that reveals their sincere concerns in protecting workers' health. Benevolence and generosity of employers are expressed in a variety of ways in Japan: in the form of fringe benefits that include housing, family expense assistance, vacation facilities, or in the form of free health check-ups for all employees. What is expected of employers by the plaintiffs is the recognition of the victims' devoted service and employers' *seii* [genuine concern] for employees' well-being. The plaintiffs almost always mention that if the employers had expressed sincere concern as employers, they would not have taken the matter to the court. A survivor of near-karoshi heart attack expressed his anger towards his employer who failed to show compassion and willingness to take care of employees in a difficult time.

Why did I sue the company? That's because they asked me to quit [after surviving a cardiac infarction]. If that's the case, I must be "disposable" [tsukaisute], mustn't I? ... I wouldn't have sued the company if they kept me despite the disability. But they asked me to submit the resignation, and then I realized that they see employees "disposable"... They totally lack *seii* [sincere concern, loyalty, heartiness]. That's why this case turned into a compensation lawsuit. This is the same for all the plaintiffs [of kiaroshi]. If the companies responded with more *seii*, no family would want to go through the ordeal of civil lawsuit.

- Nishimura Satoru, 53, Survivor of *karoshi*, driver in a major package distribution company

His anger is against the employer's lack of moral integrity that failed not only to protect the lives of their workers, but also to show sincere concerns towards their hard working employees. The lack of *seii* [sincere concern] on the part of employer is a crucial factor in deciding to sue the employer in every *karoshi* case. In the minds of the victims' families, *seii* is the core of employer generosity, with which employers should respond to *karoshi* cases. Their failure to do so meant that they did not care to protect workers' right to "live like a human being" [*ningen rashi seikatsu*].

Lack of Benevolence as a Cause of Labor Revolt

Japanese workers' demands for better treatment have been often couched in a paternalistic dependency on their employers, producing ambivalent feeling of what Ishida Takeshi (1984) has termed "dependent revolt". In their demands, the expectation for employers' benevolence has often been at the root of their grievances. Ronald Dore (1987) has argued that basis of employee obedience in Japan is the assumption of employer goodwill towards employees. During two and a half century of Tokugawa period, the peasant rebellions were always protest rebellions based on the premise that rulers ought to be benevolent, and that a desperate life-risking protest might call them back to the path of virtue. In Japan, employers, rather than the state, have taken a large part of social welfare responsibility throughout its modern history. Andrew Gordon (1999) persuasively argues that the system of new social welfare created during the postwar growth period purposefully steered workers to depend less on the state but more

on employers, in order to allow companies to control their labor force. For instance, unemployment insurance, old-age pensions, and health insurance offered by the state provided less protection with higher premiums compared to those subsidized by private companies. The government then encouraged private companies to take up the benefactor role by offering tax incentives, in effect forcing workers to rely more on employers than the state.¹⁹

Unlike contractual employment relations found in many western nations, Japanese employment relations tend to extend to the spheres of private life including family, leisure, social rituals and health. In exchange for dedicated and obedient service, businesses are expected to take up social responsibility not only for employees' economic wellbeing but their health, social welfare, and sometimes even personal matters. While the expectation for employer benevolence is gradually changing under the shifting employment structure, especially among younger workers who work through temporary agencies or under *seika-shugi* [the system of remuneration based on outputs], the plaintiff families tend to emphasize the conventional view of employment relations. The assumption about employers as benevolent benefactors can be seen in the relationship between employers and families of *karoshi* victims. Following the deaths of their husbands, some widowed wives in anti-*karoshi* activism have been offered jobs by their husbands' employers. The employers emphasize their patron roles justifying their offers as "to make sure that the families will not be in trouble" [*kazoku ga komaranai youni suru*]. While their offers are commonly interpreted as generosity in helping the families sustain their livelihood, anti-*karoshi* activist recognize the hidden advantage for the

¹⁹ Gordon, *The Wages of Affluence*, p. 177

employer in employing the wives - silencing victims' families and avoid Worker's Compensation legal cases. Yet very few, including anti-karoshi activist openly criticize the practice.

The Irony of Corporate Warrior Image

Despite their increasing success in legal suits and pressuring the government to respond to the issue, karoshi litigation produce paradoxical and unintended consequences. In their efforts to argue that the victims died of work, not just a disease, plaintiff women try to show victims' dedication to work and extreme toiling before death. They reconstruct the work life of the victims, creating the best images of the victims based on the ideal of male model worker who has the capacity to prioritize work over private needs. This ironically results in reinforcing the cultural image of Japanese workers as "corporate warriors" who do not hesitate to sacrifice their lives for work. The image of the victims they create, in effect, unintentionally reinforces the culture of overwork that they set out to eliminate in the first place. Their expressions being in line with the dominant work culture is important in asserting the moral responsibility of employers and gaining support for their cause. It allows plaintiffs to insist that employers must do their part when workers have done theirs. Yet, the implicit result is to condone the corporate practices that exposed their husbands to the risk of karoshi.

The most common image of a victim presented by the plaintiffs is that of a loyal worker who continues to work hard despite his fatigue and health problems. In the accounts of the plaintiff women, their husbands, like brave soldiers, rarely heed to ill-

health or seek medical assistance, but ignore their health problems and almost obsessively devote their life to their duties.

For ten years prior to his death at age 50, he endured extreme work hours and fatigue by receiving drip infusions for nutrition. He was taken to a hospital in an ambulance twice due to overwork and fatigue. He also suffered work-related injuries for three times. Yet, he kept working, averaging over 250 hours per month for 4 months prior to death although his company officially recorded 0 hours for his overtime.

- Shimada Yoko, wife of a sales manager

My husband wholeheartedly worked for the company for 28 years and 8 months without taking sick or injury leaves, and in the end died of karoshi. It wasn't that he was always healthy. He was tired. But he kept working day and night.

-Hirata Emiko, wife of a section chief in a manufacturing factory

The discourse surrounding karoshi is permeated with the expressions that equate work with masculinity²⁰and valor. Through the portrayal of the victims as loyal soldiers who courageously sacrificed their lives to work responsibilities, the plaintiffs construct the image of the victims as model workers. In doing so, the plaintiffs ironically employ the same language of masculinity that corporate culture uses to enforce single-minded focus and total commitment to work duties among workers.

My husband became gripped by the work to the degree that made me worry. Day in and day out, I was worried about his health. But no matter what I said, all he said was “for men, work is life” [otoko wa shigoto ga inochi da]... He became fixated with his work to the degree that he lost interest in everything he used to like when he was younger.²¹

- Okikubo Aki, Wife of a corporate employee

²⁰ While there are female victims of karoshi, especially in traditionally female occupation such as teachers and nurses, the number of lawsuit cases compared to cases involving male are few.

²¹Shinuhodo Taisetsuna Shigototte Nandesuka [What is the job important enough to die for?] p. 224

My husband used to say, ‘This is an economic war. It will be my life or my job....’ After all, he lost his life... In the dream I had ... he did not know that he was dead and was still working...

- Yamazono Keiko, 55, Plaintiff wife of a karoshi victim

The metaphor of war exalts men’s single-minded attitudes towards work and neglect of health, and serves as a euphemism for employees who are made to risk their lives in harsh working conditions. Yet, the euphemism is often taken for granted by the plaintiff wives, and considered “honorable” to be a “corporate warrior”.

Your husband lived and worked hard sincerely everyday. He sacrificed his life for the company. You are the only one who can take revenge on the company for him. You must fight so that you will be able to tell your children that your husband was a courageous corporate warrior.

-Tanabe Yoshiko, litigant wife

Their acceptances of the metaphor of “corporate warrior”, about which one can proudly tell their children, is propelled by their desire for the public recognition that their loved ones dedicated their lives to their work responsibilities. Yet, their expressions inadvertently result in the effect of affirming the practice of “work till you drop” [shinuhodo hataraku] which they set out to change in the first place.

Japanese work culture often emphasizes mental strengths, and extols those with psychological capacities and discipline to overcome physical limitation in dealing with their health problems. The plaintiff women portray their loved ones in a similar manner emphasizing their hard working nature and willingness to sacrifice their private needs for work responsibilities.

Working overtime till midnight was common and taken for granted. He frequently went to the office on weekends too. Mental and physical

fatigue was severe. As he could not stop thinking about his work even when he was at home, he was suffering from insomnia and began taking sleeping pills. He was under tremendous stress and starting to show the symptoms of depression. He often bled from his nose due to stress, and had to go and see an otolaryngologist. Yet, he kept working by sheer force of will and sense of responsibility.

- Morita Keiko, Wife of a karo-suicide victim

A strong sense of responsibility and the ability to persist at work with diligence and perseverance are praised qualities of a good worker in Japanese corporate culture.

Ability to prioritize work responsibilities over one's private enjoyment or health needs, and be able to persist in time of difficulty is regarded as essential traits. The plaintiffs often emphasize these qualities in the victims, model workers who prioritized work responsibility above all else.

When he died, it was not that my husband was playing tennis that he enjoyed, or attending his son's soccer tournament that he loved to watch, but was on the business trip under the company's control. He kept working suppressing debilitating headaches and finally suffered Subarachnoideal hemorrhage. His diligent, patient, and perseverant character, and his strong sense of responsibility turned against him.

The plaintiff mothers and wives were often worried about the health of the victims before their deaths. Almost without exception, the women described their efforts in making their loved ones take time off and rest, but the workers in the end refused to do so despite their exhaustion.

I begged my husband to take off from work when he was suffering from stress-related stomach ulcer. I said to him, "Your life or work, which is more important to you? Please take time off!" But my husband said "when I think about the pile of work, I can't stay home and sleep. That would give me even more stress." After hearing this, I could not insist. In less than a year, my husband lost his life.

- Wada Yoshiko, plaintiff wife

I was so worried about my husband because he was working day and night, and was not getting enough sleep. I used to hide his alarm while he was sleeping, but he still used his wrist watch alarm and got up and went to work.

- Okahira Emiko, plaintiff wife

Margaret Lock (1980) has argued that in Japan, fatigue, stress and minor illnesses are often subject to suppression in favor of a display of self-control and discipline so that their social duties can be fulfilled. It has been also suggested that insisting on continuing to work despite sickness is not an uncommon way of proving one's industriousness. In her observation among Japanese factory workers, Christena Turner (1993) similarly describes workers' insistence on working despite ill health, not wanting to become *makeinu*, a whipped puppy. The women's portrayals of the victims' lives reflect these observations.

My son was very devoted to work and sincerely worked very hard. He was advised by his doctor to reduce his workload by 40%. But after resting a while, he went right back to the same condition with long overtime hours and Saturday work.

- Ohashi Satoko, Mother of a manufacturing company employee

The meanings of hard work and health come to be conflated as workers' diligence and industriousness are expressed through their abilities to ignore ill health and "push" themselves. The litigant women's descriptions of the victims, reflecting the prescribed ideals of workers' behaviors and workplace norms, have the ironic effect of reinforcing the culture of overwork that exposed their loved ones to health risks.

The traditional notion of gender relations that defines the realms of work as men's sphere and home as women's is often emphasized in the women's discourse, contributing to the image of the victims as model workers and ideal husbands.

My husband was a person with "man's virtue" [otokogi]. He believed that men's life belonged to work and working single-mindedly was a desirable quality for men. He used to say that working hard and earning a living for family is the most important duty of men. I did my best to support him, and tried to take care of his health.

- Nishida Emiko, wife of a restaurant manager

Even when the idea of gendered division of labor between work and home does not reflect reality, the ideal is still emphasized in their discourse. Nishida from above example, for instance, worked fulltime outside of home and earned income as much as her husband did. Yet she described herself as a wife who supported her husband's work, and be solely in charge of housekeeping and childrearing in order to allow her husband to focus on his work. Similar link between manliness and being the head of household and breadwinner was often stressed by male workers as well. An employee in a trading company in his early thirties expressed his masculine pride in being a sole breadwinner of his family. He resolutely said, "I don't know what will happen in the future. But no matter what happens to my career, I don't want to send my wife to work." Some husbands find pride in being able to provide for their families single handedly without their wives' income. Yet in reality, it can be a tremendous source of pressure on men when the rising prices and staggering economy increasingly make it hard to sustain a household with a husband's income alone. The plaintiff women's emphasis on the cultural assumption of sole male breadwinner and of women as their care-takers has the

ironic effect of reinforcing the masculine image of “corporate warrior” and the culture of overworking.

The paradoxical consequence of emphasizing the model image of male Japanese workers as “corporate warriors” is not only to leave the fundamental causes of *karoshi* unchallenged, but to perpetuate the underlying corporate values that normalize work overload and health risk taking. The activist plaintiffs are unable to seriously challenge workplace practices that condone work overload and long overtime, and to empower workers in protecting themselves from *karoshi*. Rampant work practices that ignore workers’ health needs and expose workers to the risk of *karoshi* are seldom highlighted in the discourse, and the fundamental issues of labor exploitation and the lack of labor rights are left unaddressed. Instead the victims’ single-minded dedications and hardworking nature are emphasized as deserving of employers’ ‘concerns’ [*hairo*] and protection, limiting the activists’ ability to challenge existing workplace norms. Consequently, the litigation leaves the power to change (or not to change) harmful labor practices with employers, and so far have resulted in little improvements in actual working conditions.

V. Gap between Workplace Health Practices and Duty to Consider Safety

Employers must provide health check ups for employees,... and according to the medical advice, employers must take measures such as adjusting work location, changing tasks, and shortening work hours...,

- Labor Safety and Health Law, Clause 65-3

In Japan, a thing like “Duty to Consider Safety” is out of the window until someone actually dies.

-Nishimura Satoru, 53, package delivery service driver

Despite the existence of the laws that specifies employers' "duty to consider" physical and mental health of workers and adjust their workloads, there is a wide gap between workplace realities and the condition that the liberal law stipulates. The gap is rather glaring to those who understand the law and know the work practices of karoshi victims. Once enough evidence is gathered, it is not difficult to prove employer's violation of the labor law. In other words, the obvious discrepancy between reality and the law helps anti-karoshi activists put forward their arguments and win legal victories in the court.

Testimonies of workers about their working conditions underscore the gap between the courts' liberal interpretation of the laws and the reality. When a one-day consultation hotline for workplace "power harassment" [pawa hara] was opened in Tokyo, over 300 calls flooded in, complaining verbal, sometimes physical, harassment by their bosses.²² The calls revealed that the concept of *anzen hairyō gimu* seemed to completely take a back seat in some workplaces. For example, a worker explained that he was reprimanded for calling in sick and told, "Do you have guts to take a leave when it's so busy!" [isogashii noni yasumukika!]. Despite the law, he was prevented from taking a sick leave and forced to work. A Supreme Court case that favored the plaintiff also provided an extreme but telling example. Investigations of the case revealed the gross violation of the labor laws and human rights in a major advertisement company, Dentsu, in Tokyo. During their after-work socializing, Oshima Ichiro, a 24-years-old new recruit was bullied by his boss, and forced to drink beer out of his boss's shoe, along with his

²² Asahi Shimbun, 2/23/2003

colleague who was made to swallow vomit. In Dentsu, against the labor laws, over 100 workers were routinely working from the morning to mid-night due to work overload. Oshima, who was made responsible for 40 clients despite his inexperience, worked all night without sleep every 3 days in his last month until he committed suicide. Oshima's case is not an isolated case, but reflects the basic lack of labor management and protection in many Japanese workplaces.

Management in Japan commonly maintains a minimum number of personnel²³ in order to reduce labor cost, and count on workers' overtime in coping with workload (often unpaid beyond a limited number of hours). As a result, employees are often unable to take leaves to care for themselves when ill despite the protection of the Occupational Safety and Health Laws. The following statements are from workers who claim that their colleagues have died of overwork.

I have been diabetic for 10 years, but the reduction of work force makes it impossible to keep up with insulin shots. Daily overtime, take-home work, business trips and entertaining customers at night make it difficult for me to control my diabetes.

-Harada Yosuke, 40, production equipment sales personnel

The atmosphere of workplaces, especially where the labor union is weak or non-existent, is often such that it is hard for workers to insist on their right to sick leave. Workers themselves rarely think of sick leave as a legal right, but rather a cause for extra workload for colleagues and themselves, and refrain from taking it as much as possible. Lacking labor unions' protection in day-to-day work life, workers usually have no recourse but to

²³ Nishimura and Johnson discuss the implication of Japanese 'lean' production method for karoshi in "Kaorhi-Death form Overwork: Occupational Health Consequences of Japanese Production Management", *International Journal of Health Services*, Vol. 27, No. 4, 625-641.

push themselves. Extraordinary perceptions towards work and health and unsound health practices among workers are often evident.

I suffered from stomach ulcer. I kept working while taking medicines... There was no way I could take time off. If I did, there would be more work waiting for me when I come back. Nobody would take care of my work for me. I am the one who would be in trouble if I take off, so I don't... The atmosphere is that one couldn't take time off for such a trifling thing as an ulcer. There are just so many who are working with illnesses, like with 40 [Celsius] degree fever, that it is normal.

-Kameda Tadashi, 32, insurance company employee

Doctors can often attest to the nonsensical health practices of corporate employees.

A businessman came to see me due to pain in his chest. I told him there was a chance of myocardial infarction, and ordered immediate hospitalization. You know how he replied? He said, "I can't because I have work to do."

- Ryozo Okada, Physician in Tokyo

The degree of severity that requires a worker to be exempted from obligations is high in these workplaces compared to Western societies. The "sick role"²⁴ that exempts them from work responsibilities is not easily available unless the condition is so serious that one is incapacitated and hospitalized. "In this company, you can't rest until you collapse", a manager of a restaurant complained a day before he killed himself. Wife of another worker recalled, "When I received a call that my husband collapsed, I said to myself, 'he can finally take days off and rest'. But when I got there, his body was already cold [dead]." Experience of a civil servant who was told "hattedemo detekoi" [come to work even if you have to crawl] and an insurance company employee being told

²⁴ Talcott Parsons coined the term "sick role" to describe the social dimension of becoming sick, exempted from normal social responsibilities. The cases of Japanese workers reveal the socio-cultural difference in the perception of and willingness to adopt the sick role.

“netsugurai de yasumuna” [do not take a leave because of a trifle like a fever] all suggest the hegemonic work culture that is miles away from the judicial interpretation of the labor laws. Informal but strong management control embedded in draconian corporate culture makes it almost impossible to attain “sick” status that release workers from their work responsibility.

The ability to prioritize work and persevere in the face of hardship is linked to masculinity in corporate culture that extols men’s sacrifice and perseverance at work. The ambiance of workplace is often such that one can not complain or rest without damaging his masculine identity or risking career advancement prospects for the future. It is not unusual for superiors to push subordinates resorting to the language that challenges workers’ masculine identities in order to push workers to increase productivity.

At my work, it is taken for granted that work is most important. Anyone who whines is considered not a man. The mood at work is such that if you complain even a little, they would look down on you and say “Are you a man being like that? Are you a Takase’s employee?” It’s a kind of condition in which one can not think about family or self. We are driven into a state in which we can think about nothing else but work. The labor condition is such that mere 80, 100, or 120 hours [per month] would fly away, and that is taken for granted. With the kind of employer who values profits over worker’s livelihood, we could die anytime. Tomorrow can be my turn to die of karoshi.

- Yamada Takashi, a worker in a construction company

Just as in the plaintiff women’s portrayals of the victims, workers’ descriptions of work life are also permeated with the metaphor of war and masculine toughness to withstand harsh working conditions. Workplace is often depicted as a “battle field” [senjyo] where work is assumed to be a hardship [shigoto towa tsurai mono] while male workers are portrayed as soldiers [kigyo senshi].

In my company, overtime is called “Death March”²⁵. The extra hours put in, in addition to regular work hours, reach 100 to 200 hours per month.

- Maeda Tatsushi, 35, IT engineer

In the work culture that equates work with survival in the battlefield, taking time to care for own health is not a taken-for-granted act

My superior does not allow me to take a sick leave... He only says that “Everyone is working with illnesses, so you have to try harder. It was ‘live or die’ during the War.”

- Corporate employee, male, 37²⁶

Work duties are often regarded with the same intensity with the survival in a battle, and even loss of life is seen as inevitable “death in war” [senshi] and “honorable” casualty.

There is a corporate culture that even sees karoshi as an honorable death in war. When a section manager in my company died at his desk holding a pen while writing a report, his younger colleagues thought it was “sort of cool” to die like an “honorable warrior” [meiyo no sennshi] and that it must have been a satisfaction for him to die working hard [honnmou dato omou].²⁷

-Kameda Tadashi, 32, insurance company employee

Corporate employees, especially younger workers with much enthusiasm for their career sometimes derive pride and satisfaction in being “corporate warriors” and able to “fight for 24 hours”. The expressions of work as war reflect the cultural assumption that work responsibilities must be fulfilled at all costs just as soldiers’ duties in a war. Like in military, the depictions of workers’ everyday life suggest the powerful control of

²⁵ The relocation marches of POWs that killed tens of thousands of soldiers in South East Asia during the WWII.

²⁶ Asahi Newspaper, 7/1/ 2003

²⁷ Interview by R. Morioka, 2002-03

managements dictating workers' life. Japanese corporate practices have been compared to that of military.

Japanese corporate organization resembles military organization very closely. All the things that are supported to be peculiar to the Japanese company-the organization song, exercising together in the morning, the ethic of loyalty and putting the organization before the family, vertical hierarchy, inter-organizational rivalry, no right to refuse overtime, respect language with different forms of address for superiors and inferiors, and profound contempt for women-are all commonplace in, say, the U.S. Marines²⁸

While some executive level officers are aware of the problem of illegal overtime and make some, but often superficial, attempts to curve the problem out of concern for public relations, many managers in charge of day-to-day operation, out of necessity, condone or even encourage long work hours under intense working conditions. A lawyer in karoshi litigation described the attitude of the defendant employer.

The corporation was well aware of the [illegal] long work hours and work overload. Yet, they not only did not try to change the condition, but encouraged the illegal labor practice by declaring that they are in the state of "war". Every fiscal year the "war" was to begin from September, and employees are supposed to make a total dedication just as in an all-out war.

- Kawakami Hideo, activist lawyer

In the work environment where the importance of health over work can not be taken for granted, making decision to look after oneself can mean a somber choice between life and career. The father of an employee warned the public to take better care of themselves in the readers' column in a newspaper.

When overwork threatens health, it often becomes a serious choice between life and job because it is difficult to take time off. You must

²⁸ Charles Lummis in *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Fanselow and Kameda, 1995, p. 234

choose life. It can not be helped if you are laid off... It takes a lot of courage, but it really depends on whether you can make up your mind and say there is no work more important than your life.

- Father of a company employee²⁹

In many workplaces in Japan, he points out, it requires “a lot of courage” to take time off when sick, and protecting one’s health is a “serious choice” that risks one’s job. Despite the existence of Industrial Safety and Health Laws that liberally protects workers’ life and rights, the basic labor rights of Japanese workers in protecting one health, in practice, seems little heeded.

The discrepancy between the spirit of the labor laws and workplace realities reveals the powerlessness of workers and organized labor in changing work conditions that jeopardize workers’ health and well-being. Most enterprise-based labor unions are uninterested in the issue of occupational safety and health³⁰, and workers and their families often find no place to seek help. The services that lawyers and labor activists in anti-karoshi activism provide represent one of few assistance workers could access. A maintenance worker of a health center timidly sought a help of the Labor Standards Ombudsman organized by activist lawyers fearing the retaliation of the management.

Here is the list of all the problems in my company. If I take a leave due to sickness like flu, they would not let me use my sick leaves and force me to make up for the days... We workers can not do anything to change the reality... Please report to the Labor Standard Office... But please do not reveal my name.

²⁹ Asahi Newspaper, 6/17/2003

³⁰ See Chapter 2 for the discussions on the reaction of labor unions to karoshi.

His health was deteriorating, but unable to do anything for himself as others at his work were all refraining from complaining in fear of losing their jobs. He knew the illegality of the problem, and finally “summoned his courage” and consulted the Ombudsman.

Concerns brought to the Labor Standards Ombudsman and the rapidly increasing number of *karoshi* litigation in the civil-service labor court [Jinji-in] reveals that deaths due to work overload and the violation of *anzen hairyo gimu* is not limited to the private sector but widespread among public offices and institutions.³¹ A 50 year-old public school teacher consulted the Ombudsman. He complained that he has been forced to teach an additional subject and take up many other school related responsibilities without any compensation. Due to extreme stress and fatigue, he began to suffer from vomiting, severe pain in his neck and back, hypertension and breathing difficulty. When he was finally hospitalized for 2 weeks, his doctor diagnosed him with “panic disorder”. When he was facing another hospitalization during a summer recess, his superior threatened him. “If you are hospitalized, you would not be able to stay on-call anytime as necessary. In terms of paycheck, it would not be good for you, so think well about it.” In the end, the teacher decided not to be hospitalized and kept working.

The widespread violation of *Anzen Hairyō Gimū* [safety consideration duty] and *Kenko Kanri Gimū* [health management duty] means that the defendant employers in *karoshi* cases are punished for the neglect of duties which in reality few employers in Japan actually observe. The tendencies of the defendant employers to appeal to the

³¹ The increasing number of *karoshi* claims and compensation in public sector can be attributed to the active and “militant” unionism in the public sector, as well as to the pervasiveness of unhealthy work practices that goes beyond the “corporate culture”. While the term “corporate culture” does not reflect the prevalent workplace practices that include public sector, for clarity and simplicity, I will use the term “corporate culture” in this study.

higher courts and fight against lower court decisions for many years partly owes to the fact that businesses find the decisions surprising and unacceptable. It is hard for the businesses to accept the penalties for practices that have been norms and which are practically everyone else's.

Workplace Reality: Emphasis on Individual Responsibility

The gap between *anzen hairyo gimu* and the realities of Japanese workplaces is even more salient when one considers how individual workers are made responsible for ill health in the work environment that makes health promoting behaviors almost impossible. Workplace norm often stress the notion of *jiko kanri* [self-management] in personal life. Ability to maintain good health status, and therefore not to hamper workplace productivity by falling sick, is often exaggerated and moralized, and considered part of one's work capacity. Unable to do so and falling sick is negatively judged by managers, and can affect performance evaluations that impact salary, bonus and/or promotion. An employee from a major insurance company explained what it means to be sick in his workplace:

I had duodenal ulcer twice... From the beginning, falling ill with ulcer is something to be ashamed of, so I could not mention this fact to anyone at work. I have to keep my mouth shut because they would say I am unable to manage my own health... So, I slipped out to the hospital during work hours, and swallowed a gastro-camera. I know there are loads of people like me in the workplace. Some people have surgeries during lunch time and come back to the office to keep working.

- Kameda Tadashi, 35, insurance company employee

In many workplaces, optimum and productive state is seen as a norm, and falling ill is regarded abnormal, rather than occasional but unavoidable events in life. No matter how stressful and unhealthy their work environments are, workers are supposed to stay fit and be productive at work. As a result, individuals are often pressured to hide the fact of being ill in order to avoid the criticisms of others.

Friedson (1970) and other scholars of deviance classify sickness as one deviance for which individual is not held responsible. For sickness, according to Friedson, there is “absolution” from blame, the deviant is managed permissively rather than punitively. However, the meaning of sickness in Japanese work culture seems to be radically differ from that of general context. In workplaces, sickness is considered a result of neglect and individual incapability to fight off illnesses. It is seen as a consequence of mismanagement of personal life. The notion of “*jiko kanri*”, which places the onus of illnesses on individuals, shifts the way people respond to sickness from that of tolerance to punitive and disciplinary.

The notion of individual responsibility, *jiko kanri*, helps shift the burden of prevention back to workers and leave the issues of working conditions unaddressed. The problem of focusing on individual responsibilities in public health issues has been pointed out in the past. For example, in her study on Fetal Alcohol Syndrome, Elizabeth Armstrong (1998) points out “the privatization of public health” in which the politics of “assigning” causality to disease blame moral failure of mothers who drink. The source of problem is found to be in individuals, and the means of prevention is predicated on a change in “lifestyle.” In the process, any aspect of their environment, no matter how disadvantaged it may be, is ignored and remains unaddressed.

In karoshi trials, while discounting occupational health factors such as work overlord, long hours, and stressful environment that can trigger illnesses, the defendants emphasize individual behaviors in staying fit and productive. Victim's smoking habit, the level of alcohol intake, blood pressure, the types of food intake, daily exercise and obesity, and health care seeking behaviors are often brought up as points of argument in the defendants' rebuttals. For example, denying their responsibility, the employer of Nishimura Hitoshi, an employee of a major transporter company, blamed his inability to manage high blood pressure, fat contents in blood, and maintaining healthy life style in general. Despite his 12-15 hour shift with only 3 days off in a month, which made it nearly impossible for him to maintain healthy lifestyle, the plaintiff was made to defend his eating habits that excluded oily food, "moderate" level of smoking, and his efforts to exercise and receive regular health checkups. The emphasis on lifestyle and individual habits allows the defendants to blame victims in triggering diseases, and divert attention from corporate responsibilities.

The notion of *jiko kanri* is sometimes exaggerated and placed out of context not only by the businesses, but sometime by the court as well. A telling example is the karosicide case of 24 year old employee in an advertisement agency, Dentsu, mentioned earlier. While the verdict by the High Court favored the plaintiff's claim, the decision partly agreed with the defendants' claim and held the victim responsible for "not taking rational actions" in order to recover from mental depression, as well as his parents for not "predicting his depression and suicide" and "taking action to improve" his mental health condition. Though this part of the decision was later overturned in the Supreme Court, the High Court ordered that the 30% of the responsibility to be held accountable by the

victim and his parents, and reduced the level of compensation by the amount. The High Court's decision shows how the notion of *jiko kanri*, in this case that expands to the responsibility of family members, is pervasive in the society.

The Role of the Court as a Defender of Labor Rights

The gap between the liberal interpretation of the labor law in the court and the actual work practices also suggests the judges' concern over the lack of labor power and protection in workplace. In the midst of the "corporate-centered society", the court of law serve as one of few institutions in Japan that attempt to promote workers' rights and reverse the trend of tighter labor squeeze prompted by the laissez-faire relaxation of the state regulations. Upham (1987) has noted "a long and well-deserved reputation for political independence" of the Japanese judiciary and their "willingness to make decisions unpopular with the government." The recent trend in supporting plaintiffs' claims in *karoshi* civil lawsuits and reversing the administration's decisions not to compensate *karoshi* victims indicates judicial willingness to act as a protector of labor rights in the current non-union climate. Judges in Japan are known to be conservative, and far from being "champions of labor rights". Yet, they are aware of the harsh workplace realities that workers in "overworking society" [*hataraki sugi shakai*] are facing, even through their own experience of work overload. Like any other occupation, judges themselves are not immune to overworking and *karoshi*.³² They are also aware of the mounting concerns of the public and the media about overworking and work-related health problems. According to Upham (1987), the courts in Japan sometimes function as

³² In March 2004, wife of a High Court judge in Osaka filed for workers' compensation for his *karo-suicide*. She stated, "his workload was beyond the amount which he could 'digest' with sheer efforts." "I want to recover my husband's honor who was proud of being a judge."

“a forum of the public articulation of the grievances of parties outside the ruling coalition, and thereby enable outsiders to circumvent the elite control of the political and social agenda that is inherent in bureaucratic informality.” As the media and the public opinion increasingly portray long work hours and work-centered lifestyle problematic, more and more judges are willing to support plaintiffs’ claims in karoshi trials.

VI. ASSUMPTION OF NO WORKER-AGENCY

Whose Responsibility is Worker’s Health?

In contrast to the workplace norm of *jiko kanri* [self-management] that leaves the responsibility of workers’ health to individuals, anti-karoshi activists present their view based on the assumption that workers possess little power to protect their health from unsound practices of the businesses. In their efforts to propound *anzen hairyo gimu* of employers, anti-karoshi activists attribute workers little agency in caring for themselves. Workers are too busy with their heavy work responsibilities, they argue, therefore, employers must take responsibility for them. Plaintiff women also stress that they are doing their part in maintaining workers’ health in accordance with the culturally prescribed roles of mothers and wives. An underlying issue in the debates is who bears the responsibility over workers’ health, and the courts in recent years are increasingly inclined to support the plaintiffs who assume no agency of workers in protecting themselves from harmful work practices.

Worker’s Inability to do Health Management

In their discussions on the responsibility over workers' health, the plaintiffs emphasize the employers' *kenko kanri gimu* [duty to manage employees' health] to maintain the health of employee. Under the severe working conditions, they claim, there was no time or energy left for individual workers to care for themselves, and therefore, employers bear responsibility over the employees' health.

As for responsibility for health, I believe most of the responsibilities fall on employers. If you ask whether workers can refuse work, they really can't, for they worry about the consequences of refusing... The companies take overtime for granted. The work condition is such that one can't finish work unless he puts a lot of overtime... When we consider the reality of work place, it [responsibility for health] is an issue that employers must take care of. I don't think we can ask individuals to be responsible for own health.

- Plaintiff in an unpaid overtime lawsuit, Tajima Takeshi, 29,
Construction company supervisor

They argue that basic health habits are impossible to keep under the working conditions. Mothers and wives, through their narratives, often try to demonstrate this fact by describing the life of the victims prior to their deaths.

He was working till mid-night every day, sometimes 3 am. He just went to bed and went to work again in the morning at 9am or 10am. Everyday I tried to communicate with him writing memos... I was very worried about his health. He kept saying he was tired and complaining about headaches. He was visibly getting thin... He lost appetite and couldn't even eat his favorite food... When I asked him if he was eating lunch, he said there was no time to eat lunch. He just ate potato chips at the desk. .. He said 'everyone else is working like this, and I alone can't do differently'. He couldn't go out to eat lunch. I cooked dinner for him and left it on the table, but most of the time he didn't eat it. I thought he was eating outside, but in reality he was too tired. He was too exhausted even to eat.

-Hirota Kazuko, 58, Mother of a magazine publisher employee.

Under these conditions in which “everyone else” is working around the clock without proper rest and food, plaintiffs assert that workers’ have no choice but to keep working if they wanted to keep their jobs. The emphasis on workers’ powerlessness and the claim that the victims’ work conditions compelled them to spend their every waking moment for work responsibilities, in turn, allows the plaintiffs to stress employers’ moral and legal responsibility over their employees.

Workers’ Health as Women’s Responsibility

In addition to workers’ responsibility in “managing health”, the responsibility of family members, especially those of women, in taking care of workers’ health often becomes an issue in the debate over karoshi. Mothers and wives are often accused of failing to take care of their loved ones and blamed for their karoshi. In arguing for their cases, the plaintiff women use their culturally defined gender role to their advantage. Rather than denying their responsibilities in workers’ health management, they argue that they are unable to fulfill their role as a care-taker when their husbands and children are spending so much time working and not at home.

I want the employer to let workers go home earlier. Then, their families would manage their health. When they come back home just to sleep, how are we to manage their health?

- Hirata Emiko, 53, wife of a factory supervisor

I was very careful about his health management, paying attention to his meals, amount of exercise, and so on. But the power of corporation that far exceeds individual abilities made my husband draw his last breath.

-Takeda Sachiko, 44, wife of a trading company employee

The discourse also highlights the sexual division of labor between men and women deeply rooted in Japanese gender relations. A man's duty is taken to be a devoted worker who brings financial stability to home, and a woman's job is to support men in fulfilling their duties. Women, according to their narratives, are doing the best they can to look after men's health.

My husband killed himself due to severe depression. Before getting to that point, he was in an awful overworked condition. Five days prior to his death, he was working overtime till 2 or 3 am, and leaving home at 7am the next day. Before that, his schedule was irregular, but still, more than 3 days a week, he came home past midnight. I was worried that he would succumb to a disease. One time, I dragged him out to a brain surgeon, despite his unwillingness to go, because he was complaining a severe headache that even made him vomit.

- Yamada Hiroko, 48, wife of a printing company employee

It was his wife who was worried about his health and brought him to the hospital for a check up. Her husband insisted on working till late at night ignoring his ill health, and she had to "drag him out" to see a doctor because he prioritized his work responsibilities over his health. It was she, not he, who assumed the responsibility for his health.

VII. RESPONSIBILITY FOR OVERWORKING: COERCION OR FREEWILL?

The issue of responsibility over workers' health in the context of karoshi trial is closely linked to the issue of responsibility for overworking. Ability to make healthy choice and maintain healthy lifestyle depends on the level of control workers have over their work life. If work overload is coerced to workers, it is unlikely that individual workers can maintain behaviors that are conducive to optimal health. In the trials, the

defendant employers insist that victims' workloads were reasonable, and that their long work hours, if existed, were due to their voluntary decisions, not by order. The activist plaintiffs rebut their claims by arguing that the victims' decision to work was never a result of freewill but due to the pressures exerted by the management to perform.

Here too, however, throughout the debates, the workers are again portrayed as an entity without agency to address their own problems. While depicted as loyal hardworking employees, workers are viewed as possessing little means to resist the harsh demands of management. The women's narratives stress many sources of visible and invisible pressures in Japanese workplaces that push employees to be a part of reserve army for *karoshi* [*karoshi yobigun*]. Bound by workplace norms, future concerns and their financial responsibility for their families, the plaintiffs argue, workers have little choice but to keep working even when facing deteriorating health.

My husband was forced to accept work overload and extreme stress. His work hours reached 12 to 15 hours a day, overtime was 96 to 120 hours a month. In addition to that, the owner and manager kept calling for him in the middle of the night and weekends. He had to maintain the machine that was running for 24 hours without any support. The management did nothing to help him despite his plea...

- Kanetani Akemi, wife of a factory supervisor

If he wanted to work the next day, if he wasn't ready to quit, he couldn't go home and rest just because he was feeling ill. The gate [of the company building] was closed, and he couldn't even go out for lunch break.

-Hiraoka Chieko, wife of a section chief in a manufacturing company

As most workers wish to achieve a degree of success at work and security for the future, the plaintiffs argue, workers try hard to complete their tasks even when their health is at

risk. Switching jobs, especially for white collars, is often regarded unfavorably and increasingly difficult for older employees in Japan. Those who died of *karoshi*, according to their families, saw no other choice but to keep trying at their tasks no matter how overburdened and fatigued they were.

Scholars with insights of Japanese labor-management relations have pointed to the coercive elements of corporate practices. In his work on a history of labor and management in postwar Japan, Andrew Gordon (1998) has shown that, contrary to the popular image of “harmonious” Japanese management model, its success “owed as much to coercion as to happy consensus.” Kumazawa Makoto (in *Shinbun Akahata*, 2003) has coined a term “forced freewill” [*kyousei saretai jihatsusei*] to describe the ways Japanese workers are made to overwork. At the state policy level, he describes, Japan’s lack of adequate social welfare overburdens individual breadwinners for expensive higher education for children and life after retirement. Job performance today can impact their ability to meet these demanding needs for tomorrow. At the organizational level, Kumazawa contends that the system of individual performance evaluation by immediate supervisors, common in Japanese workplace, unduly pressures individual employees to overwork. If given an unfavorable mark, often based upon the subjective judgments of their supervisors, it can lead to a level of future earnings that would not sustain the “middle class lifestyle” considered a norm in Japan.

The plaintiffs and their lawyers try hard to reveal to the court that the victims were under subtle but extreme pressure, and that their inability to refuse responsibilities left them in anguish behind their apparent willingness. Though often faced with the resistance and interferences of powerful defendants, the plaintiffs make every effort to

gather evidence to prove the subtle coercive elements in the victims' work. A telling example is the case of Murata Yoko who died at the age of 25. She was a nurse working at a national hospital, under the management of the Ministry of Social Welfare and Labor. Convinced by the repeated and emotional pleas of the victim's mother to testify against the powerful employer, a reluctant former colleague finally agreed to describe her working condition in writing to the court in support of Murata in the trial.

In my ward, to finish the work routine almost always took more time than regular work hours. The patients in that ward can not move by themselves, and made me busy ... so daily overtime could not be avoided... Third or fourth year nurses would not claim hours for overtime. The atmosphere was such that if we claimed hours for overtime, we would be regarded as bad nurses... We did not record our overtime unless our seniors kindly wrote it for us or asked us to write it down. Even then, we wrote it less than real hours. The nurses in our ward did not show interest in how many hours of overtimes done or how those hours were reflected in the paycheck. The head-nurse never had to give a verbal order for overtime.

- Nurse, a former colleague of a victim, and a witness for the plaintiff

A written statement by the employer was not only a direct contradiction to the evidence provided by the plaintiff team, but an insult to the plaintiff.

The monthly average of overtime was only 16 hours, which should not cause fatigue especially. There must have been a problem in the ways she spent her days-off.

- Defendant employer of Murata Yoko, National Hospital

The employer blamed the victim for her inability to "self-manage" [*jiko kanri*] her free time. Yet, Yoko's email sent to her friend 6 months before her death, which the plaintiff team managed to retrieve as part of their evidence, revealed the harshness of her actual working condition.

I got home around 3 am, the date has changed. So I only slept for about 3 hours. But I have to start working again at 8:30am. We are supposed to have 8 hours between our shifts, but it's rare that we finish on time. This is the reality of the three-shift system, isn't it?

I just finished my nightshift, but even I feel quite fatigued. It's because the day- shift [8:30am-5:00pm] yesterday was so busy, and I got back around 10pm. There was no time for me to sleep, and have to start the nightshift [0:30am-9:00am] right away. I was dizzy from the beginning of the shift. [Hours in italics were added by the author]

There were no official records of her overtime on the dates mentioned above. Entrenched in the workplace relationships in which personal identity and self-esteem are rooted in,³³ the plaintiff team argued that she found little power to resist unspoken norms and subtle pressure for overtime. Working overtime, often without pay, is taken for granted in many workplaces in Japan, and workers appear to work long hours on their initiative. Yet, the plaintiffs gather evidence that reveal subtle but coercive forces in the victims' long work hours supposedly put in by the freewill of workers. The evidence are often convincing enough for the judges to deem that the victims had little choice but to keep working at insurmountable tasks, and there was little the workers do to help themselves.

VIII. CONCLUSION

Despite the "myth" of no contention over rights in Japan, the debates surrounding *karoshi* show that rights do get asserted in Japan. It also tells, however, that in investigating their assertions, we must pay particular attention on *how* they are asserted and by *whom*. The rights of workers in *karoshi* cases are asserted not by workers but

³³ The tight social relationship created at work and the centrality of workplace identity among Japanese fulltime employees have been described in numerous literatures. See, for example, Takie Lebra 1976, Thomas Rohlen 1974, Kondo, Dorine 1990.

their families, supporters, and legal professionals, and not by voicing the word “rights”, but by speaking the language of “duties”. Anti-karoshi activism reveals the importance of moral assumptions of duties and benevolence in the assertion of workers’ rights, and ultimately in the course of legal conflicts and the direction of social change. As Upham (1987) has noted in the cases of Minamata pollution, the Buraku liberation movement, and women’s equal employment opportunity, social values play an important role in judiciary decision making processes in Japan. The moral overtone justifies plaintiffs’ legal actions and helps gain the support of the judges. The endorsement of the court for the plaintiffs’ moralistic claims also plays a crucial role in appealing to the wider public opinion, the media, policy makers as well as medical professionals who tend to reject the concept of karoshi.

However, the moralistic legal arguments presented by anti-karoshi activists paradoxically limit their ability to pursue their goal of “society free of karoshi”. As anti-karoshi activists construct the images of the victims as “corporate warriors” who sacrificed their lives in the line of duty, and assert the moral responsibilities of employers in protecting workers’ health, they are disabled from directly challenging the harmful practices of the businesses. Their claims to the benevolence of the employers in looking after workers’ wellbeing allow little room for assertions for labor empowerment and fundamental changes in the employment structure. Their emphasis on workers’ powerless and having no agency to take responsibilities over their own health and lifestyle also limits activists’ ability to solicit workers’ initiatives in changing workplace practices. As a result, the underlying issues embedded in the larger social and political context of karoshi, in which workers are left powerless against the demands and control

of powerful businesses and the state, remain unaddressed by the legal activism of anti-karoshi activists.

CHAPTER 6
CONCLUSION:
ACCOMPLISHMENTS IN JAPAN,
AND THE TRANSNATIONAL
DIFFUSION IN ASIA

I. ACCOMPLISHMENTS OF ANTI-KAROSHI ACTIVISM

On November 28th, 2002, the issue of karoshi compensation made its way to the agenda of the Diet. The committee in the General Affairs [*soumu iinkai*] of the House of Councilors [*sangiin*] in the 155th diet debated the subject. A member of the Diet, Miyamoto Takeshi from Japan Communist Party, raised the issue and asked questions to the director of the workers' compensation fund for local government employees [*chihou koumuin saigai hoshou kikin*]. He accused the government of being unwilling to put into practice the new relaxed version of workers' compensation standards created in the previous year.

The intent of the workers' compensation law for public workers, instigated thirty five years ago in 1967, was to eliminate local government employees who could not receive adequate compensation after having an accident and work-related disease. Regrettably, I want to argue that the current condition [of the compensation system] is not helping people that are supposed to be helped... The new standards allow the long term accumulation of fatigue, not just one week prior, to be taken into consideration. Why aren't you reviewing these cases according to the new standards?... I don't think you are reviewing anything... After all, it is a change only in the form, in reality, things are going as usual. The change does not happen in the place where it really needs improvement. This is the reason why we point out that the reform of Koizumi administration is only on the signboard, and has no substance in it.

Anti-karoshi activism is one of few successful labor related social movements in recent years in Japan. As of mid-2000s, close to 1000 workers' compensation and legal claims are being filed annually for karoshi cases. It not only has managed to make the issue of karoshi a major social problem of the time, but also triggered the politicization of death from overwork, as well as important changes in labor policies, workers' compensation

standards, and public opinion in the recession ridden conservative politico-economic climate.

The accomplishments of anti-karoshi activists in impacting the labor Ministry's policies are remarkable for a relatively small lawyer-led legal activism. Since the resurgence of the activism in 1988, twice they compelled the Ministry to relax the stringent Workers' Compensation Standards by winning a number of legal suits. In December 1994, the standards were changed to take into consideration events and work overload one week prior to death instead of one day prior. Seven years later in 2001, anti-karoshi activism pressured the Ministry enough to allow for "accumulated fatigue" during six months prior to onset. In addition, after the activists won numerous suicide cases in the court, the Ministry issued standards specific to mental health and suicide cases in 1999, and relaxed them in 2004 to better reflect individuals' subjective mental conditions. Almost every year, furthermore, the Ministry has been issuing official "notices" to guide businesses towards better compliance with the labor laws. This includes stricter policy towards illegal unpaid overtime, the time-honored corporate "convention". As a result, tens of thousands of businesses including big corporations such as Toyota and Sharp have been charged and forced to pay by the Labor Standards Bureau.

Framing Success and Constraints

Although understanding the emergence of karoshi demands broad attention to politico-economic context, the media, medical community, legal system and professions, labor unions, and gender relations, the key to understanding has been the social actors'

active and collective construction of reality in their social world. Attributing causality and blame to corporate irresponsibility, the each group of social actors constructed the “reality” of *karoshi* in their respective communities and professional fields to make sense of the phenomenon, and to claim “ownership” over the issue defining and interpreting events. As a result, despite being labor disputes in nature, the phenomenon of *karoshi* took the forms of medical, legal, and household concerns, reflecting professional and family interests that the members of anti-*karoshi* activists brought into the issue. Anti-*karoshi* activists were not simply the users and disseminators of the new cultural concept. They engaged in assigning the meaning and interpreting the events surrounding *karoshi*.

The success of anti-*karoshi* activists in turning the issue into a major public health concern and impacting labor policies largely owes to their ability to frame labor disputes as health concerns of average workers and their families caused by the neglect of management responsibilities. Social problems are projections of public sentiment, rather than simple reflections of objective conditions. The problems of work-related physical and mental ailments are increasingly serious concerns of virtually every household in contemporary Japan. By turning their grievances against employers into a broad work-related health concerns, anti-*karoshi* activists succeeded in gaining a wider support from the public and mobilize potential litigants. Similarly, anti-*karoshi* activism also taps into the widespread concerns of wives and mothers about long work hours of their husbands and children, and emphasize employers’ responsibilities in managing workers’ work hours. They contend that the seemingly voluntary acts of overworking are a result of corporate pressure, and that employers have neglected their legal and moral responsibilities to protect workers from health hazards of long work hours. By stressing

the need to protect victims' families' livelihood through workers' compensation and employer responsibility for workers' health, the activists frame hitherto taken for granted practice of long work hours into the issue of corporate and state irresponsibility and moral injustice.

Despite karoshi activists' success in drawing public attentions to the issue, setting legal precedence, bringing out changes in administrative policies and compensation standards, the level of impact on the actual overworking practices in workplaces is modest. Karoshi activism in Japan is successful in pursuing what Jo Gusfield (1981) pointed out "political responsibility" of the employers, government ministries and agencies, but unable to address "causal responsibility" of businesses in overworking their employees. This is because their legal strategy not only does not allow direct intervention of harmful corporate practices, but also certain aspects of daily work practices and dominant assumptions in employment relations are taken for granted by the activists themselves and remain unquestioned. As Hank Johnston and Bert Klandermans (1995) noted, social movements offer an excellent site in which we can observe the relationship between cultural change and stability. Social movements are a fundamental source of societal change, challenging institutional arrangements and existing meaning of cultural objects and practices. Yet, at the same time, they arise out of an environment that is culturally given, and continue to exist in larger cultural context that channel or constrain its development. Members of movements must rely on the cultural images of what is an injustice, and what is legitimate and acceptable behavior. The case of karoshi movement, in which the activists gain legal victories by emphasizing the moral responsibility of employers, yet at the same time takes for granted workers' loyal

devotion and sacrifice to work responsibility and management's power over workers, provides an excellent example of social movements both facilitated and constrained by cultural factors.

II. THE TRANSNATIONAL DIFFUSION OF ANTI-KAROSHI ACTIVISM AND THE CONCEPT OF KAROSHI

Karoshi is becoming a global phenomenon. Reports of death from overwork and information on causes, symptoms and prevention of *karoshi* are found in Japan's neighboring countries such as South Korea, Taiwan, Singapore, Hong Kong, and China, as well as in the United States. The idea that one can die from overwork is new to these societies and there is no existing term to describe it in their languages. As a result, the Japanese word *karoshi* has been adopted. Growing evidence in the United States strongly suggest that Americans are not strangers to *karoshi*. American workers are working the equivalent of an extra month a year compared to 30 years ago (Schor 1992). Numerous publications with titles like *American Karoshi*¹ and *White Collar Sweatshop* (Fraser 2002) report the lives of overworked Americans who work over 14 hours a day, belong to Workaholic Anonymous and lead stressful lives. Even the reports of "death at desk" are not rare such as the case of sudden death in Microsoft Corporation where "the entire company deliberately operates in a mode of critical high stress" and employees are often found asleep in the office after having worked all night.² In the United States, the number of workers' compensation cases awarded to the victims with symptoms similar to

¹ New Internationalist, 3/ 1/ 2002

² van Jaarsveld and Adler, 1999, www.nelp.org/docUploads/jaarsveld%2Epdf

those of Japanese *karoshi* has been reported to be 200 to 300 per year in the state of New York alone.³

More importantly, not only has the term and concept of *karoshi* been adopted, but workers and activists in some nations have also begun filing lawsuits against companies that ‘overwork’ employees to death and the governments that deny workers’ compensation. In South Korea, there are numerous legal cases of *karoshi* and the number of workers’ compensation awarded to *karoshi* victims’ families has grown to over 2,000 cases. While fewer reports on death from overwork are available in China’s rigidly controlled state media, independent labor watchers such as Asia Monitor Resource Center and newspapers such as the Legal Daily have been paying close attentions to the legal suits over *karoshi* in China and provide documented details in several cases of *karoshi*. While the conditions of overworking to death seem to exist in these nations, only nations in Asia, but not in the United States, have adopted the legal and medical concept of *karoshi* and activism surrounding it. In East Asia, *karoshi* has become a tool in labor struggle, yet, in the United States, it remains a curious phenomenon of a far away land. Why? What makes the concept of *karoshi* adaptable in East Asian countries, and not in the US? How does the frame of *karoshi* problem resonate or not resonate in these societies? What is the role of political opportunity in the adaptation processes? How does the state and the media affect the adaptation? Cross-cultural comparisons of *karoshi* adaptation processes will illumine why a particular framing of an existing social issue resonates (or not resonate) with public at a particular time in a particular place and trigger institutional changes.

³ Miyake Hitoshi, 2003, www.kanagawaohpc@rofuku.go.jp

Social Movement Cluster

Cases in Korea and China provide opportunities to observe the processes of transnational flow of a new legal and medical concept and adaptation of activism surround it. Current research on social movements tends to treat social movements as discrete entities focusing only on single case studies and ignoring how ideas and tactics become transferred from one movement to another. As a result, the processes and conditions under which social movements are most likely to be diffused remain unclear. Despite these general tendencies, some scholars have addressed the issues and offered insight. For example, McAdam (1994) points to the tendency of social movements to cluster in time and space, and argues that it is precisely because they are not independent of one another. Della Porta and Rucht (1991) contend that similar movements, “movement family,” tend to develop when there are political opportunities to stimulate mobilization. The transnational network of anti-*karoshi* activists and the diffusion of the concept of *karoshi* suggest that the tendency of social movements to cluster is not limited to the context of one nation but crosses national borders.

International Karoshi Movement - “Transnational Public Sphere?”

My preliminary research indicates the importance of the regional connections among labor unions, lawyers, doctors, and occupational NGOs in East Asia in developing “*karoshi* movement family.” There are a loose network of occupational health organizations, labor unions and legal and medical professionals in East Asia that are linked to existing international coalitions of labor groups such as the Asian Network for the Rights of Occupational Accident Victims (ANROAV), and are developing new

transnational networks of anti-*karoshi* resistance. The network of these professionals is instrumental in putting together international symposiums of *karoshi* held in East Asia. Scholars of social movements diffusion point out the importance of cross-movement cooperation and learning (e.g. McAdams 1994, Della Porta and Rucht 1991). The existence of international *karoshi* network is likely to owe much to globalizing political environments which allow for more cooperation, interaction and information exchange cross-nationally. Sidney Tarrow points out, most of what are often presented as transnational social movements “are actually not cases of single movements with national branches, but of political *exchange* between allied actors whose contacts have been facilitated by global economic integration and communication...”⁴ Similarly, the international *karoshi* movement may be thought of as a consequence of ever expanding “transnational public sphere”. According to Guidry, Kenney, and Zald (2000), “transnational public sphere” is a real as well as conceptual space “in which movement organizations interact, contest each other and their objects, and learn from each other.” Action taken in a localized setting, the authors explain, is mediated by discursive relationships that are forged in a transnational public sphere. As a result, “the transnational public sphere is realized in various localized applications, potentially quite distant from the original production of the discourse or practice in question.” Anti-*karoshi* activism originated in Japan may be developing into a transnational public sphere triggering localized application of *karoshi* concept.

⁴ Quoted in Jonathan A. Fox and L. David Brown, *The Struggle for Accountability*, 1998, p. 30

Institutional Similarity

The spread of *karoshi* cases in Asia indicates the growing importance of judiciary system and legal professionals in labor struggle. *Karoshi* lawsuits and anti-*karoshi* activism, regardless of judges' verdicts, have an important role to play not only in assigning the responsibility for *karoshi*, but also in constructing and validating the legal concept of *karoshi* as a tool for labor struggle. Scholars of diffusion theory emphasize the role of institutional similarity in cross-national diffusion; the more institutional, situational and cultural similarities, the better chance of diffusion. The legal structure surrounding workers' compensation system in South Korea and China possess similarities to that of the Japanese. Due to the historical ties and Japan's influence in its modern history, South Korea's workers' compensation system bears close similarities to that of Japan. Korean lawyers who brought *karoshi* litigation to Korea attested to the significance of the similar legal system between the two countries as a crucial factor for them to import the legal concept of *karoshi*.⁵ China's contemporary legal scholars also actively modeled Japanese laws. My investigation revealed that China's recent workers' compensation law already includes the clause on *karoshi*, sudden death due to cardiac or cerebral diseases, similar to that of Japan. These legal similarities must have provided important structural bases for the adaptation of *karoshi*.

Frame Resonance in Transnational Diffusion of Movement Idea

The notion of frame resonance is again helpful in thinking about cultural aspects of the adaptation of the concept of *karoshi* in Asia. The frame of *karoshi* ultimately places

the causality and blame for long work hours and their health consequences to the employer. In order for the assertion of *karoshi* to resonate with public sentiments, there must be in a society the moral notion of employer responsibility over employees, and what Ronald Dore (1984) has pointed out, the social expectation of benevolence over subordinates when the powerful exercise their authority. The notion, according to Dore, is “a version of Confucian ideology” that emphasizes moral virtue. The responsibility over worker's mental and physical wellbeing, for instance, is heavily placed on employers' shoulders in *karoshi* trials precisely because the health of subordinate workers ought to be, it is considered, a concern of 'benevolent' employers who exercise power over them. The adaptation of *karoshi* concept in some Asian nations may be encouraged, in addition to their similar socio-legal structures, by the cultural assumption of broader employer responsibilities over the wellbeing of employees, similar to the Japanese expectation of "benevolence" from employers.

In contrast, people in the West, the United States, for example, generally possess much more individualized notion of the responsibility over one's wellbeing. As Elizabeth Armstrong (1998) noted in her study of FAS, “the theme of ‘personal responsibility’ is one that continues to dominate American thinking about health and illness.” She points out that “an endemic problem of contemporary American society” is “the individualization or privatization of public health” and “the politics of assigning causality of disease” to the moral failure of the disadvantaged. In other words, in the United States, the "empirical credibility" and "experiential commensurability" of *karoshi* may be there, but the cultural compatibility of *karoshi* frame including "valuational centrality" and "narrative fidelity" discussed earlier in this study may not be found to promote *karoshi* as

a public health or labor problem.⁶ As Mayer Zald (1996) succinctly summarizes, social movements draw on “the cultural stock for images of what is an injustice, for what is a violation of what ought to be.”

Relational and Non-relational Models of Diffusion

The processes in which the concept of *karoshi* diffused to the two countries were radically different reflecting the political environments of the adapters. The Korean anti-activism was rooted in the existing labor movement, while the case in China was promoted by the rising consciousness of individual workers towards legal means of labor disputes. McAdam and Rucht (1993) distinguish between two models of diffusion, each emphasizing a different channel. One perspective is the relational model of diffusion, in which direct, interpersonal contact between transmitters and adopters is presumed to mediate the diffusion process. The other is diffusion based on nonrelational channels, such as the mass media. My preliminary studies suggest that the diffusion of *karoshi* concept and activism to South Korea is the relational model and the diffusion to China to be nonrelational.

III. TRANSNATIONAL ADAPTATION PROCESS IN SOUTH KOREA

Diffusion Process in Korea: Strategic Adaptation by Labor Activists

The diffusion of *karoshi* to South Korea was a result of strategic adaptation of the concept by labor lawyers and unionists. The term *karoshi* was directly adapted, its Chinese characters being pronounced as *kwarosa* in Korean language. The adaptation

⁶ See Noaks and Johnston (2005) for a useful summary of frame analyses.

was facilitated by associational ties among labor activists, and similar legal structure and workers' compensation system. Anti-*karoshi* activists in South Korea are in direct communication with Japanese counterparts, and the diffusion of *karoshi* and legal strategy was facilitated by the information exchange among labor activists, and legal and medical professionals in the two nations. Korean labor activists aimed at mobilizing a wider segment of working populations by incorporating white-collar issues to their agenda, and to heighten the awareness of general public in the problems of poor working conditions and exploitative work practices. One of the central actors directly responsible for adapting the concept of *karoshi* is a group of labor lawyers who were linked to Japanese and Korean labor activist organizations. Kim Jing-Kook was one of the first lawyers who became interested in the problem of *karoshi* in Japan, and actively sought information on *karoshi* and learned from Japanese workers compensation award standards and legal arguments in *karoshi* court cases. He had first interaction with the Japanese lawyers through the annual conference held between Korean Lawyers for a Democratic Society [民弁] and Japanese Young Lawyers Association in 1992. Within Min ben, there is a section called Labor Committee [労働委員会] that have been in association with Japanese Rodo Bengodan, of which many of Japanese *karoshi* lawyers are members. The lawyers from both sides were invited to the conference by activist doctors and labor organizations that had been collaborating on occupational health issues.

Since the beginning of his career, Kim was interested in *karoshi*. As of 2003, he estimated his *karoshi* cases to be around 100 cases, and at the time was handling about 15 cases. After learning about Japanese *karoshi*, he realized that similar situations existed in Korea. There were sudden deaths among workers, and lawyers and paralegals have been

receiving consultations from workers and their families. Kim imported the legal strategies and arguments of the Japanese *karoshi* lawyers such as "duty to consider safety" [*anzen hairyogimu*], and applied them in Korean courts. Kim explained "As far as *karoshi* goes, there are no legal arguments or research to learn from in Korea, so I am learning all from Japanese cases. Koreans know well about general labor movements, but have little idea about legal battles of *karoshi*." He was so moved by the Dentsu case, a 2001 *karo-suicide* case introduced in earlier chapters in which the Supreme Court ordered the advertisement company to pay a hundred million (USD), that he went to see the lawyer in Japan. After seeing the amount of compensation that the Japanese plaintiff won, he began to feel that the amount provided to Korean plaintiffs, which averages about 10,000 dollars, is too small. According to Kim, the introduction of *karoshi* to Korea was a deliberate strategic effort, and was possible because the overall socio-legal context in Korea was similar to those of the Japanese. "It [the concept of *karoshi*] was consciously brought to Korea after carefully considering how to introduce it in our society... It was possible to introduce *karoshi* to Korea because the social and legal situations in both countries were similar." However, unlike in Japan, *karoshi* in Korea is only a part of larger labor struggle. It is a much smaller issue situated in the bigger picture of Korean labor movement.

Labor unions and activists seeking to expand their activities play an important role in adapting the concept of *karoshi* in Korea. South Korea has its grassroots radicalism in organizations like KCTU,⁷ and their social movement unionism seeking to influence Korean labor policies and agenda setting of labor unionism as a whole (Ranald

⁷ Inyi Choi. 2005. "Organizing Negotiation and Resistance: The Role of Korean Union Federations as Institutional Mediators". Ph.D. Dissertation, University California, San Diego.

2002), is loosely connected to a network of legal professionals interested in labor issues. In 1987, the group founded Workers' Health and Safety Research Association [労働健康研究所] as a strategy to expand its activities. One of the leaders in KCTU, Cho Tai-Sang, told in my 2003 interview that they found the association because they were "looking for social issues to work on, and the doctors found the occupational health problems." In 1993, the issue of *karoshi* came to the frontline of their occupational health struggle as the lawyers and doctors from Japan and South Korea gathered and held a seminar on the issue.

The first *Karoshi* Consultation Center in South Korea was founded in Seoul in October 1993 by 10 lawyers, 4 paralegals and 9 medical doctors. The center was a de facto sub-organization of Workers' Health and Safety Research Association as many of the key players being the members of the association. The members of the center had been aware of the existence of *karoshi* as they had been answering questions and providing consultations to workers and their families. The center aimed to promote the popular awareness towards *karoshi* among general public and to establish a compensation system for the families and the victims of *karoshi*. The center expanded by 1996, including new locations in Inchion, Pusan, Taegu, and Kuangju. The members took turns to station in the center, and organized seminars and symposium on *karoshi* for professionals and answered questions from general public and assisted victims' families in receiving workers' compensation. The group managed to apply the concept of *karoshi* more liberally than the Japanese counter part, winning *karoshi* compensations even for illegal workers. The number of workers' compensation won amounts to 10 times more than that of the Japanese. One reason for the high rate of awards may be because it only

provides one- time compensation of the amount much smaller than that of the Japanese counterpart. It is easier for the Korean system to award them to a larger number of applicants. Furthermore, because there is no other safety net for workers in their welfare system, the labor ministry tends to be lenient in giving awards. Unlike in Japan, there are also judges in the court in Seoul who are specialized just in industrial accidents and compensation cases, and this shortens the time required for the process.

Adaptation, but not a Social Problem

Despite the strategic adaptation of karoshi by the activists and the active promotion of the issue by the center members, anti-karoshi activism in Korea has not develop into a major social problem, at least so far. For the first few years of the karoshi center, the media reports on the center and their activities drew substantial number of consultations and legal cases. However, the number of consultations declined steadily after a few years, and the center has stopped its activities by 1999. Despite the "experiential commensurability" of karoshi frame - the congruency of the frame with everyday experience⁸- the issue has not evolve into a long-term battle ground against corporations and government that triggers institutional changes. Some of the direct reasons for this, my preliminary investigation suggest, may include the incompatible political consciousness of the public for karoshi frame to resonate, the problem of territorial demarcation over the field of occupational health between labor unions and professionals, and the failure to mobilize victims' families as potential constituencies, and the neglect of the media on the part of movement organizers.

⁸ Snow and Benford (1992) "Master frames and Cycles of Protest"

Lack of Frame Resonance

One of the reasons why karoshi in South Korea did not develop into a major social problem may be related to the frame resonance of karoshi with the socio-political climate of Korean society at the time. Just as Japanese anti-karoshi activism in the 1970s, the labor activists' framing of the issue as an occupational hazard did not resonate with the public sentiment of the larger audience whose attention was more on booming economy and national development. In the midst of high economic growth and development that have brought new hopes and aspirations for the future, the accusation that corporations were working employees too hard may not have been compatible with the value and beliefs of the potential constituents. Snow and Benford (1992) identify the centrality of the issue as one of the factors that affect frame resonance: How essential the core values and beliefs, as articulated by movement frames, are to the lives of the target. Unlike the timing of the Japanese case in the late 1980s when the societal mood was that of self-reflection on what it means to be a rich nation, the issue of overworking may have been simply not important enough to the minds of people in Korea in the 1990s. Furthermore, the assumption on workers' ability to protest – in contrast to the Japanese assumption of lower worker agency - which the existence of radical unionism in South Korea gave to the general public, also seems to prevent South Korean people to be from being as sympathetic to the cause. Similar to the first phase of anti-karoshi activism in Japan, the time, it seems, has not come for the Korean anti-karoshi activism, and it has to wait for a better timing to draw a wider public attention.

Korean Civil Court Cases

The lack of resonance with the societal concern is reflected in the small number of Civil Court cases that seek corporate responsibilities in Korea. In his over 10 years of karoshi career, Kim Jing-Kook saw only one victory in civil suits against corporations. The concept of corporate responsibility for overworking has not been accepted in Korea, and the court is much less sympathetic to plaintiffs in civil cases. Kim believes that the judges' attitudes reflect the society's view that sees karoshi as an individual's problem rather than a social problem. People tend to think that victims worked too much on their own initiative and neglected their own healthcare. It is deemed workers' compensation case because it is work-related, but people tend to place responsibility on the victims. Even if a case compel a judge to support the plaintiff, almost always he ends up reducing the compensation award by 50% accounting for the victim's responsibility, making these cases financially meaningless to pursue. Unlike in Japan, the symbolic benefit of winning court cases is not recognized in Korea, and what the plaintiffs ask for are financial compensations, rather than the means to redress injustice or apologies from corporations. Unlike in Japan, there is no organized victims' group in Korea. Because people tend to see karoshi as a private, work-related misfortune caused by worker's own health negligence, the families don't feel that they are the victims of corporate abuse and that they need to organize themselves (Kim Jing-Kook, interview on 5/3/03). The compensation process, furthermore, is relatively shorter (1 to 2 years) compared to Japan, and the victims' families do not see the necessity to organize themselves to support each other during legal battles. As karoshi is found the problem of individuals in Korea, not a social problem, the professionals like Kim found less and less necessity to act as an

organized group, as they could do their legal and medical consultations just as well in their offices

The Professional Territorialism and the Expansion of Labor Union Activities

Professional territorial rivalry over the field of occupational health seems to have undermined anti-karoshi activism in Korea. Occupational health until recently has been considered the territory of medical and legal professionals in Korean labor movements. When the democratization began in the late 80s and the early 90s, labor unions, illegal at the time, did not have enough human or financial resources to work on the relatively new issue of occupational health. NGOs consisting of professionals such as doctors and lawyers began acting on the issue of occupational health, and offered basic support and assistance to workers, in effect taking over labor unions activities. However, as the unions became legalized and gained legitimate power in the late 1990s, they demanded more direct and radical solutions to the problem of occupational health, pushing the professionals to other activism territories such as human rights and environment issues. Anti-karoshi activism faced a similar problem that contributed to the dissolution of the center. Kim Jing-Kook sees the dissolution due to not just the problem of the center management but due to the legalization of labor unions in 1998. Around 1999, the professionals and the activists began to see breaches in their opinions on how they run the center. Unlike Japanese unions, Korean unions were successful in directly negotiating with employers to provide compensation to the victims and their families. This made civil lawsuits for restitution even more unnecessary, but probably contributing to the Korean tendency to see karoshi as an individual problem rather than a social problem. As

labor unions gained momentum in their activities, professionals, especially lawyers broke away from the movement.

Neglecting the Media

One negative consequence of labor unions' influence on anti-karoshi activism is the neglect of the media. According to Choi Eun-Hee from Workers' Health and Safety Research Association, the Korean labor activism has the tradition of ignoring the media. The media has been unsympathetic towards their cause, and both professional and union activists never actively try to communicate with them and use them as a public relation tool. Unlike the Japanese karoshi activists, who consciously made efforts to tailor their activism for the media, and use them as a means to gain public support, the Korean counterpart relied on labor unions to publicize their activities through flyers and posters. This eventually led to a declining number of calls to the karoshi center by the mid-1990s.

IV. TRANSNATIONAL ADAPTATION PROCESSES IN CHINA

In August 2000, the municipal court in Shanghai, China, received the first legal case of karoshi in China. A state-run company was accused of forcing the victim to work exceeding the legal limit of overtime and infringing upon the worker's right to life and health. According to reports, the victim, Tang Yingcai, was working 17 hours a day for 226 days continuously in the state-own food products store. Facing the time limit for labor dispute arbitration, the victim's siblings brought the case to the civil court demanding the company to pay 200,000 yuan (25,000 USD) as compensation and overtime pay. The term "guolaosi", the Chinese pronunciation of Japanese characters

“karoshi”, was used in the official letter of complaint by the plaintiffs to describe Tang's death. The use of the term indicates that the Japanese concept was strategically adapted to make a legal case against the employer. The court's decisions in the first and second trials found no responsibility of the defendant company in Tang's death and did not recognize the concept of karoshi. Yet, interestingly, the court ordered the company to "voluntarily" pay 52,000 yuan to the plaintiff, pointing out the moral responsibility of employers to be benevolent and help workers who are in need. With a rationale similar to that of the Japanese cases, in the end, the Chinese plaintiff has won the compensation from the employer though in a substantially reduced amount.

Cultural Compatibility of the Frame Contents

The verdict of the court in Tang's case which referred to the employer's moral responsibility over their employees as a rationale for compensation suggest the cultural compatibility of karoshi frame in China. The assumption of employers' broad responsibility over workers' welfare, found in both Japanese and Chinese cases, provides the "narrative fidelity" that synchronizes karoshi frame with the basic assumptions of the dominant culture. Sheila Oakley (2002) has also found the similar moral assumption in China, noting the expectation of lifetime employment and the assumption of broad employer responsibility for workers' welfare as "non-market hangovers from the pre-reform Maoist era" (151). The frame of karoshi and legal pursuit over employer responsibility over workers' health seem to resonate well with the experience of the Chinese in term of the "empirical credibility" of their experience, the "centrality" of the

values, and the "narrative fidelity" of their basic assumptions, that have been discussed in the earlier chapters.

Political Opportunity: Rising Number of Labor Disputes

The adaptation of karoshi legal case in China is prompted by the political opportunity presented by the emergence of more sophisticated legal system and the rising consciousness of Chinese workers towards legal means of settling labor disputes in the midst of worsening labor market competition and exploitations. In China, the rapid economic growth facilitated the rising consciousness of workers towards legal means of labor dispute resolutions in recent years. China's labor movements have been "restive" and "brewing" (Chan 1995), and the incidence of labor disputes, including that of collective disputes, has been rising. Between 1993 and 1995, for example, the number rose from 30,000 to 210,000 cases, a dramatic 600% increase (Oakley 2002). The rise in lawsuits over labor issues in China and attempts of workers to organize themselves may indicate Chinese workers' increasing understanding of their rights and legal ways to redress injustice. The adaptation of the concept of karoshi in China occurred in this trend towards legal labor activism.

Political Constraint: the Suppression of Media Reports

Yet, the number of karoshi litigation in China still remains small partly because of the government's suppression of the reports of karoshi which are feared as potentially having politically and socially destabilizing effects. During the earlier days of the trial in 2000, the issue of karoshi and the legal implication of the phenomenon were hotly

debated in the media and discussed by labor activists and legal scholars. Yet, during 2001, the debates and reports on Tang Yingcai's case after the beginning of the second trial suddenly disappeared from the public discourse. Among legal scholars and journalists in Shanghai, it is a common knowledge that the disappearances in the coverage and debates are due to the government's suppression of the issue. While the cultural compatibility of karoshi frame indicates the possibility of further adaptation of the legal concept of death from overwork in China, the government's resistance to the spread of the potentially destabilizing legal concept through media presents a political constraint to the adaptation of the concept and the development of a social movement that leads to institutional change.

Death of a Worker

Tang Yingcai, a 56-year-old sales and delivery man at the state-own Jingan District Food and Edible Oil Company, had been working 17 hours a day, seven days a week for 226 days when he was found dead at his work in Shanghai on August 15, 1998. He had been working in the company for 10 years and never had been married. According to his brother, one of the plaintiffs, Tang Yingcai began his day around 5 am delivering products by bicycle and worked in the store until 11:30 am. He then watched and cleaned the store from 6:00 pm till 11:30pm, and slept in the store every night. The commute between his home (shared with his brother and sister-in law) and the store took 3 hours round trip and only day he could go home and "rest" was Tuesdays when he could leave around 9am instead of 11am. Even then, he still had to be back in the store by 5pm on the same day. His brother attests that Tang Yingcai had been often treated

unfairly because of his age and introverted character. When Tang Yingcai expressed his concern over his deteriorating health, his boss replied by saying “there are a lot of people willing to take over the job these days” and “no one else would hire him at his age”. Every month, he received 600 yuan (75 USD) from the company including 200 yuan extra night shift wage, and gave 500 yuan to his brother to help household expenses.

The Attention of the Media and Legal Scholars to the Case

As soon as the case was in session in October 2000, Tang Yingcai’s death was widely reported as Shanghai’s first karoshi case and drew much attention of the media and legal scholars. Not only local newspapers and magazines, but national newspapers such as the China Daily [Zhongguo Ribao] and TV stations introduced the case in detail. National CCTV station’s “Economy 30 minutes” [Jingji ban ge xiao shi] featured interviews with Tang’s lawyers, Wang Weiquan and Wu Hualiang, to whom other requests for an interview by the media were flooded. The case was also introduced as a topic of discussion in a TV show that discusses legal questions with guest lawyers. The media reports triggered lively debates on the issue involving scholars and lawyers offering a variety of opinions on the issues such as the legal liabilities of the company, the definition of work hours and occupational injury, the possibility of extreme fatigue as the cause of death, and the economic development and the protection of the laborers and the weak in the society. The trial even became a case study material for law school students in Hua Dong Politics and Law School in Shanghai. The term “guolaosi”

[karoshi] became a “fashionable” [shimao] word, according to the lawyers, that expressed problems arising from the rapid economic development.⁹

Economic Reform and Unemployment

The plight of Tang Yingcai is indicative of the politico-economic context of the adaptation of karoshi concept in China in which the economic security of workers in the lower strata has been negatively impacted as the result of economic reforms and marketization of labor began in the mid-1980s. State enterprise were made accountable for own productivity and profit, and a series of regulatory measures were issued in order to reform employment contracts, recruitment and dismissal practices, and unemployment benefits of the state sector. The Regulations on the Allocation of Surplus Workers considerably broaden the grounds for dismissal in 1993 and allowed state firms to shed workers according to the demands of production (Oakley, 2002). Between 1993 and 1997, over 1 million workers were dismissed from state enterprise in Shanghai alone¹⁰. As the over all unemployment in China has been predicted to reach as high as 30 million by 2005,¹¹ unemployment is a serious concern especially for the unskilled and old.¹² Tang Yingcai may be considered fortunate to keep his job at his age, but he was forced to labor for long hours in substandard condition which proved to be life-threatening especially with his pre-existing health conditions.

⁹ Interview conducted by R. Morioka, 2004

¹⁰ China Labour Bulletin 50

¹¹ “China’s Unemployment Challenge” <http://news.bbc.co.uk/1/hi/business/>, March 19, 2002

¹² Unemployment among middle-aged women and the migrant laborers also poses a serious concern in China.

Legal Changes in Labor Dispute Resolutions

The instigation of labor law, which was first enacted as recent as in 1995, reflects China's rapidly changing labor relations that necessitate the legal protection of labor in the market economy. Until the mid-1980s, the only system of labor dispute resolution was the *Xinfang* [write and visit] method, which made workers with grievances to write to and visit a special *xinfang* department established within the firm's managing department or the Labor Bureau. The method was highly bureaucratic and slow, and often ineffective. Legality and standardization of dispute resolution have been deemed as the essential prerequisites for China's economic development, and the government's success in implementing legislative control was understood as a catalyst for the popular approval of the general process of market reform.(Oakley 2002). In 1987, *Interim Provisions on the Handling of Labor Disputes in State Enterprise* recognized managers and workers as the two parties with opposing interests in a labor dispute, and provided institutional and legal structures for the resolution of labor conflicts. A legally based mediation and arbitration system was introduced in place of most *xinfang* system. Following the broadening of the provision to all firms within China in 1993, the 1995 Labor Law finally recognized the rights of workers to choose jobs, receive wages, rest appropriately, work in safe, healthy conditions, gain skills and initiate labor disputes.

Similarity with the Japanese Law: Sudden Death Clause and the Definition of 48 Hours

The influence of Japanese *karoshi* cases is apparent in Chinese workers' compensation laws. The Chinese laws, according to legal scholar Xun Baohua in Hua

Dong University, are characterized by their legal principles borrowed from multiple nations such as Japan, Taiwan (which was modeled after Japanese laws), the US, and Germany. The law makers in China seemed to have anticipated the problem of karoshi which was already a serious social issue in Japan by the mid-1990s. The Chinese workers' compensation law first enacted in 1996 already included a clause that deals with sudden death of workers. In its Article 2, Clause 4, the law defined sudden work-related deaths that qualify for workers' compensation as "occurred at workplace and work time, due to the reasons other than unsafe factors, or due to illnesses caused by work stress that leads to death or the complete loss of ability to work after first emergency treatment." In January 2004, the clause has been revised to narrow the definition further, reflecting the law makers' concern over the overuse of the clause. The newest law regarding the workers' compensation of karoshi victims restricts it to "the deaths caused by sudden occurrence of fatal disease or within 48 hours after emergency treatment." The comparative Japanese law also used to include the time restriction, 72 hours preceding the onset of illness, in the past which was heavily criticized by labor activists for many years and finally removed in 2001. The evidence of Chinese lawmakers anticipating the problem of karoshi, and adopting the foreign law that define death from overwork make the Chinese government, in effect, an active adapter of the concept, while the Japanese government has only been reacting to the judiciary decisions to recognize karoshi deaths. The similarity of the legal system and laws, as in the South Korean cases, also promote the use of the concept in legal disputes providing an important basis for popular adaptation of the concept of death from overwork.

No Labor Movements, No Activist Lawyers

Unlike anti-karoshi activism in Seoul, Korea, karoshi in Shanghai is still an isolated case and not a part of larger labor movements. The concept of death from overwork in Japan and South Korea was first utilized by labor organizations and lawyers to promote occupational safety and health. While lawyers in Japan and South Korea play a central role in spreading the concept of death from overwork, however, the lawyers in Shanghai were less active in promoting the concept. Until recently, there were few organizations who would actively promote legal means of redressing labor grievances or the concept of karoshi in Shanghai. Furthermore, most lawyers in China do not have specialization and take up any type of legal disputes. Labor lawyers are especially few in number because it is a new area in China's law and less lucrative. As the new workers' compensation insurance system instigated at the beginning of 2004 (paid 100% by businesses and the government), more sophisticated knowledge in labor law are in demand. The Shanghai's case suggests that the lack of organized labor activists and legal professionals in China was one of the reasons why the legal cases of karoshi did not spread as quickly as in Japan and South Korea.

Plaintiffs: the Rising Consciousness of Workers towards Law

Who brought karoshi to China then? Instead of labor activists and lawyers, the term "guolaosi" [karoshi] was first adapted and introduced to the Shanghai's court by the plaintiff himself. Two years after Tang Yingcai's death, his brother Tang Yingjie and two other siblings brought the case to the civil court in August 2000. The defendant was the shrinking state-own company whose operation has been reduced from nine branch

stores to three in recent years. Tang Yinjie had been collecting information on work-related sudden deaths and in order to describe his brother's death, he adopted the concept of death from overwork from Japan and used the term "karoshi" in an official letter to the court. Tang's lawyer in the first trial, Wang Weiquan, was from a state-run legal office and did not play an active role in spreading the concept of karoshi. He had little knowledge of karoshi before working with Tang Yinjie, and only acquired superficial understanding even during the lawsuit. To this day, he does not consider Tang Yingcai's death as a "typical" case of karoshi since Tang had been suffering from ill health and taking short naps during the day. To his understanding, karoshi victims must be healthy and die after working continuous hours. Despite Wang's own idea of what karoshi is, Tang's case would have been considered a full-fledged karoshi if this was a case in Japan. In any case, it was the plaintiff, not lawyers, who learned the legal concept of karoshi in Japan, applied it to own legal case, and actively promoted the concept through the media.

The Skyrocketing Number of Legal Labor Disputes

While Chinese workers, especially those who are from rural area with low education standards, are reported to have little, if any, understanding of the law, Tang Yingjie's adaptation of the concept of karoshi in the lawsuit indicates that the awareness of workers towards legal rights are rapidly rising especially in cities. Oakley's experience (2002) in the course of her research suggested that the workers subjected to the terrible working conditions are often "unaware of their rights and feel that they have no choice but to accept the circumstances in which they find themselves" (84). Though this is likely in rural areas, data suggest that things are rapidly changing in places like

Shanghai. Between 1993 and 1994, Shanghai's arbitration system dealing with labor disputes increased more than 150%.¹³ A growing number of workers are seeking legal assistance. Labor Legal Support Center in Shanghai, for example, is a NGO funded by European organizations and offers free legal consultations to workers with two full-time staffs. Since its opening in February 2002, the center has received overwhelming twenty some thousand consultations, a large proportion of the consultations relating to unpaid wages and occupational injuries. To be sure, Shanghai is rather exceptional being the "modernized city" in China with notably strong influence of legal scholars and lawyers. However, even at national level, statistics show that the number of disputes handled by arbitration committees at all levels are increased by 73% between 1994 and 1995. If disputes handled using administrative methods are included, case numbers rose by a stunning 600% between 1993 and 1995, from 30, 000 to 210,000 cases.¹⁴

The Official and Unofficial Decisions of the Court

The result of Tang's lawsuit reveals the particularities of the Chinese labor relations in which cultural and political factors intervene the spread of new legal concept that could potentially empower the labor. The official rulings of the court in both the first and second trials favored the defendant state-run company rejecting the company's responsibility over Tang Yingcai's death. The Article 41 of 1995 Labor Law clearly states that paid overtime is only allowed for one hour per day, or 3 hours per day with the agreement of labor union or representatives of workers, under the working condition that

¹³ Sheila Oakley, *Labor Relations in China's Socialist Market Economy*, 2002, p. 68

¹⁴ *Ibid.* p.68

guarantees workers' health and safety. The total overtime allowed in a month is not to exceed 36 hours. Tang Yingcai's actual work hours described above clearly exceeded the legal limits. However, the court refused to acknowledge that his night shift was part of work hours because he was able to sleep during the shift in the store. The official decision in the end rejected the plaintiff's claim that Tang Yingcai's death was due to overwork. It instead gave a verdict that his death was triggered by his existing health condition, and therefore the company was at no fault.

While the official result of the trial is not surprising, the unofficial action of the court is suggestive of the cultural assumption in Chinese labor relations that made the adaptation of the *karoshi* lawsuit possible in the first place. Despite the official ruling that the company has no obligation to compensate the plaintiffs, the court unofficially ordered the defendant to "voluntarily" pay 30,000 yuan as consolation after the first trial. The amount was further increased to 52,000 yuan after the second trial, the actual sum paid to Tang's family in the end. Fearing that the court might be flooded with similar cases, the judge compensated Tang without finding faults in the employer or recognizing the concept of *karoshi*. When I asked the reason for this compensation, one of the plaintiff's lawyers explained it as "the Chinese characteristic which foreigners have a hard time understanding." According to him, the employer has the responsibility to take care of their workers and their families, and "is not totally free of responsibility" even though they won the lawsuit. The culturally appropriate behavior for them would be to act benevolent and help Tang's poor family. Culturally influenced outcomes of labor disputes and legal policy in contemporary China have been pointed out before. Oakley describes "a strong commitment to settling disputes by mutual agreement" in Chinese

“Confucian” labor relations and observed culturally apt results in which “neither party appears to lose, and both parties seem to gain something.”¹⁵ The court’s decision to let the company win the case and yet unofficially compensate the family was understood by the lawyers as a way to “save the face” of the company. In the current working condition of China where the labor are not generally well protected and many more similar cases may well exit, the judges were apparently unwilling to let the plaintiffs win the case. Yet, according to the lawyers, the judges accepted the plaintiff’s claim as reasonable and try to unofficially persuade the company to “voluntary” pay the compensation. The reason for the unofficial compensation to Tang’s family is, thus, based on the cultural ideal in which employers bear broader responsibility over the welfare of employees and their families.

The Politicized “*Mingan*” [Sensitive] Case

What has been said about the result of the case by lawyers and legal scholars adds an interesting political dimension to the case. The first legal case of karoshi in Shanghai was politicized far more than cases in Japan or South Korea. Due to its potential to turn the labor problem into a larger sociopolitical issue and a criticism against the government’s labor policies, or even to harm "the image of the city attractive to investors", the lawsuit came to be described as “sensitive” [mingan] in Shanghai. The news of first karoshi legal case immediately drew the attention of the media triggering lively public debates when the family of the victim filed a civil lawsuit in August 2000. Six months after the beginning of the trial, the Legal Daily [Fazhi Ribao] pointed out that “the high level of attention from the specialist and scholars from all over the nation,” and

¹⁵ Sheila Oakley, *Labor Relations in China’s Socialist Market Economy*, 2002, p.138

predicted that “the second trial would receive even more attention from the media” (2/5/2001). The decision of the second trial, which was the highest court available for the plaintiffs, was eagerly awaited by the media and interested individuals at the time.

However, despite the public attention, the case disappeared and the result of the suit was hardly reported in the media. The reports on the case suddenly vanished from the media in the beginning of the year 2001 leaving the decision of the second trial virtually unknown to the general public. Legal scholars, lawyers and journalists in Shanghai who were following the case managed to find out some facts about the case, but the situation created suspicion about the fairness of the trial and the manipulation of the media by the government in their minds. A law school professor who runs a free legal consultation center for workers in Shanghai, for example, did not hide his misgiving that the trial has a “problem” due to the government’s influence on the case.¹⁶ He believed that the judges, closely connected to the government officials through informal personal ties, were pressured to reject the concept of *karoshi* because of its potential to create social instability. He also suggested that the Publicity Department of Communist Party’s Shanghai Municipal Committee [Zhongguo Gongchandang Shanghaishi Weiyuanhui Xuanchuanbu] has issued an order preventing the tightly controlled media from further discussion on the case. Even the possibility of gagging the plaintiffs with some compensation was insinuated by other lawyers.

¹⁶ Because of his activity, he has been made to submit to the government every month the reports of his visitors and meetings he is engaged with.

Publications on legal cases in China are often pre-selected by the editors or the publishers to conform to a particular objective of the government.¹⁷ Oakley (2002), for example, warns that legal labor dispute cases she used for her research were likely to be pre-chosen by the editor solely on the basis of their conformity to a set of desired outcomes determined in advance in line with official policy. In her work, she suggests that “the official barriers to the general dissemination of potentially destabilizing information” will make it unlikely that larger scale labor disputes will feature notably in Chinese labor relations in the near future. The media control is said to be especially tight in Shanghai because of the strong influence of scholars in the city and the city’s role as the China’s “window to the world”. A freelance journalist in Shanghai, Fu Xiyang, who has been writing on Tang Yingcai’s case attested that while he, being a freelancer, has not personally received any pressure from the government on the case, he was certain that the editors of newspaper companies went through rigorous selection processes to weed out politically sensitive articles.

Why was the Government of Shanghai concerned with the Case of Karoshi?

The disappearance of Tang’s legal case reports from the media provides an example of how political opportunities and the role of the state affect the diffusion of a movement idea and a new cultural concept. The diffusion of karoshi concept to China is a case in which cultural compatibility of a frame is found in the adapting society, but political constraints limit the general dissemination of the concept and activism

¹⁷ For example, Yuezhi Zhao, *Media, Market, and Democracy in China*, 1998. Sheila Oakley, *Labor Relations in China’s Socialist Market Economy*, 2002

surrounding it. The problem of karoshi has a latent threat in exposing the contradictory nature of socialist market economy in China, triggering larger human rights concerns, and damaging the image of Shanghai as the most “advanced” Chinese city. First of all, the fact that the phenomenon of karoshi was first found in Japan is problematic to the government. It meant that the problem of death from overwork was a problem of the capitalists who exploit the labor. The Chinese government has been criticizing the capitalist economy as “the system that eats people” [qi ren de zhiben zhuyi zhidu, 吃人的资本主义制度]. When a company in China, especially a state-owned company, was accused in the court of law of having worked its employee to death, the case put the socialist government who has been portraying the exploitation of workers as the problem of capitalist nations such as Japan and the US in an awkward position. Furthermore, the government would be concerned over the case triggering more similar disputes, as well as the problem developing into another human rights issue. The unusual level of public interests and discussions on the case, if left uncontrolled, may develop into the debates over the government’s neglect of protecting workers’ basic rights to life in its desire for rapid economic development. Another concern, especially for the city government, is maintaining the image of Shanghai as the most modern and economically advanced city in China. The tendency for local government officials to ignore breaches of national regulations in their desire to appease influential local and international investors has been known in the current economic environment in China.¹⁸ Although the average working condition in Shanghai seems to be better than some provinces like Guandong and other inner land cities, the legal case of karoshi may harm the image of Shanghai as an investor

¹⁸ Ibid. p.83

friendly city where the municipal government is capable of managing its workforce and labor disputes. The sensitivity surrounding Tang Yingcai's case is due to the fact that the phenomenon of *karoshi* can be a Pandora's Box for the government.

Propaganda of Honorable Deaths

Death from overwork is nothing new in China, but it has been propagandized as a heroic death of a communist member who "sacrificed" their lives for the sake of the nation. Despite the fact that the harsh working condition seen in Tang Yingcai's case mostly represents the problem of displaced blue-collar workers, sudden death from work fatigue has been depicted as a white-collar's honorable death. The numerous reports of death from overwork in Chinese media in the last decade mostly concern occupations such as scholars, intellectuals, scientists, researchers, engineers, corporate executives, and public servants.¹⁹ Only the deaths of white-collar workers or the Party's "model workers" [laodong mofang] are reported because their deaths are considered the result of "voluntary" hard work that places no blame on employers. For example, a 32-year railroad engineer, Kong Fanyi, was reported to have died of a heart attack while working on a public construction project "from early in the morning to late at night everyday" "forgetting to rest" or "even to have a haircut." The "excellent communist party member" was reported to have written "for the sake of the Party's benefit, I would sacrifice everything, including my life."²⁰ The People's Daily reported the death of a

¹⁹ The overwork-related deaths of famous novelist, Guan Sushang, maestro, Shi Guannan and famous mathematician, Hua LuoGeng were widely reported celebrating their achievements before their deaths.

²⁰ *Zhonghua renmin gongheguo jianshe bu, Zhongguo gongcheng jianshe xinxiwang* (The Republic of China, the Department of Construction, China Engineering and Construction News) <http://jzsbs.cein.gov.cn/guali/neirong.asp?id=606>, July 2, 2001.

manager in a city agricultural committee who voluntarily worked in remote areas to help develop poor farming villages despite his heart problem. On a monument elected to commemorate his death read, “For years you worked hard for farm villages, toiled and became ill, living with the disease, for the sake of the development of farm villages... you pained and labored dripping blood. For the people’s benefit, you self-sacrificed and devoted yourself...” He was awarded the title of “Party’s Excellent Officer” [dang de hao ganbu] by the province three months after his death.²¹ Examples of “model workers” who “voluntarily” overworked themselves to death are plentiful in the Chinese media, but deaths of blue-collar workers who had no choice but to obey the harsh demands of employees are effectively kept out of public attention.

V. CONCLUSION

The transnational diffusion of the term of *karoshi* to many parts of the world suggests the increasing concern towards the problem of overworking in global scale. Juliet Schor's claim in 1992 that Americans were working the equivalent of an extra month a year compared to 30 years ago caused a sensation in the nation. The WHO and ILO have declared work related-stress as the epidemic of the century in 1998. International Herald Tribune warned about work stress-related health problems, featuring an article with the headline "The world's changing workplaces put new strains on health" on September 6th, 2004. The reports of increasing work-related suicides in Great Britain and of growing number of work hours in Australia²² all suggest the global concern

²¹ *Renmin Ribao*, The People’s Daily, September 12, 1995

²² Australian Council of Trade Unions. www.actu.asn.au/public/papers/crossnationalcomp/index.html.

towards overwork-related health problems. It probably is not a coincidence that organized labor everywhere is gradually losing its foothold and power to influence industrial policies and production processes. The increasingly fierce global economic competition is exacerbating the problem of inequality, alienating quality of industrialized work, and the exploitation of cheap labor. Not only in developing nations, but also in already industrialized nations, the quality and quantity of work are rapidly changing due to automation and rationalization. Overall, work in contemporary societies seems to be denser, faster, and more intense, and people seem to be weary of the change.

This study that traced social processes in which the phenomenon of karoshi is discovered, framed, and cast as a social problem, sheds light on the construction and diffusion of new medical and legal concept within the larger context of the global concern towards ever increasing corporate control over individuals' lives. Contested diseases often require social movements to draw public attention and ultimately find a solution to the problem. Health issues related to work stress and environment especially require social agents who possess ability to strategically frame diseases and initiate the process of change. Anti-karoshi activism makes it clear the importance of medical and legal professionals in the process, especially in the face of a general decline of organized labor. Professionals hold power to label, and to place causality and blame, and use their power to advance the world view that they promote. At the same time, anti-karoshi activism also reveals the ability of lay persons to influence the framing of reality based on their own understanding of events along side with the professionals despite their little expert knowledge. Without the participation of these lay activists, mostly family members of karoshi victims and their supporters, anti-karoshi activism would not have

the same dynamism and sustainability as they do now. Their stories of battles against corporations and the state reveal how collective efforts and social movements remain a vital and important means to solicit social change, in order to mitigate the exploitative aspects of liberal economy and corporate practices. Social movements towards more democratic and fair treatment of workers initiated at the grassroots level bears even greater importance in light of diminishing labor unions' ability to trigger changes in labor practices, policies, and public consciousness. In the mean time, the struggle of anti-karoshi activism against "corporate-centered society" continues in Japan and other parts of the world.

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