

EALS Newsletter

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2004 Yong K. Kim '95 Prize to Zang and Sangay



Photo courtesy of Dongsheng Zang

Dongsheng Zang and Lobsang Sangay at Commencement

This year the Yong K. Kim '95 Memorial Prize was awarded to two doctoral candidates. Dongsheng Zang, LL.M. '96, S.J.D. '04, is from the People's Republic of China. His dissertation is entitled "One-Way Transparency: The 'Rule-Based' International Trade Order and the Predicament of Its Jurisprudence." Lobsang Sangay, LL.M. '96, S.J.D. '04, is a Tibetan raised in India and was profiled in the Spring 2003 *EALS Newsletter*. His dissertation is entitled "Democracy in Distress: Is Exile Polity a Remedy? A Case Study of Tibet's Government in Exile."

The Yong K. Kim '95 Memorial Prize is awarded annually at Commencement in recognition of the student or students who have done the most to foster U.S.-East Asian understanding while at

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Princess of Thailand Returns to Law School



Photo courtesy of Justin Knight

Princess Sirindhorn enjoys Caspersen Room reception

HRH Princess Maha Chakri Sirindhorn of Thailand made a brief repeat visit to Harvard Law School on April 7. Princess Sirindhorn spent several days at HLS in 1998 in her capacity as advisor on higher education matters to the King of Thailand, her father.

In coordination with the Harvard Asia Center, EALS acted as host of Princess Sirindhorn's return to Harvard Law School. We were delighted to hold an afternoon reception in her honor in the Caspersen Room in Langdell Library, where she met Dean Elena Kagan and chatted

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HLS (typically by authoring the best paper written at the Law School on the law or legal history of the nations or peoples of East Asia or legal dimensions of U.S.-East Asia relations). The award honors the memory of Yong Kim '95, a talented and creative law student passionate about international law who was closely affiliated with EALS throughout his years at HLS and beyond.

(Princess, continued from page 1)

with members of the HLS faculty. Princess Sirindhorn also enjoyed viewing a small but select display in the Root Room of historical Chinese and Thai materials compiled with her interests in mind by Special Collections staff members Vernica Downey, David Ferris, Lesley Schoenfeld, Steven Smith and David Warrington.



Photo courtesy of Justin Knight

Princess Sirindhorn with Dean Kagan and Professor Alford

Law Librarian Nongji Zhang Wins Fellowship

The Law School's Bibliographer for East Asian Law, Dr. Nongji Zhang, was recently awarded a coveted Douglas W. Bryant Fellowship, named in honor of former Harvard University Librarian Douglas Bryant. The Fellowship supports research by Harvard library staff members in bibliography, historical aspects of librarianship, production of reference and bibliographic tools, and in other scholarly investigations outside the field of librarianship. Through the generosity of Charles and Mary Tanenbaum, Bryant Fellowships have been awarded annually since 1974.

Nongji plans to address the problem of the lack of reference works and useful research guides for modern Chinese legal scholarship published in English. After conducting fieldwork in China in September (with assistance from a travel grant from EALS), she will endeavor to identify the most important Chinese jurists from the late nineteenth century to the present and compile a bibliography of their legal scholarship, supplemented with biographical background on each.

Over the past century, succeeding generations of legal scholars have contributed to the development of Chinese legal theory—introducing Western legal scholarship, writing new textbooks based on the ideologies underpinning Soviet Communism and the Cultural Revolution, and ushering in the current boom in Chinese legal publishing. Despite these changes, existing reference guides focus on the writings of early scholars and fail to address recent developments. Nongji's tracing of legal theory as it developed in China over the past century will help to fill this gap.

The biographic bibliography resulting from this research project will be published by EALS as part of its series of *Harvard Research Guides to the Legal Systems of East & Southeast Asia*. Nongji

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Yeh Jiunn-rong's Busy Winter Term at HLS

EALS had more than a passing interest in this year's presidential election in Taiwan, even apart from the central roles played by alumni such as Vice President Lu Hsiu-lien, LL.M. '78, Taipei Mayor Ma Ying-jeou, S.J.D. '81, and Legislative Yuan member and Taiwan Solidarity Party leader Wu Tong-sheng S.J.D. '90.

During the 2004 winter term, Professor Yeh Jiunn-rong, then Minister without Portfolio in President Chen Shui-bien's government (dealing with issues such as governmental organization), joined Professor William Alford '77 to teach a wonderfully stimulating course on constitutionalism in the Chinese world. A doctoral graduate of Yale Law School and a distinguished member of the law faculty at National Taiwan University (as well as former visiting professor at Columbia, Duke, and Toronto), Professor Yeh, who justly deserves his international reputation as a scholar of constitutional law, was a colorful figure at EALS, with his shoulder-length hair, warm smile, and unstinting receptivity to students. The class examined such issues as the wisdom of replacing the current ROC constitution, the role of the constitution in the People's Republic of China, post-handover constitutionalism in Hong Kong, and the future architecture of governmental relations in cultural China—all in a lively, but even-handed, manner. EALS is very grateful to Professor Yeh, who has been named Minister for Research, Development, and the Evaluation Commission in the new Chen government, for making time in his very busy schedule to work with Professor Alford in developing and teaching this exciting, enthusiastically received class.

Howson Joins Alford—Successful Course on PRC Draws a Crowd

EALS and scores of Harvard students wish to thank Nicholas C. Howson who, this past semester, joined with Professor William Alford '77 to teach a course loosely entitled "China Meets the World, the World Meets China." The class examined the ways in which state and society in the People's Republic of China understood and engaged international norms in a variety of areas (including trade, foreign direct investment, natural resource development, technology transfer, civil and political rights, economic and social rights, gender, and the spread of diseases such as AIDS and SARS) as well as the ways in which China sought to shape the future direction of those norms. Efforts were made throughout the semester to compare the manner of engagement across subject matter area as well to examine the institutional implications of this process. Originally scheduled as a seminar, the class drew some forty-five students (including auditors), leading to its conversion to a course.

Mr. Howson taught masterfully, drawing reflectively on his vast experience in China to work with Professor Alford in developing a number of very effective role-playing exercises. Students also enjoyed his sense of humor (corny Chinese puns notwithstanding) and kind, thorough mentorship, leading many to track his performance (during Spring Break) in this year's Paris Marathon. Next year, Mr. Howson, who previously was the partner in charge of Paul, Weiss, Rifkind, Wharton & Garrison's China practice and an adjunct professor at Columbia Law School, will be visiting professor at Cornell Law School.

Alford Advocates for Special Olympics in China



Photo courtesy of Neal Ulevitch

Professor Alford with Chinese Special Olympics athletes in Shanghai

Showing that *pro bono* work knows no national boundaries, Harvard Law School Professor Bill Alford is engaged in the development of the Special Olympics movement in China. Recently, this work took Alford to Beijing, where, with Special Olympics founder Eunice Kennedy Shriver and CEO Tim Shriver, he met with Chinese President Hu Jintao to discuss ways to enhance opportunities for individuals with intellectual disabilities in the world's most populous nation. That meeting was followed by the signing of an agreement to hold the 2007 Special Olympics World Summer Games in Shanghai.

The 2007 Summer Games are slated to bring over 7,000 athletes and thousands of coaches, parents and others from more than 150 nations to Shanghai for what will be the first Special Olympics summer games to be held in Asia and in a developing nation. The games are already serving as a major focal point for programs aimed to improve the situation of China's disabled while helping foster civil society there. More than 300,000 Chinese athletes with intellectual disabilities now participate in Special Olympics programs, with plans to create opportunities for another 200,000 by the end of 2005, making this the largest such contingent outside the U.S. In addition to its work in athletics, the

Special Olympics is also actively involved in education, health and training programs in China, including introducing into middle schools teaching materials regarding acceptance of persons with disabilities.

Alford has been involved with the Special Olympics for years, his interest having initially been sparked when he practiced law with Special Olympics Chairman emeritus Sargent Shriver in the early 1980s. The Law School's Vice Dean for the Graduate Program and International Legal Studies, Alford serves the Special Olympics principally regarding China, offering strategic advice, acting as a sounding board for the Special Olympics leadership, providing legal guidance, and helping interface between the Chinese and other Special Olympics volunteers such as Arnold Schwarzenegger. In addition, in anticipation of the 2007 games, Alford is helping think through new initiatives concerning the intellectually disabled, one of which is likely to be a project involving Chinese scholars and representatives of a major PRC social organization that will examine ways in which Chinese law addresses disability.

Alford also has brought his work on disability issues back to Harvard Law School. He has been ably assisted by students from both China and the US, and hopes this summer to place at least one with the Special Olympics Beijing office. Along with William and Mary Professor Michael Stein, a 1988 graduate of HLS and current visiting scholar, Alford is working on a research project on comparative disability law and the treatment of the disabled in international law. Also being contemplated is a reading group for students that would examine these issues. "This work brings together so many of my interests—including China, public service, transnational law, sports, children, education and more," said Alford. "I also cherish the opportunities it provides for me—and increasingly for other members of the HLS community—to work collaboratively with Chinese colleagues in building civil society."

Fuji Foils Ramseyer

Mark Ramseyer spent the fall of 2003 on leave in Tokyo with his family. He was at the University of Tokyo, where he enjoyed the hospitality and intellectual camaraderie of the Business Law Center of the Law Faculty. During the semester, he worked closely with his co-author, Professor Yoshiro Miwa of the Economics Faculty, on a variety of projects involving the finance and governance of the Japanese firm. In addition to his work, Ramseyer spent several weeks in August in the mountains of Nagano, took his family to his childhood home in Kyushu for a few days, and made an ill-fated ascent on Mt. Fuji with his daughter. They remain determined, however, to confront the challenge again—possibly next year.

Visiting Scholars Visit Courts, Observe Trials

Laura A. Cecere, LL.M. '98, Research Fellow and EALS Visiting Scholar Coordinator, made arrangements for two opportunities for the scholars to see local courtrooms in action this spring. Our Visiting Scholars were observers at two jury trials in Massachusetts Superior Court: one a high-profile first degree rape case involving a police officer and a minor girl, and the other a civil jury trial in which the judge allowed the scholars to meet privately with and question the jurors.

In Boston at the U.S. District Court for Massachusetts the scholars observed four jury trials, ranging from a claim against two police officers for false arrest to a seven-month trial for Medicare fraud against eleven individuals and a pharmaceutical company that had already settled with the prosecution for \$350 million. The scholars also visited the Circuit Court of Appeals Library and were given a tour of the dramatic John Joseph Moakley Courthouse overlooking the harbor.



Photo courtesy of Wang Chunyan

Li Qingchi, Laura Cecere and Wang Chunyan framed by Boston Harbor outside the Federal Courthouse

Visiting Professor Kang to Students: “Law Teaching in Your Future?”

Visiting Professor Jerry Kang '93 met with an overflow crowd of more than fifty students in the EALS conference room on the evening of April 8 for a Chinese dinner and lively discussion of legal education. The event was the suggestion of EALS Research Fellow Laura A. Cecere, LL.M. '98, who was an auditor in Professor Kang's spring semester seminar “Asian American Jurisprudence.”

Professor Kang, on leave from the UCLA School of Law, spoke candidly about his personal background as an immigrant child in Chicago and his growing political-mindedness as a Harvard College undergraduate and law student at HLS. He encouraged students to consider a career as a law professor and suggested a variety of ways to prepare for and the rewards to be gained from such work. He emphasized the significant part played by imagination in propelling someone to go into law teaching, and the assumptions and implicit biases faced in particular by Asian Americans hoping to gain positions on law faculties. Professor Kang encouraged students to use their time at HLS to grow intellectually, seek out as much writing experience as possible, and aspire to careers in furthering social justice.

Participants included students in his courses, as well as members of the Harvard Asia Law Society, the Asian Pacific American Law Students Association, the Korean Association of Harvard Law School and the South Asian Law Students Association.

Judge Herbert Y. C. Choy Portrait Donated to Harvard Law School

Professor Kang's meeting with students began with the unveiling of a handsome photographic portrait of an Asian American HLS alumnus who had recently died at the age of eighty-eight

after a long and distinguished legal career. Herbert Young Cho Choy '41 was the first Asian American to serve on the federal bench, having been nominated by President Richard Nixon in 1971. Judge Choy served on the U.S. Court of Appeals for the 9th Circuit. While serving in this capacity, he maintained his home in Hawaii (where he was an avid surfer) and traveled 5,000 miles once a month to San Francisco and back to hear cases. Professor William Alford '77 and Professor Kang each delivered remarks regarding the Judge.

The portrait now at the Law School is a high-quality photographic reproduction of the original painted portrait done in 2003 by Scottish artist Anne Macintosh.

Through HLS Director of Alumni Relations Donna Chiozi, arrangements were made for this copy to be given to Harvard Law School. John H. McGuckin, Jr. '71, a former clerk of Judge Choy, acted as organizer of the gift made by a group of seventeen Harvard Law School graduates who had served as his law clerks over the course of thirty years.

(Nongji Zhang, *continued from page 2*)

hopes that this guide will be of particular help to students and scholars working on modern Chinese legal theory who have not received their legal education in a Chinese law school, as

well as to small law libraries needing assistance in developing their collections of China law.

Scholars Present Their Research at Roundtables

In addition to courtroom visits, our Visiting Scholars were busy this spring discussing their respective research projects in sessions moderated by Visiting Scholar Coordinator Laura A. Cecere, LL.M. '98. The roundtable discussions are generally intended chiefly for EALS affiliates and give each Visiting Scholar an opportunity to present his or her work in progress in an informal way. The Visiting Scholars and their respective topics are listed below.

Haifeng Huang (PRC) LL.M. '03

The Rhetoric and Reality of Intellectual Property Law: A Historical Perspective

Huang discussed how intellectual property laws, driven by business people and lawyers, may be used to restrict competition at the expense of prospective creators and the public. (December 10, 2003)

Hsiang-Chen (Josie) Hsu (Taiwan)

Deterrence or Protection: Some Legal Issues Arising From U.S. Extradition

Hsu reviewed extradition procedures in the U.S. and the European Union. (March 3, 2004)

Ibrahim Assegaf (Indonesia)

Government Accountability

Assegaf addressed the challenges for watchdog entities in government that are independent but accountable for their conduct. He discussed the Anti-Corruption and Human Rights Commissions in Indonesia and their relative independence and accountability. (March 23, 2004)

Takayasu Kamiya (Japan)

The Structure of Fiduciary Duties as Approached Through Law and Economics

Kamiya discussed the elements of fiduciary duty and the theories on which it is based. He contrasted this duty in the U.K., the U.S., China, Korea and Japan, concluding with a discussion of whether Japan should adopt fiduciary duty as a mandatory rule. (April 14, 2004)

Myung-suk Choi (Korea) LL.M. '96

Introduction of the Business Judgment Doctrine to the Korean Courts

Choi reviewed the business judgment doctrine in the U.S., noting its premise that judges are not business persons capable of second-guessing directors. He noted several early attempts to use this rule in pending cases in Korea, even though it currently has no basis in statute or case law, and predicted its eventual acceptance. (May 3, 2004)

Judge Jinsu Jeong (Korea)

Sentencing

Jeong reviewed the present U.S. Federal Sentencing Guidelines along with criticisms and advantages of that system. He also discussed community-based alternatives available in the U.S. that are not yet available in Korea and the work of the Korean Commission now considering adoption of sentencing guidelines. (May 7, 2004)

Chen Xiaoping (PRC) LL.M. '02

Chinese Constitutionalism

Chen discussed how each succeeding leader in the PRC revises its Constitution in order to leave his imprint on it. He lamented the lack of enforceability of constitutional provisions and its frequent revision reflecting popular Party sentiment at the time. (May 10, 2004)

Naoki Watanabe (Japan)

Plea Bargaining in Japan?

Watanabe addressed the feasibility and utility of introducing a plea bargaining system in Japan. After reviewing the potential benefits and costs, he recommended adoption of this practice. (May 12, 2004)

Wang Gangqiao (PRC) LL.M. '03

How International Law Affects the Behavior of Countries: A Case Study of the U.S. and China With Regard to International Trade Law

Wang discussed how international trade law is influencing international relations between developing and developed countries. He also discussed recent Section 301 cases, whether or not smaller countries can secure U.S. compliance with WTO determinations, and how the rule of law may sometimes be inconsistent with democracy. (May 17, 2004)

Ryu Kojima (Japan) LL.M. '03

Information Transactions in the Future: From Intellectual Property's Perspective

Kojima discussed the problem of establishing a contractual relationship between the software copyright holder and the final consumer, including the recent use of the shrink wrap license concept. He also reviewed the Uniform Computer Information Transactions Act, the Fair Use v. Fared Use (Bell) concept and the issues for a future model. (May 19, 2004)

Wang Chunyan (PRC)

Exhaustion of Intellectual Property Rights and Parallel Imports

Wang discussed the dilemma that legal parallel imports of patented products presents in jurisdictions in which the patent holder has already

granted an exclusive license. She reviewed the treatment of this issue in China, Japan, the U.S., South Africa, and the U.K., and the international response to this problem. (May 24, 2004)

Kyung-Hee Jeon (Korea)

Homosexuality Rights in Korea

Jeon discussed the Korean National Commission on Human Rights Act outlawing discrimination on the basis of sexual orientation. This law is expected to strengthen gay rights in Korea. (May 27, 2004)

Zhao Jun (PRC) LL.M. '03

Transformation of Commercial Law in China

Zhao discussed China's move from a planned to a market economy. After reviewing theories for rule-making, he discussed the state of commercial law in the PRC, the Unified Contract Law, and the need to protect the weak while fostering economic prosperity. (May 27, 2004)

Li Qingchi (PRC)

Reform of Internal Corporate Governance Structure

Li referenced the planned 2004 revisions to the PRC's Company Law and contrasted its present system with systems of corporate organization and governance in Japan, Germany, Hong Kong, Europe, and the U.S., sparking much debate as to the relative merits of each system in devising a future model for China. (June 7, 2004)

Chih-hsiung (Thomas) Chen (Taiwan)

The Medical Reform of Acupuncturists

Chen reviewed the present statutory and case law regulating the practice of traditional Chinese medicine in the U.S. and discussed the antitrust implications of the legal monopoly enjoyed by the western medical profession preventing that practice. He presented the Ontario and Colorado laws governing the practice of traditional Chinese medicine as models for permitting its practice in the U.S. (June 7, 2004)

East Asian Legal Studies Spring 2004 Speakers

February 27

Preston M. Torbert '74

Partner, Baker & McKenzie

“The Globalization of Law Practice: What the Chinese Can Teach Us About Legal Drafting”

March 19

Elyssa Faison

Assistant Professor of History, University of Oklahoma

Postdoctoral Associate, Yale Council on East Asian Studies

“Keeping Idle Youngsters Out of Trouble: Japan’s 1929 Abolition of Night Work and the Problem of Free Time”

April 22

Rebecca MacKinnon

Fellow, Joan Shorenstein Center on the Press, Politics and Public Policy, Kennedy School of Government, Harvard University

CNN Tokyo Bureau Chief

“The Northeast Asian Powershift: China, Japan and the Koreas”

Newsletter Going Online

Beginning with this issue, the EALS Newsletters will be available not only in paper but also in an online version. A PDF will be posted at our web site: www.law.harvard.edu/programs/eals. In the future if you find that you prefer the electronic

version and would like us to cease sending you a printed Newsletter, please send a note via postal mail or e-mail us at eals@law.harvard.edu and ask that your name be removed from our newsletter mailing list.

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