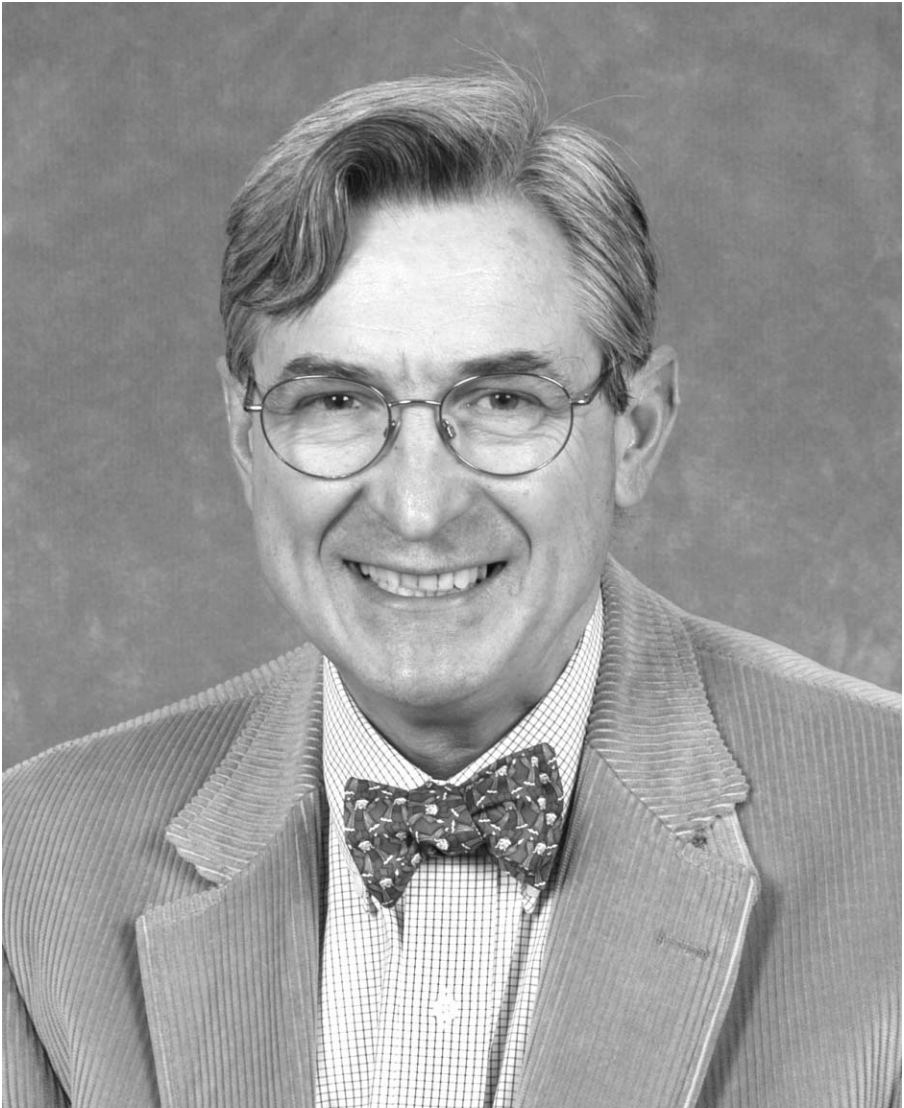


INTERNATIONAL LAWYER

A Dialogue with Judicial Wisdom



Professor John Owen Haley

INTRODUCTION

The Journal of East Asia & International Law honorably had an interview with Professor John Owen Haley for <A Dialogue with Judicial Wisdom> of Volume 2, Number 1. Professor Haley is one of the outstanding international and comparative lawyers in the United States. For more than 30 years, Professor Haley has been studying in East Asian legal studies focusing on Japanese laws. His scholarly works cover from international trade policy and comparative law to Japanese land-use law, Japanese and East Asian business transactions and Japanese law and contemporary society.

Professor Haley was educated at the Woodrow Wilson School of Public and International Affairs at Princeton University and got his J.D. from Yale University School of Law in 1969. He continued to study international and comparative law at the graduate program of the University of Washington Law School in Seattle where he had taught more than 25 years before moving into St. Louis. He has also lectured at various higher educational institutions including Aoyama Gakuin University, Kobe University and Tohoku University in Japan and Tuebingen University in Germany. Professor Haley is the William R. Orthwein Distinguished Professor of Law at Washington University School of Law, St. Louis. Professor and Madam Haley have been married for 39 wonderful years and have three daughters, Jorin, Star and Brook. They have two grandchildren. Professor Haley may be contacted at: johaley@wulaw.wustl.edu

QUESTIONS & ANSWERS

1. I would like to ask you at first a few personal questions.

A. Where were you born?

Ft. Bragg, North Carolina

B. What were your parents and family backgrounds?

My parents were born and raised in Florence, Alabama. They met in high school and were married a few months after my father's graduation from the United States Military Academy at West Point. My father served in World War II (beginning six weeks after I was born) as an officer in a field artillery battalion in North Africa, Sicily, Italy (assigned to General Juin's French army command), and in southern France and Germany. He remained in Germany after the German surrender in Tutzing, Bavaria (on the Starnberg See south of Munich). After his return in 1946, he was assigned to Ft. Sill, Oklahoma. He

was subsequently stationed at Ft. Leavenworth, Kansas, Ft. MacPherson, Georgia (Atlanta), Monterey, California, Caracas, Venezuela (as U.S. military attach?), the Army War College at Carlisle Barracks, Pennsylvania, and Ft. Meade, Maryland. His last post, immediately before he retired, was Birmingham, Alabama, where I attended and graduated from high school. After retiring he and my mother returned to Florence. My father died in 1985. My mother, age 92, currently lives in Monteagle, Tennessee. I have one older brother and two younger sisters. My brother was Professor of Finance for over 35 years at the University of Washington, where I also taught for over 25 years. I believe we were the only two brothers on the faculty at the time. I also have two younger sisters.

C. What was the most impressive event from your childhood?

The most impressive experience—rather than single event—was the three years I lived in Caracas, Venezuela from September 1952 through mid July 1955. But for that experience, I doubt that I would have developed so deep an interest in international and comparative studies.

D. May I hear your wedding story and life with Mrs. Haley?

I met Karin Brant during my second year of law school at Yale. She was completing her Masters of Music degree and had a part-time job checking in students for dinner at Trumbull College. I also had a job with the college as a Freshman Counselor. After she graduated, she received a fellowship to study the Kodaly system of music education in Budapest, Hungary. When she returned to teach music in New Haven, I had graduated and was beginning my study of Japanese law at the University of Washington in Seattle. I called her from Seattle, proposed, and she accepted. Allowed to take my fall exams early, I returned to Connecticut and we were married in December. When I finished my LL.M. degree, we moved to Japan on a Fulbright Research grant. We lived for a year in Kyoto and for two in Tokyo. We returned to Seattle in 1974. We have been married for 39 wonderful years and have three daughters. Two (Jorin and Star) were born in Japan, and one (Brook), in Germany. We now also have two grandchildren—one boy (Harrison, age six) and one girl (Haley, age six months).

Karin is a deeply committed Christian. For over a decade she has spent several weeks each year in Korea working with pastors, their spouses, and staff on intercessory prayer and worship music.

2. You grew up in the post-World War II period. At that time, the American economy was dramatically booming and the American society was fast changing.

Under such environment, the United States finally became the leading country in the western world under the Cold War and the only superpower after the breakdown of the Soviet Union. How differently has American society and people recognized the rest of the world between now and then? How do you feel times changed?

Let me take the second question first. Two transformational changes have occurred in the United States in my lifetime. Both were profoundly influenced by World War II. The first, I believe, reflected a moral transformation. I was born on a color-of-skin based segregated army base in the segregated South. The schools I attended in Maryland within thirty miles of Washington, DC, and in Alabama were segregated. I grew up taking for granted separate wash rooms and drinking fountains for “whites” and “colored.” My grandparents could scarcely imagine a fully integrated society. Yet my father taught me that merit not color was what mattered. I recall his saying that when you are in a foxhole you do not care about the color of the person next to you but rather his courage and capacity. He made it clear to me as a child that he would not condone any epithets related to color and race however common in usage. I absorbed—and took equally for granted—values that he acquired from his experience during the war. All persons whatever their nationality, race, or color deserve dignity and respect. What occurred within my family was hardly exceptional. My parents were caught in the midst of a profound moral change between generations—my grandparents and my own—that not only transformed the American South but, I believe, the world as Eurocentric paternalistic as well as exploitive colonial values and attitudes gradually yielded to a widely shared recognition in human dignity.

Racial minorities were not the only beneficiaries of this change. During four years at Princeton, then an all-male undergraduate college, and three years at Yale, with only seven women out of a class of about 150 students, I had only one female teacher (Professor now Connecticut Supreme Court Justice Ellen Peters), who was parenthetically one of the best classroom teachers I ever had.

I do not believe that either civil rights “revolution” was forced as the result of a victorious “battles,” but rather the result, as noted, of a profound moral transformation. In this context, both the civil rights and women’s rights movements were important, perhaps even determining catalysts of change. I was thus especially moved and proud when the University of Washington School in 2001 celebrated with an endowed scholarship the posthumous admission to the Washington State bar of Takuji Yamashita, its first Japanese graduate, upon the reversal by the Supreme Court of

Washington State of a century old decision that denied him admission based on his Japanese ancestry.

The second transformation is more universal and continuing. I recall as a youngster listening raptly to the radio—often under the sheets, after bedtime, and against parental strictures. I recall even today the favorites: Baby Snooks, Superman, the Lone Ranger, Inner Sanctum. I also remember our first TV with a ten inch screen, black and white, and only a couple of stations. The technological advances in communication have utterly transformed social, economic, and political life in the United States and the world.

Both of these changes have fundamentally changed not only U.S. perceptions of the world and the world's perceptions of the U.S.—but also our relationships with family, friends, neighbors as we become increasingly conscious of our connectedness and mutual dependence as well as cultural and institutional differences. The technological advances may have also had negative consequences as we are increasingly subject to covert manipulation and socially destructive influences. Yet the two changes combined offer hope for future communities based on mutual respect and shared experience and knowledge.

3. You have a prominent academic background. As a graduate of Princeton University, you went to Yale Law School and the University of Washington, Seattle. What brought you to study law? Who were the most influential teachers from your campus life? In Yale Law School, especially, there were Professor Myers McDougal and Professor Leo Gross both of whom were highly renowned international law scholars. There was a harsh debate between the two professors on the legal validity of the USSR's Absence in the Security Council during the Korean War. It was related to the legal interpretation of Article 27, paragraph 3 of the UN Charter.(60 Yale Law Journal, 1951) Did you have intimate contact with them?

Again to answer the second set of questions first, as a law student I had only a couple of encounters with Myers McDougal. He gave a lecture, subsequently ridiculed unmercifully by the professor teaching the course, in an introductory course on international law that I took the second semester of my first year at Yale. Later I enrolled but almost immediately withdrew from one of his seminars. My respect for McDougal is thus more the result of my admiration for two of his former students. One, Richard Falk, supervised the most prescient public seminar of my undergraduate experience. The other, William Burke, was a close colleague and dear friend at the University of

Washington. To my knowledge Leo Gross was not on the faculty while I was at Yale.

My personal experience as a student at Yale began in September 1966 upon my return from two years in Japan as an English language instructor at the International Christian University under a Princeton-in-Asia Fellowship. Like many law students my decision to attend law school was based less on what I wanted to do than what at the time I thought I did not want to do. I had decided while in Japan that I did not want to go into the foreign service or to become an area studies specialist. Having applied to law school before going to Japan with no understanding of what it involved or commitment to becoming a lawyer, I discovered early in my first year that between law and Japan, I actually preferred to continue connection with Japan. I had also been drafted during the summer but allowed to complete the academic year, and could only wonder whether I would be in the army—and possibly Vietnam?the next year. During the second semester—without the permission or knowledge of the law school, I was able to audit the second semester of first year Japanese in order to keep up what language skills I had previously acquired. At the end of the year, the draft law had changed and I was no longer likely to be drafted. I then met the first of the two members of the Yale faculty who in fact had the greatest influence on my subsequent career. He was an historian whom I was told was with respect to possible careers in law involving Japan the most knowledgeable member of the Yale University faculty. He gave me the worst career advice I have ever received. He told me that legal Japanese would require at least five or six years of intensive study and that no career possibilities existed for an American lawyer even with such Japanese language competence. I believed him and for the next year and a half abandoned any plans for a future career involving Japanese law. During the fall semester of my third year, however, I took a seminar on “Law and Modernization” taught by David Trubek, who was one of several faculty then at Yale with comparative law interests who were in the process of attempting to develop a government-funded research and graduate program in law and modernization. This seminar revived my interest in Japan. Believing then—as I still do—that an understanding of the Japanese and broader East Asian experience is essential to any accurate appraisal of the relationship of law and development, I enrolled in a second seminar on Law and Development taught by Robert Stevens, who later became President of Haverford College and subsequently Chancellor of the University of California at Santa Cruz, Stevens encouraged my renewed interest in Japan. He agreed to supervise a research project that resulted in my only Yale accolade—the Sherman Prize for a paper on Japanese law—and suggested that I meet with Dan Henderson, a University of Washington law professor teaching at Harvard that year who was coming to give a lecture at Yale. Henderson had written the law school inquiring whether any student

might be interested in the University of Washington's newly established LL.M. program in Asian Law, which he founded and directed. But for Stevens suggestion I would never have met Henderson, entered the Asian Law Program, and begun my career journey in Japanese and comparative law, a journey that truly began at the University of Washington.

I spent most of the first year at the UW studying intensive Japanese and, as Henderson had forecast, by the end of the year—not five or six as I had been previously advised—I could actually begin serious research using primary Japanese legal materials. Studying under Henderson, as well as Professors Teruo Doi, Herbert Ma, and above all Yasuhiro Fujita and Zentaro Kitagawa, by the end of the second year I had been given as broadly based an introduction to the Japanese and Chinese legal systems as anyone outside of Japan had ever experienced. In addition, Also, I had entered the program with a mid career Korean prosecutor, Japanese judge, and Japanese attorney who became and continue to be among my closest friends.

4. Just after getting your J.D., you continued to study law at the University of Washington Law School's LL.M. program. You did not practice long but came to academia as a law professor at the University of Washington in Seattle. Why did you decide to teach in law school instead of practicing law?

For U.S. lawyers in the late 1960s and early 1970s, career opportunities to practice law in Japan did not exist. Nor were many U.S. law firms particularly interested in lawyers with Japanese language competence. The advice I had been given by the Yale historian seemed true that a Japan-related career in legal practice was out of the question. I thus entered the University of Washington's Asian Law Program assuming that a research and teaching career was my only available option. And it became my goal. However, within the year I completed the Asian Law Program, opportunities began to appear. By that time, however, I was already committed, although I did want eventually to find a position with a law firm in Japan to gain some actual experience with the Japanese legal system. Indeed, the two years I spent with the law firm of Blakemore & Mitsuki in Tokyo proved to be invaluable.

5. You are a world-renowned Asian law scholar and pioneer of Japanese and Korean law research in North America. Why did you study and teach Asian law?

The two seminars on law and development at Yale had an enduring influence. I began my study of Japanese law at the University of Washington with the thought that I

would at least seek a research and teaching career with a principal focus on what we can learn from the Japanese experience regarding the relationship of law and development. The Trubek seminar had convinced me that the Japanese experience could not be accurately analyzed or appreciated without the fullest understanding possible of Japanese history, institutions, and culture. I thus set out to learn about Japan. In addition to the courses on Japanese law, I persuaded Henderson to permit me to take reading tutorials for law school credit on Japanese institutional history with George Beckman, then the Director of what is today the Jackson School of International Studies, as well as social science perspectives on comparative law with Dan Lev, a political scientist with exceptional expertise on the Indonesian legal system. Henderson also permitted me to enroll in a seminar on Japanese politics in which I was encouraged to examine the determinative factors on litigation rates in various Japanese prefectures. The quest continues. It has, as I have discovered, no end.

More to the point, in 1974 I was exceptionally fortunate in that the University of Washington law faculty was willing first to appoint a second Japanese law specialist and second to take the risk that I might succeed.

6. You taught in the University of Washington Law School's Asian Law Program, now regarded as one of the most time-honored Asian law programs in the United States, for more than 25 years and were its director for nearly a decade. Even after moving to Washington University Law School in St. Louis, you are still actively researching and teaching Asian law. Do you think it is still valuable for law students to study Asian law in the United States?

The study of Asian law—particularly Chinese, Japanese, and Korean law—is essential for any student today interested in a career in transnational practice, policy or both. The United States, China, and Japan are the three largest national economies. In terms of international trade and investment they are among a handful of states that dominate international trade and investment on a worldwide rather than regional basis. During the four decades since I graduated from law school, there has been an exponential expansion of regimes for the regulation of commercial and financial activities under either formally constituted international organs such as the WTO and WIPO or, even more significant, informal cooperative arrangements among key national regulatory agencies. In 1970 a handful of law firms, all based in the United States, had offices in Europe. Only one even claimed to have a representative in Asia. Today dozens of law firms based in the United States, Europe, as well as East Asia have offices that span the

Pacific and Atlantic oceans. The need and thus the career opportunities for lawyers who have the legal and language competence to advise clients in both the private and public sectors have never been greater and continue to multiply.

7. You have had many students from Japan and Korea. In Korea, they are even called "Haley troops." How different were Japanese and Korean students?

Working with both Korean, Japanese as well as Chinese—from both the People's Republic and Taiwan— students has been one of the joys of my teaching career. They have taught me at least as much if not more than I taught them. You ask about differences. Aside from manifest individual contrasts in background, motivation, and aims, students from each of these countries also reflect the shared habits and values that distinguish each national culture. Japanese students tend to have institutional support from law firms, companies, or public agencies that provide for overseas education. They generally expect to return to Japan and continue down previously established career paths. Few come to the United States to study on their own. They thus reflect what I refer to as a "communitarian orientation" characteristic of Japan. In contrast, more Korean and Chinese students tend to study in the United States with family support or, in some cases, on their own. Although many do return to Korea or China, they are more likely to look for long-term career opportunities in the United States. As one might expect, familial relationship are considerably more significant. All, however, are serious and working. They are among the best students I have ever taught.

8. Could you please advise young international lawyers in Asia preparing for the global world?

I would advise them to concentrate first on developing language skills, perhaps, adding to English perhaps another European language as well as another Asian language. Similarly, I would urge them to take whatever opportunities they may have to study in the United States as well as in Europe and in Asia. Those who do not have the opportunity to study abroad do have opportunities at home to meet and get to know lawyers and, increasingly, students from abroad. Ripening into lifelong friendships, such personal contacts are invaluable in all respects.

9. How do you think East Asian policy of the Obama administration will be? What should the new administration do?

President Obama's childhood experiences in Hawaii and Indonesia should give him a special sensitivity and understanding of East Asia and its people. Above all I hope and pray that he will listen to Asian voices and be willing to learn from East Asia and what East Asia has to teach the United States.

Interview by Eric Yong-Joong Lee

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