

FOR IMMEDIATE RELEASE

Contact: Lucinda Underwood
E-mail: lunderwood@abfn.org
Phone: 312.988.6573
Fax: 312.988.6579
Online: www.americanbarfoundation.org

**Terence Halliday, Center on Law and Globalization co-Director, addresses the Council on
Foreign Relations on China's Future**

CHICAGO, IL December 18, 2009- Terence Halliday, co-Director of the Center on Law and Globalization and Research Professor at the American Bar Foundation, presented a program with his co-author, Sida Liu, University of Wisconsin, at the Council on Foreign Relations in New York in late November. Halliday and Liu addressed the Winston Lord Roundtable on Asia, the Rule of Law, and U.S. Foreign Policy, with the question: *Are Lawyers the Vanguard of Political Liberalism in China?* Jerome A. Cohen, Council on Foreign Relations Adjunct Senior Fellow for Asia Studies, and one of the world's leading authorities on criminal justice and human rights in China, presided.

Halliday said it was common to ask if China was headed down a path to democracy or to the rule of law. He asked the audience of China-specialists, international NGO representatives, lawyers, and foreign policy experts a different question. Is there any prospect in China for the emergence of political liberalism? Halliday's National Science Foundation-funded research has shown that historically, in Europe, Latin America, Africa, and other parts of Asia, lawyers have fought for a moderate state, an open civil society, and basic legal rights, including core political rights of freedom of speech and association, and property rights. Frequently lawyers have been joined by judges, law professors, and other practicing professionals in this struggle.

Halliday and Liu, sociologists of law, reported on interim findings from their five-year comprehensive research study on the prospect of political liberalism among criminal defense lawyers in China. Through hundreds of interviews with lawyers across China, a systematic analysis of domestic and foreign media, and extensive archival research, their work is discovering how far lawyers have proceeded down the path towards political liberalism that has been followed by China's neighbors, such as Japan, South Korea and Taiwan.

Criminal Justice is a place to look

A key place to discover whether real legal change is occurring in China, said Halliday, is the criminal justice system. While international media report on dramatic human rights cases, in everyday work across China ordinary lawyers are engaged in an unceasing struggle to make law work for ordinary people detained by the police. Halliday's research investigates whether these criminal defense lawyers have any capacity to defend detainees from arbitrary arrest, protect them from confession by torture, gather evidence on their behalf, and obtain a fair trial. Whether lawyers can make a difference depends not only on changes in the criminal law and criminal procedure law, but whether ordinary citizens get legal protections in practice. Many lawyers are

skeptical about law reforms and report that they have not delivered what they promised. Some lawyers even state that the 1996 Criminal Procedure Law was a step backwards. Lawyers are more vulnerable, they say, to arrest by police and pressure from prosecutors. Hundreds of lawyers have been detained or their licenses revoked because they represented their clients too energetically.

Early Signs

Halliday and Liu told the Council that “there is a vanguard within a vanguard in formation among Chinese lawyers.” While research is still in progress, there are clear indications of lawyers’ preferences for stronger courts that are independent of Party influence. There are stirrings of a “rule-of-law” ideology in segments of the profession and moves to collective action. Bar association leaders are participating in a new round of criminal procedure law reforms. United Nations’ norms for courts, criminal justice, lawyers’ representation, and human rights are progressively seeping into the profession as ideals. Often the domestic media in China give wide publicity to cases where lawyers defend clients against abuses by the police or unfair sentences. The political organization of lawyers, often through electronic media, is also increasing.

Four Pointers to the Future

Halliday and Liu urged the Council audience to watch for four potential developments that may signal future directions of political liberalism in China. Halliday noted that there is the prospect of alliances between powerful interest groups in China—workers, women, religious groups—and lawyers. For instance, religious groups, most notably Christians, are using the law to defend their right to worship freely. Religious affiliations, said Halliday, “combine deep sentiments, domestic organization and moral courage with overseas support.” Another pointer is the degree to which the Party-state will rely on law as a safety valve when there is widespread anger and

grievance over land expropriations, official corruption and bureaucratic ineptness. All these can lead to the social unrest the government fears. Whether the media are permitted to report on criminal justice issues and the degree of control over the internet, social networking online, and cell phone technologies will affect the ability of lawyers to lead publics to press for political liberalism. Halliday said that in many other countries a trigger of some sort—police killings, a natural disaster, massive state incompetence—can precipitate change further and faster than leaders expected.

Political Liberalism is Possible but not Inevitable

Halliday and Liu see stirrings of lawyers in the vanguard of political liberalism. A “vanguard is emerging within a potential vanguard.” But Halliday cautioned that there is nothing inevitable about China’s future. “Many contingencies and circumstances will determine whether these movements are regressive or progressive,” he said. “This is a drama whose final acts are not yet written.”

[Terence C. Halliday](#) and Sida Liu have co-authored the article “Recursivity in Legal Change: Lawyers and Reforms of China’s Criminal Procedure Law” published in *Law & Social Inquiry* 34(4), in December 2009. Halliday has edited with co-authors Lucien Karpik and Malcolm Feeley, the book *Fighting for Political Freedom*.

[Sida Liu](#) is an assistant professor of Sociology and Law at the University of Wisconsin at Madison. Author of the book, [The Lost Polis: Transformation of the Legal Profession in Contemporary China](#), published by Beijing University Press (2008 In Chinese), he writes widely on the legal profession and law in China. He is Co-Principal Investigator with Terence Halliday

on a National Science Foundation multi-year research program on lawyers and criminal justice in China

The [Center on Law and Globalization](#) is a Partnership of the American Bar Foundation and the University of Illinois College of Law. The Center brings together the top legal officials of international organizations, key journalists, and academic experts to understand behavioral and legal dimensions of critical global issues, to stimulate well-informed global policy choices, and to advance empirical research on globalization and law. To access the Center's Smart Libraries – clustering the leading scholarship on globalization- visit www.lexglobal.org

The [American Bar Foundation](#) is the nation's leading research institute for the empirical study of law. An independent, nonprofit organization, for more than fifty years the ABF has advanced the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world.

###