

Briefs

U.S. tax court judge argues for more regulation



In an appearance sponsored by the libertarian-leaning Federalist Society and UB Law's Moot Court Board, a U.S. Tax Court judge played the contrarian, arguing in favor of more government regulation – at least in the tax arena. “Why Tax Regulation Is Good” was the straightforward title of Hon. **Mark V. Holmes’** address, and Holmes acknowledged he was making a challenging argument. “Usually for those of us on

the right, especially for those of us of a libertarian persuasion, praising regulation seems perverse,” he said.

And he recognized widespread suspicions that the complexity of tax law amounts to a full-employment act for tax attorneys. But, he said, many who specialize in tax matters are no fans of the proliferation of tax law. Instead, it is regulations – issued by taxing entities like the Internal Revenue Service rather than by legislative bodies – that tax lawyers prefer.

“Judges have to use some tools to clarify the tax law’s ambiguity and apply it to the case at hand,” Holmes said. “In tax law in particular, the number of regulations that meet the precision test of a good law is likely to be very large. Precision is a criterion for good law, and it also helps to explain why regulation might be good, even better than case law.”

“A tax system that tries to use precision in regulation will always need more regulation to fence in some activities and fence out others.”

But even as regulation adds clarity to tax legislation, tax specialists are needed more than ever. “A tax system that tries to use precision in regulation will always need more regulation to fence in some activities and fence out others,” Holmes said. “People will shift their behavior in response to a previous round of regulation. Even bright lines will increase the demand for tax lawyers.”

What are campaigns for?

The common complaint, Professor **James A. Gardner** said, is that presidential campaigns are not thoughtful enough, not rational enough, too thin, too superficial, and driven by personality and image rather than substance.

“But the question we like to ask in the Law School is, compared to what?” he said.

That comparative critique of campaign styles across the centuries of the American experiment was the basis for a lecture by Gardner to nearly 200 people in the free UB This Summer lecture series. It was called “What Are Campaigns For?” and was based on Gardner’s upcoming book of that title.

Sure, he said, modern voters grumble about the quality of campaigns. But a look back shows that each era of American electoral history has had its failings, some of them unthinkable by today’s standards: everything from plying the voters with whiskey to rolling giant leather balls inscribed with party slogans across the countryside.



campaigns are not about winning voters over to a candidate’s side. Instead, “they are about making sure that people vote the inclination that they brought into the campaign. Campaigns orient voters to select the candidate they should prefer. That does not mean that people are not making up their minds, they are just making them up outside of the campaign.”

Therefore, he concluded, “we need to worry about something else, and that is how people form their political opinions outside the campaigns. It seems to me that we need to worry much more about inequality of access to the tools of communication and the concentration of mass media ownership.”

Gardner said dissatisfaction with campaigns comes as campaigns fall short of reasoned persuasion and understanding, and voters fail to inform themselves about the issues. Part of the problem, he said, are the laws regulating ballot access and public campaign financing.

So what are campaigns for?

Mostly, Gardner said,



Our students help New Orleans after the storm

The recent Hurricane Gustav refocused America’s attention briefly on the Gulf Coast, but the nation has moved on to other matters. For the residents of New Orleans still struggling to rebuild after Hurricane Katrina, however, “the storm” of three years ago is a continuing and very present reality.

Beyond the city’s physical rebuilding, New Orleans’ legal system is recovering as well from the devastation that blew in from the Gulf of Mexico in August 2005. And the need for legal services – on issues both civil and criminal – has never been greater.

In January, 29 second- and third-year UB Law students spent a weeklong bridge course getting a firsthand look at the recovery efforts, practicing their legal skills in a fast-paced, high-volume environment, and pitching in to help the New Orleans legal community clear some of its staggering caseload. The students worked with the city’s public defender’s office, New Orleans Legal Assistance Corp. and the Alliance for Affordable Energy.

“They’re still putting out fires in terms of legal work,” said third-year student Tatiana Markel. “We were there to do whatever we could to lighten their load,” including helping with evictions and title transfers that had gotten “pushed to the bottom of the barrel.”

“The biggest shock by far was the devastation still there,” Markel said. “It was as if Hurricane Katrina occurred yesterday.”

“I should have known about all the legal backlog of work that needs to be done so people can rebuild their homes and reacquire their land,” said Elliot Kowalski, another third-year student who made the trip.

The three-credit bridge course was the brainchild of Professors Suzanne Tomkins, Margaret Phillips and Sara Faherty. It included two weeks of classes on affordable-housing case law and the government’s role in responding to disasters.



Areas of the lower ninth ward in New Orleans are flooded after a levy along the industrial canal was overtopped as a result of storm surge associated with Hurricane Rita on Friday, Sept. 23, 2005. The overtopping caused areas of New Orleans that were flooded during Hurricane Katrina, and since drained, to flood once again.

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