

The State of Justice:

Like Politics, all Justice is Local



Lecturing on our country's "rule of law" in a former Soviet country that has often been identified in the West as deficient in that department, your editor was surprised to get the barbed questions that challenged the very premise of which we spoke.

"Are American Indians really citizens of the United States?"

Not an easy question to answer.

"Well, yes, American Indians are "also" citizens of the United States, but... [Here discuss Reservations...]"

"Will Dick Cheney go to jail after the election for war crimes?"

"Will George Bush go to jail for illegal surveillance of American citizens?"

"Well, that would happen only if it were determined that they should be prosecuted after investigation, and [Here discuss our system of justice, which considers everyone innocent until proven guilty.]

"But we have seen on the news a well respected law professor of your

country who has said on American television that Vice President Cheney may have admitted to illegal torture; surely someone will investigate that?"

Not an easy question to answer.

"You see, the way it works in the U.S. is that it would be up to the Attorney General, or Congress, or more likely, perhaps, a local U.S. Attorney that would have jurisdiction over the alleged criminal event, perhaps a U.S. Attorney from D.C., perhaps a U.S. Attorney from the Eastern District of Virginia...to cause an investigation to be conducted, if he or she believed a criminal act may have occurred..."

"Does Obama believe in the "rule of law?"

"Of course he does."

– [But we admit that we would have felt much better if the first thing President Obama had said after being elected President was that "torture is the against the law, and this administration will not violate the law," rather than just telling the world, "We don't do that, and we need to move on,"

which has been interpreted by some of our critics as telegraphing implied, if not express, immunity from his Administration to the extent laws were violated by the last.

Rather, (and whether or not the Justice Department under President Obama decided to investigate) it would have been good to hear a word of support in that context about our country's determination to be a country where the "rule of law" governs. And despite disparate political or social beliefs as to whether or not "water boarding" constitutes illegal torture, we would hope that the issue is controlled "as a matter of law," not by Presidential opinion or prerogative.]

Since we returned to the states, we have been thinking about those questions and the challenges to the "rule of law" in our own country, as well as the challenges to the rule of law in the former Soviet countries.

We would have liked to ask our students what they thought of the report in The New York Times of February 1, 2009, that contained a picture of

President Ramzan A. Kadyrov of Chechnya, holding a "golden pistol," and which informed that he has been accused of "personally participating in torture." Or about the article in BusinessWeek of February 9, 2009 which recounts how human rights attorney Stanislav Markelov, who represented Chechens allegedly abused by the Russian military, and an accompanying journalist were gunned down in broad daylight in Moscow on January 19th, 2009, after leaving a press conference. And I might have questioned why the author of that article, reporting from Russia, had to be so careful not to raise the question of whether or not the murders may have been state sanctioned

We imagined the answer: "Well, you see, the way it works, is that there is usually a local prosecutor, who would investigate a local murder, and who would determine who was responsible, and it would be up to them to determine whether or not it involved any one "higher up."

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And the thought struck me a little later, when reading the February 15th issue of The New York Times, and its front-page story featuring a local case involving the “rule of law” right here in West Virginia – the case of Caperton v. A.T. Massey Coal, No. 08-22, to be argued March 3 in the United States Supreme Court.

Like politics, all Justice is local.

Whom a U.S. Attorney in the Eastern Division of Virginia ultimately chooses to investigate, or prosecute, can have national and even international repercussions on “the rule of law,” but the story of any such prosecution will originate locally, in the Eastern Division of Virginia. And how each one of our Justices of the Supreme Court of Appeals acts in West Virginia, can affect the “rule of law” nationally

– and the perception of it internationally as well.

Though beliefs in the West about Justice have changed somewhat with changing circumstances over the ages, a fundamental idea of “Justice” elucidated as early as Socrates has it that “Justice” emerges at the top – in society in general – from the collective virtue or excellence (arête) of each and every individual practitioner or “craftsman” of justice in doing his or her job well – every lawyer, every Judge, every lawmaker, every official at every level of government – federal, state, county, city.

When a lawyer allows a witness to shade the truth, when a lawmaker, Judge, or other official dispenses or delays justice based on political favoritism, or for personal or political advantage, it is not a “trifling matter” of injustice just because it may have involved one case, or occurred in small

claims court or in State court only. It is nonetheless corruption, of the system, and of the “rule of law” in general.

And those that may engage in such “trifling matters” of injustice may think that others – other citizens, other members of the Bar – can overlook such small injustices upon the rationale that “it’s how the game is played.” But our experience is that even those hesitant to confront each and every “little injustice,” even those willing to “overlook” for a period of time, or willing to give the “benefit of the doubt,” will do so when it becomes personal, like Coalhouse Walker, Jr., of “Ragtime” fame.

“Is it true that in America if you are rich you get better representation than if you are a poor person?”

“Is it true that some Judges take contributions for election from lawyers and then give favors to those lawyers?”

Not easy questions to answer.

It makes you reflect upon the good news and the bad news of our individual “responsibility” towards the “rule of law.”

The good news is that many of us have the luxury of not having the responsibility in our local place to actively deal with corruption, or injustice, at the highest levels of government.

The bad news is that all justice, like all politics, is local, and that what we all have to ask ourselves, each and every one of us, is whether or not each of us is taking the responsibility of being the best craftsman of justice here at the local level, in our jobs, in our own places.

Not an easy question to answer. 



Mark your calendars for future meetings:

April 24, June 25, Aug. 28, Oct. 30 and the Wheeling

Academy of Law and Science Christmas

Awards Banquet on Dec. 10, 2009.