

"THEY the People of the United States?"

By Brad Cunningham, Municipal Attorney, Lexington, South Carolina

It is my intention to avoid political talk as much as possible in this column, and while I am going to talk about government operations, I hope that no reader sees me as taking a "side" in any political debate. I'm just going to talk about two ideological theories of my own that to me seem to be causing governmental operational issues across the country. We all experience these as members of local government. I have been given a stark reminder of it recently.

First, over the years there has come to be a line of thinking that the government is some endless pot of money that just falls out of the sky. It comes from nowhere, and we all are entitled to a share of it whenever we feel the need arises. This we expect to happen without repercussion or consequence. After all, it is free money of which "they" have an endless supply. (Just exactly who "they" are is another question.)

Second, there is a growing trend toward avoiding responsibility for the actions and choices we take as members of society. Nobody accepts fault, and when an injury or damages occur there is a rush to find someone to blame. Usually there is a correlation between how much money a party has, and the level of effort to blame that party. Since the government is a nameless faceless entity, "they" are almost always a target. "They" are a convenient party to blame for almost everything. "They" have a lot of money.

I have been sent a reminder of that very recently from a listserve colleague. A citizen called and indicated that her teenage son had been injured on public property while riding his bicycle. He broke two fingers and surgery was required for the injuries to be healed properly. She wanted to know where to send the bill.

Question number one: WHERE did this occur? The accident occurred while he was riding on a sidewalk adjacent to a city street. I don't know about other states, but in South Carolina many municipalities have ordinances prohibiting bicycle riding on a sidewalk. This particular municipality was one of them. The theory, of course, is that sidewalks are for pedestrians.

Question number two: HOW did this occur? Perhaps an even more important question... It happened because he was on the cell phone TEXTING and wasn't paying attention and hit a tree that was close to the sidewalk. He was knocked off the bicycle and injured his fingers and hand. (I am told the cell phone survived... Important information in today's electronic society)

So, my colleague has received a request to pay for injuries to someone who was 1) Committing an illegal act; and 2) Engaging in careless behavior while committing the illegal act. My colleague advised the citizen of the aforementioned ordinance, and suggested politely that the texting while riding was probably not a good idea. The caller was miffed. "Well, I'm certainly not going to pay for this. It wasn't my fault." The report of injury was sent by my colleague to the city's insurance company, which agreed with the above analysis and denied responsibility for the incident. The caller phoned my colleague back complaining that "I can't believe "they" are refusing to help! Just who do "they" expect to pay for this?" Apparently, it never occurred to her that it could be the child's fault, and that she would have to bear the burden. But, isn't "they" (the government) an endless pile of money waiting to be paid out in relief of all that ails the citizenry?

No doubt everyone feels bad that the child is injured, but does feeling bad entitle one to a government handout? I leave that open for debate, and agree of course that opinions on incidents such as these can swing upon specific facts. But, last time I checked the government was "WE the People" wasn't it? (Or is it "They" the People?)

This second incident is also sent from a listserve colleague in a nearby state. A party was cited for a sign ordinance violation. A sign had been erected on the business premises without a permit. The party fussed and complained about why they even needed a permit in the first place, and how this was an overreaching government intrusion, etc... Still, however, this is easy enough to fix isn't it? Let them come in and apply after the fact and everyone can go home happy. So, the party submits a permit only to find out that 1) The sign is in the road right of way; and 2) The sign is larger than the ordinance allows. The sign contractor goes ballistic, completely missing the clue that issues are precisely why a permit is required. "So, you're telling me that I need to take the sign down and put another one up? That's expensive! Who is going to pay me for this?" He continued, "I think the city should pay since "they" are the ones requiring the corrections." (The city that he said shouldn't be involved in the matter in the first place)

Again the theory surfaces that "It certainly can't be my responsibility," and "The government is an endless pile of money. Why can't "they" pay for it?" No thought at all to the theory that preventing situations like this may be why permits are required in first place,

or to that of possibly looking into the regulations before the sign was erected. Just jump in with both feet, and if all doesn't go well blame the government and ask for money.

As government attorneys, some of us face these attitudes in dealing with litigation. Some things I have heard: "You don't have a real client. Ok, you do have a real client, but "they" don't have a job and a checkbook to balance. Why are you being so hard-nosed about this? It doesn't come out of your pocket. "They" can afford to pay more easily than my client." Notice the absence of responsibility in the equation? How can it be MY fault? "They" have more money.

This type of thinking reminds me of a book written by my former elementary school principal, the late George Wilkins. The book was titled "My Pants are Wet but I Didn't Do It!" It also leads to warnings such as: "Do Not Iron Shirt While Wearing It." ... "Do Not Hold the Chainsaw by the Moving End"... Or the retail coffee establishment's cup that says "Caution – Hot! Avoid Pouring on Crotch Area."... "Do Not Put Children in the Washing Machine."... "Ingredients – 100% Peanuts.... Warning: Product may contain peanuts..." Without such warnings, people will most certainly claim "You didn't warn me." This is despite the overly stupid nature of the act committed. Ugh, when did we get this way?

WE are all in this together, folks. The government is not "they." It is us. We elected our officials and we can un-elect them. The preamble to the Constitution starts with "We the People of the United States...." So every time someone wants to sock it to the government, whether they realize it or not, they are taking it out of all of our pockets, and not the pocket of "they." It hurts us all when this type activity occurs.

Sorry, it's that time of year..... School is starting back, and even though I am "over 21," I still get a little bit bummed when school starts again..... This year it is a lot worse, since my only daughter, Lauren embarks upon her college career and will be moving into the dorm. The saving grace is that at least it means it is college football season.

So, to boost the mood, time for some more courtroom funnies..... Lest you ask, yes all of these happened either locally or to local lawyers in another venue. They are all true stories but the names have been changed to protect the innocent.

There was the guy who came to court dressed as a monk in a brown robe and rope around the waist. He was also carrying a small flute or similar instrument. He claimed to be a church pastor but couldn't tell where the church was, or the name of it. He tried playing the flute once, but was resoundingly discouraged from doing so. He was also convicted.

There was another guy who came to traffic court as an apparent "sovereign citizen." He had inserted a "dot" or period at the end of his name. For simplicity, let's say his name was Brad Cunningham. He had changed it to Brad Cunningham"." When his name (without the ".") was called in court, he failed to answer and proceeded to watch himself get tried in his absence. When everyone had cleared the room, the judge inquired as to his purpose for being in the courtroom. He replied that he was told to be here today. The Judge asked his name, and he replied Brad Cunningham"." The Judge (ignoring the ".") asked if he had heard his name called. The gentleman responded that he had heard a name similar to his called, but that his name was Brad Cunningham "." There was no humor or patience in the Judge that day and he stared the guy down and asked if he was paying the fine today. The gentleman said he had not been assessed a fine that day. The Judge just said pay it within ten days, and left the room. I bet if the City owed the guy money, he would have gladly ignored the "." as well.

The prosecution rests your honor...

Hopefully you made plans and are attending the IMLA 82nd Annual Conference, October 14-18, in Niagara Falls, ON. Some of you may not know that IMLA's Deputy Executive Director, Veronica Kleffner, will be retiring following the annual conference. Please make plans to attend this exceptional conference and bid a fond farewell to Veronica who has served us very well over the years. ML

