

KeyOpinion

What Goes Around Comes Around

Richard L. Hershatter
Contributing Columnist

*Laugh, and the world laughs with you;
Weep, and you weep alone.
The County Commissioners don't appreciate
mirth,
And have trouble enough of their own.*
(apologies to Ella Wilcox)

Back in November, we authored a tongue-in-cheek (are there really any other kind?) column entitled "Hey, Lawyers Got to Eat, Too."

The column poked gentle fun at the Sarasota County Commissioners for voting to sue its own appointed Zoning Board of Appeals over displeasure at one of the latter board's rulings.

As even the most casual observer knows, the purpose of an "appeals" board is to consider and rule on appeals — not merely to exercise rubber stamps.

In the Sarasota case, the Zoning Board of Appeals overturned a land use decision of the county commissioners and approved the replacing of a restaurant and marina with condos. (Not exactly a trail blazing endeavor in South Florida these days.)

The net result was that one county agency ended up suing another, with each side obligated to employ separate attorneys, at taxpayer expense. As one commissioner said at the time, "I feel as though I'm suing myself."

Lo and behold, six months have flown by, and the courts have ruled in favor of the Zoning Board of Appeals. The taxpayers are left holding the bag to the tune of \$23,000 for lawyers' fees alone, and the meter is still running.

The commissioners might have appealed the matter further, but evidently they came to the realization that reporters and columnists were covering the situation, and the public was being kept aware of how public dollars were being spent.

Meantime, the zoning body was in the process of developing its annual report on its accomplishments. The meeting was being videotaped for the normal "big-brother-is-watching" delivery on the local television access channel, and in discussing what should be mentioned in the report, one of the members suggested the recent court victory.

Somebody laughed. As a matter of fact, several somebods laughed.

You can laugh, but the world doesn't always laugh with you.

King Henry the Eighth would have ordered "Off with their heads!" but you can't do that in a democracy.

Or can you?

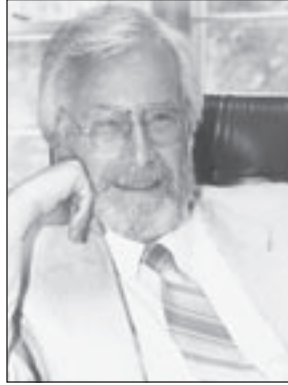
The seven members of the Board of Zoning Appeals are appointed by the County Commission, and the Commission could have replaced each of the members as their respective terms expired.

Unwilling to wait, however, and cloaked with what passes for regal ire, the offended commissioners have directed county staff to research the consequences of passing an ordinance eliminating the Appeals Board altogether.

Some of the readers of this column are old enough to remember the high dudgeon engaged in by President Franklin Delano Roosevelt when, during his first term, the Supreme Court of the United States had the temerity to disagree with some of his actions and held them unconstitutional.

The offended Chief Executive was not content to wait until the passage of time and old age could provide the opportunity to replace sitting Justices.

Instead, he moved to promote changes in the law,



which would have increased the number of Justices from nine to fifteen. In its wisdom, the public and the legislature labeled the scheme a blatant attempt to "pack" the court, and shot the idea down.

Prior to his first race for the presidency, F.D.R. had been Governor of the State of New York. Perhaps, if his earlier political experience had encompassed service as a county commissioner, it might have occurred to him to eliminate the Supreme Court altogether. (There are those, in our own state, who might welcome the idea even today.)

But we digress. In the case of our counties, what would fill the void left by the elimination of Zoning Boards of Appeal? After all, unless the County Commission finds a way to anoint itself collectively as king, there must be some process of review to provide an "escape valve" from incorrect decisions.

One of the commissioners has suggested the creation of a "hearing officer," to replace the obstreperous seven-member appellate board.

Judging from the reactions of the commissioners to the present situation, one can only assume that what they really want is a "deaf" hearing officer, with an obedient, subservient nature.

While the public waits for the ultimate outcome, it can only be hoped that some lessons are absorbed from the controversy.

One lesson is clear. Public servants must be careful when they laugh.

A smile, a grin, or a quiet chuckle, is sometimes appropriate, but never on camera and never when thin-skinned politicians can observe the light-hearted expression.

Richard L. Hershatter is a retired lawyer and novelist who writes a syndicated column of interest to Floridians. He can be reached at Banyan502@aol.com.

Should Congress be Fired?

Tom Burgum
Contributing Columnist

In recent months the news has been unkind to the Republicans in Congress, the Republican in the White House and it hasn't been so hot for those in Connecticut, Ohio and many states west of the Missouri River. President Bush currently has approval ratings somewhere between 28% and 33% while Congress has an approval rating of 22%. In other words, the public believes that Congress should be rated somewhere below lawyers and IRS agents. It is clear the national Republicans are in a malaise and there are danger signs no prudent politician should ignore. An article in the National Review put it bluntly, "The talk of Washington has been about the 'shakeup' in the White House and what administration official — Dick Cheney? Don Rumsfeld? John Snow? — should be sacked to help turn around the national GOP's fortunes. We survey this scene and find ourselves asking, Is it Congress that should be fired?"

Republicans can ignore items like this when found in the New York Times, the LA Times or even the Washington Post, but they can't ignore the National Review. The growth of modern conservatism was spurred by Barry Goldwater, Ronald Reagan and, first and foremost, William Buckley's National Review. When this august publication asks, "Should Congress be fired?" the Republicans are truly walking a very difficult road.

An article in the May 22 edition by Kate O'Beirne and Richard Lowry took the current Congress and leadership to task for a series of actions and missteps. Not only are the Hill Republicans guilty of following Democratic leads on some issues, but also they are delinquent in their response to some basic problems that beset the country. Their response to gas prices stole a page from the Democrat playbook. Speaker Denny Hastert and Majority Leader Bill Frist joined the Democrats in bashing the oil companies while the omnipresent Arlen Specter (R-Penn.) backed Democrat's call for a windfall-profit tax. Sen. Chuck Grassley (R-Iowa) of ethanol fame "asked the IRS to allow Finance Committee aides to review the corporate tax returns of oil and gas compa-

nies for the past five years." For what, we wonder.

"The political problem," according to the O'Beirne and Lowry, "with all this is that once Republicans have given away the premises of their governing philosophy — in this case, that prices and executive compensation are determined by the market — they have no foothold to resist Democratic initiatives. Try as they might, there is no way that Republicans can be more socialistic and economically populist than the Democrats." It is also pointed out that the initial Republican response to gas price increases was almost comic. The suggested \$100 rebate to compensate motorists for the increases would simply be taking money in taxes and giving it back in a symbolic gesture.

The creation of the new, enormous, sprawling Department of Homeland Security (DHS) is given as an example of problem-causing in response to problems — in this case with the aid of the four Jersey widows whose call for action stampeded the Congress into ill-considered action. The O'Beirne and Lowry article recalls, "Smart analysts said at the time that a collection of 22 disparate agencies could not be made to function effectively, at least not for years." The most reprehensible aspect of this is when DHS's "dysfunction played into the chaotic response to Hurricane Katrina, Congress turned around and excoriated the people in charge of the unmanageable department it itself had created." The authors conclude, "Being in Congress means never having to own up to your own errors, when you can browbeat other people over them during televised hearings instead. Blame always rolls off Capitol Hill onto someone else." The accuracy of the author's charges is best proved by Congressional outrage because national intelligence director John Negroponte is having difficulty presiding over the very over-bureaucratization Congress insisted



on.

What is worse, according to National Review article is "...when the near-total ban Congress rushed to pass on coercive interrogation methods last year ever manifestly puts a crimp on efforts to preempt a terror attack, Congress will lead the chorus of outrage. Hearings will be held, and careers ruined — just not the careers of anyone who wrote the restrictions into law in the first place." You can bet on it as that is exactly what happened when the restrictions on FBI and CIA communications prevented them from coordinating their efforts prior to 9-11. Congressional hearings and the 9-11 Commission acted as if the CIA and FBI had passed the restrictions that kept them from acting in concert. It is almost astounding when you realize one member of the 9-11 Commission was the very person who drafted the Presidential order by Bill Clinton that prohibited the CIA and FBI from sharing information. This only goes to show that farce is not restricted to comedy.

O'Beirne and Lowry believe, "What all three of these examples have in common is an unseemly stampede, a rush to take action that overwhelms any critical thought about the proposals in question. Congress couldn't even wait to get the Robb-Silberman report on how the intelligence community had missed the true state of Saddam's weapons program before rushing ahead to pass that intelligence reorganization." The authors conclude, "For the world's greatest deliberative body, Congress lacks any deliberative sense, lacks the ability or willingness to stop and think."

Republicans would not be in error to mention that the Democratic minority in Congress is as guilty of all these offenses against reason as the Republican majority. While true, this misses the crux of the problem for the party in power. The Republicans are held to be in charge and when in charge you get the credit or the blame for conditions and it is no defense to say, "The Democrats are no better." Will Rogers had another way of saying the same thing. He believed the party out of power has an advantage as it has usually been some time since they proved to be incompetent.