

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE  
& DEMOCRACY  
**\*\*NEWS\*\***

Dear Friends,

You may recall the superb *Washington Monthly* investigative journalist, Stephanie Mencimer, from her stinging account of media bias around tort issues called *False Alarm: How the Media Helps the Insurance Industry and the GOP Promote the Myth of America's "Lawsuit Crisis."*

Stephanie has written a fantastic new book called *Blocking the Courthouse Door: How the Republican Party and Its Corporate Allies Are Taking Away Your Right to Sue*, and CJ&D is pleased to announce that she has personally autographed a limited number of copies of this book for CJ&D members.

We're offering *Blocking the Courthouse Door* as a special thank you gift for those who join or renew their CJ&D Associate or Fellow memberships by the end of the year. See the back page for this limited time offer.

So now, you can show your support for CJ&D while being the first on your block to have this brilliant new book, signed by the author just for CJ&D friends.

While supplies last!

Joanne Doroshow  
Executive Director

## IN THIS ISSUE: Food Safety

### Risking Gains for Healthy Schools

This spring, after several years of negotiations, the country's three largest soft-drink manufacturers, Pepsi Co., Coca-Cola, and Cadbury Schweppes, came to an agreement with health advocates to begin removing high-sugar and high calorie drinks from elementary, middle and high school cafeterias and vending machines starting this fall.

At the time of their agreement these three companies controlled over 90% of the market share in school drink sales, with the high-sugar and high calorie drinks at

issue accounting for nearly 50% of over-all industry school sales.



For years the food beverage industries had aggressively worked to exploit this captive market, even going so far as to capitalize on schools' need for financial assistance by giving them a cut of prof-

its from sales of soda and junk food. Their efforts proved so successful, that according to a recent study by the Government Accountability Office (GAO) found that nearly nine out of ten schools offer junk food to kids.

These statistics are particularly troubling when you consider that the Institute of Medicine recently predicted that if current trends continue, one in five American children will be considered obese by the year 2010. Jeffrey Koplan, former

(continued on page 2)

### Immunity for Banned Supplements

In April of 2004 the Food and Drug Administration banned the diet-supplement Ephedra due to what then Health and Human Services Secretary Tommy G. Thompson called the "unreasonable risk to those who use it."

While federal studies of the drugs effect linked the supplement to an increased risk of heart-attack, the decision to finally ban the product

came after repeated lawsuits were brought against the drug's manufactures, NVE Pharmaceuticals. At the time the FDA had gotten around to banning the drug it had been linked to 155 deaths.

As the *Washington Post* reported in 2000, "[I]t is clear that lawsuits, far more than FDA saber-rattling, are forcing changes in the way ephedra companies do busi-

ness." These changes included adopting stronger warnings on the labels of products containing ephedra, as well as decisions to stop "marketing ephedra as an herbal high and ... added label language to discourage teenagers from using it."

However, if certain people in Congress get their way, these kinds of lawsuits

(continued on page 3)

**Risking Gains for Healthy Schools** *continued...*



director of the Centers for Disease Control and Prevention has called the problem of childhood obesity one of the 21st century's "most critical public health issues."

But while the decision by these companies to discontinue sales of drinks with dangerously high levels of sugar was voluntary, it would be wrong to assume that it was done for purely altruistic reason.

According to the *New York Times* the deal, which was formally reached between the three beverage manufacturers and representatives from the Alliance for a Healthier Generation - a partnership of the American Heart Association and the William J. Clinton Foundation - was in large part a "response to the growing threat of lawsuits" set to be brought by the likes of the Center for Science in the Public Interest and others.

According to Richard Daynard, an associate dean of Northeastern Law School who was involved in the Center for Science in the Public Interest's efforts to prepare litigation, from the outset of negotiations

the beverage makers had been unwilling to budge from a set of recommendations outlined by the American Beverage Association in 2005, which would have placed much more lenient restrictions on school sales.

"The soda companies had made it very clear in the fall 2005 that they were not going to voluntarily go beyond an agreed upon policy that had been promulgated by the beverage industry," Daynard explained. "They felt that that was far enough and this position was one that would have continued to have these mildly addicted and nutritionally useless drinks in schools."

"What budged these companies from their former position was not their affection for Bill Clinton," Daynard went on to explain, referring to the former president and chief negotiator for the Alliance for a Healthier Generation. "There's no explanation for their shift other than their concerns about lawsuits."

Speaking further about the agreement, Daynard expressed dissatisfaction with omission of sports energy drinks from the final agreement, a fact that led to him to tell the trade publication *Beverage World* that it may be necessary to "re-hone litigation" to ensure that they are also taken out of schools across the country.

"Sports drinks make perfect sense if you're running a marathon, but no one runs a marathon between 5th and 6th period."

Just don't tell that to the American Beverage Association or their friends on Capitol Hill.

**"Sports drinks make perfect sense if you're running a marathon, but no one runs a marathon between 5th and 6th period."**

Efforts have long been underway in the U.S. Senate to pass legislation that would make it far less likely that this agreement, and others like it, could be reached.

The so-called Commonsense Consumption Act, previously passed in the House of Representatives and introduced in the Senate by Mitch McConnell (R-Ky), is often discussed as a measure targeting "frivolous" lawsuits brought against the fast food industry by overweight customers. In referring to the bill's supposed intent, Sen. McConnell has spoken out repeatedly about the need to curb "abusive" lawsuits, explaining that "[i]t's important not to blame poor eating habits on someone else."

However, this legislation,

which is sometimes referred to as "The Cheeseburger Bill," is so broad that it could eliminate the possibility of legal action in a vast array of cases including challenges to false advertising over ingredients, injuries caused by dangerous supplements and even against schools for providing kids with unhealthy foods.

The broad immunity provided in this bill would eliminate one of the most effective incentives for food and beverage companies to act as good corporate citizens, one of the effects doubtlessly being the re-introduction of harmful drinks into schools where children are required to be.

As Sen. Patrick Leahy (D-VT), an opponent of the bill, has stated publicly, "This legislation does not create any alternative method for keeping a check on corporate misconduct that has a detrimental effect on the health of all Americans."

This is just what the food and beverage industry had been asking for.

(continued on page 3)



## Risking Gains for Healthy Schools *continued...*



As Richard Daynard explained, “They’re not only concerned with losing a lawsuit; they’re concerned with all the negative publicity that would result from having a suit brought against them, which would expose their conduct.”

So as Americans become increasingly aware of the health risks associated with serving high-sugar drinks to children, the food industry has been fran-

tically pouring money into politician's coffers in hopes of getting laws passed that would eliminate even the possibility of a lawsuit being brought against them.

According to published reports, Sen. McConnell himself accepted \$151,205 in donations from restaurant industry groups over the course of his past two senate campaigns. In fact, during the 2002 and 2004 election cycles alone, the National Restaurant Association along with 14 separate political action committees representing restaurant chains donated almost “\$3.9 million to federal campaigns, of which nearly \$3.5 million went to Republicans,” who currently control both houses of Congress.

Sen. Leahy, in urging his colleagues to vote against this bill, articulated precisely what food industry lobbyist and this bill's proponents don't want Americans to know: “This legislation favors the interests of corporations over the health of our children and the health of their parents.”



## Immunity for Banned Supplements *continued...*

could soon be extinct. The Commonsense Consumption Act, or “Cheeseburger Bill,” would not only limit the liability of food companies, it would also grant immunity to the makers of banned substances such as Ephedra. (Court rulings in Utah have re-allowed the sale of the drug within its borders.)

Just as proponents of the “Cheeseburger Bill” have sought to hide the negative effect this legislation could have on efforts to protect children from junk food



in schools, so have they ignored the effect the legislation would have on harmful supplements.

**“[This bill] goes much further than its stated purpose of banning the small handful of private suits brought against the food industry.”**

As Rep. John Conyers (D-MI), an opponent of this legislation points out, “[This bill] goes much further than its stated purpose of banning the small handful of private suits brought against the food industry.” He went on to say, in a letter that was addressed to his colleagues, “It also bans suits for harm caused by dietary supplements and mislabeling which have nothing to do with excess food consumption, and would prevent state law enforcement officials from bringing legal actions to enforce their own consumer protection laws.”

Without the threat of lawsuits, manufacturers of dangerous supplements will have far less incentive to keep the public safe.



90 Broad Street  
Suite 401 New York, NY 10004  
Phone: 212.267.2801  
Fax: 212.459.0919  
E-mail: [centerjd@centerjd.org](mailto:centerjd@centerjd.org)  
Web: <http://centerjd.org>

### IMPACT

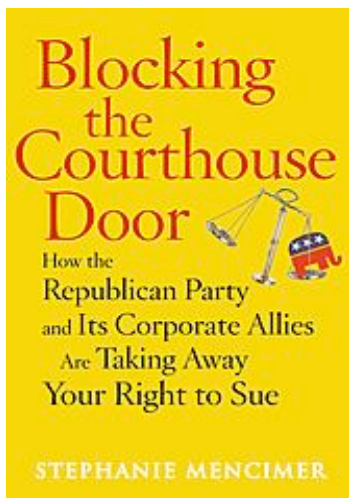
Editor:  
Daniel Albanese

Contributor:  
Patrick Buckley

© Copyright 2006 Center for Justice & Democracy. All rights reserved.

# Free Gift ~ Join or Renew Today!

## Join or Renew to Receive:



**Hurry to Get Your Copy  
Signed by the Author!**

When you **join or renew** your CJ&D membership at the Associate level or higher, we will send you an autographed copy of Stephanie Mencimer's gripping new book as a thank you gift.

**Blocking the Courthouse Door** is Stephanie Mencimer's "no-holds barred political broadside", revealing how conservatives and corporations have been scandalously successful in persuading millions of Americans to give up their legal right to a civil trial.

*Mencimer is a contributing editor of the Washington Monthly, and was previously an investigative reporter for the Washington Post and staff writer for Legal Times. She won the 2000 Harry Chapin Media Award for reporting on hunger and poverty.*

## In addition to your free gift. . . You'll also receive the regular benefits of your membership:

- Annual subscription to our newsletter and fact sheets
- Full access to CJ&D's password-protected library
- Groundbreaking White Papers on critical subjects
- Every major CJ&D study

## Please join or renew today!

- \_\_\_ \$5000 Fellow
- \_\_\_ ~~\$1000~~ \$500 Associate *introductory offer for new members*
- \_\_\_ \$100 Subscriber

## We have three payment methods:

Visit us online at:  
[www.centerjd.org/donate](http://www.centerjd.org/donate)

Please send to:  
Daniel Albanese  
Membership Coordinator  
Center for Justice and Democracy  
90 Broad Street, Suite 401  
New York, NY 10004



Call us at:  
212.267.2801

As always, your contribution is tax-deductible to the extent allowable by the law.