IDEAS ON LIBERTY
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Lawyers Run Amok

As Washington, D.C., prepared for the descent of thousands of anti-globalization protesters last fall, George Washington University law professor John Banzhaf proposed deploying the ultimate weapon: trial lawyers.

Hit the demonstrators with a class-action lawsuit! Luckily, the city survived the protests without resorting to such extreme measures.

But the proposal was par for Banzhaf, who believes that just about every decision in life should be decided by judges. No rhapsodic commitment to liberty. Just send in the lawyers.

Unfortunately, there are few people Banzhaf would not like to sue. He apparently will not be satisfied as long as anyone is making a personal decision that has not been cleared by him in court.

He cites among his accomplishments sex-discrimination lawsuits against the Washington Cosmos Club and South Carolina's military-oriented university, The Citadel; hair stylists who charged more to cut women's hair and dry cleaners who charged more for women's clothes; and bars that discriminated against men with "ladies' nights."

Long known as the "Father of Potty Parity," last year he joined in a federal complaint against the University of Michigan for having only a third more restroom facilities for women. In his view, this constituted illegal "sexual harassment."

Doug Bandow, a nationally syndicated columnist, is a senior fellow at the Cato Institute and the author and editor of several books.

He really hates the tobacco companies. Consenting adults have no right to make what he thinks is a bad decision. He was involved in the campaign to ban cigarette advertising on TV. He naturally backed the legal avalanche of state Medicaid lawsuits against cigarette makers, and last fall put out a press release lauding a judge for banning parental smoking around a child in a custody case.

Banzhaf also has suggested legislative action, such as a tax proportional to the medical costs created by consumption of particular foods. Banzhaf contends: "If there are products the use of which cause large costs, grave costs, it is better that the burden of those costs fall on people who use and make the products."

He says that some of the revenues should go "to fund healthy eating messages to compete against the $30 billion that the food industry spends." And government should "put more health foods in vending machines, install bike racks and showers at public buildings to encourage more exercise, and so on."

Should his fellow citizens and their elected representatives be too stupid to go along with his plans, however, there is always the class-action lawsuit. Sadly, though, while helping to pioneer the basic theory of fat litigation, Banzhaf was slow in finding actual plaintiffs. An overweight 56-year-old, Caesar Barber, used another lawyer to file the first suit, charging McDonald's, Burger King, KFC, and Wendy's with making him fat.

But now Banzhaf is trying to catch up. He has complained that fast-food companies "aim in particular [at] young people," and kids thereby "fall into the trap and become obese at youth." He's threatening to sue schools and school boards "for entering into contracts whereby they get paid for every fat burger and sugary soft drink they sell to kids."

Moreover, Banzhaf has filed a class-action case against McDonald's for selling to children. Suing on behalf of kids "avoids the major argument that plaintiffs are supposedly responsible for their own actions, since one can hardly blame youngsters who are lured into McDonald's by playgrounds, gotta-have toys in Happy Meals, birthday parties, etc."

Elsewhere Banzhaf has admitted that consumers have some responsibility, but "to exercise their personal responsibility, consumers need the same clear and conspicuous disclosure of calories and fat content in fast foods that we enjoy and use regarding food purchased in stores." As if most people don't know that a Big Mac has more calories than a tub of Tofu.

We Know Better

The basic point is that people know better, but still choose "bad" stuff. And most people still eat most meals at home. Grocery stores, diet doctors, and packaging companies could be next on the legal hit list. Even people who give out candy on Halloween. Sue 'em all!

Seem unlikely? Observes Banzhaf with delight: "Never underestimate the tenacity of a lawyer working on a contingency fee." Indeed.

Nor are private suits the only option. Banzhaf says we could see "similar state lawsuits against fast food companies for the public costs of obesity, just as states were so successful in suing tobacco companies for the public costs of smoking."

The argument that we are all paying for the costs of fat people and that instead such expenses should be "confined to those who use the products or produce them" is superficially attractive. But in the case of smoking, government actually benefited: though smoking-related diseases are expensive, they are not as expensive as decades more of age-related diseases.

Moreover, that government tries to socialize the cost of everything—health care, for instance—doesn't entitle it to control our lives. Should people be allowed to hang-glide? Should people be forced to exercise? Why let individuals assess the relative benefits and risks of any activity when the rest of us pay?

Banzhaf is a dedicated social engineer. He told one critic, "the problem is, the remedies that you proposed—exercise, moderation in eating—and what some others propose—parental responsibilities, individual responsibility, education—aren't working."

He'd prefer that government legislate. But even here there are limits. Banzhaf allowed in an interview with a French publication: "one can change the behavior of the companies much more easily than that of the consumers. . . . I can't think of any way we can legislate that people go out and jog a mile a day." We should be thankful for small favors.

"But we can change how fast foods are advertised, promoted, sold. We can adopt taxes on fast foods so the losses are borne much more by people who eat them," he exults. Who cares if people like fast food? He doesn't want them to eat it, and he will do whatever is necessary to stop them. If government won't do his bidding, then "as in the tobacco area, where the legislatures did not act, we were forced to litigate." Lawsuits pushed their way out of his pen in the same way that hamburgers forced their way into Caesar Barber's mouth.

When will all this end? Never, if Banzhaf has his way. He told *Insight* magazine: "I'm not sure anybody at this time can say. I would suggest that we have to work it out the way we always have. Which is . . . in the great laboratories of law that are our courts."

Freedom requires responsibility, a willingness to bear the cost of one's actions. Increasingly, however, Americans want someone else to bear the consequences. □