

Former government lawyer describes Bush administration meddling in landmark tobacco suit

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27 March 2007

The lead prosecutor in a six-year landmark government lawsuit against the tobacco industry has described how Bush administration loyalists intervened to weaken and manipulate the Justice Department's case, resulting in a drastic reduction of the financial penalties demanded by federal prosecutors.

Former Justice Department attorney Sharon Eubanks described the Bush officials' interference in the case against the tobacco giants in a March 22 report by Carol Leonnig in the *Washington Post*. Eubanks, who retired in December 2005, said she decided to come forward out of concern for the "overwhelming politicization" of the department, exhibited most recently in the purging of eight US attorneys.

"Political interference is happening at Justice across the department," she told the *Post*. "When decisions are made now in the Bush attorney general's office, politics is the primary consideration.... The rule of law goes out the window."

Eubanks was the lead prosecutor in a major racketeering case brought by the government in 1999 against the six largest tobacco companies in the US: Philip Morris (Marlboro and others), RJ Reynolds (Camel and others), Brown & Williamson (later acquired by RJ Reynolds), Lorillard Tobacco (Newport), The Liggett Group and the American Tobacco Company.

The corporations, which account for 99 percent of the cigarette market, were charged with conspiring to conceal the dangers of smoking and the addictiveness of nicotine; deceptively marketing "light" and "low tar" cigarettes as less harmful than regular cigarettes; deliberately targeting young people to recruit new smokers; misleading the public on the dangers of

secondhand smoke; and deliberately refraining from producing safer, less-addictive cigarettes.

When it became clear that the government was going to win its case, the *Post* reported, Bush administration officials began "micromanaging" the team's strategy in the final weeks of the trial, weakening government's charges and recommended penalties.

Eubanks said that three Bush appointees—then-Associate Attorney General Robert D. McCallum, then-Assistant Attorney General Peter Keisler and Keisler's deputy at the time, Dan Meron—instructed her to tell key witnesses to change their testimony and drop the proposal that tobacco executives be removed from their positions. "How could you put that in there? We're not going to be pursuing that," Eubanks recalled McCallum reacting when he learned of the proposal.

Most significantly, the proposed penalty against the industry was lowered from \$130 billion to \$10 billion. Eubanks was ordered to read a new closing argument they had written that rationalized the lowered penalty. "I couldn't even look at the judge," she told the *Post*.

"The political people were pushing the buttons and ordering us to say what we said," Eubanks said. "And because of that, we failed to zealously represent the interests of the American public."

The \$130 billion was to be used to create smoking-cessation programs for the next 25 years. Instead, the Justice Department recommended only \$10 billion over the next five years. Prior to the morning the figure was announced in court, she said, McCallum refused to tell the prosecution team how much the penalty would be reduced.

McCallum, who is now the US ambassador to Australia, told the *Post*, "Her claims are totally false in

terms of [us] trying to weaken the case.” Alluding to the internal Justice Department investigation that whitewashed the interference, he said, “Her claims were looked into by the Office of Professional Responsibility and were found to be groundless.”

E-mails that Eubanks provided to the Committee on Oversight and Government Reform on March 22 indicate that the White House was anxious over the public’s perceiving the interference in the case. In one instance, the Justice Department was ordered to “hold up” submitting an op-ed piece to *USA Today* explaining the handling of the case because “the White House wanted some changes.” The revisions included prefacing the op-ed with the following: “President Bush and his Administration have proven time and again a strong commitment to holding the tobacco industry accountable for past fraud and abuse,” among other politically calculated edits.

Gladys Kessler, the US District Judge presiding in the case, ruled last August that the companies violated racketeering laws and ordered changes in marketing techniques, but could not order the monetary penalty against them because of a February 2005 appeals court ruling that disallowed penalties for past conduct.

In a scathing, 1,652-page ruling, Kessler ordered tobacco makers to publish newspaper advertisements enumerating the health consequences of smoking. Companies were also ordered to stop labeling some varieties of cigarettes as “low tar,” “light,” “ultra light,” “mild” and “natural,” because the relative safety such words connote has no scientific validity.

“Over the course of more than 50 years, defendants lied, misrepresented, and deceived the American public, including smokers and the young people they avidly sought as ‘replacement smokers,’ about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low-tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system in order to achieve their goal—to make money with little, if any, regard for individual suffering, soaring health costs, or the integrity of the legal system,” Kessler wrote.

“In short, Defendants have marketed and sold their lethal product with zeal, with deception, with a single-

minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.” The tobacco industry, she wrote, continues “to falsely deny and distort the serious health effects of smoking” while denying that nicotine is an addictive substance.

The tobacco companies “concealed and suppressed research data and other evidence that nicotine is addictive.... Defendants’ internal documents reflect a sophisticated understanding of nicotine and its role in creating smoking addiction—an understanding that is totally inconsistent with their long-standing public denials that nicotine is addictive. In addition, it is clear that Defendants intentionally withheld from public dissemination, from the public health community, and from government authorities, accurate and important information regarding the addictiveness of nicotine in cigarettes.

She further found that companies “have falsely denied that they can and do control the level of nicotine delivered in order to create and sustain addiction” and devoted vast resources and research to ensure that “all cigarettes delivered doses of nicotine adequate to create and sustain addiction.”

Indeed, a January 2007 study by the Harvard School of Public Health found that tobacco companies increased nicotine concentration levels in cigarettes by 11 percent between 1998 and 2005—even as the tobacco industry was being criminally prosecuted for the practice.



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