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Torpedoing a Tobacco Suit

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Even the tobacco industry's own lawyers were surprised when the Bush administration pulled its punches in the final rounds of a tobacco racketeering trial this week, suddenly asking for far less than expected from the corporate defendants. This last-minute cave-in was reportedly dictated by political appointees in the Justice Department who overruled the career professionals who have been prosecuting the case for six years. It was an egregious example of favoritism toward a big politically connected industry by an administration that is making such favors a hallmark of its governing style.

Just this week, for example, a Times reporter revealed that a former oil-industry lobbyist now ensconced at the White House has been editing reports on global warming to play down the threat. Meanwhile, the Pentagon's inspector general charged that the Air Force had tried to award a hugely expensive leasing deal to Boeing in what an internal e-mail note described as a company "bailout."

The retreat in the tobacco case was the latest blow to a case that started out with high hopes under the Clinton administration. At that time, the tobacco industry had already settled a case brought by state attorneys general for a whopping \$246 billion, and the Justice Department sought a potentially larger sum in a civil racketeering suit that charged the industry with a 50-year campaign of fraud and deception to minimize smoking's health risks and addictiveness and to hook teenagers with aggressive marketing. Over the years, unfavorable court rulings have limited the case - most recently by restricting any awards to remedies that would restrain any future fraud.

Even so, the government looked ready to demand a hefty sum from the industry to conduct smoking-cessation programs. Its own key witness had estimated that a good program would cost \$5.2 billion a year, or \$130 billion over a 25-year period. That sounded like a fair way to force the industry to deal with some of the damage that its propaganda on behalf of smoking causes.

But when it came time to make closing arguments this week, the Justice Department shocked all of the participants with a confused and fumbling presentation. It sought only \$10 billion for a five-year program, suggesting later that it had to cut the demand to stay within the appeals court's ruling and that the payments could rise if the industry kept misbehaving. But the appeals court ruling had less to do with the amount of money sought than with the kinds of remedies it would pay for.

We have no idea whether the courts will approve smoking-cessation programs as an appropriate remedy if the companies are found guilty, but it surely made no sense for the Justice Department to give up the game just as the case was going to the trial judge for a decision.



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The Bush administration has never liked this inherited case. When John Ashcroft was attorney general, he tried to settle it or undercut the legal team, but he let the case go forward after a public outcry. Now, according to press reports, high officials in the Justice Department - including the associate attorney general, whose former firm represented one of the defendant companies - ordered the department's career lawyers to seek far less money than they wanted.

In give-and-take over the reasons for the turnaround, the trial judge, Gladys Kessler, suggested that perhaps "additional influences have been brought to bear on what the government's case is." This is not an auspicious way to usher in the reign of the new attorney general, Alberto Gonzales.