

# American University Washington College of Law

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From the SelectedWorks of Ira P. Robbins

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## Settlement Sentiments

Ira P Robbins



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## LETTERS TO THE EDITOR

### SETTLEMENT SENTIMENTS

MARK CURRIDEN'S ARTICLE on the aftermath of the \$246 billion tobacco settlement ("Up in Smoke," March, page 26) laments the failure of governmental efforts to regulate the tobacco industry. But the government has been ineffective because it has focused on exacting

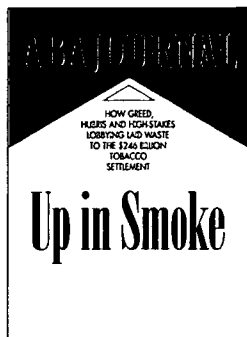
money. If we want to get serious about the deadly consequences of what tobacco companies have been doing for decades, we should exact deterrence and retribution as well. How to do this? By prosecuting tobacco executives for homicide. They have negligently and recklessly disregarded the substantial and unjustifiable risk that their conduct might result in death. There's a term for this in criminal law: manslaughter. And when they have ignored this risk under circumstances manifesting indifference to the value of human life, another term comes to mind: murder.

Is this idea so far-fetched? Not after the Harvard School of Public Health reported in January that, from 1998 to 2005, the industry deliberately intensified the concentration of nicotine to increase the number of puffs per cigarette, thus perpetuating a "tobacco pandemic."

Criminal punishment is the prevailing way for society today to communicate its condemnation of wrongdoing. It is a means of expressing revulsion toward the grave offenses of morally culpable offenders. Tobacco company executives must be called to account for decisions that have led to countless deaths. That may cost them money. It should also put them in prison.

*Ira P. Robbins  
Washington, D.C.*

CURRIDEN'S EXCELLENT ARTICLE ON the warts of the \$246 billion tobacco settlement might have placed more emphasis on the corruption of the law that was at work in that process. In essence, our profession, politicians and courts struck a bargain with merchants of death that put a price not only on past victims but, by choosing a 25-year time line, on future lives as



well. While many bizarre events ensued, this was the objective from the very beginning. It makes my skin crawl.

*Philip McBride Johnson  
Washington, D.C.*

YOUR ARTICLE ON THE master settlement agreement made in 1998 between most of the states

and the Big Four—now Big Three—cigarette companies, overlooks the point that the original proposal presented to Congress in 1997, the McCain bill, failed primarily because of the FTC's opposition. Then-Chairman Robert Pitofsky persuaded Congress that, if enacted, it would create an output cartel enriching the Big Three, and it was undeserving of the antitrust exemption in the bill.

The settlement between the three big cigarette companies and most of the states was made without congressional approval and set up an even more anti-competitive cartel that has created record-breaking profits for the Big Three. To generate the settlement payments from these Big Three, the states agreed with them to enact statutes requiring small cigarette manufacturers to pay substantial penalties on their sales, enabling the Big Three to charge exorbitant prices without losing much market share, and thus make record profits. The stocks of all three, hailed by analysts as "growth" equities, are at all-time highs. Prices protected by the cartel have enabled the Big Three to spend additional billions of dollars in promotions for recruiting youths to replace old smokers who quit or die.

Michael Moore, the former Mississippi attorney general quoted in the article as labeling the MSA a "tragedy," described it this way in the *Boston Globe* in 2001: "The tobacco guys are sitting there laughing at us. Because they are saying: 'We've raised the price on our product. All our smokers that we're killing, they're paying for it. We passed some money on to the states, and they're building highways with it. No threat to us.'"

*David F. Dobbins  
New York City*

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