

Gladys Kessler, Judge Who Curbed Deceptive Tobacco Ads, Dies at 85

In a landmark case, she ruled in 2006 that cigarette companies had been deceiving the public about the health hazards of smoking, violating racketeering laws.



Judge Gladys Kessler, who presided over a major civil case against the tobacco companies, forced changes in the way cigarettes are marketed in the United States. Credit...Charles Dharapak/Associated Press

By [Richard Sandomir](#) March 27, 2023

Gladys Kessler, a federal judge who in a historic ruling in 2006 found that the tobacco industry had violated civil racketeering laws for decades by “repeatedly, and with enormous skill and sophistication” deceiving the public about the health hazards of smoking, died on March 16 in Washington. She was 85.

The cause of death, in a hospital, was complications of pneumonia, her family said.

Judge Kessler — who also ruled on cases involving the force-feeding of a prisoner held in the United States military prison at Guantánamo Bay, Cuba, and the constitutionality of the Affordable Care Act — was appointed to Federal District Court by President Bill Clinton in 1994.

For more than a decade, Judge Kessler presided over *United States v. Philip Morris, et al*, which the Justice Department filed in 1999 against the major cigarette makers. After years of legal maneuvering and a nine-month trial, she issued a [1,653-page opinion](#) in August 2006 that was significant for its stern judgments and its detailed history of industry efforts to mislead the public.

The defendants [“have marketed and sold their lethal product with zeal”](#) and “with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted,” she wrote.

She ordered the tobacco companies to stop labeling cigarettes as “low tar,” “light,” “natural” or with any descriptive label that would make cigarettes appear less harmful; to create a public archive of industry documents that detailed their decades-long deceptions; and to publicize “corrective” statements in newspapers and on television about the harmful effects of smoking.

Those statements, [which did not start appearing until 2017](#) after years of appeals in court, included “Smoking kills, on average, 1,200 Americans. Every day” and “Smoking causes heart disease, emphysema, acute myeloid leukemia and cancer of the mouth, esophagus, larynx, lung, stomach, kidney, bladder, and pancreas.”

The warnings, which have appeared in television commercials and newspaper ads, [are to be posted on signs in retail stores later this year](#).

But [a prospective preamble](#) to the statements saying that the companies had “deliberately deceived the American public” was struck down by an appeals court in 2015.

Judge Kessler was also limited by an appeals court ruling from [imposing at least \\$289 billion](#) in financial remedies on the defendants, which included Philip Morris USA and its parent, Altria Group; R.J. Reynolds; and Brown & Williamson.

Nonetheless, [Matthew L. Myers, president of the Campaign for Tobacco-Free Kids](#), said that the major impact of the decision was the “exhaustive, clear documentation of what the industry knew and did.”

In a phone interview, he added, “Without any question it has been the final word, ending any debate about the fact that the tobacco industry long knew the harm caused by its products, intentionally designed its products to reach kids and minorities and engaged in a 40-year campaign to deceive the public.”

Sharon Eubanks, the lead lawyer in the tobacco case for the Justice Department, wrote in an email: “Judge Kessler presided over a case that many said was impossible to try. In denying the tobacco defendants’ motions to dismiss the case, Judge Kessler’s decision on the merits remains highly relevant to this day.”

The case was separate from a [\\$206 billion](#) agreement reached in 1998 to settle lawsuits filed by 46 states, the District of Columbia and five territories over the health costs of smoking.

Image



Judge Kessler in a meeting of a commission that oversees complaints against judges in 2014. Despite gains made by women judges, she said, sexism continued in the courts. Credit...Bill O'Leary/The Washington Post
Gladys Kessler was born on Jan. 22, 1938, in the Bronx. Her father, Norman, was a dentist. Her mother died when she was young, and Gladys was raised by her father and stepmother.

She wanted a life different from the one envisioned by her father, which was to attend a good college, marry a well-educated man, live in the suburbs and have two or three children.

“I knew I had to be self-supporting, which was very important to me,” [she said in an interview with the American Bar Association](#) in 2013. “I knew I wasn’t fit for certain jobs that women were expected to take, like teaching, secretarial work. And I wanted a job that would be intellectually challenging for a lifetime.”

She graduated from Cornell University with a bachelor’s degree in 1959. During her third year at Harvard Law School, she found that gender discrimination prevented her from getting any job offers. One of her professors, Derek Bok (who went on to be president of Harvard University), set up an interview for her at the National Labor Relations Board, where she spent two years in its appellate division after she received her law degree in 1962.

Fascinated by politics, she served as a legislative assistant to [Senator Harrison A. Williams](#), Democrat of New Jersey, from 1964 to 1966, and to [Rep. Jonathan Bingham](#), Democrat of New York, from 1966 to 1968. After working for a year as a special assistant to the director of staff relations at the New York City Board of Education, she was a founder of a public interest law firm in Washington, where she practiced from 1969 to 1977, representing consumer, environmental and tenant groups.

“We argued in the Court of Appeals all the time,” Judge Kessler said in the A.B.A. interview, “and we were doing really wonderful things.”

In 1977, she was appointed as a Superior Court judge in Washington, where she served for 17 years.

She was a founder of the Women’s Legal Defense Fund (now the National Partnership For Women & Families) and president of the National Association of Women Judges in 1982.

Despite the gains that had been made by women on the bench, Judge Kessler said that sexism continued in the courts, particularly in the ways that judges were dealing with female lawyers.

“Many judges in this country treat women in a condescending manner, which instantly sends signals to a jury,” [she told The New York Times in 1984](#). She said that the Association of Women Judges felt a responsibility to educate their colleagues, male and female, about how sexism can influence a jury’s verdict.

During her 17 years on the Superior Court, she served for four years as the presiding judge of its family division. She described a period when she heard neglect and abuse cases as “a horrific six months.”

“You were making incredibly important decisions, scary decisions, about whether to return a child, and you knew anytime you returned a child and there was a terrible result, it would be on the front page of The Washington Post,” she said.

Judge Kessler was appointed to the District Court for the District of Columbia in 1994. Her other major cases included one in which she was part of a three-judge panel that upheld the constitutionality of the Affordable Care act, popularly known as Obamacare.

In cases involving prisoners at Guantánamo Bay, she ordered the release of detainees for lack of evidence. In another case, involving a Syrian detainee who had been held for a dozen years without trial, [she ruled in 2014 that he could be force fed](#) because he was refusing food and water.

She had initially ruled that the detainee, Jihad Ahmed Mustafa Diyab, also known as Abu Wa'el Dhiab, could not be force fed, but reversed herself as his condition deteriorated. In her order, she said that she was “faced with an anguishing Hobson’s choice” — to continue to deny him food and let him die, or let him be fed “at the possible cost of great pain and suffering.”

The court, she wrote, “simply cannot let Mr. Diyab die.”

Mr. Diyab survived and was transferred to Uruguay later that year.

[Eric Lewis](#), a lawyer for Mr. Diyab, said of Judge Kessler in an email, “She was clearly very conflicted and felt great empathy for the detainees and how they were being treated.”

Judge Kessler is survived by her stepdaughters, Sally Mackwell Bauer and Sharon Mackwell; her stepsons, Steven, Clark and Arthur Mackwell; five grandchildren; five great-grandchildren; and one great-great granddaughter. Her husband, [Arthur Mackwell](#), died in 2013.

In her tobacco decision, Judge Kessler was particularly critical of lawyers for their central role in what she called “the Enterprise” — devising national and international strategy, vetting scientific papers and public relations materials, identifying “friendly” witnesses and carrying out document destruction policies.

She wrote, “What a sad and disquieting chapter in the history of an honorable and often courageous profession.”