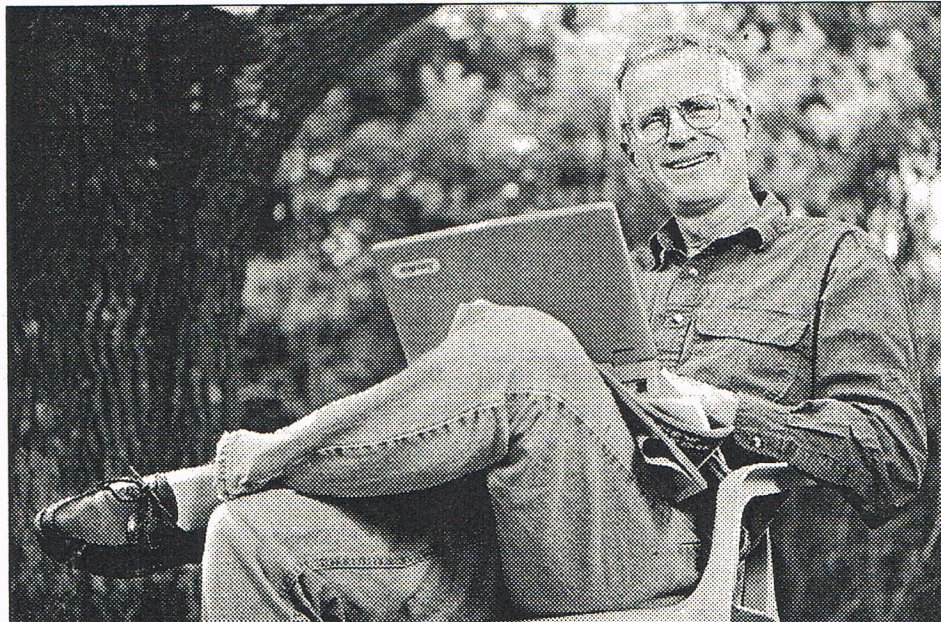


# Style

TUESDAY, NOVEMBER 17, 1998



BY CARL D. WALSH FOR THE WASHINGTON POST

**"Lawsuits are a lousy way to make public policy," says James Tierney, here at his command post in rural Maine. Nonetheless, change may be on the way via the lawsuit he helped 12 states fashion.**

## *Fighting Smoke With Fire*

By JOHN SCHWARTZ  
Washington Post Staff Writer

LISBON FALLS, MAINE

**F**or James E. Tierney, self-appointed field general in America's tobacco wars, yesterday was a moment of victory. Attorneys general for 12 states announced that they had agreed to settle their cases against the industry with a deal that could serve as a model for the 34 additional states that have not already settled such suits. If all 46 states sign on, the total value of the pact could reach \$206 billion—the largest legal settlement in history.

Tierney, 51, a former Maine attorney general, gets an evangelical tone as he proclaims that whatever

In the Legal  
Fight Against  
Tobacco,  
James Tierney  
Has a Burning  
Passion

happens in Congress or in state litigation, "one thing that does not change from place to place is what the tobacco industry did": the industry's attempts to conceal the health consequences of smoking, and the alleged efforts to recruit new generations of smokers to replace dying customers.

"The public will rise up again," Tierney predicts.

If that happens, no small amount of the credit will go to Tierney, a Zeliglike figure who now neither holds office nor files his own lawsuits. While tobacco industry lobbyists swarm on Capitol Hill, he works from a 200-year-old farmhouse where he and

See TIERNEY, B8, Col. 1





his wife have raised their five kids, a few miles outside this tiny Maine town.

In the ongoing tobacco wars, Tierney, these days a consultant hired by state attorneys general, is part strategist, traffic cop, lawyer and spin doctor. His 10 years of experience as attorney general in Maine during the 1980s and his knack for a sound bite have gotten him quoted more often in the national press than many incumbent AGs. He's a new breed of activist and outsider who, with a little help from digital technology, can influence Washington policy debates from far beyond the Beltway—and become something of an insider in the process. President and Hillary Rodham Clinton, for example, took note of Tierney's thoughtful brand of liberalism and invited him to one of those intimate Big Ideas dinners at the White House.

His working day begins by the wood-burning stove off the kitchen, as he sits with a laptop and a cup of coffee. He reads the news online, then composes a daily roundup and commentary for attorneys general and their staffs around the country. He fires off the missives via modem, then begins working the phones.

### The Great Facilitator

"You can't decide whether he's brilliant or crazy," says Mike Easley, the AG for North Carolina and one of the lead negotiators of the new state settlement. "The things Tierney does good are the things you don't see. He keeps bad things from happening."

He's a raconteur, he's a schmooper, he's good company," says Richard Blumenthal, Connecticut's attorney general. "But he also understands the role of attorneys general. He's been there and faced many of the issues. So he can empathize as well as advise."

Tom Miller, Iowa's AG, says Tierney smooths the tensions in tough situations like the seemingly endless negotiations toward a national tobacco settlement proposal in the summer of 1997.

"Jim is one of the very best people at bringing the best out in people... helping them maximize their good qualities at the time and minimize their bad qualities," Miller says. "He just does that naturally" by keeping lines of communication open on all sides. "He just settles things down and solves problems," Easley says. "He's a good person to talk to. And he helps keep your focus."

Now that state attorneys general are suing Microsoft, Tierney is again getting quoted often—though, as always, most of his briefings for reporters are delivered on background, a deal in which he cannot be identified. Nonetheless, he is rich with zingers aimed at his opponents.

Some attorneys general rankle at the notion that Tierney gets more press than they do when they are the ones taking the political risks. Asked about Tierney's role in assisting them, one snapped, "There's no question that he has a knack for being quoted," but added that "I am not sure how substantive his role has been. Even on tobacco."

Others, however, say they are happy to see Tierney quoted as saying the things that they cannot.

"He's able sometimes to speak more openly and fully since he's not a direct party to litigation, and not bound by those restraints," Blumenthal says.

### Tobacco Meets Its Match

Tierney, who got his law degree from the University of Maine, got his political education in the Reagan years.

Attorneys general had been banding together in lawsuits since the 1970s, but the pace picked up when Republicans won the White House in 1980. The federal government wasn't all that interested in issues like consumer protection or antitrust, and across the country state AGs found themselves looking at nationwide problems—exorbitant insurance charges, say, in the rental car business—and seeing no relief on the way from Washington.

"We had to learn how to do it," Tierney recalls. "If we didn't think about those things, nothing happened."

But in 1990, Tierney, restless, decided to get out as Maine attorney general. "I had the sense that I had done what I was going to do in Maine," he says. He'd already served in his state house of representatives, having been majority leader at age 29, so he set his sights on Washington.

"I knew I'd made a mistake as soon as I announced" for a seat in the U.S. House of Representatives, he says. "It didn't feel right."

After the attorney general's relatively simple world of legal or illegal, honest or dishonest, the return to arm-twisting and horse-trading, the need to play to narrow interest groups, was disheartening. Then the voters decided the issue for him. He was beaten roundly in the 1990 election.

So Tierney, unemployed and facing college tuition payments for his kids, decided to fashion a new gig working with former colleagues.

"I had this theory that maybe I could make a living if I kept my overhead low enough—and that means zero." He hung out a shingle offering to help attorneys general nationwide run big cases and train staff, as well as to dispense a blend of managerial and political advice to newcomers to the job, Democrat and Republican alike.

His first client was Grant Woods, a newly elected Republican in Arizona and a man who had inherited no end of problems. The governor, J. Fife Symington III, was under constant legal scrutiny (and would eventually be convicted of savings and loan fraud); the office was in disarray. Tierney offered to come out and help shape things up. Woods hired him. At once, Woods recalled, he realized that he was not dealing with a slick management consultant. Tierney asked if he could crash at Woods's home—and wound up sleeping in the bed of his 7-year-old.

Gradually, Tierney's plain-spoken style won over more and more state officials. Tierney proved especially adept in the role of honest broker in the middle of discussions about launching collective litigation, and in connecting staffers who were wrangling with the same problems.

And then the biggest suit of all came along: tobacco. Just four years ago, Mississippi became the first state to sue the cigarette industry for reimbursement of smoking-related health costs; Minnesota followed soon after. At the same time, the Food and Drug Administration was considering declaring nicotine in tobacco products a drug that could be regulated by the agency. In addition, a group of trial lawyers was readying a series of class action cases on behalf of smokers.

But after an initial flurry of litigation, the number of state lawsuits stalled at four. Mississippi Attorney General Mike Moore was crisscrossing the country trying to garner new recruits, but hadn't been able to get more to take the leap.

Tierney helped jump-start the process by contacting Richard Daynard, head of the Tobacco Products Liability Project at Northeastern University in Boston. Daynard has long served as a resource for attorneys suing the industry. Tierney became his liaison with the attorneys general.





BY CARL D. WALSH FOR THE WASHINGTON POST

**They're not cases, they're jihads," James Tierney says of the antitrust suits he's involved in. "I don't like monopolies."**

They organized a pivotal November 1995 conference of attorneys general in Boston, where trial lawyers and public health groups laid out their case against the tobacco companies. The assembled state officials, Tierney says, began to see "just what a huge lawbreaker the tobacco industry was."

He says the attorneys general began asking themselves, "How can I go after driveway pavers and telemarketers and not go after tobacco?" Within a year and a half, the number of suits had climbed from four to 41.

The industry decided that it was time to cut a deal. In June 1997 the attorneys general, many of the private attorneys suing the industry and the tobacco companies reached a \$368 billion proposed settlement. It would have granted the industry a measure of protection from lawsuits in return for public health concessions and broad advertising restrictions.

A bill based on the agreement, however, foundered in Congress after the industry declared that its terms were too restrictive and too expensive.

Activists are already denouncing yesterday's deal by the states as a sellout to Big Tobacco. The deal, which does not require congressional approval, does include the creation of a national tobacco education and research foundation, reduction but not elimination of tobacco advertising and sponsorships, and other modest public health gains. The opponents say that, at a minimum, any such deal should include an agreement for the industry to be regulated by the FDA, and stiff penalties if, after the deal is struck, underage smoking does not decline.

Tierney acknowledges that the settlement doesn't have the teeth of the June 1997 agreement. However, he says that the AGs led by Christine Gregoire of Washington state are smart to be considering a settlement now because they're playing with a weaker hand. Many of the AGs are leaning toward accepting the settlement precisely because it is narrow. It does not, he notes, preclude the thousands of individual lawsuits that he predicts will be coming thanks to millions of pages of internal industry documents, most of them released as part of Minnesota's case against the industry.

"The state AGs carried this from nothing to this amazing point," Tierney says. "They ought to be proud of it. They might not have gotten everything they want, but they should be very proud of it."

"Lawsuits are a lousy way to make public policy," he grouches. "The only reason the states are here was because everyone else"—by which he means federal lawmakers—"had failed."

Now it's the turn of Congress, Tierney says, to come back and devise a national tobacco policy that finishes the job that the attorneys general started.

### The Un-Lawyer

In a political world obsessed with status and achievement, Tierney is almost ostentatious in his simplicity. Many of the private lawyers who sued the tobacco industry zip across the country in their personal jets. But when Tierney needs to get into Boston, he often takes the bus, spending \$23 for the round trip. He drives a Dodge Aries station wagon that, at one time in the distant past, was a definable shade of blue. The upholstery is mostly dog hair.

Still, he's not shy about making sure he gets paid. In the Microsoft case, the bills are being covered by one of the many players that feel squashed by the software giant: Sabre Group, the pioneering online travel agency. Microsoft has unveiled its own online travel services. "They've been treated by Microsoft the way Microsoft has treated just about everybody," Tierney says.

Although some of what he does on behalf of Sabre sounds an awful lot like old-fashioned, Washington-style lobbying, Tierney argues he has not compromised his principles.

"I'm loyal to the institution," he says. "... I won't represent a private party who will criticize an attorney general." Instead, he tries to find clients who are going the same way as his attorney general buddies, and then tries to get the client to pay the freight. That hasn't created a conflict of interest yet, said Jeffrey Modisett, Indiana's Democratic attorney general. "He's not going to give you advice that helps Jim Tierney and hurts you," Modisett said.

But when Tierney does get rolling—as in the Microsoft case—watch out.

"They're not cases, they're jihads," Tierney explains. "I don't like monopolies. I think they breed inefficiencies in the economic system, but they also breed arrogance."

So how would Tierney describe his role in these cases?

"When I was a young legislator," he recalls, "my predecessor in this office said, 'You know, you should always give people something when you see them.'"

"What can I give them?" I thought. So I got road maps, which the state highway department made available to the citizenry free. "I put them in the back of my Volkswagen Bug. Every Saturday, I'd go out and visit people and hand them maps. They didn't need a map—they always went to the same places."

But they still loved getting something for nothing from their scrawny representative, and re-elected him consistently.

"I'm still giving road maps," Tierney says.