

# United States Senate

WASHINGTON, DC 20510

June 8, 2005

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
Office of the Inspector General  
950 Pennsylvania Avenue, NW, Suite 4322  
Washington, D.C. 20530-0001

Dear Mr. Fine:

We are writing because of our deep concern over recent events in the government's landmark case against the major tobacco companies, *United States v. Philip Morris USA Inc. et al.* Like all of those who have closely followed the case, we were shocked by the position that the Justice Department took in court yesterday on the crucial issue of damages. The government had presented extensive expert testimony that \$130 billion would be needed to finance a comprehensive national smoking cessation program to counteract the harm caused by the defendants' highly addictive product. Rather than base its claim for damages on the evidence presented by its own expert, the Justice Department inexplicably asked the Court to order the companies to pay only \$10 billion, less than eight percent of the amount the government is entitled to recover based on the trial record. This action appears to seriously compromise the government's position in the case, undermining our ability to obtain a strong and effective remedy for the egregious misconduct of the defendants.

What is particularly disturbing are news reports that the career Justice Department attorneys who have pursued the case against the tobacco industry for more than six years wanted to seek the full \$130 billion to fund smoking cessation programs, but were overruled by high-ranking political appointees.

According to today's *Washington Post*:

"Sources and government officials close to the case said the trial lawyers wanted to request \$130 billion for smoking-cessation programs, but were pressured by leaders in the attorney general's office, particularly [Associate Attorney General Robert D.] McCallum, to make the cut."

The *Los Angeles Times* made a similar report:

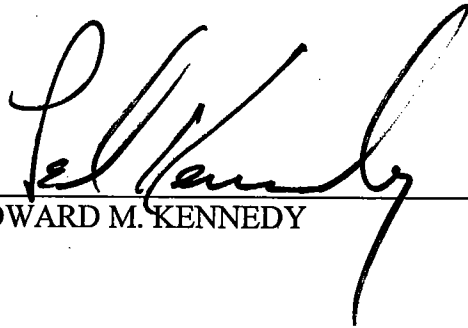
"A person familiar with the situation, speaking on a condition of anonymity, said the change was 'forced on the tobacco team by higher-level, politically appointed officials of the Justice Department,' including Associate Atty. Gen. Robert McCallum, who oversees the civil division."

There should be a thorough investigation to determine whether there was in fact political interference in the prosecution of this case.

No credible explanation has been offered to explain the Department's sudden abandonment of the evidence-based remedy which had been established through lengthy, detailed expert testimony. The legitimacy of the \$10 billion claim for damages made by the Department yesterday is called into question by the very testimony that the government painstakingly presented over the last year.

In light of these disturbing facts, we request the Office of the Inspector General to investigate the manner in which the decision to reduce the claim for damages from \$130 billion to \$10 billion was made, and to determine whether improper interference by political appointees led to a reversal of the position advocated by the career professionals working on the case. In light of the urgency of this matter, we request that this investigation be afforded high priority by your office.

Sincerely,



EDWARD M. KENNEDY



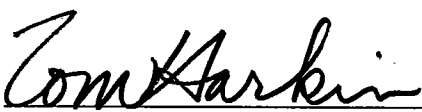
FRANK R. LAUTENBERG



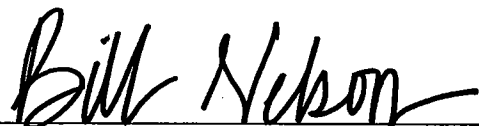
RICHARD DURBIN



RON WYDEN



TOM HARKIN



BILL NELSON