Congress of the United States
Washington, DC 20515

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, DC 20530-0001

Dear Mr. Fine:

We request that the Office of the Inspector General investigate whether improper political interference led to yesterday's sudden reversal by the Department of Justice in the landmark tobacco case in U.S. District Court. Despite the testimony of a key government witness and leading national expert that $130 billion is necessary to fund smoking cessation programs, the Justice Department, without explanation, asked the Court for only $10 billion.

We also ask you to investigate the role of Associate Attorney General Robert D. McCallum, Jr., a former tobacco industry lawyer, in this surprising reversal.

During the trial, a key government witness was Dr. Michael C. Fiore, who is considered the leading expert in the United States on smoking cessation. At the request of former Secretary of Health and Human Services Tommy G. Thompson, Dr. Fiore recently led the Subcommittee on Cessation of the Interagency Committee on Smoking and Health. This subcommittee included experts from the Centers for Disease Control and Prevention, National Cancer Institute, the American Cancer Society, the American Medical Association, the American Association of Health Plans, state health departments, and leading research institutions.[1]

Dr. Fiore based his testimony on the recommendations of this blue-ribbon panel. He testified that a comprehensive cessation program would cost $5.2 billion per year, including $3.2 billion for a national quit line, $1 billion for a national media campaign, $500 million for research to improve cessation, and $500 million for training of clinicians.[2] He also testified that 25 years of funding at this level would be necessary. He stated:

> Given the current size of the smoking population — about 45 million people, about 30 million of who tell us they want to quit — it is reasonable to expect that it will take as many as 25 or more years to allow every smoker in America who wants to quit to do so successfully.[3]

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[1] Subcommittee on Cessation, Interagency Committee on Smoking and Health, *Preventing 3 Million Premature Deaths, Helping 5 Million Smokers Quit: A National Action Plan for Tobacco Cessation* (Feb. 13, 2003).

[2] United States Direct Written Examination of Dr. Michael C. Fiore, M.D. M.P.H, Submitted Pursuant to Order #471, United States v. Philip Morris USA Inc. et al (2005).

[3] *Id.*

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Yesterday, the Justice Department abandoned Dr. Fiore's evidence-based estimate and asked only for a $10 billion smoking cessation program, funded at a rate of $2 billion per year for five years. The over-90% cut in the request was not explained. While the Justice Department's lawyer stated that the $2 billion in funding might need to be extended past five years, he added that the Department hoped "it won't be necessary."[4]

According to news reports, the sudden reversal was not the result of any new scientific evidence on smoking cessation. Rather, it apparently is the result of political pressures brought to bear on the prosecutors responsible for the case. In particular, a political appointee, Associate Attorney General Robert D. McCallum, Jr., has been linked to the decision. According to the *Washington Post*:

> Sources and government officials close to the case said that trial lawyers wanted to request $130 billion for smoking-cessation programs, but were pressured by leaders in the attorney general's office, particularly McCallum, to make the cut.[5]

Similarly, the *Los Angeles Times* reported:

> A person familiar with the situation, speaking on 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.[6]

The *Los Angeles Times* has also reported that prior to joining the Justice Department, Mr. McCallum was a partner at a law firm that represented tobacco giant R.J. Reynolds and had signed a Supreme Court brief on behalf of the company. For reasons that are difficult to understand, he apparently had been cleared by the Department's ethics office for his participation in the trial.[7]

The Justice Department's approach to tobacco litigation should be based on the facts of the case and not political favors to the tobacco industry. It is highly unusual for government prosecutors to abandon evidence-based testimony by their key witnesses at the last moment in a major trial. It is even more unusual for changes in strategy to be dictated by a political appointee with clear ties to the industry that is the defendant in the case.

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[4] *Transcript of Trial Record, Volume 113 Afternoon Session*, United States v. Philip Morris et al. (June 7, 2005).

[5] *Tobacco Escapes Huge Penalty*, Washington Post (June 8, 2005).

[6] *U.S. Eases Demands on Tobacco Companies*, Los Angeles Times (June 8, 2005).

[7] *Id.*

We ask that you investigate whether the Justice Department's reversal was the result of improper political interference, determine the role played by Mr. McCallum and other political appointees, and assess whether the ethics process was handled appropriately.

Because of the urgency of the case, we ask that you conduct this investigation as quickly as possible.

Sincerely,

Henry A. Waxman
Ranking Minority Member
Committee on Government Reform

Martin T. Meehan
Democratic Co-Chairman
Congressional Task Force on
Tobacco and Health