

Political interference weakens federal anti-tobacco effort

By Makebra Anderson
Special to Sentinel-Voice

WASHINGTON (NNPA) — Despite testimony from their own expert witness, the Department of Justice (DOJ) decided to decrease the amount of money it requested from the tobacco industry for nationwide tobacco-prevention programs from \$130 billion to \$10 billion—a move that sent shockwaves through the tobacco cessation community.

“The smoking cessation remedy the U.S. Department of Justice described in its lawsuit against the tobacco companies is completely inadequate to help the nation’s 45 million smokers quit or to prevent the tobacco companies from continuing to deceive and addict new smokers in the future,” the American Cancer Society, American Heart Association, American Lung Association, American Public Health Association and Campaign for Tobacco-Free Kids said in a joint statement.

“It is also inconsistent with the powerful case the government has made that the tobacco companies engaged in a decades-long scheme to defraud the American public and market their deadly products to our children. Due to apparent political interference in this case, the Justice Department is now seeking a remedy that protects tobacco profits rather than public health.”

Michael Fiore, the government’s expert witness, recommended a 25-year, \$130 billion smoking cessation program during his testimony. Fiore, director of a tobacco research center, chaired the subcommittee on tobacco cessation in the Department of Health and Human Services’ Interagency Committee on Smoking and Health.

In addition to Fiore’s testimony, lawyers working on

the case for DOJ agreed that \$130 was sufficient and said that backing down now would be suspicious. In an internal memo reviewed by *The New York Times*, lawyers Sharon Eubanks and Stephen Brody wrote to Associate Attorney General Robert McCallum, “We do not want politics to be perceived as the underlying motivation, and that is certainly a risk if we make adjustment in our remedies presentation that are not based on evidence.”

Most say that DOJ’s decision to back down from the tobacco industry shows just how close industry executives are to top government officials.

“There is unfair influence from political appointees and the process is supposed to be part of public scrutiny in the sense that DOJ is supposed to be representing the people. If this was an example of having changed their ways then this is a great example of racketeering,” says Sherri Watson-Hyde, executive director of the National African-American Tobacco Prevention Network. “The fear in the public health community is that this is signaling the potential for a settlement that is far less than what really could have been a very strong outcome in terms of correcting issues and practices affecting public health.”

If DOJ were to move towards a settlement, more than likely, Associate Attorney General Robert McCallum would be responsible for the case. This is the same person that has been accused of pressuring DOJ lawyers to lower the penalty recommendation. McCallum is a close friend of President Bush and was a partner at Alston & Bird law firm, which did work for R.J. Reynolds Tobacco Co. DOJ says McCallum past ties to the tobacco industry doesn’t prevent him from making

decisions on this case.

Anti-smoking advocates are not the only people that think DOJ caved under extreme political pressure. Senator Tom Harkin (D-Iowa) is another one.

“This week, I was shocked—and, frankly, disgusted—by the Administration’s last-minute surrender to Big Tobacco. Well, is it just possible that this has something to do with massive campaign contributions from the tobacco companies?” the Senator said.

Harkin is right. The tobacco industry has given millions of dollars in federal political contributions. Ac-



ording to a quarterly report issued by the Tobacco-Free Kids Action Fund and Common Cause, the tobacco industry made more than \$2.8 million in political contributions to federal candidates, political parties and political committees during the 2003-2004 election cycle.

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According to the report, tobacco company political action committees (PACs) provided more than \$1.4 million to federal candidates. Approximately 74 percent (\$1,112,212) went to Republican candidates and 26 percent (\$384,000) to Democratic candidates.

In addition to direct contributions, the report also says that tobacco PACs donated almost \$1.3 million to non-candidate committees, including party committees and PACs established by

members of Congress. About 77 percent (\$1,008,499) went to Republicans, 17 percent (\$217,000) to Democrats and 6 percent (\$74,484) to non-partisan committees.

Altria, one of the defendants in the case and parent company of Philip Morris USA, say that this is less about politics and more about the law.

“The problem with the government’s cessation request really isn’t the dollar amount it’s the proposal itself. It’s the kind of proposal that’s better directed towards a federal agency like HHS or Congress,” John Wunderli, senior assistant general coun-

sel at Altria, says. “I can only assume that this is about the government understanding and recognizing that what their expert witness had said before didn’t meet the requirement of the law.”

The battle between the tobacco industry and DOJ has a long history. It started in 1999 when President Bill Clinton announced that he had directed DOJ to seek a medical cost-recovery civil action against the tobacco industry for money spent to treat tobacco-related illness.

During the past six years, DOJ has had difficulty proving its case. It alleges that defendants British American Tobacco Limited, Brown & Williamson Tobacco Corporation, Liggett Group, Inc., Lorillard Tobacco Company, Philip Morris USA Inc, Altria

Group, Inc. and R.J. Reynolds Tobacco Company Inc. have engaged in a continuing scheme to defraud the American public since 1953. A scheme that involves, “false statements denying that smoking and environmental tobacco smoke causes disease, false statements denying that cigarettes are addictive, manipulating nicotine in cigarettes to ensure addictiveness, marketing to youth...”

Originally, DOJ sought \$280 billion in monetary relief; however, the U.S. Court of Appeals in D.C. ruled against them in February. According to Watson, the judge in the case, Judge Gladys Kessler, wanted to hear the evidence regardless of specific dollar amounts. “If she was going to award money or not award money she wanted to be sure she understood what that was based on,” Watson-Hyde says.

The tobacco industry contends that the DOJ lawsuit is unnecessary. According to them, the Master Settlement Agreement (MSA) already penalized tobacco companies. The MSA was reached after attorney generals in 46 states, five U.S. territories and the District of Columbia filed suits against the tobacco industry seeking compensation for the millions of dollars it had lost on tobacco-related illnesses. It drastically changed how tobacco is marketed and sold in the United States.

For example, it prohibits manufacturers from targeting youth, bans the use of cartoons in advertising, prohibits most forms of outdoor brand advertising and bans manufacturers from distributing free samples of tobacco products, except in adult-only facilities.

“The federal government is trying to recruit dollars that

they have spent treating smoking related diseases. The MSA was just for the states, it never dealt with Medicare, any of the government supported programs on a federal level including military services, civil servant services, federal healthcare plans, etc. That’s what the federal government was trying to recover when they initially filed the suit,” Watson-Hyde says.

“There is no excuse as far as the government is concerned that they [tobacco companies] shouldn’t be brought to the table to talk about some of the practices they’ve engaged in over the years,” she says. “What they are trying to prove with the DOJ case is that the industry hasn’t changed its ways. The marketing strategies and the promotional stuff that goes out in our neighborhoods, like Kool MIXX, is proof that they have not changed their ways.”

Brown & Williamson Tobacco Co. launched its “Kool MIXX” promotion that was billed as a “celebration” of hip-hop music and culture.

Not surprised by DOJ’s decision to back down from the industry, Watson-Hyde is still disappointed.

“This is not an issue that’s going to be settled by one lawsuit. There is still a tremendous amount of wrong that has to be undone including helping people, saving lives and making sure that young people don’t start smoking,” she says.

“If the government is serious about the elimination of disparities and improving the quality of lifestyles in this country now is not the time to step away from DOJ. It makes you wonder. If this is the coattail that has to be pulled how close were we to a victory? We must have been pretty close.”

Jackson

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credibility is sorely lacking,” Nockleby added.

The family’s motives in pursuing a lawsuit could be critical in the eyes of the jury. “Money is not a good enough reason,” Petrocelli said. “The jury will see right through that. In the O.J. Simpson case, it was about justice, and money was barely mentioned.”

If the accuser’s mother sues, she will not have trouble finding a lawyer — the publicity alone would attract many eager candidates.

“It’s considered to be golden,” Douglas said. “They will take a case with a big-time defendant just to get in the papers,” he added.

Any lawyer taking on a suit against Jack-

son would face enormous costs. The lawyer would have to study the entire file of the criminal case, which had over 600 pieces of evidence.

Pretrial depositions would probably stretch over months, and a team of investigators would have to be hired. Those costs would have to be borne by the attorney in the hope of receiving court costs if the suit is won.

And the payoff in cases brought against celebrities is not necessarily a sure thing. A jury held Simpson liable for the slayings of his ex-wife Nicole Brown Simpson and Goldman, and awarded \$33.5 million to the families. But little was ever collected.

In Jackson’s case, prosecutors presented evidence that his once vast fortune is in peril.

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