



**WEEKLY MEDIA AVAILABILITY WITH ATTORNEY GENERAL JANET RENO**

**ALSO PARTICIPATING: DAVID OGDEN, ASST. ATTORNEY GENERAL FOR  
THE CIVIL COURTS**

**DEPARTMENT OF JUSTICE**

**WASHINGTON, D.C.**

**9:30 A.M. EDT**

**THURSDAY, OCTOBER 5, 2000**

ATTY. GEN. RENO: Good morning. A year ago, after an exhaustive review of the facts and law by a team of career Justice Department lawyers, the United States filed a suit against the major manufacturers of cigarettes. This lawsuit calls those companies to account for alleged wrongful conduct that has led to the death and illness of millions of Americans.

Last Thursday, the District Court held that the government can go forward with its case to demonstrate that for more than 45 years the tobacco companies have deceived the American public about the hazards of smoking, including the addictiveness of nicotine, and they have intentionally targeted young people, with the result that more generations will suffer from tobacco-related illnesses.

Although the court dismissed claims for recovery of health care costs under Medicare and certain other programs, it vindicated one of the central theories of that lawsuit. The counts of the complaint that the court sustained allege a pattern of deception in violation of the Racketeer Influence and Corrupt Organizations Act, or RICO, and it gives us the opportunity to seek equitable relief to change the way tobacco companies do business, to protect America's children, and to require the tobacco companies to right the wrongs of the past. In addition, the United States may seek to recover the tobacco companies' ill-gotten gains which,

as the court recognized, are likely to run into the billions of dollars.

We are at a critical juncture today in this litigation. It is time to move forward with preparation for trial. In order to do so in a manner that does justice to the interest of the American people, I'd call on Congress to fund the Justice Department at the levels necessary to continue our efforts in this litigation. I ask that the Congress embrace the proposal, put forward by Senator Hollings, providing direct funding for the litigation in the final fiscal year 2001 Commerce, Justice and State appropriations bill.

I also would ask that the conference agreement remove provisions, while innocuous on their face, that could be used to allow politics to interfere with the conduct of litigation and the final determination of the liability of the tobacco companies. The decision should not be about politics. It is about law, and on this, the court has spoken. The American people should have their day in court.

Q Ms. Reno, can you describe what these provisions are that are seemingly innocuous but could inject politics?

ATTY GEN. RENO: This is David Ogden, the assistant attorney general for the Civil Division.

MR. OGDEN: There are certain provisions in a number of the appropriations bills that would require that the department go to the appropriations committees to get permission to use certain funds, either funds appropriated by -- to other agencies for purposes related to the tobacco litigation, such as a health care provision, or general funds that support litigation activities. We would need specific permission, case by case, for such a reprogramming and for such a use of the funds. And the consequence of that is that it injects the political process into funding decisions of litigation and potentially creates a roadblock to funding this case or potentially other cases.

Q So, Mr. Ogden, this is -- in alternative to giving you

the full budget amount you need for the litigation, they're basically saying, "As you go" -- in the alternative, "as you go through it, come to us each time, and we'll see."

MR. OGDEN: Well, they're doing both things. That is, at the moment, there's no funding for the litigation -- direct funding. And while last year we were able to use funds from certain other agencies, they're now saying that we'll need permission in order to do that next year. And we have reason to fear that such permission would not be granted.

Q But isn't reprogramming -- doesn't reprogramming always require congressional approval?

MR. OGDEN: What's happened is that there's been an expansion of the types of the transfers that this kind of reprogramming that -- if this bill were to become law, it would expand the types of transfers of funds that would be subject to reprogramming, including transfers that traditionally have not been subject to reprogramming requirements. So the consequence is, it would inject this potential for political -- politicization into a much wider range, including key aspects of funding for this lawsuit.

Q Is the reprogramming related to the part of the lawsuit that's been dismissed?

MR. OGDEN: Well, the reprogramming would potentially be related to the lawsuit as a whole.

(Interrupted by loud fire alarm.)

Q Ms. Reno, if -- (inaudible) -- poison pill, would you ask the president to veto?

ATTY GEN. RENO: We're going to work with everybody concerned to get it -- (inaudible).

(Fire alarm announcements continuing.)

Q Ms. Reno, if you don't mind, I'll re-ask that question after the --

ATTY GEN. RENO: That's fine.

(Fire alarm announcements continuing.)

Q Have you done any kayaking the last couple of weeks?

ATTY GEN. RENO: No.

(Pause in the briefing while waiting for the alarm announcements to end.)

STAFF: Okay. Any time.

Q How much money do you need to fund the litigation?

ATTY GEN. RENO: You were next. (Laughter.)

Q As we were talking about just a few minutes ago, these provisions which are circulating in several versions of the legislation, are they enough of a poison pill to cause you to ask the president to veto any legislation that contains them?

ATTY GEN. RENO: We're going to look at everything and make an appropriate decision at the time. But it is important. We estimate it will cost approximately \$23 million to properly prepare the case. For example, it cost California, as I understand, \$14 million just on their litigation. We want to do it right. And we will be prepared to do so if Congress will fund this litigation.

Q That's over the course of the litigation? Is that over the next three years, or what's that estimate?

MR. OGDEN: That's for the next fiscal year. That is for fiscal year 2001. That's right.

Q What about in 2002 and -- well, what do you think is the total cost of preparing for and getting to trial?

MR. OGDEN: It is, of course, a very difficult thing to forecast what litigation is going to cost two and three years out because it depends so much on what the other party does in terms of what kind of discovery they seek and what kind of rulings we get from the court about the course of discovery. An awful lot of litigation cost is related to discovery itself. And, you know, we're doing our best to make those kinds of out-year estimates.

I think the likelihood is that before a trial -- and the court has indicated she'd like to try the case in January of 2003, so we're looking for a course of litigation that will last that period of time. The costs will probably go -- I would guess would go up somewhat in the years after next year, as we get more and more heavily into discovery and into trial preparation.

Q Are there any settlement talks going on?

MR. OGDEN: I wouldn't comment on that.

Q Mr. Ogden, can you give us some way to compare that \$23 million figure? For example, do you have any idea what the department has spent so far on the Microsoft case?

MR. OGDEN: The Microsoft case, of course, was brought by the Antitrust Division, and I don't have statistics on that in particular. The attorney general --

ATTY GEN. RENO: We would ask -- we'll ask Myron to give you whatever would be appropriate and fair.

MR. OGDEN: But I --

Q Well -- I'm sorry. Please.

MR. OGDEN: I guess what I would say is that what we have done, our budget people and our litigators have gotten together and they've been working very hard on budget issues from the very beginning of the litigation. And what they look at when they come up with a number like this is their best estimate of the number of documents, for

example, that are going to be called for both from the other side and from the federal government in terms of discovery.

And there are costs of managing those documents which have to do with computer databases and personnel time that can be worked out with some precision, once you understand what those numbers look like.

And this is an enormous document case. When we look at a case that has an enormous number of documents in discovery like this one, we look at other cases that are similar; for example, the Winstar cases that involved FIRREA are enormous cases that the Civil Division is doing. The cost of those cases on an annual basis is two or three times greater than what we're talking about here because the documents are that much more numerous. But based on those evaluations, we've come up with the numbers that we have.

(Cross talk.)

ATTY. GEN. RENO: David, many people won't know what FIRREA means.

MR. OGDEN: You're exactly right, Ms. Reno. (Laughter.) FIRREA is -- and what the Winstar litigation is about -- is litigation that has come out of the collapse of the savings and loan industry and lawsuits brought by stockholders of failed savings and loans against the federal government coming out of that.

Q So it's not the cost of obtaining these documents, largely, because -- well, what I was going to ask you is,

Has the state litigation unearthed a great deal of what you need anyway? What you're saying is, it's more a cost of management.

MR. OGDEN: There are a number of different components. It's true that the state litigation unearthed something like 27 million to 35 million pages of documents, and those are very important documents. Those need to be managed, as you

say. But the discovery in the state cases really stopped as of 1994, so we have six years of conduct that there's been no discovery on.

In addition to that, we know that the cigarette companies moved a large number of documents out of the United States overseas during the course of the last 45 years. Those documents have never been discovered in the course of the tobacco litigation that's occurred in that time, and we hope to require those to be produced.

In addition, we have truly massive discovery requests from the tobacco companies of the federal government; discovery that they are seeking of more than 30 federal agencies with respect to the federal agencies' dealing with the issue of tobacco, and while there will be disputes about how much they're entitled to, I think it's clear that there will be a lot of discovery of the federal government, and a huge amount of the cost is going to be managing that in a responsible way.

Q And that will come out of the 23 million or so estimate? Or will those agencies have to pay for their own costs?

MR. OGDEN: There -- certainly a big part of the 23 million will be involved in managing that discovery. In any litigation that involves an agency's documents or records, the agency will bear some cost as well.

Q But Ms. Reno, when President Clinton first announced at his State of the Union that he wanted to pursue this lawsuit, he cast it entirely as a matter of collecting on medical expenses. Now that you've lost the MICRA (sp) and the medical component, do you think you've lost your primary weapon in this case? How badly do you think that hurts you?

ATTY GEN. RENO: I think the case has always been about the fact that for 45 years the tobacco industry has attempted to deceive the American people, particularly with respect to how addictive nicotine is. The basic theory is there, and I think the court has made clear that we can go forward

and that there is a viable theory.

Q Ms. Reno, given the fact that you may have an administration change -- or you will have an administration change, is it that -- how should that affect these kinds of decisions?

ATTY GEN. RENO: How should that affect --

Q These kinds of decisions.

ATTY GEN. RENO: This administration and this Department of Justice have a duty to go forward to protect the American people, to protect their interest, to protect the financial interest involved in the effect of what the tobacco company has -- companies have tried to do. And until we leave office, we'll have a responsibility for proceeding.

Q Under the legislation as it's presently constituted, would you receive the full funding you need but just need to go to the appropriations committees for permission, or you would not even have the funding at all? Can you clarify that?

MR. OGDEN: Yes. Under the current situation, there is a very limited amount of money, approximately \$1.8 million, that's in the Civil Division's base, that could be used for tobacco litigation. Beyond that, there's no money provided.

What needs to happen is that there be a direct appropriation of the \$23 million that we need to pursue the case.

In addition to that, it's extremely important that these unnecessary constraints on the ability of the executive branch to manage litigation be removed as well.

Q One-point-eight million is direct funding, but is there other money at all that you can use or reprogram, in effect?

MR. OGDEN: The -- as I understand it, the basics of the



changes that would be instituted, these technical restrictions, would require us, with respect to other amounts of money, to get specific permission from the appropriators.

Q Ms. Reno, if I may follow up on Eric's question about the purpose of the lawsuit, you said that tobacco companies have attempted to deceive the American people. Is that -- how is that a cause of action for the Justice Department? What -- it's sort of a "fraud on the American people" theory? What's left of the case, in other words?

ATTY GEN. RENO: I think that's a good way of describing it, but I'll ask David to be specific.

MR. OGDEN: That's right. From the beginning, what this case was about and has been about is an organized, coordinated, fraudulent plan that the tobacco and cigarette companies put into effect in 1953 and have maintained over that course of time to, through a whole variety of communications, deceive the American people about the health effects of tobacco, including its direct health effects on heart disease, cancer, et cetera, emphysema, and with respect to the addictive qualities of cigarettes. We've only learned relatively recently how long the tobacco companies have known of the devastating health consequences of cigarettes and cigarette smoking.

And the -- under federal law, this -- these constitute, if we can prove what I've just said, and we think we can -- this would constitute an organized course of mail fraud, which is a violation of the criminal laws of the United States. And what the RICO statute that the attorney general referred to allows the federal government to do is to come in and stop, through injunctive relief, an organized course of fraud like that, and to seek remedies for it, including, potentially, requiring the company to give up their ill-gotten profits, including requiring the companies to do things to undo the effects of the fraud. And that's what RICO allows us to do.

And the important thing for us is that a court has now said

that, based on our allegations of fraud, under the RICO statute we have a right to go forward and prove our case.

Q Doesn't RICO also allow for triple damages under its civil provisions? And if you do get triple damages, are you essentially putting tobacco, the tobacco companies, out of business in the United States?

MR. OGDEN: The civil damages portions of the RICO statute, which can be invoked by private parties and by the federal government, do provide for multiple damages. We have not invoked those provisions of the RICO statute. What we've sued under are what are called the "equitable" provisions of the RICO statute, which only the United States may sue under, and the purpose of that, as I've said, is to stop organized criminal activity such as what we've alleged, and to force the perpetrator to remedy the harms that they caused.

Q David, has there been --

Q So you're only seeking straight compensatory damages plus some, like, putative damages?

MR. OGDEN: What we would be seeking would be for them to surrender the ill-gotten proceeds of their illegal activity, and to get an order that would require them to stop what they're doing and to do certain things to undo the harmful effects of what they've done. It's a very important tool to undo something like this, a long-term course of conduct that's been illegal and that has caused a lot of harm.

Q What harmful effect --

Q Well, is it possible for you to appeal the judge's -- Judge Kessler's ruling? Have you given any consideration to that?

MR. OGDEN: Our litigation team is looking at the ruling and thinking about that and other options, but we haven't reached any decisions.

Q What ill effects have the cigarette companies taken from their cigarettes and what ill effects remain in cigarettes being sold at this time, as far as chemical additives or boosters or, well, nicotine, basically?

MR. OGDEN: I guess I'm not sure what you're asking. I mean, cigarettes obviously continue to be terribly harmful to the health of the people who smoke them, and continue to be addictive. I guess I'm not sure --

Q I'm talking about what -- what have the cigarette companies done -- since the federal government began their prosecutions, what have they done to change their formulas so that their cigarettes might be safer? Or, are they safer, or are they just the same thing as was being smoked 10, 15 years ago?

MR. OGDEN: I'm -- I mean, you probably would better direct that question to the companies themselves.

I'm not aware of any substantial changes that have been made at all. Cigarettes continue to be as dangerous to health as they've ever been.

Q The cigarette company lawyers are maintaining, as far as RICO damages, that it would only apply to future profits; that if you were able to disgorge anything, it would be a matter of taking their future profits after the point of litigation. Are they just misreading the law on that?

MR. OGDEN: I think so. And I think the judge's opinion is clear that what we're talking about is the surrender, or the disgorgement, of the ill-gotten gains of the prior conduct.

Q But she hasn't ruled on that point yet, has she?

MR. OGDEN: Well, she hasn't. What she's ruled is that that is available if we prove our case. Now, obviously, all of this is contingent on our being able to prove our case and persuade the judge that she should give us this remedy. But

what she's said is that as a theoretical matter, if we can prove our case, that type of remedy is available.

Q How much would you be seeking, on an estimated basis, at this time? At this point in time, what's the range of estimate of the ill-gotten gains?

MR. OGDEN: Well, we are so early in the case. We haven't engaged in discovery, we haven't been able to really look at the financial issues that underlie this, and so it's really premature. The judge's opinion itself says that potentially billions of dollars are at issue, and I think that's right, but at this point, it's really premature to be talking about a specific number.

Q Do you think it would rise --

Q But the (\$)20 billion figure that you had cited frequently, that was built mostly around the medical costs that are now out the window, right?

MR. OGDEN: That's right. The (\$)20 billion is the annual cost, approximately, to the federal government, of providing care for people as a result of tobacco-related illnesses. The potentially billions of dollars that the judge is talking about relate to the proceeds of the ill-gotten gains.

Q Do you think it could rival the (\$)220 billion that the states are getting over time?

MR. OGDEN: I think it's just too early to be talking about numbers. We've just -- what we've got is a ruling that we're legally entitled to proceed with our suit and to prove our case, and now we've got our work cut out for us to do our discovery and prove our case, and I think, in some number of months, we'll be further along to be talking about specific numbers.

(Cross talk.)

Q Do you have a backup plan in the event that Congress

doesn't back away from putting restrictions?

ATTY. GEN. RENO: Without that money, we will not be able to proceed, and I think it is imperative that we move forward to protect the American people and to give them their day in court.

Q So you would drop the case if you don't get the money?

ATTY GEN. RENO: We do not see how we can proceed without the funding.

Q (Off mike.)

ATTY GEN. RENO: We don't -- under the law as it stands, we don't have the authority to retain private counsel on a contingency basis. We also think it would be an extremely unwise use of federal resources. When you think about what a potential contingency would be in a case like this and compare it to the cost of funding it directly, all you've got to do is look at the fees in the state cases to realize what a foolish strategy that would be.

But the bottom line here is that beyond that, we don't have that option, as a legal matter.

Q Is there a fail safe point beyond which you can't go without new funding? I mean, have you looked down the road and said if we don't have it in two months, we might as well pack our bags on this particular suit?

MR. OGDEN: I think our view is that the current funding round -- that is, the decision as to what the fiscal year 2001 budget is going to be -- is a make or break point. You can't litigate a case against an organized and extremely well-financed defendant without minimal levels of funding, and we've looked at what the minimum is and that's what we're asking for. If we don't get it, we simply can't proceed.

Q How much do you estimate spending this year on the case?

MR. OGDEN: About \$23 million.

Q In fiscal 2000.

MR. OGDEN: In fiscal year 2001.

Q Fiscal 2001.

MR. OGDEN: Yes. About 23 --

ATTY GEN. RENO: He's asking --

MR. OGDEN: Oh, I'm sorry.

Q The previous year. Both, actually.

MR. OGDEN: In the past -- well --

Q Have much have you spent to date?

MR. OGDEN: To date, I'm going to have to get that number for you. I don't have it.

Q So \$23 million in the current fiscal year?

MR. OGDEN: We're asking for \$23 million for the coming fiscal year.

ATTY GEN. RENO: For this -- 2001, the fiscal year that has begun that we're on a continuing resolution for.

Q And how much did you spend in fiscal 2000?

MR. OGDEN: That's what we'll have to get for you. I think it's in the range of \$13 million.

ATTY GEN. RENO: Let us be careful with those figures, and I'll ask Myron to furnish those to you.

Q Does the \$23 million factor in staff time, labor time? Is that included in that?

MR. OGDEN: Yes.

Q That's presumably the majority of that \$23 million, is in-house attorney time?

MR. OGDEN: No. In-house attorney time is an important component, but the biggest component in a case that has so many documents involved in it is management and discovery of the documents.

Q Ms. Reno, is Wen Ho Lee cooperating with the Department of Justice as his lawyers agreed that he would? How is that going?

ATTY GEN. RENO: I think it important not to comment until the debriefing is complete.

Q Has it begun, at least?

ATTY GEN. RENO: I can't comment.

Q Ms. Reno, on the Bush debate materials, I understand the OPI has not determined whether a crime has -- a federal crime has occurred. Has the Bush campaign filed a formal complaint that this material represents a theft of their proprietary material?

ATTY GEN. RENO: I will not comment on it while it's pending.

Q You can't even say whether the alleged victim is --

ATTY GEN. RENO: I don't think I should comment.

Q Ms. Reno, Independent Counsel David Barrett is apparently pursuing a theory that the department, in refusing to extend his mandate in 1997, obstructed his inquiry. And apparently he's even looking into other tax cases beyond Mr. Cisneros. Do you think his mandate covered that?

ATTY GEN. RENO: Again, I will not comment on an independent

counsel's work.

Q Has he approached you, asked you for a deposition or testimony?

ATTY GEN. RENO: I won't comment on anything that he's done or not done.

Q Ms. Reno, this is something I'd really appreciate an answer to. (Laughter.) There's a rumor going around that you're getting a Flemming Award from the AARP this afternoon. Can you comment, on the record, for --

ATTY GEN. RENO: Somebody put that in your head. (Laughs.)

Q Can you tell us a little bit what it's about?

ATTY GEN. RENO: The Flemming Award is given by the AARP and others to -- I'll let Myron -- I'm embarrassed. I'll let Myron explain it to you. (Laughter.)

I will tell you a little bit about Arthur Flemming, though. I think he first came to Washington in about 1933, and he served through successive administrations. He called me shortly after I took office and asked if I would have breakfast with him. And it was one of the most interesting, delightful times I've spent in Washington. He had such a breadth of knowledge about Washington, both as to time and as to different issues. He described President Eisenhower's Cabinet.

It was just a very wonderful morning, and I think I had two occasions to have breakfast with him. So it's a great honor for me.

Q Mr. Trulock this week said that it was Secretary Richardson who gave up Wen Ho Lee's name in that investigation, initially. Is that going to be investigated, or --

ATTY. GEN. RENO: I don't have any comment.



Q This morning, the New York Times reported that a pattern of racial discriminatory street patrol frisks in New York City was found by a computer analysis of the reports they filed after doing the stop- and-frisks. Do you have any comment on that, and do you know where that investigation is?

ATTY. GEN. RENO: As you have sensed and known, I just don't comment on pending matters.

Q Let -- let me put it a different way. Are you checking other cities for -- doing computer checks of other cities, or are you only checking in New York?

ATTY. GEN. RENO: I don't comment on what we're doing in various cities.

Q Do you have any comment on the ACLU's allegations that the team recruited to -- recruited by the Justice Department to review Carnivore is stacked by former law enforcement officials and others who would not do an objective, independent analysis?

ATTY. GEN. RENO: From all that I've heard, it is a very excellent institute, dedicated to coming up with objective, independent findings, and from everything that I've heard, I feel confident that it will.

Q Going back to the tobacco question, how much of the evidence uncovered by the criminal investigation can be used in the case?

MR. OGDEN: At this point, none of that evidence. It is -- on the criminal side, the information is -- when a grand jury's proceeding, as you know, is protected by federal law from transfer to even to civil lawyers within the government without a court order. We don't have a court order and as a result, we have not had any of that information as part of the civil process.

Q Have you decided whether to seek? (Laughter.)

MR. OGDEN: I wouldn't comment on that.

Q But the 60 rule, or the -- whatever it is, right under there in the book -- (laughs) -- there are all sorts of provisions for sharing this information with other prosecutions, for example.

It is -- it's theoretically possible, is it not? There's no legal reason why you couldn't seek it.

MR. OGDEN: Certainly we're entitled, as a matter of law, to seek it. I wouldn't comment beyond that.

Q Well --

ATTY GEN. RENO: Thank you.

Q Thank you.

(Chorus of "thank you.")

Q Whatever happens this afternoon, your hair is ready.  
(Laughter, cross talk.)

END.