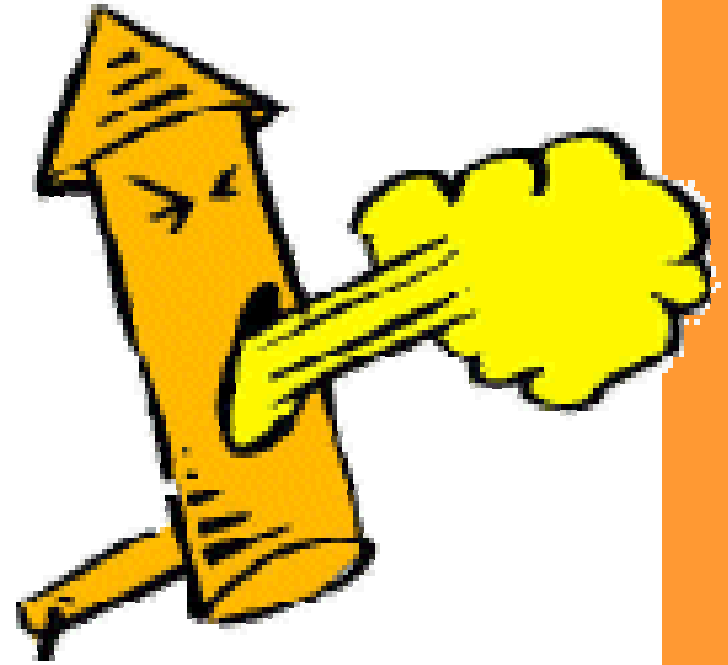


New Legal Protections To Energize Whistleblowing Against the Tobacco Industry



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Tobacco Industry Whistleblowers Afraid to Come in From the Cold

The Tobacco industry has had several whistleblowers, but none more Famous or effective than scientist Jeffrey Wigand, Vice President of Research & Development & Environmental Dept. for Brown and Williamson Tobacco Co.
(B&W)

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Art Imitates Life

Hollywood made a movie about Wigand called “The Insider,” starring Russell Crowe as Wigand



Russell Crowe (center) & Jeffrey Wigand (right)
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Wigand Gets In Trouble

- Wigand was a top scientist for B&W
- Wigand signed confidentiality agreement when he was hired
- Was fired because he:
 - **Pushed for creation of safer cigarette**
 - **Resisted secretive, duplicitous culture at B&W**

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Wigand Gets Mad AND Even

- Wigand contacted by CBS's 60 Minutes program
- Eventually persuaded to do an on-camera interview
- Talked about:
 - dangers of B&W's cigarettes
 - B&W's corporate culture of fraud and deceit



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B&W Retaliates

- B&W heard about the proposed interview and threatened to sue both CBS and Wigand
- Lawsuit threat based on B&W's claim that Wigand was breaking a confidentiality agreement he signed never to discuss B&W and that CBS was interfering with that contract

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Wigand's Specific Allegations

- Wigand accused B&W of:
 - manipulating the amount of nicotine in its cigarettes
 - knowing nicotine was addictive
 - using known carcinogens in manufacture of cigarettes
 - destroying or altering incriminating documents to prevent legal liability exposure

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The Smear Campaign is On

- Prior to airing of 60 Minutes interview, B&W tried to smear Wigand's reputation by releasing a 500-page dossier to papers such as the NYT and WSJ
- Dossier alleged domestic abuse, shoplifting, fraudulent statements regarding involvement with Olympic judo team
- B&W attorney Gordon Smith said Wigand's "life has been a pattern of lies."
- B&W PR professional, John Scanlon, said Wigand is "a habitual liar."

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More Chilling Facts About B&W's Campaign of Intimidation Against Wigand

- B&W hired private detectives and PR operatives to destroy Wigand's reputation
- B&W's lawyers commissioned and approved the dossier and its language of slander and lies
- B&W's CEO, Thomas Sandefur, allegedly initiated and approved the dirty tricks campaign against Wigand
- According to Wigand's allegations, his family was threatened by B&W's agents

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Wigand Vindicated

- 60 Minutes Interview aired
- Dossier discredited by the *Wall Street Journal*
- Wigand went on to help fight against the tobacco industry by:
 - testifying in several cases as expert witness on tobacco industry's science and deceit, including State Attorney General cases, individual smokers' cases, and U.S. Department of Justice's Racketeering case
 - helping Food and Drug Administration Chairman David Kessler establish proof that nicotine is a drug that should be regulated

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How Did Tobacco Industry Keep People From Blowing the Whistle?

- Made them sign confidentiality agreements
- Intimidated them with threats of lawsuits and public humiliation
- Allegedly allowed or commissioned others to make threatening statements on their behalf

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Lengths to Which Tobacco Industry Will Go to Intimidate Its Employees

WE WANT YOU TO KNOW THAT WE HAVE
NOT FORGOTTEN YOU OR YOUR LITTLE
BRATS. IF YOU THINK THAT WE ARE GOING
TO LET YOU RUIN OUR LIVES YOU ARE IN
FOR A BIG SURPRISE! YOU CAN NOT KEEP
THE BODY GUARDS FOREVER ASSHOLE.
THIS IS SOMETHING FOR YOU TO KEEP TO
REMINDE YOU THAT WE ARE WATCHING FOR
OUR MOMENT.

What Protections Were Available to Whistleblowers in Wigand's Time?

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- Law was a patchwork of statutes applying mostly to government workers
- Law was largely inadequate for employees of even large private companies
- Process was long, laborious, and often did not work fast enough to save the whistleblower from financial ruin and public humiliation

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New Era in Whistleblower Protection

- After the Enron scandal, lawmakers created a law called the Sarbanes/Oxley Act (SOX) (Public L. No. 107-204, 1116 Stat. 745 (2002))
- Includes wide and effective protection for whistleblowers employed by companies that are publicly traded (Section 806, 18 U.S.C. § 1514A)

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SOX Has New Approach Towards Whistleblowers

- Changes and reforms corporate “code of silence”
- Protects and encourages whistleblowers to come forward
- Changes legal and ethical duties of attorneys working for publicly traded companies

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SOX Offers New Protections

- Prohibits employment discrimination against whistleblowers employed by publicly held corporations
- Forces companies to accept whistleblower complaints
- Whistleblowers will get expedited review of their claims of intimidation, retaliation, discrimination, or wrongful termination.
- Requires company lawyers to be on the lookout for such abuses and places an affirmative duty on them to report it to proper authorities.
- Imposes **criminal penalties** for discrimination against whistleblowers

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Is Tobacco Industry Covered by SOX?

Most major American tobacco makers are publicly traded companies, including:

- Philip Morris, a division of Altria, its parent company
- Lorillard, owned by Loews/Carolina Group
- Reynolds/American

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What Constitutes Fraud?

Theoretically, the tobacco industry endangers the health of investors' portfolio by:

- Producing a product that is deadly when used as directed
- Illegally marketing to underage smokers
- Manipulating the product to make it more addictive
- Lying to courts and government bodies about its business and marketing practices

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What Can Future Tobacco Industry Whistleblowers Do?

- Come forward if they work for a major American tobacco company because they are protected by SOX
- Report fraud perpetrated by company that could have adverse affect on value of company and its investors' holdings
- Company lawyers should do their statutory duty and report their company's fraud

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