TESTIMONY OF Dr. JEFFREY WIGAND BEFORE THE HOUSE SUBCOMMITTEE ON WORKFORCE PROTECTIONS

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Thank you for giving me this opportunity to testify before this Subcommittee on my experience with breaking ranks with the tobacco industry---and more specifically with my former employer Brown & Williamson (B&W). I speak as an insider who spent more than four years as a high level senior executive in the industry and as one who has seen the inner most secrets of the industry. In this testimony, I provide a detailed chronology the events that led up to my decision to come forward with what I knew. As you will see, the road was neither easy nor short, and the decision to come forward transpired after a considerable amount of time witnessing immoral and illegal actions. For me, the decision to come forward was not an immediate response -- an "epiphany." Rather, the decision to come forward was a process. I do believe that if laws were put in place to protect persons who likewise decide to come forward, their road would be an easier, shorter one. And obviously, if we can make it quicker and easier for someone to come forward, then we can help to mitigate and forestall the harm caused by the wrongdoing.

I want to make very clear that I am able to be here today---not because I was protected by any whistleblower statute---but because of the tremendous courage of so many people. There is a debt of gratitude that I will never be able to repay: to my own daughters, to my students, to the lawyers who risked their reputations, assets and own

personal safety for the search for truth and justice, and to all of those who held an unwavering belief in me and the truth.

Essentially, I was hired by B&W to manage the development of a safer cigarette. I came from the medical/health care industry, working for 25 years as a senior executive for such companies as Pfizer, Merck and Johnson & Johnson. I was accordingly steeped in the mindset of using science to search for the truth, to make products better and to improve the quality of life and to save lives. I found the position at B&W attractive because it enabled me to use my expertise to develop a "safer" cigarette, and hence to use my skills and experience to address a product that, when used as intended, kills. Thus the consequences of my research were profound. The position at B&W was also attractive to me because my wife and two young daughters, ages 2 and 2 months, had family in Louisville and we felt we could have a good life there.

I accepted B&W's offer in November 1988. I began working for B&W in January 1989, as its Vice-President of Research and Development in its corporate headquarter offices in Louisville, Kentucky. At this time, B&W was a subsidiary of BATUS, the US holding company but, for all intents and purposes, a direct subsidiary of BAT Industries, formerly British-American Tobacco Company, the second largest tobacco company in the world. At B&W, I focused on learning all aspects of tobacco science and chemistry and directed the development of a product, code-named "Airbus" that was a non-traditional nicotine-delivery device that could cause less disease.

My first discomforting experience with B&W was early on. As part of my corporate orientation, I was sent to one of B&W's outside corporate counsels, Shook,

Hardy & Bacon, located in Kansas City, Missouri. For 3 days, I was told that the research from numerous Surgeon General Reports and other eminent public health scientific publications on the human hazards of tobacco was based on flawed science, and that there were no studies linking tobacco use to negative health consequences. The attorneys at Shook, Hardy & Bacon also argued that nicotine was not addictive, and therefore that tobacco use was an autonomous act. This was the first time in my career that I had lawyers interpret the science for me. In fact, during my initial hiring interviews with B&W's executives, they unequivocally expressed that nicotine was highly addictive and that tobacco use caused a myriad of debilitating and fatal diseases. Indeed, it was at these interviews where I first heard the mantra "we are in the nicotine delivery business and tar is the negative baggage." However, the lawyers were asking me to effectively ignore these comments, not to mention the scientific research that is replete with findings about the adverse health consequences caused by tobacco. Although I returned to corporate headquarters after this part of my orientation confused, I was not deterred from developing a safer product.

In September of 1989, I was part of a Research Policy Group meeting held in Vancouver, British Columbia, where all the high level senior managers of research and development from BAT and BAT-affiliated companies had gathered to develop strategic research priorities and tactical programs. Over the course of several days, we discussed how to make a safer product, how to test a safer product, how to address the passive smoke issue, the feasibility of a reduced ignition propensity or "fire safe" cigarette, and many other scientific topics. We all knew and articulated that nicotine was addictive and that tobacco use was responsible for a myriad of adverse health consequences. We also

expressed the belief that, although we might be able to develop a “safer” product, we could never deliver one that was completely unsafe. The meeting generated twelve pages of detailed minutes memorializing the summary of scientific discussions, as well as follow-up programs to achieve key projects.

I circulated a copy of the meeting minutes to my immediate supervisor, T. Sandefeur, Jr., the COO/President as a "FYI." When the minutes of the Vancouver meeting reached the other senior executives of the company, they were clearly distressed. Then, in a move that shocked me, Thomas Sandefeur, with the agreement of the Chairman/CEO Ray Pritchard and General Counsel Mick McGraw, ordered in-house product liability counsel, J. Kendrick Wells, III to rewrite the minutes, *even though he had not attended the meeting*. Wells completely altered the minutes removing any reference to the discussions that had taken place and included only an abbreviated follow-up program. He reduced 12 pages of meeting minutes into 2 and one half pages of vanilla. The intent of attorney Wells was to destroy any content in the document that would aid an adversary in litigation and undermine the five decades of legal, technical and PR obfuscation.

In January 1990, the Chairman of BAT, Sir Patrick Sheehy, summoned all the scientists who had been at the Vancouver meeting, along with the product litigation attorneys from each of the companies, to a meeting in New York. At that meeting, we were informed by the BAT Solicitor General, Stuart Chalfen and attorney Nick Cannar, that a lawyer would be placed at every sequence of scientific communication and research. This meant that any communications, discussions, reports or notes would be subject to attorney review prior to becoming a permanent document with limited

distribution. An elaborate system of mandated lawyer vetting, sequestering and altering scientific documents was instituted as a result of this meeting. In addition, all safer-cigarette work was transferred and all further work on that project was transferred overseas to the Southampton R&D facility in the UK.

As I continued to work at B&W, I realized that the company was not interested in making safer products, but only in new finding new adolescent consumers and maximizing profits. Disturbingly, I learned that the culture of the tobacco industry was one in which great importance was placed on keeping the public ignorant about the addictive and lethal nature of tobacco products. The industry most wanted to protect its fundamental legal and PR platform that tobacco use was not addictive, that tobacco use was a free, consumer choice, and that tobacco use was not the source of the scientifically linked morbidity and mortality.

So, even after only a year at B&W, I was in a quandary as to what to do with what I knew. But I stayed for three more years. Indeed, I did not make the decision to come forward even after witnessing how lawyers helped B&W to obfuscate the truth to the public. Why? I had a wife, two young daughters, one of whom had a serious medical condition requiring good medical insurance coverage, and a mortgage. And there were perks with my $300,000 a year job, including a car, and all of the usual amenities of a successful executive's position. I was also keenly aware by now of how the industry intimidated defectors, paying legions of lawyers to attack their credibility in an effort to stop their behavior. I wanted no part of that and wanted to protect my family. My intent was to transition back to the healthcare industry for I had realized I had made a major error in my career. The truth is, had I been assured that my family and I would be

adequately protected, I probably would have come forward at this point. But as you will learn, my decision to come forward came much later, after witnessing more disturbing events, and experiencing further turmoil.

So, I continued to work at B&W, knowing full well about the fraud that they were perpetrating on the public. I began to investigate health issues relating to the use of tobacco products, including the role played by additives and cigarette design on nicotine deliveries, the premature deaths caused by tobacco use, and the marketing of tobacco to children. The more I learned, the more I had difficulty looking in the mirror. But there was no obvious outlet to which I could turn, I had a duty to my family. All things considered, I decided that it was best not to rock the boat.

But something significant happened in August 1992. I received a draft copy of a National Toxicology Program (NTP) report on Coumarin. The report classified Coumarin as a carcinogen.

In 1954, the FDA banned the use and importation of Coumarin and deleted it from the GRAS list because of its demonstrated animal toxicity. Although the industry finally removed Coumarin during the 1986-1988 time period, they have a long history of using Coumarin in their products. Importantly, when the industry removed Coumarin during the 1986-1988 time period, they only removed this ingredient from *cigarettes.* Coumarin, in other words, was still used in other tobacco products such as pipe tobacco. Why did the industry continue to use Coumarin in other products, even though they removed it from cigarettes? The answer is simple. They did not *have* to. An FDA regulation requires tobacco companies to disclose a list of all additives used in the manufacturing of *cigarettes*, and cigarettes alone, to the Department of Health and

Human Services (US Code: Title 15, Chapter 36, 1965, Cigarette Labeling and Advertising Act). Thus, tobacco companies do not have to disclose additives in pipe tobacco, chew or other any other form. So, B&W continued to use Coumarin in pipe tobacco. Their rationale was simple but disturbing. They reasoned that since the law did not *require* the disclosure of ingredients in non-cigarette products, then they could use any ingredient in these products, including known carcinogens, with impunity. They felt no moral obligation to make their product "safer" by removing known carcinogens.

After the 1992 NTP report came out, I went to my supervisor, Mr. Sandefeur, the COO/President of B&W. I had been to Mr. Sandefuer many times before on issues of health and safety. We had many disagreements including the use of the company's mantra “hook ‘em young, hook ‘em for life,” and the impropriety of lawyer interference in science, among many others. When I urged Mr. Sandefeur that Coumarin should be removed from all of B&W's products, he instructed me to go back to the lab and find a substitute for Coumarin. But he also told me that despite evidence that Courmarin was a carcinogen, it would *not* be removed from pipe tobacco because it would affect the taste of the product and negatively impact sales and profits.

It was at this time that I constructed a memorandum that included the NTP’s findings, a recital of the 1954 FDA ruling, and the validated toxicological data. Also included in the memo, was the argument that the company was bound by a moral imperative that, when possible and feasible, products should be designed so that their potential to create harm is mitigated. This final issue caused me to be fired in March of 1993 when Mr. Sandefuer was promoted to Chairman/CEO of the company.

When I was terminated, being a "whistleblower" was the last thing on my mind. All I wanted was to forget my experiences at B&W. Albeit, I expected the company to adhere to the termination provisions in my employment agreement, which included severance benefits, continued health care benefits and retirement benefits among other provisions. Much to my dismay, the company did not honor the totality of the agreement. Consequently, I searched for a lawyer in the state of Kentucky to represent me in a contract law matter but could not find one who would oppose B&W. So I was forced to negotiate my own severance package. I ended up with two years of salary and health coverage. The company also voluntarily agreed to void the non-compete clause in my 1988 employment contract, provide out-placement services, and eliminate any off-set against future earnings.

Then in September 1993, B&W sued me in a Kentucky court for allegedly violating the boiler-plate provisions of the secrecy provision of my employment agreement by telling another employee my annual salary. With the filing of the lawsuit, the company immediately stopped my health coverage and severance pay. B&W agreed to drop the law suit and reinstate my benefits and salary if and only if I agreed to a new, draconian secrecy agreement without any further consideration. This new agreement prevented me from discussing anything I knew about the internal workings of the company without the presence of a B&W lawyer or without the prior vetting of my statements by some such lawyer. I felt I had no choice and signed the agreement as my daughter’s health care was at risk.

The decision to sign the new agreement was made at the same time I received a DOJ CID (Civil Investigative Demand) --a kind of federal subpoena-- from the Justice

Department on the issue of fire-safe cigarettes. Pursuant to the new secrecy agreement, I provided testimony in the CID in the presence of a B&W lawyer from the firm of Kirkland and Ellis.

In January 1994, I began working with CBS/60 Minutes on a “fire safe cigarette” investigative report. Mr. Lowell Bergman, a producer for CBS, received a box of some 2400 R&D documents from an anonymous source. These documents encompassed the period of 1954 through June 1976 on the “reduced ignition propensity physics of a natural incendiary device.” Mr. Bergman asked me to interpret the substance of these documents for 60 Minutes. I agreed. I was paid $ 12,000.00 for this work that spanned two weeks of sorting, ordering and interpreting the R&D documents. The documents demonstrated that, in June 1976, Philip Morris (PM) had developed and tested in a CPT (Consumer Product Test) at a 95 % confidence level, a reduced ignition propensity cigarette equal in taste, cost, and aesthetics of their leading brand, Marlboro. PM called the project "Hamlet -- ….to burn or not to burn.”

Disturbingly, but not surprisingly, PM decided against manufacturing these "fire safe" cigarettes. In fact, because there was no law mandating them to manufacture these "safer" cigarettes, PM decided to shelve project Hamlet. This decision to shelve the project was made notwithstanding the fact that a "fire safe" cigarette could prevent approximately 800-1,000 deaths each year, as well as the economic losses due to cigarette-created fires (cigarettes are the single largest contributor to fire losses). Clearly, the morally responsible course of action would have been to manufacture this product. But PM refrained from this course of action because there was do legal compulsion to do. This was deja vu. PM's tactic was the same one used by my former employer, B&W,

when confronted with the decision not to use Coumarin. Just as PM did not make their cigarettes "fire safe" because they did not have to, B&W did not remove Coumarin from its pipe tobacco because it did not have to. Each company felt no moral imperative to reduce harm.

As I read these documents, I became aware of the culture of deception within the industry. I recognized names on these documents as persons that I had heard speak when I was attending scientific meetings in 1989-1991. At these meetings, these individuals were adamant that it was not feasible to make fire safe cigarettes, and that the responsibility for cigarette-caused fires rests with the furniture, clothing and fabric industries. The CBS/60 Minutes aired the program in April 1995 entitled “Up in Smoke.” I continued to keep my story to myself.

In February 1994, the FDA began to explore the establishment of a regulatory authority over tobacco products. In addition, the U.S. Congress, under the leadership of Representatives Henry Waxman, Mike Synar (now deceased) and Ron Wyden (now a Senator), initiated its own tobacco inquiry. I was contacted by numerous Congressional staff members seeking my help in this investigation. Ultimately, they wanted me to testify. Because of my secrecy agreement, I told the Congressional staff that I would need to be served with a subpoena. Nevertheless, I began to help Congress to understand tobacco science. After numerous contacts with members of the Congress, I contacted B&W to apprise them of these conversations, pursuant to the terms of the new contract that I recently signed to re-instate my severance package.

What came next changed the course of all future actions and changed my family. Two anonymous phone calls were received after I reported the Congressional contacts to

the Company that threatened the safety of my young daughters with physical harm if I cooperated with anyone about the internal workings of B & W. As a result, I went to the local FBI who installed a “trap and trace” on my phone line. Two threats made to my phone were isolated, and from that day forward, I never made further contact with the company, except in a Court of Law.

In April 1994, I watched the 7 heads of major U.S. tobacco companies, including Mr. Sandfeur, testify before Congress under oath that nicotine was not addictive and smoking was no more dangerous than eating Twinkies. This was really the "last straw" as they say. I realized that if I remained silent, I was a bystander to harm and I was no different from the industry executives. It was at this time that I felt I had to take action. So, in May 1994, I began to secretly share my knowledge with the FDA. Because I was concerned of a repeat retaliation and was convinced that the tobacco industry would try to derail any FDA investigation, I insisted that my cooperation with the FDA would need to be confidential and secret, limited in number of participants and directly with the then Commissioner, Dr. David Kessler. I traveled to the FDA offices in Rockville, Maryland under assumed names and going through unmarked entrances. My code name was “Research.” I taught the FDA all aspects of cigarette design, tobacco chemistry, high-nicotine genetically engineered tobacco (Y-1) and numerous other subjects. I served as a navigator to documents the FDA had acquired. For some time, I "covertly" disclosed what I knew. However, two subsequent events transpired that compelled me to publicly disclose what I knew. Both of these events put me in contact with more internal documents which, once again, revealed a pattern of immoral and illegal actions by the industry.

In early 1995, I became a non-testifying technical expert for ABC, which was being sued for libel by Phillip Morris ($10 Billion). ABC, on its newsmagazine program, *Day One*, aired a segment that stated that nicotine was addictive and that the industry "spiked" nicotine in its tobacco products in order to maintain an adequate delivery of addictive nicotine. I was one of the limited experts who were allowed to see all the PM produced documents in the discovery process. I am still bound by a TRO from this action. The lawsuit was settled in August, 1995, with ABC's unusual apology to PM, just a month after Disney announced it was acquiring ABC/Capital Cities.

In June 1995, a professor of cardiology at the University of California San Francisco, Dr. Stanton Glantz, contacted me. Dr. Glantz was a recipient of a cache of tobacco documents smuggled out of B&W by Merrill Williams, a paralegal filing clerk who had worked at a highly secure section of the R&D facility during the time that I was employed by B&W. Dr. Glantz was publishing 7 scientific papers on the contents of the documents in the peer reviewed JAMA publication. He shared with me the documents that spanned 1950 through the 1980s for technical review and authentication purposes. They mirrored my exact experiences while I was at B&W and provided me with the first opportunity to see reports and documents that I had never seen while at B&W although I had asked to do so repeatedly. There it was in black and white: how the tobacco industry knew that tobacco was lethal but totally disregarded public health and safety; how it had used additives to boost nicotine's addictiveness; how lawyers controlled the flow of technical documents and how they manipulated the science and hid the truth.

After these experiences I decided to rid my conscience of the burden that I carried and decided to share the internal workings of B&W with the American public via

CBS/60 Minutes and reset my moral compass. So, on August 5, 1995, my family I and agreed to an interview with 60 Minutes at CBS. We agreed that I would maintain custody and control of the taped interview until I had arranged for competent legal counsel, had my affairs in order until they arranged for physical security for my family, upon the airing of the show.

However, CBS began to question whether my interview should be aired. Somehow, B&W found out about the interview. In October, someone with access to my interview transcript leaked it to the media. After learning about the interview, B&W threatened to sue CBS for billions, under the legal principle of "tortuous interference," if CBS decided to air the interview. During this time, Lawrence and Robert Tisch were the principal owners of CBS via Loews Corporation, which also owned Lorillard Tobacco Company. The Chairman at Lorillard was Andrew Tisch, the son of Lawrence Tisch. Tisch the junior was one of the seven CEOs who had testified before Congress in 1994. He was also under investigation by the DOJ for perjury at the April 1994 Congressional hearings. To further complicate matters, Lorillard was conducting a multi-million dollar product transfer from B&W. Additionally, Westinghouse tendered an offer to acquire CBS.

The interview was cancelled in October 1995, and the retaliation from B&W began shortly thereafter.

B & W filed suit against me in Kentucky for theft of trade secrets for violating my confidentiality agreement. I started receiving threats and armed security was provided. A security detail lived with us every minute---opening the daily mail, starting the car in the morning, escorting my daughters to school and me to work. Ultimately, the school

where I was teaching was forced to place a sheriff's deputy at my classroom door due to recurrent daily threats.

In November 1995, I was served with my second CID subpoena from the U.S. Department of Justice, and I was also subpoenaed by the State of Mississippi to testify in the State's civil suit against the tobacco industry. When I traveled to Mississippi for depositions in both hearings, I stayed with my attorney, Dickie Scruggs. His home had to be swept for electronic eavesdropping devices and armed Mississippi State Police patrolled the home all night.

B&W continued its campaign of legal intimidation to stop me from giving the Mississippi deposition, by going to both the Mississippi Supreme Court and Kentucky District Court to stop the testimony. The Mississippi Supreme Court allowed the deposition to go forward. The four hour deposition was laden with threats, and the Mississippi Court ordered it to be sealed. In contrast, the Kentucky court ordered me to be held in contempt if I testified. I testified anyway. When I returned to Kentucky after giving my depositions, I was met by Federal Marshals and thankfully did not have to go to jail. I went back to teaching.

In January 1996, my sealed Mississippi deposition found its way to the *Wall Street Journal*, which despite a threatened lawsuit by B&W, published the deposition on its front page and put it on its internet site. In addition, B&W, using private investigators, a prominent publicist, and some of the largest law firms spent millions to smear my reputation with a 500 page dossier marketed to all the major media outlets. The local Louisville paper published these smears, and despite continued security, I still managed to receive death threats with a live Israeli armor piercing bullet that was placed in my

mail box in January 1996 with another threat directed at my daughters. The pressure was too much for my wife who notified me she would be filing for divorce after 10 years of marriage.

Meanwhile, B&W continued its lawsuit against me in the Kentucky court. Legions of the company's lawyers deposed me for 11 days, and the local Kentucky Court threatened to hold my attorneys in contempt for protecting my rights.

B&W's lawsuit against me finally ended on June 20, 1997. Thirty nine state Attorneys General sued Big Tobacco, and were in the final stages of $368 billion settlement with the industry. The Attorneys General threatened to walk away from settlement discussions and sue in each state unless B&W dropped their suit against me. So, B&W reluctantly dropped their lawsuit against me at the eleventh hour. Since that date, I have been free to speak the truth about the hazards of tobacco to children in a classroom setting, to governmental officials, to Ministers of Health throughout the world addressing the "denormalization" of tobacco, and to agencies such as the WHO and CDC. I have also testified in select tobacco litigation cases such as the 1998 DOJ RICO case, the Dutch litigation on additive regulations and various state tort cases.

However, even though B&W promised to drop their suit against me as a condition of the Master Settlement Agreement, I continue to suffer the repercussions of my decision. For example, when I became a public figure for the coordinated move to make Charleston, SC smoke-free, my car and front door of my condo were marked with a black indelible marker with slurs and threats. When I testified against the legal misdeeds of the Kansas City law firm Shook, Hardy and Bacon, a member of the firm used "pretexting" while I was a visiting scholar in ethics at Auburn University seeking transcripts and

information about my lectures to the students after I testified under oath about how Shook et. al. committed a fraud on the public. And although B&W agreed to give me a positive performance evaluation when I was terminated, it was very difficult for me to earn gainful employment after I decided to speak to CBS 60 Minutes. This was the first time in my career that I had difficulty finding a job.

During this four-year ordeal, I was not protected by any whistleblower statute and had no recourse against the Company, except for the truth. And as you have learned, my decision to come forward did not happen at the instant I witnessed wrongdoing, but rather was the result of a long and painful process. This process began with experiencing how corporate attorneys vetted and destroyed documents, and with witnessing how a corporate executive refused to remove a known carcinogen from a product merely because doing so would "impact sales." Yet, even though these two events should have compelled me to speak out, they did not. I endured further discomfort, realizing that I had been lied to as I read the company's documents, and witnessing my former boss lie under oath to Congress. To be sure, I spoke out when I did, because, at this point, I had to. Quite literally, I could no longer look in the mirror. But I do think that had there been protection for me and my family, my decision would have come sooner than it did. I have delineated in this testimony, my concern for my family and my fear of retaliation were the principal driving forces of why my decision to come forward was "delayed."

This is why the Paul Revere Freedom to Warn Act is needed. The Act would provide potential whistleblowers with a psychologically comforting counterweight to the fear of retaliation that naturally accompanies the decision to come forward.

Thank you for allowing me to testify today.