COMMENTARY

How the tobacco industry continues to keep the home fires burning

On Friday, 24 September 1993, I kept a telephone appointment with Jeffrey Wigand that had been set up by a mutual colleague. This was our first of dozens of telephone conversations (to this day, I have not met Jeff in person) and I took notes of our talk. Jeff was reaching out to me to see if I could assist him in "whistleblowing" on his former employer, Brown & Williamson (B&W). I was committed to helping him—although I must admit I suspected that he was an industry spy, even as he claimed that he was the former director of research and development at B&W. I knew that this made Jeff the highest level whistleblower in the history of the tobacco industry.

While still employed by B&W, Jeff had sat in the audience at public meetings of the Technical Advisory Group (TAG) on Fire Safe Cigarettes in Washington, DC, United States, and I was one of the 15 congressionally appointed members representing the American Burn Association and the American Public Health Association. After observing me at the meetings, Jeff felt that I would be sympathetic to his cause. Jeff asked if I could introduce him to members of Congress so that he could be "forced" to testify. All of this was in order for Jeff to tell the world what he knew about the corporate practices of B&W. And the corporate practice that I was most interested in was whether or not B&W was developing or had developed a fire-safe cigarette—or as defined by the National Institute of Standards and Technology (NIST), a cigarette with a "reduced propensity for igniting upholstered furniture and mattress fires". This was the first question I put to Jeff that Friday afternoon. His answer was not surprising. He told me that all the cigarette companies had been developing fire-safe cigarettes since at least 1982. In fact, one of the tasks that he was given when he was hired at B&W was to instigate a research effort to develop fire-safe cigarettes.

Jeff eventually had his day although not in front of a congressional committee. Instead, I introduced him to Michael Pertschuk who promptly informed the United States Justice Department of Jeff's willingness to talk. An antitrust investigation of the tobacco industry was opened and is still pending. Next, I convinced Jeff, after months of gentle persuasion, that he should meet another friend, Lowell Bergman, an award-winning producer for the television news magazine programme *60 Minutes*. Lastly, I introduced Jeff to Stanton Glantz, professor of medicine at the University of California, San Francisco, so that Jeff could provide a scientific review of the purloined

B&W tobacco papers that Stan and his colleagues were analysing for publication.

Although Jeff has been instrumental in exposing the inside of the tobacco industry and has provided expert testimony in crucial court cases against the tobacco industry, his knowledge of the fire-safe cigarette issue has not been fully exposed. For the most part, the issue is a minor one in the backwater of tobacco policy. However, it could cause great public relations harm to the industry and lead to large personal injury settlements for burn victims.

Definition of "fire safe"

A comment about terminology is in order. Before 1982, it was assumed that the only method available to render a cigarette less of a fire hazard was to cause the cigarette to "self-extinguish" within a short period of time. In the late 1960s, research conducted at the National Bureau of Standards (NBS) on mattress flammability showed that cigarettes had to smoulder for up to 20 minutes before igniting a mattress. Thus, in 1974, an act introduced in the United States Senate called for an arbitrarily defined 10-minute period within which cigarettes had to self-extinguish to be less likely to ignite mattresses or furniture. In 1979, another act was introduced by Congressman Joseph Moakley in the United States House of Representatives that called for a more stringent and arbitrary five-minute self-extinguishment time. Then, in unpublished research conducted at NBS in the early 1980s, it was discovered that a cigarette could continue smouldering its entire length, from lit end to filter tip and for up to 20 minutes while placed on flammable mattresses or furniture and *not* cause ignition. I was informed of this phenomenon and, in consultation with the staff of Congressman Moakley, it was decided to discard the use of the term "self-extinguish" and replace it with "fire safe." By 1987, a more precise definition was created by NIST for a cigarette that was less of a fire hazard. However, the less precise term "fire-safe" cigarette has taken hold as the shorthand definition of a cigarette that NIST defines as a "reduced propensity for igniting mattresses and upholstered furniture".

Cigarettes are the leading cause of fire death in America. Annually there are approximately 1000 burn deaths and 3000 burn injuries due to cigarette-caused fires. Property loss due to cigarette fires amounts to over half a billion dollars. In addition, other societal costs, such as health care, lost productivity, and fire services, total over \$4 billion.¹

Brief history of the fire-safe cigarette

The first news report referring to a method to render a cigarette fire safe appeared as an Associated Press story in the 31 March 1932 edition of the *Boston Herald American*. According to the story, Congresswoman Edith Nourse Rogers of Massachusetts encouraged the National Bureau of Standards (today's NIST) to develop a treatment for cigarettes that would cause them to go out as soon as they were discarded. The article ends with this prescient comment: "Now Dr. Lyman Briggs, acting director of the bureau has written Mrs. Rogers that all there is to do is to find a manufacturer to take up the idea."

In the September 1950 edition of *Reader's Digest* an article entitled "So you want to burn to death!" made the following claim: "The tobacco industry is not yet ready to make its product less of a fire hazard. The faster cigarettes burn, the more are used, the bigger the sales". The unscientific notion that if a cigarette could be made to "self-extinguish" then the fire problem would be eliminated was gaining strength. By March 1974, a bill mandating that cigarettes "self-extinguish" passed through the Senate and was promptly killed in the House of Representatives. The Tobacco Institute was quick and forceful. On the other hand, there were no forces aligned to promote the bill and this is where things stood for five years.

The campaign begins

I first heard about the possibility of fire-safe cigarettes in 1976 at a national meeting of fire chiefs. There was no scientific evidence that the tobacco industry could produce such a product; however, anecdotal evidence was circulating among members of the fire service. In 1978, I hired the Center for Investigative Reporting to uncover information about the issue. (Lowell Bergman was a co-founder of the centre.) The results were published in *Mother Jones* magazine in July 1979. The centre had uncovered enough circumstantial evidence that the cigarette industry could produce cigarettes that were less likely to cause ignition of furniture and mattresses to enable me to launch an official campaign calling on the United States Congress to mandate fire-safe cigarettes. In March 1979, I presented to the American Burn Association (ABA) a resolution of support for a campaign demanding that the cigarette companies produce fire-safe cigarettes. The ABA became the first organisation to endorse the campaign. A month later, the campaign was also endorsed by the International Association of Fire Chiefs. In September 1979, Congressman Joseph Moakley of Boston, Massachusetts, introduced a bill giving the Consumer Product Safety Commission authority to regulate cigarettes as a fire hazard. In addition, the bill mandated that a fire safety standard be implemented. Four months later, in January 1980, Senator Alan Cranston introduced the Senate version of the bill. In 1982, with the assistance of the former editor of *Tobacco Control*, Ron Davis,

the American Medical Association became the 45th national organisation to endorse the campaign.

The first hearings on the Moakley bill were held in March 1983 in Congressman Henry Waxman's subcommittee. Although the bill did not move, momentum was building at the state level. Since there was no federal preemption of state action on cigarette fire safety legislation, similar versions of the Moakley bill were introduced in 11 state legislatures. By May 1984, the bill in New York state, authored by Assemblyman Pete Grannis, had cleared the Assembly and was headed through the Senate when the tobacco industry, fearing a New York state fire safety regulation of its product, contacted Moakley and agreed to the technical wording of a federal bill. The terms of the agreement were the following.

- The federal bill would provide \$3 million to fund three years of research to determine the technical and economic feasibility of a fire-safe cigarette
- A 15-member technical study group (TSG), would oversee the research and report the findings to Congress. Membership of the TSG included representatives of the National Cancer Institute, the Federal Trade Commission, the Consumer Product Safety Commission, the United States Fire Administration, the National Bureau of Standards Center for Fire Research, the International Association of Fire Chiefs, the American Burn Association, the American Medical Association, the American Public Health Association, the National Fire Protection Association, the furniture industry, Philip Morris, American Tobacco, Lorillard, and RJ Reynolds
- There would be no preemption language in the legislation that would prohibit states from enacting cigarette fire safety legislation.

In August, 1984 President Reagan signed into law the Safe Cigarette Act. Mandated by this law, the TSG sent an eight-volume report to Congress in December 1987 summarising the results of the research.² The conclusions were agreed to by all 15 members of the TSG, that it was "technically and economically feasible to produce a cigarette with a significantly reduced propensity for igniting upholstered furniture fires." In short, the cigarette companies produced "experimental" cigarettes for the TSG to test that did not ignite highly flammable furniture. These cigarettes looked, felt, smelled, and smoked like commercial cigarettes and the measured levels of tar, nicotine, and carbon monoxide were the same as Marlboro and Winston cigarettes. As the industry could make fire-safe cigarettes, the next legislative step was to develop a fire safety "test method" that could be used by regulatory agencies to measure the fire safety properties of cigarettes.

In January 1988, Moakley introduced the Fire Safe Cigarette bill, which was immediately opposed by the tobacco industry. Once more, fire-safe cigarette bills were introduced in six state legislatures to apply pressure on the

tobacco industry. The tobacco industry once more withdrew their opposition to the Moakley bill and President Bush signed the Fire Safe Cigarette Act in October 1989.

This Act reconvened the same 15 members, now called the technical advisory group (TAG) and, like the TSG, oversaw another three years of research at the National Institute of Standards and Technology. A six-volume report detailing the science used to create two different “test methods” for determining the fire safety of cigarettes was delivered to Congress in January 1993. The TAG’s brief was to oversee the development of a fire safety test method to be used in the creation of fire safety performance standards for cigarettes. This time, however, the four cigarette industry representatives on the TAG did not agree with the other 11 members that a valid test method had been developed. Thus, the report to Congress was criticised by the tobacco industry with the claim, among others, that more research was needed to verify results. Although the four tobacco members were outvoted (a two-thirds vote of the TAG was needed to approve the language of the report to Congress), the report was delivered to Congress.

Congressman Moakley promptly drafted his third and final bill that would mandate that the Consumer Product Safety Commission develop a fire safety performance standard for cigarettes (using the test method developed by the TAG) and promulgate the standard within 18 months of passage of the bill.

Before hearings could be held on Moakley’s bill the Republicans took control of Congress and Congressman Thomas Bliley, who represents Richmond, Virginia—home of Philip Morris’ manufacturing plants and research laboratories—became chairman of the committee that Moakley’s bill would be referred to. In short, there is no hope that the current Congress will act to regulate cigarettes as a fire hazard.

Back to the states and the courts

Once more, when Congress refuses to regulate cigarettes as a fire hazard, the campaign returns to the more responsive state legislatures. During the past two years, bills were introduced in Oregon, California, and New York. The bill in New York passed the Assembly unanimously although it was held up in the Senate. In 1999, I will be collaborating with fire service and burn care organisations in forming a national coalition to promote fire-safe cigarette legislation in numerous state legislatures. Simultaneously, I will inform burn survivors who were injured in fires caused by someone else’s cigarette that they have a potential personal injury claim against the cigarette manufacturers. This claim is based on the fact that the manufacturers know how to produce a cigarette that will not cause ignition of furniture or mattresses. The basis for that claim includes not only the work of the TSG and the word of Jeff Wigand but also court documents from a failed product liability suit against Philip Morris that were leaked to *60 Minutes*.

Project Hamlet

As reported on *60 Minutes*, Philip Morris researchers began working on their version of a fire-safe cigarette in 1980, shortly after Moakley introduced his first bill in Congress. The research project was given the code name “Project Hamlet”. When asked by the plaintiff’s lawyer during a deposition in the case if there was a special meaning in the code name, the researcher replied that it referred to an inside joke at Philip Morris, “To burn or not to burn”. Besides discovering that the researchers were literate, the plaintiff’s lawyer also revealed documents detailing seven years of scientific work on Project Hamlet. The goal of the project was to create a commercially acceptable fire-safe cigarette. In 1987, Philip Morris researchers sent unmarked packs of “Hamlet” cigarettes to dozens of taste testers who smoked and rated the fire-safe cigarettes. The results, as detailed in a memorandum that went up the chain of command within Philip Morris, indicated that the taste testers could not distinguish any difference between the “Hamlet” cigarettes and Marlboros. Philip Morris had its fire-safe cigarette.

Are the cigarette companies stupid?

The central question is, why don’t Philip Morris and the other cigarette manufacturers market fire-safe cigarettes? This was the second question that I asked Jeff Wigand. His answer confirmed my understanding of the issue. He said that there were two reasons.

First, the companies were afraid of product liability suits and were counselled by their attorneys to always suggest that there are insurmountable scientific problems associated with producing a commercially acceptable fire-safe cigarette.

Second—and, according to Jeff, most importantly—the companies abhor change. Jeff described the companies as huge dinosaurs that lumber along in one direction, committed to that direction. Corporate change within the cigarette industry comes slowly.

Unfortunately, for all the men, women, and children who are burned to death or burn injured, the corporate behaviour of the cigarette companies can only be influenced by concerted political advocacy and lawsuits, a process that is agonisingly slow. Perhaps the process can be speeded up if other nations consider and enact fire-safe cigarette legislation.

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1 US Consumer Product Safety Commission/Environmental Health and Hazard Analysis. From data obtained from the US Fire Administration/Federal Emergency Management Agency, Washington, DC and the National Fire Protection Association, Quincy, Massachusetts, 1996.

2 Technical Study Group. *Toward a less fire-prone cigarette: final report of the technical study group on cigarette and little cigar fire safety*. Bethesda, Maryland: US Consumer Product Safety Commission, Oct 1987.