

# How Big Tobacco got away with the Crime of the Century

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It all began in 1994. Years of outrage over decades of Big Tobacco's lies finally seemed to be coming to fruition. 1994 was the year it seemed like we finally turned a corner in the fight against Big Tobacco.

None of these tobacco CEOs were indicted for perjury

The early 90s was pretty much the height of the lung cancer epidemic. Ever since then, lung cancer rates overall have been slowly dropping, especially among men. It was also the height of "Joe Camel," a wildly successful marketing campaign by RJ Reynolds that appealed to beginning smokers (i.e., teenagers). What was really alarming people at the time was that the teenage smoking rate had been steadily decreasing until the mid- to late-80s. Then, shockingly, the teen smoking rate started going up, and going up markedly. Why? Joe Camel. Tobacco paying millions every year to insert "cool" smoking scenes in PG and PG-13 movies. They were finding a way to market to kids.



Harry Waxman nailed 'em, then they slithered away

Congressman Harry Waxman held a famous series of Congressional hearings in 1994 in which the CEOs of the four major tobacco companies were subpoenaed to testify before Waxman's committee about the cover-up and lies of Big Tobacco. All four CEOs — from RJ Reynolds, Phillip Morris, Brown & Williamson and Lorillard — steadfastly refused to budge an inch under withering questioning from Waxman and other congressmen that they knew cigarettes were addictive and were killing people. They all four claimed they did not *believe* this.

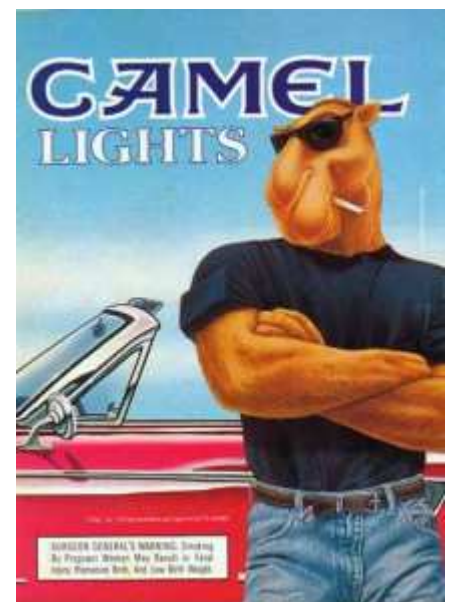
The public was outraged. It was a major public relations debacle for Big Tobacco. Within months, a perjury investigation was initiated by the Department of Justice. All four CEOs were eventually fired. Ultimately, the Department of Justice claimed it didn't have enough evidence to prosecute for perjury because the four CEOs testified under oath they *believed* tobacco did not addict people nor cause cancer. They had crafted their answers very carefully, obviously with help from attorneys. Because they had used the word *believe*, they could not be prosecuted for perjury.

Joe Camel, retired by the MSA in 1998

Then came the Global Settlement Agreement, which came oh, so close to passing. This was a settlement proposed between several plaintiffs and Big Tobacco to right at least some of the wrongs committed by Big Tobacco over the past century. This included payment of \$365 billion to the states for their Medicaid costs caused by smoking. FDA would be given regulation over tobacco products, warning labels would be strengthened and all class-actions suits against Big Tobacco would be nullified.

This required an act of Congress (because of the FDA involvement), and Congress failed to pass the bill, which was carried by Sen. John McCain.

Out of the flames of that failure, came the the Master Settlement Agreement, which was announced in 1998, I cheered. Finally, Big Tobacco was being brought to its knees. It wasn't as good as the GSA, but it still sounded good. Big Tobacco would be crushed by a \$280 billion out-of-court settlement with 46 states ... (give or take several billion depending on your accounting).



I continued to cheer it for at least five years ... until I started finding out all that had been lost. All in all, this agreement was an abject failure on most levels, explained very well in Alan Brandt's "The Cigarette Century."

The Master Settlement Agreement is to this day the biggest court settlement ever reached in the history of litigation. Big Tobacco (RJ Reynolds, Phillip Morris, Lorillard and Brown & Williamson), was sued by the state of Mississippi in the early

1990s to reimburse the state for its Medicaid expenses caused by all the health problems caused by smoking. 40 other states joined the suit. Famed Mississippi attorney Dickey Scruggs took over the plaintiffs' case, leading an army of lawyers against Big Tobacco.

The case had an interesting basis in law. The tobacco industry was adding untold billions to the Medicaid expenses of states dealing with the near-epidemic of health problems caused by cigarettes — lung cancer, heart disease, lung disease, etc. In the 70s and 80s, lung cancer especially hit a crescendo as all those heavy smokers who started smoking in the 1950s and 1960s (when the smoking rate was the highest) started getting lung cancer. The industry knew damn well that its product was making people sick, yet continued to sell it ... and this was actually adding to taxpayers' tax burdens.

All this information came out in a series of documents leaked over a period of years from various personal injury lawsuits against the tobacco industry. While few of these lawsuits succeeded (Most jury decisions for the plaintiffs were either overturned by higher courts or the damages greatly reduced), one good thing did come out of all this litigation. Discovery.

#### Big Tobacco paid millions to insert smoking in movies

Through the discovery process, reams and reams of documents were released to the plaintiffs, who in turn made them available to the public, proving that the tobacco industry had known since the early 1950s that tobacco was giving people heart disease and lung cancer and that nicotine was physically addictive and that "light" cigarettes were not safer than "regular." Documents were released showing that Big Tobacco executives did their damndest to keep this information covered up, and to fabricate studies attempting to disprove that cigarettes were killing people. More documents also proved that the industry had been shamelessly marketing to "new smokers," which is a Big Tobacco euphemism for "teenage smokers."



With this reams upon reams of evidence now out in the public forum, Big Tobacco was forced to settle, or face constant lawsuits and judgments. However, the high-priced Big Tobacco lawyers completely outmaneuvered the state attorneys general in the settlement.

The biggest failure of the agreement? It was suggested in the agreement that a certain amount of the \$280 billion go toward tobacco education and cessation programs. Everyone assumed it would. Everyone thought it was a MANDATE. It was never MANDATED however.

Anti-smoking programs did receive a lot of funding from the settlement for a few years, but it didn't take states very long to figure out that the word "mandate" wasn't in the settlement anywhere. Before long, state legislatures started diverted that money to balancing their general funds. Money for tobacco education dried up. Lazy state legislators got an easy source of money to balance their budget without raising property taxes. It turned into a huge windfall. Not only that, but states started selling bonds with the intention that they would be paid off by future tobacco settlement funds.

Instead of stamping out smoking, states had become utterly dependent upon tobacco. It wasn't in the states' interest to cut smoking rates.

There was one last chance to really nail the tobacco industry. A RICO racketeering lawsuit filed against Big Tobacco in the federal court by the Justice Department under Bill Clinton. They had a damn good case. Tobacco executives had conspired for years to cover up the addictiveness and deadliness of their product. They had conspired for years to cover up the fact that they were marketing their product to kids. They had lied that "light" cigarettes were safer.

The feds won their case in 2006, sort of. A federal judge issued a scathing ruling convicting Big Tobacco of racketeering under the RICO statutes. An appeals court upheld this decision. However, shockingly, the courts did not impose any financial penalties, saying the RICO statute did not allow this. Some argue that the Justice Department under Bush did not pursue the case as aggressively as it had been pursued under Clinton, and this was part of the reason for the mixed ruling. The case is still being appealed as the government is seeking more of a monetary punishment against Big Tobacco.

So, tobacco executive lost their jobs for lying to Congress, were investigated for perjury, but avoided an indictment. Big Tobacco was convicted by a federal judge of RICO racketeering, and that conviction was upheld by an appeals court, but

no executives went to jail, nor was the industry even forced to pay penalties. A huge civil settlement with the states has simply turned into a windfall for state government.

Big Tobacco murdered people for decades. And murder is not too strong of a word for it. They knew since the early 1950s, maybe even earlier, that they had a product that was addicting people and was killing people. And they continued to sell it and market it, and then they marketed it to kids. And they covered up and lied. For decades. It's amazing to me that not one person has ever spent a day in jail for it. And people are rotting in prison in Texas and Florida for selling pot.

They got away with it. The final chapter of Dr. Allan Brandt's book, "The Tobacco Century," is "The Crime of the Century."

They murdered roughly 100 million people worldwide between 1950 and 2010, and by "murder," I mean they knew full well they were killing people with their addictive product.

If you want to look at the glass half-full, a few good things did come out of the 1998 MSA:

- \* Joe Camel was retired for good. Big Tobacco is forbidden from marketing to kids again (no ads with cartoon characters). They have attempted to get around this provision several times.

- \* Payments to movie studios for product placement were forbidden. Weirdly enough, smoking scenes in movies after 1998 actually went up, not down. Big Tobacco insists they have nothing to do with this. It's probably Hollywood's continued love affair with the cigarette dating back to Casablanca. However, pressure has been put on Hollywood to cut gratuitous smoking scenes out of PG and G movies. That pressure seems to be working.

- \* The cost of cigarettes went up. To pay for the \$280 billion settlement, the industry as expected raised their prices. Along with a number of states jacking up their cigarette taxes, in some cases dramatically, the price of cigarettes has skyrocketed in the past 10 years, helping to drive down the smoking rate.

- \* Spurred partly by outrage that sprang from Waxman's hearings, more and more states and cities have passed smoking bans. Not only do smoking bans help drive down the smoking rate (because a lot of casual smokers only smoke in bars, and therefore, it gives them a good excuse to quit), they also protect nonsmokers from secondhand smoke.

- \* The FDA was given regulatory authority over tobacco in 2009. The first thing the agency did was ban candy-flavoured cigarettes, which are popular with kids.

- \* The smoking rate and teen smoking rate have declined since 1998, but not dramatically. The smoking rate was around 24-25 percent in 1998, and today it's pretty much stuck at about 20 percent. The smoking rate for teens is a little harder to pin down, because few teens are what you would call "regular smokers," but the percentage of teens who were smoking dropped from 28 percent in 2000 to 17 percent in 2010. However, that drop has stalled the last few years, probably because of the cut in tobacco education funding.

- \* Class-action suits against Big Tobacco have been halted, but individual lawsuits are still being allowed. In Florida, a Supreme Court decision there in 2006 allowed thousands of individual lawsuits to go forward against Big Tobacco for lying about the safety of "light cigarettes," etc. So far, juries have awarded hundreds of millions of dollars for plaintiffs, with hundreds more suits in the works. None of those judgments have been paid out, however, as Big Tobacco is appealing all the verdicts. the industry will be dealing with these lawsuits for at least the next decade, maybe longer.

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