

Fall 2012

Using "The Insider" to Teach Legal and Ethical Topics in a Legal Environment of Business of Employment Law Class

Sharlene A. McEvoy
Fairfield University, samcevoy@fairfield.edu

Follow this and additional works at: <https://digitalcommons.fairfield.edu/nealsb>

Recommended Citation

McEvoy, Sharlene A. (2012) "Using "The Insider" to Teach Legal and Ethical Topics in a Legal Environment of Business of Employment Law Class," *North East Journal of Legal Studies*: Vol. 28 , Article 3.
Available at: <https://digitalcommons.fairfield.edu/nealsb/vol28/iss1/3>

This item has been accepted for inclusion in DigitalCommons@Fairfield by an authorized administrator of DigitalCommons@Fairfield. It is brought to you by DigitalCommons@Fairfield with permission from the rights-holder(s) and is protected by copyright and/or related rights. **You are free to use this item in any way that is permitted by the copyright and related rights legislation that applies to your use. For other uses, you need to obtain permission from the rights-holder(s) directly, unless additional rights are indicated by a Creative Commons license in the record and/or on the work itself.** For more information, please contact digitalcommons@fairfield.edu.

UnitedStates/Local%20Assets/Documents/FSI/US_FSI_FinancialReformInsights_041911.pdf

⁴⁶ The Economist has also attempted to clarify this third and the other reforms.

http://www.economist.com/blogs/freeexchange/2010/09/financial_reform

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ The European Banking Confederation has expressed concern about the feasibility of the timetable and the negative effects which may result from failure to adhere to it. <http://www.gfsnews.com/article/103/1/>

⁵⁰ 84 non-voting Associate and Affiliate Members are self-regulatory agencies or other interested parties.

⁵¹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD126.pdf>

⁵² <http://www.treasury.gov.au/documents/178/PDF/atti.pdf>

⁵³ <http://www.cvent.com/events/2010-ifie-iosco-global-investor-education-conference/agenda-12ff63e32b1c4a3caa3221593e0425e.aspx>

⁵⁴ <http://www.world-exchanges.org/reports/regulation/iosco-principles-outsourcing-financial-services-market-intermediaries>

⁵⁵ http://books.google.com/books?id=66gCBR2c_jgC&pg=PA141&lpg=PA141&dq=iosco+clearing+entities&source=bl&ots=Ytyjv-xC6f&sig=NZLFzftpkNdhlyBMid7ssvgevvg&hl=en&ei=j9m5TbfoHYK5twe80uDeBA&sa=X&oi=book_result&ct=result&resnum=1&ved=0CBYQ6AEwAA#v=onepage&q&f=false

⁵⁶ http://www.sc.com.my/eng/html/iaffairs/ioscoreport/Publication_of_SAP.pdf

⁵⁷ Portfolio Media's Law 360 discusses the rights of Requesting Authorities' representatives.

<http://www.ropesgray.com/files/Publication/bacd6451-1c43-4223-b53b-3d625f511d8e/Presentation/PublicationAttachment/3c2487b3-4a52-4076-9286-3f574e7c565d/Regulatory%20Cooperation.pdf>

⁵⁸ The IOSCO treats such non-public information in a similar manner as most jurisdictions would; if a public authority has a right to demand the information, non-public documents will become public.

⁵⁹ http://www.osc.gov.on.ca/documents/en/Securities/mou_20021101-exchange-info.pdf

⁶⁰ http://www.iaisweb.org/_temp/7_April_2009_IAIS_supports_G20_Declaration.pdf

⁶¹ Brummer, op. cit. page 304-314 describes the "soft law" "hard law" dichotomy and the author's contention that a global financial regulator is impractical.

USING "THE INSIDER" TO TEACH LEGAL AN ETHICAL TOPICS IN A LEGAL ENVIRONMENT OF BUSINESS OF EMPLOYMENT LAW CLASS

by

Dr. Sharlene A. McEvoy*

*Dr. Sharlene A. McEvoy is a Professor of Business Law at the Charles F. Dolan School of Business Fairfield University Fairfield, CT

ABSTRACT

As today's college students are a visually oriented group it is helpful to elucidate legal and ethical concepts introduced in a business law class by using movies with popular actors based on actual events. "The Insider" is such a film.

INTRODUCTION

In instructing students about legal and ethical concepts present in a business law course it can be helpful to use popular media to help illustrate such issues.

One such film is "The Insider"¹ starring Russell Crowe (Gladiator) and Al Pacino (The Godfather I, II and III). The movie deals with a complex case involving the tobacco industry but can be used to focus on many legal issues such as the rights of whistle blowers, freedom of the press and the First Amendment, Congressional hearings and products liability. An instructor can use the movie in a variety of ways. First, it can be used to illustrate employment issues and the instructor can examine the employment relationship from the perspective of both the employer and the employee. Second, the movie can be used throughout the semester as the underlying thread of the course because the movie deals with many issues of crucial importance to the business student especially the challenges faced by a company who manufactures and markets an increasingly unpopular and unhealthy product.

THE OUTLINE OF THE STORY

Jeffrey Wigand was employed as a scientist with Brown Williamson Tobacco Company. Among Wigand's assignments was to experiment with developing a safer cigarette. Wigand was extremely well-paid for his services earning more than \$300,000 per year.

The 1999 Touchstone Picture opens with scenes not relevant to Wigand's plight but with the experiences of Lowell Bergman (played by Pacino) in Beirut. The opening establishes Bergman's bona fides as an investigative reporter willing to go to great lengths to pursue a story for Sixty Minutes, the CBS investigative icon. Bergman is the producer for Mike Wallace and he is in Lebanon to pave the way for a future Mike Wallace interview with an elusive leader of Hezbollah.

The movie then moves to the crux of the story. Jeffrey Wigand is shown leaving his office and driving to his home in an upscale neighborhood, where he is greeted by his wife and two daughters.

Once Wigand breaks the news that he has been fired by Thomas Sandifur, CEO of Brown and Williamson, his wife asks about their financial situation, health coverage and car payments. Not reassuringly, Wigand tells her that the severance package includes medical coverage. His wife always seems to be the last to know. She is taken aback when eventually Wigand decides to do the Wallace interview. Subsequently she leaves and later files for divorce.

The next scene returns to Mike Wallace's interview with the sheik arranged by Bergman which establishes Wallace as a blustery, aggressive interviewer who is unwilling to back down and who begins his interrogation by asking "Are you a terrorist?"

Bergman and Wigand eventually connect when Bergman seeks Wigand's assistance in deciphering some documents from Philip Morris on a story Bergman is planning on fire safety. Wigand and Bergman meet at a hotel in Louisville, Kentucky where Bergman tells Wigand, "I still do the tough stories. Sixty Minutes reaches a lot of people."

Wigand tells Bergman that he can help with the fire safety material but that he signed a confidentiality agreement with Brown and Williamson, where he was a corporate vice president and head of Research and Development.

Later Wigand is summoned to a meeting with Sandifur in which the latter seeks an amendment to the confidentiality agreement. Wigand is told that if he does not sign, his benefits under the original agreement will be terminated and the company will sue him.

Wigand accuses Bergman of violating his agreement to not disclose their conversation since Sandifer's demand occurred soon after Wigand's meeting with Bergman.

Bergman and Wigand meet again and talk outside the zone of the confidentiality agreement. Wigand tells Bergman that he has worked for Johnson and Johnson, Pfizer and Union Carbide in Japan. Bergman tells Wigand that only he can decide whether to honor the confidentiality agreement or break it and tell the public what it needs to know.

When the Sixty Minutes staffers discuss the possibility of airing the story, the CBS lawyers inform the producers that Big Tobacco spends \$600 million on outside law firms and they win every case.

Bergman suggests that they approach the problem from another direction. If Wigand were compelled to testify in court, would the company be unable to enforce the confidentiality contract?

Wigand and his family experience considerable upheaval. They endure prowlers on the property who destroy plants in the garden and anonymous telephone and computer threats to the family, and a bullet in the mailbox. Eventually they are forced to sell their house.

Wigand is relegated to teaching Japanese and Chemistry at a high school.

Bergman tells Wigand that if he decides to appear on Sixty Minutes Bergman has to know why he was fired and that once 30 million people hear his story nothing will be the same. Wigand remains skeptical about Bergman's motives but the latter assures Wigand that his word is good and that he protects his sources.

Bergman contacts Richard Scruggs who has filed a lawsuit against tobacco on behalf of Mississippi seeking reimbursement for Medicaid expenditures for medical treatment related to cigarettes. Bergman believes that if Wigand's information first appears in court testimony, it would provide some cover against the expected onslaught by Brown and Williamson.

When Wigand is interviewed by Wallace he reveals that cigarettes are a delivery device for nicotine that there is "impact boosting" through the use of ammonia. Wigand discusses the use of Coumarin which was a cancer-causing agent. Wigand also revealed that when the CEOs of the "Seven Dwarfs" Big Tobacco testified before Congress they lied when they answered that they believed that nicotine was not addictive.

To combat Wigand's testimony, Brown and Williamson serve Wigand with a gag order issued in Kentucky. Even though the order is thrown out in Mississippi, Scruggs and

Michael Moore, Mississippi's Attorney General, warn Wigand that if he returns to Kentucky he could be arrested. At this point the instructor might stop the film and ask students what they would advise Wigand to do. Is it worth risking arrest and putting his family in further jeopardy? What would the students do if they found themselves in his position?

Wigand testifies at a deposition but is interrupted by tobacco attorneys who remind him that he signed a confidentiality agreement and that a TRO has been issued by Kentucky, Wigand proceeds with his testimony.

SIXTY MINUTES BACKS DOWN

An attorney for CBS warns the Sixty Minutes team about a possible claim for tortious interference, citing the maximum "the greater the truth the greater the damage." The lawyer says that the information belongs to Brown and Williamson and if the company sues CBS, it could wind up owning the network.

The CBS President urges that the segment be re-cut to eliminate the Wigand interview. Bergman reminds Mike Wallace and Don Hewitt that CBS is about to be sold to Westinghouse and the sale may be affected.

When Don Hewitt and Mike Wallace ally against Bergman and agree that Wigand's interview should not air, Bergman then has the unpleasant task of telling Wigand that his interview will not be broadcast.

Brown and Williamson mount an all out offensive against Wigand compiling a 500 page report about his past foibles that even the Wall Street Journal does not find credible. The strategy is to destroy Wigand's credibility despite his protestation that he is telling the truth.

When the edited version airs Bergman tells Wallace "it was a disgrace".

Wigand accuses Bergman of "manipulating" him as he is on the edge of desperation.

Bergman then becomes a "whistleblower" himself, notifying the New York Times that CBS corporate told CBS News not to air a story. The Times prints the account and the

editorial page opines that CBS had betrayed the legacy of Edward R. Murrow.

When Wallace and Bergman talk about the fate of the story Wallace says that he does not want his legacy to be allowing a tobacco giant to "crash" CBS. Later Wallace admits "we caved" and it was "dead wrong." Eventually, CBS does air the Wigand interview.² Students can debate how much influence the corporate side of broadcast networks has on what is aired in the national media. Is the press really free or does the First Amendment fall prey to corporate concerns? What other stories might have been suppressed?

CONCLUSION

Having viewed "The Insider" the students should be asked: Is the price the whistleblower has to pay personally and financially worth it? Had Wigand kept quiet, he would have been able to keep his severance and health benefits as well as his family. Should the spouse and children of the whistleblower have to endure the pressure, opprobrium, and financial consequences of the whistleblower's decision?

What did the public gain because of Wigand's interview? Students can research the outcome of tobacco litigation referred to in the film that led to many states getting money from Big Tobacco. To what use has the money been put?

Despite the litigation and Wigand's testimony and interview, what has changed? Nearly twenty percent of the population still smokes and how many people have even heard of Wigand? Even though it is an unpopular and unhealthy product, smokers willingly pay a premium for it. A pack of cigarettes costs more than five dollars in most states today. Rates of cigarette consumptions are even higher abroad.

Another issue for students to examine is that of corporate confidentiality agreements. Can such contracts be lawful if the company requires an employee to conceal information about a product that is harmful to the public? Are such agreements contrary to public policy and therefore unconscionable?

A third issue for students to consider is whether the press should be legally exempt from lawsuits like tortious interference when the press is serving the public good by

reporting information? Students should carefully review the scenes in the movie in which CBS lawyers meet with the Sixty Minutes team to discuss these concerns. The sale of CBS to Westinghouse also raises the issue of whether the media should be owned by corporations or should the networks be owned by the public since they are regulated by the Federal Communications Commission. Newspapers can be privately owned because they are not regulated by a government agency.

Another issue related in passing in the movie is the testimony of the tobacco CEOs before Congress in which they claimed that nicotine was not addictive even though they knew that was not true.³ If former baseball pitcher Roger Clemens can be prosecuted for falsely testifying before a Congressional Committee about his steroid use, why were charges not pursued against tobacco officials for misleading both Congress and the public about a dangerous product?⁴

Clemens harmed only himself and his baseball competitors in using steroids while tobacco has brought ill-health and death to millions.

Finally, students might ponder the ethics of allowing a dangerous product to be sold at all. If cigarettes have such deleterious effects why should they not be banned as a matter of public health policy like other addictive drugs.

Students can debate not only the business impact of such a decision but the effect on public health in an era in which healthy lifestyles are being encouraged.

"The Insider" is filled with many issues that students can discuss in the context of a business law, legal environment, or employment law class.

NOTES

¹ "The Insider" was released in 1999 by Touchstone Pictures.

² If students want to view the interview Mike Wallace did with Jeffrey Wigand, see a History Channel program "20th Century with Mike Wallace: The Perils of Whistleblowing", narrated by Mike Wallace who omits any discussion of his and Don Hewitt's CBS's craven behavior in suppressing the interview with Wigand.

³ See, Frontline: Tobacco on Trial (1986) for a report on tobacco CEO's testimony before Congress and role of Food and Drug Administration.

⁴ Bob Hohler, "Clemens Indicted for Drug Denials, Ex-Sox Star Faces 6 Counts over Testimony to Congress", Boston Globe, Aug 20, 2010 at A1 and A6.