

“Beacon of False Hope”
Remarks by Leroy Smith upon receiving
Public Servant Award for 2006
(The “outstanding whistleblower” selected by the U.S. Special Counsel)
September 7, 2006

While I am humbled and honored to receive this award, I do so with mixed feelings. My concern is that the dangers that I identified go un-remedied to the continuing detriment of my colleagues who work in the Federal Bureau of Prisons and the inmates working in those prison industry factories.

My name is Leroy Smith and I was the safety manager at Atwater Federal Prison, a maximum-security institution located just outside of Merced, California. I originally came forward in December 2004 with documents showing that computer terminal disassembly plants were showering particles of heavy metals, such as lead, cadmium, barium and beryllium, over both inmates and civilian prison staff.

The federal prison industry authority, called UNICOR, has operated a computer recycling plant at Atwater since 2002, but the operation has been plagued by shutdowns and safety problems, including:

- Particles of heavy metals are released when inmate workers break glass cathode ray tubes during shipping and disassembling. Beyond the prison environment, staff going home with toxic dust on their clothes risk spreading contamination to their families;
- The UNICOR factory at Atwater had an open food service in the contaminated work areas; and
- Prison staff and inmates were not informed of health risks or given training on handling contaminants. Blood and urine monitoring is incomplete.

Six other federal prisons have similar computer recycling plants. Even though test results at two of the prisons, Elkton, Ohio, and Texarkana, Texas, found similarly excessive exposure levels, the Bureau has declined to investigate conditions at these facilities.

After reviewing my disclosure and the agency response to that disclosure, this spring the U.S. Office of Special Counsel (OSC) faulted the Federal Bureau of Prisons for failing to address exposure of both its staff and inmates to “excessive levels of toxic metals” from computer recycling enterprises. In a letter dated April 3, 2006, the Special Counsel called for a “thorough, independent, and impartial investigation into recycling operations at [Bureau of Prisons] institutions.” The Special Counsel characterized the Bureau responses to my disclosure as “unreasonable,” “inconsistent with documentary evidence,” and relying on “strained interpretations” of safety requirements.

In its letter of May 9, 2006 to my lawyers (Ms. Mary Dryovage of San Francisco and Mr. Jeff Ruch, the Executive Director of PEER), Carol Ochoa, the Assistant Inspector General for Oversight and Review stated that the Inspector General (IG) for the U.S.

Justice Department would investigate computer recycling enterprises operated by the Federal Bureau of Prisons to determine the extent of health hazards to staff and inmates, and why the Bureau failed to act on red flags raised by its own safety managers.

On June 27th, Mr. Ruch and I met with a team from the IG. I provided additional material and contact information for current and former colleagues at Atwater and other institutions.

Since that date, none of these witnesses have been contacted, let alone interviewed by, the Justice Department IG. In fact, the IG team has stopped returning my phone calls and emails.

Perhaps I should not have been surprised because I first reported these safety problems to the Attorney General and the Justice Department IG back in 2004. These offices have direct oversight responsibilities over the Federal Bureau of Prisons. These officials ignored these problems then, and, I am sad to say, seem to be ignoring them now.

In the meantime, correctional staff and inmates are reporting health problems and have nowhere to turn. For example, Charlie Carter, a UNICOR Industrial Specialist at Elkton, Ohio, has submitted a formal complaint through the Justice Department IG but has yet to receive any response. UNICOR had moved its glass breaking operation from Marianna, Florida to Elkton, Ohio, because female inmates were becoming sick and there was growing concern that exposure to toxic metals would negatively affect the female inmates' reproductive systems.

This award is premised upon the idea that the Office of Special Counsel (OSC) helped me accomplish something for the public good. The conduct of the OSC also bears some examination.

In my case, while OSC proceeded with my disclosure, it dismissed my complaint of retaliation. Working with PEER, I retained Mary Dryovage as my counsel and proceeded with my case to the Merits Systems Protection Board. With Mary's able assistance, I obtained a resolution of my retaliation complaint and I am now the safety manager at the Federal Correctional Institution at Tucson, Arizona.

With respect to my disclosure, once OSC transmitted my disclosure to the Attorney General, the Justice Department response was, by law, due within 60 days. In my case, OSC gave the Justice Department nearly a year and a half, from December 2004 until April 2006, before OSC decided that the Justice Department response was inadequate.

Throughout this process, an OSC deputy, Matthew Glover, was a source of support. Unfortunately, Mr. Glover has resigned in OSC, I sadly suspect, in frustration.

More importantly, however, OSC has rejected disclosures and complaints from my colleagues working at computer recycling operations in Elkton, Ohio and Marianna,

Florida. While the Special Counsel promised to continue investigating their allegations, no such effort has been undertaken, to my or my co-workers' knowledge.

At the ceremony, I thanked my former Congressman, Dennis Cardoza, as well as my attorney Mary Dryovage and the staff at PEER. But as I stand here with my award for being the "Public Servant of the Year," I cannot help but feel that my experience is a beacon of false hope for public servants who are trying to correct wrongdoing.

Daily, I receive calls from my colleagues working in computer recycling operations at other correctional institutions who describe coming home coated in dust. They had been assured that there was no danger. Now, many have health problems and others are scared about what lies in store for them.

Even though it now acknowledges safety deficiencies, the Bureau of Prisons is not offering medical screening or assistance. These people, both staff and inmates, do not know what they have been exposed to or in what quantities. I am at a loss as to what to tell them. I do not know what resources are available to them or who will be able to answer their questions.

My chief achievement through this whole process is that I survived to tell the tale, through the assistance of the people I mentioned. But merely surviving is not as important as ending the health risks from improper operation of a prison industry. I hope that by continuing to speak out I can accomplish a true public service, which is making the UNICOR operations safe.

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