

# PRISON

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### **“To Get Stuff and Sell It for As Much As We Can Get”: Federal Prison Industries and Electronics Recycling**

*by Aaron Shuman*

In recent months, UNICOR Recycling has experienced a number of challenges in its efforts to build the infrastructure of U.S. electronics recycling into the infrastructure of federal prisons. In September 2006, the federal Office of Special Counsel named Leroy Smith, the former health and safety manager at the federal prison in Atwater, California, Public Servant of the Year for his whistle blowing efforts regarding toxic conditions for workers in UNICOR Recycling.

In October, four organizations—Silicon Valley Toxics Coalition, Prison Activist Resource Center, the Computer

TakeBack Campaign, and the Center for Environmental Health—released a report on UNICOR Recycling, accompanied by a protest in Austin, Texas, at E-Scrap, the North American conference for electronics recycling. Attendees at the conference were greeted by caged protesters in orange jumpsuits, using hammers to dismantle electronics and computer monitors, next to printed quotes from incarcerated workers such as, “We was getting showers of glass and the whole chemicals out of the tube. We was cutting ourselves. I only went to the hospital twice, but one of them was a serious injury. They even took pictures of it at the hospital.”<sup>1</sup>

One month after the protest, in November, Joseph Redden, a computer reseller with a contract at UNICOR Recycling’s flagship facility at Texarkana, pled guilty to theft of government property, raising questions about the history of mismanagement and theft in UNICOR Recycling. Specifically, how did Aaron Aragon, an Assistant Factory Manager at Elkton, Ohio—who signed an affidavit in 2000 admitting he lied to federal investigators in an inquiry into fraud and theft in UNICOR’s Recycling operations there—get promoted to his current position as second-in-command of UNICOR Recycling?

The fact that UNICOR Recycling has problems is so well-established that the 2006 House Judiciary Committee specifically acknowledged this in its report on legislation to reform UNICOR. The Committee stated that it “is aware of recent reports concluding that employees

as well as inmate workers in one or more of the recycling factories operated by FPI were exposed to toxic or hazardous substances.”<sup>2</sup> However, the report goes on to state, “the Committee believes that recycling programs such as those operated by FPI can simultaneously teach marketable skills to Federal inmates and provide the environmentally desired outcome of reducing the disposal in landfills of hazardous materials. Nothing in H.R. 2965... is intended to restrict the continuation of FPI’s recycling activities for Federal agencies.”<sup>3</sup>

This position likely reflects the pressures of dealing with an electronic waste crisis in which “over 100,000 computers become obsolete in the U.S. every day”<sup>4</sup>, and a prison crisis in which one way to keep exploding prison populations quiet is to create labor intensive, prison industry jobs to keep the prisoners occupied—or as UNICOR puts it, “when the prisoners work, so does the system.”<sup>5</sup> It also reflects a willingness to displace the burden of toxics onto the people least empowered to advocate for their own safety, with U.S. prisoners joining laborers in poor communities around the world as the recipient of the high-tech industry’s toxic trash. As one Congressional source who requested anonymity put it, “As far as [UNICOR] is concerned, there are plenty [more] prisoners where the sick ones came from.”

In a strongly worded statement in September, Scott Bloch of the federal Office of Special Counsel said, “Federal employees and prisoners inhaling poisons due to the neglect of their superiors,

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## **Electronics Recycling (cont.)**

and federal agencies whitewashing the investigation. It sounds like a Hollywood [movie], or a John Grisham novel with wild conspiracy theories. In this case, however, workers and inmates were exposed to hazardous materials without protection, including lead, cadmium, barium, and beryllium, without adequate safety precautions, and the Bureau of Prisons and Federal Prison Industries did nothing to stop it, and indeed frustrated attempts to investigate the matter.”

Bloch continued, “These are powerful arms of the United States Department of Justice. Even if the problem is less a wholesale cover-up and simply a cabal of self-interested bureaucrats, challenging it is a formidable task.”<sup>6</sup>

Although Bloch cancelled Leroy Smith’s award ceremony in Washington DC, Loren Smith, the Special Counsel’s Director of Congressional and Public Affairs, says the Office backs Leroy and encourages people to step forward “if there is new information or anyone else in the BOP or there’s a new claim of retaliation by Mr. Smith or anyone else.”<sup>7</sup> Loren Smith identifies in the Bureau of Prisons “an attitude among some that nobody died so there’s not really a problem here. That’s not how we see it.”<sup>8</sup>

However, according to Florida attorney Bill Reeves, several people *have* died. At a September press conference called by Public Employees for Environmental Responsibility, Reeves said he was in contact with 20-50 people who were exposed to toxics at Marianna, Florida—the birthplace of electronics recycling in the federal prison system in 1994—all of whom demonstrated similar symptoms related to toxic exposure. He then introduced Freda Cobb, a former staff member at Marianna who was retired for medical reasons by the Bureau of Prisons several years ago, and who had just buried her mother two months before.

Cobb said, “There are several inmates that I have known that have become ill and sick. There’s a couple of truck drivers that have died. After unloading [electronic waste from] the truck, they would personally sweep out their trucks every day, and two of them have died... Of course, [there’s] my mom... One of my daughters, who is [in her twenties], has been diagnosed with [problems] with her female organs.

“And they retired me after I worked approximately 14 years for the Bureau of Prisons... My [ability to meet] the responsibility of helping my family are very, very much limited due to my symptoms. I’ve got a page and a half of medical documentation of body functions breaking down; I just got out of the hospital a week ago... I’ve got multiple, multiple medical problems, and it seems to be getting worse.”<sup>9</sup>

### **Origins of the Dell High-Tech Chain Gang**

Silicon Valley Toxics Coalition and the Computer TakeBack Campaign have followed the interplay between electronics recycling and prison labor since 2002, when UNICOR opened its Atwater facility. In 2003, protesters targeted Dell Computers for its contract with UNICOR. Dressed in orange jumpsuits, they proclaimed themselves “the Dell High-Tech Chain Gang” and gathered outside industry events such as the Consumer Electronics Show and at drop-off points for Dell until the company pulled its contract.<sup>10</sup>

Their new report (co-written by the author), titled *Toxic Sweatshops: How UNICOR Recycling Harms Workers, Communities, the Environment, and the Recycling Industry*, identifies a crisis in the federal prison system. In the age of the War on Drugs, the War on Immigrants, and the War on Crime, the federal prison system has grown so large that UNICOR has found it difficult if not impossible to meet its goal of keeping one-quarter of the population busy in jobs, while complying with its mandate to minimize its impact on labor and private industry. A 1991 study found its prison work program could not expand production of “a single product... that would provide a significant number of additional [prisoner jobs] without negatively affecting private business and labor.”<sup>11</sup> This has prompted UNICOR to pursue new business strategies, including expanding into services, “repatriating” work from sweatshops abroad, and seeking alleged “‘expanding pie’ situations where the total domestic market, including both the commercial and the federal market, has growth opportunities [that] allow simultaneous growth by both UNICOR and the private sector”<sup>12</sup>—all of which prompted UNICOR’s entry into the business of electronic waste recycling.

In this context, e-waste<sup>13</sup> recycling seems pretty ideal for UNICOR: busting up computers keeps prisoners busy, and

## Electronics Recycling (cont.)

turning surplus government electronics into a steady stream of cash by reselling systems or their raw materials fills UNICOR's pockets. (As we shall see, there are concerns about this stream filling the pockets of high-ranking UNICOR officials and prison guards as well.) *Toxic Sweatshops* tells the story of Leroy Smith's efforts to stop toxic exposure at Atwater, where UNICOR failed at least six air quality tests in its first year of operation, and Smith battled staff at the prison and at UNICOR's Central Office in Washington DC to shut down the factory and to pay for changes mandated by federal law.<sup>14</sup>

With prisoners agitating for their own health—demanding better equipment like dust masks and gloves—and Smith's willingness to go to the mat for the health and safety of everyone in the factory—by filing complaints with federal agencies such as OSHA (the Occupational Safety and Health Administration) and ultimately pursuing workers' comp and federal whistleblower protection for himself—the Bureau of Prisons was forced to conduct its own investigation in 2005.

That investigation<sup>15</sup> confirmed toxic exposure at at least three UNICOR Recycling factories (at Elkton, Ohio; Texarkana, Texas; and Atwater) and recommended disciplinary action against unnamed BOP and UNICOR officials in five instances. Most interestingly, the BOP report recommended discipline of a senior-level UNICOR official who told the Factory Manager at Texarkana to keep the glass breaking operation open while making progress towards implementing new “standard operating procedures”—rather than shut the factory down, as Leroy Smith was attempting to

do at Atwater.<sup>16</sup> Sources speculate that the unnamed official is UNICOR Recycling founder and head Larry Novicky, but the BOP would neither identify those recommended for discipline nor confirm that any disciplinary action was actually taken as a result of its own report. This is the report which Special Counsel Scott Bloch referred to as a “whitewash”,<sup>17</sup> and which prompted the Inspector General of the Department of Justice to open an ongoing audit of UNICOR Recycling, at the urging of Smith's attorney Mary Dryogage and advocate Jeff Ruch of Public Employees for Environmental Responsibility, in May 2006.<sup>18</sup>

These issues should receive a national hearing in 2007, whether through the various legal actions stakeholders are considering (described at the end of this article), the 2006 House Judiciary Committee's request for briefings by the Attorney General on the progress of the audit, or Leroy Smith's call for congressional hearings that would invite people other than the Attorney General to testify on a scandal going on in his house.

### A History of Investigations

The question is: What did high-ranking BOP officials know, when did they know it, and did they dodge their responsibility to know by refusing to conduct environmental testing until Leroy Smith forced their hand by paying for it out of his own department's budget at Atwater?

In his response to the BOP's report in October 2005, Leroy Smith repeatedly accuses UNICOR officials of criminal intent. Smith names UNICOR's Chief Operating Officer Steve Schwalb, UNICOR Recycling General Manager Larry Novicky, UNICOR's former Recycling Program Manager Cynthia Keidel, UNICOR's Marketing Program Manager Varney Smith, UNICOR Recycling's current Recycling Program Manager Aaron Aragon, and UNICOR's General Counsel Marianne Cantwell as “knowingly aware of UNICOR's non-compliance with OSHA and EPA.” Smith goes on, “It is clear Federal Prison Industries...wants to focus solely on the present and are trying to discard their intentional endangerment of staff, inmates, and staff families during the previous years.”<sup>19</sup>

UNICOR's senior management, including Operations Program Manager Aaron Aragon, has been investigated before. In 2000, the General Services Ad-

ministration—the agency that manages federal property and equipment--opened what Congressman Pete Hoekstra referred to as a “criminal investigation regarding FPI's taking and subsequent use of various types of excess property” at a September 26, 2000 House hearing on the subject.<sup>20</sup>

Victor Arnold-Bik, Sales Chief of the Personal Property Management Division of the GSA, testified that GSA transferred computers to UNICOR with the understanding that those computers were for the agency's own use. UNICOR sold them to the public instead and pocketed the money. Arnold-Bik continued, “As we became aware of the large volume of excess property being transferred to FPI, we began to seek more information as to how this property was being used. We believe that, today, the most prudent decision has been to stop transfers of excess personal property to the FPI facility at Elkton, Ohio and to question and scrutinize approvals to all other FPI facilities.”<sup>21</sup>

The investigation report found that “[Aaron] Aragon officially requested computers and other property...with no intent of using the property within his institution as outlined by regulations and federal law. Furthermore, statements by FPI officials in Washington D.C. indicate an ongoing, and deliberate attempt to operate their ‘recycling’ program outside of regulations, laws, and GSA directives, in order to secure the profits from the sale of federal excess property.”<sup>22</sup> It also noted from “certain FPI officials...a pattern of deceit in order to conceal the true nature of their ‘recycling program.’”<sup>23</sup>

Specifically, Aragon “made no mention of selling whole computers, separate computer components, or entire truckloads of computers or other government property to the private sector. [He] also failed to disclose that his warehouse often didn't even see the shipments of excess property they ordered, as many were shipped ‘directly’ from the federal agency [unloading] government property to various private companies... [He] stated that direct shipping to the private sector does not occur. However, at the time [in July 2000, when he was first interviewed at Elkton], [he] was shipping direct goods to the private sector on almost a daily basis.”<sup>24</sup>

Two months later, in an affidavit, Aragon admitted lying to federal investigators, lying to offices that unload surplus Defense Department equipment about its whereabouts, and accepting small gifts from local businessmen. The investigation stated “no



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evidence of bribes/kickbacks found”, while noting that “a complete audit of FPI’s account was not completed.”<sup>25</sup>

Charlie Carter was at Elkton when investigators came in 2000. The first Officer of the Year at Elkton, Ohio, Carter worked with Aragon to establish the UNICOR Recycling factory there; more recently, he has developed health problems and testified in support of Leroy Smith at his whistle blower protection hearing. Carter recalls in 2000, “They came down there guns a-blazin’ and all that stuff, hauled [Aaron Aragon] in the office there, flashing their badges... What he was doing is, instead of those [regular] customers coming [to the UNICOR warehouse], he would order the truck to come to Elkton and divert it to that customer’s business... That’s when the Department of Defense stopped sending us stuff for quite some time.” According to Carter, when the DOD resumed sending electronics to Elkton, they sent “maybe one truck a day” with a representative who accompanied the shipment to make sure that its computers actually arrived at the UNICOR factory.<sup>26</sup> (It’s interesting to note that according to the minutes from UNICOR’s 2006 Board of Directors meeting, sales in recycling are down, because “the Department of Defense, one of the Recycling group’s primary Federal customers, has sent much of its material for recycling to private vendors.”<sup>27</sup>)

In July 2001, investigators met with FPI’s General Counsel, General Manager Larry Novicky, and FPI’s former Recycling Program Director at company headquarters in Washington DC. One person told investigators that FPI “provided written guidelines and instructions on every facet of the program to the managers in the field who were running the recycling factories”<sup>28</sup>—a claim contradicted by Leroy Smith’s experience working to open the recycling factory at Atwater in 2002, where he says there were no plans provided by the DC office.<sup>29</sup>

The investigators “asked who at Elkton would have been the most familiar with the basic underlying purpose of the [Recycling] program.” The person DC staff identified—a former Supervisor for Industries and Education at the prison—had already been interviewed by investigators. They said, “when asked what the main purpose of the program was, that he had replied ‘to get stuff and sell it for as much as we can get.’” Two of the DC staff disagreed, “stat[ing] that

the purpose of the program was ‘inmate training.’”<sup>30</sup> “They were then advised that when asked what inmate training occurred in the program, [he] replied ‘there wasn’t any’ and that [he] had in fact referred to the program as being more along the lines of inmate labor.”<sup>31</sup>

The distinction between “inmate training” and “more along the lines of inmate labor” is suggested by descriptions of work conditions from prisoners, and now some guards. Reports of brute force in UNICOR Recycling are typical. A Marianna guard says that when UNICOR realized it was more expensive to ship whole computer monitors than to break their leaded glass and ship it, one of UNICOR’s first techniques was to have prisoners break glass on the deck of a semi. Years later, when Atwater opened in 2002, Phil Rodriguez, then union local president and Leroy Smith’s co-worker in the safety department, says, “In the beginning, I made recommendations that [UNICOR] get rubber mallets because they were just using a piece of metal, a piece of wrought iron, to break down wood TV cabinets. Whatever they had in the area to do the job, that’s what they used.”<sup>32</sup> In 2004, BOP National Hygienist Matthew Korbek noted that Atwater prisoners still lacked the proper tools to unscrew monitor housing and wrote, “Forced breaking of monitor housing when an easier dismantling is an option increases the potential for injuries and [the need for] the use of additional personal protective equipment.”<sup>33</sup> Prisoners have also described being told to make their own “sharp knife-like objects” to scrape the property tags off of CRTs, and being retaliated against for receiving information on toxics in electronic waste and attempting to raise safety issues.<sup>34</sup>

When UNI-

COR’s former Chairman of the Board Joseph Aragon told Congress in 2000, “Our technology in prisons is often much older as it was generations ago in the private sector”,<sup>35</sup> he wasn’t lying—breaking TVs with a piece of wrought iron is as old as making convicts break rocks.

Ultimately, the GSA investigation concluded that “officials of FPI demonstrated a pattern of deceit with GSA officials. From misrepresentations about the program and its purpose, to lying to federal agents and property officials about the use and location of federal property, the investigation revealed an ongoing enterprise whereby FPI officials obtained federal property under false pretenses and deposited the proceeds into their own general treasury.”<sup>36</sup> The report cited seven issues with relevant federal codes, including one that raises the possibility of embezzlement or theft for failing to return the proceeds of computer sales to the U.S. general treasury. Neither the GSA, the Bureau of Prisons, nor UNICOR had any comment on what (if any) policy changes or disciplinary actions were taken as a result of this report. For Aaron Aragon, who has since been promoted—along with his wife Janice—to work under Larry Novicky in UNICOR’S

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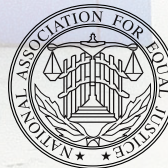
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## Electronics Recycling (cont.)

national office, the consequences of lying to federal investigators appear not to have been severe. Creating a new industry for UNICOR to keep prisoners busy was apparently more important.

“We thought Aaron Aragon was our friend,” says Carter. “I went to Aaron Aragon who was the Factory Manager, and I told him, is this stuff hazardous? And he looked at me and said, Charlie, I’ve already checked on it; there’s nothing to be worried about. And him being our friend and this and that, I’ll be damned if he didn’t lie to us. And so, they’ve known all along that there’s hazards in these monitors, and we went for years and maybe we were a little ignorant or whatever, but we took our fellow employee’s word for it. And I’ll be damned. And now I suffer from some medical stuff; I’ve had some buddies at Elkton [suffering from some medical stuff]... Somebody’s got to answer for this.”<sup>37</sup>

One hurdle that Carter, other affected guards, prisoners and their families face is collecting the documentation required to show toxic conditions in their workplaces. Such efforts to collect evidence is thwarted, for example, by the fact that all OSHA inspections are pre-announced, which gives UNICOR plenty of time to clean up its factories.

Before OSHA inspections, prisoners describe such things as being ordered by prison staff to work more slowly, to clean more thoroughly than usual, to change air filters, and even to wear safety equipment provided for the first time prior to the inspection. While the Bureau of Prisons claims that there is no reason to believe Atwater prisoners or staff have been exposed to toxics at actionable levels since 2003, at which time the glass-breaking booth was relocated to vent outside, Leroy Smith has challenged the validity of testing conducted in 2004 and 2005, arguing that such testing may be misleading, because prisoners weren’t doing the work of disassembling CRTs at the time, and because low levels of toxics are still dangerous as they accumulate in the body over time. There are also allegations that Atwater staff loaded electronic waste onto trucks and arranged for it to be trucked away from the prison, in preparation for a health and safety inspection, confirmed by Phil Rodriguez, then union local president and Leroy Smith’s co-worker in the prison Safety Department. Smith’s attor-

ney Mary Dryovage says, “it completely violates Department of Transportation regulations... [The Bureau of Prisons] didn’t want anyone who had witnessed the trucks to testify that they destroyed the evidence by moving the evidence.”<sup>38</sup>

Dryovage says, “We have lawbreaking on a number of fronts, and no law enforcement to be seen, except for a call for additional witnesses, additional investigation. But no putting some time frames into when the medical help is going to be made [to people who have been exposed]. We think it’s very clear that the employees and the inmates who are employed by the prison system should be tested so that we can monitor their health and develop the background information to establish causation, as the health consequences manifest.”<sup>39</sup> Noting the cost of independent medical testing and the lack of sufficient medical services in rural areas such as Marianna, Florida, Bill Reeves says he’s tried, so far unsuccessfully, to get federal agencies such as the Department of Health and Human Services to conduct testing at the government’s expense.

Meanwhile, prisoners have complained about UNICOR refusing to authorize blood tests, and in some cases, to disclose the results if they are lucky enough to be tested. One prisoner writes in 2006, “They are denying me my legal rights to access copies of my blood test. They keep saying they don’t have them or haven’t received them yet, but the foreman moved us out of the glass breaking section because he informed us that we have high levels of lead in our blood and kidneys because he got a call from the medical staff here, so they are working together because now they are trying to cover their tracks.”

The latest manifestation of a toxic economy built on lies, deceit, and moving electronics through federal prisons—whether by trucking it directly to computer resellers, as the GSA investigation found, or by trucking it around to avoid health and safety inspectors, as Mary Dryovage alleges—is a growing number of reports of theft.

In November, 2006, computer reseller Joseph Redden pled guilty to charges of theft of government property. According to the affidavit, Redden had a contract with FCI Texarkana to sell its refurbished computers on eBay, but held some on the side to sell directly to prisoner families without giving UNICOR its cut. This is not the first time that UNICOR’s handling

of electronics has come under scrutiny, and if theft of over \$1,000 in value is a felony, there is reason to believe that high-ranking officials in UNICOR’s Recycling program should be investigated.

Multiple sources state that Atwater guards William Bernthold and Anthony Borges retired in 2005 rather than be fired for stealing computer parts. Bernthold and Borges worked under UNICOR Factory Manager Tom Stahley and Aaron Aragon. One prisoner claims to have seen Aragon “walk out [the] front door with the ‘high dollar’ chips in pocket, carried out two boxes of chips out [the] front door.” According to Leroy Smith, “my understanding was that Borges was the key behind it all. He would make certain deals with the local vendors. He would charge a certain amount, and then some of the product they were supposed to purchase, he would meet with them and get what he had put on the trucks for himself” and resell it.<sup>40</sup> Attorney Bill Reeves confirmed that there are theft of government property issues at Marianna as well.

### Project GREEN-Fed

You’ll find none of the above information on the website of UNICOR Recycling. Instead, you’ll find videos promoting UNICOR as, of all things, a friend of the environment, calling itself a “true green solution”<sup>41</sup> for electronic waste, with proclamations of the corporation’s “environmental sensitivity”<sup>42</sup>, and a highlighting of its recent efforts to obtain industry-standard certification at its factories. At Leroy Smith’s whistle blower protection hearing, Larry Novicky testified, “I like to say in my marketing skills that UNICOR means a unique corporation because we truly are a unique corporation. We are not only recycling electronics; we’re trying to recycle lives.”<sup>43</sup> Claiming to “recycle lives”, especially now that the BOP conceded toxic exposure of staff and prisoners, is disingenuous, to say the least.<sup>44</sup>

While it is beyond the scope of this article to trace the “greening” of UNICOR, it’s worth noting the role that outside scrutiny, visits, and pressure from independent monitoring organizations have played in forcing UNICOR to make gestures toward the “greening” of its industry. In March 2003, while prisoners and some staff were struggling to improve conditions at the Atwater facility, Silicon Valley Toxics Coalition toured the Atwater facility and produced a report *A Tale*



of *Two Systems* contrasting UNICOR unfavorably with a private-sector recycler used by Hewlett Packard named Micro Metallics. Also in 2003, Robin Schneider of Texas Campaign for the Environment says TCE was invited to tour the Texarkana facility, but then summarily disinvited when she attempted to tour with an industrial hygienist who had worked in the Texas state prison system. According to minutes from UNICOR's November 2003 Board meeting, UNICOR's auditors proposed the company develop "an annual Health, Safety, and Environmental update on its Recycling operations"<sup>45</sup>, and Chief Operating Officer Steve Schwalb agreed to an annual report that "would set forth FPI's compliance with all applicable environmental and safety requirements."<sup>46</sup> Neither the BOP nor UNICOR would provide further details about its environmental reporting or the circumstances surrounding TCE's attempted visit to the Texarkana facility.

Months after the June 2005 Bureau of Prisons report confirmed toxic exposure at the federal prison in Texarkana, UNICOR announced a new program that would begin funneling e-waste there called Project GREEN-Fed. A one-year pilot project in the state of Arkansas, under GREEN-Fed, residents can dial a 1-800 number, receive boxes from FedEx, fill them with their old electronics, and ship the waste off to prison, free of charge. For a state bureaucrat like Robert Hunter of the Arkansas Department of Environmental Quality, who sees little money for recycling programs, rural counties struggling to pay the transportation costs of hauling e-waste, and private companies going out of business trying to serve them, prison labor is the solution—even if the end result is a public health problem.

Hunter addressed UNICOR's Board of Directors meeting at FCI Texarkana in November 2005, where he was described as "very complimentary of the FPI recycling program,"<sup>47</sup> and in February 2006, told trade publication *Waste News*, "We hope that the results [of Project GREEN-Fed] are so good that it can be taken and broadened regionally and then nationwide."<sup>48</sup> In December 2006, Hunter attended a meeting with UNICOR staff in Washington DC to discuss Project GREEN-Fed. He does not expect it to expand beyond Arkansas at this time, although it should be noted that UNICOR has recently opened collection centers in the DC area, Atlanta, Miami, and entered discussions at Leavenworth, Kansas.

Hunter expects an announcement of the program's future in February 2007.

Hunter differentiates between an "old" UNICOR factory at Texarkana—inside the prison walls, cramped, "limited in some of the way that they were dismantling the [cathode-ray] tubes,"<sup>49</sup> with no air purification—and a "new" factory—located outside at the prison camp, larger and better-lit, with new air circulation equipment, a new procedure of suiting and masking prisoners, body scans with metal detectors to make sure prisoners aren't carrying computer parts out, and "basically the same technology for the dismantling/breaking."<sup>50</sup>

While details of the exact "technology"—or method—used in glass breaking vary from prison to prison, they tell a common story of prison slave labor being forced to work in toxic conditions. The front cover of the report *Toxic Sweatshops* features a picture of "old" style glass breaking at another prison. A cathode ray tube, stripped of its plastic shell, sits on a waist-high table. According to a prisoner, "When the operation began, most glass room workers would heft the CRT to head height and slam the CRT down on the metal table and keep slamming it on the table until the glass broke away from whatever they were trying to remove."<sup>51</sup> A January 2006 picture in the *Texarkana Gazette* appears to show some of UNICOR's modifications to the glass breaking procedure. The picture shows two prisoners, hooded, in white hazmat-like suits, standing on platforms with their backs turned to the camera. A black tube runs from their hoods down their backs to their belts; the tube pumps compressed air into their hoods from breathing. The prisoners stick their gloved hands inside a box covered with heavy plastic sheeting and break the CRTs inside. These changes appear intended to isolate the prisoners from the toxics released by breaking CRTs; in fact, they might be considered tacit admission of the toxics prisoners were exposed to for years without such attempts at protection.

For Hunter, such reforms were sufficient to tell *Waste News* UNICOR offers "one of the most modern, up-to-date facilities you'll find for the disposing and handling of electronics."<sup>52</sup> According to Sheila Davis of Silicon Valley Toxics Coalition, "If they're breaking glass in such hazardous conditions that they have to wear these suits, that's a problem."<sup>53</sup> Barbara Kyle of the Computer TakeBack

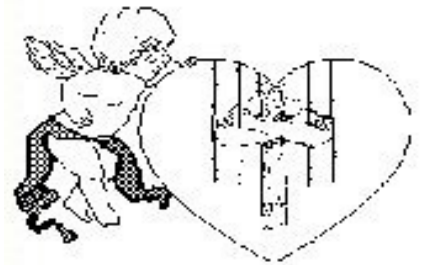
Campaign says that such suits are not standard in U.S. recycler shops.

Such calculations prompt Congressman Pete Hoekstra, (R-MI), a long-time UNICOR antagonist, to say, "Why are we injecting unfair low-wage competition in an area we should foster? E-waste is going to be a major, major problem; we should be developing small and not so small efforts to get rid of e-waste in a responsible fashion while giving employment to American folks."<sup>54</sup>

Nonetheless, UNICOR's efforts to "greenwash" itself explains why the report

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## Electronics Recycling (cont.)

*Toxic Sweatshops* emphasizes the environmental racism of a prison system whose population is overwhelmingly poor people of color, which subjects them to work with toxics, without adequate health and safety protections or access to the courts, making prison work programs one part of a genocidal U.S. prison and jail system that releases 1.5 million people every year with a life-threatening contagious disease, according to the Commission on Safety and Abuse in America's Prisons.<sup>55</sup> The groups that issued the report *Toxic Sweatshops*

have called for UNICOR to get out of the business of recycling electronics immediately, for "full compensation and reparations for damages as well as quality health care"<sup>56</sup> following the environmental justice principles adopted by the First National People of Color Environmental Leadership Summit, for institutions and individuals to pull their contracts with UNICOR Recycling, for industry associations such as the International Association of Electronics Recyclers to stop certifying UNICOR Recycling, for the Environmental Protection Agency to ban dumping electronic waste on prisoners and poor people outside the U.S. in

countries such as Nigeria and China, and for the high-tech industry to join this ban by taking its own toxic trash back and using responsible recyclers.

### Prisoners Poised for Legal Redress

In a January 2007 interview, attorney Bill Reeves said, "Right now, I'm looking at a lawsuit on behalf of current and former prisoners who were or are incarcerated at Marianna that essentially accuses the government of subjecting them to cruel and unusual punishment."<sup>57</sup> California attorney Michael Couzens has been corresponding with prisoners for the past year on behalf of Silicon Valley

## ARE YOU IN A PRISON WORK PROGRAM HANDLING TOXIC ELECTRONICS?

At Silicon Valley Toxics Coalition and the Prison Activist Resource Center we have been working to end the exposure to toxics of people working in electronic recycling programs in prison, particularly in UNICOR work programs within the Federal Prison System. Sworn statements from people in prison have played a vital role in advancing our understanding of how electronic waste is recycled in prison. We suggest that after returning this form, you file any complaints you may have within your prison's internal administrative remedy process, in order to preserve your ability to sue. Please take a moment to fill out this survey and return it to our legal support: **Michael Couzens, Attorney at Law, P.O. Box 3642, Oakland, California 94609.**

### SURVEY QUESTIONS

1. Do you wish to keep your identity anonymous?
2. Are you currently working in a work program in electronics?
3. Work: Recycling, Manufacturing, Repair or other: Where: Federal, State, County or Other Prison.
4. If you are working in a Federal Prison, are you working for UNICOR?
5. What is the name of the facility you are in?
6. How long have you worked in this program? from (mo./yr.) to (mo./yr.)
7. Do you have any health concerns that you believe are related to your work? If so, what have you done to get redress?
8. What, if any, special care is taken to protect your health and safety when handling electronics? Are there any special steps you believe should be taken, but are not?
9. Has there ever been environmental/toxic materials testing at your site?  
If so, have you ever witnessed manipulation of activity or change in routine specifically because of the tests? [Example: stopping work before or sudden clean-ups to pass air quality tests] How many times? When were the

tests (mo./yr.)? Do you know what they were testing for? Please list.

10. Have you had a blood sample taken and tested since you began working with electronics in the program?

If so, do you know what they were testing for? Please list. Were the results shared with you?

How often have you been tested?

11. When doing this work, what do you wear? Are you provided with personal protective equipment? What?

12. Have you ever experienced personally or seen intimidation, discipline or firing of workers as a result of attempts to obtain information about or address problems in the work environment?

13. Have you seen or been involved in accidents, injuries, breakage of equipment at the worksite? If so, how often, and of what nature? Please describe.

14. What tools are you given to work with? Would you describe the equipment provided to do your job as adequate or inadequate? Please explain.

15. Have you ever seen prison guards questioned, disciplined or fired for workplace corruption or violating rules (i.e., refusing to provide safety equipment, setting electronics aside for personal profit)? Explain.

16. If you are working in recycling, do you know where the electronic equipment comes from? Please detail (i.e. names of school districts, universities, agencies, hospitals, corporations, etc., that ship electronics)

17. Can we use your statements here in reports or media work on these issues? (anonymous or with name?)

18. What is your race/culture/ethnic background?

19. Do you want to maintain communication with us regarding this work and any future actions we may take?

20. Please provide contact information for a friend or family member outside of prison. I swear under the penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct. SIGN AND PRINT YOUR NAME, WITH YOUR PRISONER ID# AND DATE SIGNED. 🖨

Toxics Coalition. He notes, "UNICOR is a government entity exempt by law from the Federal Tort Claims Act, and unfortunately for us all, but especially the prisoners, they have impunity."<sup>58</sup>

According to Reeves, an 8<sup>th</sup> amendment *Bivens* suit on behalf of prisoners and a lawsuit from the family members of guards offer the best possibilities in a system in which prisoners rights are ridiculously limited and guards are locked into a worker's compensation process that requires proof of a disease. Phil Rodriguez points out, "Some of this stuff takes years and years to develop; it's not like you get sick right away from it."<sup>59</sup>

As for prisoners, according to the federal regulations for compensation for work injuries (referred to as "inmate accident[s]"),<sup>60</sup> they are not able to file a claim until they are within 45 days of release. Prisoners have a right to representation but cannot collect attorneys' fees, cannot compel anyone to testify, and must pay all the costs of presenting evidence themselves, including the costs of travelling to Washington DC for hearings if they appeal. After an initial ruling by an examiner, they can pursue their claim up to the Chief Operating Officer of UNICOR, who is one of the people Leroy Smith has claimed knew of UNICOR Recycling's health and safety violations and failed to take action. No wonder the Texas ACLU, in its guidelines on a prisoner's right to sue for exposure to environmental hazards or toxic materials, emphasizes the 8<sup>th</sup> Amendment. The system for compensating "inmate accidents" is set up for people with the money to seek redress for catastrophic injuries, not toxic exposure claims for which the BOP possesses broad liability.

Tim DeBolt, western regional vice president of the Council of Prison Locals, says that the Special Counsel award for Leroy Smith "emboldened our efforts at trying to protect our employees for workplace hazards. There are now individual grievances; however, we are exploring legal avenues on a class-action level"<sup>61</sup> with private attorneys who may be willing to take the case.

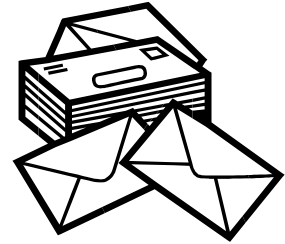
A grievance filed by the Atwater guards union has languished since spring 2006, and may be tabled by this renewed interest in a lawsuit. Nonetheless, the grievance is interesting for what it suggests about the possibilities of prisoners' claims. In a May interview, then union president Phil Rodriguez described a

grievance filed on behalf of the local. As described by Rodriguez, the grievance, under article 27 section a2 of the guards' collective bargaining agreement, cites violations of federal regulations governing toxics such as lead and cadmium, personal protective equipment, health and safety standards for federal employees, as well as freedom from retaliation or harassment for enforcing regulations. The grievance requests several forms of pay on behalf of the entire bargaining unit (not just UNICOR employees), because all prison staff rotated through the factory to be available to prisoners during lunchtime in the UNICOR cafeteria.

If the local is able to establish that all of its members were put at risk by UNICOR Recycling, it could strengthen arguments about the effects of toxic exposure on people outside the glass-breaking operation—from prisoners wearing dusty clothes back to their units and guards back to their families, to the possibility of cross-contamination due to prison laundries washing prisoners' clothes together, and the possibility of exposure by venting glass-breaking operations outside, and dumping toxics-laden mop water and air filters into the county waste stream. Current Atwater union local president Jeremy Schoer did not return a call, and Council of Prison Locals president Bryan Lowry did not know the current status of the grievance.

Phil Rodriguez says, "We want medical testing for all staff every year for the rest of their lives, compensation by established practice, and hazardous duty pay to staff that are working there right now."<sup>62</sup> Asked if prisoners should receive the same things the guards are asking for under the terms of their grievance, Rodriguez said, "Of course, I support that for the prisoners. They should be tested and maybe even compensated. Some of those guys are getting out pretty soon, and they don't want to go home with something like blood disorders or cancers or neurological disorders. They should be tested and provided medical. Definitely, doctors outside the prison, specialists."<sup>63</sup>

Ultimately, the significance of the campaign to force UNICOR out of electronics recycling is the window it opens into the world of prison and prison labor in general. Electronics recycling and other forms of waste management occur in state prisons as well as the federal system. In an unpublished paper,<sup>64</sup> Virginia Hamner, currently an Equal Justice Works Fellow at Florida Institutional Legal Services,



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## Electronics Recycling (cont.)

chose SVTC's campaign as the case study in her effort to define prisoners as a unique environmental justice community of concern, who "exist in an essential void of regulations, are subject to compulsory labor, and subject to live in the environments the prison system provides." She points out, "The industries in which prisoners predominately work, based on the descriptions of the services and products provided by the industrial corporations who run the inmate labor systems, are disproportionately toxic industries that have created concern in union communities, farm worker rights communities, and other health and policy organizations." She notes Florida's efforts in manufacturing chemicals and traffic paint, restoring heavy vehicles, and working with pesticides "in agricultural settings ... similar to the toxic environmental health conditions experienced by farm workers outside the prison system."<sup>65</sup>

For prison staff who have developed health problems or fear doing so as a result of toxics in UNICOR Recycling, it is an eye-opener that their own management is responsible for poisoning them, and that the cruelty and exploitation of prison labor may be returned to them. The question is why what aspires to be a national system of recycling electronic waste has been placed in the hands of a man who has already admitted lying to federal investigators and been dogged by scandal, and whether the only thing exceptional about toxic exposure in UNICOR Recycling is that in this case, a prison staff member was willing to risk his health and his career to fight against it. ■

*This article will appear in the forthcoming book: Prison Profiteers: Who Makes a Buck from Mass Imprisonment, out this Fall from the New Press, edited by Paul Wright and Tara Herivel.*

*Silicon Valley Toxics Coalition encourages prisoners at UNICOR's electronics recycling factories—at Atwater, Elkton, Texarkana, La Tuna, TX; Marianna, FL; Fort Dix, NJ; Lewisburg, PA; and Tucson, AZ-- to complete the survey enclosed in this issue of Prison Legal News and return to attorney Michael Couzens, P.O. Box 3642, Oakland, CA 94609. He is also interested in hearing from UNICOR workers on conditions and possible toxics they face in other UNICOR industries, such as electronics*

*manufacturing; expect a slower response time. For all other inquiries regarding toxic exposure in prison (from asbestos to wastewater), please have an outside supporter download and print the Texas ACLU's Prisoner Resource Guide and read its section on "Exposure to Environmental Hazards or Toxic Materials", available at <http://www.aclutx.org/projects/prisons.php>.*

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