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**2002 NO FEAR BILL**

# **Inside The Fishbowl Official Newsletter of NTEU 280**

**OCTOBER 2002, VOL. 18, NO. 8**

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## **Quote of the Month**

Administrator Whitman at Women Executives in State Government Leadership Awards Gala

"But we can't sit back and celebrate our success yet. While there has been a great deal of progress, there is still so much room for more. As Maureen Reagan once said, "I will feel equality has arrived when we can elect to office women who are as unqualified as some of the men who are already there." (Emphasis added)

## **From The Chapter President - James Murphy**

(Fiscal) New Year's Resolutions and Election Year's Musings

Seek Win-Win agreements (so that the other party doesn't feel a need to get even).

"In union there is strength." All of us are smarter than any of us (Chapter 280's informal motto). All for one and one for all (NFFE's motto). NTEU National's motto and goal: "to organize federal workers to work together to insure that all are treated with dignity and respect."

It would be helpful if every member of Chapter 280 asked a colleague to join NTEU. The number of votes the Chapter gets at the Union's national conventions depends on the number of members, and this year has seen an erosion of membership through retirement and other causes. On a larger stage, the Union has more influence the more members we have. For example, in 2000, NTEU got legislation passed to permit federal employees to contribute an increased percentage of their salary to the Thrift Savings Plan (TSP). Around the same time, NTEU supported passage of legislation that resulted in health-insurance premiums being paid with pre-tax dollars, thus saving the average federal employee about \$400 a year. This year, NTEU supported H.R. 3340, to permit federal employees who are 50 and older to contribute an additional \$2000 to their TSP in 2003. Having succeeded in the House of Representatives, NTEU is working to secure passage of this legislation in the Senate.

NTEU's National President Colleen Kelley said: "This election [November 5, 2002] is about recognizing who among the candidates understands issues of importance to federal employees, and supports the federal workforce on those issues."

There once was a lady who said, "I never vote. It only encourages them." That may be true, but NTEU lists its "top ten reasons why you should vote" --- 10. Congress determines federal pay. 9. Your parents would want you to. 8. Rising health care premiums. 7. Voting is a right - use it. 6. Protect vital civil-service rights and protections. 5. Every vote counts. 4. Contracting-out quotas on federal jobs. 3. You get to wear a sticker that says, "I Voted." 2. Candidates who support federal employees need your vote. 1. Your job may depend upon it.

NTEU supports Members of Congress who support federal workers and vote for issues of importance to NTEU. In Maryland, NTEU has targeted races in Districts 2, 5, and 8, backing Dutch Ruppersberger, Steny Hoyer, and Connie Morella, respectively. NTEU also noted that

Representatives Cardin (District 3), Wynn (4), and Cummings (7) supported NTEU's position in 100% of the eight roll-call votes of particular interest to the Union. In Virginia, NTEU has targeted races in Districts 8 and 10, backing Jim Moran and Frank Wolf. Representatives Scott (District 3) and Boucher (9) supported NTEU 100% on roll-call votes, while Tom Davis (District 11) supported NTEU only 25% of the time.

The Hatch Act bars federal employees from running for partisan political office, using their official position to influence election results, and wearing political buttons while on duty or in uniform or in government buildings. Federal employees also may not collect, solicit, receive, handle, disburse or account for political contributions from the general public.

What the Hatch Act does permit is running for election to a non-partisan office, contributing money or attending political fund-raising functions, expressing opinions privately or publicly about candidates and issues, signing petitions (including nominating petitions), assisting in voter-registration drives, and wearing political buttons or badges while off duty and outside federal buildings. Federal employees may register and vote as they choose.

### **The Status of Telework (Flexiplace) in the Federal Government by Rosezella Canty-Letsome**

Section 359 of Public Law 106-346 requires each Executive agency to establish a policy under which eligible employees may participate in telecommuting to the maximum extent possible without diminished employee performance. It further instructs the Director of the Office of Personnel Management (OPM) to assure that the requirements of Section 359 are applied to 25 percent of the federal workforce by April 2001 and to an additional 25 percent of the workforce each year thereafter. In compliance with these directives OPM evaluated the effectiveness of the telework program and reported to Congress that there were 74,487 federal teleworkers as of October 1, 2001. However, federal telework utilization rates remain low in contrast with the total U.S. workforce.

In an April survey of 63 agencies including EPA, the most frequently mentioned barrier was management concerns. OPM has identified training as the tool for expanding telework participation and addressing the barriers such as management concerns to telework.

### **The Status of Telework (Flexiplace) in EPA and Office of Water Grievance - by Rosezella Canty-Letsome**

According to OPM's report to Congress, EPA has a little over 21 percent of its workforce participating in some form of Flexiplace. Rumor has it that the participation is not consistent throughout the Agency.

It has been brought to our attention (NTEU Chapter 280) that many employees in the Office of Water would like to apply for regular flexiplace, but are discouraged from doing so because of the perception that the management in the Office of Water does not favor such an alternative working practice.

In response to a Memorandum dated March 26, 2002, entitled, "Flexiplace Policy in the Office of Water" NTEU Chapter 280 filed a grievance pointing out provisions that were inconsistent with the NTEU-EPA Collective Bargaining Agreement. Diane C. Regas, Deputy Assistant Administrator disagreed with our interpretation of the memorandum and indicated that the intent was clear. However, she did agree to modify a paragraph on employee access - in particular, she agreed that it will not be required for OW employees to have internet access at home or to be able to talk on the phone while using the internet or remote access in order to be able to participate in Flexiplace in OW.

It was our position then and still is now that the NTEU-EPA Collective Bargaining Agreement on Flexiplace is detailed and clear and does not require any additional specific office policies or fine tuning. Indeed, the NTEU-EPA Flexiplace agreement specifically prohibits either party from modifying the terms of the agreement without the consent of the other party. NTEU has never consented to any such modification either on a Headquarters-wide basis or on a office -specific basis. The complete text of the NTEU-EPA Flexiplace agreement can be found on the EPA Intranet at the following website address: <http://intranet.epa.gov/rm/policy/hr/nteuflex.pdf>.

If you or any of your colleagues are having difficulty having your application approved in a timely fashion, please contact the Union immediately at 202-566-2785.

Keep in mind that any supervisor who fails either to approve or disapprove a flexiplace application within 30 days of receiving it from the employee is in violation of the terms of the agreement. Also keep in mind that a supervisor must have a sound basis consistent with the provisions of the NTEU-EPA Flexiplace agreement for disapproving an application. If he/she disapproves for any other reason, he/she is acting in an arbitrary and capricious manner, which is not permissible. Such a decision can be overturned.

NTEU Chapter 280 wants to hear from you.

### **Last Month's Fluoride Piece: Are EPA Professionals Asleep? by Bill Hirzy**

So far, the only response from our professional community to last month's article pointing out the scientifically unsupportable nature of EPA's drinking water standards for fluoride has been one inquiry regarding EPA's definition of "adverse health effect." I sent that person copies of the two memos referred to in the article: one from Attorney Kenneth Gray to Victor Kimm, Director, Office of Drinking Water and one from Kimm to Administrator Ruckelshaus.

I urge those colleagues involved in hazard and risk assessment to read just three papers (to start), make your own judgments from them, and send comments to me. I will be happy to provide copies of these papers:

1. Chronic administration of aluminum- fluoride or sodium-fluoride to rats in drinking water: alterations in neuronal and cerebrovascular integrity. Varner, J.A., Jensen, K.F., Horvath, W. And Isaacson, R.L. Brain Research 784 284-298 (1998).

2. Neurotoxicity of sodium fluoride in rats. Mullenix, P.J., Denbesten, P.K., Schunior, A. and Kernan, W.J. *Neurotoxicology and Teratology* 17 169-177 (1995)

3. Influence of chronic fluorosis on membrane lipids in rat brain. Z.Z. Guan, Y.N. Wang, K.Q. Xiao, D.Y. Dai, Y.H. Chen, J.L. Liu, P. Sindelar and G. Dallner, *Neurotoxicology and Teratology* 20 537-542 (1998).

The National Academy of Sciences is about to convene a panel to undertake another review of fluoride toxicology. If this review takes the course of past NAS efforts on this subject, a panel heavily laden with people who have promoted fluoridation will find a way to support the U.S. Public Health Service's outdated and dangerous policy to expand the use of America's drinking water systems as disposal media for 200,000 tons per year of hazardous waste from the phosphate fertilizer industry. Anyone care to place a bet?

I would especially like to hear from our scientists in the Offices of Water, Prevention, Pesticides and Toxic Substances and Research and Development on this subject. After all, even though any continuing whitewash of fluoride toxicity could be blamed on NAS, it is our reputations as EPA scientists that are tarred when EPA maintains a scientifically unsupportable set of drinking water standards for fluoride.

After reading the three neurotox articles, I ask you again to consider signing on to the Statement of Concern that can be found on the union website at [www.nteu280.org](http://www.nteu280.org). The Statement is found under Current Issues, Fluoride.

### **NATIONAL PARTNERSHIP COUNCIL - DEAD OR ALIVE? by Bill Hirzy**

The National Partnership Council Executive Board met on January 30 this year to discuss the future of partnership at EPA, given President Bush's Executive Order rescinding President Clinton's that established partnership as an operating principle for Federal agencies. Union representatives expressed their desire to maintain the momentum toward improving labor-management relations that had developed at EPA, especially since ca.1998. Management representatives said they wanted the union members of the Executive Board to be involved pre-decisionally on emerging Agency-wide issues.

The union people stated that they wanted to engage in pre-decisional involvement (PDI) during the very earliest stages of new policy developments that affect employee working conditions, but that they were not interested in having the Executive Board labor representatives act as a "mega-union" negotiating EPA-wide issues.

Next steps agreed to included implementation of the Labor-Management Relations (LMR) Strategic Plan (which had been under development for over two years) by revising its language to be consistent with the present Administration's attitude toward the word "partnership." This was to be done within six weeks, followed by a conference call to gain consensus, then submission to the Administrator for her approval signature. The Labor Relations staff was to

provide a Department of Labor PDI handbook to union representatives for comment and mark up for our use.

The Executive Board reached consensus on leaving the existing structure and operating guidelines intact, that the Board should meet about three times a year, with conference calls between meetings, and that the full National Partnership Council (reps from each EPA local union plus their management counterparts) should continue once-a-year meetings.

Since January, the Executive Board has never held another meeting. There has been one conference call - in June. To say this Administration holds a less than burning interest in engaging employees' elected representatives in decisions that affect working conditions would be an understatement.

During the June conference call the Labor Relations staff committed to having an adaptation of the DOL PDI handbook ready for review in six weeks. The revised LMR Strategic Plan was discussed, further revisions were agreed to and the Plan was to be sent to Deputy Administrator Linda Fisher for subsequent approval by the Administrator. We agreed to schedule a meeting of the full NPC around September, with a postponement to October a possibility.

The full NPC was scheduled finally to meet in October 9, and local union representatives from around the country held a conference call October 8 for last-minute tactical planning. During the call, Leslie Mills, the new labor co-chair of the vestigial NPC informed us that Morris Winn, management's co-chair had informed her that afternoon that management was unable to assemble a quorum of its representatives for the meeting. Further, he said, the Administrator had not signed off on the Strategic plan, having anxiety over the appearance of the anathematic "P" word (partnership) in the document.

It is not clear whether the October 9 meeting was sabotaged by managers who oppose any sort of cooperation with employees' elected representatives, or whether a lack of enthusiasm on the part of this Administration's political leadership for working with democratically elected representatives was responsible. Perhaps it was just a happy conjunction of interests.

In either event, the unions are here to stay until an election to the contrary occurs, and the Civil Service Reform Act grants us certain legal authorities with which to defend employee rights. We intend to do just that, whether in an atmosphere of cooperation or open warfare. The choice of which atmosphere is to exist is management's to make.

### **More On The Administration's Labor Policies (From the FPMI Newsletter October 24, 2002)**

\*\*\*\* LABOR SOLICITOR INTERVENES AGAINST JUSTICE WHISTLEBLOWER \*\*\*\*

Eugene Scalia, the solicitor for the Department of Labor, has intervened in an appeal before his department to argue that whistleblower protections should be narrowed. Scalia has filed a brief seeking to overturn a \$200,000 punitive damages award won by an assistant U.S. attorney in a whistleblower case against the Department of Justice. The whistleblowing prosecutor, Greg

Sasse, cited retaliation for reporting irregularities in pollution prosecutions to a member of Congress. In Scalia's brief, released Oct. 23 by Public Employees for Environmental Responsibility, he argues three main points:

\* Government whistleblowers are not protected in disclosing to Congress. Scalia attempts to revive Bush's attempt to limit protections in the recently signed Corporate Accountability Act (Sarbanes/Oxley) by arguing that only reports to duly authorized congressional committee investigations, not reports to individual members of Congress, are protected under DOJ administered whistleblower statutes.

\* DOJ is constitutionally "immune" from whistleblower claims by federal prosecutors. According to Scalia, prosecutors can never be whistleblowers on matters within the umbrella of prosecutorial discretion. Further, Scalia argues that "separation of powers" considerations place federal prosecutors beyond the reach of any judicial power, leaving prosecutors with no remedy for retaliation incurred by seeking environmental prosecution of politically-connected industries, disclosing information about attempts to obstruct investigations or prosecutions, or reporting environmental violations to EPA or other investigative agencies.

\* Punitive damages against the federal government are barred by sovereign immunity. This stance would insulate the federal government from serious sanctions for outrageous conduct.

PEER Executive Director Jeff Ruch, whose organization represents whistleblowers inside environmental agencies, said, "The nation's top labor law enforcement officer is seeking to weaken the very laws he is charged with enforcing; laws designed to protect the public health by ensuring anti-pollution rules are obeyed."

### **More Help For The Fertilizer Industry Challenged by Bill Hirzy**

In last month's issue of Inside the Fishbowl we pointed out how EPA's drinking water regulations for fluoride really are designed to further the use of the nation's drinking water systems as media for disposal of 200,000 tons per year of hazardous waste, viz. hydrofluosilicic acid, from the fertilizer manufacturing industry.

The following press release indicates a challenge to another step by EPA to aid the fertilizer industry by letting it sell hazardous wastes for land applications that could cause increased human and environmental exposures to toxics.

We welcome a response by Office of Solid Waste and Emergency Response and Office of Water officials as to how their programs to aid the fertilizer industry contribute to environmental and human health protection, our Agency's putative mission.

We also welcome comments from EPA professionals on these topics - if you are afraid to be identified, we will withhold your name from publication, but we will not publish comments sent in anonymously.

**PRESS RELEASE: CITIZENS SUE EPA TO PREVENT FARMLANDS AND GARDENS FROM BECOMING HAZARDOUS WASTE DISPOSAL SITES** For Immediate Release, October 22, 2002. For more information, contact: Melissa Powers, Western Environmental Law Center (541) 485-2471 Patty Martin, Safe Food and Fertilizer (509) 679-8711

Farm, consumer, and environmental health groups today filed a lawsuit to overturn an Environmental Protection Agency (EPA) rule allowing hazardous wastes to be used in fertilizers. Under the rule, toxic heavy metals, including lead, arsenic, mercury, and cadmium may be recycled into zinc-based fertilizers. The hazardous waste-derived fertilizers would not be labeled and may be applied to farm lands and home gardens without further restrictions. While industries have long been disposing of their hazardous wastes through fertilizers, the practice was not officially authorized until this rule. Many of the heavy metals that will be recycled into fertilizers are highly toxic substances. Lead has been known to cause behavioral problems, learning disabilities, seizures, and even death. Mercury may also cause neurological abnormalities, including cerebral palsy in children and severe deformations in animals. Arsenic and cadmium may damage internal organs, skin, and nerve function. The rule would allow these heavy metals to be applied to farms and gardens in concentrations that exceed the limits set for disposal of the hazardous wastes in lined and monitored landfills.

"The government's own studies show that, over the past few years, heavy metal levels in children's diets have risen," said Patty Martin, a former mayor of Quincy, Washington, and the founder of Safe Food and Fertilizer. "Rather than take steps to reduce the toxic burden on children, however, the EPA is illegally authorizing a practice that will put our children at even greater risk from exposure to lead, arsenic, and other toxic heavy metals."

Groups are concerned that farmers and consumers could unknowingly buy and use hazardous waste-derived fertilizers, because the fertilizers will not be labeled. Once applied, heavy metals in the fertilizers could migrate through the soil, run off into streams, and leach into waterways, affecting neighboring lands. "In Oregon alone, over 1.6 billion pounds of fertilizers are used each year," said David Monk with the Oregon Toxics Alliance. "On a national level, the cumulative effects of these fertilizers could be staggering."

Safe Food and Fertilizer, Family Farm Defenders, the Oregon Toxics Alliance, and the California Public Interest Research Group (CALPIRG) claim that the "land ban" provisions of the Resource Conservation and Recovery Act (RCRA) prohibit the EPA from allowing hazardous wastes to be put in fertilizers that end up on farm fields and home gardens. While treated wastes may be placed in land disposal facilities, the facilities must be designed to prevent migration of the hazardous wastes and have, at a minimum, double liners and leachate collection systems. The EPA's rule defies this scheme, by allowing hazardous wastes - including untreated wastes - to be disposed of on farmlands and home gardens.

In 1994, the EPA banned a similar type of practice, in which hazardous wastes were being used in road de-icing chemicals. The EPA justified that ban by noting that hazardous wastes could not legally be applied to the land in an uncontrolled manner. "The EPA has already recognized that it has no authority to allow this type of uncontrolled land disposal of hazardous wastes," said

Melissa Powers, an attorney with the Western Environmental Law Center, the law firm representing the plaintiffs in this case. "This rule will not withstand judicial review."

### **Bridget Shea and OGC Refuse to Discuss Civil Rights Settlement Authority - Delegation of Authority 1-39**

In the August edition of *Inside the Fishbowl*, NTEU raised the issue of who has the authority at EPA to settle civil rights actions, and sought to get official answers from the Office of General Counsel. As we noted in August, NTEU is quite concerned that some Agency officials are making false representations as to their authority to settle, thereby violating Agency Delegation 1-39 and Administrative Judges' Orders, and are, in essence, negotiating in bad faith.

As background, civil rights settlement authority is governed by Agency Delegation 1-39, which states that the Administrator has delegated such authority to the Director, Office of Civil Rights. The Director, is authorized to redelegate such authority to: "the Deputy Director, Office of Civil Rights; the Regional directors of civil rights; and, on a case by case basis, individual attorneys in the Office of General Counsel and the Offices of Regional Counsel."

As we understand the redelegation process from reading EPA's delegation manual and EPA's practice in, for example, enforcement cases, redelegations must be in writing. However, through FOIA requests for civil rights settlements and redelegation documents, NTEU found that some of the settlements, though heavily redacted so that the terms of the settlements remain confidential, were signed by Agency officials not listed in the redelegation clause cited above, and for others, OGC attorneys were signing without a written redelegation of settlement authority.

NTEU sent e-mails to those OGC attorneys asking them to state their authority to settle for the Agency when it appears that there was no written redelegation. Their boss, Bridget Shea responded by e-mail, dated August 22, 2002, and stated:

"Dwight--This is in response to the e-mail messages you sent to attorneys assigned to the Office of General Counsel's Employment Law Practice Group (ELPG) regarding their authority to enter into settlement agreements on behalf of EPA. . . ."

"With regard to employee discrimination complaints filed before the EEOC, ELPG attorneys are authorized to represent the Agency and to enter into settlement agreements on behalf of EPA. Pursuant to Delegation 1-39, the authority to "issue adjustments and settlement agreements for discrimination complaints" has been redelegated by the Director, Office of Civil Rights (OCR), to "on a case by case basis, individual attorneys in the Office of General Counsel." This redelegation is effected when the Director, OCR, or her designee, transfers an employee's complaint to the EEOC to conduct a hearing, provides ELPG with a copy of the complaint file, and notifies the EEOC to contact ELPG regarding Agency representation during the hearing phase of the complaint. Once ELPG and the complainant receive an order from the EEOC acknowledging receipt of the request for a hearing and requesting the name of each party's representative, an ELPG attorney is designated to act as EPA's representative for that particular complaint. Should a settlement be reached in a complaint, an agreement is drafted in accordance with the provisions of 29 CFR Part 1614, and a copy is provided to OCR to ensure Agency

compliance with the terms of the agreement. This process is followed in each case to which an ELPG attorney is assigned."

However, the "redelegation process" described by Ms. Shea, does not appear to be an Agency authorized redelegation process. Consequently, NTEU responded to Ms. Shea, on August 23<sup>rd</sup>, asking her to provide the Agency document that authorizes such "redelegation process" and requesting a meeting "to further discuss these redelegation issues and that we bring our respective delegations experts to such meeting, including the OGC attorney charged with delegation and redelegation issues."

Unfortunately, Bridget Shea has moved on to be the special assistant to Morris Winn, AA for OARM. Ms. Shea now takes the position that she will not discuss this redelegation question because she no longer works for OGC. At her suggestion, NTEU then contacted her OGC replacement, David Guerrero. So far, he refuses to respond to our e-mails and phone calls. Frankly, we find Ms. Shea's response and Mr. Guerrero's silence rather troubling and gives the appearance that Ms. Shea, Mr. Guerrero, and the Agency have something to hide.

NTEU will continue its efforts to get a meaningful Agency response to this settlement authority question. However, in the meantime, we strongly urge NTEU members who find themselves in EEO settlement negotiations with Agency officials, to demand to see the document that redelegations settlement authority to that official. Clearly, for Agency officials not listed in the redelegation clause, they are not authorized to settle for the Agency, even if the Director of EPA's Office of Civil Rights, provided a document purporting to redelegate that authority to them. If you find yourself in this situation, please contact Dwight Welch at 202 566-2787.

### **X-BYTES by Dwight Welch**

#### **Bush Administration's Attitudes Towards Unions and Whistle-Blower Protections Hurts National Security**

Previously I reported how the Administration's position on depriving employees in the proposed Homeland Security agency of Union and whistle-blower rights would harm national security. I gave examples such as the FBI field agent reporting terrorists taking flight training, only to have the report quashed, and the manager who withheld this information was not fired, but promoted. This article continues to expand on that theme with more recent examples.

#### **Scalia Opposes Whistle-Blower Settlement**

Gregory C. Sasse, an assistant U.S. Attorney won \$200,000 punitive damage settlement in his case where he reported toxic materials on federally owned land. Such toxic materials could not only have environmental implications but represent a terrorist vulnerability as well. But Labor Department Solicitor Eugene Scalia has submitted a friend-of-the-court brief indicating that the judgement should be overturned. Mr. Sasse had reported the abuse to a Senator, but Mr. Scalia claims it should have been reported to the appropriate committee. Thus, in not reporting it to the committee, Mr. Sasse forfeited whistle-blower protections. Such an anal retentive interpretation

acts only to inhibit whistle-blowers from performing their service to protect America and Americans.

### **Detained Sniper Set Free**

Another issue is unfolding, which comes near and dear to Washington area residents. John Lee "Sniper" (his school nickname) Malvo, preceding the Sniper reign of terror on metro Baltimore-DC-Richmond area, was taken into custody by the Immigration and Naturalization Service. As someone who stowed away to enter this country illegally, Mr. Malvo should have been detained and then deported. The union which represents the Border Patrol agents is claiming the rules should have been enforced, Malvo should have been deported. But INS management is claiming the charge of stowing away to "arriving illegally" was an appropriate lowering of the charge, which, of course, the union disputes. "Arriving illegally" allowed the INS to release Malvo under his own recognizance, and everyone knows what happened later. Similarly, management has attempted to fire Border Patrol officers who blew the whistle on the Canadian border's being too porous to illegal immigrants.

Representing Border Patrol in the Malvo incident is Executive Vice President Rich Pierce of the national Border Patrol Council, speaking up against this mismanagement. After the INS/Border Patrol is merged into Homeland Security, if President Bush gets his way, voices of truth such as Mr. Pierce's will be silenced. This is not merely just an insult to organized labor, it severely compromises needed reform to make our country a safer place in which to live.

### **Whistle-Blower Foe Promoted**

Similarly, EPA is a microcosm of the national trend. In addition to the various managers accused of wrong-doing being promoted under the Whitman Administration, the newest move is a blow to protection of EPA whistle-blowers. Bridget Shea, who refuses to account for OGC possibly illegal activities in the article "Bridget Shea and OGC Refuse to Discuss Civil Rights Settlement Authority - Delegation of Authority 1-39" above this one, has been promoted to serve as Assistant Administrator Winn's Special Assistant.

I have personal experience with Ms. Shea's anti-whistle-blower activities. During my whistle-blower case, Ms. Shea engaged in an ex-parte communication with the judge in my case. It is illegal for agency counsel to talk to the judge without my counsel having been present. Additionally, the Agency position proposed by Ms. Shea, another example of an anal retentive technicality designed to dismiss a legitimate complaint, went something like the following. The Office of Pesticide Programs had illegally cited me as being over a hundred hours of AWOL, in retaliation for my blowing the whistle on flammable pesticide aerosols. (This was later reduced to fifty something hours.) The charge was totally bogus, as I never left my desk during the supposed period of AWOL. Ms. Shea argued that since no leave or loss of pay was assessed against me, I had suffered no retaliation, therefore my claim was invalid and the case should be dismissed. Very shortly after my case was dismissed on the basis of this rationale, more than 50 hours of leave was stolen by the Agency from my leave balance. Ms. Shea was among the many EPA managers working to retaliate against me and other whistle-blowers while continuing to cover up blatantly illegal activities on the part of EPA managers. For a while my life was

essentially ruined, as are most whistle-blower and EEO complainants, while Ms. Shea, like so many other evil doers was promoted.

This administration came into office preaching reform. I for one would like to see some. However, when whistle-blowers continue to be retaliated against, when wrong-doing managers continue to be promoted and rewarded, I see the opposite of reform. I see contempt for the hard working ordinary employee just trying to do their job. I see a cynical effort to make this and other agencies even more dysfunctional by rewarding incompetent and/or illegal behavior on the part of bad managers, meanwhile, good managers, like good employees, seem to get nowhere.

### **Unions are NOT a Special Interest Group**

The Bush Administration needs to change its negative stance that labor unions are a "special interest group." Rather, labor unions, if working in a proper partnership with the Administration, could help the Administration root out the base causes of government dysfunction. Instead, the cynical suppression of whistle-blowers and other activists, the continued promotion and reward of wrong-doers, and useless hype such as the Zero Tolerance memo which has been repeatedly confirmed by General Counsel and Labor Relations as having no enforcement teeth, is acting to not only make the government more dysfunctional, but comprises the very quality of life and security of all Americans.

### **AA Morris Winn Attends Blacks in Government Conference**

During the last week of August, Assistant Administrator Morris Winn attended the national Blacks in Government conference in Atlanta, Georgia. EPA BIG members represented the second largest contingent to the conference, the number, perhaps reflecting continuing dissatisfaction by EPA African Americans. Many attendees reported to me favorably on their interactions with Mr. Winn.

### **Fishbowl Article Precipitates Meeting with OS&T/OW**

Apparently shaken by my article, in a previous issue of this newsletter, indicating the Office of Science and Technology to be a discrimination trouble spot in the Agency, I was asked to meet with Director Goeff Grubbs and the OS&T Diversity Action Committee. While some of the meeting was preoccupied with their numbers verses our numbers on discrimination complaints, the meeting in general went favorably. One miscommunication that was worked out was the fact that facilitators were working with OS&T to improve the climate in the office. The Unions were supposed to have been invited, but somehow this slipped through the cracks. Being unaware that the activity was being pursued, I mistakenly reported in the Fishbowl, that it was not.

One very productive agreement which Mr. Grubbs and I arrived at, was that we would reciprocally inform the other of potential problems which we might see arising within the office, and thereby tackling these problems while they were small and before they get out of hand. Chief Steward Rosezella Canty-Letsome was of great assistance to me at this meeting and arriving at this solution.

In the background, OS&T employees, who wish not to be identified, say the climate has improved in the Office of Science and Technology. Goeff Grubbs asked for us to publish an article, however, no article was ever received.

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## **SPECIAL NO FEAR GALA COVERAGE by Dwight Welch (Photos captions only-no pics)**

**ESSMAN JAMES  
ENBRENNER**

**CONGRESSMAN JAMES SENSENBRENNE  
PRESENTS AWARD TO DR. MARSHA COLEMAN**

October 19, 2002 Congressional heroes, EPA VARD members, NO FEAR Coalition members, union leaders, and other employee civil rights and whistle-blower advocates all met to celebrate the passage of the NO FEAR bill last year. The celebration also served to kick off the effort to pass the Civil Rights Tax Relief Act; and already there is discussion. NO FEAR II would address short comings of the original NO FEAR Act. The Civil Rights Tax Relief Act, heartily backed by numerous public interest groups including the National Treasury Employees Union, NTEU 280, the NO FEAR Coalition, AARP, American Civil Liberties Union, the Government Accountability Project (GAP), the world headquarters of the Seventh-day Adventist Church, the U.S. Chamber of Commerce, Chubb Corporation, etc., would eliminate the tax penalty for winning an EEO or Whistle-Blower case. Due to changes made during the Clinton Administration, a person could win a case but end up owing money. This is because out of the award, a complainant would have to pay attorney fees, PLUS income tax on the ENTIRE award.

Co-Hosting the celebration were Actor-Director-Activist Danny Glover who couldn't make it due to scheduling conflicts and former DC Delegate Walter Fauntroy. Congressional dignitaries included Rep. F. James Sensenbrenner (R-WI) the original sponsor of the act and his aid Beth Sokol. Beth worked tirelessly in getting the bill passed and continues to take an active role in the civil rights of federal employees arena. Also, present were Rep. Sheila Jackson-Lee (D-TX), and Maryland's own Connie Morella (R-MD). Chief Senate Sponsor of NO FEAR, Virginia's own Sen. John Warner (R-VA), unfortunately couldn't make the celebration as the Senate was debating the war resolution.

NTEU 280 officers attending were yours truly, Dwight Welch, Executive VP, Bill Hirzy, Senior VP, and Jacqueline Rose, Secretary. AFGE 333 officers attending were Selwyn Cox, VP Civil Rights, Anita Nickens, Steward, Theresa Fleming-Blue, Steward, and Gretchen Helm, Sergeant at Arms. EPA was well represented; however, due to fear of retaliation, some requested not being photographed or mentioned. Other agencies such as Commerce, USDA, and Dept. of Justice were also represented. Many of the EPA Union activists wore patriotic peace buttons to the celebration to protest the war resolution still being debated in the Senate.

Food and soft drinks were provided. Background music supplied by a harpist. In addition to plaque and certificate presentations, there were poetry readings and, of course, speeches by the aforementioned Congressional Members. Also speaking were Mr. Gerald Reed National President of Blacks in Government, Steven Cohn and Mr. Robert Seldon of the National Whistle-Blower's Center, Doug Harnet of the Government Accountability Project, and in his capacity as co-founder of EPA Victims Against Racial Discrimination, Selwyn Cox.

After being introduced by co-host Walter Fauntroy, Dr. Marsha Coleman-Adebayo approached the speaker's podium to a sustained standing ovation. Highlights of the evening were inspirational speeches given by Marsha Coleman-Adebayo, Rep. Sheila Jackson Lee, Rep. F. James Senesenbrenner, and Selwyn Cox. Mr. Cox's speech sent no uncertain message, despite the passage of NO FEAR, substantial problems still remain at EPA.

It was a night to remember. The movement, began at EPA with the formation of EPA Victims Against Racial Discrimination, originally founded by Marsha Coleman-Adebayo and Selwyn Cox, soon grew to gain EPA Union and then inter-agency support. The bi-partisan cooperation reached in Congress to pass NO FEAR will hopefully endure to pass the Civil Rights Tax Relief Act and other significant legislation to protect the civil rights of federal employees.