

Testimony of Donald Coit Smith
Senate Committee on Health, Education, Labor and Pensions
April 29, 2008

Good morning Senators and thank you for having me at this hearing.

My name is Donald Coit Smith. My official title is the Division Safety Manager for a polyurethane manufacturer with responsibilities for manufacturing plants in Texas, Oklahoma, and Colorado. This function I've held for over 19 years, with 30 years in the manufacturing field altogether. My specialties include inspecting and investigating to OSHA standards.

I also have the title of father to a son killed on the job.

Section one

I will begin by addressing my experiences with the Occupational Safety and Health Administration from the employer standpoint. Having been through several OSHA inspections, planned and otherwise, the courtesy and professionalism of those inspectors have been exemplary. I can safely say with reasonable accuracy that the knowledge gleaned from those inspectors has been a worthwhile activity. While reading the code of federal regulations can be sometimes tedious, if not altogether

aggravating, the times I've needed interpretations has been met with understanding and patience. I think a salute to those men and women is in order.

I have unfortunately seen citations and fines issued in some of our plants for various things, none of which were major but nonetheless were citations, and are what I consider violations of the law. Those violations were abated post haste, documents drafted reflecting the abatements, and a plea entered for immediate withdrawal of all fines levied. In all cases that I remember, every fine was reduced at least by half and some altogether dismissed.

This "process" is what was explained to me by my mentor as the proper way to deal with OSHA.

But I did not understand why these reductions were so easy to attain. I attributed it the good nature and "helping hand" of those inspectors in their willingness to "settle" the account with the least possible effort. I also came to the opinion of viewing it as a possible revenue-generating function of the agency. To this date, I am still uncertain of the motivation to settle for less.

I spoke of fines for citations. In my opinion, what the fines represent is called a “cost of doing business” among corporate America. The pittance remitted for those fines seem, well pretty much just that... a pittance... or maybe more adequately stated, a nuisance settlement. I do not say they aren’t justified, but rather the standpoint of OSHA as I’ve experienced is not one of grit but one of pacification and conciliation. On the OSHA website the mission statement in part is as follows:

**OSHA's mission is to assure the safety and health of
America's workers...**

Let’s look at the word “assure” closely. Webster’s says it is to “make certain.” Senators, OSHA doesn’t make certain of anything from what I’ve been through. If I had to change one thing that could make a profound difference in OSHA, it would be to make fines and punishment so severe that employers would tremble at the thought of violating the code.

SECTION TWO

I told you at the beginning that my second title is father to a son killed on the job. I do not possess the capacity to adequately describe the horror that possesses my soul from my son’s death. To lose him caused me to reflect on faith in my God. I still to this day have issues with Him over my loss. However, I have come to believe He took him for a reason of His own, possibly to foster events that led me

to being here today. To this I must yield to a higher authority and is why I do what I do. I have a mission. That mission is to do what it takes to strengthen the law that will prevent what happened to my son from happening to anyone else. Looking at the statistics on America's job deaths, you'll see that about 6,000 people die in America from job-related activities each year. That is a figure that is 6,000 too many.

You know that I've dealt with OSHA from the employer standpoint, but let me tell you that dealing with them from a parent's standpoint is dreadful. I have been met with resistance at virtually every corner I've had to turn. It started with the inspection of the death facility and getting information on the why and how of my son's death. I'm not talking about the fact that he was electrocuted...that was obvious. But how could this have happened? And why weren't the events that led up to his death avoided? In my study of the situation from the information I've obtained, the root problems that surfaced were really simple and stood out. A blind man could see them in a minute.

There was no commitment. There was no deterrent.

There were citations issued to the offending company by OSHA on my son's death. The original set totaled seven... all within 29 CFR 1910.147, which is the OSHA lockout regulation.

After the well-versed and experienced OSHA inspector painstakingly reviewed the case, making absolutely sure what he was indicating were true violations of federal law, the lawyers for OSHA and the offending company got together and "negotiated" out all but two citations.

The original 7 citations called for a combined penalty of \$31,000 with two of the seven citations not having any amount assigned. In the end, a fine of \$12,000 was paid. It is interesting to note that, according to the OSHA website, one of the original 7 citations that had zero dollars assigned was placed at \$7,000 in the end, but the violation summary has the total penalty at \$5,000. If I hadn't seen the pay off check with my own eyes I wouldn't know for sure myself.

The one thing I know for sure is that my son died and there was nothing I could do about it. The laws of this nation couldn't protect him. Fear of violating OSHA standards couldn't protect him. The value for human life couldn't protect him.

How do the OSHA penalties given out for my son's death affect me? Well, frankly mad doesn't describe it. And every American should be mad as well. The system I've worked in for all these years, of which I had great faith, seems to have literally bargained his life. For one thing the penalties are no real incentive for compliance. As I said, the penalties are a "cost of doing business," What makes matters worse, if it can be, is the workers comp system which allows the state and the insurance industry (at least in Texas) to benefit from his death. Now to me that's just morally wrong. But that's another issue I'm working on.

SECTION THREE

My presence here is two-fold. To let you know how frustrated I am about OSHA's role in prevention of injury in the workplace and to urge you to do whatever it takes to get this job death atrocity under control.

I would suggest placing severe penalties, both monetarily and criminally, on operations violating federal standards where job deaths occur. Current legislation is not a deterrent. Any review of the topic will show too well how little attention is paid to it.

SECTION FOUR

Excerpt from The Family Bill of Rights: Item 5

Family members should have the opportunity to interview co-workers and management that have knowledge of the facts of the case and any signed affidavits should be submitted, obtained, and applied by OSHA during investigations.

“In viewing what is “right” and what is “wrong” with how families are treated in job related deaths, I believe one must look at our current laws. To the naked eye it is obvious the law favors corporate America with regards to keeping information hidden. A closer viewpoint reveals just how this is done. All OSHA documents and local law enforcement investigations are kept from families’ eyes (in part) via the Freedom of Information Act. This includes “negotiations” and OSHA/company meetings, even though families follow procedures in filing documents to have access to these meetings. Seems as though, at least in my case, OSHA was not willing to follow the law and no one was there to make them. While securing production secrets for the good of the company is important to lever any market advantage, when items are covered that would lead to revealing criminal- type actions, the whole legal system (and those who made the law) should be revised.

Part of that revision should be allowing families of workers killed on the job access to ALL information available, including negotiations and meetings/correspondence. Even investigating law enforcement is blocked from getting this part (ref: Bell County Sheriffs Office).

However, all this is virtually meaningless unless something is done to allow successful prosecution of negligent employers. Right now the only avenue is “gross” negligence and that is akin to the employer holding a gun to the employee’s head and pulling the trigger. I believe what is happening in this country is just that... only the employer’s gun is their apathy and greed. And the law protects them!

Now at some point OSHA will render its investigation “public” but that is only a very small and insignificant document redacted to be almost useless. One can read the citations on the Web. This document does not have the interviews and reasons why OSHA “fines” are levied. These interviews go deeper to the root cause of job deaths. They can point to individuals and company policies that contribute/cause the job death. But let’s review: the law protects these people. If a company is a subscriber to workers comp, they are untouchable and unless OSHA proves “gross negligence,” federal law keeps them safe. The maximum penalty for gross

negligence? A fine and six months in jail (for someone... and you can bet it's not the boss).

I will sum with the viewpoint of parents of dependents killed on the job. Unless laws are changed to allow prosecution and legal actions to be filed by parents outside of workers comp, protection, we will continue to see job deaths on a regular basis. But knowing exactly what happened to their loved ones is important. Just the knowledge may help. Allowing this knowledge to escape government/legal cover up is a step in helping families of workers killed on the job cope with their loss.”

SECTION FIVE: CLOSING

Thank you very much for this opportunity to have input and, in closing this address, I'd like to leave you with what I've told my sons each time we part.

To them I say: “te amo, mi hijos.”

And to all of you here I say:

May God bless you and may God bless America.

Donald Coit Smith