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HOMELAND SECURITY: SURVEILLANCE AND MONITORING OF EXPLOSIVE STORAGE FACILITIES, PART II

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

OCTOBER 31, 2005

Serial No. 109–105

Printed for the use of the Committee on Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

25–260 PDF WASHINGTON : 2006

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HOMELAND SECURITY: SURVEILLANCE AND MONITORING OF EXPLOSIVE STORAGE FACILITIES, PART II

MONDAY, OCTOBER 31, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
San Mateo, CA.

The subcommittee met, pursuant to notice, at 9 a.m., in San Mateo Council Chambers, 330 West 20th Avenue, San Mateo, CA, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays and Lantos.

Staff present: J. Vincent Chase, chief investigator; Robert A. Briggs, clerk; Jason M. Rosenstock, minority senior legislative assistant; Lynne Weil, minority communications director; and Ron Grimes, minority legislative director.

Mr. SHAYS. The Subcommittee on National Security, Emerging Threats, and International Relations hearing entitled, "Surveillance and Monitoring of Explosive Storage Facilities, Part II," is called to order. Good morning. It is good to be back in San Mateo with my good friend and colleague Tom Lantos.

The persistence and perspicacity he brings to national and international issues inspire bipartisan respect, and it is a privilege to join him in today's important discussion. Ours is an oversight partnership dating back to my first days as a Member of Congress in 1987. I have learned a lot since then, much of it from Tom.

In August of last year, this subcommittee met here and learned first-hand about security gaps and potential vulnerabilities in the protection of explosive material held by State and local authorities. To get a clearer picture of the depth and breadth of the problem, we asked the Government Accountability Office [GAO] to visit some explosive storage facilities and assess the rigor and consistency of security measures there.

Why? Because it is beyond debate storage magazines containing C4 plastic explosives and other highly volatile material are attractive targets for terrorists and criminals looking for a big bang on the public buck. An unknown number of publicly maintained storage sites, likely containing hundreds of tons of explosives, constitute a potentially serious homeland security challenge, a classic disaster waiting to happen. If not critical infrastructure, explosive storage sites certainly represent combustible temptations over which someone should have adequate visibility and accountability.

Regretfully, the GAO report released today describes an uncertain, inconsistent, at times inadequate, system of regulation over publicly managed explosive storage facilities. The Federal Government, through the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF], licenses and inspects private manufacturers and handlers of explosives but has almost no authority over State and local government users.

Their compliance with security standards is voluntary. ATF does require public facilities to report thefts of explosive materials, but even that requirement is not uniformly understood, adhered to, or enforced.

The GAO report also pierces the assumption that State and local regulation of explosives magazines would fill any vacuum left by Federal law. Most of the 18 public storage facilities visited by GAO were not required to be licensed or inspected by State or local regulators. But, as we will hear in testimony today, some States and localities have taken steps to secure explosive stockpiles, following best practices in many respects more demanding than the voluntary ATF standards.

So we look to our witnesses this morning to help us understand what is being done to secure government-held explosives, and what more should be done to define and mitigate the threat posed by these facilities. We appreciate the time, dedication and expertise of all our witnesses and we look forward to their testimony.

At this time the chair would recognize the distinguished Member Mr. Lantos.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
October 31, 2005

Good morning. It's good to be back in San Mateo with my good friend and colleague Tom Lantos. The persistence and perspicacity he brings to national and international issues inspire bipartisan respect, and it is a privilege to join him in today's important discussion. Ours is an oversight partnership dating back to my first days as a Member of Congress in 1987. I've learned a lot since then, much of it from Tom.

In August of last year, this Subcommittee met here and learned first-hand about security gaps and potential vulnerabilities in the protection of explosive material held by state and local authorities. To get a clearer picture of the depth and breadth of the problem, we asked the Government Accountability Office (GAO) to visit some explosive storage facilities and assess the rigor and consistency of security measures there.

Why? Because it is beyond debate storage magazines containing C4 plastic explosives and other highly volatile material are attractive targets for terrorists and criminals looking for a big bang on the public buck. An unknown number of publicly maintained storage sites, likely containing hundreds of tons of explosives, constitute a potentially serious homeland security challenge, a classic disaster waiting to happen. If not critical infrastructure, explosive storage sites certainly represent combustible temptations over which someone should have adequate visibility and accountability.

Regretfully, the GAO report released today describes an uncertain, inconsistent, at times inadequate, system of regulation over publicly managed explosive storage facilities. The federal government, through the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), licenses and inspects private manufacturers and handlers of explosives but has almost no authority over state and local government users. Their compliance with security standards is voluntary. ATF does require public facilities to report thefts of explosive materials, but even that requirement is not uniformly understood, adhered to, or enforced.

The GAO report also pierces the assumption that state and local regulation of explosives magazines would fill any vacuum left by federal law. Most of the 18 public storage facilities visited by GAO were not required to be licensed or inspected by state or local regulators. But, as we will hear in testimony today, some states and localities have taken steps to secure explosive stockpiles, following best practices in many respects more demanding than the voluntary ATF standards.

So we look to our witnesses this morning to help us understand what is being done to secure government-held explosives, and what more should be done to define and mitigate the threat posed by these facilities. We appreciate the time, dedication and expertise of all our witnesses and we look forward to their testimony.

Mr. LANTOS. Thank you very much, Mr. Chairman. I am delighted to be with you again here in San Mateo following the hearing we conducted in August of last year. At the outset, I want to express my very sincere appreciation to the remarkable work done by members of your staff and members of my staff in preparing for this hearing. I want to thank you once again for agreeing to convene this subcommittee hearing in San Mateo where the national problem of poorly secured high explosives first came to light.

I also want to put in some kind of perspective our collaborative relationship. Not only have we worked together since your arrival in Congress many years ago, but just this past year, year and a half, I had the pleasure of working with you on three entirely different issues each of them of enormous importance to the American people and each of them totally nonpartisan in character.

When it was brought to my attention that Reservists and National Guardsmen and women suffer a severe financial hardship in many instances when they are activated, I decided to move with legislation to rectify this appalling injustice. Not only are we asking Reservists and National Guard folks to risk their lives in conflicts in Afghanistan and Iraq, but we are also imposing an extraordinary financial burden on members of their families.

This issue was brought to me by a constituent of mine in south San Francisco. I was very delighted that you chose to be the No. 1 Republican co-sponsor of this legislation. The goals of which we have partially achieved and we are working on fully achieving them in the near future.

Second, you came on board with the legislation that we are dealing with today. In San Mateo, when we discovered the theft of explosives, I asked you to call a hearing in your capacity as chairman and, as always, you immediately and graciously responded in the affirmative.

The final piece of legislation on which you and I are the principal co-authors is a legislation that was born as a result of the hurricanes in the Gulf. As everybody else, I was glued to my television set watching the nightmare pictures. But the one that stood with me most poignantly was a 7-year-old little boy with his dog who was taken from him because dogs are not allowed in shelters.

If you saw the face of this little boy, and the only one left in his whole life was forcibly taken from him, I felt that legislation was needed to deal with this issue. You and I introduced legislation, Mr. Chairman, and the markup will take place this week to mandate that communities in order to take advantage of FEMA funding must provide in their evacuation plans provisions for household pets and service animals. Next time a tragedy strikes we will never again see a 7-year-old little boy or an elderly blind person being deprived of their pet or service animal in order to be admitted into a shelter.

Congress always does its work best when it goes so on a bipartisan basis and you are known in Washington not only for your passionate commitment to public service but for your deep and thorough bipartisanship and I am profoundly grateful for that.

Last year's hearing raised many, if not more, questions than it answered. Today we will hear from some of the same witnesses and some additional witnesses and hopefully we will have more an-

swers than we got 14 months ago. Today we will learn the result of a study by the Government Accountability Office that Congressman Shays and I commissioned a year ago, a study which has just been completed.

This study, along with the testimony of today's witnesses, will be instrumental in ensuring that the legislation Chairman Shays and I will introduce in the near future is based on solid data. The chilling implications of last summer's theft from a poorly secured law enforcement storage shed just a little ways from where we hold our hearing horrifically illustrated this past July when terrorists attacked the London transportation system.

Immediately after hearing the news of the bombings I rode BART to show my support for the safety of the Bay Area Transit System. While the terrorists who bombed the London subway used homemade devices, I can't help but wonder how much more destructive their actions would have been had they been able to arm themselves with high strength plastic explosives stolen from the San Mateo Law Enforcement Agency bunker.

At the hearing 14 months ago, the overwhelming response to our repeated questions was, "We don't know. We don't know how many public facilities are uninspected by ATF for safety and security precautions exit in our country. We don't know how much explosive material is stored at these facilities." That answer was unacceptable then and it most certainly will not wash now after 14 months of opportunity to discover the answers.

Mr. Chairman, our country is still very much in the midst of the war on terrorism that officially began on September 11, 2001. Sometimes we are reminded of it dramatically as a bomb scare shuts down a tunnel as it recently did in the Washington area. While such episodes tend to dominate our attention, we should not underestimate the dogged vigilance needed every single day so that in this struggle we shall prevail.

Thieves should not be allowed to raid stockpiles of high explosives right in our backyard to sell them to the highest bidder, potentially terrorists. Uniform standards for safeguarding such materials must be established and they must be enforced.

Mr. Chairman, thank you again for holding this hearing. I also want to thank our witnesses for agreeing to share their perspectives from this most important topic and I look forward to hearing their views.

[The prepared statement of Hon. Tom Lantos follows:]

Mr. Chairman, I am delighted to be with you here in San Mateo again following up the hearing we conducted in August of last year. Thank you for once again agreeing to convene this subcommittee in California, where the national problem of poorly-secured high explosives first came to light.

Before we begin, I want to commend you for your diligence and commitment on this issue. For those who are not familiar with Chairman Shay's reputation, he is known in Washington as a fair person, committed to policy rather than partisanship. His role as Chairman of this subcommittee is complemented by his membership on the Homeland Security Committee.

Last year's hearing raised as many, if not more questions than it answered. Today we will hear from some of the same witnesses, and I hope that we have more answers today than we did 14 months ago.

Today we will learn the result of a study by the Government Accountability Office that we commissioned a year ago, and that has just been completed. This study, along with the testimony of today's witnesses, will be instrumental in ensuring that the legislation Mr. Shays and I will introduce a short time from now is based on the most recent data.

The chilling implications of last summer's theft from a poorly-secured law enforcement storage shed were horrifically illustrated this past July, when terrorists attacked the London transportation system. Immediately after hearing the news of the bombings, I rode BART to show my support for the safety of the Bay area transit system. And while the terrorists who bombed the London subway used homemade devices, I can't help but wonder how much more destructive their actions would have been had they been able to arm themselves with high-strength plastic explosives stolen from a law enforcement agency bunker.

At the hearing 14 months ago, the overwhelming response to our questions was "we don't know." We don't know how many public facilities, un-inspected by the ATF for safety and security precautions, exist in our country. We don't know how much explosive material is stored at these facilities. That answer was unacceptable then and it most certainly will not wash now, after 14 months of opportunity to discover the answers.

Mr. Chairman, our country is still very much in the midst of the war on terrorism that began September 11, 2001. Sometimes we are reminded of it dramatically -- a bomb scare shuts down a tunnel, or a raised alert level puts a city on edge. While such episodes tend to dominate our attention, we should not underestimate the dogged vigilance needed every day so that in this struggle, we will prevail. Thieves should not be allowed to raid stockpiles of high explosives right in our backyard to sell them to the highest bidder. Uniform standards for safeguarding such materials must be established and enforced

Mr. Chairman, thank you again for holding this hearing. I also want to thank the witnesses for agreeing to share their perspectives on this important topic, and I look forward to hearing their views.

Mr. SHAYS. Thank you, gentlemen. If I had been in the cabinet room of the White House and my phone went off, the President would have taken it and put it in a glass of water. I apologize for the phone going off.

Mr. LANTOS. We plan to do that after the hearing.

Mr. SHAYS. I would like to invite our panel to come forward and I will introduce them. We have Dr. Laurie E. Ekstrand, Director, Homeland Security and Justice Team, U.S. Government Accountability Office accompanied by Philip Caramia, Senior Analyst, Homeland Security and Justice Issues.

Our second testimony will be from Michael Gulledge, Director, Office of Evaluation and Inspections Division, Office of the Inspector General, U.S. Department of Justice.

Our third testimony will be from Mr. Lewis P. Raden, Assistant Director Enforcement Programs and Services Division, the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of Justice.

Before swearing our witnesses in—if they would come forward. Oh, I see. Are they speaking from—OK. This is interesting. I was looking and seeing no witnesses. OK. Before swearing them in, let me ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record and the record remain open for 3 days for that purpose. Without objection so ordered. I ask further unanimous consent that all witnesses be permitted to include their written statements in the record and without objection so ordered.

At this time I would ask our witnesses to stand up. If there is anyone they may call on to answer a question, I would like them sworn in as well if that is the case. If they would rise, raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. I will note for the record all four of our witnesses have responded in the affirmative and we will begin with the GAO. Then we will go to the Inspector General. Then we will go to the Bureau of Alcohol, Tobacco and Firearms. The way the system works is we have 5 minutes. If you go over 5 minutes I am not going to stop you but we would like you to be as close to 5 minutes as possible. If you dare go to 10 minutes, things go off. Your testimony is very important and we look forward to hearing your testimony and then asking you questions.

Dr. Ekstrand.

STATEMENTS BY DR. LAURIE E. EKSTRAND, DIRECTOR, HOMELAND SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ACCOMPANIED BY PHILIP CARAMIA, SENIOR ANALYST, HOMELAND SECURITY AND JUSTICE ISSUES; MICHAEL GULLEDGE, DIRECTOR, OFFICE OF EVALUATION AND INSPECTIONS DIVISION, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE; LEWIS P. RADEN, ASSISTANT DIRECTOR ENFORCEMENT PROGRAMS AND SERVICES DIVISION, THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, U.S. DEPARTMENT OF JUSTICE

STATEMENT OF DR. LAURIE EKSTRAND

Dr. EKSTRAND. Mr. Chairman, and Representative Lantos, Mr. Caramia and I are very pleased to be here today to discuss security at State and local government explosive storage facilities. A report on this issue is being issued today in conjunction with the hearing. My statement covers three topics and let me briefly touch on them in turn.

First, the extent to which State and local storage facilities have been vulnerable to theft. The short answer is that no one knows. We know that ATF data indicates that there have been nine thefts of explosives from State and local government storage facilities during the 3-year period that ended in February 2005 and that this is a relatively small number compared to the 205 thefts reported from all sources combined.

But we have reason to believe that the actual number of thefts from public facilities could be higher than nine. While requirements for prompt reporting of thefts from private facilities are clear, it is less so for public entities. ATF officials acknowledge that State and local governments may be unclear as to whether they are covered by theft reporting requirements.

Indeed, during the course of our work we found evidence of five thefts from State and local government facilities but only four appeared in ATF's theft data base. We are recommending that action be taken to ensure that all thefts from public as well as private facilities are promptly reported so that appropriate actions can be taken to recover the explosives and apprehend the thieves.

Now, let me turn to ATF oversight of State and local explosive storage facilities. First, all facilities both public and private are required to comply with Federal storage regulations. However, only private facilities are required to attain a license from ATF. Oversight, and that is inspection to ensure that storage standards are being met and sanctions are administered for noncompliance, is linked to the licensing process. That is because public facilities are not subject to licensing. They are not subject to mandatory Federal oversight.

The licensing process is also the main source of data on the numbers of facilities, locations, and types of explosives in storage for private sector facilities. As with oversight, no licensing results in no nationwide data for public facilities. During the course of our work we identified three types of State and local government entities that use or stored explosives. They were law enforcement bomb squads, public universities with mining programs, and transpor-

tation departments. However, we were unable to gather sufficient information to estimate the total number of facilities in these categories.

Finally, during our audit we visited 14 State and local entities, 13 bomb squads, and one university. We observed the security in place at their total of 18 storage facilities. We found a wide variety of safety and security measures in place across the facilities. For example, some had fences and electronic monitoring devices. One was in the basement of a municipal building behind locked doors.

Another was in an open area without any physical barriers. All of the storage facilities seemed to meet ATF's requirements in relation to security. However, this is by no means a representative sample of public storage facilities nationwide.

In conclusion, as I indicated, we have made a recommendation to try to ensure that all incidents of theft are timely reported to ATF so that they can be properly recorded and investigated. Not only would this reporting ensure investigation of crimes by ATF but it would also help us gauge the level of vulnerability of State and local facilities as all thefts would be required to be reported.

This completes my oral statement and Mr. Caramia and I would be glad to answer any questions you might have.

NOTE.—The GAO report entitled, "AFT, Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Underreported, GAO–06–92," may be found in subcommittee files.]

[The prepared statement of Dr. Ekstrand follows:]

United States Government Accountability Office

GAO

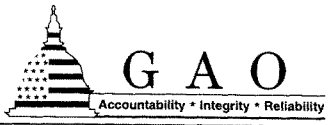
Testimony Before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

For Release on Delivery
Expected at 9:00 a.m. PST
Monday, October 31, 2005

ATF

Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Underreported

Statement of Laurie E. Ekstrand
Director, Homeland Security and Justice



GAO-06-182T

October 2005

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Highlights

Highlights of GAO-06-182T, a testimony before the Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

ATF

Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Underreported

Why GAO Did This Study

More than 5.5 billion pounds of explosives are used each year in the United States by private sector companies and government entities. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has authority to regulate explosives and to license privately owned explosives storage facilities. After the July 2004 theft of several hundred pounds of explosives from a local government storage facility, concerns arose about vulnerability to theft.

This testimony provides information about (1) the extent of explosives thefts from state and local government facilities, (2) ATF's authority to regulate and oversee state and local government storage facilities, and (3) security measures in place at selected state and local government storage facilities. This information is based on a report GAO is releasing today on these issues.

What GAO Recommends

In the report released today, GAO is recommending that the Attorney General direct the ATF Director to clarify explosives incident reporting regulations to help ensure that all entities storing explosives, including state and local government agencies, understand their obligation to report all thefts or missing explosives. The Department of Justice agreed with GAO's recommendation and indicated it would take steps to implement it.

www.gao.gov/cgi-bin/getrpt?GAO-06-182T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Laurie Ekstrand at (202) 512-8777 or ekstrandl@gao.gov.

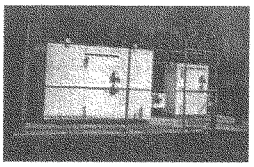
What GAO Found

Judging from available ATF data, there have been few thefts of explosives from state and local government storage facilities. From January 2002 to February 2005, ATF received 9 reports of thefts or missing explosives from state and local facilities, compared with a total of 205 explosives thefts reported from all sources nationwide during this same period. During the course of the audit, GAO found evidence of 5 thefts from state and local government facilities, 1 of which did not appear in ATF's national database of thefts and missing explosives. Thus, the actual number of thefts occurring at state and local facilities could be higher than that identified by ATF data.

ATF has no authority to oversee or inspect state and local government explosives storage facilities. State and local agencies are not required to obtain a license from ATF to use and store explosives, and only licensees—such as private sector explosives storage facilities—are subject to mandatory oversight. Thus, ATF has no means to ensure that state and local facilities comply with federal regulations. Further, ATF does not collect nationwide information on the number and location of state and local storage facilities, nor does the agency know the types and amounts of explosives being stored in these facilities. Because this data collection is a function of the licensing process and state and local facilities are not required to be licensed, no systematic information about these facilities is collected. By comparison, all licensed private sector facilities must submit a variety of information about their facilities—including location and security measures in place—to ATF during the licensing process. ATF also collects information about these facilities during mandatory inspections.

At the 18 state and local government storage facilities GAO visited, a variety of security measures were in place, including locked gates, fencing, patrols, and in some cases electronic surveillance. All the facilities' officials told GAO that they conducted routine inventories. But most of the state and local government entities GAO visited were not required to be licensed or inspected by state or local regulatory agencies. GAO identified several instances of possible noncompliance with federal regulations, but these were related primarily to storage safety issues rather than security.

Explosives Storage Facilities in Pennsylvania and Texas



Source: GAO.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss security and safety at state and local government explosives storage facilities. More than 5.5 billion pounds of explosives are used each year in the United States. These explosives are used by both public sector entities (such as state and local government agencies) and private sector companies for a variety of purposes—including mining, construction, avalanche control, and law enforcement. Under current federal explosives laws and regulations, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users. It is primarily through this licensing authority that ATF oversees and inspects privately owned explosives facilities to ensure they comply with federal explosives storage laws and regulations. However, state and local government agencies are exempt from ATF licensing requirements.

In August 2004, the subcommittee held a hearing here in California to investigate the July 2004 theft of several hundred pounds of explosives from a storage facility being used by local law enforcement agencies. At that hearing, the subcommittee heard testimony from federal, state, and local officials regarding the safety and security of publicly managed explosives storage facilities and the adequacy of federal authority to regulate and oversee these facilities. Out of concern that state and local government explosives storage facilities could be vulnerable to theft, you asked us to study the security and oversight at these facilities.

My testimony this morning is based on a GAO report[1] being released today in conjunction with this hearing, and will focus on the following issues:

1. the extent to which state and local government explosives storage facilities have been vulnerable to theft,

2. the extent to which ATF regulates and oversees state and local government explosives storage facilities, and

3. the types of security measures in place at selected state and local government explosives storage facilities.

[1]GAO, *ATF: Thefts of Explosives from State and Local Government Storage Facilities Are Few but May Be Underreported*, GAO-06-92 (Washington, D.C.: Oct. 3, 2005).

We conducted our work on this report from February 2005 to August 2005 in accordance with generally accepted government auditing standards.

Summary

Judging from available ATF data, there have been few thefts reported at state and local government explosives storage facilities. However, these reported thefts could be understated by an unknown amount. During the 3-year period from January 2002 to February 2005, ATF received 9 reports of thefts or missing explosives from state and local law enforcement storage facilities, compared with 205 thefts from all sources nationwide. Similarly, during a *10-month period* (ending December 2003), there were 76 theft incidents reported nationwide resulting in a loss of about 6,700 pounds of high explosives and blasting agents. By comparison, over an entire *10-year period* (ending December 2004), ATF received 14 reports of theft from state and local law enforcement storage magazines, resulting in reported losses of about 1,000 pounds of explosive materials. The actual number of state and local thefts could be higher than indicated by ATF data. While ATF interprets its theft reporting requirement to mean that state and local entities, among others, must report explosives thefts, ATF officials acknowledged that state and local government entities may be unclear as to whether they are covered under this requirement. Indeed, during our site visits and other state and local contacts, we found evidence of 5 thefts from state and local government facilities, 1 of which did not appear in ATF's national database on thefts and missing explosives.

Although state and local government explosives storage facilities must comply with federal storage regulations, ATF does not have oversight authority at these facilities. ATF oversight—including the ability to conduct regulatory inspections—is linked to licensing, and state and local government entities are not required under federal explosives law to obtain such a license. ATF does not have specific statutory authority to conduct regulatory inspections at these storage facilities. Through its licensing and inspection authority, ATF is able to collect nationwide information on the number and locations of private sector storage facilities and the types and amounts of explosives being stored. Because ATF does not license and inspect state and local government facilities, no similar information is collected about them. On the basis of our audit work, we identified three types of government entities that used and stored explosives: (1) law enforcement bomb squads, (2) public universities, and (3) state and local departments of transportation. We were unable to gather sufficient information about these entities to reliably estimate the total number of state and local government storage facilities and magazines nationwide.

During our audit, we visited 14 state and local government entities—13 bomb squads and 1 public university—and observed the security measures in place at their 18 explosives storage facilities. Regarding physical security, most facilities had a locked gate to prevent vehicle access and several had fencing surrounding their storage facilities. Several storage facilities also had electronic security systems in place—such as video surveillance. These types of security measures—fences, vehicle barriers, and electronic monitoring devices—all exceed the requirements of federal explosives regulations. Officials at all the entities we visited told us they visually inspected or patrolled the facilities on a regular basis and conducted routine inventories. Most facilities were not required to be licensed or inspected by state or local regulatory agencies. Of the 5 explosives thefts we identified during our site visits and other contacts, 2 had occurred at state and local storage facilities we visited, but only 1 of these incidents appeared in ATF's nationwide theft database.

In our report released today, we recommend that the Attorney General direct the ATF Director to clarify federal explosives regulations to ensure that state and local government agencies understand their obligation to report thefts or missing explosives. The Department of Justice agreed with our recommendation and indicated it would take steps to implement it.

Background

ATF is the chief enforcer of explosives laws and regulations in the United States and is responsible for licensing and regulating explosives manufacturers, importers, dealers, and users.[2] ATF is also responsible for regulating most, but not all, explosives storage facilities. Under federal explosives regulations, a license is required for persons who manufacture, import, or deal in explosives and, with some exceptions, for persons who intend to acquire explosives for use. No license is required solely to operate an explosives storage facility. State and local government agencies are not required to obtain an explosives license to use and store explosives. However, all persons who store explosive materials (including state and local entities) must conform with applicable ATF storage regulations, irrespective of whether they are required to obtain an explosives license for other purposes. According to ATF data, as of February 2005 there were 12,028 federal explosives licensees in the United

[2]Licenses are issued to persons who manufacture, import, or sell explosives, while permits are issued to persons who intend to acquire and use explosives. Throughout the remainder of this statement, references to explosives licenses, licensees, or ATF's licensing authority refer to both explosives licenses and permits.

States.[3] Roughly 7,500 of these had some kind of explosives storage facility, consisting of 22,791 permanent or mobile storage magazines.

ATF storage regulations include requirements relating to the safety and security of explosives storage magazines—that is, any building or structure (other than an explosives manufacturing building) used for storage of explosive materials. Regarding safety, the storage regulations include requirements related to location, construction, capacity, housekeeping, interior lighting, and magazine repairs, as well as a requirement that the local fire safety authority be notified of the location of each storage magazine. Regarding security, the ATF storage regulations include the following requirements:

- *Explosives handling.* All explosive materials must be kept in locked magazines unless they are in the process of manufacture, being physically handled in the operating process of a licensee or user, being used, or being transported to a place of storage or use. Explosives are not to be left unattended when in portable storage magazines.
- *Magazine construction.* Storage magazines must be theft-resistant and must meet specific requirements dealing with such things as mobility, exterior construction, door hinges and hasps, and locks.
- *Magazine inspection.* Storage magazines must be inspected at least every 7 days. This inspection need not be an inventory, but it must be sufficient to determine if there has been an unauthorized entry or attempted entry into the magazines, or unauthorized removal of the magazine contents.
- *Magazine inventory.* Within the magazine, containers of explosive materials are to be stored so that marks are visible. Stocks of explosive materials are to be stored so they can be easily counted and checked.

Notwithstanding the security requirements described above, ATF storage regulations do not require explosives storage facilities to have any of the following physical security features—fences, restricted property access, exterior lighting, alarm systems, or electronic surveillance. Also, while ATF licensing regulations require explosives licensees to conduct a physical inventory at least annually, there is no similar inventory requirement in the storage regulations applicable to other persons who store explosives.

[3]Including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

Thefts Reported at State and Local Explosives Storage Facilities Are Few but May Be Underreported

According to ATF data, the number of reported state and local government thefts is relatively small when compared with the total number of thefts that have occurred nationwide. During a recent 3-year period (January 2002—February 2005), ATF received reports of 205 explosives thefts from all sources nationwide. By comparison, during this same period, only 9 thefts were reported that involved state and local government storage facilities—5 involving state and local law enforcement agencies,[4] 3 involving state government entities (all universities), and 1 involving a county highway department. The amounts of explosives reported stolen or missing from state and local government facilities are relatively small when compared with the total amounts of stolen and missing explosives nationwide. During a recent *10-month period* for which data were available (March 2003 through December 2003), there were a total of 76 theft incidents nationwide reported to ATF, amounting to a loss of about 3,600 pounds of high explosives, 3,100 pounds of blasting agents, 1,400 detonators, and 2,400 feet of detonating cord and safety fuse. By comparison, over an entire *10-year period* (January 1995 through December 2004), ATF received only 14 reports of theft from state and local law enforcement storage magazines. Reported losses in these cases were about 1,000 pounds of explosive materials, and in 10 of the incidents less than 50 pounds of explosives was reported stolen or missing.

While the ATF theft data indicate that thefts from state and local facilities make up only a small part of the overall thefts nationwide, these reports could be understated by an unknown amount. There are two federal reporting requirements relating to the theft of explosives. One is specific to all federal explosives licensees (and permittees) and requires any theft or loss of explosives to be reported to ATF within 24 hours of discovery. The second reporting requirement generally requires any other "person" who has knowledge of the theft or loss of any explosive materials from his stock to report to ATF within 24 hours. Although the term "person" as defined in law and regulation does not specifically include state and local government agencies,[5] ATF has historically interpreted this requirement as applying to nonlicensed state and local government explosives storage facilities. However, ATF officials acknowledged that some state and local

[4]One of these was later determined to be the possible result of training explosives that had been mistakenly discarded.

[5]The term "person" is defined in statute and regulation as "any individual, corporation, company, association, firm, partnership, society, or joint stock company" (see 18 U.S.C. § 841(a); and 27 C.F.R. § 555.11).

government entities could be unsure as to their coverage under the theft reporting requirements and, as a result, may not know they are required to report such incidents to ATF. Indeed, during our site visits and other state and local contacts, we identified five state and local government entities that had previously experienced a theft or reported missing explosives—two involving local law enforcement agencies, two involving state universities, and one involving a state department of transportation.[6] However, one of these five incidents did not appear in ATF's nationwide database of reported thefts and missing explosives. Based on these findings, the actual number of thefts occurring at state and local government storage facilities nationwide could be more than the number identified by ATF data.

ATF Lacks Authority to Regulate and Oversee State and Local Explosives Storage Facilities Nationwide

There is no ATF oversight mechanism in place to ensure that state and local government facilities comply with federal explosives regulations. With respect to private sector entities, ATF's authority to oversee and inspect explosives storage facilities is primarily a function of its licensing process. However, state and local government entities are not required to obtain a federal license to use and store explosives. In addition, ATF has no specific statutory authority to conduct regulatory inspections at state and local government storage facilities. Under certain circumstances, ATF may inspect these facilities—for example, voluntary inspections when requested by a state and local entity, and mandatory annual inspections at locations where ATF shares space inside a state and local storage magazine. Regarding those state and local government facilities that ATF does not inspect, ATF officials acknowledged they had no way of knowing the extent to which these facilities are complying with federal explosives regulations.

ATF officials stated that if the agency were to be required to conduct mandatory inspections at all state and local government storage facilities, they would likely need additional resources to conduct these inspections because they are already challenged to keep up with inspections that are mandated as part of the explosive licensing requirements. Under provisions of the Safe Explosives Act, ATF is generally required to physically inspect a license applicant's storage facility prior to issuing a federal explosives license—which effectively means at least one inspection every 3 years. At the same time, however, ATF inspectors are

[6]Two of these five incidents occurred at locations we visited; three occurred at other locations we identified during the course of our audit work.

also responsible for conducting inspections of federal firearms licensees. The Department of Justice Inspector General reported that ATF has had to divert resources from firearms inspections to conduct explosives storage facility inspections required under the Safe Explosives Act. Despite recent funding increases for ATF's explosives program, giving ATF additional responsibility to oversee and inspect state and local government storage facilities could further tax the agency's inspection resources. According to ATF officials, because inspection of explosives licensees is legislatively mandated, the effect of additional state and local government explosives responsibilities (without related increases in inspector resources) could be to reduce the number of firearms inspections that ATF would be able to conduct.

ATF does not collect nationwide information on the number and location of state and local government explosives storage facilities, nor does the agency know the types and amounts of explosives being stored in these facilities. Since data collection is a function of the licensing process and state and local facilities are not required to be licensed, no systematic information about these facilities is collected. With respect to private sector licensees, ATF collects descriptive information concerning explosive storage facilities as part of the licensing process. ATF license application forms require applicants to submit information about their storage capabilities, including specific information about the type of storage magazine, the location of the magazine, the type of security in place, the capacity of the magazine, and the class of explosives that will be stored. ATF also collects information about licensed private sector storage facilities during mandatory inspections, through examination of explosives inventory and sales records and verification that storage facilities meet the standards of public safety and security as prescribed in the regulations.

During the course of our audit work, we compiled some data on state and local government entities that used and stored explosives. At the 13 state and local law enforcement bomb squads we visited, there were 16 storage facilities and 30 storage magazines. According to Federal Bureau of Investigation data, there are 452 state and local law enforcement bomb squads nationwide. However, because of the limited nature of our fieldwork, we cannot estimate the total number of storage facilities or magazines that might exist at other bomb squad locations. Moreover, other state and local government entities (such as public universities and state and local departments of transportation) in addition to law enforcement bomb squads also have explosives storage facilities. At the one public university we visited, there were 2 storage facilities and 4 storage magazines. Again, however, because of the limited nature of our fieldwork,

we cannot estimate the total number of storage facilities and magazines that exist at these other state and local government entities nationwide.

Security Measures Varied at State and Local Explosives Storage Facilities We Visited

We found that security measures varied at the 14 state and local government entities we visited. Overall, we visited, 2 state bomb squads, 11 city or county bomb squads (including police departments and sheriffs' offices), and 1 public university. Four of the 14 state and local entities had 2 separate storage areas, resulting in a total of 18 explosives storage facilities among the 14 entities. Three of these storage facilities were located on state property, 7 were located at city or county police training facilities, 7 were located on other city or county property, and 1 was located at a metropolitan airport. Eleven of the 18 explosives storage facilities we visited contained multiple magazines for the storage of explosives. As a result, these 18 facilities comprised a total of 34 storage magazines. All of the 18 facilities contained a variety of high explosives, including C-4 plastic explosive, detonator cord, TNT, binary (two-part) explosives, and detonators. Estimates of the amount of explosives being stored ranged from 10 to 1,000 pounds, with the majority of the entities (9) indicating they stored 200 pounds or less.

At each of the 14 state and local storage entities we visited, we observed the types of security measures in place at their explosives storage facilities. Our criteria for identifying the type of security measures in place included existing federal explosives storage laws and regulations (27 C.F.R., Part 555, Subpart K) and security guidelines issued by the explosives industry (the Institute of Makers of Explosives). Most of these security measures (fencing, vehicle barriers, and electronic surveillance, for example) are not currently required under federal storage regulations. However, we are presenting this information in order to demonstrate the wide range of security measures actually in place at the time of our visits.

- *Physical security.* Thirteen of the 18 storage facilities restricted vehicle access to the facility grounds by way of a locked exterior security gate or (in one case) by virtue of being located indoors. Five of the 13 facilities restricted vehicle access after normal working hours (nights or nights and weekends). Officials at 7 other facilities said that vehicle access to the facilities was restricted at all times, including the 1 indoor facility that was located in the basement of a municipal building. Six of the 18 storage facilities had an interior barrier—consisting of a chain-link fence with a locked gate—immediately surrounding their storage magazines to prevent direct access by persons on foot. One other facility (the indoor basement facility), relied on multiple locked doors to prevent access by unauthorized personnel. Conversely, at 1 facility we visited, the storage

magazine could be reached on foot or by vehicle at any time because it did not have fencing or vehicle barriers to deter unauthorized access. In addition to restricted access to storage facilities, officials at all of the 18 storage facilities we visited told us that official personnel—either bomb squad or other police officers—patrolled or inspected the storage facility on a regular basis. And, at 9 of the 18 storage facilities we visited, officials said that state or local government employees—police training personnel, jail or correctional personnel, or other city/county employees—maintained a 24-hour presence at the facilities.

- *Electronic security.* Four of the 18 explosives storage facilities had either an alarm or video monitoring system in place. Two storage facilities with video surveillance took advantage of existing monitoring systems already in place at their storage locations—one located at a county correctional facility and one located inside a municipal/police building. Officials at 4 storage facilities told us they had alarm systems planned (funding not yet approved), and officials at 3 facilities said they had alarm systems pending (funding approved and awaiting installation). Officials at 2 facilities also told us they planned to install video monitoring. Regarding the feasibility of installing electronic monitoring systems, 4 officials noted that storage facilities are often located in remote areas without easy access to electricity. Regarding the possibility of new federal regulations that would require electronic security at storage magazines, 9 officials told us they would not object as long as it did not create an undue financial burden.

- *Inventory and oversight issues.* Officials at all 14 of the entities we visited told us they performed periodic inventories of the contents of their explosives storage magazines in order to reconcile the contents with inventory records. In addition, 9 entities said they had received inspections of their storage facilities, primarily by ATF. Six entities told us they received the inspections on a periodic basis, with another 3 entities having received a onetime inspection. Regarding oversight by multiple regulatory authorities, one entity had been inspected by both ATF and a local government authority, while another entity was inspected on a recurring basis by both ATF and a state government authority. Five of the 14 entities we visited told us they were required to obtain a license from state regulatory authorities to operate their explosives storage facilities. One of these entities was also required (by the state regulatory authority) to obtain a federal explosives license issued by ATF. Officials at 13 entities we visited said they did not object to the possibility of federal licensing or inspection of their explosives storage facilities. Officials at 3 state and local entities noted that additional federal oversight was not a concern as long as they were not held to a higher standard of security and safety than ATF requires of private industry.

- *Thefts and compliance issues.* Two of the five thefts we documented during our site visits and other state and local contacts occurred at state and local entities we visited. At one storage facility, officials told us that criminals had once used a cutting torch to illegally gain entry to an explosives storage magazine. At another storage facility, officials said that an unauthorized individual had obtained keys to a storage magazine and taken some of the explosives. In both incidents, the perpetrators were apprehended and the explosives recovered. However, one of these incidents did not appear in ATF's nationwide database of reported thefts and missing explosives. We also observed storage practices at four facilities that may not be in compliance with federal explosives regulations. However, these circumstances appeared to be related to storage safety issues, rather than storage security. In April 2005, the National Bomb Squad Commanders Advisory Board—which represents more than 450 law enforcement bomb squads nationwide—initiated a program encouraging bomb squads to request a voluntary ATF inspection, maintain an accurate explosives inventory, and assess the adequacy of security at their explosive storage facilities to determine if additional measures might be required (such as video monitoring, fencing, and alarms). This is a voluntary program and it is too soon to tell what effect, if any, it will have towards enhancing security at state and local law enforcement storage facilities and reducing the potential for thefts.

Conclusions and Recommendations

The overall number of state and local government explosives storage facilities, the types of explosives being stored, and the number of storage magazines associated with these facilities are currently not known by ATF. ATF has no authority to oversee state and local government storage facilities as part of the federal licensing process, nor does it have specific statutory authority to conduct regulatory inspections of these facilities. As a result, ATF's ability to monitor the potential vulnerability of these facilities to theft or assess the extent to which these facilities are in compliance with federal explosives storage regulations is limited.

According to ATF's interpretation of federal explosives laws and regulations, state and local government agencies—including law enforcement bomb squads and public universities—are required to report incidents of theft or missing explosives to ATF within 24 hours of an occurrence. Because this reporting requirement applies to any "person" who has knowledge of a theft from his stock and the definition of "person" does not specifically include state and local government agencies, ATF officials acknowledged that these entities may be unsure as to whether they are required to report under this requirement. If state and local

government entities are unsure about whether they are required to report thefts and missing explosives, ATF's ability to monitor these incidents and take appropriate investigative action may be compromised by a potential lack of information. Further, the size of the theft problem, and thus the risk, at state and local government storage facilities will remain unclear.

To allow ATF to better monitor and respond to incidents of missing or stolen explosives, the report we are releasing at this hearing recommends that the Attorney General direct the ATF Director to clarify the explosives incident reporting regulations to help ensure that all persons and entities who store explosives, including state and local government agencies, understand their obligation to report all thefts or missing explosives to ATF within 24 hours of an occurrence. The Department of Justice agreed with our recommendation and said it would take steps to implement it.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or members of the subcommittee may have.

Contact and Staff Acknowledgments

For information about this testimony, please contact Laurie E. Ekstrand, Director, Homeland Security and Justice Issues, at (202) 512-8777, or EkstrandL@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Other individuals making key contributions to this testimony include William Crocker, Assistant Director; Philip Caramia; and Michael Harmond.

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Mr. SHAYS. Thank you.
Mr. Gulledge.

STATEMENT OF MICHAEL GULLEDGE

Mr. GULLEDGE. Mr. Chairman, Mr. Lantos, on behalf of the Inspector General, I appreciate your invitation to testify today. We were invited because we recently issued a report on the ATF's implementation of the Safe Explosives Act. My testimony is based on that review and I will discuss the issues we identified and recommendations we made and the actions that the ATF has taken. I will also briefly discuss the ATF's inspector staffing levels.

After September 11th Congress passed the Safe Explosives Act to reduce the chance that terrorists could easily obtain explosives to carry out attacks in this country.

Mr. SHAYS. Excuse me. I am going to interrupt you. Mr. Lantos and I are both having a little bit of trouble hearing you. Could you pull the mic a little closer to you? Don't feel you have to rush your testimony. Just speak at a nice pace.

Mr. GULLEDGE. After September 11th Congress passed the Safe Explosives Act. Is that better?

Mr. LANTOS. Pull it closer.

Mr. GULLEDGE. After September 11th Congress passed the Safe Explosives Act to reduce the chance that terrorists could easily obtain explosives to carry out attacks in this country. The act expanded the licensing requirements to include interstate users of explosives and it strengthened the application and licensing process.

A key provision is that in addition to all corporate officers all employees who have access to explosives are to receive background checks. Every explosives license applicant is also to receive an onsite inspection. Our review found several deficiencies in ATF's implementation of the act which prevented it from ensuring that all prohibited persons were identified and denied access to the explosives. Prohibited persons are generally felons, fugitives, drug users, and other people who are not authorized access to explosives.

We compared a sample of ATF and FBI records and found that about 9 percent of the employee applicants in ATF's records had no corresponding record of an FBI NICS check. Second, the ATF had not adjudicated about 30 percent of the cases we reviewed in which the FBI had completed a background check.

Third, the ATF did not promptly deny prohibited persons that were identified by those NICS checks. The data available during our review showed that the FBI had identified 1,157 prohibited persons through August 2004 while the ATF data showed that about 502 individuals had been denied access to explosives.

Another problem identified during our review was that ATF inspectors were not consistent in their enforcement of explosive regulations, the ATF plan to send all its inspectors to an enhanced explosives training course but we estimated it would take about 7 years for all ATF inspectors to attend that course.

The report that we issued last March included 10 recommendations to help the ATF improve its implementation of the act. Since then ATF has provided information on the action it is taking to correct the deficiencies. For example, ATF has told us that it is in the process of conducting 100 percent cross match of its data with FBI

NICS data to identify individuals whose backgrounds were not previously checked and has implemented procedures to ensure that FBI background checks are conducted on all future applicants.

The ATF has also told us it has taken action on all the prohibited persons previously identified by the FBI and has taken steps to ensure that any prohibited persons identified in the future are promptly denied access to explosives.

The ATF informed us that through its cross match it has identified and updated the records of over 24,000 individuals that had been cleared by the FBI and its records still showed as pending or denied. To improve the consistency of its regulatory enforcement, the ATF is making information more readily available by disseminating documents electronically and posting information on its Internet and public Web sites. ATF has also told us it is improving its training for its inspector work force, for example, by distributing training courses on DVD so that inspectors can view them as needed.

Finally, the ATF developed an interactive CD that contains the publications, forms, technical descriptions of explosive products, and other information that inspectors need to conduct inspections. I will give you a brief update on staffing. In August 2004 I discussed the ATF's estimate that it needed 1,775 inspectors to accomplish its inspections workload. That included inspections of firearms dealers and gun dealers.

We questioned that number and we asked the ATF to revise the projection using more accurate assumptions. Last month the ATF provided a revised estimate that indicates it needs 1,114 inspectors. As of last week ATF told us that it has 610 inspectors on board not including managers. Although ATF's latest calculation is 760 fewer inspectors than before, it is still over 400 less than they have right now. Sorry, 400 more than they have right now.

Also, it is based on the current population of firearms and explosives licensees. At present inspections of publicly owned explosive storage facilities are not a significant portion of ATF's workload. Only about 100 last fiscal year. So if the ATF's responsibility is expanded to include these facilities, the staffing requirements will have to be adjusted further.

In summary, although our report reflected strong concern with ATF's implementation of the Safe Explosives Act, it appears that the agency is taking steps to correct the deficiencies we found. We believe the actions that the ATF has reported taking will make it better prepared should Congress decide to expand its authority to include publicly owned storage.

This concludes my remarks. I would be pleased to answer any questions.

[The prepared statement of Mr. Gulledge follows:]

Statement of

Michael D. Gulledge
Director, Evaluation and Inspections Division

U.S. Department of Justice Office of the Inspector General

before the

House Committee on Government Reform
Subcommittee on National Security,
Emerging Threats and International Relations

concerning

"Homeland Security: Surveillance and
Monitoring of Explosive Storage Facilities, Part II"

October 31, 2005

* * * * *

Mr. Chairman, Congressman Lantos, and Members of the Subcommittee on National Security, Emerging Threats and International Relations:

I. INTRODUCTION

On behalf of the Department of Justice Office of the Inspector General (OIG), I appreciate the opportunity to again testify before the Subcommittee as it examines issues related to safeguarding stored explosives. You requested that our testimony describe the findings of the OIG's March 2005 report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) implementation of the Safe Explosives Act (SEA).[1] My testimony today is based on that report. I will discuss several of the issues raised in that report, the recommendations we made, and the actions the ATF has taken to improve its inspections of explosives licensees. I will also briefly discuss the ATF's inspector staffing levels.

II. ATF'S IMPLEMENTATION OF THE SAFE EXPLOSIVES ACT

In March 2005, the OIG issued our report on the ATF's implementation of the SEA. The report, titled Review of the Bureau of

[1] P.L. 107-296, Title XI, Subtitle C of the Homeland Security Act of 2002.

Alcohol, Tobacco, Firearms and Explosives' Implementation of the Safe Explosives Act, focused on whether the ATF had effectively implemented a licensing procedure and an inspections process to ensure that explosives are properly stored and protected, and that only reliable individuals are allowed access to explosives. We also reviewed the ATF's plans to establish the National Explosives Licensing Center and the ATF National Laboratory's plans to collect and catalog samples of explosives as authorized by the SEA.

The SEA, enacted on November 25, 2002, expanded the ATF's authority to license the intrastate manufacture, purchase, and use of explosives. The SEA also expanded the categories of "prohibited persons" that should be denied access to explosives.[2] To protect public safety, the ATF is required to conduct background checks on the owners and officers of companies that make or sell explosives (licensees), as well as on those companies' employees who have access to explosives as part of their work (Employee Possessors). The ATF entered into an agreement with the Federal Bureau of Investigation (FBI) to perform those background checks using the FBI's National Instant Criminal Background Check System (NICS). The SEA also required the ATF to inspect licensees' manufacturing and storage facilities at least once every 3 years, beginning with all new license applications and renewal applications submitted after May 23, 2003.

Our review found deficiencies with several aspects of the ATF's implementation of the SEA. The most critical finding was that the ATF's background check and clearance process was not ensuring that prohibited persons were denied access to explosives. We found that the procedures that the ATF implemented were not effective for several reasons, which I summarize below.

Background Check and Clearance Process Deficiencies

Some applicants' background not checked. First, the ATF did not request FBI background checks on all employees of license applicants. We compared the records of 683 individuals contained in the ATF's Federal Licensing System with records in the FBI's NICS and found that 59 of the individuals in our sample (9 percent) were not listed in the

[2] "Prohibited persons" include felons, fugitives, individuals who use or are addicted to controlled substances, individuals who have been adjudicated mentally defective or committed to mental institutions, aliens (with limited exceptions), individuals dishonorably discharged from the military, and individuals who have renounced their United States citizenship.

FBI's records as having had a background check.[3] Of those 59, the ATF's records indicated that 25 had been cleared to access explosives, and no decision had been made for the other 34. Until the ATF completes its determination, the cases are categorized as "pending" and the individuals continue to have access to explosives.

Cases with completed background checks not adjudicated. In cases in which the FBI had completed its background checks, the ATF frequently failed to make a final clearance determination, or adjudication. The ATF had not made a final determination for 31 percent of the individuals in our sample.[4] Those applications had been held in pending status for an average of 299 days.

Inaction on many identified or suspected prohibited persons. The ATF also failed to act when individuals were identified as prohibited persons by the FBI or when the FBI could not confirm potentially prohibiting factors found during the NICS check. As of August 2004, the FBI had identified 1,157 Employee Possessor applicants who appeared to be prohibited persons. However, ATF data showed only 502 of those individuals had been denied – the other 655 individuals remained in a "pending" status and continued to have the authority to access explosives. Our research found that some of these individuals had significant criminal records. For example, one individual had been arrested over 20 times and had at least 3 felony convictions (2 for damaging property and one for auto theft) since 1992. The individual was back in prison for felony theft at the time we checked his record, but he was still authorized to access explosives.

We identified an additional 297 cases in which the FBI NICS check indicated possible prohibiting factors that the FBI could not confirm for various reasons, such as because court records were not available. The FBI had referred the cases back to the ATF to complete the investigations. Under the ATF's procedures, the cases were to be reviewed and, if necessary, assigned to a Field Division for investigation. We found that as of January 2005, the 297 cases had been with the ATF Headquarters for an average of 363 days, but none had been referred to an ATF field office for investigation. Again, the applicants remained in pending status, with the authority to access explosives.

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[3] We reviewed a sample of 1,000 records. Individual Employee Possessors can have more than one record because they may be included on separate applications for different license types. The 1,000 records we reviewed encompassed 683 individual Employee Possessors.

[4] For employees with more than one record, we considered the determination to be complete if a final result was entered into any of the records.

Overall, because of the systemic failures to complete background checks, adjudicate the results, and promptly deny identified prohibited persons, we concluded that the ATF's clearance process was not effective in preventing prohibited persons from accessing explosives.

Inconsistent Regulatory Enforcement and Inspections

We also found problems with the ATF's inspection of licensees that are pertinent to today's hearing. We stated in our report that because of inadequate training, the ATF's inspector workforce lacked explosives product knowledge. As a result, inspectors were not consistent in their enforcement of explosives regulations. After the SEA was enacted, the ATF expanded its Advanced Explosives Training Course for inspectors from 7 to 10 days and enhanced the training to include more explosives product identification. The ATF told us that it intended to have all inspectors attend the enhanced training, although it planned to conduct only 3 classes per year, with 30 inspectors in each class. At that rate, we estimated it would take 7 years for the ATF to send all inspectors it had on board to the revised course.

During our field work, ATF officials, inspectors, and industry members also cited problems with the consistency of inspectors' interpretations of ATF regulations relating to explosives storage facilities, which they attributed to the lack of inspector training. For example, one licensee who operates nationwide told us that because ATF inspectors conduct inspections and interpret regulations differently at various locations across the country, he could not develop a consistent corporate policy to comply with ATF regulations. According to ATF inspectors we interviewed, calculating the quantities of explosives allowed in storage magazines was the issue that most frequently caused them difficulty when conducting explosives inspections.

We also found that the ATF's compliance inspection procedures were inadequate to identify Employee Possessors who became prohibited persons after their initial background check. The ATF's procedures instructed inspectors to conduct "random" background checks on Employee Possessors during compliance inspections, but did not specify how many checks to conduct or establish how the random sample was to be selected. At the time of our review, the ATF had not determined whether to conduct NICS background checks on all Employee Possessors when explosives licenses or permits are renewed or whether to require Employee Possessors to submit updated information when their employers renew their licenses. We were concerned because some Employee Possessors with prohibiting factors would continue to have access to explosives for years before being rechecked during a compliance or renewal inspection.

OIG Recommendations and ATF's Response

Our report included several recommendations for correcting the deficiencies we found in the ATF's background clearance process and for improving the consistency of regulatory determinations by ATF inspectors. Regarding the ATF's background clearance process, we recommended that the ATF:

- Implement procedures to ensure that all Employee Possessor applicants receive a thorough background check.

- Establish milestones and controls to ensure that Employee Possessor applicants do not remain in a "pending" status for extended periods, including generating an aging report for pending cases and setting priorities for resolving cases that have been pending for more than 45 days.

- Conduct a 100-percent cross-match of individuals issued licenses and permits by the ATF with the individuals on whom the FBI conducted NICS checks. Based on that check, conduct background checks on any individuals not confirmed as having been checked by the FBI, and recheck the license status of all individuals determined by the FBI to be prohibited persons to ensure those individuals are denied access to explosives.

To improve the consistency of regulatory determinations, we recommended that the ATF:

- Designate a single point of contact at ATF Headquarters for inspectors and explosives industry members that would maintain a history of regulatory inquiries and post frequently requested information on the ATF's web site.

- Examine alternatives for speeding the delivery of the ATF's Advanced Explosives Training course to all inspectors, and develop a curriculum to build explosives expertise within the ATF's inspector workforce.

ATF's corrective actions. In responses and status reports the ATF provided from March 2005 to as recently as a week ago, the ATF has given the OIG information and data indicating that it is taking various actions to correct the deficiencies we found. For example, the ATF has provided documentation on new data entry procedures and quality controls it has implemented to ensure that applicant data is entered accurately and that NICS checks are requested on all applicants. The

ATF is also in the process of conducting a 100-percent cross-match of data in its licensing database with FBI NICS data to identify all Employee Possessors whose backgrounds were not previously checked by the FBI. The ATF has informed us that once the cross-match is complete, it will submit the names of any unchecked Employee Possessors to NICS.

The ATF has stated that its efforts to reconcile its data with that of the FBI has already yielded results. The ATF informed us that it had identified 433 records that had an FBI-NICS status of "Deny," but were listed in ATF's records as "Pending" or "Cleared." The ATF stated that it has made the necessary corrections to these inaccurate records in its database. In addition, the ATF informed the OIG that it had identified all records where the FBI-NICS check resulted in a "Proceed," but the corresponding ATF record had a status of "Pending" or "Denied." The ATF reported that the 25,456 records it identified in which the background check results in the ATF's records did not match the FBI's records have been corrected. Based on these reviews of discrepancies between statuses in FBI-NICS records and ATF's records, the ATF generated 1,351 Notices of Clearance to inform employers of the results of their employees' background checks, and mailed 25,456 Letters of Clearance, which notify employees of their clearance status. As of October 24, 2005, the ATF was continuing to examine records to identify and resolve discrepancies between its system and the FBI's NICS records.

The ATF also agreed to implement an aging report to identify cases that remain in pending status for more than 45 days. The ATF informed us on October 24, 2005, that the software to generate the report had been developed and was undergoing testing. According to the ATF, the target implementation date was the end of October, 2005.

The ATF also reported that it has taken action on all of the pending cases involving Employee Possessors identified as prohibited persons by the FBI and that it has made procedural changes to ensure that all individuals the FBI identified as prohibited persons are promptly denied access to explosives. Regarding the cases of individuals for whom the FBI could not complete a background check, 115 were found to still be employed by an explosives licensee. The ATF informed us that it had contacted each of those individuals to obtain the clarifying information it needed to make a clearance determination. The ATF stated that the cases of any individuals who did not respond to the information requests within 45 days were being referred to ATF Field Divisions for further investigation. According to data provided by the ATF on October 24, 2005, 89 of the cases had been resolved, with most applicants being cleared. The 26 cases that remained open had been referred to the appropriate Field Division.

Regarding our recommendations to improve the consistency of regulatory determinations, the ATF stated that the Explosives Industry Programs Branch has served, and will to continue to serve, as the single point of contact for information on explosives regulations at ATF Headquarters. The ATF provided the OIG with examples of questions it has received from explosives industry members, the ATF's responses to these inquiries, and a description of how the Explosives Industry Programs Branch handles these communications to ensure that ATF inspectors are made aware of regulatory determinations. Copies of correspondence with national implications, such as regulatory determinations, are sent to field personnel, although the ATF stated that it is exploring more efficient means of disseminating this information since the current process involves making and mailing paper copies. A method of sending electronic copies is being devised, according to the ATF.

The ATF also agreed to post frequently requested information on its web site and to explore ways to post information that is relevant to explosives industry members and ATF inspectors. The ATF stated that it has posted all of its published newsletters and several rulings regarding explosives regulations on the web site and, when available, plans to post an update of *Federal Explosives Law and Regulations*, a widely used ATF publication. In addition, the ATF stated that it is placing significant documents on a newly designed intranet site where all ATF personnel will have immediate access to those documents. The documents will be limited to those of national importance, such as regulatory determinations, clarifications of policy and regulations, and some limited variance requests. We are continuing to monitor the ATF's efforts to make its Internet and intranet web sites more useful for providing information to industry members and its staff.

In response to our recommendation that it speed up the delivery of the Advanced Explosives Training course and develop a curriculum to build explosives expertise within the ATF's inspector workforce, the ATF has provided the dates and attendance rosters for three courses: Advanced Explosives Training for inspectors; Chemistry of Pyrotechnics for Area Supervisors; and the Mining, Blasting, Safety, and Application Seminar. The ATF also provided agendas and lists of scheduled attendees for two future iterations of these courses.

In addition, the ATF provided a copy of a June 2005 training DVD developed in conjunction with the American Pyrotechnics Association entitled "ATF/APA Fireworks Safety Training" specifically for use at quarterly roll call training. We reviewed the DVD and found it to be comprehensive and well produced. The DVD can be viewed by new staff so that they can gain a fundamental understanding of this type of

inspection. The ATF informed the OIG that they are in the process of conducting an agency-wide training needs survey and will use the results of the survey to set priorities for topic areas to be covered by future training DVDs. The ATF did not provide a schedule for the survey or for the production of the next DVD.

Finally, the ATF provided the OIG with a copy of the interactive CD, "ATF Reference Library." The CD, issued in September 2004, contains all ATF directives and guidelines; copies of all forms used by the ATF; a phone book for all ATF Bureau Offices, Field Divisions, and Field Operations personnel, as well as other frequently used numbers; and a comprehensive Explosives Multimedia Database, which includes technical descriptions and photos of most explosives products that inspectors will encounter.

Overall, we believe the actions that the ATF has reported to us to date are responsive to the recommendations in our report on the implementation of the SEA. As a part of our post-review resolution process, however, we are continuing to work with the ATF to obtain the information on the corrective actions it has reported taking. Although we believe that the ATF is taking steps in the right direction, because we have not conducted an on-site follow-up review, we cannot definitively state that the deficiencies we identified have been corrected fully.

III. ATF INSPECTOR STAFFING LEVELS

During our August 2004 testimony, which focused on our review of the ATF's inspections of Federal Firearms Licensees, we noted that the ATF had projected that it needed about 1,775 inspectors to conduct its workload of firearms and explosives inspections. According to the ATF, it needed 1,235 inspectors to inspect firearms licensees, and about 540 inspectors to inspect explosives licensees. We questioned that number, which was included in a staffing report provided to Congress, because we found the methodology the ATF used to calculate that figure was based on unsupported assumptions. In particular, we questioned the ATF's assumptions regarding the time required to conduct inspections of firearms dealers. In our July 2004 report, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, we recommended that the ATF revise its staffing report to reflect more accurate assumptions. The Government Accountability Office report that Ms. Ekstrand discussed at today's hearing cited our analysis of the staffing requirement calculations.

On September 23, 2005, the ATF provided us with a revised calculation of its staffing requirements. The ATF's revised calculations indicated that it requires 1,014 inspectors to conduct compliance

inspections on Federal Firearms Licensees and Federal Explosives Licensees. The ATF stated that 855 of the inspectors would be dedicated to conducting compliance inspections of 66,651 Federal Firearms Licensees, the population of firearms retailers as of September 23, 2005, excluding those issued collector's licenses. The remaining 159 inspectors would be dedicated to conducting compliance inspections on Federal Explosives Licensees. As of October 25, 2005, the ATF reported to us that it employed 610 inspectors.

We examined the ATF's revised calculation to identify the differences that account for the reduction in staff needs as compared with its previous projection. First, the revised calculation assumes a smaller population of licensees to be inspected. Specifically, the revised calculation excludes gun collectors, which reduces the population of Federal Firearms Licensees to be inspected from approximately 104,000 to about 67,000. Second, the revised calculation assumes that each compliance inspection will require about 60 hours of direct time and that indirect time, which includes activities such as leave and training, will add another 25 percent for a total of 80 hours. This is an increase of about 17 hours over the ATF's earlier calculation, which assumed that inspections would take an average of 63 hours, a figure that included indirect time.[5] Because we have not conducted a follow-up inspection to assess the accuracy of the ATF's revised calculation, we cannot endorse a specific number of ATF staff needed to conduct inspections of firearms and explosives licensees.

Nonetheless, because the calculations that the ATF provided to us on September 23, 2005, are based on the agency's current workload of firearms dealers and explosives licensees, the staffing needs would increase if the ATF's authority is expanded. Currently, the ATF only inspects explosives storage facilities owned by state and local governments or other public entities when the owners invite the ATF to perform such an inspection. While some state and local governments have requested these inspections, the numbers are small. During fiscal year (FY) 2003, ATF inspectors conducted 39 inspections of government-owned explosives storage facilities. Our understanding is that number of such inspections increased to about 100 in FY 2005. Overall, that is still not a significant portion of the ATF's workload. Therefore, if the ATF's responsibility is expanded to include inspections of public explosives storage facilities, it must adjust its staffing requirements accordingly.

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[5] Potential reasons for the average inspection time increase may be that inspections of collectors took less time than other compliance inspections, so excluding them could cause the average time to increase. In addition, the ATF has reported to us that it now requires more thorough inspections and that it now requires application inspections to be conducted in person rather than by telephone.

In addition to obtaining adequate staffing levels, the ATF's resources must be distributed appropriately. In examining the ATF's resource levels, we noted that the ATF had not distributed its inspectors among the Field Divisions to match the distribution of firearms and explosives licensees, resulting in significant workload imbalances. The imbalance in staff was clearly correlated to the time that each Field Division spent conducting inspections, with those Field Divisions that had fewer inspectors relative to the number of dealers spending less time on each inspection.

In response to our recommendation, the ATF restructured the management of its field organization to begin aligning its inspector workforce to reflect the number of firearms and explosives licensees in each ATF Field Division. As a part of this restructuring, the ATF combined four management positions and began the process for opening new field offices. In addition, the ATF reassigned inspectors to previously understaffed areas, such as the southwest United States, and has developed a workload model for assigning new inspectors to areas that need them the most. However, if the ATF's authority is expanded to include inspections of publicly owned explosives storage facilities, the workload model for distributing inspector resources may have to be reconsidered once the full population of those facilities is known.

IV. SUMMARY

In summary, although our report reflects our strong concerns with the deficiencies we found, it appears that the ATF is taking steps to correct those deficiencies. We believe that the actions that the ATF has reported to us will make it better prepared if Congress expands its authority to include inspections of publicly owned explosives storage. Also, if Congress includes a requirement to conduct background checks on individuals authorized to access the explosives in these public storage facilities, the actions that the ATF has reported it is taking should place it in a better position to conduct the background checks required to identify prohibited persons.

This concludes my prepared statement. I would be pleased to answer any questions.

Mr. SHAYS. Thank you very much.
Mr. Raden.

STATEMENT OF LEWIS RADEN

Mr. RADEN. Thank you, Mr. Chairman, Mr. Lantos, and members of the subcommittee. I appreciate the opportunity to appear before you today to discuss the report by the Government Accountability Office on thefts of explosives from State and local government storage facilities. I hope to provide you with an understanding of how the Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF] can assist in the protection of these facilities.

As discussed during this subcommittee's August 2004 hearing, the ATF enforces Federal explosives laws and regulates commerce in explosives. The ATF also is responsible for regulating most explosives storage facilities in the United States. The ATF's regulatory authority over explosives extends back to the Organized Crime Control Act of 1970.

This statute imposed controls over the manufacture, distribution, importation, and storage of explosives, and gave the ATF enforcement responsibility for these controls. The Safe Explosive Act, enacted in 2002, expanded ATF authority to require permits for persons who receive explosives and background checks for all licensees and permittees and their employees who possess explosives.

Federal explosives laws require all persons who store explosives to comply with applicable storage regulations, except for Federal agencies. With respect to private entities, the ATF's authority to inspect explosives storage facilities is related to its authority to regulate licensees and permittees. The ATF has warrantless inspection authority only for persons who hold a Federal license or permit.

State and local governmental entities are required to comply with the Federal storage regulations, but there is no mechanism in place to ensure this compliance. Because these entities are not required to obtain a Federal license, the ATF does not have statutory authority to conduct inspections at their storage facilities but ATF cannot conduct voluntary inspections.

There are approximately 12,100 Federal explosives licensees and permittees in the United States. Under the Safe Explosives Act, the ATF is required to conduct an onsite inspection of an applicant's storage facilities prior to issuance of a Federal explosives license or permit. The ATF also is required to inspect storage facilities at least once every 3 years after issuance of a license or permit.

During fiscal year 2005, the ATF conducted 3,800 inspections of Federal licensees and permittees. To put these inspections in context, the ATF currently oversees approximately 118,000 firearms and explosives licensees nationwide. The ATF has approximately 610 to 620 industry operations investigators—again, these do not include supervisory—who regularly conduct both explosives and firearms inspections.

Any person who has knowledge of a theft or loss of explosive material stock must report that theft or loss to the ATF within 24 hours of discovery. In an effort to keep explosives out of the hands of those who would use them for criminal or terrorist activity, it is the ATF's policy to investigate all reported thefts of explosives.

The GAO report on explosives thefts concluded that the ATF would be better positioned to monitor and respond to incidents of missing or stolen explosives if the ATF clarified the Federal theft reporting requirements to ensure that all persons who store explosives—including State and local government agencies—understood their obligation to report all thefts. We have acted on this recommendation.

First, in conjunction with the ATF, the National Bomb Squad Commanders Advisory Board and the International Association of Bomb Technicians and Investigators sent a letter dated April 19, 2005, to each State and local bomb squad commander, urging each of them ensure that all bomb squad explosives facilities were as secure as.

Second, in August 2005 ATF gave presentations on storage requirements to the NBSCAB Conference. On September 24, 2005, ATF conducted a similar presentation at the International Association of Chiefs of Police Annual Conference.

Third, in October 2005 the ATF issued letters of guidance to the Attorneys General of each State, the International Association of Chiefs of Police, the National Association of State Fire Marshals, and the National Sheriffs Association, informing these organizations about Federal storage requirements, the timely reporting of lost or stolen explosive materials, and requested that agencies with magazines voluntarily report the locations of these magazines to ATF.

Finally, several times a year the ATF trains State and local law enforcement officers and bomb technicians on Federal storage and theft reporting requirements. Again, Mr. Chairman and Mr. Lantos, I appreciate the opportunity to testify today and share with you the latest information on the ATF's explosives enforcement efforts. We have made progress in making our communities safer, but we know there is much more to do. We are determined to work with you to succeed in our mission of reducing violent crime, preventing terrorism, and protecting the public. I look forward to responding to any questions you may have.

[The prepared statement of Mr. Raden follows:]

Statement of
Lewis Raden
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Before the
Subcommittee on National Security, Emerging Threats, and International Relations
Committee on Government Reform
United States House of Representatives

Concerning
Homeland Security: Surveillance and Monitoring
of Explosive Storage Facilities, Part II

Presented on
October 31, 2005

Thank you, Mr. Chairman, Mr. Lantos, and members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the report by the Government Accountability Office on thefts of explosives from State and local government storage facilities. I hope to provide you with an understanding of how the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") can assist in the protection of these facilities.

As discussed during this Subcommittee's August 2004 hearing, the ATF enforces Federal explosives laws and regulates commerce in explosives. The ATF also is responsible for regulating most explosives storage facilities in the United States. The ATF's regulatory authority over explosives extends back to the Organized Crime Control Act of 1970. This statute imposed controls over the manufacture, distribution, importation, and storage of explosives, and gave the ATF enforcement responsibility for these controls. The Safe Explosive Act, enacted in 2002, expanded ATF authority to

require permits for persons who receive explosives and background checks for all licensees and permittees and their employees who possess explosives.

Federal explosives laws require all persons who store explosives to comply with applicable storage regulations, except for Federal agencies. With respect to private entities, the ATF's authority to inspect explosives storage facilities is related to its authority to regulate licensees and permittees. The ATF has warrantless inspection authority only for persons who hold a Federal license or permit.

State and local governmental entities are required to comply with the Federal storage regulations, but there is no statutory mechanism in place to ensure this compliance. Because these entities are not required to obtain a Federal permit, the ATF does not have statutory authority to conduct inspections at their storage facilities.

Despite the fact that the ATF cannot conduct mandatory inspections of State and local law enforcement storage facilities, the ATF can and does conduct voluntary inspections at these facilities. During fiscal year 2005, the ATF conducted 102 voluntary inspections of explosives storage facilities or magazines operated by State and local government agencies.

There are approximately 12,100 Federal explosives licensees and permittees in the United States. Roughly 7,500 of these licensees and permittees have explosives storage locations, which include 7,848 permanent and 14,943 mobile storage magazines. Under the Safe Explosives Act, the ATF generally is required to conduct an on-site inspection of an applicant's storage facilities prior to issuance of a Federal explosives

license or permit. The ATF also is required to inspect storage facilities at least once every 3 years after issuance of a license or permit.

During fiscal year 2005, the ATF conducted 3,786 inspections of Federal licensees and permittees, and resolved 1,821 recordkeeping and storage violations. To put these inspections in context, the ATF currently oversees approximately 118,000 firearms and explosives licensees nationwide. The ATF has 781 industry operations investigators who regularly conduct both explosives and firearms inspections.

Turning to explosives theft or loss reporting, the law requires that any person who has knowledge of theft or loss of explosive material from his or her stock must report that theft or loss to the ATF within 24 hours of discovery. In an effort to keep explosives out of the hands of those who would use them for criminal or terrorist activity, it is the ATF's policy to investigate all reported thefts of explosives.

The GAO report on explosives thefts concluded that the ATF would be better able to monitor and respond to incidents of missing or stolen explosives if the ATF clarified the Federal theft reporting requirements to ensure that all persons who store explosives -- including State and local government agencies -- understood their obligation to report all thefts or missing explosives to the ATF within 24 hours of discovery. The ATF has made numerous efforts to comply with this recommendation.

First, in conjunction with the ATF, the National Bomb Squad Commanders Advisory Board and the International Association of Bomb Technicians and Investigators sent a letter dated April 19, 2005, to each State and local bomb squad commander, urging

each of them to ensure that all bomb squad explosives facilities were as secure as possible in order to prevent unauthorized access. In the letter, among other things, bomb squads were urged to ensure that their storage facilities were in compliance with Federal law. They were asked to conduct a realistic assessment of the adequacy of current security measures; to ensure that they maintained complete, accurate, and current explosives inventories; and, to examine the quantity of explosives stored and ensure that the amount of explosives stored was consistent with their particular needs. They also were asked to assist the ATF in gathering information on all law enforcement magazines currently in use and to participate in the ATF's voluntary magazine inspections.

Second, on August 16-17, 2005, the ATF conducted presentations on storage requirements to the National Bomb Squad Commanders Conference, in Anniston, Alabama. On September 24, 2005, ATF conducted a similar presentation at the International Association of Chiefs of Police Annual Conference in Miami, Florida.

Third, on October 18, 2005, the ATF issued letters of guidance to the Attorneys General of each State, the International Association of Chiefs of Police, the National Association of State Fire Marshals, and the National Sheriff's Association, reminding those individuals and organizations about Federal storage requirements for explosive materials and providing guidance on the timely reporting of lost or stolen explosive materials. In the interest of public safety, the ATF also requested that agencies with magazines storing explosive materials voluntarily report the locations of these magazines to ATF.

Finally, several times a year the ATF trains State and local law enforcement officers and bomb technicians on Federal storage and theft reporting requirements. In fiscal year 2005, the ATF delivered 5 classes to 119 State and local officers and technicians. The ATF anticipates delivering 6 additional classes in fiscal year 2006 that will train roughly 150 new technicians and officers.

Again, Mr. Chairman and Mr. Lantos, I appreciate the opportunity to testify today and share with you the latest information on the ATF's explosives enforcement efforts. We have made progress in making our Nation's communities safer, but we know there is much more to do. We are determined to succeed in our mission of reducing violent crime, preventing terrorism, and protecting the public. I look forward to responding to any questions you may have.

Mr. SHAYS. Thank you. What we are going to do, Mr. Raden, is have you move to the other side so we can actually see you. Sorry. You sat where we put you but it would be better to have you over there. Is that mic on as well, Bob? OK.

Let me also say that we are going to take questions. We are just going to pursue our questions with no clock. Mr. Lantos, you have the floor for the first round.

Mr. LANTOS. Thank you very much, Mr. Chairman. Let me first thank all four of the witnesses for their testimony. There are some very broad and very specific issues I would like to raise. First, let me state for the record that I am fully cognizant of the fact that the Bureau of Alcohol, Tobacco and Firearms is severely under-funded. The Bureau is not to be criticized for being under-funded. It is to be criticized for not asking for adequate funding. I believe that over recent times that has been the case.

I am also very conscious that ATF, as every other organization, needed time to adjust to the paradigm shift following September 11th. Prior to September 11th the assumption was that if there are thefts of explosives the reason for that basically is for thieves to sell these explosives to the highest bidder.

Now we are confronted with the possibility that these could be sold to terrorists. Since we are expending unbelievable sums of money to deal, for instance, with airplane security, it seems incomprehensible how little attention is being paid to these enormously dangerous items.

I also find it puzzling, and I would like any of you ladies and gentlemen to answer me, why we differentiate between public and private storage facilities for explosives.

The terrorists couldn't care less whether the explosives they gain control of come from a private facility or from a public facility. And to have public facilities subjected only to voluntary inspection boggles the mind. It is nonsensical. Why shouldn't we have the same mandatory provisions for public storage facilities that we do for private storage facilities since the purpose is to prevent explosives from getting into the hands of terrorists who don't care whether the explosives come from public or private facilities. I would like to ask all four of you to answer my question which is, is there any justification for a dichotomy between public and private facilities?

Now, I also find it extremely disturbing that years after September 11th my wife routinely has her little manicure nail confiscated at the airport, as it should be, but there is no comparable effort to take charge of facilities which contain hundreds of pounds of very dangerous explosives. This is an absurdity that the Department of Homeland Security must explain to the American people.

I find myself in the hilarious, but at a different level, very idiotic experience of going to visit my daughter at the New Hampshire airport at Manchester where all the people know me perfectly well. I take off my shoes and they inspect me while conversing with me knowing me full well on a first-name basis. Money and resources are spent for such idiotic activities while explosives go uninventoried, undetected, thefts unreported with potential damage of vast proportions.

Fifty-nine people were killed in India over the weekend. Fifty-nine people were killed in a terrorist episode because those terror-

ists could not get hold of more powerful explosives. We are all in agreement that on September 11th the perpetrators would have loved to have killed not 3,000 but 300,000 or 3 million of our fellow citizens.

This failure of the agency in charge to differentiate between nail scissors and the theft of vast quantities of dangerous explosives literally is nonsensical. I would be grateful for your comments.

I also am intrigued by the fact that according to your testimony, Mr. Gulledge, prohibited persons continue to have access to explosives until after their case is finally resolved. It would seem to me that prohibited persons should immediately have their ability to have access to explosives terminated and if they are cleared, their opportunity to deal with explosives be reinstated rather than assuming that since they are only prohibited and the final determination was not yet made, they can continue to deal with these dangerous materials.

The final question I have and, again, all of you are welcome to comment on it, is the nonviability of the 24-hour reporting requirement. What are the penalties if a storage facility does not report a theft within 24 hours? Would you like to begin, Dr. Ekstrand, on my questions?

Dr. EKSTRAND. At first in terms of why public facilities were exempt in the passage of the law, I would think that it was probably a number of reasons and one of them is probably a States rights issue but——

Mr. LANTOS. I am not questioning why that was so in the past. I am asking why, at a time of a serious terrorist threat globally which we experience every day, 1 day in India, and 1 day in London, 1 day in Baly, 1 day in the United States, this dichotomy between public and private facilities still continues.

Dr. EKSTRAND. I think that in respect it is a better question for ATF since they are responsible for——

Mr. LANTOS. Would you favor eliminating the distinction?

Dr. EKSTRAND. I think that it is a complicated question. All of the facilities we looked at including, and we didn't look at the facilities near San Mateo where the theft was. It is our understanding that they all would have met ATF standards in terms of security. We think that this is a far more complicated issue than perhaps even the requirements for security at public as well as private are not where they should be.

Fences are not required. Video surveillance is not required. We did not feel at GAO we are in a position to prescribe what security there should be for explosive facilities but the ATF standards are fairly minimal in terms of security. We were not finding things that looked like obvious breeches of that in the public sector.

Mr. LANTOS. But you are favoring, I take it, from what you are saying, a dramatic upgrading of the standards and making them uniform?

Dr. EKSTRAND. We can't be very specific about it because we didn't do enough work but the work that we did do leads to at least the consideration that maybe the standards that are in place are not stringent enough for protection.

Mr. LANTOS. Do you have any comments on my other questions?

Mr. CARAMIA. Background checks. The question about the background checks is probably best left for the Department of Justice and Inspector General since they did the work on that. We did not do any work on verification of the background checks on the persons that handle explosives.

If I could just mention one other thing to elaborate on what Dr. Ekstrand said. One has to keep in mind that these facilities even though ATF does not have any responsibility for mandatory oversight, they are required to still comply with the Federal storage regulations. It is not like they are completely operating out there without any sort of regulation whatsoever.

However, right now there is no mechanism whereby ATF can verify where everyone of those facilities are whether they are in compliance with the regulations. In that respect there is a bit of a disconnect. They are required to comply with the regulations but ATF has no authority to go out there and verify that they are in compliance.

Mr. LANTOS. Is that a bit of a disconnect or is that an absurdity?

Mr. CARAMIA. Well, it is certainly different from what is required of the private sector.

Mr. LANTOS. Do you see any justification for a differentiation between the public and the private sector when, in fact, a terrorist couldn't care less where they obtain explosives?

Mr. CARAMIA. Well, since you put it that way, it doesn't seem to make a whole lot of sense, but as far as the way the law was written, and, again, ATF can probably speak to this a little bit in more detail, as Dr. Ekstrand explained, it is probably a bit of a State's rights issue, that is, the Federal Government not being in a position to tell State and local government entities what they should be allowed to do with, for example, their law enforcement agencies. That could be a little bit of a sticky wicket, so to speak, and that may be at least partially one of the reasons why State and local agencies were made exempt from the requirements back when the original law was passed.

Mr. LANTOS. I understand the historic reason. I am talking about now in a global terrorism age is that any justification in your judgment for a differentiation between public and private storage facilities.

Mr. CARAMIA. I think it makes a lot of sense but it is an issue right now of resources for ATF whether they can be able to handle the additional responsibility.

Mr. SHAYS. I am sorry. It makes a lot of sense meaning what?

Mr. CARAMIA. It seems to make a lot of sense on the face of it.

Mr. SHAYS. To do what?

Mr. CARAMIA. That ATF would have the same responsibilities for public sector as they do for private sector. However, there are other issues to consider there, one of which is the ATF resource issue, how much would they need in resources to be able to handle those additional responsibilities.

Mr. LANTOS. The resource issue is a very simple issue. ATF has to ask for what it needs and Congress has to provide what it deems ATF should have. If ATF doesn't ask for enough resources, then it bears a considerable share of the responsibility for its failure to be able to adequately discharge its responsibilities.

Let me turn to you, Mr. Gulledge. What is your view of discrepancy, putting it mildly, between individuals found to be prohibited persons but since the final determination is not yet in they are allowed to continue dealing in explosives?

Mr. GULLEDGE. A prohibited person is an individual who by virtue——

Mr. LANTOS. Can you speak into the mic?

Mr. GULLEDGE. Yes. A prohibited person is someone who because they have a criminal background or have been adjudicated mentally defective or certain categories of aliens are not allowed under the law to have access to explosives.

When an individual starts to work for an explosives company, that company has, I believe, 30 days to submit information on that individual to the ATF. The ATF then enters that information into its system and conducts a background check which it does using the FBI's national instant background check system, the same system used for guns.

When the results of that NICS check come back, it indicates whether or not the individual has any of those prohibiting characteristics in their background. If they don't, then they are allowed to access explosives. If they do, then they are denied.

During the interim between when they start to work, their information is submitted to ATF and the ATF gets those results, makes its determination, and responds back to the company telling the company whether that individual is a prohibited person and is, therefore, denied or is approved. If approved, they are allowed to continue working. The problem that we saw was that some people were not getting the background checks requested from the FBI and, second——

Mr. LANTOS. What does that mean, the company did not submit the name?

Mr. GULLEDGE. The company submitted the information. We found the individuals in ATF's records but when we went to the FBI to confirm that the checks had been conducted, we didn't find a record at the FBI. More importantly, once the FBI did its check and ATF was retrieving the results, the individuals until they get that background check back from the time ATF enters them and submits the background check request to the FBI and they get it back, the person is held in what is called pending.

We found that a considerable number of records in the ATF system were held in pending. Even though the ATF had requested, and the FBI had completed its background check most of those people were approved. About 1,150 of them were not approved. However, a lot of those people, particularly the ones we were most concerned with, were the ones who had been found to be prohibited persons. As long as they were still showing as pending and had not been reported back to the company, they continued to have access.

Once the ATF makes its determination and enters into its records that a person is denied and reports that to the company, that individual is denied access to explosives. They can't appeal that but during that appeal they do not have the authority to continue working with explosives. Our concern was that even once an FBI check was done, the individuals continued to be held in pend-

ing with no final determination and continued to have access to explosives.

Mr. LANTOS. Thank you, Mr. Chairman.

Mr. SHAYS. Thank you, Mr. Lantos. I know since September 11th, and Mr. Lantos, I think, introduced this point, that since September 11th there has been a paradigm shift. I will tell you that since September 11th I sometimes feel like I am in the water and I am gasping for breath and someone dunks my head down and then I come up again and they dunk my head down. I would imagine that is the way a lot of people feel in government, particularly as it relates to concerns about terrorism.

I just want to affirm Mr. Lantos' point that if ATF doesn't ask for the money, it rests on its shoulders. If it does ask for the resources and Congress doesn't provide it, it rests on our shoulders. If we are not told what needs to happen, then you are depriving Congress of the most important part of our job, information to be able to evaluate what we do.

I am surprised that a year later, actually much more than a year later, we had our hearing on August 2, 2004. We are beyond a year now. I don't really feel that much has been done in terms of responding to this issue. I am just going to also agree with Mr. Lantos that terrorists and criminals could care a twit about whether it is a government facility or private facility.

I am also left with the feeling from this hearing that the standards for private facilities is not all that good so it is almost like an argument why do we want to mirror what happens in private facilities. But I have heard no testimony that says that the public facilities are much better. Disabuse me of that if I need to be. But I also have a sense that nobody cares in government about this issue to the extent they should care.

Mr. Raden, I had mentioned before the hearing that I am a bit puzzled by the kind of response that we are getting from ATF. Last year Mr. Lantos asked in the hearing, and this is from the transcripts, "I am not asking you whether you want to make technical comments. I am asking you representing the agency whether you are prepared at this stage to recommend a complete accounting of all such facilities which, it seems to me, is step one in regulating them. If you don't know how many there are, how can you regulate them and if you don't know who they are."

Then Mr. Nelson, who I think is your Deputy, is that correct, Mr. Raden?

Mr. RADEN. Yes, sir. That is correct.

Mr. SHAYS. Walforde Nelson, Deputy Assistant Director, Enforcement Programs, ATF, is he still in his position?

Mr. RADEN. As a matter of fact, Mr. Chairman, today is his final day on the job. He is retired as of the end of the day.

Mr. SHAYS. In the response he said, "Anything we attempt, and it is probably a good idea to get this count, would have to be voluntary. We do not have authority to require agencies." Mr. Lantos says, "Are you asking for the authority?" "We have not asked for it." "Why not," Mr. Lantos asked? "Mr. Nelson, again, when it comes to State and local agencies, we partner with them in many things but we are not their regulatory agency."

Mr. Lantos, "But don't you minimally need to know how many such facilities are in the United States?" Mr. Nelson, "Could you repeat the question?" Mr. Lantos, "Yes. Wouldn't step one in dealing with theft such as this one we have here in San Mateo need to know how many such facilities there are and where they are located?"

So let me just start and ask Dr. Ekstrand do we know how many facilities there are?

Dr. EKSTRAND. No, sir. We don't. We made a rough estimate just for internal use that in relation to bomb squads there are probably somewhere between 1,000 and 1,200 different facilities. In terms of university related facilities and transportation departments, we really couldn't get——

Mr. SHAYS. So we don't know how many facilities are so, therefore, we don't know what facilities are. Correct?

Dr. EKSTRAND. Correct.

Mr. SHAYS. Yes. Do you agree with that, Mr. Raden?

Mr. RADEN. Yes, I do agree with that, Mr. Chairman.

Mr. SHAYS. Mr. Gulledge.

Mr. GULLEDGE. Yes, that is correct.

Mr. SHAYS. So we don't know how many facilities there are and we don't know—first, we don't know what facilities there are and we don't know how many there are. We all agree on that.

Mr. GULLEDGE. Yes, sir.

Mr. SHAYS. Would you like to jump in, Mr. Lantos?

Mr. LANTOS. I just find this the theater of the absurd. We are sitting here, seriously for the second year in a row, attempting to plug a whole in facilities that hold dangerous explosives of potential great use by terrorists. All of the agencies represented here are telling us they don't know how many such facilities there are.

In which case the notion of regulating them, controlling them, establishing standards for them, becomes an absurdity. I find, as our chairman does, incomprehensible that in none of the agencies represented here is there any apparent sense of urgency that step No. 1 is to find out how many such facilities there are.

I mean, it is insane to cavalierly say we have no idea how many storage facilities there are and then talk about how we should regulate them or whether we should regulate them. What organization would be responsible for just counting how many such facilities there are? What would be the appropriate agency, Dr. Ekstrand?

Dr. EKSTRAND. They would come under ATF.

Mr. LANTOS. Well, why doesn't ATF take the time and trouble to count the number of facilities?

Mr. RADEN. Mr. Lantos, that is a good question and I do have an answer for you.

Mr. LANTOS. Good.

Mr. RADEN. In fact, I have put together a survey. We were in the process of getting that survey through the administrative requirements that a survey of collection of public information is required. It needs to work its way through the department and through OMB. In that survey——

Mr. LANTOS. When did you commence that survey?

Mr. RADEN. That survey was recently commenced——

Mr. LANTOS. What does recently mean?

Mr. RADEN. Within the last 2 weeks, I think.

Mr. LANTOS. Within the last 2 weeks. So 14 months ago we held a hearing and you didn't do a damn thing for 13 months and knowing that a hearing is coming up again 2 weeks ago you start scurrying around and counting the number of facilities. You think this will wash with this subcommittee.

Mr. RADEN. No, Mr. Lantos, I don't think it will wash with this subcommittee. I had asked that question myself and when I found out the answer was we internally had not asked ourselves that question or had gone out to seek that information, I found that an absurdity. When it was brought to my attention I acted upon it. It is late. I agree with you.

Mr. LANTOS. Whose responsibility was it to begin a survey just counting the number of facilities?

Mr. RADEN. It would have been ATF's responsibility.

Mr. LANTOS. Who at ATF?

Mr. RADEN. It would have been my responsibility, sir, and I did not do that.

Mr. LANTOS. When will this survey be completed?

Mr. RADEN. I cannot give you a firm date on that because we do need OMB approval for it. On a similar topic, if I may, Mr. Chairman.

Mr. SHAYS. Sure, Mr. Raden.

Mr. RADEN. That is from an ATF perspective because it was not brought into the line of questioning from me directly. Our agency is on record—it is a law enforcement sensitive document. I can't sell it with you—with the department to bring State and local agencies and private entities under the inspection authority of ATF. We have made that recommendation to the department. That was back in April of this year.

Mr. SHAYS. Let me be a little critical and a little thankful at the same time just to continue with this question. In response to Mr. Nelson saying, "Could you repeat the question," Mr. Lantos said, "Wouldn't step No. 1 in dealing with theft such as this one we have in San Mateo be to know how many such facilities there are and where they are located?"

Then Mr. Nelson said, "One thing we did in 2001 is we put out a letter to all State and local enforcement agencies about their requirements for storage and the fact that we did a voluntary inspection some weeks ago." "Some weeks ago." This is in August so in July 2004. "Some weeks ago we started developing another letter to go out and as part of that we are again offering to do these inspections. We can certainly develop a list for this effort I would think, Mr. Lantos. You have 39 responses in that right."

Let me put in my words and you can agree or disagree. We have a letter from you, Mr. Raden, being sent out to a variety of local government agencies. The first paragraph is the Bureau of Alcohol, Tobacco and Firearms and Explosives. "ATF respectfully request the assistance of your association in distributing information pertinent to the safe and secure storage of explosive materials.

It has come to ATF's attention that some State and local government entities may not be aware of the Federal requirements for the storage of explosive materials and for the reported materials that have been stolen. ATF is seeking to correct this by reviewing the

Federal requirements with these government entities." Is this letter that was sent out basically in just a few—what is the date on this? There was no date. When was this letter sent out?

Mr. RADEN. Is that the letter to the National Sheriffs Association? That letter was sent out on October 18th.

Mr. SHAYS. OK. Let me say that Newt Gingrich told me one time that sometimes having hearings accomplishes what you want to accomplish just by having the hearings. I am getting a sense that this issue hadn't been shown on your radar screen. It had been on Mr. Nelson's. He had participated in this hearing. He is your assistant and we appreciate you being here today. Is it fair to say that ATF dropped the ball on this? I mean, was this letter of last year finally getting sent out this year?

Mr. RADEN. Well, the letters went out after I had read the GAO report and one of the recommendations was to collect information and advise State and local entities of their requirements under the storage laws and give them the information that they needed to be able to conduct basically what would be a self inspection. But to answer your question, it is late and I will take responsibility for it being late. We are doing and moving, I believe, at this point in the right direction and we were not before but I am determined to make sure that we are.

Mr. SHAYS. Let me say that what we will do in this subcommittee is hold a hearing in Washington sometime in March if you need to use us as a bit of an excuse with OMB. What I am hearing you say is a few things. One is you all did drop the ball. Is that correct?

Mr. RADEN. That is correct. There is no other way to put it. When it came to my attention I acted upon it. It came to my attention late and I hold myself responsible for it.

Mr. SHAYS. Well, that is one point. The second point is that you have asked OMB to do what as it relates to the oversight of public facilities?

Mr. RADEN. What we are doing, and it hasn't gotten to OMB yet because it is still in the vetting process, when you are conducting a collection of information, a Federal agency is collecting information from sources, it has to go through a vetting process through the Department of Justice and then over to OMB who then basically gives the agency the authorization to collect that information.

Mr. SHAYS. OK. What is the information you are trying to collect?

Mr. RADEN. The location of all the storage facilities of the State and local law enforcement and other, shall we say, public entities.

Mr. SHAYS. You are saying that it has to go through vetting but ultimately OMB has to approve it?

Mr. RADEN. OMB does not have to approve it but unless there is something unusual or some legal twist to it that I would be unaware of at this point, I would think that it would make its way through the system.

Mr. SHAYS. Let me just say one other thing. Besides having this hearing that we will have in March, maybe the end of February, maybe the beginning of April, but somewhere in that range, Mr. Lantos and I, I think, will seek to speak to the Director of OMB either by letter or in person because this is a no-brainer so we appreciate knowing that.

Now, I thought I heard you say besides collecting this information that it was your recommendation, not necessarily someone else's, that there be uniformity and oversight and that you have the ability to have oversight besides knowing these facilities. Did I hear that or just dream it?

Mr. RADEN. No, you heard it but perhaps it was—let me characterize it. Maybe I was unclear on it. What we have recommended over to the department in a memorandum from our Director is that it be examined, that ATF be given the authority to have statutory inspection authority over State and public facilities so we have recommended to the Department to take a look at this issue, sir.

Mr. SHAYS. So you are recommending that, one, you have the authority and then you are not suggesting that you will use authority but you are saying at least give us the authority. Is that what I am hearing you saying right now?

Mr. RADEN. I would suggest that if we were given the authority that we would be using it. We also recognize the issue regarding and it has been brought up in different fora including the GAO report and what my colleague at the IG's office has said on the issue of the resource issue. That is additional responsibility. There is no question.

Mr. SHAYS. Let me say that one of the challenges—I speak now as a Member of the majority party. One of my extraordinary disappointments is that what has developed in the administration has been that once an agency has been given its budget, then it is supposed to argue for its budget, nothing more and nothing less, even to the extent sometimes of not being honest and forthright with Congress as to what they truly need.

It is one thing to say this is what we are requesting and this is what the President is requesting. It is important that when you are before committees that if they say, "Do you have enough to do your job?" the answer is no if it is no, not that, "We can do it." What I am hearing you say is, one, this is going to get more of your attention that you all dropped the ball, two, that you are asking to know about where these facilities are, and three that you're recommending that you have the authority to have over-sighted these facilities. Is that correct?

Mr. RADEN. That's correct, sir.

Mr. SHAYS. Mr. Lantos, did you want to followup on anything?

Mr. LANTOS. If I may, Mr. Chairman. As I understand it, between 2002 and the present ATF inspectors conducted 77 voluntary requested inspections. Is that correct?

Mr. RADEN. Yes, I believe that is the number.

Mr. LANTOS. How many of these inspections resulted in findings that were unsatisfactory?

Mr. RADEN. I don't have that information right in front of me at the moment, Congressman, but I could get that information to you.

Mr. LANTOS. That is not satisfactory. I mean, this hearing was scheduled. You are representing the agency. You claim that you conducted 77 investigations that were requested on a voluntary basis. It is not an unfair question of me to ask what was found in the 77 voluntary examinations.

Mr. RADEN. It is not unfair of you to ask that, sir. I have it in materials but I do not have it before me. If that is me being unprepared, I apologize to you, sir.

Mr. LANTOS. Do you know theoretically if the results of the 77 voluntary inspections are unsatisfactory, what does ATF do to bring the agencies into compliance?

Mr. RADEN. We would make recommendations to them on what is required of them to come into compliance.

Mr. LANTOS. And how many instances did you make recommendations to them?

Mr. RADEN. Again, that relates back to the materials that I don't have in front of me but we would work with the departments to ensure that they are in compliance.

Mr. LANTOS. How would you characterize the performance of your agency in controlling depositories of dangerous explosive materials on a scale of 10 to 0, 10 being perfect?

Mr. RADEN. Well, we have a very, very dedicated work force, extremely hard working and knowledgeable.

Mr. LANTOS. That is not my question.

Mr. RADEN. I am getting to your question, sir. I would probably rate us given what we have and what the statutory requirements are, what we can and we can't do in terms of combining the statutory mechanisms and the regulatory mechanisms, and using that in judging our ability, I would give our agency about a five or six at this point.

Mr. LANTOS. Is it part of the responsibility of the agency to vigorously advocate for adequate resources when the task it has is not adequately funded?

Mr. RADEN. Yes, sir.

Mr. LANTOS. Has that been done?

Mr. RADEN. We have asked for resources. We are on record with Congress. There are any variety of different reports that are open source whether it is through the IG or through GAO that plainly demonstrate the resource issues with ATF.

Mr. LANTOS. I would like to address a question to all four members of the panel. On the basis of what you know and what you have learned, would you be in favor of dramatically upgrading the security requirements that all storage facilities of explosive materials whether publicly or privately owned. Dr. Ekstrand.

Dr. EKSTRAND. I think we saw storage facilities that were without any barriers around them that were visible from major highways. From a lay person's standpoint in terms of security that makes me nervous. We also saw a storage facility that is in the basement of a municipal building. That makes me a little bit nervous, too, but maybe from a safety standpoint rather than a security standpoint.

I think that GAO is really not in a position to have the expertise to determine what types of security is appropriate for these facilities. I think we saw situations that even though they would meet ATF standards for security, from a layman person's point of view didn't seem very safe. The fact that over a 3-year period there were over 200 thefts, that again makes me feel that maybe the standards are not high enough.

Mr. LANTOS. How about the uniformity of standards? Would you favor uniformity of standards irrespective of whether the ownership is public or private?

Dr. EKSTRAND. Well, I don't think it makes sense to have more stringent standards for public than private because one thing that seemed clear from our work is that the amount that is stored in these facilities and the number of facilities are far greater in the private sector than in the public sector. In terms of vulnerability, the private sector is probably more vulnerable just because of the amounts, both the number of facilities and the amount stored in those facilities.

If there is any difference in terms of standards, then it probably is weighed on the side of the private facilities. I certainly agree with the tenor of the hearing that even the loss of 1 pound of explosives is a serious matter. If you can get 1 pound from public or private, then they are both vulnerable.

Mr. LANTOS. Mr. Caramia.

Mr. CARAMIA. Yes. If I could just bring in a little bit from the locations we visited. I just wanted to address one of the chairman's comments earlier about whether public security was better or worse at these public sector facilities. We actually visited quite a few where they exceeded what the current standards require right now.

Mr. LANTOS. The current standards are palpably unacceptably low. To exceed unacceptably low security standards when it comes to explosives is not much comfort to this subcommittee or to the American people.

Mr. CARAMIA. Actually, that's true. The standards for security are quite minimal for storage magazines. They require you to have a magazine that is theft resistant and has locks basically. That is the extent of the security. Some of the locations we visited, in effect, that's all they had. There was one location we visited where the storage magazine was sitting out next to a law enforcement training facility.

It was sitting out in the open by itself not surrounded by any fences. You could drive a car right up to it and walk right up to it. Yet, that facility was in compliance with the Federal standards so that gives you an idea of perhaps the minimum level of standards that are currently required of all facilities and that is the same thing that is required of private sector facilities as well.

Mr. LANTOS. Any comment from either of you gentlemen?

Mr. GULLEDGE. Sir, first off, we agree that there need to be adequate safeguards in place and that they should be standardized across public and private.

Mr. LANTOS. And that is not the case today.

Mr. GULLEDGE. Well, the standards do apply to all. As Dr. Ekstrand's report demonstrated, generally they are meeting them in the public sector.

Mr. LANTOS. But they are meaningless standards. They are inadequate standards.

Mr. GULLEDGE. Well, I don't have the information to say that. I think first——

Mr. LANTOS. Have you not been listening to the conversation this morning?

Mr. GULLEDGE. Yes, sir. I have.

Mr. LANTOS. You have no other basis for learning it. What is your judgment on the basis of what testimony we have had?

Mr. GULLEDGE. Well, first, I think I would need to know how the explosives that were stolen were stolen. Were they inside jobs or were they someone from outside the organization coming in. No matter how many safeguards you have in place physically, if it is an inside job, it is irrelevant.

Mr. LANTOS. Let me ask the other side of the panel. Is there any indication of the proportion of inside jobs in the thefts?

Mr. CARAMIA. One of the locations we visited had a theft that involved actually the keys to the magazine being stolen. I am not sure if that would be considered an inside job but the person did not have to break into the storage magazine. They simply stole the keys and then opened the door and broke in that way. We have no other evidence based on the site visits we made of any of the thefts that were inside jobs.

Mr. LANTOS. The San Mateo case certainly was not an inside job. Do you agree with that?

Mr. GULLEDGE. Yes, sir.

Mr. LANTOS. OK. Go ahead.

Mr. GULLEDGE. In deciding what you want to do with this in any case——

Mr. LANTOS. We have decided what we want to do with it. We want to secure explosives so the American people are not exposed to thefts which might convey these dangerous substances into the hands of terrorists. That's what we want to do. We have long ago decided that, Chairman Shays and I. That is our goal.

Mr. GULLEDGE. Yes, sir.

Mr. SHAYS. Let me just ask our Inspector General. I am feeling a little bit of a push back from you and that maybe I am misinterpreting it. From GAO's standpoint we are basically hearing one, there is erratic standards on the public side and some States may do a good job, some counties may do a good job, some may not, and some do not. We are hearing from them that we don't know how many facilities we have so we don't know where these facilities are and we don't know how many of them there are.

We don't even know who to contact because we don't know if they have a facility or not. We are also hearing from GAO, and correct me if I am wrong, that even if we went to the standard of the private side, which is overseen by ATF, that standard isn't all that impressive. Is that correct?

Dr. EKSTRAND. Correct.

Mr. SHAYS. Do you agree with that or disagree with any part of it?

Mr. GULLEDGE. I think I heard it a little bit differently from Dr. Ekstrand. I think the standards are the same for both sides. The point is that the public facilities there is variance in the degree of protection of the public facilities. Generally all of them met the standards if I read the report correctly. There is also variance on the public side.

Mr. SHAYS. A comment on what you just heard?

Dr. EKSTRAND. The standards are the same across the board. What we found when we went out was a wide variety of achieving

or overachieving the standards. That is that some facilities had additional safeguards in effect that went beyond the standards. We didn't find any facilities that weren't meeting the standards but the standards are fairly minimal.

Mr. SHAYS. Right. So respond to that part. I appreciate your distinction. Respond to just the standards being fairly minimal. Do you think they are minimal?

Mr. GULLEDGE. I think they are minimal. I think there are decisions that will have to be made as you go forward in this raising the standards certainly requiring video surveillance or electronic surveillance or physical protections.

It will be easier for some public entities as well as private entities to meet than others. Some companies that use explosives are very small. It may create a difficulty for them. Those are all considerations. We don't have a position on whether or not you should do this but those are considerations.

Mr. SHAYS. Shouldn't do what?

Mr. GULLEDGE. Implement the new standards on safeguards. What we would try to do as——

Mr. SHAYS. Let me be clear. You have no opinion on whether we should raise the standards?

Mr. GULLEDGE. On what the specific standards should be. Like Dr. Ekstrand, we can't tell you what the exact standards should be. All we can really do is tell you the information.

Mr. SHAYS. That is because you don't have the authority to or you haven't done the research?

Mr. GULLEDGE. I haven't done the research.

Mr. SHAYS. OK. Dr. Ekstrand, you made the point that one facility, if I heard you correctly, kept explosive devices in a municipal building?

Dr. EKSTRAND. That is correct, in the basement of the municipal building.

Mr. SHAYS. OK.

Mr. LANTOS. What city is that?

Mr. CARAMIA. Well, actually, when we originally did the work we decided that we would not divulge any of the locations for security purposes.

Mr. SHAYS. I would like for you afterwards to tell Mr. Lantos and I what facility it is.

Mr. CARAMIA. We certainly can.

Dr. EKSTRAND. By all means.

Mr. SHAYS. Well, I just laughed. I mean, laughed not at the fact that a facility is like that but laughed that somehow we're not outraged. You are basically saying that there are men and women and the general public who would go to a municipal building that in the basement there were or are explosive devices. Are the explosive devices still there?

Dr. EKSTRAND. As far as we know.

Mr. CARAMIA. As far as we know, yes.

Mr. SHAYS. OK. Well, you know——

Dr. EKSTRAND. I would point out that it is certainly a safety issue. It is not necessarily a security issue but it is still an issue.

Mr. LANTOS. We understand that.

Mr. SHAYS. When you heard that, Mr. Raden, what was your reaction when you heard that there was a public—that is not your standard, correct?

Mr. RADEN. That is correct, Mr. Chairman, to put a magazine in an inhabited building. The circumstances, as I read it in the GAO report, is a clear violation of the existing standards and regulations.

Mr. SHAYS. OK. So at least your standards would not allow for that.

Mr. RADEN. That is correct, sir.

Mr. LANTOS. May I just raise an issue which is much more than semantic, Mr. Chairman. Dr. Ekstrand keeps using the term minimal standards. In ordinary conversation the notion of minimal means acceptable. If you are minimally qualified, you are qualified. You reach the minimal level of qualification for a certain position. I don't think the use of the word minimal is appropriate in this context.

These are unacceptable standards. They are not minimal standards. They are useless, worthless, pro-forma standards. They are not minimal. They are way below minimal. Minimal would be no more than what is necessary. That is what minimal is. If I have the minimal qualifications to be admitted to a college, I am qualified to attend that college. These are subminimal. These are below minimal. Would you accept that modification?

Dr. EKSTRAND. I would say these standards are the ones that are currently required.

Mr. LANTOS. They are currently required and they are unacceptable because they are meaningless.

Dr. EKSTRAND. I really don't want to go that far because——

Mr. LANTOS. How far do you want to go?

Dr. EKSTRAND. Well——

Mr. LANTOS. If you say minimal, you find them acceptable. Minimal means acceptable.

Dr. EKSTRAND. Well, I certainly want to indicate that they are in accordance with ATF regulations.

Mr. LANTOS. But if ATR regulations are idiotic, that doesn't make them acceptable.

Dr. EKSTRAND. From a layman's point of view we did see circumstances that did not seem very acceptable. We don't have sufficient information at GAO to make a statement that they are——

Mr. SHAYS. Could I just interrupt a second? You make me uncomfortable when you say from a layman's standpoint. Are you saying that you don't have people GAO qualified to be more than laymen?

Dr. EKSTRAND. We certainly do in many respects. We do not have people that have specific experience in relation to——

Mr. SHAYS. Then let me say this to you. That is unacceptable from our standpoint because GAO to me is of the standard along with some Inspector General agencies. When you all come before us, I don't consider you laymen. I consider you disinterested parties in the sense that you are not connected.

If your testimony is that you happen to be a layman in this regard, I could accept that but I would like to think the people that did the research aren't laymen. Otherwise, your value is dimin-

ished tremendously. We don't want laymen to look at this. We want experts to look at this. Do you not have experts to look at this issue?

Dr. EKSTRAND. Our researchers are extremely well qualified in relation to the work we do and I have no doubt about the quality——

Mr. SHAYS. Do you have anybody in your department that has expertise in explosive issues?

Dr. EKSTRAND. We have no one who has that specific expertise but from time to time we do work with outside consultants. In this particular case we felt that we were at least adequately trained to determine——

Mr. SHAYS. Let me interrupt you because I know where you are going. The bottom line is you are saying for what we tasked you to do you had the expertise.

Dr. EKSTRAND. We feel that we did.

Mr. SHAYS. We want to bring this up to another level. I mean, I almost don't think we need to go much further with this panel because what I am getting from it is that basically the local and State and county governments, local, county, and State governments play by their own rules. There are certain standards that are uniform but that bottom line is they are not overseen by your agency, Mr. Raden.

I am getting the sense that even the standards for the private sector is simply unacceptable and I agree with Mr. Lantos' terminology. We would also agree that we would not be saying to the States if they want to make them tougher than what ultimately we want as good Federal standards, the States are always free.

They can't go below the minimal but we want the minimal to be acceptable and acceptable is not reached. What I hear from you, Mr. Raden, that you have a lot of things on your plate to deal with. You are going to give this higher attention. We will be able to confirm that in our hearing in Washington in February, March, or April, in that timeframe, to give you some time.

In the meantime, Mr. Lantos and I will certainly congratulate you whether late or not in wanting to move this up to a different level. We will be in touch with OMB to make sure, one, you can get the information of where these facilities are because you know where the private site is, correct?

Mr. RADEN. Yes, sir. That is correct.

Mr. SHAYS. Then you would want the authority to be able to step in. I also go under the assumption that whether or not you technically have the authority or not that you will raise some questions about any facility being stored in a public place where you may have city workers and the public visiting. That is an outrage and we don't even need alliance of authority to step in.

I would like to think that you will raise some questions with GAO immediately about that. We will as well. We want those explosives to be taken out of those buildings post haste and we would like to make sure that is stated today, not tomorrow or the next day.

I would just say to you, Mr. Gulledge, the bottom line to my sense is that I would like to see that you have a greater sense of urgency in overseeing ATF on their oversight of these issues. I

would like to make sure it is showing up on your radar screen a little better.

Mr. Lantos and I, I think, waiting for the GAO report, were seeing back a little more than we should have so we are going to up the pressure, I think, quite significantly.

Mr. Lantos, are there any questions or any other points you want to make? OK. Then I think what we will do is go to our next panel.

Let me just say is there any question we should have asked you that you need to put on the record? This is my reason for asking this. I don't want to hear later on that you weren't asked and, therefore, you didn't put it on the record. If there is anything pertinent that we should be aware of, that you have made us aware of, I want to put the burden back on you. Is there any point that any of you want to make? Any closing statement you all want to make before we go?

Dr. EKSTRAND. I think that I would like to add one thing, and that is there is a real question in terms of what this security standards should be to be safe. I would suggest that over the past 3 years up until the time that we completed our review, there had been a little over 204 thefts.

I would suggest that information on those 204 thefts could be a good starting point to analyze what kinds of things are associated with thefts in facilities and might help to have a data-driven way of figuring out what kind of things are lacking that result in these thefts. Representative Lantos asked how many were inside jobs and the data on these 204 could help us understand that and help us move along rationally in figuring out what kinds of standards might be most appropriate to prevent thefts.

Mr. CARAMIA. I just wanted to clarify one other thing. You had asked earlier about the results of the voluntary inspections that ATF had conducted and what they had found. I would just like to point out what we found at the locations we went to in addition to the one we just talked about where the storage facility was in the basement of the municipal building.

We did find three other locations that appeared to be out of compliance with some aspect of the regulations. Now, while that didn't appear to relate to security, in other words, it didn't make the facilities more vulnerable to theft, it does tend to indicate that maybe there are some public sector facilities out there that are not quite in compliance with even existing regulations right now. That certainly raises the issue of why it is important to maybe have some more oversight of these facilities going forward.

Mr. SHAYS. Thank you.

Mr. GULLEDGE. Mr. Chairman, I would like to make one statement and answer one question that I didn't get a chance to answer before. I would say we do take this very seriously. The reports that we have issued on ATF, both firearms inspection, enforcement of the Brady Act, the Safe Explosives Act implementation show that we take our oversight of them very seriously.

In this instance identifying the storage locations was a tasking that went to the GAO specifically and we coordinate with each other and we don't duplicate each other's work. That is why we did not proceed with that question. We did attend their entrance briefing and we knew what they were doing.

To answer the question then of who should identify and inventory where these locations are, that is a separate questions of who should conduct the oversight. I think as an alternative I would offer that there are two mechanisms within the Department that could be helpful to you in this. The first is the Joint Terrorism Task Forces and the second is the Anti-Terrorism Advisory Council, the former run by the FBI and the second run by the U.S. attorneys offices.

Those councils and joint task forces have contacts with all law enforcement agencies and other public agencies within every county in the United States and there are over 3,000 counties. One of their duties, one of their responsibilities is to do risk assessments and this could fit within the purview of what they are supposed to be doing to contact their members, have them identify and report in without going through a formal survey process.

Mr. SHAYS. Thank you.

Mr. RADEN. Mr. Chairman, Mr. Lantos, I would just in terms of security in the future for magazines whether private or public sector. We do need to take into some considerations, I think, in terms of some of the unique factors.

I think some of the people on the next panel will address these issues but the unique factors involved with some of the public sector facilities such as storage of evidence and things of those natures in criminal cases.

Obviously you would want to ensure that your criminal evidence had a great deal of security and I think you will find that the GAO report demonstrated that in some situations security was above what we have referred to here as the minimal standard. There is also economic impacts for remote sites and why some of them don't have electricity.

Some of these things really need to be taken into consideration. I know that you both will in terms of if you are crafting legislation the type and form it will take in terms of ensuring that the best security model for the particular individual facility is taken into account. That is just something I wanted to comment on.

I also wanted to clarify with Mr. Lantos, I did find the information on the 102 law enforcement magazines that we had inspected. We did note nine discrepancies in those, sir, eight of them related to the lock that was on the structure itself. It was inadequate and was subsequently replaced and one dealt with a recordkeeping issue. They weren't keeping their books for a while so I did get that information.

Mr. LANTOS. Let me be sure I understand you, sir. You say there were 102 inspections?

Mr. RADEN. Yes. Well, there were 102 locations.

Mr. LANTOS. 102 locations.

Mr. RADEN. 102 locations.

Mr. LANTOS. Among those 102 locations, in 9 of them the security was inadequate?

Mr. RADEN. In eight of them the locking systems were inadequate. That is the case, sir. The other was recordkeeping.

Mr. LANTOS. Ten percent of the cases had inadequate security locks. Isn't that true?

Mr. RADEN. That is true, sir.

Mr. LANTOS. That is extremely alarming and I would very much hope that all the agencies, including yours, will share the sense of urgency that Chairman Shays and I clearly have. These are very serious matters. These are not slight traffic violations. These cases provide the basis for a potential terrorist attack in the United States.

I must say that while I was very disturbed by the hearing last year, I am no less disturbed by the hearing today because I see no sense of urgency or an indication that the seriousness of the matter under consideration is assimilated by those who are responsible for dealing with these matters. The very fact that you began the survey on October 18th when our hearing took place in August a year ago is profoundly disturbing.

Mr. RADEN. I understand that, sir, and let me assure you you have my attention on it.

Mr. SHAYS. You know what? I think we can move forward in a very positive way from what we have learned from this first panel. Mr. Lantos and I recognize that we have some obligations as well. We are going to be even more aggressive than we have been. If that helps you persuade OMB that come March you need to have some good news for us, that would be constructive.

I thank you all very much for your service and we are going to move to the next panel. Thank you.

Our next panel is Mr. Fernando Gonzalez, battalion chief, Fort Worth Fire Department, Division of Arson/Bomb Inspection; Dr. Tibor G. Rozgonyi, professor and head, Mining Engineering Department, Colorado School of Mines; Sgt. Stanley Mathiasen, chairman, National Bomb Squad Commanders Advisory Board; Dr. Vilem Petr, assistant research professor, Mining Engineering Department, Colorado School of Mines; Mr. James Christopher Ronay, president, the Institute of Makers of Explosives [IME], the Honorable Don Horsley, county sheriff, San Mateo County Sheriff's Office, and Lt. Gary Kirby, San Jose Police Department.

I thank you and you can remain standing and we will swear you in. Thank you very much.

Just so you understand, all our witnesses in the Government Reform Committee are sworn in because we are an investigative committee. In my many years of being chairman now, the only one we never swore in was a Senator from West Virginia. I chickened out. Do we have everyone here? I think we are missing someone. Is that correct? OK. We will wait for you to come, sir.

If there is anyone from your department that you may ask to respond to a question or your agency or whatever, we would want them to rise as well. OK. Then if you are asked to speak, we will have you identified then. We just have one additional person being sworn in.

Are you gentlemen standing to be sworn in or not? OK. Fair enough. Raise your right hands.

[Witnesses sworn.]

Mr. SHAYS. Thank you very much. If you can remember, are you in order of how we called your names? I think we are. We are just going to come around this way. Let me say that your full testimony will be part of the record. If you want to just respond to what you have heard and respond that way, feel free. Because we have so

many witnesses it would be good if you could stay within the 5-minute limit. Then we will proceed with our questions. Thank you all very, very much for being here.

Thank you, Mr. Gonzalez.

STATEMENTS OF FERNANDO GONZALEZ, BATTALION CHIEF, FORT WORTH FIRE DEPARTMENT, DIVISION OF ARSON/BOMB INVESTIGATION; DR. TIBOR G. ROZGONY, PROFESSOR AND HEAD, MINING ENGINEERING DEPARTMENT, COLORADO SCHOOL OF MINES; SGT. STANLEY MATHIASEN, CHAIRMAN, NATIONAL BOMB SQUAD COMMANDERS ADVISORY BOARD; DR. VILEM PETR, ASSISTANT RESEARCH PROFESSOR, MINING ENGINEERING DEPARTMENT, COLORADO SCHOOL OF MINES; JAMES CHRISTOPHER RONAY, PRESIDENT, THE INSTITUTE OF MAKERS OF EXPLOSIVES [IME]; DON HORSLEY, COUNTY SHERIFF, SAN MATEO COUNTY SHERIFF'S OFFICE; AND LT. GARY KIRBY, SAN JOSE POLICE DEPARTMENT

STATEMENT OF FERNANDO GONZALES

Chief GONZALEZ. Good morning.

Mr. SHAYS. I would just say the closer you are to the mic the better. I realize it presents a problem if you are reading but it would be helpful. Sorry we are so crowded on that side. You know, I don't mind if one person would like to come up here. Would that make it easier? Is it kind of crowded there?

Chief GONZALEZ. It is fine, sir.

Mr. SHAYS. I think you feel a little crowded. We are not breaking any rule, are we? OK. You can spread out a little bit and have a little bit more room. OK. We are all set for you, Mr. Gonzalez.

Chief GONZALEZ. Thank you. Good morning, Chairman Shays and Congressman Lantos and all the other distinguished ladies and gentlemen at this proceeding. I am Battalion Chief Fernando Gonzalez. I am representing the Fort Worth Fire Department. Can you all hear me OK?

We utilize four explosive magazines in our city. All of them are alarmed and monitored 24 hours a day, 7 days a week by our fire alarm office. That hasn't always been the case. At least one of the reasons that I was invited, I assume, to this proceeding was because we have had not one but two thefts at our explosives magazines.

In 1991 we had our first burglary. Thieves tried to cut a hole in the side of the magazine with a welding torch. When that was unsuccessful they tried to pry the roof off the magazine. That also did not work. Ultimately they cut the locks off with that welding torch.

They stole over 100 pounds of explosives and the thieves were never identified. However, the explosives were recovered when they were found abandoned on a road about 3 weeks later. Not for lack of trying but they were not identified.

As a result of that burglary, we installed an intrusion alarm on our magazine. Approximately 8 months later we had a second burglary. At this burglary, 40 pounds of explosives were stolen. This time the thieves used a grinder to cut the hinges off of the door.

This time they were apprehended and the explosives were recovered again.

This second theft led to the installation of perimeter fencing with concertina wire. I don't know if you have my testimony with you but there is a picture of it in exhibit A there.

Mr. SHAYS. We have your testimony.

Chief GONZALEZ. OK. Thank you. We haven't had any thefts since that time. I am skeptical that alone has made our facility secure, the perimeter fencing. What I think it has done is made a little too much trouble for your garden variety thief to attempt.

As a bomb squad commander there are a few security measures that I would welcome at our facility and I think would be beneficial for other facilities. The most prominent among them, besides perimeter fencing, would be video surveillance and audible alarms. Theft is not the only problem. Vandalism, of course, is another problem, in terms of destroying the explosives on the spot.

On the second front, I think it would be beneficial to mandate BATF inspections of our facilities. There is a tendency to mass explosives in our business, not only through confiscations but through acquisition. When budgets are tight our training aids are the first to go.

I think mandated inspections would accomplish two things. First, they would require a detailed inventory and detailed inventory, I believe, would help in case there was a theft to recover them quicker. The second effect that having BATF inspections would have, I believe, to mitigate unsafe practices. I think they were mentioned in the GAO report also, storage of explosives with the blasting gaps or storage of explosives with deteriorated military ordinance.

At any rate, and all that being said, I thank you for your interest in the matter.

[The prepared statement of Chief Gonzalez follows:]

Testimony of Fernando Gonzalez
Battalion Chief
Fort Worth Fire Department
Fort Worth, Texas
Submitted to the Committee on Government Reform
Subcommittee on National Security, Emerging Threats, and International Relations
U.S. House of Representatives

Security of Explosives Magazines

October 18, 2005

The Fort Worth Fire Department Bomb Squad is currently responsible for the maintenance and security of four explosives magazines in the City of Fort Worth. Three of these magazines (one Type 2 and two Type 4) are located at our evidence storage facility and bomb range on the outskirts of Fort Worth. The Type 4 magazines (not pictured) contain only electric blasting caps and are kept in the fully alarmed evidence storage building. The Type 2 magazine (Exhibit A) is equipped with a motion detection alarm. The fourth; a Type 1 magazine, is located at our Fire and Police Training Center (Exhibit B). The Type 1 magazine is equipped with intrusion and motion detection. All alarms are monitored round-the-clock by our Fire Dispatch/Alarm Office.

We did not start with this level of protection.

On Sunday, April 14, 1991 a break-in occurred at our Type II explosive magazine and our evidence storage facility. Entry to the grounds was achieved by cutting a single lock at a gate. Indications were that the storage facility was breached using simple prying tools. Entry to the explosives magazine was attempted in several ways. A hole was cut in the side of the structure using an acetylene torch. Due to the sand barrier between inner and outer walls this was unsuccessful. A pry-bar was also used to create a viewing port through a roof opening, but allowed no access. Ultimately, access was gained by cutting through the padlocks with the torch and opening the door to the magazine.

Taken in the magazine burglary were approximately 86 pounds of high explosive in various configurations, 30 pounds of binary explosive, and 4000 feet of detonating cord.

Taken from the evidence storage facility were 10 pounds of smokeless powder, five gallons of ether, two portable magazines (Type 4) containing 100 blasting caps, a portable generator, and various tools and equipment.

The publicity caused by the break-in produced some quick leads but none proved conclusive. Three weeks after the theft, the explosives and the two portable magazines containing blasting caps were found abandoned on a farm-to-market road. The tools,

smokeless powder, generator, and ether were not recovered and the suspects were not identified.

In May of 1991, and as a result of this burglary, an alarm system was installed at both facilities that included both intrusion and motion detection.

One year later on Sunday May 17, 1992 another burglary occurred at the same facility. This time only the explosives storage magazine was burglarized. Evidence indicated that a grinder or other abrasive power tool was used to cut the hinges from the door to gain access. The loss was approximately 40 pounds of high explosive and five pounds of binary explosive. Leads were developed and approximately two months later two suspects were arrested and the missing explosives were recovered.

In response to this second burglary, an eight-foot perimeter fence with three levels of concertina or 'razor wire' was installed around the compound (Exhibit A). Reinforcements were added to the hinges and locks on the explosive magazine. Placards were placed on exterior entrances prohibiting entry.

As a result, we've had no further burglaries or attempts at any of our explosives magazines since 1992. I attribute this to several factors. The primary factor is the visible deterrent of the perimeter fencing and alarm panels. A secondary factor is the increased traffic to the facility. In Fort Worth we are fortunate to have an excellent working relationship with the Bureau of Alcohol, Tobacco and Firearms. It's notable that they also store their explosives in the smaller Type 2 magazine visible in Exhibit A. This has essentially doubled patrols at this location.

As a bomb squad commander there are a few other security measures I would welcome at our facility that I think could be beneficial to other squads as well.

Video surveillance would be the ideal preventative measure for protecting these installations. Many bomb squad facilities I've visited, including our own, are in remote locations. These locations give bomb squads the ability to train effectively and with various types and amounts of explosives. Unfortunately, the necessity of having a remote location also protects a potential burglar from discovery when he or she trespasses on a facility. It's for this reason that I think video surveillance - as opposed to intrusion and motion alarms – is a better theft prevention measure. The time consuming aspect of an explosive theft is in breaching the magazine – not in loading the explosives.

Readily identifiable audible alarms (110-120 decibel range) would also provide a means of alerting individuals in the immediate area, as well as making a lengthy operation more difficult to complete.

On a second front, it would be beneficial to mandate BATF inspections of state and locally controlled explosives magazines. Detailed inventories and regular inspections would increase the odds of recovering stolen explosives through quick identification and

also mitigate various unsafe practices (e.g. storing blasting caps with high explosives, deteriorated military ordnance with high explosives, etc.)

Thank you for your interest in this matter.

EXHIBIT A

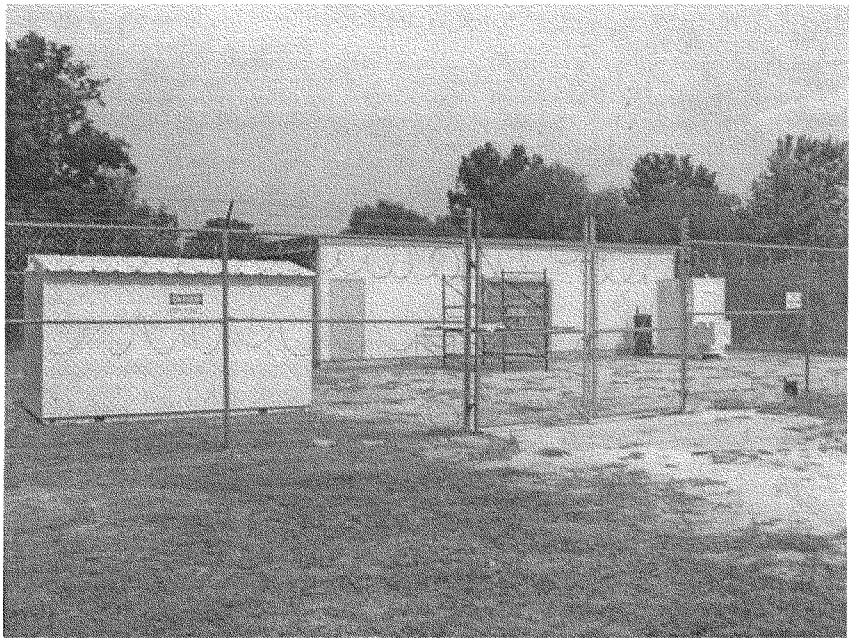
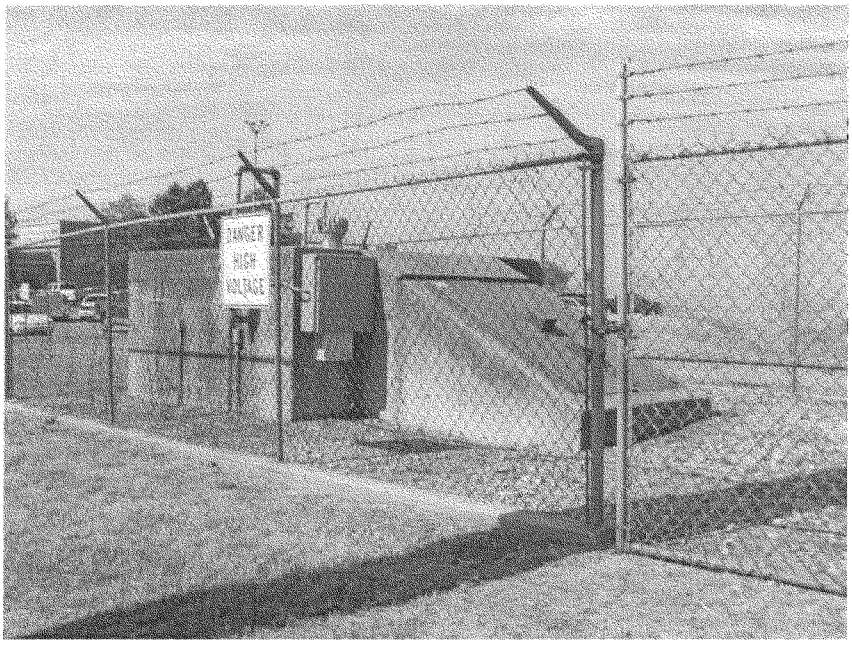


EXHIBIT B



Mr. SHAYS. Thank you very much.

STATEMENT OF DR. TIBOR ROZGONYI

Dr. ROZGONYI. Good morning, Mr. Chairman, Congressman Lantos.

Mr. SHAYS. I need you to speak a little louder. You have a nice Hungarian voice that Mr. Lantos can hear but for me it is a little bit of a problem.

Dr. ROZGONYI. I am Tibor Rozgonyi, professor and head of the Mining Engineering Department at Colorado School of Mines. I am really very pleased and honored to practice my citizen requirement and responsibility to testify for you.

Mr. SHAYS. It is an honor to have you here as it is with all of you. Thank you.

Dr. ROZGONYI. We have been reviewed and asked to provide input to your subcommittee, because to our educational research program we store and utilize substantial quantity of explosive material regularly at the Edgar Experimental Mine.

The Colorado School of Mines is a public institution that was established in 1874 to support the needs of the mining industry. It continues to fulfill this mission today with special expertise in the development and stewardship of the Earth's mineral and energy resources.

The Edgar Experimental Mine was donated to the Colorado School of Mines after the 1880 Gold Rush. It is used extensively for instruction, research, and testing special equipment, excavation technology, mining metal. It is in this capacity that we use explosives and, therefore, store explosives.

As long as explosives remain the most effective rock fragmentation technology, we will educate our students on the safe handling of explosives and also deal with industry partners to provide them health and safety training and education.

We work with State officials and various law enforcement authorities in training of their work forces and special rescue team. We offer education training for mining construction companies to enable them to be certified and licensed in explosive handling, storage, and use.

We have always been mindful of the safe use and storage of the explosives, but there has been special emphasis placed after September 11th. After September 11th, we established a special protocol for the use and safe transport and storage of explosives in the Colorado School of Mines premises.

The document provides guidelines, information, and requirements of how we can transport the material explosives from one place to the other. All of these requirements are in compliance with the ATF and the State's regulations. Each CSM employee who is directly or indirectly involved in the utilization of explosives has been required to obtain a "Responsible Person Letter of Clearance" from the U.S. Department of Justice.

We have a Type I magazine for explosive storage. It is built like a tunnel in a mountainous area and secured and furbished with all necessary equipment in order to deter any kind of problem.

I would like to mention that it was a little bit of a surprise to me when I heard that some of those minimum standards were

questioned here in the previous panel. I probably would like to point out the mining industry, which is very conscious, the safety and security of the explosives and have a very clear regulation what you can do, how you can do it, how you can store the explosives.

You must dig up a certain tunnel. You must secure with a certain door and even specify what is the thickness of that steel door, what kind of padlock you can use, how you can store the detonators and how you can use the explosives. It is well specified so I believe the mining industry, and coincidentally the Colorado School of Mines, is very keen to maintain this kind of standard.

At the Type I storage facility we do have electronic surveillance system. If somebody will break in, it will automatically inform the campus police and the campus police very quickly inform the Colorado Spring police department and the sheriff department.

In 24 hours we report the accident if it would happen to the ATF. I would like to report to the committee that we have a very cordial and professional relationship with the ATF and the law enforcement agencies. As a matter of fact, I was very happy to see the ATF manager here. We requested their visit and they came and visited our facility and we are very happy to work with them. They gave us advice and we upgraded the system.

What I would like to suggest for your consideration: I believe that we wholeheartedly can support that some Federal agency should be responsible for a nationwide repository for all explosives. I think the cheaper system is readily available so you can go one visit and you have the coordinate and everything where it is located.

I am more concerned with the education background of the individual who handles explosives. I am not sure that each State or every agency or even employers are requiring. In the mining industry, they definitely do but I am not sure that in the construction industry or in other industry the individuals who are handling and using explosives has the minimum knowledge which is required to handle that kind of dangerous material.

[The prepared statement of Dr. Rozgonyi follows:]

TESTIMONY OF
TIBOR G ROZGONYI
PROFESSOR AND HEAD OF THE MINING ENGINEERING DEPARTMENT
AT COLORADO SCHOOL OF MINES

Before the

HOUSE GOVERNMENT REFORM COMMITTEE
Subcommittee on National Security, Emerging Threats, and International Relationship

Concerning

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities, Part II

October 31st, 2005
Field Hearing, San Mateo, California

Good morning, Mr. Chairman and Members of the Subcommittee. I am Tibor G Rozgonyi, Professor and Head of the Mining Engineering Department at Colorado School of Mines. I appreciate the opportunity to appear before you today to provide testimony on the subject entitled Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities, Part II, with specific emphasis on "ATF: Thefts of Explosives from State and Local Government Storage Facilities Are Few, But May be Underreported" and the efforts implemented at Colorado School of Mines (CSM) to improve explosives storage facility security.

Please allow me to briefly introduce to you Colorado School of Mines, the first public institution of higher learning to open its doors in Colorado. Established in 1874 to serve the needs of the local mining industry, CSM now enjoys an international reputation of excellence in engineering and the applied sciences, with special expertise in the development and stewardship of the earth's mineral and energy resources. The CSM enjoys Exemplary Institute and Enterprise status, recently granted by the State Legislation. Colorado School of Mines offers all the advantages of a world-class research institution, but with a size that allows for a high level of personal attention. With a student body of approximately 4000, CSM has a student/faculty ratio of 15:1, and an average undergraduate class size of 30. CSM features an innovative curriculum that emphasizes practical, hands-on experience, and an interdisciplinary approach to solving problems of importance to society.
CSM fully understands and is supportive of national security issues and is actively involved in major national projects such as the Yucca Mountain Radioactive Waste Repository program and the Energy Security program, both of which have major national security and safety implications.

Perhaps the best description of the mission of the Colorado School of Mines is given by its President, John U Trefny: I quote: "At Mines, we are interested in the education of the whole person, and endeavor to infuse our graduates with the skills, knowledge and character to have successful careers, lead lives of great fulfillment, and make a difference for the betterment of humankind". The outstanding and forward-looking Board of Trustees, which is the governing Board of the School, jointly with the executive management, spare no efforts to fulfill our mission and are always mindful of the needs for increased national security. Mr. Chairman, Members of the Subcommittee, I hope that from my brief introduction of the Colorado School of Mines you might sense that, for both students and faculty, to be a member of the Mines' community it is not only a privilege but a great honor as well.

The Edgar Experimental Mine at the Colorado School of Mines

Since the 1930s, CSM has maintained and operated an underground laboratory and training facility just outside the city limits of Idaho Spring, Colorado. This underground facility was chiefly an old silver and secondly a gold producing underground operating mine. The Edgar Experimental Mine is fully owned by the State of Colorado, and managed by the mining engineering department. Although the Edgar is categorized an inactive mine, it has been utilized during the decades to carry out special research and training activities by the students and for different companies, state and federal agencies and authorities. Consequently, intensive explosive usage has been in a continuous basis for excavation of new tunnels and chambers, development and testing of new explosives, new mining and ground support systems and for the training of our students and special experts from the industry and different agencies. The previously mentioned activities are requiring using and storage of significant amount of explosives.

Other academic units of CSM have also used special explosives for exploration purposes, but this utilization of explosives has been discontinued in recent years.

The Need for Using Explosives at the Experimental Mine and in general at the school

Although there is a strong interest and development in the hard rock mechanical excavation technology, the extensive use of explosives for rock fragmentation and excavation in a variety of areas, in demolition of old infrastructures, and other special purposes is very cost effective and widely used. Therefore it is of the utmost importance to educate and train the experts in the mining and underground industries for safe use of explosives.

Research

In the past five years, much of the research carried out at the Edgar Experimental mine by both government agencies and private companies have focused on the use of

explosives and the development of new energetic materials for excavation. Without striving for an exhaustive list I'd like to mention a few research programs. One major explosive manufacturer company has performed studies to quantify the gaseous products of fumes from the detonation of various explosives. The study assisted the manufacturer in developing products that are environmentally better for use in different coal mines. During this research program, the company has also tested newly developed electronic detonators that allow incredible precision in detonation timing. This research project also resulted in the development of hundreds of feet of new drifts in the mine.

Another smaller research development company carried out research to develop several new products for the mining industry. One, the Boulder Breaker, allows for safer secondary breakage of oversized rocks at quarries without causing dangerous fly rock, which is the result of conventional explosives. Another product that the company developed is a device that is able to deliver an explosive charge to loose rocks in vertical underground openings that are not accessible safely to human.

One of the major national agencies recently awarded two projects to the mining engineering department to develop safer methods of creating underground openings with the use of explosives.

Faculty of the mining engineering department jointly with industry carried out research to develop a better technology for sampling the lunar surface by utilizing explosives. Also, research programs are on the utilization of explosives for material joining, and for using explosives for special projectiles.

Training

The main reason that Colorado School of Mines requires the ability to use explosives is for educational and training purposes. Through various classes offered by the Mining Engineering Department for students across the Campus, part of their course work is to learn safe methods of using industrial explosives for excavation of rock and other purposes. In classes delivered at the Experimental Mine, students are actually using explosives under the strict supervision of a licensed individual and the practice/experience is carried out in compliance with all the laws and regulations of the Bureau of Alcohol Tobacco Firearms and Explosive (BATFE) and the State of Colorado.

Training is also carried out at the Experimental Mine organized by the Special Programs and Continuing Education (SPACE), which is a special unit of the Colorado School of Mines. Trainers from this unit jointly with the Edgar personnel serve the needs of those who are enrolled in a non-degreed educational program. A well organized safety training program is carried out for personnel from operating mines, and from construction industry. As part of some of these trainings, the mine safety trainers of the SPACE group utilize the Experimental Mine and the Mining Department staff to train special clientele who are using explosives. The most notable of these groups are

personnel from the Department of Homeland Security, the United States Secret Service, and the United States Army.

Permits, Protocol of Explosive Usage, Transport and Storage on the Properties of the Colorado School of Mines

The CSM has always been mindful of the safe use and storage of explosives at the CSM premises, but specific emphasis has been give to security after 9/11.
With the leadership and approval of the Executive Vice President, Nigel Middleton, the CSM developed a comprehensive protocol for the safe use, transport and storage of explosives on the CSM premises. The purpose of this protocol is to develop and apply safety procedures and requirements to carry out demonstrations or testing of explosives at Colorado School of Mines. This document provides guidelines and standards for the use, manufacture, possession, storage, transport and/or disposal of explosives or blasting agents in the interest of the safety and security of the students, employees and the general public, as well as the protection of properties. This protocol has been developed according to the existing rules and regulations of the Department of Justice, Bureau of Alcohol, Tobacco and Firearms (BAFTE P4500.7) and the Division of Oil and Public Safety of the State of Colorado (CRS 1998) requirements with the proviso that the rules of the previously mentioned State and Federal agencies will have precedence. The responsibility of compliance to this protocol and to any State and Federal regulation related to the subject matter has been transferred by the Executive Vice President to the Head of the Mining Engineering Department.

To this end, each responsible person who is an employee of the CSM and is involved in using, storage, transporting or policy-making related to explosives has been required to obtain a "Responsible Person Letter of Clearance" from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, National Licensing Center. Copies of these licenses of each responsible person including the Head of the Mining Engineering Department are on the file in the department for inspection.

Mr. Chairman, Members of the Subcommittee, please allow me to provide some further information concerning different permits as we understand it at the Mining Engineering Department.

The Colorado School of Mines, Mining Engineering Department has acquired and holds all State and Federal permits to manufacture, store and use explosive materials that any private corporation located in the same vicinity would need to acquire. The two agencies that the Colorado School of Mines has permits from for the storage and use of explosives are the BATFE and the State of Colorado Department of Labor and Employment, Division of Oil and Public Safety. Both of these agencies regulate and enforce federal and state laws regarding the storage and use of explosives. Both of these agencies regularly visit our facilities.

The BATFE requires the Colorado School of Mines to have a site license for the purpose of purchasing, storing and manufacturing explosives. Also, the BATFE requires all persons working with or in the position of directing the use of explosives to have a "responsible person letter of clearance" license after an extensive background check. We at CSM consider this as a minimum requirement, but one insufficient to practically handle and use explosives for excavation or other purposes. The BATFE requires that all persons possessing or directing the utilization of explosives have not committed a felony and have a United States citizenship. As I have mentioned earlier in my testimony, all employees of the Colorado School of Mines that may be required to use or direct the use of explosives have passed the background check required by the BATFE. According to BAFTE regulation, CSM has a Type I (applicable to high explosive) explosive magazine. Confusingly enough, according to the State of Colorado we are required to possess a permit of Type III magazine, which we do in fact possess, and which is equivalent to the ATF Type I magazine.

Colorado Department of Labor and Employment, Division of Oil and Public Safety require entities in the State of Colorado to have three types of explosive permits. The first is an organizational permit called a Type II permit that allows the holder of the permit to conduct activities requiring explosives. The holder of a Type II (organization permit) requires having for its explosive magazine a Type III magazine permit. The Colorado School of Mines obtained and in possession of such a State's permit as well.

Lastly, the Division of Oil and Public Safety requires anyone of the organization holding a Type II permit who would handle explosives, to obtain a Type I permit as well. To obtain a Type I permit, a person must pass a background check with a higher standard then that required by the BATFE. Also individuals of Type I permit holders to maintain their license are required to take a written test covering state explosive laws and obtain a score of 90% or better every three years. The Type I permit is valid for only one Type II organizational permit.

Security of Explosive Storage at Colorado School of Mines, Edgar Experimental Mines

As I have testified earlier, Colorado School of Mines and the Mining Engineering Department are required and do in fact satisfy all applicable State and Federal laws governing the purchase, storage, use of and manufacture of explosives.

The explosives at the Colorado School of Mines, Edgar Experimental Mine site, are stored in a tunnel-type magazine classified according to the ATF regulation as Type I and according to the State regulation as Type III magazine. This 8 foot by 8 foot tunnel magazine penetrates into an inclined hillside of hard granite gneiss rock for a length of 60 feet. At a length of 40 feet and at a length of 52 feet are two passages that propagate to the rock mass at right angles to the main opening for distances of 20 feet and 30 feet respectively. These side openings (drifts) are also 8 foot high and 8 feet wide. The entrance to the magazine is secured with a ½ inch thick steel door with two

5-tumbler 3/8 inch hasped padlocks. Both of these padlocks are shielded with a ½ inch thick steel guard covering box. The hinges of the main door are welded to prevent disassembly. Each of the internal side drifts have their own steel doors made of a wire mesh and are also individually locked with small padlocks. The first side opening serves as storage for detonators and the second side drift is storage for all non-detonator explosives. As it is well known, the detonators are required to be stored separately from the explosives.

There are only two sets of keys to the explosive magazine at the Edgar Experimental Mine. Both sets are accessible only by employees of the Mining Department with valid state and federal explosive Permits. One set is controlled exclusively by the Experimental Mine Manager, while the other set is controlled by the head of the Mining Engineering Department. Both sets of keys are locked up in undisclosed steel boxes at locations far away from the Experimental Mine when not physically being used by a licensed permit holder faculty or Mine Manager.

The magazine is furnished with an electronic alarm system. This alarm system is wireless and is triggered if the main door of the magazine is opened without disarming the system from an undisclosed location. Each licensed responsible person has his/her own code. Only authorized employees with valid explosive permits are allowed to disarm the electronic security system. If the magazine alarm is triggered, a siren is initiated and an electronic signal is sent to the Colorado School of Mines campus security. The Campus Safety Office immediately informs and alerts both the Idaho Springs City police department and the Clear Creek County Sheriffs department. Both of these agencies have been given specific knowledge concerning the Experimental Mine's magazine as required by State laws.

It is required that the magazine be physically entered and checked by a person having a valid Type I permit at least once every 7 days. The main door of the explosive magazine is visually checked at least daily by an employee at the mine site. When no employee is working at the mine site, a gate approximately 2000 feet away remains locked.

The quantity of explosives in the magazine are inventoried at least once every 30 days and compared with an explosive log system that is also located within the magazine. Often at shorter intervals spot checks are made of that type of explosive that are more often used. This is often done while explosives are gathered for use.

All explosives remain in the magazine until such time that they are required for use. No temporary storage magazines are used at the Experimental Mine.

Brief history of the security of the magazine and the process to be followed in case of security of a safety violation

The Colorado School of Mines has an exemplary security record. To my best recollection we have had only one incident worthy of mention. Over ten years ago, before our electrical security system was in place, a few high school kids obtained the keys to the magazine due to human error, which in this case was a brief lapse of attention by the Mine Manager at that time. They entered the magazine during the night and removed a small amount of explosives. Upon discovering the incident the next morning, the Mine Manager immediately informed the Campus Security Officer, the Sheriff Department and the Idaho Springs City Police department. Within 24 hours, the incident has been reported to the ATF and Colorado State's appropriate authorities.

All the missing explosives were subsequently found and returned to the magazine, and the perpetrators were apprehended within a very short time due to the coordinated effort of the Mine Manager and all the appropriate law enforcement agencies. The incident was more mischief than a seriously planned violation of safety against any human or property, and since the incident, we introduced new security measures such as the electrical surveillance system and better protocol and storage of the keys to the magazine.

We have reviewed our security and safety system with the representatives from both the State agency and ATF and they have provided very valuable advice, suggestions and support toward a better security system. We have a very cordial and professional relationship with those agencies, and we are happy to accommodate both their declared and undeclared site visits concerning our security system.

As I have mentioned earlier in my testimony, since the aforementioned incident we have not had any further problem or incidents, and there has not been any explosives stolen or missing from our well-kept inventory. We are considering some further fine tuning of security system with the establishment of an infrared motion detector system in addition to the existing one.

Monitoring of Explosive Use

It is required by both State and Federal Law, (Subpart G of T.D. ATF-87, 46 FR 400384, August 7-1981) the all explosives while being transported from the magazine to the site where they are to be used and while they are being prepared for use must physically be in the presence of a holder of both state and federal explosive permits. We strictly observe and are in compliance with this regulation. Both State and Federal laws allow a student without valid permits to physically handle explosives as long as they are always in the presence of a valid permit holder. We are strictly in compliance with this requirement and require that our industry customers should be in possession of the appropriate license, otherwise we will provide explosive handling service to them by a licensed employee.

Traceability of Explosives

Explosive traceability and security paperwork are required by State and Federal laws. We are in full compliance with this requirement by keeping an accurate record of the usage of all explosive and electronic detonators in the file at the Edgar Experimental mine site. We keep logs for the use/inventory of both the detonators and the quantity of the explosives in their respected storage drifts and by doing so we can keep track of the quantity and type of explosive material used at any time in the mine. These records are regularly inspected by State and ATF inspectors from time to time. A compiled inventory and utilization record is kept in the mine's office for at least 7 years after the explosives were used. Also records are stored in the mine office of all of the deliveries/purchase of explosives with a brief record of the blasting patterns.

My personal observations and suggestions for consideration

1. First and probably most importantly, we need one Federal agency (i.e. ATF) that has a generic responsibility to inventory and maintain an accurate record for all explosive magazines and their responsible persons in the USA. Since background checks are required for all licensed persons and they are tied to an organization permit or magazine permit that can easily be established because all the background checks are done through the appropriate office of the Department of Justice.

2. Secondly, the permitting process requirements for educational or research institutions, companies and responsible persons should be better coordinated between the States and ATF although it should be serious background check requirement as a minimum, should the process be streamlined. Although I am not conversant on the different level of background check requirements, it is hard to explain why some States require an additional background check that is already required by ATF. The paperwork requirement is very ambiguous and cumbersome.

3. Thirdly, the security and safety requirements of handling and storage of explosives for educational and research use, but probably even for industrial purposes, vary widely from state to state. It would be reasonable for the ATF to establish a baseline requirement of what needs to be followed by the institutions. Based on this base line requirement, institutions should establish a protocol for explosive storage and handling within their premises.

4. Fourthly, a clear reporting mechanism should be established for each magazine and explosive holder institutions and agencies. Colorado School of Mines has decided to report any incident to all agencies that may have something to do with such an incident. Since, if stolen, explosive materials can be easily transported and used in any state in the union, it should be mandatory that institutions and agencies should report incidents within 24 hours to ATF as the coordinating agency of the federal government.

5. Fifthly, the Department of Homeland Security should review the security and safety of the explosive magazines of educational and research institutions and provide professional and financial assistance to bring the system to the required minimum.

6. Finally, the educational and research institutes that use explosive and are in full compliance with the ATF and State regulations should be clearly exempt from any liability and responsibility if in a later stage any former students are involved in unlawful activities.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify today and share with you information on the system that we have established at Colorado School of Mines. We are proud of our record, but on the other hand also share your concern that explosives in the wrong hands remains the preferred weapon of terrorists, and so the safe use of explosives and their secured storage requires a coordinated and cooperative effort between legal users and law enforcement agencies.

Thank you for allowing me the opportunity to address these issues. I am happy to answer any questions you may have.

Sincerely,

Tibor G Rozgonyi

Mr. SHAYS. Thank you very much, sir.

Dr. ROZGONYI. Thank you.

Mr. SHAYS. Appreciate it. Thank you, Dr. Rozgonyi.

We will go now with Sgt. Mathiasen. Thank you.

STATEMENT OF SGT. STANLEY MATHIASEN

Sgt. MATHIASEN. Gentlemen, thank you.

Mr. SHAYS. Nice and loud, sir.

Sgt. MATHIASEN. I am Stan Mathiasen. I am a sergeant with the Santa Barbara Sheriff's Department and the bomb squad commander for that agency. I am also chairman of the National Bomb Squad Commanders Advisory Board.

The National Bomb Squad Commanders Advisory Board was formed in 1998 under the auspices of the FBI Bomb Data Center by popular vote of U.S. State and Local Bomb Squad Commanders.

The board is composed of 12 elected State and local bomb squad commanders from the four FBI reporting regions in the United States and its territories. Three members are elected from each region with one new member from each region elected yearly.

NBSCAB represents all 458 State and local bomb squads and over 2,600 certified bomb technicians. Several Federal agencies are liaison members to NBSCAB including ATF, FBI, NIJ, and the Department of Homeland Security. NBSCAB is tasked to set standards for accreditation of bomb squads, certification of bomb technicians, review and recommendation of training curriculum, and review and guidance regarding research and development of new tools and equipment. NBSCAB is recognized as the sole voice on matters concerning accredited State and local bomb squads within the Federal Government.

State and local bomb squads are aware of their responsibility to provide security for their explosive storage magazines and to comply with all applicable Federal, State, and local laws governing storage of explosives.

NBSCAB in conjunction with the International Association of Bomb Technicians and Investigators has notified bomb squad commanders via a letter dated April 2005, to examine their security measures to ensure they are in compliance with applicable laws, to keep a current and accurate inventory of stored explosives, to improve security measures if needed, and to avail themselves of voluntary magazine inspections provided by ATF.

I have provided a copy of this letter that was sent out to the bomb squads and would ask to have it entered in the records of these proceedings which I understand it has. Thank you.

NBSCAB is not opposed to increasing security requirements for magazine security. However we have several concerns. State and Local public entities are required to comply with current ATF—as well as any State and local—requirements for storage of explosives. Adding new Federal requirements for lights, alarms, fences, and other security measures will place additional compliance burdens on public safety agencies not required of Federal agencies, or the private sector.

Any requirement for mandatory inspection by ATF may be problematic for State and local bomb squads, in that not only are explo-

sives stored in magazines, but explosive related evidence in criminal cases are stored there as well.

The offer by the Federal Government to pay for additional security measures through Homeland Security Grant Funds, mentioned in the proposed draft legislation, while attractive, may present a situation where the bomb squad will receive only those funds necessary to provide additional magazine security, and will not enhance their response capability.

With the competition for grant funds among local agencies great, I fear this requirement may actually decrease the ability of bomb squads to obtain needed equipment. It may set up a situation where grant administrators are required to spend funds on magazine security in lieu of response equipment.

Bomb squads are on the front line in the response to terrorism in the United States and it is imperative that there be no degradation of operational response capabilities in these critical incidents. While this proposed legislation stands to provide some limited benefit to public safety through the addition of extra layers of security for stored explosives, there is a real danger that this benefit will be offset by a higher risk to the public through a potential diversion of funds for critical operational resources.

Thank you.

[The prepared statement of Sgt. Mathiasen follows:]

National Bomb Squad Commanders Advisory Board
P.O. Box 102230, Denver, CO 80250
www.nbscab.org

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Santa Barbara
County Sheriff's Dept

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IABTI

Testimony of Stan Mathiasen

Chairman

National Bomb Squad Commanders Advisory Board

BACKGROUND

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Several Federal Agencies are liaison members including ATF, FBI, NIJ, and DHS.

NBSCAB is tasked to set standards for accreditation of bomb squads, certification of bomb technicians, review and recommendation of training curriculum, and review and guidance regarding research and development of new tools and equipment. NBSCAB is recognized as the sole voice on matters concerning accredited state and local bomb squads.

PROPOSED MAGAZINE SECURITY LEGISLATION

State and Local Bomb Squads are aware of their responsibility to provide security for their explosive storage magazines and to comply with all applicable federal, state, and local laws governing storage of explosives.

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via letter (April 2005) to examine their security measures to ensure they are in compliance with applicable laws, to keep a current and accurate inventory of stored explosives, to improve security measures if needed, and to avail themselves of voluntary magazine inspections provided by ATF. I have provided a copy of this letter, and would ask to have it entered in the records of these proceedings.

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Stan Mathiasen
Chairman NBSCAB

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April 19, 2005

Dear Bomb Squad Commanders:

Members of the United States House of Representatives have recently conducted hearings on the issue of federal and state guidelines for the storage, monitoring and protection of explosive materials. These hearings focused on the potential terrorist threat and adequacy of safeguards and security measures for publicly managed explosive storage facilities, to include bomb squad explosive storage magazines. Congressman Tom Lantos summarized their concerns by saying, "Explosives stored at public facilities are a real target of opportunity for terrorists and other criminals. We must learn from the recent theft of explosive material in San Mateo and San Francisco in order to improve and protect our communities…the point is to minimize the risk that such a problem will occur here or elsewhere in the future."

Regardless of any legislation that may follow these hearings, the National Bomb Squad Commanders Advisory Board (NBSCAB), in conjunction with the International Association of Bomb Technicians and Investigators (IABTI) are urging all Bomb Squad Commanders to make an extra effort at this time to ensure that all bomb squad explosive storage magazines are as secure as possible from terrorist and criminal attack. We recognize the importance of the work being done through these Congressional hearings and believe that as commanders of U.S. bomb squads, who are responsible for reacting to terrorist bombings in the U.S., you will also stand with us in a demonstration of solidarity on this critical issue.

Actions we are recommending all bomb squads take at this time include:

1. Review and ensure your explosives magazine storage facility(s) are in compliance with Title 18, U.S.C., and CFR 27, Part 555.

2. Conduct a realistic assessment of the adequacy of security measures in place on your explosives storage facility and determine whether additional security measures are required, such as video monitoring, extra fencing, alarms, etc.

3. Ensure that you maintain a complete, accurate, and current inventory, of all explosives in your possession.

4. Examine the quantity of explosives stored by your organization, and ensure it is relevant for your needs.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is continually reevaluating the procedures and practices regarding the safe and effective administration of Title XI of the Organized Crime Control Act of 1970 and the newly enacted Safe Explosives Act of 2002. The purpose of this is not to burden bomb squads, who are involved with the safe and secure storage of explosives, but to do everything they can to protect the general public from criminal activities. While it is understood that we, as state and local public safety agencies, may enjoy some exemptions from criminal prosecution for violations of some Title 18, Federal Explosives Laws, we are not exempt from the laws dictating the storage of explosives material.

ATF is exploring the means to gather information on all law enforcement magazines currently in use. We encourage you to give ATF your full cooperation with this effort. Additionally, we recommend your squad participate in the voluntary magazine inspection program available from ATF. You may coordinate this by contacting your local ATF field office.

As members of the bomb squad community, we strive to act with the highest possible integrity. It is our goal to prevent and deprive terrorists and criminal elements the opportunity to acquire explosive materials in furtherance of their activities. Therefore, we ask you to join with us in this proactive counterterrorism offensive and take all reasonable steps to secure your explosives and meet this initiative.

Sincerely,

Stan Mathiasen

Stan Mathiasen
Chairman, NBSCAB

Barney T. Villa

Barney T. Villa IABTI
International Director

Mr. SHAYS. Thank you very much, Sergeant.

Mr. Petr. Thank you. I think that mic may have been turned off.

STATEMENT OF VILEM PETR

Mr. PETR. Thank you. Mr. Chairman and subcommittee members, ladies and gentlemen, I am sorry for my Czechoslovakian accent.

Mr. SHAYS. It is a great accent.

Mr. PETR. Thank you. I am pleased and very happy that I can testify today for you.

Just quick introduction of myself. My name is Vilem Petr.

Mr. SHAYS. I am going to have you not give your introduction of yourself. Just tell us about what you want on the record here.

Mr. PETR. OK. Yes.

Mr. SHAYS. Thank you. Only because we are aware of everybody's qualifications. That is why we invited you.

Mr. PETR. OK. Thank you. I am a research assistant professor at Colorado School of Mines. At the same time I am an explosive inspector for State of Colorado, Department of Labor and Employment, Division of Oil and Public Safety, Denver office in Colorado.

I have two things I would like to address. One is from the end of the user, people who are using daily explosives and also when you can control and regulate the explosives. One part that I think is important that also Dr. Rozgonyi mentioned for education purposes is how we can regulate and how we can use explosives.

The other part is when I represent the State of Colorado, when I am State inspector, I would just bring quickly overview of how many people, how many licenses we have by October 22, 2005. We have 1,725 active Type I permits, people who physically touch explosives, and we have 675 Type II permits. This is the companies who own explosives.

Also we have 287 Type III, the license for explosive magazines. The State of Colorado is following Federal regulations. Also we are controlling like if somebody will come and would like to have license from State of Colorado or practice explosive demolition or different things using explosives, they will also have to not just have ATF license but they will have to have Colorado license.

To be able to get Colorado license or use explosives, you have to have a minimum of 1 year experience under someone who has experience using explosives. The second part we also have is a regulation that you have to be 21 and mentally and physically able like we have with ATF.

But they have to provide us with employer letter that they have more than 1 year experience under supervision of somebody who has license.

We are not just giving a license to people. I want only to point it out. We can talk more about that later. Not all the States have controls like in Utah or Wyoming. They are much more leaning for the regulations and who has access to the explosives.

I will stop here. If you have some questions, I will be happy to answer them.

[The prepared statement of Dr. Petr follows:]

TESTIMONY OF
DR. VILEM PETR
RESEARCH ASSISTANT PROFESSOR OF THE MINING ENGINEERING
DEPARTMENT AT COLORADO SCHOOL OF MINES
AND STATE INSPECTOR, DEPARTMENT OF LABOR AND EMPOYMENT<
DIVISION OF OIL AND PUBLIC SAFETY, DENVER, COLORADO

Before the
HOUSE GOVERNMENT REFORM COMMITTEE
Subcommittee on National Security, Emerging Threats, and International Relationships

Concerning:
Thefts of Explosives from State and Local Government Storage Facilities are few, but may be underreported and State of Colorado regulations concerning the storage and security of explosive materials.

October 31, 2005 Field Hearing, San Mateo, California

Mr. Chairman and Members of the Subcommittee:

My name is Dr. Vilem Petr, Research Assistant Professor at Colorado School of Mines. I am also an Explosive Inspector with the State of Colorado, Department of Labor and Employment, Division of Oil and Public Safety, Denver, Colorado. I have more than 17 years of experience in the explosives industry. My first hands-on explosive experience began during my work as a mining engineer at the largest national ceramic company in the Czech Republic. Some of my responsibilities involved finding ways to improve explosive material transportation, explosive storage and explosive material handling for quarries and pits around the Czech Republic. During this time, I obtained my first blasting license.

In 1992, I came to the United States and spent several years at the University of Wisconsin, Milwaukee, where I was improving my skills in the English language. In 1995, I was accepted for the Masters program at the New Mexico Institute for Mining and Technology where I conducted research for rock fragmentation by explosives. In 1997, I began my Ph.D. program at Colorado School of Mines. My research included experimental and numerical studies on shock wave propagation within a geo-medium. After finishing my program in 2002, I continued on at Colorado School of Mines as research Assistant Professor. During this time, I have helped develop an explosive engineering program for undergraduate students. A month ago, I accepted a temporary position with the Division of Oil and Public Safety, Denver Office. In this role, I will help with the training of a new explosive field inspector and will help with the investigation of some of the technical cases. In addition, I will be involved in approving new candidates for state explosives licenses and in the development of new training programs for blasters and explosive end users. I would like to make disclaimer that all my opinions and recommendations are based on my personal, professional and practical experiences.

During this last fifteen years, the Department of Labor, Division of Oil and Public Safety, established rules and regulations for the usage of explosives materials in the State of Colorado. These rules and regulations address the manufacture, possession, sale, storage, transport, and disposal of explosive materials or blasting agents in the interest of life, health, and safety of employees, and the general public, as well as the protection of properties. The main reason for these changes was not due to international politics, but rather had to do with the large population growth in the State of Colorado. The population along the Front Range and Western Slope has almost doubled in the last ten years. 2002 in response to the September 11, 2001 additional explosive regulations were introduced on persons which are prohibited from receiving or possessing explosives.

A primary strategic goal of the Division of Oil and Public safety is to ensure implementation of statutory mandates or requirements, maintain a safe Colorado work, educational and living environment utilizing codes and standards and rules adopted by Division of Oil and Public safety. This includes the administer, investigate, inspect and enforce state wide compliance with laws and regulations promulgated under Title 8, C.R.S., regulation of carnival and amusement parks and Title 9, C.R.S., Explosive Regulation and Inspection. Prepare and administer exams to qualified applicants, assist local and federal law enforcement by conducting investigation upon request, conducts training and fully knowledgeable of federal and local laws pertaining to the use of explosives for purposes of proper application. As well as consistently monitor changes to federal regulations for conflict with state regulations. Issues permits to qualified applicants. Assists the Attorney General's office in representing the State of Colorado in hearings held for the denial, suspension of revocation of explosives permits, conducts inspections to ensure compliance. Educates the public and permit holders about their legal rights and responsibilities. The Division of Oil and Public Safety mandates that it is against the law for any person to physically touch or possess any amount of explosive material without a valid permit, and will be processed according to criminal law.

Last year, the U.S. explosives production was 2.52 million metric tons (Mt). This is a 10% increase from 2003. This data is based on reported sales of explosives from every state. Coal mining, with 67% of total consumption, continued to be the dominant use of explosives in the United States. Wyoming, West Virginia and Kentucky, led the nation in coal production, accounting for 59% of the total. These states were therefore, the leading users of explosives. Colorado falls within the top twenty-five states in terms of explosive consumption. (Reference: The Institute of Makers of Explosives, Newsletters)

Additional explosives usage in the State of Colorado in the last ten years had to do with the increased cost of energy and new energy exploration for natural gas in Colorado. New wells need to be perforated by using explosive devices. Some of the older wells need to be reopened using explosive material. Explosive devices are also needed for clean up of the wells. The rising price of precious metals and uranium on the world market has increased mining activities in the State. Due to the population growth, usage of explosive materials has grown each year as new demands for quarrying, construction and

transportation are made. Another active use of explosives is in the avalanche control industry which is driven by tourist trade and transportation demands.

EXPLOSIVE STORAGE REGULATIONS ENFORCED BY STATE OF COLORADO AND ATF

The State of Colorado explosive regulations were revised on March 30, 2005 and several new changes were introduced. These changes are a direct result of the introduction of new technical developments in the explosive industry, such as a new initiation system and electronic detonators.

Colorado regulations have three permit types and classifications. The permits are separated according to type. A permit may have more than one designated classification; however, for each and every classification requested, an application must show legitimate use and qualification. The qualification must be reinforced by more than one (1) year of practical hands–on training under the supervision of an experienced blaster or explosive manufacturer. Companies who hold Type II and Type III permits must submit a written request demonstrating that the applicant successfully finished one year of practical training and the applicant is ready for a state exam for a type I permit. The State of Colorado's explosive regulatory system is working in conjunction with the explosive industry. I would like to add that our Mining Engineering Department in particular has a very good relationship with the explosive industry. The Mining Engineering Department has ongoing research with leading world explosives companies on new explosives products and new blasting technologies.

The Type I permit is designed for all individuals who possess and control explosives materials and are classified as users: construction, construction limited, quarry operations, avalanche control, geophysical exploration, transporter, and special use.

The Type II permit is for corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies involved in the use, purchase, sale, manufacture, transportation, or disposal of explosive materials. The Type II permit has the following classifications: classification as a manufacturer of explosives, classification as a dealer of explosives, classification as a purchaser of explosives, classification as a purchaser limited, classification as a user of explosives and transportation.

The Type III permit is for corporations, companies, partnerships, firms, individuals operating a business, associations, or state or local government agencies that store explosives within storage magazine sites. Each magazine has written notification of the location of the permanent storage magazine site and this information will be made available to the fire district or department. Duration of the permit can not exceed more than three (3) years and will be inspected by the Division of Oil and Public Safety prior to the renewal of the Type III permit. Temporary explosive magazines may not exceed a

Table 1. Types of businesses who use explosive material and the number of applicants for each category in Colorado in 2005. (Reference Database of Division of Oil and Public Safety)

Category	Type II	Category	Type II
Construction	237	Manufacturing	14
Quarry	16	Seismic	34
Distributor	12	Avalanche	38
Government	33	Power	29
Law	26	Water	8
Excavation	41	Telephone	0
Mining	28	Well	39
Demolition	7	Logging	0
Agribusiness	17	Research	16
Hazardous	8	Highways	6
Ranching	20	Other	35
Aircraft	1	Unknown	14

ninety (90) day period, upon written notification to the Division of Oil and Public Safety of the location of the magazine site, and supplier of the magazines being utilized, the type and quantity of explosives being stored and proof of the written notification of the location of the storage magazine to the applicable fire district or department and county sheriff.

The Division of Oil and Public Safety office oversees 24 different types of business categories for the use of explosives:
Construction, quarry, distributor, government, law, excavation, mining, demolition, manufacturing, seismic, avalanche, power, water, telephone, well, logging, agribusiness, research, hazardous, ranching, highways, aircraft, other and unknown. For more details see Table 1.

As of October 22, 2005, the State of Colorado has 1727 active Type I permits, 679 Type II permit renewals, and 287 Type III permit renewals.

The Federal and state criminal and regulatory authority over explosives extends back to the Organized Crime Control Act of 1970. This act imposed control over the manufacture, distribution, importation and storage of explosives, and gave the ATF and each State, enforcement responsibility for these controls. This status was amended by the Safe Explosive Act of 2002 in response to the September 11, 2001 terrorist attacks. The Safe Act was signed into law by the President on November 25, 2002. Congress renamed ATF the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and introduced the Act which adds three new categories of persons prohibited from receiving or possessing explosives: (1)-aliens (with limited exceptions), (2) persons who have been

dishonorably discharged from military, and (3) citizens of the United States who have renounced their citizenship.

Only Federal government agencies, law enforcement and military personnel are exempt from storage requirements, as described in ATF regulation 18 USC Sec. 845(a)(6).

EXPLOSIVE INCIDENTS, THEFTS AND STATISTICS

In 2004, there were 1798 explosive licenses and renewals permitted in the State of Colorado. Over the last ten (10) years there have been few explosive thefts in the state of Colorado.

In 2003, there was an explosive theft in Colorado Springs in which burglars cut a Master padlock on a storage trailer (type V magazine) at a quarry site and took eight 40–pound bags of ANFO. ANFO is classified as a blasting agent and is not detonator sensitive. Officials said they had no information that pointed to terrorist involvement, but to my knowledge, none of the stolen explosive material was recovered. (Reference :USA Today 7.18.2003)

Division of Oil and Public Safety office do provide voluntarily requested inspections for storage facilities owned by police departments. In the last few years the Division of Oil and Public Safety office have developed good cooperation with Sheriff's departments and bomb technicians around the State of Colorado. I believe that our Achilles weak point for the better regulation and control of explosive materials storage is the exemption of the mandatory inspections of the Federal agencies, law enforcement and military storage facilities. They should be held to the same standards and regulations as any explosives user.

ADDITIONAL STATE OF COLORADO REGULATORY EFFORTS FOR STORAGE AND REPORTING THEFT OF EXPLOSIVES MATERIALS

The Division of Oil and Public Safety continues to work with the International Society of Explosive Engineers, ATF, Department of Natural Resources Division of Minerals and Geology, and The Institute of Makers of Explosives (IME). Division inspectors attend numerous seminars and events sponsored by these organizations and work with these groups to quickly integrate new information.

RECOMMENDATIONS:

(1) I believe that the ATF should be able to conduct mandatory inspections for explosive storage and explosive handling of state and local government entities and police forces.

(2) The state regulatory department should be able to conduct mandatory inspections of the storage facilities of police forces as well as other explosive users, manufacturers and dealers.
(3) Federal financial support / grants should be required to develop uniform training courses and exams which are standardized nationally for quality and depth of knowledge. These courses and exams should be transferable to other states with minimal testing or with emphasis on the site specific requirements.

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to testify today and share with you information on behalf of the Division of Oil and Public Safety in the State of Colorado explosive regulations, storage and handling of explosive materials. As well, we understand that one of our main responsibilities is general public safety. Good cooperation between federal and state agencies is necessary to win the fight against terrorism. I would be happy to answer any questions you may have.

Respectfully,

Dr. Vilem Petr

Mr. SHAYS. Thank you. One of the reasons we invited you was that our reading is that Colorado has paid a lot more attention to this than other States and we thank you.

At this time we will go to Mr. Ronay.

STATEMENT OF JAMES CHRISTOPHER RONAY

Mr. RONAY. Thank you, Mr. Chairman and Representative Lantos. Good morning.

The Institute of Makers of Explosives is very pleased to be here today once again having participated last year. We are the Safety and Security Institute serving the commercial explosives industry and the government since 1913. You may recall from my previous testimony that over 5½ billion pounds of industrial explosives are consumed annually in the United States. All of the metals, minerals, petroleum products, construction materials, and many consumer products are available today because commercial explosives make them possible.

Since our last meeting, the IME has completed and published safety library publication No. 27 which I have provided to the subcommittee. It is entitled, "Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives." This comprehensive document addresses security in all aspects of daily operations and is intended for use by all who use commercial explosives.

The IMR is also working closely with the Bureau of Alcohol, Tobacco, Firearms, and Explosives to develop security recommendations for Federal explosives licensees. We have also produced a training video with ATF dealing with the safe storage of explosives. The explosive industry embraces the oversight of the many agencies that promulgate the rules by which we are governed. We are very proud of our contribution to the development of these rules over the last 90 years.

I want to emphasize that the current Federal regulatory regime works very well for the industrial sector. We believe that any mechanism that prevents explosive materials from falling into the wrong hands enhances security. It would undoubtedly be best to require Federal oversight of all explosive storage facilities. However, I must emphasize that any additional mandate given to the ATF must not infringe on its ability to maintain appropriate oversight of the many more and much larger industrial explosives operations and facilities. The ATF presently has barely adequate facilities to oversee all the private sector licensees.

Finally, let me emphasize this industry's commitment to the security of all explosives operations. We continually seek to develop more effective and reasonable requirements that will ensure the continued availability of our products for use in the commerce of our Nation.

I thank the subcommittee for this opportunity and will respectfully answer any questions.

[The prepared statement of Mr. Ronay follows:]

Statement of

J. Christopher Ronay
President
Institute of Makers of Explosives

before the

House Government Reform Committee
Subcommittee on National Security, Emerging Threats and International Relations

concerning

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities

October 31, 2005

Mr. Chairman and Members of the Subcommittee:

I am Christopher Ronay, President of the Institute of Makers of Explosives commonly referred to as the IME.

The IME represents the U.S. manufacturers of industrial high explosives and other companies that distribute explosives or provide related services. Over 2.5 million metric tons of industrial explosives are consumed annually in the United States. Of this, IME member companies produce over 98 percent of the high explosives and the great majority of the blasting agents and oxidizers. These products are used in every state of the Union and are distributed worldwide. The value of this essential commodity is estimated in excess of $1 billion annually. The ability to manufacture, transport and distribute these products safely and securely is critical to this industry.

Industrial explosives are essential to mining, quarrying, construction, demolition, petroleum production and natural resource exploration. They are the backbone of our industrial society. Metals, minerals, petroleum, electricity, construction activities and materials, and consumer products are available today because commercial explosives make them possible.

The IME is the safety and security institute serving the commercial explosives industry and the government for over 90 years. Our mission is to promote safety and the protection of employees, users, the public and the environment during the manufacture, transportation, storage, handling and use of explosive materials. The IME is not a trade association and is prohibited by its bylaws from engaging in any activity that is marketing or sales related.

The explosives industry embraces the comprehensive regulatory environment in which we work and the oversight of the many agencies that promulgate the rules by which we are governed. We

are very proud of the contribution that the IME has made over the last 90 years in the development of such regulations.

IME Initiatives

I would like to briefly update you on some important IME initiatives since we last met in August 2004.

The IME has produced a brochure that highlights the essential contribution commercial explosives make to our society. Metals, minerals, petroleum, coal for electricity, construction materials, site preparation, and consumer products are economically feasible today through the use of commercial explosives.

In keeping with our reputation as a standard-setting organization, the IME has developed and published the 38 page Safety Library Publication No. 27 (SLP 27), ***Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives***. This document includes general security fundamentals that, as a minimum, should be adopted in all explosives operations. These fundamentals range from limiting public disclosure of sensitive operational information to the development of security plans and vulnerability assessments for each area of operation.

This comprehensive document goes on to specify in detail operational recommendations for each facet of explosives manufacture, transportation, storage and use that generally go beyond what is required in regulation.

For example, at manufacturing sites, it offers specific guidance for fences, gates and entry control, inventory and record keeping, intraplant transport and methods of waste material disposal.

Relative to transportation, the guidance specifies security procedures for common carriers, security plans and training, highway security, communications and route tracking.

The storage of explosives is covered by guidance on perimeter control, magazine security, electronic surveillance, key and lock specifications, inventory control and reporting lefts and losses.

The use of explosives section covers blast site security, blasting permits, shot reports and inventory reconciliation.

The IME is also working cooperatively with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to develop a booklet entitled, "Safety and Security Information for Federal Explosives Licensees and Permittees." This document will contain useful information for the community on regulatory requirements and recommendations for securing explosives against theft and loss.

Likewise, the IME is always seeking ways to contribute to the safety and security of commercial explosives and their handling. We are pleased to have produced with ATF the video training

program titled: ***The Safe Storage of Explosives,*** which is available to public and private sector entities to ensure compliance with Federal Explosives Law (FEL).

The GAO Report

I have been invited today to comment on the Government Accountability Office (GAO) report regarding thefts of explosives from state and local government storage facilities, and the IME security recommendations contained in SLP 27. It is my pleasure to be asked to participate in this committee's examination of the adequacy of state and local guidelines for the protection of these facilities.

The current federal regulatory regime works very well for the private sector and ensures compliance with the regulations and the timely reporting of thefts and losses. The IME endorses the ATF inspection process and shares the objective of safe and secure storage of explosives in compliance with the regulations.

In response to one of the committee's questions, the IME has no way of knowing the current adequacy of state and local regulations governing the storage of explosives by public entities.

The GAO report recommends that ATF clarify to all entities storing explosives their responsibility to report all thefts and losses to ATF. Such reporting is presently required by law of all non-exempted explosives facilities. This includes the public sector, over which ATF does not have licensing or inspection authority.

It should be noted that state and local storage facilities are presently required to comply with the remainder of the FEL as well. This requirement is not in any way mitigated because ATF does not have the authority to issue licenses to or conduct inspections of these facilities.

Similarly, IME publication SLP 27 does not distinguish between public and private entities. The recommendations contained therein apply to all those who are engaged in the manufacture, transportation, storage and use of explosive materials.

In essence, the explosives industry, long aware that their products are attractive to criminals, has always operated at the "yellow" or "elevated" DHS threat level. IME has recommended that explosives be stored in theft resistant magazines under lock and key since its inception in 1913. Since 1970 it has been a federal crime to fail to report a theft or loss of explosives. This applies to all entities, private and public. Therefore, the majority of SLP 27 applies to everyday operations when the DHS threat level is at or below "yellow" or "elevated" and is applicable to all entities that store explosives, private and public.

It is through such vehicles as SLP 27 and the *Safe Storage of Explosives* training program that we hope to enhance security in both the private and public components of the explosives community.

One possible enhancement to the current federal requirements that might be considered would be to require the registration of public storage facilities with the ATF. With such registration the

ATF, which has been designated the national repository for all explosives data, would have an accurate inventory of private and public explosives storage facilities throughout the country.

However, we would like to emphasize that any additional mandate given to the agency should not infringe on its ability to maintain appropriate oversight of the many more and much larger commercial explosives facilities. As mentioned in my introduction, the commercial industry consumes over 2.5 million metric tons of explosives annually and embraces the comprehensive regulatory oversight by the federal government.

The public sector requires explosives for civic works, research, public safety and emergency preparedness purposes. They also store dangerous evidence in explosives cases subject to investigative and prosecutive requirements. The relatively small amounts of explosives maintained in such public storage facilities rank low on the risk assessment scale in comparison to the those used in the private sector.

The ATF presently has barely adequate resources to oversee all of the private sector licensees. Additional funding is necessary now to ensure a comprehensive inspection program and increase security because of the vast number of private sector facilities. We believe this should have a higher priority than extending the agency's inspection authority over public sector entities.

Conclusion

The IME believes that any mechanism that prevents explosive materials from falling into the wrong hands promotes security. In a perfect world, with unlimited resources, it would undoubtedly be best if all explosives storage facilities came under federal inspection authority. However, with limited resources available, realistic priorities must prevail, which I believe is one of the unstated conclusions of the GAO report.

Finally, let me emphasize IME's commitment to the safety and security of commercial explosives operations. This objective is what we do and have done for over 90 years. We do not take that responsibility lightly, and strive to participate in the partnership between government and industry with the mission to develop the most comprehensive reasonable federal explosives law.

I want to thank this Subcommittee for the opportunity to provide further comment on the issues raised by today's hearing. The Subcommittee should be commended for its attention to the sensitive and important issues surrounding the storage of explosive materials.

This concludes my testimony. I would be pleased to answer any questions.

Mr. SHAYS. Thank you, Mr. Ronay.
Sheriff Horsley.

STATEMENT OF DON HORSLEY

Sheriff HORSLEY. Thank you, Chairman Shays and Congressman Lantos. It has been over a year since my initial testimony before this subcommittee and my staff has been hard at work to improve the effectiveness of our bomb squad and rectify the conditions which led up to the July 2004 burglary of our shared storage facility located on the city and county of San Francisco Watershed Property, located in unincorporated San Mateo County.

Over the past year we have conducted a thorough review of our bomb squad to determine its operational status, training needs, management oversight and feasibility of a new storage site in San Mateo County. Last year our bomb squad had only two certified bomb technicians. Since then we have added three more bomb technicians to the squad as a consequence of the international events.

In addition, I have mandated that my management staff who has responsibility for oversight of the bomb squad attend the Hazardous Devices School [HDS], executive management course located at the Redstone Arsenal in Alabama. This course is designed to provide managers to effectively manage a bomb squad to ensure proper oversight and accountability.

Since the last public hearing on the subject, we have been successful in obtaining Homeland Security funding for much needed equipment, such as a response vehicle, state-of-the-art robot and various other mitigation tools and safety equipment that was lacking for our bomb squad in the past.

As of today's date, however, we have been unsuccessful in finding a suitable site in San Mateo County for storage and mitigation. However, within the next 60 days, we will be making a presentation to a city council in San Mateo County, with hopes of using a site within their city limits that meets both our requirements, and that of the Bureau of Alcohol, Tobacco, Firearms and Explosives [BATFE].

We are currently in the process of securing a temporary agreement with another law enforcement agency that exceeds that of the Bureau of Alcohol, Firearms, and Tobacco guidelines within the San Francisco Bay Area to store our explosives. Our Sheriffs Office executive staff has inspected this storage site. In fact, I have some photographs if you wish to see them later. They have reviewed their security and feel that it is suitable for our needs while we continue to search for a permanent site in San Mateo County.

The sheriffs bomb squad receives and responds to approximately 200 calls per year. When we collect explosive evidence, we render it safe, photograph the evidence, document our findings and dispose of it immediately at a predetermined location. On certain occasions, when the explosive device is rendered safe and disassembled, a small representative sample of the incendiary powder is kept as evidence to authenticate the device. At this time, we are not storing any explosive evidence but we are storing evidence with a neighboring county's facility.

Without a storage and/or training facility of our own, we must travel out of county, which reduces our response time to bomb call-

outs, increases staff costs in terms of overtime, creates another link in the chain of custody for those cases in which explosive evidence must be maintained.

Sheriffs bomb technicians currently provide expert testimony from the evidence that is collected and/or tested to authenticate any type of explosive device for all law enforcement agencies in San Mateo County. They do so from evidence that has been collected in either a pre- or post-blast crime scene.

Since we do not currently have explosives to train with, we have been doing explosive training with other local bomb squads and enrolling our staff in explosive training courses provided by both the Federal Bureau of Investigation and the Hazardous Device School.

Some of this training could be done in house which would reduce costs to the Sheriffs Office, and at the same time ensure that our bomb technicians meet the minimum monthly and yearly Federal training requirements.

As we move forward in planning to secure a new storage site, the main affect on our agency is the inability to store explosives, explosive evidence and to assist local in-county law enforcement agencies with collecting and storing confiscated illegal fireworks.

This concludes my comments. I would like to again thank the subcommittee for your interest in this issue and for your work in helping to develop national standards for explosive storage facilities.

[The prepared statement of Sheriff Horsley follows:]

Office of the Sheriff

DON HORSLEY
SHERIFF

GREGORY MUNKS
UNDERSHERIFF

COUNTY OF SAN MATEO
400 COUNTY CENTER • REDWOOD CITY • CALIFORNIA 94063 TELEPHONE (650) 599-1664

ADDRESS ALL COMMUNICATIONS TO THE SHERIFF

Homeland Security:
Surveillance and Monitoring of Explosive Storage Facilities
Monday, October 31, 2005
San Mateo, California

Testimony of Sheriff Don Horsley

I want to thank the members of the Subcommittee on National Security, Emerging Threats, and International Relations for again taking a leadership role on this important issue and for your willingness to work with local and state law enforcement on developing National Standards for Storage Facilities.

It has been over a year since my initial testimony before this Subcommittee and my staff has been hard at work to improve the effectiveness of our Bomb Squad and rectify the conditions which lead up to the July 2004 burglary of our shared storage facility located on the City and County of San Francisco Watershed Property, located in Unincorporated San Mateo County.

Following the burglary, I conducted a thorough internal review of our Bomb Squad to determine its operational status, training needs, management oversight and feasibility of a new storage site in San Mateo County.

At the time of the burglary, our Bomb Squad had only two certified Bomb Technicians. The San Mateo County Sheriff's Office has since received its federal certification and has added three more Bomb Technicians to the squad. In addition, I have mandated that my management staff who has responsibility for oversight of the Bomb Squad attend the Hazardous Devices School (HDS), Executive Management Course located at the Redstone Arsenal in Alabama. This course is designed to provide managers who don't have the technical knowledge of explosives to effectively manage a Bomb Squad to ensure proper oversight and accountability.

Since the last public hearing on the subject, I have been successful in obtaining Homeland Security funding for much needed equipment, such as a response vehicle, state-of-the-art robot and various other mitigation tools/safety equipment that was lacking for our Bomb Squad. Unfortunately, continued funding is never guaranteed and we would welcome any financial assistance the federal government can provide to address this important issue.

As of today's date, we have been unsuccessful in finding a suitable site in San Mateo County for storage and mitigation. However, within the next 60 days, we will be making a presentation to a City Council in San Mateo County, with hopes of using a site within their city limits that meets both our requirements, and that of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE).

We are currently in the process of securing a temporary agreement with another law enforcement agency that meets BATFE guidelines within the San Francisco Bay Area to store our explosives. I have personally seen this storage site, reviewed their security and feel that it is suitable for our needs while we continue to search for a permanent site in San Mateo County.

The Sheriff's Bomb Squad receives/responds to approximately 200 calls per year. When we collect explosive evidence, we render it safe, photograph the evidence, document our findings and dispose of it immediately, either on-site or at a predetermined location. On certain occasions when the explosive device is rendered safe and disassembled, a small representative sample of the incendiary powder is kept as evidence to authenticate the device. At this time, we are not storing any explosive evidence. Without a storage/training facility of our own, we must travel out of County, which reduces our response time to bomb callouts, increases staff costs (overtime) and creates another link in the chain of custody for those cases in which explosive evidence must be maintained.

Sheriff's Bomb Technicians currently provide expert testimony from the evidence that is collected and/or tested to authenticate any type of explosive device for <u>all</u> law enforcement agencies in San Mateo County. They do so from evidence that has been collected in either a pre- or post-blast crime scene. Since we do not currently have explosives to train with, we have been doing explosive training with other local Bomb Squads and enrolling in explosive training courses provided by both the Federal Bureau of Investigation and the Hazardous Device School. Some of this training could be done in house which would reduce costs to the Sheriff's Office, and at the same time ensure that our Bomb Technicians meet the minimum monthly and yearly federal training requirements.

As we move forward in planning to secure a new explosive storage site, the main affect on our agency is the inability to store explosives, explosive evidence and to assist local in-county law enforcement agencies with collecting and storing confiscated illegal fireworks. These fireworks are handled the same as high explosives that need to be held for pending court proceedings and/or to be destroyed. These agencies have had to take over responsibility and make arrangements to store their own illegal fireworks which present many officer and public safety issues. The Bomb Squad has recommended that these agencies photograph their illegal fireworks and when they are finished with the court proceedings, we will mitigate the illegal fireworks by appointment only. We have also provided many of these agencies with the fireworks seizure forms that are drafted by the California State Fire Marshall's Office. These forms allow the State Fire Marshall to

seize these fireworks for the purpose of destroying them. Unfortunately, the response time for the State Fire Marshall's Office may be extended due to other calls for service.

That concludes my comments. I would like to again thank the committee for your interest in this issue and for your work in helping to develop national Standards for Explosive Storage Facilities.

Mr. SHAYS. Thank you, Sheriff Horsley.

At this time Lt. Kirby.

STATEMENT OF LT. GARY KIRBY

Lt. KIRBY. Good morning, Chairman, Mr. Lantos, and subcommittee members. I am currently a lieutenant for the San Jose Police Department assigned to the Chief's Office as commander of Research and Development Unit.

The San Jose Police Department has 12 active bomb technicians and investigators and we investigate approximately 250 to 300 explosive incidents a year. Since 1992 the department has maintained an explosive storage magazine for both high and low grade explosives on the site of our 6-acre Bomb Range and Training Facility.

The Bomb Range and Training Facility is the only explosive magazine available for use to other county, State, and Federal law enforcement agencies within Santa Clara County. This facility exceeds current ATF explosive storage requirements as set forth in U.S. Government codes.

In addition to the ATF storage regulations, this facility has daily inspections of the explosive storage magazine and is completely surrounded with locked cyclone fencing and electronic monitoring devices.

Explosives are stored at the facility for a variety of uses which include evidence storage of a criminal investigation, related bomb technician duties for rendering safe explosives, rendering safe explosives for training facilities, ongoing training and special instructional courses provided in conjunction with the FBI and ATF, as well as providing the safe storage of explosives used exclusively for training San Jose Police Department bomb detection dogs assigned to the San Jose Airport as part of the Transportation Safety Agency security requirements.

The BRTF is located in a heavily industrialized section of the city of San Jose which also happens to be a considerable distance away from residential populations and also frequent patrol activities that would check during non-business hours.

In the past, the San Jose Police Department was confident with the existing security measures in place for the protection of explosive materials and safety measures for personnel responding to alarm calls on breaches in security at the BRTF. In light of the current threat environment, however, associated to potential terrorist activity, our position and level of comfort on adequate security measures has changed.

We, along with other associations such as the International Association of Bomb Technicians and Investigators, believe we should elevate our ability to secure, monitor, and respond to incidents relating at our BRTF. The course of corrective action determined by the police department to provide the desired security enhancements is to install a more sophisticated security alarms that will detect intrusive movements anywhere on the bomb range training facility prior to any intrusion targeting the explosive storage magazine.

The addition of remote camera viewing through secured computer Web access directly to the San Jose Police Department Com-

munications dispatch operators is an additional enhancement recommendation. This will not only allow for remote camera viewing during security breaches, but also adds increased security during training and routine explosives handling.

Most breaches in security require a post investigation that centers around such questions as what was taken, who took the explosives, and how do we initiate a timely investigation with suspect descriptions and routes of departure. The proposed security enhancements would assist in the post-investigative process and could possibly act as a deterrent to a breach in security by their mere presence.

To secure funding for this project, estimated at a cost of approximately $20,000, the San Jose Police Department submitted a request for funding on the 2005 U.S. Department of Homeland Security, Office for Domestic Preparedness, through the California State Homeland Security Program. The request was submitted to the Santa Clara County State Homeland Security Approval Authority for consideration. The Approval Authority took the request under submission and presented it along with other law enforcement agency requests to be prioritized in order of importance as determined by the Santa Clara County Association of Police and Fire Chiefs.

Through their prioritization process, the funding to purchase the increased security and monitoring equipment was not granted on the first round of approval. To the credit of the Santa Clara County Approval Authority, this body did recognize the importance of this equipment and committed to earmarking any identified project savings during this funding period to purchase the requested equipment.

However, in the interim, a similar request for funding has been submitted to the Department of Homeland Security, Buffer Zone Protection Plan. We feel this is a greater likelihood that this security enhancement will be made available through the BZPP funding rather than waiting for identified project savings from State Homeland Security.

Law enforcement agencies nationwide continue to work together in the fight against terrorism. We know that the use of explosives is a key effort in the terrorist activity. I believe the efforts of this subcommittee will assist in the winning of this war, through collective sharing and support of security enhancements that will work toward guarding the Nation's storage of explosives.

I thank you for the opportunity to talk to this committee and I am available for questions.

[The prepared statement of Lt. Kirby follows:]

San José Police Department

Statement of

Gary L. Kirby
Commander, Research and Development Unit
Office of the Chief of Police
On behalf of Chief Robert L. Davis
San Jose Police Department

before the

House Government Reform Committee
Subcommittee on National Security, Emerging Threats, and International Relations

concerning

Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities

October 31, 2005

Mr. Chairman and Members of the Subcommittee:

Good morning, my name is Gary Kirby, a Lieutenant with the San Jose Police Department. I am a full time sworn officer assigned as the Commander of the Research and Development Unit, Office of the Chief of Police.

The San Jose Police Department has twelve active Bomb Technicians and investigators. Since 1992, the Department has maintained an explosive storage magazine for high and low grade explosives on-site at our six-acre Bomb Range Training Facility (BRTF). This BRTF is the only explosive storage magazine available for use to other County, State and Federal law enforcement agencies in Santa Clara County, which meets and exceeds current ATF explosive storage

regulations, as set forth in 18 USC. Chapter 40, subpart K - Storage, section 55.204. In addition to the ATF storage regulations, this facility has daily inspections of the explosive storage magazine and is completely surrounded with locked cyclone fencing.

Explosives are stored at the facility for a variety of uses, to include evidence storage of explosives associated to a criminal investigation, related Bomb Technician duties requiring the use of explosives, rendering safe of explosive devices, ongoing training and special instructional courses provided in conjunction with the FBI and ATF, as well as providing the safe storage of explosives used exclusively for training SJPD bomb detection dogs assigned to the San Jose Airport as part of the Transportation Safety Agency (TSA) security requirements.

The BRTF is located in a heavily industrialized section of the City of San Jose, a considerable distance away from residential populations and frequent police patrol checks during non-use hours.

In the past, the San Jose Police Department was confident with the existing security measures in place for the protection of explosive materials and safety measures for personnel responding to alarm calls on breaches in security at the BRTF. In light of the current threat environment associated to potential terrorist activity, our position and level of comfort on adequate security measures has changed. We, along with other associations such as the International Association of Bomb Technicians and Investigators, believe we should elevate our ability to secure and monitor activity in and around the BRTF.

The course of corrective action determined by our Department to provide the desired security enhancements is to install a more sophisticated security system that would detect intrusive movement anywhere on the BRTF prior to any intrusion targeting the explosive storage magazine. The addition of remote camera viewing through secured computer web access directly to the San Jose Police Communications dispatch operators is an additional enhancement recommendation. This will not only allow for remote camera viewing during security breaches, but also adds increased safety during training and routine explosives handling. Most breaches in security require a post investigation that centers around the questions of was anything taken, who took the explosives, and how do we initiate a timely investigation with suspect description(s) and routes of departure. The proposed security enhancements would assist in this post-investigative process, and could possibly act as a deterrent to a breach in security by their mere presence.

To secure funding for this project, estimated at a cost of approximately $20,000.00 dollars, the San Jose Police Department submitted a request for funding from the FY-05 U.S. Department of Homeland Security, Office for Domestic Preparedness, through the California State Homeland Security Program (SHSP). The request was submitted to the Santa Clara County State Homeland Security Approval Authority for consideration. The Approval Authority took the request under submission and presented it along with other law enforcement agency requests to be prioritized in order of importance, as determined by the Santa Clara County Association of Police and Fire Chiefs. Through their prioritization process, the funding to purchase the increased security and monitoring equipment was not granted on the first round of approval. To the credit of the Santa Clara County Approval Authority, they recognized the importance of this equipment and committed to earmarking any identified project savings during this funding

period to purchase the requested equipment. In the interim, a similar request for funding has been submitted to the Department of Homeland Security, Buffer Zone Protection Plan (BZPP). Now, there is a greater likelihood that this security enhancement will be made available through BZPP funding, rather than identified SHSP project savings.

Law enforcement agencies nationwide continue to work together in the fight against terrorism. We know that the use of explosives is key in the efforts of terrorist activities. I believe the efforts of this Subcommittee will assist us in winning this war, through collective sharing and support of security enhancements that will work towards guarding the Nation's storage of explosives.

I would like to thank the Committee for the opportunity to testify today and I am available to answer any questions you may have.

Mr. SHAYS. Thank you. We appreciate the testimony of all of you. Let me just start out by saying I would like to know from each of you what you may have agreed with most from the first panel and what you may have disagreed with most from anything you heard from the first panel. What you agreed with most and what you disagreed with most.

I am going to be looking for not long answers but fairly concise. I want to confide with all of you that I have a flight that leaves before 1 p.m., and if I could be out of here at 12:40 p.m., I will make my flight fine. Why don't we start with whoever is ready first to start.

Lt. KIRBY. Listening to the testimony today, I think that it was quite spirited and got to the point that although standards, though minimum, need to be quickly exceeded. We have tried to do that. Some of the things that I think need to be imposed upon is that we have talked about either two types of intrusion, either internal theft or external blatant break-ins.

Nowhere has there been a consorted discussion of how law enforcement agents such as myself and the sheriff seated here today would be responsible for recovering and successfully prosecuting these people that did that. As you create your standards, I would anticipate that there would be something into the early warning system, the capturing of photo ID and alarm systems that go to establish those procedures.

I also noticed that there was no discussion in the enhanced security within reason that these measures are using electronic devices for monitoring of breeches, that there is backup power, and that there are procedures set in place when there are power interruptions that inspection processes take place of those facilities. Those would be a couple of things that I would add to for consideration.

Mr. SHAYS. Thank you.

Sheriff HORSLEY. I think in my last testimony from a year ago, I recognized that there needed to be a national standard. Reading the GAO report on the number of thefts that occurred just in a few months of 2003, it was disconcerting to find out how many thefts there were from private storage facilities. I would recommend that there be national standards that apply to both the public and private sector, that they be consistent, and that there should be either annual or bi-annual inspection of all of those sites.

Mr. RONAY. I would have to agree with the first panel entirely that security should be the same for all storage entities. We have no question that they are already required to do so but the oversight that we have discussed would be appropriate.

I really don't have any cause to disagree with any of the presentations made except that in the development of these standards that we have today consideration has had to be given to the reality of conducting business in the United States, providing these products realistically to the consumers.

What might appear to be inadequate in some cases or minimally acceptable—I am commenting on your observation, Mr. Lantos—some of these things have been deemed to be required just for operational necessity. However, there is great room for improvement and our recommendations in the document that I mentioned do require considerably enhanced security measures.

Mr. SHAYS. Quickly before going to the rest of the panel, what State to you is the benchmark that we should look to that would toughen our standards beyond what the Federal Government has? What State to you is the most impressive in its oversight and regulation?

Mr. RONAY. What State of the union?

Mr. SHAYS. Yes.

Mr. RONAY. We are dealing in the State of Pennsylvania right at the moment with some very, very onerous security regulations that they have put in emergency effect.

Mr. SHAYS. I didn't ask you which is the most onerous. I am asking which of the ones do you think make the most sense? Is it Colorado? Is it what State? Think about it and I will come back to you.

Mr. RONAY. OK.

Mr. SHAYS. Am I putting you in an awkward position?

Mr. RONAY. No, not at all. I am just not sure I can answer that.

Mr. SHAYS. OK. Just think about it and I will come back.

Mr. Petr.

Mr. PETR. Thank you. I agree with everybody here that we need some uniform force here who can inspect magazines, not just private or the government like a bomb squad. In my private experience, I was helping with training bomb technicians and I have buried lots of friends but I think we should have access and somebody should overview their bookkeeping about explosive, how much explosives out, how much explosives in, who sold it, who bought it. I think it should be not just ATF but also maybe even the States should be involved in this regulative role.

What I disagree with, you know, the last 13 years I was here in the USA and I saw the change of the ATF. I saw that ATF before didn't do too much about explosives because they were not interested. They did lots of gun control and all that. Now I think they are doing a great job the last couple of years and I see the changes that ATF is improving for State of Colorado, Utah, and Wyoming.

They have only three inspectors to inspect all the magazines. Now they have 10 inspectors and they finally are getting up to speed. I am just saying this is from the field and I am getting feedback that they do a great job. They go back and they go in depth with checking. I think this is——

Mr. SHAYS. So whatever we see as a state of affairs, it was a lot worse before?

Mr. PETR. Yes.

Mr. SHAYS. And you have seen improvement.

Mr. PETR. Yes.

Mr. SHAYS. Thank you.

Sgt. MATHIASEN. With this morning's testimony, I think we all know that these standards are probably set too low and we need to bump them up and we are in agreement with that. I was just a little bit surprised that they did identify some thefts that weren't reported. In the 20 years I have been a bomb technician and a bomb squad commander you know that when explosives are stolen you report it to ATF. That is drilled into you day one when you go to training.

Mr. SHAYS. So you were surprised they were not reported and we should be taking a better look at that and the consequences of not reporting. Thank you. Any other point?

Sgt. MATHIASEN. The only other point is sometimes those reporting requirements sometimes are paperwork errors. Somebody checked something in, somebody checked something out and they weren't on the same page. I would like to know more about what those thefts that weren't reported were.

Mr. SHAYS. Thank you.

Dr. Rozgonyi.

Dr. ROZGONYI. I think almost everybody took away what I was thinking, but I fully agree that we definitely should have a common basis for both public and private institution including universities. Especially if you take into account the diversity of the student body, what you are dealing with at the universities. I do not see a clear system how we should deal with that and the liability of the universities.

I think also that clear incidents reporting mechanisms should be established so there should not be any kind of misinterpretation and whom should report that one and when and how. And some kind of consequences if it is not happening in due time. Thank you.

Mr. SHAYS. Thank you.

Mr. Gonzalez.

Chief GONZALEZ. Thank you. One of the gentlemen from ATF mentioned the remoteness of the facilities which they are by need remote from most areas.

Mr. SHAYS. Unless they are in a municipal building.

Chief GONZALEZ. Except for that one. That is true. Because of that remoteness it protects the thieves as well as the people around them. Although this is a nuts and bolts issue, I guess, the security of these facilities should be something preventative, something prior to the magazine actually being breached because that is what takes the time. If you actually want to prevent a thief, I think that is where the security should concentrate.

Mr. SHAYS. Thank you.

Mr. Lantos.

Mr. LANTOS. Thank you, Mr. Chairman. Let me thank all the witnesses. I am very pleased that there is a growing consensus among these knowledgeable people that there ought to be no differentiation between public and private facilities because it simply doesn't make sense, that there need to be higher standards, that ATF needs to be better funded, and the higher standards will have to be fully adhered to and punitive measures taken where they are not.

I want to commend Sheriff Horsley and his department for taking these very significant steps that you have outlined to improve security here in San Mateo County. While we were all deeply regretful that these thefts occurred here, in the long run, it may have very positive ramifications because both the first hearing and this hearing, the subsequent hearing the chairman is planning, and the legislation we will introduce are the direct result of this episode and I am pleased that from this unfortunate incident positive nationwide consequences will flow.

I also want to thank you again, Mr. Chairman, for taking your very precious time and coming out here. This is a difficult area to come to and we appreciate your willingness to visit us.

Mr. SHAYS. My only problem is that I have family, a brother in Hillsboro, and I didn't tell him I was even here. He may read about it in the newspaper and wonder why.

Mr. LANTOS. We will have a news blackout on this hearing, Mr. Chairman.

Mr. SHAYS. Let me ask. Is there any final point that anyone wants to make sure is on the record that needs to be on the record so we don't leave here without that information being provided? First of all, I would quickly like to say give me a few of the model States. You don't have to give me just one.

Mr. RONAY. Yes. I was just thinking about it. I think in addition to Colorado, Kentucky and Connecticut have excellent regulatory——

Mr. SHAYS. You didn't say Connecticut just because I am from Connecticut?

Mr. RONAY. I had forgotten that entirely that you were from there.

Mr. SHAYS. Good to know. That makes me feel very good. Thank you.

Mr. RONAY. They are pretty good. I would make my one final comment if I might.

Mr. SHAYS. Sure.

Mr. RONAY. That is, throughout the many years I have been with the IME we have always endorsed funding for ATF to do their job properly. We know that it is a heavy task on them and if anything additional is added to their responsibilities, I know they have asked and we certainly would endorse that additional funding.

Mr. SHAYS. We totally agree that if you are going to ask them to do more, given that they are not funded enough now, we had better come up with some dollars for it. I think that is very clear.

Anyone else like to put any——

Mr. PETR. Mr. Chairman, I just want to thank by name Vince Chase and Bob Briggs of your staff for an outstanding job.

Mr. SHAYS. Thank you. And thank your staff as well.

Mr. LANTOS. Jason Rosenstock, Lynne Weil, and Ron Grimes.

Mr. SHAYS. We appreciate their work as well. Is there any other——

Mr. PETR. If you will make some changes in these regulations, can we define some license for the whole Nation, explosive license or explosive user that maybe ATF will double up tests that can be uniform for each? Right now every State has different regulations.

Mr. SHAYS. I think the focus that you are making clear to us, and others have as well, that besides looking at the facility and where we have the facility and how we keep the facility, the people who handle the explosive devices obviously are equally, if not more, important. That is a very key point. I see nodding of heads by the witnesses.

Any other comment before we hit the gavel? Any point that needs to be made part of the record? OK. With that we adjourn. I thank you for the cooperation of this panel. Excellent panel and we appreciate your work and help. We look forward to reporting

back to you in March about where we're at. This hearing is adjourned.

[Whereupon, at 11:33 a.m. the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

2 November 2005

Representative Christopher Shays
US House of Representatives
Committee on Governmental Reform
Chairman, Subcommittee on National Security

Representative Tom Lantos
US House of Representatives
Committee on Governmental Reform
Subcommittee on National Security

Thank you Congressman Shays and Congressman Lantos for the opportunity to submit testimony to your on the subject of explosives security in the USA. My name is **Robert C. Morhard** and I am a US Citizen living at 5101 Brandywine Drive, Eagleville, PA 19403. I have thirty-one years experience in the formulation, manufacture, storage, use, and disposal of explosives, propellants and pyrotechnics in more than fifty countries. I am a partner in Zukovich, Morhard & Wade, LLC, a design engineering firm that specializes in projects involving explosives, propellants and pyrotechnics. Our focus is on explosives formulation, manufacturing, UN hazards testing for explosives materials, explosives safety, blasting, explosives regulatory support, explosive identification, tracking and detection. Prior to entering the industrial sector in 1977, while in the US Military, I graduated with honors from US Air Force, US Navy and US Army Explosives Ordnance Disposal (EOD); Missile and Munitions; Chemical, Nuclear and Biological Munitions Disposal; and Weapons Mechanics technical schools. I have written many technical articles on explosives as well as a textbook: *Explosives and Rock Blasting*. I currently serve on explosives technical committees throughout the USA, Europe and Asia. I am a full voting member of the National Fire Protections Association NFPA 495 and NFPA 498 Explosives Technical Committees.

September 11th, 2001 redefined the US national view on explosives security. The large-scale coordinated bombings in London on July 7th must serve as a wake-up call to the United States. The US Government must overhaul its approach to explosives security as soon as possible. It is not a question of "if" but "when" roadside IED's or suicide bombings similar to what we see in Iraq every day, will be commonplace in the USA. These incidents will be devastating for the US economy and the US

standard of living. It is clear that the terrorists will bring the battle to the USA. Now is the time to prepare for this eventuality.

It is not acceptable to "pretend" to prevent detonators and explosives materials from being used for illegal or terrorist purposes. Today there is heightened need and demand for a nation-wide explosives security protection plan.

Existing supply-chain management technology and equipment currently in use can be readily adapted and quickly utilized to provide explosives security with US nationwide in real-time (24/7) with a complete record of personnel chain-of-custody. The US Government should be focusing on using existing technology to monitor and track all explosives materials from the point of manufacture, through all logistics movements and throughout storage and use. All people who come into contact with explosives materials should be credentialed and monitored or linked by supply-chain technology solutions as they come into contact with explosives materials, thereby facilitating a chain-of-custody. In my opinion, a US national explosives worker-licensing program needs to be developed to properly control who comes into contact with explosives and prevent explosives from being misused for terrorist bombings.

Explosives and detonators are the most basic raw material. The US explosives consuming industry includes the mining, quarrying, construction and oil exploration sectors. Practically every material and service forming the US Gross National Product relies on explosives materials. The US economy is driven by the extraction and utilization of coal, quarry aggregate and the ability to locate oil reserves; which all rely on explosives materials. In 2003, US industry consumed 2,290,000 metric tons of explosives materials. (*US Geological Survey Minerals Yearbook – 2003)*

The United States is largest explosives consuming nation in the world. Given the approximate US population of 296 million people and 2,290,000 metric tons of explosives consumed each year, that equates to an equivalent of 17 lbs of explosives for each US citizen each year. A terrorist using just 17 lbs of explosives within an improvised explosive device (IED) could cause a major bombing incident negatively affecting the US economy and cause public panic.

Also in 2003, the US consumed approximately 125,000,000 detonators. A detonator is any device containing an initiating or primary explosive that is used for initiating a detonation. All explosives

materials require a detonator to function. More importantly, while explosives can be improvised, all IED's require a detonator to function. The US should focus on identifying, tracking detonators and explosives materials in real-time to form a nationwide system of controlling these small explosive devices from being used in IED's.

Within the US Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is the US Government Agency tasked with enforcing the *Federal Explosives Law and Regulations.* I would like to thank the ATF for work since this law was set in place in 1970. Recently, the ATF has improved the design and site-layout for explosives storage magazines. I support the registration of all explosives storage magazines with the ATF. Most ATF inspectors are diligent and hard working professionals, however current methods of record examination are becoming obsolete in view of new real-time supply-chain technologies technologies. Increasing ATF manpower is not the answer, the use of modern technology is.

All ideas for enhancing US nationwide explosive security should be explored and action taken quickly. Real-time inventory, real time route control, and real-time chain-of-custody solution are commercially available as off -the-self technology and can be quickly adapted to the commercial explosives market within a matter of months

The *Federal Explosives Law* in recorded within Title 18 United States Code Chapter 40 as a set of regulations mandated under the *Organized Crime Control Act of 1970, Title XI. Public Law 91-452, Approved October 15, 1970 (as amended).*

> PURPOSE- SEC 1101 *The Congress hereby declares that the purpose of this title is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from the misuse and unsafe or insecure storage of explosives materials.*

In 2005, as was the case in the mid-1800's, explosives manufacturing and transactions are recorded on simple paper records. Not much has changed since then. At least 750,000 explosives transactions and movement, or more than one every minute of every day, are made by people without a systematic Federal background check. Explosives are stored and moved without monitoring or tracking and

maybe listed on records that are stored in boxes with little chance of being effective to ATF or other US law enforcement investigators. Not much has changed in 150 years.

Alarmingly, the ATF does not control these records and the task is left to industry. It is common knowledge that these records are simply filed away by the manufacturers and sellers, and never even forwarded to the US Government. The records simply have to be available for inspection by the ATF, a procedure that does nothing to enable law enforcement with a tool for quick investigations.

The subject of explosives security became the focus of the *Omnibus Antiterrorism Act of 1979* when the United States Senate Committee on Governmental Affairs ordered the Office of Technology Assessment to investigate and report on the use of identification and detection taggants in explosives materials which resulted in a 263 page report *Taggants in Explosives, Congress of the United States, Office of Technology Assessment Library of Congress Catalog Card Number 80-600070.*

This twenty-six year old study was the last time the US Government funded a large scale explosives identification and detection taggants study and certain there was no effort in that study to examine explosives security. Curiously, no efforts were made at that time to study detonators. As stated previously, September 11th, 2001 redefined the US national view on explosives security.

It should be noted that when *Taggants in Explosives* was prepared in 1979, the personal computer was in its infancy. Technologies so common now, such as GPS tracking and the real-time supply-chain hardware and software discussed in this proposal were not even envisioned. The reports outcome was affected by heavy lobbying by the explosive and mining industry as well as by the National Rifle Association (NRA) to sway the studies conclusions avoiding additional expense to manufacturing explosives or identify the manufacturer so as to shield liability in the event of a bombing. Fears of product liability outweighed public safety. America deserves another look and deserves explosives security.

In my opinion, the solution to improving explosives security in the USA involves the utilization of existing off-the-shelf supply-chain technologies and equipment already in place world-wide of non-explosives materials in the industrial manufacturing, logistics and retail sectors. I believe that embedding RFID smart identification taggants within, and placing covert marking upon, detonations

and explosives materials will provide a high technology approach to preventing bombings and apprehending those individuals who plan terrorist acts.

The current procedures for identifying and apprehending criminal or terrorist bombers only begin after a bombing, generally the result of an outright failure to control detonators and explosives materials. Should wide scale road-side IED's and suicide bombings become commonplace in the USA as they are in Iraq, new methods of identifying, tracking and monitoring explosives must be in place to locate terrorists before they have a chance to bomb again. The current procedures are both costly and inefficient, due to the fact that there is no real method of identification of individual explosives materials.

Hardening infrastructure assumes that terrorists will illegally obtain explosives and detonators and will be a successful as bombers, after the fact. Hardening infrastructure is the backend of explosives security and aggressive explosives security is the front end; and emphasis must be placed on preventing terrorists from obtaining detonators and explosives instead of waiting for the terrorist to strike.

Why is it that within the borders of the USA, the most technically advanced country in the world, explosive and detonator movements and storage are moved 750,000 times each year with no explosives security system in place to mark, track or monitor their movements making them easy terrorist targets?

Robert C. Morhard