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IMPROVING WORKPLACE SAFETY: STRENGTHENING OSHA ENFORCEMENT OF MULTI–SITE EMPLOYERS

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON

EDUCATION AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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IMPROVING WORKPLACE SAFETY: STRENGTHENING OSHA ENFORCEMENT OF MULTI–SITE EMPLOYERS

Wednesday, April 23, 2008
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and Labor
Washington, DC

The subcommittee met, pursuant to call, at 11:34 a.m., in room 2175, Rayburn House Office Building, Hon. Lynn Woolsey [chairwoman of the subcommittee] presiding.

Present: Representatives Woolsey, Payne, Shea-Porter, Hare, Wilson, and Kline.

Staff Present: Aaron Albright, Press Secretary; Tylease Alli, Hearing Clerk; Jordan Barab, Health/safety Professional; Jody Calemine, Labor Policy Deputy Director; Lynn Dondis, Policy Advisor, Subcommittee on Workforce Protections; Peter Galvin, Senior Labor Policy Advisor; Brian Kennedy, General Counsel; Sara Lonardo, Junior Legislative Associate, Labor; Michele Varnhagen, Labor Policy Director; Robert Borden, Minority General Counsel; Cameron Coursen, Minority Assistant Communications Director; Ed Gilroy, Minority Director of Workforce Policy; Rob Gregg, Minority Senior Legislative Assistant; Alexa Marrero, Minority Communications Director; Hannah Snoke, Minority Legislative Assistant; Linda Stevens, Minority Chief Clerk/Assistant to the General Counsel; and Loren Sweatt, Minority Professional Staff Member.

Chairwoman WOOLSEY. A quorum is present. The hearing of the committee will come to order, and I will yield myself as much time as I need for an opening statement and then I will yield to Ranking Member Wilson for his opening statement.

Welcome, everybody, to this very important hearing. On March, 2007, Mr. Eleazar Torres-Gomez, a 46-year-old washroom employee at Cintas, was killed at the company's Tulsa, Oklahoma plant when he stepped onto a conveyor to remove a jam of wet uniforms. He was then caught by a large robotic conveyor and dragged into a drier as it continued to operate for 20 minutes at 300 degrees before he was discovered. The death of Mr. Torres-Gomez was a preventable tragedy, and that is probably the most tragic part about all of this. It did not need to happen.

Emmanuel Torres is here today, the son of Mr. Torres-Gomez, and we want to thank you for being here. We know this is hard, but we will learn a lot from you and we thank you for your cour-

age. It is crucial that we hear from you today to understand what happened to your father and to look at ways to prevent similar tragedies.

Many of us on this subcommittee, in fact every single one of us on the subcommittee, were outraged that Cintas initially sought to blame Mr. Torres-Gomez for his own death. Imagine that, especially since Cintas has its own history of unsafe working conditions. It is for that reason that from the very beginning we have been concerned with this fatality and the implications that come along with it.

In fact, only days after the death of Mr. Torres-Gomez, we sent a letter to OSHA asking for a nationwide investigation of Cintas' facilities. One of the reasons we wanted OSHA to investigate was because we discovered that Cintas, the largest uniform supplier in North America with more than 400 facilities, employing more than 43,000 people, was actually well aware of the hazard that caused this tragedy and failed to take the necessary steps to prevent such an incident. We have documents, here they are, showing that years before this tragedy Cintas had experienced at least three close calls involving almost the exact same scenario that killed Mr. Torres-Gomez. Yet the company had failed to effectively address the problems.

An internal memo dated April 30, 2004, notified company officials, including regional health and safety coordinators of—and I quote them—an incident that could have resulted in serious injury and possible death. Accompanying this memo was an attachment from then Cintas President, Scott Farmer, who is currently the Chief Executive Officer, describing two other incidents in the year 2000 where employees had climbed onto working laundry conveyors to clear jams and both fell into a running washer. The problem the company faced was that to shut down the shuttle or conveyor belt, the drier and the unloading conveyor, is something that the company was apparently reluctant to do every time there was a jam. Among other measures designed to reduce the risk, the memo promised to discuss with manufacturers retrofitting the equipment so that the shuttle could be completely shut down without shutting everything else down. None of these promises were acted upon at the Tulsa facility.

We also know that OSHA was aware of those hazards. We have a July 7, 2005 OSHA letter of interpretation alerting employers, workers and inspectors about the need for fixes such as barriers and barrier guards with interlocks to protect employees from robotic laundry shuttle equipment like that used at the Tulsa plant. And on August 8, 2005, one month after the letter of interpretation was issued, OSHA inspectors investigated the company's Central Islip, New York facility and cited the company for the very violations which the bulletin addressed, the violations that are defined in this stack of documentation.

The OSHA citation against Cintas for the tragedy in Tulsa is more than $2.7 million, actually the largest OSHA fine ever assessed in the service sector. It included a repeat citation based on the hazards uncovered 2 years ago before in Central Islip, the hazards that were not isolated to Cintas in Tulsa. For example, the Tulsa citation was accompanied by a $117,000 penalty against the

Cintas facility in Columbus, Ohio and later a $196,000 citation against Cintas in Mobile, Alabama. In August 2007, Washington State OSHA fined Cintas over $13,000 after a worker's arm was almost torn off. California OSHA also cited Cintas for similar violations.

Our main purpose here today is to explore ways to assist OSHA and ways to assist employers to better protect their employees, but today we are also interested in looking at the problem of corporations with multiple sites in multiple States because somewhere the T's aren't being crossed, the I's aren't being dotted and what happens in one part of—one company in one part of the State or another State just doesn't transfer to the other part of the company. It is really short sighted.

Additionally, Cintas officials have visited us. They have come here. They have assured us that they have made significant changes in the company's safety policies. Well, we wanted to hear about those changes and we regret that scheduling problems made it impossible for any Cintas official to appear before us to describe the actions that they have taken before and after the death of Mr. Torres-Gomez. We are also aware that Cintas has challenged OSHA's citations, and we are following with great interest and a lot of concerns the progress of settlement negotiations with OSHA.

The problem of assuring safety at all facilities at large corporations is not, of course, just a problem at Cintas. So as I said earlier, we are looking at corporate-wide investigations and problems. We think that OSHA—we know that OSHA can do better and that corporate America must do better. We want to know if there are ways to enable OSHA to more effectively hold large employers accountable for compliance throughout their operations and ensure broader abatement of hazards. Are there problems with the Occupational Safety and Health Act itself or in OSHA's regulations that prevent OSHA from effectively addressing corporate-wide safety and health problems? We need to know those answers. Can changes in the law or OSHA regulations address these issues? And in addition, we need to know what a good corporate-wide health and multiple location safety program would actually look like.

Finally, what else can OSHA do to encourage companies to take more responsibility for their workers' safety and health? I hope we find the answers to these questions, if not today, over time. This will not be our only hearing. This is not the only time we are going to be interested in what is going on with the safety of workers in our country because it is a very important issue.

And now I would like to yield as much time as he may consume to the ranking member, Joe Wilson.

[The statement of Ms. Woolsey follows:]

Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman, Subcommittee on Workforce Protections

On March 6, 2007, Mr. Eleazar Torres-Gomez, a 46-year old washroom employee at Cintas, was killed at the company's Tulsa, Oklahoma, plant when he stepped onto a conveyor to remove a jam of wet uniforms.

He was then caught by a large robotic conveyor and dragged into a dryer as it continued to operate for 20 minutes at 300 degrees before he was discovered.

The death of Mr. Torres-Gomez was a preventable tragedy.

Emmanuel Torres, thank you so much for being here today.

It is crucial that we hear from you today to understand what happened to your father and to look at ways to prevent similar tragedies.

Many of us on this subcommittee were outraged that Cintas initially sought to blame Mr. Torres-Gomez for his own death.

Especially since Cintas has its own history of unsafe working conditions.

And it is for this reason that, from the beginning, we have been concerned with this fatality and its implications.

In fact, only days after the death of Mr. Torres-Gomez, we sent a letter to OSHA asking for a nation-wide investigation of Cintas facilities.

One of the reasons we wanted OSHA to investigate was because we discovered that Cintas, the largest uniform supplier in North America, with more than 400 facilities employing more than 34,000 people, was well aware of the hazard that caused this tragedy and failed to take the necessary steps to prevent such an incident.

We have documents showing that years before this tragedy, Cintas had experienced at least three "close calls" involving almost the exact same scenario that killed Mr. Torres-Gomez.

Yet the company had failed to effectively address the problems.

An internal memo dated April 30, 2004 notified company officials—including regional health and safety coordinators—of "an incident that could have resulted in serious injury and possible death."

Accompanying this memo was an attachment from then Cintas President Scott Farmer (currently the CEO) describing two other incidents in 2000 where employees had climbed onto working laundry conveyors to clear jams and fell into a running washer.

The problem the company faced was that in order to shut down the shuttle, or conveyor belt, the dryer and the unloading conveyor also had to be shut down, something that the company was apparently reluctant to do every time there was a jam.

Among other measures designed to reduce the risk, the memo promised to discuss with manufacturers retrofitting the equipment so that the shuttle could be completely shut down without shutting everything else down.

None of these promises were acted upon at the Tulsa facility. We know that OSHA was aware of these hazards!

We have a July 7, 2005 OSHA Letter of Interpretation alerting employers, workers and inspectors about the need for fixes—such as barriers and barrier guards with interlocks—to protect employees from robotic laundry shuttle equipment like that used at the Tulsa plant (where Mr. Torres Gomez was killed.)

And on August 8, 2005, one month after the Letter of Interpretation was issued, OSHA inspectors investigated the company's Central Islip, NY, facility, and cited the company for the very violations which the bulletin addressed.

The OSHA citation against Cintas for the tragedy in Tulsa is more than $2.7 million, the largest OSHA fine ever assessed in the service sector.

It included a "repeat" citation based on the hazards uncovered two years before in Central Islip. The hazards and citations were not isolated to Cintas in Tulsa -for example:

The Tulsa citation was accompanied by a $117,500 penalty against a Cintas facility in Columbus, Ohio, and later a $196,000 citation against Cintas in Mobile, Alabama.

In August 2007, Washington State OSHA fined Cintas $13,650 after a worker's arm was almost torn off.

California OSHA also cited Cintas for similar violations.

Our main purpose here today is to explore ways to assist OSHA and employers to better protect employees.

We are also interested in solving the problem of corporations with multiple sites and multiple states.

Additionally, Cintas officials have visited us and assured us that they have made significant changes in the company's safety policies (after Mr. Torres-Gomez's death).

We want to hear about that, but we regret that scheduling problems made it impossible for a Cintas official to appear before us to describe the actions they took before and after the death of Mr. Torres-Gomez.

We are also aware that Cintas has challenged OSHA's citations and we're following with great interest and concern the progress of settlement negotiations [with OSHA].

And the problem of ensuring safety at all of the facilities of large corporations is not, of course, just a problem at Cintas, so, as I said earlier, we are looking at corporate inside investigations and problems.

We think that OSHA can do better and that corporate America can do better.

We want to know if there are ways to enable OSHA to more effectively hold large employers accountable for compliance throughout their operations and ensure broader abatement of hazards.

Are there problems with the Occupational Safety and Health Act itself or in OSHA regulations that prevent OSHA from effectively addressing corporate wide safety and health problems?

Can changes in the law or OSHA regulations address these issues?

In addition, we need to know what a good corporate-wide health and multi-location safety program would look like.

And finally, what else can OSHA do to encourage companies to take more responsibility for their workers' safety and health?

I hope we find the answers to these questions and develop goals we can all work toward to keep our workers safe.

Mr. WILSON. Thank you, Chairwoman Woolsey. First, I would like to thank you for changing the time of this hearing in order for me to attend a very important South Carolina delegation meeting. I appreciate your willingness to honor my request and your staff's and the witnesses' efforts to rearrange the schedule in order to ensure I could participate in this subcommittee hearing today.

I, too, want to offer my condolences and sympathy to Mr. Torres for the terrible loss he and his family have experienced. His testimony will be difficult, and we thank him for coming today. The hearing today focuses on larger corporations with many work sites and how to make sure that a safety message is ingrained in everyone's workday.

At the subcommittee's field hearing in New Jersey in January, in which we focused on a different industrial laundry tragedy, I believe a three-part message became clear. First, employers must educate employees about the hazards that exist in the workplace. Second, companies need to continue to build safety into the corporate culture. And finally, employees need to be encouraged to ask questions and to provide valuable input into safety programs. Of course the question is how can we achieve all three of these goals.

Workplace safety and workplace success enhance each other. The fact is by using the right approach it is possible to put in place strong protections for workers that promote a company's ability to be productive, job creating and important in the community or communities it serves. For any worker to be injured or killed in a workplace is a tragedy, And I believe I speak for everyone when I say that the most important thing for us to do in the wake of such an event is to focus on prevention for the future.

Today's hearing may provide discussion about the role of OSHA. It is often easier to point fingers than to ask tough questions about what went wrong. But if we really want to ensure a safe workplace, we must examine if any of OSHA's regulations are in fact not working.

One of the issues we will discuss is OSHA's Enhanced Enforcement Program. Is this program effectively targeting workplaces? Are there other ways that OSHA could focus its resources? Another question we need to ask is are the regulations governing lockout, tag out procedures in confined places easily understood and effectively communicated?

I am hopeful that we will remain focused on these issues today. Ultimately our shared goal is safer workplaces. The panel before us will highlight a variety of important issues that we must carefully

consider. I welcome our witnesses and I look forward to their testimony and, Madam Chairwoman, I yield back my time.

[The statement of Mr. Wilson follows:]

Prepared Statement of Hon. Joe Wilson, Ranking Republican Member, Subcommittee on Workforce Protections

Good Morning, Chairwoman Woolsey.

First, I would like to thank you for changing the time of this hearing in order for me to attend a very important South Carolina delegation meeting. I appreciate your willingness to honor my request and your staff's and the witnesses' efforts to rearrange the schedule in order to ensure that I could participate in the Subcommittee hearing today.

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The hearing today focuses on larger corporations with many worksites and how to make sure that a safety message is ingrained in everyone's work day. At the Subcommittee's field hearing in January, in which we focused on a different industrial laundry tragedy, I believe a three part message became clear. First, employers must educate employees about the hazards that exist in a workplace. Second, companies need to continue to build safety into the corporate culture. And finally, employees need to be encouraged to ask questions and to provide valuable input into safety programs. Of course, the question is how can we achieve these three goals?

Workplace safety and workplace success enhance each other. The fact is, by using the right approach it is possible to put in place strong protections for workers that promote a company's ability to be a productive, job-creating engine in the community or communities it serves. For any worker to be injured or killed in the workplace is a tragedy, and I believe I speak for everyone when I say that the most important thing for us to do in the wake of such an event is to focus on prevention for the future.

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One of the issues we will discuss is OSHA's Enhanced Enforcement Program. Is this program effectively targeting workplaces? Are there other ways that OSHA could focus its resources?

Another question we need to ask is, are the regulations governing lock-out tag-out procedures and confined spaces easily understood and effectively communicated? I am hopeful that we will remain focused on these issues today.

Ultimately, our shared goal is safer workplaces. The panel before us will highlight a variety of important issues that we must carefully consider. I welcome our witnesses and look forward to their testimony.

Madam Chair, I yield back.

Chairwoman WOOLSEY. Thank you, Mr. Wilson. Now I yield to Mr. Hare for an opening statement.

Mr. HARE. Thank you, Madam Chair. And I appreciate your holding this hearing. It will give me the opportunity to speak this morning.

Let me first acknowledge the workers who came from all over the country to participate in today's hearing. I know some of you took a great risk in coming here. Your presence and personal stories are invaluable to this discussion. The issue of workplace safety is very personal to me. Before being elected to Congress, I was a lining cutter at Siefer Clothing Company in Rock Island, Illinois. I am one of the lucky ones to leave that job with all 10 of my fingers. It was very dangerous work.

The timing of this hearing is particularly relevant not only because statistics tell us that 16, 16 workers die every day from work-related injuries, but also because next Monday, April 28th,

marks the 20th annual Workers Memorial Day where we honor those who have lost their lives or were injured at their jobs. April 28th also commemorates the creation of the Occupational Safety and Health Administration.

Since 1970, OSHA has been a driving force in improving workplace safety and health conditions across this country. However, the Bush administration has sought to stifle that progress by downsizing OSHA, favoring employer voluntary programs over real enforcement. A weakened OSHA has real life or death consequences for American workers.

One such worker is Cintas washer employee Eleazar Torres-Gomez, whose son Emmanuel will testify this morning. Mr. Torres-Gomez died March 6, 2007 in Tulsa, Oklahoma when he reportedly was dragged by a conveyor belt into an industrial drier. He was trapped in temperatures of 300 degrees for more than 20 minutes.

I had the honor of meeting Emmanuel last April and was appalled by the total lack of responsibility Cintas took for this accident and the way this company treated the Torres-Gomez family. Cintas, the largest uniform supplier in North America, blamed Mr. Torres-Gomez for his own death, yet Cintas was aware of the safety issues with the machinery and even encouraged employees to climb on top of the equipment to fix jams that slowed down operations. Moreover, OSHA's Directorate of Compliance issued a special interpretation letter in 2005 alerting employers, workers and inspectors about the need for special guarding around robotic laundry shuttles. Tragically, OSHA did not act at the Tulsa plant and now 1 year later Cintas workers are still in danger. Safety inspectors found the same unguarded machines at Cintas facilities in Ohio, in Washington, in Alabama, California and, most recently, my home State of Illinois. Something must be done to allow OSHA to deal with hazards corporate-wide.

Right after Mr. Torres-Gomez's accident, our subcommittee asked OSHA to conduct an immediate nationwide investigation resulting in a historic $2.8 million citation against Cintas involving 46 illegal hazards and 42 willful—let me repeat that—willful violations. Sadly Cintas is not the only example of corporate disregard for workers. We have a real problem in American industry. Employers are exposing their workers to serious health and safety hazards and defying worker safety and health regulations.

As I hope will be revealed by our witnesses this morning, we must strengthen OSHA and give it the tools it needs to conduct corporate-wide investigations, enforce safety and health regulations at multi-site corporations and mitigate hazards so that companies like Cintas are held accountable for the safety of their employees.

We also need to build a corporate culture in this country that puts our workers first. Last year, Chairman Woolsey and I, along with Senator Ted Kennedy, introduced a Protecting America's Workers Act, which amends OSHA to cover more workers, increases penalties and strengthens protections and accountability. I hope as we move forward in the discussion of workplace safety we can consider this legislation.

Let me again thank you, Madam Chair. I look forward to hearing from our witnesses and working with the members of this subcommittee to ensure that our Nation's workers come home safe and

sound to their families every night. That is the bare minimum that any corporation and every corporation in this country owes to the workers that work so hard each and every day.

And one last thing. This is very difficult work that these workers have to do each and every day. This is not easy work. We heard this at a conference call this morning. And I just had to say from my perspective anything that I can do to assist you, Madam Chair, on this subcommittee, not just to make sure that Cintas, but that all corporations, play by the rules, I will do that. I thank you very much and I yield back the balance of my time.

Chairwoman WOOLSEY. Thank you, Mr. Hare. Actually, you are a perfect straight man for me because I was going to suggest and share with the audience that this morning we—Mr. Hare chaired a press conference where we heard stories from Cintas workers. They were amazing stories. And without objection, I would like to include their statements in the record with today's hearing. Thank you. Without objection, all members will have 14 days to submit additional materials for the hearing record.

[The information follows:]

[Article from the Wall Street Journal, dated April 23, 2008, submitted by Mr. Hare follows:]

[From the WALL STREET JOURNAL, April 23, 2008]

House Panel to Examine Cintas Plants' Safety Record

By JAMES BANDLER and KRIS MAHER

TULSA, OKLA.—Last year, Eleazar Torres-Gomez fell from a conveyor belt into an industrial dryer at a Cintas Corp. laundry here and was killed before anyone realized what happened. The accident prompted the federal government to propose the largest safety-related penalty ever against a service-sector company.

New details about the case—from internal company memos, Cintas surveillance videotapes and people close to the federal investigation—indicate that the dangerous practices that led to Mr. Torres-Gomez's death occurred frequently in Tulsa and at other plants operated by Cintas, the biggest uniform supplier in North America.

A person familiar with the probe said U.S. Occupational Safety and Health Administration officials believe Cintas workers climbing on moving conveyors and jumping atop stuck laundry were "standard work practices at a number of facilities."

Cintas spokeswoman Heather Trainer denied that it's standard practice. "In fact, every employee at the Tulsa facility, including the receptionists, was trained to never get on an energized conveyor at any time," she said.

On Wednesday, the House Subcommittee on Workforce Protections will hold a hearing on how well OSHA is policing employers like Cintas that have multiple facilities across the country. Although other companies will be mentioned, Cintas is expected to be exhibit A, according to people familiar with the hearing. The Democratic controlled committee is investigating allegations that Cintas didn't protect workers at all of its facilities from previously known hazards.

An OSHA spokeswoman said the agency couldn't comment on pending cases.

The federal government fined Cintas $2.8 million for the Tulsa accident. Cintas has appealed the fine. Shortly after the accident, Cintas CEO Scott Farmer said Mr. Torres-Gomez wasn't following proper procedures, "which would have prevented this tragic accident."

In its investigation, OSHA found that employees weren't trained in how to shut off equipment properly. A surveillance videotape at the Tulsa plant showed workers engaging in activities similar to what led to Mr.

Torres-Gomez's death over several weeks prior to the accident, say people familiar with OSHA's investigation. A government memo, sent by Richard E. Fairfax, director of enforcement for OSHA, states that over the previous two weeks, other employees had used the same method of dislodging jams some 34 times.

"Employees climbed on and walked up the moving shuttle conveyer, and kicked at, jumped on, and tried to knee the jammed clothing into the dryer opening," Mr. Fairfax wrote. "The recording also showed two employees inserting one of their legs

into the chutes of the operating washing machines and jumping up and down to clear jams of laundry in the chute."

Company surveillance video showed Mr. Torres-Gomez trying to clear the jam from the ground level. When that didn't work, he got on the conveyor shuttle and began jumping up and down to push a clump of jeans through. He fell into the dryer. The automatic door shut, and a pilot light ignited. More than 20 minutes later a co-worker, hearing a loud thudding noise, found Mr. Torres-Gomez dead, lying on a pile of jeans, according to a police report.

A Cintas spokeswoman said in a statement that the company couldn't comment on "the factual circumstances" of the accident, because it is currently negotiating a national settlement with the Labor Department and faces pending litigation. "The accident was tragic and shook us all," she said.

Cintas—whose stock ended Tuesday at $28.87 on the Nasdaq, down 14.13% year to date—posted sales of $3.71 billion and a profit of $334.5 million in fiscal 2007.

Commercial laundries operated by Cintas wash uniforms for hotels, airlines and restaurants, among others, as well as industrial shop towels and rugs. In automated plants, robotic conveyor systems called shuttles transfer hundreds of pounds of laundry from massive washers to dryers.

In a confidential safety bulletin in 2004 that hasn't been previously disclosed, Cintas's director of safety noted that laundry jams were "fairly common on automated wash floors" and presented a serious safety risk to workers.

The memo refers to an incident at a Cintas plant in Ohio in which a worker trying to dislodge a jam at the top of a shuttle was forced into a rotating dryer. The worker wasn't seriously injured because a second worker was present and immediately shut off power.

In the memo, Richard Gerlach, Cintas's director of safety, told managers to implement several basic safety procedures before trying to dislodge jams, including shutting off power to the shuttle and to dryers and having an observer present to prevent a mishap. These procedures weren't followed prior to the Tulsa accident.

Cintas said that there were other procedures in place that would have shut off the conveyor, but they weren't followed. The company said Mr. Gerlach wouldn't be available to comment. The company also said that it is in compliance with OSHA regulations, which accept shuttles with so-called presence-sensing guarding, which shuts off a shuttle if it encounters a person as it moves along a track. The shuttle in the Tulsa plant had that, but it didn't prevent workers from climbing on the machine while it was operating, according to people familiar with OSHA's investigation.

People close to the OSHA probe in Tulsa say plant managers knew that workers were standing on moving conveyer shuttles in order to dislodge jams. Surveillance video, they say, shows the dangerous practice sometimes occurred multiple times in a single shift. Workers told OSHA investigators they were "under a lot of pressure to keep everything going." The company said that while the company sets reasonable goals for employees, pressure didn't play any role in Mr. Torres-Gomez's death.

In its investigation into the Tulsa accident, OSHA cited Cintas for 42 "willful" violations—the most serious kind of violation because it denotes "intentional disregard" or "plain indifference" to employee safety.

Since 2002, there have been at least 70 inspections of Cintas plants, more than half of which resulted in citations, according to Mr. Fairfax's memo, which was prepared late last year.

Some industry officials say Cintas has had more inspections than most other laundry companies because it has been the target of a long-running organizing campaign by Unite Here. Eric Frumin, director of occupational safety and health for Unite Here, acknowledged that the union helped workers file complaints, but said that Cintas's safety problems were real, and that without these complaints, OSHA would never have scrutinized the industry. "What is the message when absent complaints or death, OSHA isn't going to show up?" Mr. Frumin said.

After a worker nearly lost his arm when it became caught in a washer at a Cintas plant in Yakima, Wash., last year, the state Department of Labor and Industries fined Cintas $13,600, citing it for a number of safety violations, including instances of workers standing on moving shuttles. Michael White, 52, who worked in the wash room at the Yakima plant for close to 30 years before quitting in November 2006, said Cintas scrapped some safety measures when it took over the plant about seven years ago. The previous employer scheduled two workers in the wash room, where shuttle systems automatically take laundry from washers and load it into dryers, Mr. White said, but Cintas decided only one person was needed to watch over the machinery. Cintas also took away safety switches that could be worn by employees and be used to shut off machinery in case of an emergency. The prior owner had required any employee entering the wash room to wear the devices, he said.

Richard Smith, who retired after he sold the Yakima plant to Cintas in 2000, confirmed Mr. White's description of procedures when he owned the facility, and Bourtai Hargrove, an assistant state attorney general who investigated the case, said witnesses at the plant confirmed Mr. White's assertion about the safety switches.

Cintas said it doesn't find any basis for Mr. White's allegations, which are "contrary to the company's entire safety and health culture."

Write to James Bandler at james.bandler@wsj.com1 and Kris Maher at kris.maher@wsj.com2

[Letter from Cintas, dated May 7, 2008, submitted by Ms. Woolsey follows:]

May 7, 2008

The Honorable Rep. Lynn Woolsey
The U.S. House of Representatives
Chairwoman
Workforce Protections Subcommittee
2263 Rayburn Building
Washington, D.C. 20515

Dear Representative Woolsey:

Thank you for the opportunity to allow me to address testimony made during the April 23, 2008 Workforce Protections Subcommittee Hearing titled, "Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-State Employers." Prior to addressing any of the April 23, 2008 testimony, I would once again like to express my condolences to the Torres Gomez family.

Safety has always been a top priority at Cintas. Our culture encourages open communications among our managers and employee-partners to raise ideas, issues and concerns about all work-related matters, including safety. We also offer a hot line and direct line of communication to raise concerns directly to a top-level officer, me or confidentially through a third party service provider.

For more than 40 years, each rental facility has had its own Safety & Improvement Committee comprised of frontline employee-partners from key production areas as well as senior plant management who meet regularly to review workplace safety procedures and guidelines.

When I became CEO in 2004 I instituted an annual "Partner Safety Day." Each location holds events that focus on employee-partners' health and safety. This annual event enables us to communicate company-wide our resolve for our employee-partners' safety, our policies and our commitment to achieving the highest level of safety performance. We understand that safety must be a daily part of each job. That's why we regularly re-examine and continuously enhance all of our safety programs.

Cintas Corporation 6800 Cintas Blvd P.O. Box 625737 Cincinnati, OH 45262-5737 Office 513.459.1200 Fax 513.701.1375 www.cintas.com

Also in 2004, we implemented a Health, Safety and Environment Scorecard and Playbook, a tool to provide a quick snapshot of a location's safety program and evaluate the safety and environmental compliance of our locations. In July 2004, we instituted a two-day safety and health training course, containing all the elements of OSHA's 10-hour course. Over 2,000 employee-partners in management positions have participated in this key training program, including our regional directors, human resource managers, rental division general managers, plant managers, distribution center managers, logistics and manufacturing managers, plant and maintenance supervisors. We also instituted several safe driving programs for employee-partners who drive company-owned vehicles and for those who drive their personal cars for company business.

In 2006, we introduced pre-shift stretching programs to augment our existing ergonomic workstations to reduce the chance of fatigue or strain.

Each year, our Vice President of Safety and Engineering Solutions leads a Safety Summit. At that Summit, many of our best and brightest professionals at Cintas -- including engineers and others -- come together to find ways to enhance our overall safety program.

Last year, Cintas experienced a tremendous loss – one that shook us deeply – with the death of Eleazar Torres Gomez, our fellow employee-partner in Tulsa.

Up until that accident, we believed our safety program was effective. In fact, according to the National Council on Compensation Insurance, Cintas' workers' compensation rate was 28 percent better than the industry average. From 2005 to 2007, our total recordable incident rate decreased by 15 percent and was better than similarly-sized operations in our industry.

When it comes to our employee-partners' health and well-being, we can never be good enough. The Tulsa tragedy only heightened our efforts to ensure safe operations throughout all our facilities. Since Tulsa, we've taken many steps, including the following:

- We formed the Cintas Executive Safety Council to develop and implement processes to lead Cintas to world-class safety performance. The Council reports directly to me and includes some of our highest-level executives. Three nationally recognized safety experts serve as advisors. They are:
    - John L. Henshaw, a certified industrial hygienist for 30 years and formerly Assistant Secretary of Labor for OSHA.
    - Dr. Richard Fulwiler, President of Technology Leadership Associates. Dr. Fulwiler retired as director of health and safety-worldwide at Procter & Gamble.

- Michael S. Deak, former Corporate Director – safety and health for the DuPont Corp. Mr. Deak had specific global responsibility for compliance auditing processes, process safety management and fire prevention management.

- We expanded our wash-alley training. Cintas now issues weekly "permits to operate" to trained and qualified personnel, reviewing the procedures and guidelines for safe operation of the equipment. We also require "permits" for vendors who will be working in the wash alley area to ensure their safety. This training employs a team approach requiring multiple employee-partners to be present in the wash alley. It requires a person to monitor and observe actions in the wash alley, and as necessary, take timely and appropriate action to ensure the safety of employee-partners who work in this area.

- The laundry equipment used at all Cintas locations is commonly used by all commercial laundry companies throughout the world. However, Cintas is working with leading industry equipment manufacturers and other experts outside our industry to explore technical safeguards and innovative equipment changes that will help us further prevent accidents in this area. These safety improvements can become the industry standard, and once implemented can improve safety throughout our industry.

- We have enrolled in OSHA's Voluntary Protection Program (VPP) to achieve "Star" certification at selected Cintas locations. Approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees who have achieved exemplary occupational safety and health. Cintas locations in Charlotte, NC and Richmond, VA are enrolled and currently pursuing the VPP's "Star" certification. Several other Cintas locations are in line to enroll this calendar year.

- We have substantially expanded our corporate Health, Safety and Environment staff to further ensure standardized compliance templates and training programs are integrated and followed at every Cintas facility.

- Cintas has recently joined an industry trade association's efforts to develop a long-term, industry-wide safety initiative.

Hopefully the material outlined in this letter demonstrates the numerous steps we have taken to enhance safety at Cintas, particularly our commitment to continuously review, enhance and develop new safety programs.

On behalf of all of our Cintas employee-partners, I thank you for the opportunity to present this information, and would like to reiterate that as a company of ethics and integrity, we are and will remain committed to the safety and well-being of our employee-partners.

Sincerely,

Scott D. Farmer
Chief Executive Officer
Cintas Corporation

CC: Joe Wilson, R-South Carolina
Donald M. Payne, D-New Jersey
Timothy Bishop, D-New York
Phil Hare, D-Illinois
Carol Shea-Porter, D-New Hampshire
Tom Price, R-Georgia
John Kline, R-Minnesota

[Statements from various current and former Cintas employees:]

Prepared Statement of Errol Ingram, Former Cintas Maintenance Supervisor

My name is Errol Ingram, and I'm an ex-employee of Cintas in Mobile, Alabama.

I chose to leave because of instances of unsafe work practices and because the way I was treated. I was not respected.

Even after the death in Tulsa, Cintas was still not safe. By the time OSHA was done, there still was not enough training and staffing.

There were more than enough times where there were two man jobs that I was made to do by myself. I had to seek the assistance of someone who was not qualified to assist me. It got to the point where I could not take it any more, so I chose to leave.

Being here today on Capitol Hill, I heard about Cintas's widespread practices. These things need to stop, and I see now that this is possible at Cintas. I hope that this begins a trend of something good for all.

Prepared Statement of Maria Espinosa, Current Cintas Worker

My name is Maria Espinoza. I've worked at Cintas San Jose as a washer for about four years. I am here to talk about the working conditions and the pressures that we work under.

They pressure us by putting colors on the production levels we do. They also count the amount of production we do by the hour. In folding, we have to do 130 folds an hour. In sorting clothes, it is 330 sorts per hour. Washing we have to do 16 cycles per day. If we don't fulfill it, they red flag us. If we almost reach the goal, they give us a yellow signal. If we meet the goal, we get a green one. To avoid the shame of getting the red color is why people rush and get hurt.

I have injured my calf at work, and it hurts even to walk. I hurt it from taking laundry from the carts and putting it into the machines. They don't do maintenance to the carts, which is one of the main tools at work. They don't put the appropriate springs in the carts that make them easier to load and unload.

Those are reasons why so many of us injured.

Prepared Statement of Santa Ana Ventura, Current Cintas Worker

My name is Santa Ana Ventura. I've worked at Cintas in Bedford Park for 11 years. Like others in my plant, I am often in pain from the pace of production that Cintas demands. They have raised the quotas, and we are under a lot of pressure.

Now, we have to hang from 1,768 to 2,000 shirts per shift. Our supervisors check every hour to make sure we are hanging enough shirts. So when I get home, I am so tired that I am not able to do anything, I have a headache and my body hurts—hands, shoulders, arms, neck, and feet. My coworkers also suffer from pain.

From hanging so many shirts so fast, my back also hurts a lot. And there are many times that I can't lift my arms up. I have told the company that there is a problem with my arm but they want 100% so I feel bad. From the speed of the work, my hand still hurts today from an injury five years ago. Because my fingers have lost strength from all the fastening of shirts, I drop things.

From working standing in one place so long, I had to have surgery on my foot because the company refused to let me transfer to another area to do another type of work. I still need to have another operation. But Cintas doesn't want us to go back to work unless we are 100 percent. Supervisors do not want to give us different assignments that would allow us to start working again.

I am glad that OSHA is now investigating in my plant, because, since we heard about the way the worker in Tulsa died, we have been afraid for the wash-room worker in our plant.

Cintas raised production rates but they haven't raised salaries; the supervisors told us, if we're not happy with our jobs, the doors are open and we should just leave. Our raises are around $.17 to $.25 which doesn't even cover the increase in health insurance each year.

I hope that with your help we can fix things because right now we aren't able to have the quality of life that we should. On my behalf and on behalf of my coworkers, I hope to find a quick resolution to these problems because I see every day that people are injured.

I came here to talk to the representatives in Congress, to tell them about my foot and the injury because I want things to be better. If my coworkers knew that members of Congress were interested in understanding how our jobs hurt us, maybe they wouldn't be afraid to speak up—and to tell Cintas when they are in pain or are hurt and need to go to the doctor.

[Letter from the Textile Rental Services Association of America, dated May 2, 2008, follows:]

May 2, 2008.

Hon. LYNN WOOLSEY, *Chairwoman,*
Workforce Protections Subcommittee, Committee on Education and Labor, Washington, DC.

DEAR MADAM CHAIRWOMAN: On behalf of the Textile Rental Services Association of America (TRSA), I would appreciate your placing this correspondence in the record for the April 23 Workforce Protections Subcommittee hearing titled "Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-State Employers." TRSA has a long commitment to helping our industry be safe, so I welcome the opportunity to let you and members of the subcommittee know about TRSA's historical and continuing efforts relating to this goal.

Founded in 1912, TRSA is the world's largest textile service industry association, representing more than 1,000 industrial laundry facilities in 24 countries. The membership of TRSA represents a cross-section of the industry, including some of the world's largest textile service companies, along with numerous mid-size and one-plant operations. Our membership includes companies currently doing business in commercial laundering and rental services to commercial, industrial and institutional accounts, as well as firms selling services, equipment and supplies to commercial launderers and linen rental companies.

TRSA's mission is to advance the professionalism of its members and promote their success through government advocacy, education, marketing and businesses enhancing services. TRSA is committed to addressing the changing needs of the industry, and our members, while striving to surpass industry standards by uniting members through a progressive organization.

TRSA has always believed that educating its membership on the importance of a safe workplace and instilling a commitment to safety principles is an essential part of its core mission. Throughout its history, TRSA has developed resources and programs to improve the knowledge of its members on the most up-to-date practices to make our workplaces safer.

Together with our sister association, Uniform & Textile Service Association (UTSA), TRSA established the Production Management Institute (PMI) in 1990. A strong and ongoing program, PMI is designed to educate plant managers and supervisors on state-of-the-art plant operations, including leadership and supervisory

skills. From the beginning, safety has been a key component of PMI, and it will be a major focus at this year's PMI session, which begins today.

In addition, during the February TRSA Tech/Plant Summit of industry executives, I announced the TRSA Safety Initiative. The TRSA Safety Initiative is a comprehensive program that was conceived to help the textile service industry improve workplace safety. It encompasses four key areas: to educate TRSA members on how to improve safety; to serve the TRSA membership by assisting individual members on how to enhance the safety of their facilities; to track the progress of safety improvements through the collection and analysis of data; and to represent to the public and government bodies the industry's commitment to safe facilities. One aspect of the Safety Initiative, SafetyESP (Safety Enhancement Stewardship Program), is being administered in cooperation with UTSA and will focus on tracking industry progress on safety improvement through data collection and analysis.

TRSA—and its members—understand the importance of a safe workplace and we are committed to making the working environments of our membership among the safest in the world. We have been in contact with OSHA to make sure that the lead federal agency on safety is aware of our Safety Initiative and we have asked the agency to provide constructive criticism and other input that will make the TRSA Safety Initiative even more effective.

My staff and I would appreciate the opportunity to meet with you and/or your staff for a dialogue similar to our recent discussions with OSHA. We also plan to meet with other subcommittee members and their staffs as well.

Thank you for the opportunity to let us share what TRSA has done, and is doing, to improve safety in the textile services industry. If you have any questions or would like additional information, please contact me or TRSA's Director of Government Affairs Larry Fineran. Both of us can be reached at (703) 519-0029 or through e-mail at rcocivera@trsa.org or lfineran@trsa.org.

Sincerely,

ROGER COCIVERA,
President.

[Internal Cintas memo and safety bulletin follow:]

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MEMORANDUM

Date: April 30, 2004

To: Bob Maxwell

From: Rick Gerlach
Ron Messenger

Subject: Safety Bulletin April 2004

cc: John Milligan
Jay Case
Tom Frooman
Rental Group Vice Presidents
Rental Group General Managers
Mike Schneider
Kevin Ryan
R&D Engineers
Regional Engineers
Regional HSE Coordinators

PLEASE DO NOT FORWARD THIS E-MAIL OR ATTACHMENT. FORWARDING EITHER DOCUMENT COMPROMISES THE PRIVILEGED AND CONFIDENTIAL NATURE OF THIS COMMUNICATION.

On April 16, 2004 a partner at one of our locations was involved in an incident that could have resulted in serious injury and possible death. The partner was attempting to dislodge a jam at the top of a shuttle conveyor that was in the process of loading a dryer. Although the specific details of the incident are still being collected, it is believed that the partner did not engage the emergency stop on the shuttle or shut down power to the dryer. The end result was that the partner was forced into the rotating dryer after which the door closed. Fortunately, the wash floor attendant observed the incident and quickly stopped the dryer. As a result, the partner suffered only minor injuries.

In light of the above incident, and in recognition of the fact that shuttle conveyor jams are fairly common on automated wash floors, we are requesting that the following control procedures be implemented as soon as possible.

Effective Immediately

Communicate the need to comply with the load weight limits contained in the Safety Bulletin issued by Scott Farmer and Eric Mueller in January 2001 (see below). Proper loading is the best way to minimize dryer loading issues. In addition, until fully detailed instructions are distributed for specific wash floor equipment types and configurations, please implement the following basic control procedures for dislodging shuttle conveyor to dryer jams.

EXHIBIT
3

CINTAS2 000015

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Lavatech systems

1. Activate the emergency stop on the shuttle.
2. Turn off the dryer at the dryer control panel while it is in the loading mode. This should keep the dryer door open and tilted up in the loading position.
3. Lockout the electric power at the dryer control panel.
4. Turn off the main power at the dryer and follow standard lock out/tag out procedures.
5. Always have an attendant present while working on the jam to act as an observer in the event of something unexpected.
6. All partners must be clear of the shuttle conveyor before power can be restored and the unit put back in service.

It is currently not possible to lock out power to the shuttle without shutting down power to all the dryers and unloading conveyor. Pending completion of discussions with the equipment manufacturers, we expect to recommend that all shuttles be retrofitted with a means to disconnect and lock out the electric power to the shuttle so that situations such as that described above can be prevented. We also expect to install an electrical disconnect specific to each dryer.

Braun systems

1. Activate the emergency stop on the shuttle.
2. Turn off the dryer at the dryer control panel while it is in the loading mode. This should keep the dryer door open and tilted up in the loading position.
3. Lockout the electric power for the shuttle at the disconnect on the shuttle and isolate the pneumatic supply line.
4. Lockout the electric power at the control panel for the affected dryer.
5. Turn off the main power at the dryer and follow standard lock out/tag out procedures.
6. Always have an attendant present while working on the jam to act as an observer in the event of something unexpected.
7. All partners must be clear of the shuttle conveyor before power can be restored and the unit put back in service.

Caution must be exercised during this process due to the following:

- The dryer door can not be locked in the open position during this process. The door may close when the dryer is locked out. Be aware of this possibility and be prepared to react should the dryer door start to move.
- The dryer can not be locked in the tilted loading position during this process. With the power disengaged the dryer could move from the "loading" to "run" position thereby creating a pinch point between the dryer and shuttle. Be aware of this possibility and be prepared to react should the dryer start to move.

These are the minimum procedures that should be followed when handling shuttle jams. In the near future, detailed Job Safety Analyses specific to each type of system will be developed and communicated. In the interim, if you have questions regarding this Safety Bulletin, please contact your Regional Engineer or Regional HSE Coordinator.

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Safety Bulletin

To: All Plants

From: Scott Farmer/Eric Mueller

Date: January 25, 2001

Re: Automated Wash Alley Safety

On two separate occasions within the 2000 calendar year, there were accidents involving a wash alley partner falling into open pocket washer-extractors. Both incidents occurred under similar circumstances.

Scenario:
During a transfer of a load from the soil bag to the washer, the load became jammed in the hopper. In an effort to free the obstruction, the operator climbed into the loading hopper (while the washer was running) and used both their legs to "push" the load into the rotating wash cylinder. When the product started to slide into the drum, the operator fell into the cylinder. Fortunately in both cases, another partner heard calls for help and was able to free the wash alley operator before they were more seriously injured. In either case, the result of such careless activity could have resulted in a fatality.

Analysis:

- UNDER NO CIRCUMSTANCES should any partner work on a machine without following proper lockout/tagout procedures. Both incidents were avoidable if the partner would have de-energized and locked-out the washer before entering hopper.

- The jam was most likely result of soil sling overloading. R & D advises the following sling weights, they must not be exceeded.
  1. Braun/Lavatec-Garments: 225-lbs per sling.
  2. Braun/Lavatec-Shop Towel: 250-lbs per sling.
  3. Braun: Mats: 225-lbs per sling.
  4. Lavatec: Mats 150-lbs per sling.

CINTAS2 000017

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Action Plan:
R/D is taking the following step to avoid this situation in the future:

- For plants with FLM rail systems, there is a modification to limit bag weight per the above recommended weights. Operations without "Weight Limiting Software" are urged to invest in the modifications.
- Braun, Lavatec, and Jensen are working on adding signage to the washers, dryers and conveyors to warn about improper entry of equipment. New Braun and Lavatec washers will ship with appropriate signage. The Engineering Department is distributing warning decals for Braun equipment. Lavatec is preparing decals for their machinery at this time. Unfortunately, Cintas does not have an accurate database for equipment, resulting in several follow-up mailings to cover shortages. It is imperative that updated wash alley inventory information be supplied when requested by R & D.
- Braun and Lavatec will be writing procedures on how to safely clear hopper obstructions. The instruction/training must be provided to all partners authorized to operate wash alley, including the unloading team. Deviations from accepted operating practices of wash alley equipment must be met with swift repercussions. Any training must be documented and should be considered a written warning. A subsequent offence is grounds for immediate dismissal. A partner not following safe guidelines may not survive a second warning.

Please call Eric Mueller with any question or comments (513) 965-4904.

CINTAS2 000018

[Official documents on Cintas Corp. OSHA violations, Central Islip, NY, 2005–2006, submitted by UNITE HERE, follow:]

UNITE HERE Health and Safety Program
New York, NY

Official documents on Cintas Corp. OSHA violations for conveyor shuttle hazards, Central Islip, NY, 2005-2006

1. OSHA formal interpretation of the application of its machine-guarding standards to the laundry industry regarding "robotic" laundry shuttle equipment, July 7, 2005, informing the industry that the potentially fatal hazards from this equipment require the use of specific prevention methods:

> "The OSHA machine guarding standard provides that, if an employee may enter the working envelope of a laundry shuttle and be exposed to hazards associated with the laundry shuttle, the machine hazards must be addressed by: fixed barriers that are not easily defeated, barrier guards with interlocks that immediately stop machine motion, or presence-sensing devices that immediately stop the machine motion. (para. 2, p. 2)

2. OSHA citation issued to Cintas Corp., August 11, 2005, for violation of the machine-guarding standard regarding the "Braun shuttle that transferred laundry from the washing machines to the dryers…."

3. OSHA inspection file "Worksheet" for the machine-guarding violation with notes regarding "Employer knowledge" indicating that "The building was built for Cintas with the Wash Room in the planning. [Regional Safety Manager] Frank Ragone "worked for Braun before being hired by Cintas and he was working on the problem before the complaint." The "Comments" section quotes Ragone saying "the system is supposed to be fully automated and run by itself, however … it still need[s] employee/operator attention because it's not perfected yet."

4. May 24, 2006 letter from OSHA attorney Marc Sherris enclosing a Stipulated Settlement of the company's appeal of the OSHA citation, in which the company agreed to " ensure that there is a functioning … [safety] device" on the ends of the conveyor and to "retrofit the long sides of the shuttle with electronic eye safety stops similar to those currently available on Braun models being sold today."

For more information, contact Eric Frumin, UNITE HERE Health and Safety Director, 212-352-4720; efrumin@unitehere.org.

U.S. Department of Labor
JUL - 7 2005

Occupational Safety and Health Administration
Washington, D.C. 20210

DEP/GIE/SW

Mr. Eric Frumin
UNITE
Health and Safety Department
275 Seventh Avenue, 10th Floor
New York, NY 10001-6708

Dear Mr. Frumin:

Thank you for your January 31, 2005 fax to the Occupational Safety and Health Administration (OSHA). Your letter was forwarded to the Office of General Industry Enforcement for response. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any questions not delineated within your original correspondence. You had specific questions regarding robotic laundry shuttles.

Questions: 1. Would training and strict enforcement of work rules prohibiting any employee from entering the working envelope of the shuttle while the shuttle is operating provide acceptable protection for the employees?

2. Could safety features such as warning lights, audible alarms, and emergency stops provide acceptable protection for employees who may be exposed to hazards from laundry shuttles?

3. Are barrier chains or fencing surrounding the working envelope of the shuttle system, but which are constructed of a height that provides easy, but conscious, access to the hazardous area an accepted protection for employees, if the employer has training and work procedures which prohibit employee access to the area while the shuttle is running?

4. Would any combination of warning lights, warning alarms, warning signs, awareness guards, training and enforcement of written rules, and emergency stop switches provide protection that complies with OSHA's machine guarding standards?

5. Would barrier guarding that only provides employee access to the shuttle area through unlocked, non-electrically interlocked gates provide acceptable protection for employees?

6. Would barrier guarding with electrically interlocked access gates that put the shuttle into manual mode when opened provide acceptable protection for employees?

7. Would barrier guarding with control-reliable, electrically-interlocked access gates that stop shuttle motion when opened provide acceptable protection for employees?

Responses: If an employee may be exposed to machine hazards during the machine's normal operation, the hazardous areas of the machine must be guarded. The Occupational Safety and Health Review Commission has found employee exposure where it is reasonably predictable, either by operational necessity or otherwise (including inadvertence), that employees have been, are, or will be in the machine's zone of danger. Employees may be exposed as they interact with the machinery, travel within a facility, or engage in other employment and comfort activities. While the answers to your questions depend in some cases on facts related to the particular machines and the manner in which workers interact with the machines, the methods described in your questions 1-5 generally would not provide adequate protection for workers exposed to machine hazards. On the other hand, in most situations, the methods described in your questions 6 and 7 would provide adequate employee protection.

If an employee may be exposed to hazards such as nip points or moving parts on a machine (e.g., a conveyor on a shuttle), OSHA's general machine guarding standard, 29 C.F.R. § 1910.212(a)(1), addresses guarding for the hazardous areas. The OSHA machine guarding standard provides that, if an employee may enter the working envelope of a laundry shuttle and be exposed to hazards associated with the operation of the laundry shuttle, the machine hazards must be addressed by: fixed barriers that are not easily defeated, barrier guards with interlocks that immediately stop machine motion, or presence sensing devices that immediately stop machine motion.

The American National Standard for Industrial Robots and Robot Systems – Safety Systems (ANSI/RIA R15.6-1999) and other non-ANSI sources address hazards specific to industrial robots, including some hazards not addressed in § 1910.212. In 1987, OSHA issued an Instruction concerning industrial robots (STD 01-12-002 - PUB 8-1.3 - Guidelines for Robotics Safety (copy enclosed)), which references some of these sources and describes safety systems available to eliminate robotic hazards. The guarding methods listed in the Instruction encompass all of the methods listed in your seven questions, including: Interlocked Barrier Guards, Fixed Barrier Guards, Awareness Barrier Devices, Presence Sensing Devices, Emergency Robot Braking, and Audible and Visible Warning Systems. However, in practice, the guarding system selected must effectively protect employees exposed to robotic hazards; merely because a guarding system is listed in the Instruction does not mean the selected guarding system meets OSH Act requirements, either alone or in combination with other guarding systems, for any particular machine. Selection of an appropriate guarding system depends on the hazards specific to the robot in question. However, the 1986 ANSI standard on robotics systems and the updated ANSI standard (ANSI/RIA R15.6-1999) provide guidance on the selection of guarding devices. While these standards provide some leeway for selection of guarding devices when risk and severity of injury are both slight, the standards clearly provide that awareness guards must be used in conjunction with, and not in place of, specific safeguarding devices (fixed barriers, two-hand control systems, and presence-sensing safeguarding devices) during normal operation in all cases where workers could be seriously injured. See, e.g., ANSI/RIA 15.6-1999, Sections 8, 9, and 10.4.2.

Please be aware that guarding provisions discussed above protect workers from hazards when machines and robotic devices are used during normal production modes. If an employee is exposed to hazards while performing servicing or maintenance work on a machine, the lockout/tagout standard (29 CFR § 1910.147) applies, and all sources of hazardous energy must

be isolated.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. Please be aware that the enforcement guidance contained in this response represents the views of OSHA at the time the letter was written based on the facts of an individual case, question, or scenario and is subject to periodic review and clarification, amplification, or correction. It could also be affected by subsequent rulemaking; past interpretations may no longer be applicable. In the future, should you wish to verify that the guidance provided herein remains current, you may consult OSHA's web site at http://www.osha.gov. If you have any further questions, please feel free to contact the Office of General Industry Enforcement at (202) 693-1850.

Sincerely,

Richard E. Fairfax

Richard E. Fairfax, Director
Directorate of Enforcement Programs

Enclosure

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 307631937
Inspection Dates: 08/08/2005 - 08/08/2005
Issuance Date: 08/11/2005

Citation and Notification of Penalty

Company Name: Cintas Corporation No. 2
Inspection Site: 500 S. Research Place, Central Islip, NY 11722

Citation 1 Item 2 Type of Violation: Serious

29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by: being caught-in

a) Work-place, Wash Room, A Braun Shuttle that transferred laundry from the washing machines to the dryers did not have a guard to protect employees from being caught in-between the shuttle and the washing machines when extending; on or about 08/08/05.

b) Work-place, Wash Room, Braun Washing Machine Chute #1 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

c) Work-place, Wash Room, Braun Washing Machine Chute #2 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

d) Work-place, Wash Room, Braun Washing Machine Chute #3 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

e) Work-place, Wash Room, Braun Washing Machine Chute #4 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

f) Work-place, Wash Room, Braun Washing Machine Chute #5 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 307631937
Inspection Dates: 08/08/2005 - 08/08/2005
Issuance Date: 08/11/2005

Citation and Notification of Penalty

Company Name: Cintas Corporation No. 2
Inspection Site: 500 S. Research Place, Central Islip, NY 11722

g) Work-place, Wash Room, Braun Washing Machine Chute #6 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

h) Work-place, Wash Room, Braun Washing Machine Chute #7 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

i) Work-place, Wash Room, Braun Washing Machine Chute #8 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

ABATEMENT DOCUMENTATION IS REQUIRED AS OUTLINED IN PART 29 CFR 1903.19

Date By Which Violation Must be Abated:	09/28/2005
Proposed Penalty:	$ 2125.00

U. S. Department of Lal
Occupational Safety and Health Administration

Worksheet

Thu Aug 11, 2005 4:26pm

				Inspection Number	307631937
				Opt. Insp. Number	370
Establishment Name	**Cintas Corporation No. 2**				
Type of Violation	**S Serious**	Citation Number	**01**	Item/Group	**002**
Number Exposed	**1**	No. Instances	**9**	REC	**C Complaint**
Std. Alleged Vio.	**1910.0212(a)(1)**				

Abatement Period	MultiStep Abatements			Final Abatement	Action Type/Dates
	PPE Period	Plan	Report		
30					

Abatement Documentation Required	Y	Date Verified		

Substance Codes	

AVD/Variable Information:

29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by: being caught-in

a) Work-place, Wash Room, A Braun Shuttle that transferred laundry from the washing machines to the dryers did not have a guard to protect employees from being caught in-between the shuttle and the washing machines when extending; on or about 08/08/05.

b) Work-place, Wash Room, Braun Washing Machine Chute #1 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

c) Work-place, Wash Room, Braun Washing Machine Chute #2 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

d) Work-place, Wash Room, Braun Washing Machine Chute #3 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

e) Work-place, Wash Room, Braun Washing Machine Chute #4 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

f) Work-place, Wash Room, Braun Washing Machine Chute #5 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

g) Work-place, Wash Room, Braun Washing Machine Chute #6 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

h) Work-place, Wash Room, Braun Washing Machine Chute #7 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

i) Work-place, Wash Room, Braun Washing Machine Chute #8 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load; on or about 08/08/05.

ABATEMENT DOCUMENTATION IS REQUIRED AS OUTLINED IN PART 29 CFR 1903.19

Penalty Calculations				Adjustment Factors			Proposed Adjusted Penalty
Severity	Probability	Gravity	GBP	Size	Good Faith	History	
H High	**L Lesser**	**03**	**2500.00**	**0**	**15**	**0**	**2125.00**
Repeat Factor		**0**					

Employee Exposure:					
Occupation	**Wash Room**	Employer	**Cintas Corporation No. 2**		
Nr of Employees	**1**	Duration	**3 months**	Frequency	**daily**
Employee Name	**Santiago Aguilar**				
Address	,		Phone	( ) -	

Instance Description:	A. Hazard	B. Equipment	C. Location	D. Injury/Illness	E. Measurements

4. Date/Time
08/08/05

20. Instance Description - Describe the following:
a) Hazards-Operation/Condition-Accident

Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by: being caught-in

a) Work-place, Wash Room, A Braun Shuttle that transferred laundry from the washing machines to the dryers did not have a guard to protect employees from being caught in-between the shuttle and the washing machines when extending. The pressure sensor switch was broken in the "Y" Axis.

b) Work-place, Wash Room, Braun Washing Machine Chute #1 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

c) Work-place, Wash Room, Braun Washing Machine Chute #2 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

d) Work-place, Wash Room, Braun Washing Machine Chute #3 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

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g) Work-place, Wash Room, Braun Washing Machine Chute #6 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

h) Work-place, Wash Room, Braun Washing Machine Chute #7 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

i) Work-place, Wash Room, Braun Washing Machine Chute #8 that transferred laundry into the washing machine did not have a guard to protect employees from being caught in-between the chute and the washing machine when positioning for a load.

b) Equipment

a) Braun Shuttle

b) Braun Washing Machine Chute #1

c) Braun Washing Machine Chute #2

d) Braun Washing Machine Chute #3

e) Braun Washing Machine Chute #4

f) Braun Washing Machine Chute #5

g) Braun Washing Machine Chute #6

h) Braun Washing Machine Chute #7

i) Braun Washing Machine Chute #8

c) Location

a-i) Workplace, Wash Room

d) Injury/Illness

Multiple fractures and/or severe lacerations resulting in permanent disability.

e) Measurements

21. Photo Number	Location on Video
1, 2 & 4	

23. Employer Knowledge : Chris Deppoliti, Plant Manager, Norah Hickey, Senior Human Resources Manager, John J. Yavorka, General Manager, Cesar Rivadionara, Maintenance Supervisor and Lilian Morataya, Health, Safety and Environmental Coordinator walks and works out in the wash room area daily. Frank Ragone, Regional Safety Manager is on site monthly. The building was built for Cintas with the Wash Room in the planning. Frank Ragone worked for Braun before being hired by Cintas and he was working on the problem before the complaint. The local management team immediately realized the issues when the CSHO pointed it out.

24. Comments (Employer, Employee, Closing Conference) :

The building was designed for Cintas with this Wash Room in the plan. The system is supposed to be fully automated and run by itself, however according to Frank Ragone it still need employee/operator attention because it's not perfected yet.

Only one trained operator is in the area.

The CSHO suggested several ways of abatement including:

Perfecting the system so that it could run fully automatic without operator intervention.

Adding a horn and warning light 30 seconds before any movement occurs so the operator can leave the area.

Adding a light curtain that will turn on before movement occurs to act as a machine guard.

Add a pressure sensor switch to release when something is caught prematurely, like a garage door mechanism.
The management team also said they would review various options.

25. Other Employer Information : Cintas Corporation No. 2 has no OSHA history in the past three years.

26. Classification:

Serious	Knowledge	S or O	Repeat?	Willful?
Y	Y	S	N	N

First Repeat	Second Repeat	Repeat Penalty

Event Date	Event Code	Action Code	Citation Type	Penalty	Abate Date	Final Order
	Z Add transaction	A Add	S Serious	2125.00		

U.S. Department of Labor

Office of the Solicitor
201 Varick Street
New York, New York 10014

SOL:MGS
64421
Tel. 212-337-2581

Reply to the Attention of:

May 24, 2006

Hon. Irving Sommer
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, N.W.
Suite 990
Washington, D.C. 20036-3419

Re: Secretary of Labor v. Cintas Corporation, and Guarionex Santos and Dora Lucca: OSHRC Docket No. 05-1507, Inspection No. 307631937

Dear Judge Sommer:

Enclosed please find a Stipulated Settlement and Order Approving Settlement in the above-referenced matter for approval and filing with the Review Commission. The Stipulated Settlement will resolve all of the issues in this case.

Thank you for your consideration in this matter.

Sincerely,

Patricia M. Rodenhausen
Regional Solicitor

By: Marc G. Sheris
Attorney

Enclosures

James L. Curtis, Esq.
Seyfarth Shaw
55 East Monroe Street
Suite 4200
Chicago, IL 60603-5403

Eric Frumin, Director
UNITE HERE!
275 Seventh Avenue
New York, New York 10001

SOL:MGS
64421

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor,	:	
	:	OSHRC DOCKET
Complainant		
	:	No. 05-1507
v.		
	:	Insp. No.
CINTAS CORPORATION, and its successors		
	:	307631937
Respondent,		
GUARIONEX SANTOS and DORA LUCIA,	:	
Affected Employees.		
	:	

STIPULATED SETTLEMENT

HOWARD M. RADZELY
Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

MARC G. SHERIS
Attorney

U.S. Department of Labor
Attorneys for
ELAINE L. CHAO
Secretary of Labor,
Complainant

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Tel. 212-337-2581

SOL:MGS
64421

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor,	:	
Complainant	:	OSHRC DOCKET
v.	:	No. 05-1507
CINTAS CORPORATION, and its successors	:	Insp. No.
Respondent,	:	307631937
GUARIONEX SANTOS and DORA LUCIA,	:	
Affected Employees.	:	

STIPULATED SETTLEMENT

1. The Secretary hereby withdraws Citation 1, Item 1, and its concurrent penalty.

2. The Secretary hereby deletes Instance (b) through (i) of Citation 1, Item 2. Instance (a) of Citation 1, Item 2 shall be affirmed as issued.

3. The Secretary amends the proposed penalty of $4,250.00 set forth in the citations, to reflect a proposed penalty of $2,000.00 to be apportioned as set forth below:

CITATION NO.	ITEM	PROPOSED PENALTY	AMENDED PROPOSED PENALTY
1	1	$ 2,125	$ 0
1	2	$ 2,125	$ 2,000
2	1	$ 0	$ 0

CH: 11049832.1
CH: 11051126.1
CH: 11051852.1

TOTAL PROPOSED
PENALTY: $2,000

4. Respondent affirmatively states that:

a) It will comply in the future with the Occupational Safety and Health Act.

b) All violations alleged in the Citations and the Complaint, as amended, will be abated by 5/30/06.

Citation 1, Item 2, Instance (a): Cintas shall ensure that there is either a functioning pressure sensing device or functioning presence sensing device on both the washer and dryer sides of the Braun shuttle (the short sides), and will retrofit the long sides of the shuttle with electronic eye safety stops similar to those currently available on Braun models being sold today.

Citation 2, Item 1: Cintas has revised its equipment specific LOTO procedure/ PRSC reclassification policy for the steam tunnel to provide for reclassifying the space from a permit required confined space to a non-permit required confined space. This policy includes a procedure for documenting the basis for determining that all hazards in the permit space have been eliminated through a certification that contains the date, the location of the space and the signature of the person making the determination pursuant to 29 CFR §1910.146(c)(7)(iii).

Complainant and Respondent agree that the above constitutes abatement of the citations and that no further abatement documentation is required.

5. The respondent herein withdraws its notice of contest as to the citation items and proposed penalty, as amended.

6. Respondent certifies that on 5/1/06, this stipulation will be posted where affected employees may see it.

7. Respondent will pay the proposed penalty of $2,000 by forwarding a check made payable to Occupational Safety and Health-Labor in that amount to the Occupational Safety and Health Administration Office located at:

Occupational Safety and Health Administration
U.S. Department of Labor
Long Island Area Office
1400 Old Country Road, Suite 208

Westbury, New York 11590

8. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

9. None of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the citations, notifications of penalty and the complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter amicably and they shall not be used for any purpose, except for proceedings and matters arising under the Occupational Safety and Health Act.

DATED: , 2006
New York, New York

HOWARD M. RADZELY
Solicitor of Labor

PATRICIA M. RODENHAUSEN
Regional Solicitor

BY:
MARC G. SHERIS
Attorney

U.S. Department of Labor
Attorneys for ELAINE L. CHAO,
Secretary of Labor

CINTAS CORPORATION

BY:
John J. Yaworka

ERIC FRUMIN
Representative of the Affected Employees

4

CHI 11049832.1
CHI 11051126.1
CHI 11051852.1

Chairwoman WOOLSEY. Now I would like to introduce our very distinguished panel of witnesses who are here with us today, and I welcome you and I thank you for being so absolutely flexible that you—I think we changed the date and time of this hearing three times and here you are, the same four that we invited from the beginning. So thank you so much. I am going to introduce you in the order of when you will speak. I will introduce everybody at once and then give you a little tutorial on the lighting system, and then we will get into the hearing.

Emmanuel Torres, the oldest son of Eleazar Torres-Gomez. On March 6, 2007, Emmanuel's father was killed while working at a Cintas laundry in Tulsa, Oklahoma. His father was employed at

Cintas from August 2000 until the day he was killed in an industrial drier. Emmanuel and his parents, Eleazar Torres and Amelia Diaz, moved to the United States in 1987. Since July 1998, his family has made Tulsa, Oklahoma, their home. Emmanuel attended and graduated from high school in Tulsa. He currently lives with his family and is helping his mom raise his two younger brothers.

Frank White. Frank is the Senior Vice President of ORC Worldwide, responsible for ORC's occupational safety and health and environmental practices. Mr. White previously spent 5 years in private law practice representing clients in occupational safety and health litigation and rulemaking. Prior to that, Mr. White worked in the Department of Labor, including serving as Deputy Assistant Secretary of Labor for OSHA and Associate Solicitor for OSHA. Mr. White received his undergraduate degree from Duke University and his J.D. from the University of Connecticut Law School.

Ronald Taylor. Ronald is a partner in Venable, LLP. Mr. Taylor is co-chair of Venable's Labor and Employment Practice Group, where he advises and defends employers on a wide variety of labor and employment law issues. He is an active member of the American Bar Association's Committee on Occupational Safety and Health. Mr. Taylor earned his B.A. Degree from the University of Virginia and his J.D. from William and Mary Marshall-Wyeth School of Law.

Randy Rabinowitz. Randy is a partner—no—is a private practice attorney who specializes in legal issues affecting injured workers such as OSHA, workers compensation and products liability. Previously Ms. Rabinowitz has served as a senior consultant to OSHA, an administrative law fellow and adjunct professor at the Washington College of Law and as counsel to this committee. She has also served as union co-chair of the American Bar Association's Occupational Safety and Health Law Committee. Ms. Rabinowitz received her B.A. From the John Hopkins University and her J.D. and LLM from Georgetown University Law Center.

Welcome to all four of you.

So now let me tell you a little bit about the lighting system. If you have not testified here before, you will want to know this. First of all, every member and every witness gets 5 minutes. So when you start speaking, the light will not go on—yes, it will be green, won't it? The light will be on and it will be green. And then when you have a minute left it will be yellow and when your 5 minutes is over, the light in front of you will be red. We are not going to cut you off mid-sentence, mid-thought, mid-idea. But if you have extra, more words than the 5 minutes, then we will ask you to enter them into the record and probably finish many of your thoughts during the question and answer period.

Members also have 5 minutes. And if we sit up here and talk for 5 minutes and don't ask a question, that is our loss, not yours. So we try to keep ourselves short. But we have a hard time with this.

Now, we will hear from our first witness, Mr. Torres.

STATEMENT OF EMMANUEL TORRES, SON OF ELEAZAR TORRES-GOMEZ, WORKER WHO DIED AT CINTAS PLANT

Mr. TORRES. Chairwoman Woolsey and other distinguished members of the subcommittee, thank you for the opportunity to testify today. I hope this opportunity is another step towards making a positive change out of my family's tragedy.

I am Emmanuel Torres, the son of Eleazar Torres, who was tragically killed on March 6, 2007 at a Cintas plant in Tulsa, Oklahoma. On behalf of my mom and three younger brothers, it is my family's hope that this hearing results in the passage of legislation that makes workplaces across America safer and prevents tragedies like my father's death from happening to others.

It has been over a year since my father's death, but laws ensuring safer workplaces still do not exist at the level that they should be. I hope that future legislation will make OSHA stronger and finally hold companies like Cintas accountable for repeated violations by imposing stiffer penalties. No one should have to endure what my family has over the past year.

My father began working at a Cintas plant in Tulsa, Oklahoma, in August of 2000. He worked hard to support our family so we could live decently and even own a home. On March 6, 2007, my father was filling in in a different position for another employee who was on vacation. While my father was attempting to unjam clothes stuck on a shuttle, he was dragged into an operating industrial drier where he was trapped for 20 minutes as it continued to spin. As a result, he was killed. I will be haunted forever imagining the terror and the pain he must have felt.

Despite CEO Scott Farmer's statement that blamed my father for not following Cintas' safety policies, OSHA's investigation, which included review of security camera tapes, revealed over 30 similar instances over a 2-week period prior to my father's death in which other employees climbed on the wash floor machinery. Any one of them could have been hurt or killed. OSHA even said these violations were willful. Based on OSHA's investigation, we know the procedures my father followed were not merely an isolated occurrence, but were happening routinely. That is why there were several willful violations for failing to train my father and three other employees who were responsible to perform procedures to clear jams.

Later we learned OSHA found similar violations in other States. The fact that Cintas blamed my father for what truly is a companywide problem is wrong. More important, Cintas knew about the danger and should have fixed the machine so they could not turn on while workers like my father were on them.

OSHA fined Cintas approximately $2.78 million in penalties over their investigation of my father's death. But Cintas is appealing. It is my understanding that a settlement between OSHA and Cintas has not been reached. It is important that any settlement send Cintas and other companies a strong message that things must change. Part of this change must include a companywide investigation to ensure that all of their facilities make changes to protect workers and not only say that they are in compliance with all safety standards and procedures, but actually practice these proce-

dures. One way this can be done is through more random investigation, stronger enforcement and more training.

Also OSHA should use the punishment allowed by law. All of this will never bring my father back. Hopefully this process will make sure that all the other workers like my father at other Cintas plants are protected.

As I have stated previously, I feel that my father's death was preventable and Cintas failed to do everything in their power to protect him. This is why I respectfully request that this subcommittee adopt strong measures including ones I have mentioned.

I further respectfully request that Congress begin to investigate employers who fail to institute strong safety policies and procedures and have failed to enforce them internally. If this does not occur, repeated violations will continue to occur at companies like Cintas and more lives will be lost. Me and my family love and miss my father so much that we hope a tragedy like this won't ever happen again. Thank you.

[The statement of Mr. Torres follows:]

Prepared Statement of Emmanuel Torres, Son of Eleazar Torres-Gomez, Worker Who Died at Cintas Plant

Chairman Woolsey and other distinguished members of this Subcommittee, thank you for the opportunity to testify today. I hope this opportunity is another step towards making a positive change out of my family's tragedy.

I am Emmanuel Torres, the son of Eleazar Torres, who was tragically killed on March 6, 2007 at the Cintas plant in Tulsa, Oklahoma. On behalf of my mom and three younger brothers, it is my family's hope that this hearing results in the passage of legislation that makes workplaces across America safer and prevents tragedies like my father's death from happening to others. It has been over a year since my father's death, but laws ensuring safer workplaces still do not exist at the level they should be. I hope that future legislation will make OSHA stronger, and finally hold companies like Cintas really accountable for repeated violations by imposing stiffer penalties. No one should have to endure what my family has over the past year.

My father began working at the Cintas Plant in Tulsa, Oklahoma in August of 2000. He worked hard to support our family so we could live decently and even own a home. On March 6, 2007, my father was filling in a different position for another employee who was on vacation. While my father was attempting to un-jam clothes stuck on the shuttle, he was dragged into an operating industrial dryer where he was trapped for over 20 minutes as it continued to spin, and as a result, was killed. I will be haunted forever imagining the terror and pain he must have felt. Despite CEO Scott Farmer's statement that blamed my father for not following Cintas' safety policies, OSHA's investigation, which included review of security cameras' tapes, revealed over 30 similar instances over a two week period prior to my father's death in which other employees climbed on wash floor machinery. Any one of them could have been hurt or killed. OSHA even said these violations were "willful". Based on the OSHA investigation, we know the procedures my father followed were not merely an isolated occurrence but were happening routinely. That is why there were several willful violations for failing to train my father and three other employees who were responsible to perform procedures to clear jams. Later, we learned OSHA found similar violations in other states. The fact that Cintas blamed my father for what truly is a company wide problem is wrong. More important, Cintas knew about the danger and should have fixed the machines so they could not turn on while workers like my father were on them.

OSHA fined Cintas approximately $2.78 million in penalties after their investigation of my father's death, but Cintas is appealing. It is my understanding that a settlement between OSHA and Cintas has not been reached. It is important that any settlement sends Cintas and other companies a strong message that things must change. Part of this change must include company wide investigation to ensure that all of their facilities make changes to protect workers and not only say they are in compliance with all safety standards and procedures but actually practice these procedures. One way this can be done is through more random investigations, stronger enforcement, and more training. Also OSHA should use the punish-

ment allowed by law. While this will never bring my father back, hopefully this process will make sure that all of the other workers, like my father, at other Cintas plants are protected.

As I have stated previously, I feel that my father's death was preventable and Cintas failed to do everything in their power to protect him. This is why I respectfully request that this Subcommittee adopt strong measures, including ones I have mentioned. I further respectfully request that Congress begin to investigate employers who fail to institute strong safety polices and procedures and/or fail to enforce them internally. If this does not occur, repeated violations will continue to occur at companies like Cintas and more lives will be lost.

Thank you.

Chairwoman WOOLSEY. Thank you, Mr. Torres.

Mr. White.

STATEMENT OF FRANK A. WHITE, SENIOR VICE PRESIDENT, ORC WORLDWIDE

Mr. WHITE. Good morning and thank you, Congresswoman Woolsey and members of the subcommittee, for the opportunity today to testify on behalf of ORC Worldwide and discuss how leading corporations work to make sure that serious risks to worker safety and health get addressed on a corporate-wide basis. I want to do my best today to offer Mr. Torres, his family and his co-workers hope that there are, in fact, effective steps that companies can and do take to prevent the kind of tragic loss they have suffered, and I know that his appearance here will make a difference.

ORC Worldwide is an international consulting firm whose Washington, D.C. office works with more than 140 leading global corporations to help them achieve health and safety excellence. For 36 years, our guiding premise has been that providing safe and healthful working conditions is the mutual concern of workers, employers and government agencies, and it takes the cooperation and collaboration among those three to find solutions to safety and health issues.

So how can a company make sure that a serious or safety health risk that is known to exist at one of its locations does not go unnoticed or ignored at another location? And what steps does the business need to take to assure that no worker is endangered by a similar risk at another facility?

First and foremost, the indispensable foundation for effective action is the establishment of a clear and authoritative policy from the corporation's senior leadership, the CEO, stating explicitly that the corporation as a whole will insist on full compliance of all worker safety and health standards and senior leadership should be actively engaged in monitoring to make sure that is done.

Second, in addition to the clearly articulated policy of full compliance, companies that consistently achieve superior safety and health performance and that actually sustain corporate-wide compliance rely on a safety and health management system that includes several key elements. And I recommend to the committee the ANSI Z10 guideline that was promulgated in 2005 as a basis for a good, solid safety and health management system. The fundamental goal of a comprehensive management system is the elimination of injuries and illnesses through a continuous process of identifying, assessing and reducing risks, And there are a few key

elements in those systems that are applicable here to corporate-wide abatement of hazards covered by OSHA requirements.

First, you have to establish clear lines of responsibility, authority and accountability through all levels of the corporation from the CEO on down to line employees. All management levels and line employees must be assigned, understand and be accountable for their roles in the management system for finding and fixes hazards.

Second, you must encourage employee participation in reporting of unsafe conditions. No management system can function effectively without employee participation. Line employees are a company's most knowledgeable resources about hazardous conditions and they must be encouraged to report such conditions with full confidence that management will act to correct those conditions.

Third, there must be regular safety inspections and audits. Part of the responsibility of management at each company facility is to perform periodic reviews at each workplace to identify, evaluate and control risk.

Fourth, perform root cause investigations of significant incidents. Now, most large employees do incident investigations of serious incidents or injuries. But it is also important to look at near misses and incidents that do not necessarily result in injuries, particularly those where serious injuries could have occurred. And the nature of those investigations needs to go beyond just looking at the unsafe act or behavior of the employee. You have to examine more closely the root causes of the incident.

It is ORC's experience that in general there are usually more fundamental, systemic, cultural and workplace design issues—reasons for such incidents that need to be addressed beyond the worker behavior. So you can't stop at looking at what the worker did. You have to go beyond that to looking at root causes.

In addition to these sort of basic elements, many companies that have specifically addressed the issue of looking at an issue in one workplace and making sure other workplaces are looked at as well, are the following: A requirement that each workplace in a corporation reports significant incidents to a centralized corporate function or team. Then the corporate team needs to look at those incidents and make some judgment as to whether there might be some potential likelihood for occurrence at other locations. Then there has to be an alert to those locations to take action, to look and evaluate whether there is a problem. And then again, responsibility and accountability to those other locations to investigate and, if necessary, to correct those actions. And then follow up at the corporate level to make sure, in fact, those corrective actions have been taken.

Just a moment, if I may, on how OSHA can contribute. Obviously the issuance of citations for serious violations of an OSHA standard must be issued when they find that a corporation has violated a standard and particularly to take strong action, including egregious penalties when there are multiple violations at multiple sites. That is essential. But more fundamentally, OSHA can really do more and they have tried to establish some procedures in their Enhanced Enforcement Program, as you know. And basically those procedures seem to be pretty sound. The question is are they functioning cor-

rectly. And I hope we can explore during the course of this hearing how to make them more effective.

And finally I would say that in addition to these kind of specific programs, ORC would strongly encourage OSHA to search for new ways to promote and advocate the value of safety and health management systems, because in the long term nothing will have a more significant impact on the reduction of risk, injuries and illnesses as well as improved compliance than the widespread adoption of such systems. And OSHA needs to take a role in doing that.

Thank you, Madam Chairman.

[The statement of Mr. White follows:]

Prepared Statement of Frank A. White, Senior Vice President, ORC Worldwide

On behalf of ORC Worldwide, I would like to thank the Subcommittee for this opportunity to discuss how to make sure that serious risks to worker safety and health get addressed on a corporate-wide basis. We appreciate being able to share ORC member company experience in this area.

ORC Worldwide is an international management and human resources consulting firm whose Washington, DC office has for 36 years provided specialized occupational safety and health consulting services to businesses and other organizations. Currently, more than 140 leading global corporations in more than 20 industry sectors are members of ORC's Occupational Safety and Health Groups. The focus of these groups is to help ORC members achieve safety and health excellence by promoting effective occupational safety and health programs, benchmarking and sharing best practices in areas such as management systems and performance metrics, and creating new strategies and tools to improve safety and health performance. ORC is also a key industry voice on national and global safety and health policy issues. The activities of ORC's Occupational Safety and Health Groups are based on the premise that providing safe and healthful working conditions is the mutual concern of employers, workers and government agencies and that cooperation and collaboration among these key stakeholders is essential to finding solutions to safety and health issues.

How can a company make sure that a safety or health risk that is known to exist at one of its location does not go unnoticed or ignored at another location? At the very least, if there is an OSHA citation or a worker suffers an injury or even a near-miss incident at one company establishment, what steps does the business need to take to assure that no worker is endangered by a similar risk at some other company facility? I will do my best today to offer Mr. Torres and his family hope that there are real, practical answers to these questions and that there are effective approaches that companies can and do use to prevent the kind of tragic loss they have suffered.

But let me comment briefly before going further that OSHA clearly has an important role to play in ensuring safety and health risks are addressed on a corporate-wide basis. It was during my years at OSHA in the mid-1980s that the egregious penalty policy was developed and implemented in order to enhance OSHA's enforcement arsenal in the case of flagrant multiple serious safety and health infractions. It is entirely appropriate for OSHA to impose the strongest possible sanctions when a company acts in intentional or reckless disregard of the requirements of well-established OSHA standards addressing serious risks to workers, especially in cases of multiple identical or similar citations across a corporation's facilities. Any company that receives citations for serious violations of an OSHA standard, particularly high-gravity serious violations, in one or more facilities, simply must establish the necessary processes and systems to require other locations with similar operations to determine the existence of like violations, and to correct any potentially serious violations that are found.

Unfortunately, we know from our experience that even companies that work diligently to comply with OSHA standards will not necessarily have an effective process for assuring that findings of non-compliance in one facility will be made known across the organization and addressed at other facilities. There are several important prerequisites to having an effective corporate-wide approach to finding and fixing similar hazards at multiple locations.

Top Leadership Commitment to Full Compliance

It will not come as a surprise that the indispensable foundation for effective action is the establishment of a clear and authoritative policy from a corporation's senior leadership, preferably the CEO, stating explicitly that the corporation as a whole will insist on full compliance with all worker safety and health standards and requirements. Without such a policy, and without senior leadership actively engaged in monitoring compliance progress consistent with the policy, it will be extremely difficult to sustain the effort necessary to attain full corporate-wide compliance.

Implementation of an Occupational Health and Safety Management System

But even a clearly articulated policy of full compliance from company leadership, while essential, is by itself insufficient to assure that the necessary actions are taken to actually attain and sustain corporate-wide compliance. Companies that consistently achieve superior safety and health performance, and that seek continual performance improvement, rely on a management system that includes several key elements. Probably the most up-to-date, complete and accessible description of an effective health and safety management system (OHSMS) is the 2005 ANSI Z10 American National Standard for Occupational Health and Safety Management Systems. It is important to understand that the fundamental goal of a comprehensive OHSMS is the elimination of injuries and illnesses through a continuous process of identifying, assessing and reducing risks. While most corporate management systems include compliance with safety and health standards in their scope, the focus of the system is more broadly on the reduction of all risks, not just those covered by OSHA standards.

A few of the key elements of an effective management system that are particularly applicable to the corporate-wide abatement of hazards covered by OSHA requirements are:

- Establish clear responsibility, authority and accountability through all levels of the corporation. From the CEO to the shop floor, all management levels and line employees must be assigned and understand their roles in the management system for finding and fixing hazardous conditions. In addition, each level of the business must have the authority and the resources to get the job done, and each must be held accountable for achieving results.
- Encourage employee participation and reporting of unsafe conditions. No safety and health management system can function effectively without employee participation in key aspects of the system's development and implementation. Line employees are a company's most knowledgeable resources about hazardous conditions and they must be encouraged to report such conditions with full confidence that management will take prompt corrective action.
- Perform regular safety inspections and audits. Part of the responsibility of management in each company facility is to perform periodic systematic reviews of the each workplace to identify, evaluate and ultimately control risks, including potential OSHA violations.
- Perform root cause investigations of significant incidents (near-misses as well as injuries and illnesses). Most large employers and other businesses that have employed safety and health professionals at the corporate and/or the facility levels, perform investigations of incidents involving serious injuries. However, it is also important to investigate, where resources permit, near-miss incidents, particularly those where serious injury could have occurred. The nature of those investigations should go beyond looking at the "unsafe act or behavior" of the worker involved, and should examine more closely the "root causes" of the incident. It is ORC's experience that, in general, there are usually more fundamental systemic, cultural, workplace design or other reasons for such incidents that need to be addressed beyond the worker behavior.
- Establish metrics that go beyond OSHA-recordable injuries and illnesses. In order for a management system to be most effective as a tool for the prevention of injuries and illnesses, companies should establish metrics for tracking leading indicators of the company's success in identifying and reducing risks and exposures, rather than collecting only the traditional "lagging" measures of how many injuries or illnesses occurred. So, for example, company leadership should want to know how much time it is taking to correct potential serious OSHA violations once they are found, or whether the company is successfully reducing the numbers of occurrences of certain kinds of risks or exposures, e.g., machine guarding.

Integration of Special Procedures for Corporate-Wide Compliance

While the above elements constitute some of the basics of an effective OHSMS, even ANSI Z10 and other management system guidelines do not explicitly address the issue of how to assure that risks (including potential OSHA violations) discov-

ered at one company location are necessarily dealt with at other locations. To be perfectly candid, that has proven to be a challenge for some companies that have otherwise effective programs. Companies that have recognized this particular aspect of managing risks have enhanced their management systems with special measures designed to assure such multi-site awareness and response. Examples of these measures include:

• A requirement for each workplace in a corporation to report significant incidents, risks or potential violations to a centralized corporate function or team.

• A preliminary review of those reported events at the corporate level to assess whether there might be a significant potential likelihood of occurrence in other locations of the company.

• A notification or "alert" to locations with the potential for similar issues, describing the issue.

• Assigning responsibility and accountability to the other locations for evaluating the issues, determining appropriate action and providing feedback to the corporate function or team.

• Follow-up (much like for an audit) at the corporate level to assure closure of any potential violations found at other locations.

Although the execution of an effective approach to a uniform corporate-wide approach to multi-establishment compliance requires a significant and focused effort, the basic principles of leadership commitment, a systems approach, effective organizational communication and vigilant follow-up are the keys to success.

Challenges and Opportunities for OSHA

Let me turn for a moment to how OSHA can contribute to assuring that corporations with multiple facilities take effective action across the corporation to maintain compliance. In my view, from an enforcement perspective, OSHA faces a few longstanding institutional impediments to adopting a more corporate-wide orientation, among the most significant of which are:

• The entire enforcement regime of the Occupational Safety and Health Act of 1970 is based on the inspection of individual "establishments" rather than corporate entities. As a result, OSHA's inspection targeting strategy has been based on the safety and health experience at individual workplaces and the constitutional underpinnings of OSHA's inspection authority have been affirmed on that basis. That is not to say that OSHA could not refocus its efforts, where policy considerations warrant it, to a broader, more corporate-wide approach. In fact, OSHA has done so on a limited basis, in its use of corporate-wide settlements, its application of the repeat violation policy, and even to a limited extent in the Enhanced Enforcement Program (which has been recently been modified).

• Perhaps bigger practical impediments to an expanded corporate-wide enforcement policy are the ways in which safety and health data are collected and maintained at both the governmental and company levels. Again, reflecting the establishment-based orientation of the OSH Act, the Bureau of Labor Statistics and OSHA do not systematically collect or maintain either injury and illness data or, in OSHA's case, citation history on a company-wide basis. And of course, OSHA collects data only from a limited number of workplaces nationwide, so it would rarely have in its data base a complete or even representative set of data from any multi-establishment corporation. And while many large multi-facility companies do collect and often analyze some injury and illness data at the corporate level, it is often a limited subset of the data from all of its facilities.

• There is also the bureaucratic version of the "silo" issue faced by many organizations, including corporations—each OSHA Area Office and each OSHA Region and each State Plan State has its own priorities, goals and targets in terms of inspections of the unique mix of establishments in these "mini-jurisdictions." If OSHA is to address more fully and strategically violations by a single company at multiple sites throughout the nation, the agency would need to institute some special program (akin to a National Emphasis Program) that encourages or requires coordination and the exchange and analysis of information, followed by action.

Despite these issues, there would appear to be solid reasons for OSHA to consider additional ways to examine a company's compliance on a corporate-wide basis under limited circumstances. Most fundamentally, OSHA is always looking for ways to leverage its scarce resources in order to maximize its impact—such a focused corporate-wide approach may be one way to further that objective. By the same token, any new or enhanced program to focus more heavily on corporate-wide compliance would have to balance the additional resources required against the potential impact of the program.

One possible approach OSHA could take would be to establish certain "triggers" whereby if an Area or Regional Office has experienced a citation history of a des-

ignated "high" magnitude at the establishment or establishments of a corporation known to have national operations, this history could be brought to the attention of the National Office and other potentially affected Regions for an evaluation of the company's compliance experience nationally. If the analysis finds similar compliance histories in other company locations, OSHA could establish a series of steps ranging potentially from notification of the company's senior management of these findings and requesting a corporate review, to more intensive enforcement efforts at other company locations.

Finally, on a more general note, ORC would strongly encourage OSHA to search for new ways to promote and advocate the value of safety and health management systems as a critical tool to reducing risk and achieving full compliance. In the long term, nothing will have a more significant impact on the reduction of risks, injuries and illnesses, as well as improved compliance, than the widespread adoption of such systems—OSHA can play a critical role in this effort.

ORC looks forward to working with the Subcommittee as it continues to evaluate the issues raised in this hearing and other approaches to reducing injuries and illnesses in the workplace.

Chairwoman WOOLSEY. Thank you, Mr. White.

Mr. Taylor.

STATEMENT OF RON TAYLOR, PARTNER, VENABLE LLP

Mr. TAYLOR. Thank you, Madam Chairwoman.

Chairwoman WOOLSEY. Your microphone, sir.

Mr. TAYLOR. I apologize. Thank you very much. Chairwoman Woolsey, members of the subcommittee, thank you very much for this opportunity to participate in this important hearing. Although my comments today are those of myself alone, they are based on my 27 years experience representing employers in enforcement actions and assisting employers in understanding and obtaining compliance with applicable safety and health rules throughout the United States, Puerto Rico and the Virgin Islands. I have also participated as a past co-chair of the American Bar Association and have taught a mandatory occupational safety and health law course at the Johns Hopkins University, Bloomberg School of Public Health. Those help to inform my experience.

I have submitted written comments which I ask to be made part of the record, but I want to try to summarize them since I have only a few brief moments.

The starting point for our discussion today is the Occupational Safety and Health Act, which was enacted in 1970 to assure that every working man and woman in the United States had a safe and healthy workplace. At the time that the act was enacted, Congress was very concerned that injuries and illnesses were on the rise. Statistics that were included in the legislative history showed that since 1958 the number of disabling injuries and illnesses was actually on the rise. So this was really the first comprehensive legislation designed to address that. At the time, estimates showed that between 14,000 and 15,000 workers died each year in occupational injuries. Today, 37 years later, that trend has been reversed. And notwithstanding the occasional but minor upticks, the trend is downward and the number of occupational fatalities is roughly one-third of that number. 55 percent of those occupational injuries are the result of traffic incidents and homicides. And in a 1995 study, two professors concluded that in fact the danger of dying at work was less than the danger of dying in an accident at home.

I believe that there are lots of reasons for this. First and foremost is the very presence of OSHA, that this Congress had the wisdom to enact, to create this legislative rule. Its enforcement and that of the State plans that help OSHA enforce occupational safety and health laws across the United States has had a good effect. However, we cannot overlook the effect of increased education and efforts by workers, by their unions, by employee representatives, as well as by employers in helping to obtain this lower result. And the statistics that are included in my written materials reflect that.

This is not to suggest that the goal of the act has been met 100 percent or that people should be complacent. They cannot be. Unfortunately we have heard today of a tragic accident, and I know from my own practice that accidents occur, and we have to continue to be committed to reducing those so that nobody goes home as a result of preventable accidents. I think, however, it is fallacious to think that the system is because accidents still occur in complete disrepair or dysfunctional. In fact as I noted, workplaces are safer, employees are better educated and better trained as they should be. Employers in my experience generally do care and care very much. They do not want to be cited, they do not want to receive willful citations or repeat citations or any such thing. And OSHA is continuing to do its part.

Our discussion today is focused on multiple employers who are operating at multiple sites. I think that the present act and the tools that OSHA has developed over its 37 years of existence are adequate to assure that its statutory goal is met and that while not perfect, that we are working towards that goal.

Enforcement statistics show that fewer people are being injured and that there are fewer accidents. OSHA's existing programs, willful citations, the program that Mr. White alluded to, the Enhanced Enforcement Program, its willful, egregious or otherwise known as instance by instance citation policy and in particular its repeat citation policy, provide avenues and tools for the agency to assure that employers who operate more than one facility have safe and healthy workplaces in all of those facilities throughout the United States.

These tools drive behavior. In my experience, clients are very motivated to ensure that when an accident occurs that they don't become subject to repeat citations or, alternatively, to willful citations and they take many of the very steps that Mr. White alluded to. They send out notices, they work to make sure. And often when OSHA comes in, and it does come in and look at other job sites, it finds that those violations have been corrected. I believe that this is the result of the spirit which is consonant with the act, which is to lead employers toward voluntary compliance; but for those employers who don't do that, to have a stick that is available. And I think that the act provides those provisions.

Two quick moments. I see my time is very nearly up. It is up. With respect to the EEP program, I have criticized it from time to time as being over inclusive and unfairly labeling employers as being indifferent when in fact nothing more is true. I expect that the OSHA people who I have met in my 27 years of experience are dedicated, they care, by no means in my experience that I have met an OSHA person who did not care about safety. And I think it is

natural to see that relatively small numbers of people would be in EEP. That reflects to me fundamentally that the system is working. That should be the goal, to have fewer and fewer people in it. I think that can only be done by a proper mix of voluntary compliance and by adequate enforcement.

Thank you very much.

[The statement of Mr. Taylor follows:]

TESTIMONY OF RONALD W. TAYLOR
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
HEARING ON IMPROVING WORKPLACE SAFETY:

"STRENGTHENING OSHA ENFORCEMENT
OF MULTI-SITE EMPLOYERS"

April 23, 2008 - 10:30 a.m., Rm. 2175
Rayburn House Office Building

Good Morning Chairman Woolsey, Ranking Minority Member Wilson, Members of the Subcommittee, Witnesses and Guests. My name is Ronald Taylor. I am an attorney with the law firm of Venable, LLP and I am here to comment on an important workplace safety issue, strengthening OSHA's enforcement as it pertains to employers that operate at more than one site.

At Venable, my practice is concentrated in the area of labor and employment, and a significant component of my work pertains to representing employers in the area of occupational safety and health. I help them to interpret standards and laws and to understand their obligations under those standards and laws. When appropriate, I defend them against citations issued by the federal Occupational Safety Health Act (Act) and its state plan counterparts. I have handled enforcement actions in virtually every state, as well as in the territories of Puerto Rico and the Virgin Islands, and thus have had the opportunity to interact with many of the employees of OSHA and the many state plans who are dedicated to ensuring that every working man and woman in the United States has safe and healthy employment. I am also past management co-Chair of the American Bar Association's Occupational Safety and Health Law Committee.

Although any views that I express here today are mine alone, and do not reflect those of my firm, my partners, or any of my clients, I am hopeful that my comments here today may in some small way help advance the goal of workplace safety, which is a goal that I believe all of us present today share. I thank the Subcommittee for the opportunity to contribute to that objective.

The Occupational Safety and Health Act of 1970 was the first comprehensive effort by Congress to address job safety and health. Testimony presented to Congress at the time revealed that an estimated 14,500 workers were killed each year as a result of workplace accidents. And the trend with respect to workplace safety was disturbing: The number of disabling injuries in 1970 was significantly higher than it was in 1958.[1]

Against this backdrop, Congress enacted the Act with the express, salutary purpose of ensuring that every working man and woman had a safe and healthy workplace. Toward this goal, the common law duty of employers to provide reasonably safe workplaces essentially was codified and incorporated into the Act as the general duty of all employers to provide workplaces free from recognized hazards of a serious nature. Beyond this general duty, the Act authorized the Secretary of Labor to promulgate standards to effect the Act's goal of obtaining workplace safety and required employers to comply with those standards.

The specific responsibility for attaining the goal of the Act was vested in a new agency within the Department of Labor, the Occupational Safety and Health Administration. OSHA was broadly empowered to inspect employer work sites and to

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[1] *See Report of the Senate Committee on Labor and Public Welfare*, S. Rep. No. 91-1282 (91st Congress, 2d Session) at 1-5 (October 7, 1970).

issue citations and propose monetary penalties for failing to comply with applicable safety and health standards. Although the citation/penalty enforcement mechanism is primarily civil in nature, Congress also established criminal penalties for certain violations. For example, employers who lie or misrepresent facts to compliance officers may be subject to criminal penalties, and employers whose willful failure to comply with the requirements of the Act may be subject to criminal penalties.[2]

While the Act clearly established penalty mechanisms for enforcing OSHA standards, Congress also expressed its desire to encourage employers voluntarily to reduce hazards and improve safety plans.[3] Indeed, Congress considered evidence that employer safety consciousness and the voluntary use of safety measures mattered to workplace safety: data from the National Safety Council (NSC) showed that employers who voluntarily paid attention to safety—even in the absence of any comprehensive legislation—had substantially less disabling injuries than those employers that did not.[4]

There is little doubt that increased employer and employee awareness of safety and the presence of OSHA have dramatically, and beneficially, affected workplace safety. Today, workplace fatalities are down by nearly two-thirds from their pre-OSHA levels. As a point of reference, Professors Thomas Kniesner and John Leeth, after studying NSC and Bureau of Labor Statistics (BLS) data, observed that as of 1993, statistically "the chance of injury in an accident at home… is greater than the chance of

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[2] 29 U.S.C. § 666(g),(e).
[3] 29 U.S.C. § 651(b).
[4] See M. Rothstein, Occupational Safety and Health Law, § 2, at p.5 (1998), citing M. Gross, OSHA: Much Ado About Something, 3 Loy. L.J. 247, 249 (1972).

dying in an accident at work."[5] While I would agree that all interested parties—employers, workers, and OSHA—should continue to look for ways to reduce the number of workplace accidents further, the dual effect of voluntary employer compliance and OSHA enforcement under the Act in reducing workplace fatalities and injuries cannot be overlooked or understated. I am pleased to say that the employers with whom I work, and I believe those with which my colleagues on the ABA Occupational Safety and Health Law Committee work, share this commitment to workplace safety and to reducing to zero the number of workplace injuries and illnesses, irrespective of OSHA's enforcement of the Act. They recognize that workplace safety is both right and good business.

It is probably fair to say that the nature of employment and the workforce today, in 2008, is different than the landscape that existed in 1970 when the Act was passed. Any suggestion, however, that OSHA lacks the ability or the tools to enforce its standards against employers with multiple facilities or worksites is, however, incorrect.

First, although injury and fatality statistics reflect occasional upward ticks, in general, fewer serious and fatal injuries are occurring today than at times in the past.[6] The decline in workplace injuries and deaths increases are, I believe, the result of a number of factors working together, including the self-interest and better awareness of employers and employees as well as the enforcement efforts of OSHA. These efforts,

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[5] T. Kniesher and J. Leeth, *Abolishing OSHA*, Regulation: The Cato Review of Business & Government (Vol. 18, No. 4, Fall 1995) *available at* http://www.cato.org/pubs/regulation/reg18v4e.html.

[6] *See, e.g.*, *Census of Fatal Occupational Injuries* (CFOI) (revised), available at http:/www.bls.gov/iif/oshcfoi1.htm.

both voluntary efforts and enforcement, are true to the intent of Congress reflected in the Act.

In this regard, OSHA has demonstrated its willingness to adapt to a changing employment landscape and has developed tools that enable it effectively to police – or motivate toward compliance - employers not simply at single work sites, but at multiple sites. Some of those tools are: willful citations, repeat citations, OSHA's Instance-by-Instance Citation Policy, and OSHA's Enhanced Enforcement Program (EEP).[7]

Willful Citations: The Act authorizes OSHA to issue willful citations to employers who demonstrate, in general terms, a voluntary, intentional disregard for or a plain indifference to their obligation under the Act to comply with the general duty or specific standards. In addition to substantially increased penalties, which typically start at the $25,000.00 level for serious willful violations, the Act authorizes OSHA to pursue criminal penalties when a willful violation of a standard results in the death of an employee.[8] The issuance of willful citations is not limited to single sites. In fact, an employer's pattern of violations at multiple sites may be indicative of the disregard or indifference required to support a willful violation.

Repeat and Failure to Abate Citations: Even without consideration of the possibility of willful citations, the Act currently includes impetus for even well-

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[7] On an industry and hazard-centric basis, OSHA also has a number of local and national emphasis programs designed to react to hazards incident to a particular industry or operation.

[8] In addition to criminal prosecution under the Act, employers may be subject to criminal prosecution under state law. Such prosecutions are not limited to situations involving willful violations and fatalities.

intentioned employers to assure that their response to violations is effective company-wide. Thus, the Act authorizes OSHA to issue repeat citations to employers that fail to or ineffectively abate violations. Penalties for repeat violations may be up to 10 times greater than non-repeat violations, and penalties for failing to correct may be up to $7,000 for each day the violation remains unfixed. OSHA has extensively issued repeat citations to employers operating at multiple locations. The effect of its actions has been to drive employers to adopt effective company-wide abatement measures for violations arising out of the inspection of a single location.

Willful Egregious or Instance by Instance Citation Policy: In appropriate cases, OSHA has alleged a separate violation and proposed a separate penalty for each instance of non-compliance with its standards. For example, in 2005, OSHA issued a record fine of more than $21 million against BP Products North America, Inc., a subsidiary of British Petroleum, after citing the company for 301 willful violations of worker-safety laws. When this enforcement approach is used, it sends an unmistakable message to the employer issued the citations, but also provides a deterrent to any employer that might perceive itself similarly situated. The issuance of such citations occurs when the violation is willful and often when there has been a worker fatality or a large number of injuries or illnesses, but the application is not limited to fatality and catastrophe cases. Thus, OSHA's policy directive states that such penalties may be used where employer has an extensive history of prior violations, where the employer has intentionally disregarded safety and health responsibilities, where the employer's conduct reflects bad faith in the discharge of its duties under the Act and where the employer has committed such a number of violations as to undermine the effectiveness of any safety

and health program the employer may have in place.[9] The threat of and the use of such citations assists OSHA in carrying out its mission without regard to multisite employers.

Enhanced Enforcement Program (EEP): In March 2003, former Assistant Secretary for OSHA John Henshaw announced a new program, entitled "Enhanced Enforcement Program for Employers Who Are Indifferent to Their Obligations under the OSHA Act." The purpose of the EEP is to target those employers who ignore their obligation to provide a safe and healthful workplace. Revisions to the EEP published in January 2008 refocus the Program's enforcement emphasis on those employers that have a history of violations with OSHA and its state plan counterparts. OSHA's EEP provides for follow-up inspections of the worksite at issue to assure abatement, inspections of other worksites, steps to ensure increased company awareness of OSHA enforcement activities, increased settlement requirements, and the use of consent degrees providing for immediate federal court enforcement.[10] OSHA has made extensive use of its EEP. According to data released by OSHA, through December 31, 2007, OSHA had enforced 2,185 EEP cases.[11]

I believe that, taken as a whole, the existing statutory framework affords OSHA the tools it needs to enforce its standards not simply at single employment sites, but at multiple worksites of an employer. And, as noted, OSHA has demonstrated its ability to effectively use its tools in creative ways. A broader picture emerges from the

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[9] *See* CPL 02-00-080.
[10] OSHA CPL 02-00-145.
[11] Statements by Donald Shahoulb at the ABA OSH Law Committee Midwinter Meeting (March 2008).

enforcement statistics for fiscal year 2007 that were recently released by OSHA.[12] Here are a few highlights of these statistics:

- In fiscal year 2007, OSHA conducted more than 39,000 inspections.
- Total violations of OSHA's standards and regulations were 88,846, a 6 percent increase from 2006.
- The agency cited 67,176 serious violations, a 9 percent increase from the previous year and a more than 12 percent increase over the past four years.
- The number of cited repeat violations also rose from 2,551 in 2006 to 2,714 in 2007.

These statistics—together with the previously mentioned statistics showing dramatic declines in workplace injuries and deaths—offer strong evidence that OSHA's enforcement programs are working across single and multiple worksites. In short, the existing statutory framework has given OSHA the tools it needs to identify serious safety and health hazards, to address recalcitrant employers, and to efficiently use its resources, with more than single site employers.

In addition to the enforcement tools to which I have already alluded, and consistent with the congressional desire contained in the Act, OSHA has also tried to work to create incentives for employers voluntarily to obtain compliance. To this end, OSHA's voluntary compliance programs invite employers to collaborate with OSHA in order to foster safer and better working conditions. Examples of OSHA's voluntary

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[12] *OSHA records another successful enforcement year in FY 2007*, OSHA National News Release 07-1948-NAT (Dec. 28, 2007). For a more detailed statistical analysis of OSHA's recent enforcement efforts, see *OSHA Enforcement: Striving for Safe and Healthy Workplaces*, Directorate Of Enforcement Programs, OSHA (2007), available at http://www.osha.gov/dep/enforcement/enforcement_results_07.html.

compliance programs include, the Voluntary Protection Program (established in 1982), its Strategic Partnership Program (established in 1998), and its Alliance Program (established in 2002). In its March 2004 report to this Committee, the GAO reported that OSHA's voluntary compliance strategies showed some promising results.[13] I recently had the pleasure to hear a representative of the Arizona state plan's consultation and training section describe articulately and passionately the many positive safety results occurring in that state as a result of its consultation and training efforts.

It is my belief that the dual approach of balancing voluntary compliance with enforcement provides the best hope for assuring worker safety and health. Promoting better understanding and cooperation will lead to the attainment of a greater level of protection than can be expected to result simply from increased or new forms of punishment. Increased reliance on strict enforcement alone is not likely to result in truly effective safety programs. Rather, efforts to make OSHA standards clearer are likely to result in greater improvement in the area of safety across all sites. This is because, too often, compliance issues arise not as a result of a desire to flaunt safety rules, but from a lack of understanding of the obligations imposed due to inartful drafting. Too often a rule does not say what OSHA means, and disputes arise because OSHA seeks to enforce a rule different than the one it wrote. This is unfair to all concerned, and undercuts the effectiveness of enforcement. As at least one commentator has observed, "Merely cranking out more standards (even assuming that's feasible) and issuing more citations (or more egregious penalties, or however one defines 'stronger' enforcement) isn't

[13] *See* GAO-04-378.

necessarily desirable or more effective from a worker safety and health perspective."[14] In short, more vigorous enforcement of poorly drafted, unclear rules will not improve safety. OSHA should be given the resources to clarify ambiguous rules and to continue its efforts at education. I do not suggest that this should come at the expense of appropriate enforcement: rather, the goal for the agency is to find the proper balance between carrots and sticks.

I am privileged to represent employers that care deeply about the safety and health of their workers, and that work to ensure all of their workplaces are safe. They favor strong and fair enforcement against those employers who, unlike them, take lightly the obligation to protect their workers. I believe that my experience with employers is typical of those attorneys who do what I do.

This concludes my remarks. Thank you for allowing me this opportunity to speak today. I welcome any questions you may have.

[14] Comments of Frank White, reported in Industrial Safety and Hygiene News Ezine, Vol. 7, No. 4 (Feb. 15, 2008).

Chairwoman WOOLSEY. Thank you, Mr. Taylor.

Ms. Rabinowitz.

STATEMENT OF RANDY RABINOWITZ, ATTORNEY IN PRIVATE PRACTICE

Ms. RABINOWITZ. Good morning, Madam Chair and members of the subcommittee.

Chairwoman WOOLSEY. Your microphone. Get it in front of your face.

Ms. RABINOWITZ. Oh, I am sorry. Is that better?

I am honored to be here this morning. My name is Randy Rabinowitz, and as a private lawyer, I represent unions on OSHA

matters. And I imagine you won't be surprised to learn that I have a different view than Mr. Taylor, and I do believe that there are several changes to the OSHA Act that the Congress ought to consider that would help improve OSHA's ability to conduct effective corporate-wide investigations and to protect workers from the kinds of preventable tragedies like the one we just heard about which killed Mr. Torres-Gomez at Cintas.

Many companies devote substantial resources to safety and health and take their duty to protect employees seriously. Unfortunately, far too many companies do not. So I don't want to be seen as trying to condemn all of corporate America, but I do think there is a problem among some bad apples and the question is how to fix that problem.

Mr. White has talked about what management can do to fix that problem internally. I would like to focus my comments on what OSHA can do to strengthen its ability to protect workers.

In my view, OSHA could better use its inspection resources if, once it found evidence of severe health and safety violations at one location of a multi-facility company, it looked for patterns of misconduct within the company and demanded abatement of the problem companywide. Large companies have the organizational resources to make safety and health improvements, and I think unfortunately the Bush administration has relied far too heavily on voluntary programs, including an alphabet soup of partnerships, alliances and consultative programs even though they have no empirical research to show that any of them have any effect.

OSHA's enhanced enforcement policy, or EEP policy, was adopted in 2003 as a response to a New York Times expose on enforcement problems within the Agency. It provides guidance to OSHA staff on how to conduct wider investigations when a serious violation is found at one facility of a multi-facility company. The EEP policy in my opinion is too limited, both by design and in the way it has been used. There need to be changes in the OSHA Act to make sure that we remove some of the obstacles to uncovering patterns of corporate misconduct.

One of the real problems with the EEP program is that it leaves OSHA with too much discretion. It may look great on paper, but the Agency doesn't have to do anything with it. And it is just unfortunately oftentimes an empty promise. So one suggestion is that Congress should consider ways to require OSHA to conduct corporate-wide investigations in appropriate circumstances and not just rely on OSHA's discretion in doing it or not doing it only when there is a big New York Times series and everybody is watching.

OSHA also needs to overcome some of its own bureaucratic obstacles to conducting corporate-wide investigations. The OSHA statute imposes compliance duties on employers regardless of whether they operate one facility or hundreds of facilities. OSHA itself chooses to enforce the act facility by facility in a piecemeal and disjointed manner that often makes it difficult to achieve communication and collaboration among the various parts of OSHA. There is no reason they have to go about it that way and they should be pressured to fix that problem. I also think OSHA needs more information on corporate-wide injuries and illnesses.

Section 8 of the OSHA statute grants OSHA broad authority to adopt regulations requiring employers to record and report workplace injuries and illnesses. There is no legal reason in my opinion that OSHA could not impose a new requirement on large companies to report this data across facilities. But unfortunately, OSHA's record of timely adopting regulations is dismal and, without a congressional mandate that it do so promptly, it is unlikely to act on its own.

Further, once OSHA finds a severe hazard at one facility of a multi-site employer, OSHA needs information on whether those conditions also exist at other facilities within the company. Current law allows OSHA to request such information, but it leaves OSHA with few effective ways to compel production within the 6-month statute of limitations during which OSHA has to issue its citations. So OSHA often negotiates for far fewer documents than it really needs to address the companywide problems. And Congress should consider how it can maybe arrange ways to get around the 6-month limit.

And then finally, when OSHA finds a problem, a company is not required to fix serious and willful hazards until all its appeals have been exhausted, and that can sometimes take years. I know of one case where it took more than a decade, and during that time while the appeals are pending there is no obligation for the company to go out and investigate other facilities or to fix things and OSHA is often reluctant to inspect other facilities and cite the same problem while it is litigating the validity of its original citation. This committee has twice reported legislation to fix that problem, and I would urge that it consider doing so again.

Thank you.

[The statement of Ms. Rabinowitz follows:]

Prepared Statement of Randy S. Rabinowitz, Attorney in Private Practice

Good Morning Madam Chair and Members of the Subcommittee.

My name is Randy Rabinowitz. I am a private attorney specializing in occupational safety and health law. I have spent the past 30 years on OSHA law issues, first as a law clerk and attorney at the Solicitor's Office, later in private practice, and as Labor Counsel to the Committee on Education and Labor between 1991 and 1995. I have been a consultant to OSHA, the State of Washington, and the Commission on Labor Cooperation. I have represented a variety of unions, including UAW, USW, UFCW, Unite, and others in litigation over OSHA and MSHA standards. For several years, I taught a law school seminar on OSHA law, have served as the union co-chair for the OSHA law subcommittee of the American Bar Association, and have authored several law review articles on OSHA law issues. For more than a decade, I have served as the Editor-In-Chief of a prominent treatise on OSHA law, published jointly by the ABA and the Bureau of National Affairs (BNA).

I am pleased to appear before you this morning. I have been asked to provide an overview of OSHA's current legal authority to conduct investigations generally and, more specifically, to conduct corporate-wide investigations. My testimony is intended to highlight areas of the Occupational Safety and Health Act of 1970 (OSH Act) which pose obstacles to broader reliance on corporate-wide investigations to identify patterns of misconduct for the purpose of reducing the safety and health hazards workers face on-the-job.

Many companies devote substantial resources to safety and health and, within those companies, managers and officers take their duty to protect employees seriously. Unfortunately, far too many companies, both big and small, do not. This is unacceptable, because workers should not have to die or become ill when they go to work.

In the more than two decades that I have been practicing OSHA law, every year it seems there is an expose describing the dangerous, often life-threatening conditions at some large company or within an industry.

In the 1980's, the meatpacking industry crippled thousands of workers. IBP denied the problem. An investigation by Representative Tom Lantos revealed the company's deception about the true toll of worker injury and death.

In the late 1980's, the Phillips Petroleum and other petrochemical companies ignored process safety hazards, creating highly dangerous conditions. The risk of catastrophic explosions highlighted the need for stricter standards. Congress compelled OSHA to act when it failed to do so.

In the 1980 to 1990s, the auto, garment, meatpacking, trucking/distribution and healthcare industries all ignored the devastating toll from ergonomic injuries until OSHA developed corporate-wide programs to address these hazards.

The construction industry has killed workers through failures in site management and most often missing fall protection. Today, the Avalon Bay development company and its contractors repeat this pattern.

In the late 1990's and since, as the New York Times revealed in its expose, the McWane company achieved new lows in corporate malfeasance—with its "production-first and only" schemes that degenerated into death and injury for workers, and conspiracy, deception, and criminal convictions for managers.

Today these same patterns continue:

At the Cintas Corp., the repeated violations of life-and-death OSHA standards across the company again show a pattern of production-first, safety later.

A recent expose by the Charlotte Observer illustrates that the House of Raeford, Smithfield and DCS Sanitation have again created the same dangerous working conditions Cong. Lantos investigated two decades earlier. The House of Raeford's misrepresentation of its injury rates raises serious questions about OSHA's failure to enforce basic recordkeeping requirements.

New industries often escape scrutiny until it's too late. Today, the waste hauling industry and its leader, WMI, has repeatedly violated OSHA rules, causing severe injuries and even death among its workforce.

And, after every expose, OSHA and others promise to "get tough." But, almost four decades after the Occupational Safety & Health Act went into effect, OSHA enforcement efforts grow weaker, not stronger.

Empirical research has shown strict enforcement by OSHA is effective in reducing illnesses and injuries.[1] It is the very foundation for the OSH Act. Nevertheless, during the Bush Administration OSHA has shifted its resources to voluntary programs, including an alphabet soup of partnerships, alliances and consultative programs. There is no empirical evidence that these programs reduce injuries or that they do so more effectively than old-fashioned enforcement.

Like the Act itself, a recent enforcement effort by OSHA, its Enhanced Enforcement Policy or EEP Program, is another example of an enforcement program with great potential that has never achieved its promise. The EEP program was adopted in 2003, in response to the enforcement disgrace at McWane Corp. Unfortunately, the EEP program has failed to protect workers at indifferent, large employers from highly-dangerous hazards.

In my view, OSHA should try to leverage its resources to identify patterns of misconduct and demand abatement of the problems company-wide. These large companies have the organizational resources to make health and safety improvements. It is a shame when OSHA fails to insist on this company-wide protection for workers.

Overview of OSHA enforcement

OSHA faces obstacles if it wants to expand its corporate-wide enforcement efforts.

Some of these obstacles stem from the structure of the OSH Act and Congress may need to act to fix these. Other obstacles have been created by OSHA. OSHA chooses to enforce the Act facility by facility. Its programs and policies are designed to facilitate a plant by plant approach to enforcement. Those programs are administered by a Regional Administrator (RA). Within each region, the RA decides which cases to pursue. This piecemeal and disjointed approach often makes it difficult to achieve the communication and collaboration necessary to uncover patterns of misconduct across large corporations. Obviously, legislation is not necessary to fix these bureaucratic obstacles to greater corporate-wide enforcement.

To help understand OSHA's authority to conduct enforcement across an employer's several facilities and the obstacles to effective exercise of that authority, I believe a brief overview of the enforcement scheme under the OSHA Act would be helpful. OSHA's enforcement efforts rely principally on two types of inspections. OSHA relies first on injury and illness statistics recorded by employers and reported to OSHA to conduct "general schedule" inspections. These inspections are intended to target high-risk employers. The scope of a general schedule inspection is generally broader than the scope of a complaint inspection.

Second, when a current employee at a facility, or that employee's representative, files a written complaint about a hazardous condition, OSHA must initiate an inspection.[2] During such complaint inspections, OSHA usually inspects only those conditions described in the complaint.

If an employee believes OSHA should broaden its inspection, the employee can request that OSHA do so while the inspection is ongoing.

When an inspection reveals that an employer has violated an OSHA standard, regulation, or the general duty clause, OSHA must issue citations.[3] These citations must be issued no later than six months from the date on which the inspection began. The sooner OSHA identifies a problem and issues citations, the sooner the employer must begin abatement.

A citation notifies an employer of the violations OSHA found, the penalties it proposes, and the date by which abatement must be accomplished. Each violation is classified by severity. A serious violation is one where there is a substantial probability the violation will cause death or serious injury. OSHA must assess a penalty of up to $7000 for each of these violations. A willful violation occurs when an employer intentionally disregards safety and health or is indifferent to the Act's requirements.[4] OSHA must assess a penalty of between $5,000 and $70,000 for each willful violation.[5] OSHA may also levy additional fines of up to $70,000 for each repeat violation, those which are substantially similar to violations in prior OSHRC orders.

OSHA may refer a case for criminal prosecution when willful violations of specific standards result in an employee death.[6] OSHA may not seek criminal penalties for general duty clause violations, even if an employee dies. OSHA cannot seek criminal penalties when an employer's OSH Act violations permanently disable workers. Only firms, not individuals, are subject to criminal prosecution for a misdemeanor.[7] States may prosecute employers who harm workers if their actions violate state criminal laws, such as those prohibiting manslaughter and reckless endangerment.[8]

OSHA, however, has substantial discretion about whether to cite an employer for hazards it observes, to withdraw citations, reach settlements, characterize violations, and reduce or eliminate penalties.[9] Courts are not permitted to review OSHA's decision on whether to enforce the law. OSHA routinely changes the classification of violations when settling citations even in major cases involving worker deaths—usually changing willful violations to "unclassified" violations so criminal prosecution is no longer possible and the $5000 minimum penalty does not apply. Penalties are often substantially reduced as well.

When an employer receives a citation, it has fifteen working days in which to challenge the violations, the characterization, or the penalty. An uncontested citation becomes a final OSHRC order, enforceable in federal court.[10] Most contested citations are resolved informally, without resort to litigation. When employer challenges to citations are not resolved informally, they are adjudicated before the independent Occupational Safety & Health Review Commission. While an OSHRC challenge is pending, the employer is not required to abate the violation. This delay in abatement during litigation often extends for several years. In cases of imminent danger, OSHA can, but rarely does, ask a federal court to shut down a dangerous operation.

OSHA shares enforcement duties with states under the OSH Act. Section 18 of the Act authorizes states to administer their own OSHA program, if that program meets minimum federal requirements and receives OSHA approval. Twenty-two states enforce occupational safety and health requirements in the private sector apart from federal OSHA. Where OSHA has not given the state final approval of its plan, and it has not done so in six states with jurisdiction over safety and health in the private sector (California, Washington, Vermont, New Mexico, Michigan and Puerto Rico), OSHA could exercise concurrent enforcement jurisdiction, but it has a policy of not doing so. Enforcement procedures—as well as classification and penalties—can differ widely among the states.

Company-Wide Enforcement

OSHA adopted its Enhanced Enforcement Policy (EEP) in response to the New York Times/ Frontline expose on corporate-wide indifference to health and safety at McWane, and OSHA's inability to identify the horrifying pattern of misconduct at the company. Under the policy, when OSHA identifies high gravity serious violations at a facility, it considers whether to initiate additional enforcement action at that facility or at others. The idea—at least on paper—is to give OSHA a tool to find patterns of violations.

Within this framework, EEP provides guidance to staff on how to conduct broader investigations when a compliance officer identifies a serious violation at a facility and a possibility exists that similarly hazardous conditions exist elsewhere in the

company. But it is too limited. And, OSHA relies on the policy too infrequently for it to accomplish its goals. OSHA can fix some of the obstacles to stronger corporate-wide enforcement. Others require Congressional action. Some of the issues which Congress should address are described below.

OSHA's current EEP program leaves the Agency with too much discretion to do nothing. On paper, the policy represents a reasonable effort by OSHA; the problem with the EEP policy is that it can be changed or ignored. Sometimes OSHA staff follow it. Sometimes they do not. OSHA is free to act arbitrarily. It is not required to explain why it relies on the EEP in some cases and not in others. Within some OSHA regions, the EEP policy is relied on often. Within others, rarely.

OSHA's own statistics reveal that while OSHA has designated approximately 2,000 EEP cases since the inception of the program in 2003, it has not primarily been used to target employers with patterns of misconduct across multiple sites. Forty-six percent of the employers included in the EEP inspections are small employers with less than 25 employees, and only twenty-three percent of covered employers who had over 250 employees. Further, as of March 2007, OSHA reported that EEP had led to inspections of other locations of employers involved in EEP cases under one hundred times. OSHA's unfettered discretion to do nothing leaves employees without adequate protection. Further, because OSHA relies on the EEP inconsistently, the program fails to deter on-going patterns of violations across larger companies.

The strongest action under the EEP Program is the issuance of a national "EEP Alert" memorandum, instructing Federal OSHA Regional and Area Offices to conduct inspections at a specified group of a company's locations, designated by the National office. According to OSHA, however, it has only issued 8 such alerts since the inception of the program in 2003—or less than two per year.

Congress should contain OSHA's discretion so that in appropriate cases it can be required to conduct corporate-wide investigations. Current law already mandates OSHA inspections when employees voice specific complaints. The EEP program contains no comparable requirement.

OSHA has a crippling lack of the information that could help it target companies with widespread problems. OSHA currently lacks corporate-wide information on injuries and illnesses. Without such information, it cannot identify patterns of misconduct. Section 8 of the Act grants OSHA broad authority to adopt regulations requiring employers to keep records of workplace injuries and illnesses and report injury incidence to OSHA. OSHA's existing regulations require that these records be kept for each facility. Some, but not all, employers must report their injury incidence to OSHA. In my opinion, section 8 of the Act clearly permits OSHA to adopt broader corporate-wide recordkeeping requirements. There is no legal reason OSHA could not impose upon large companies a new requirement to report injuries and illnesses across facilities. There is a practical limit to whether OSHA can accomplish this goal within the foreseeable future. When OSHA last set out to revise its recordkeeping rules, the process took nearly 7 years. Any proposal to expand recordkeeping requirements for large companies would likely generate controversy and OSHA's track record of timely completing controversial regulations is dismal. So a Congressional mandate that OSHA adopt corporate-wide recordkeeping requirements with 6-12 months would be a necessary first step so the agency can obtain the basic information necessary about health and safety hazards across facilities within the same company.

OSHA also needs information on whether conditions posing hazards at one facility exist at other facilities within the company. Current law allows OSHA to request such information, but leaves it with few effective ways to compel such information. Once OSHA identifies a serious safety and health hazard at a facility of a company with many facilities, it needs information about whether similar conditions or processes exist at other facilities before it decides whether to conduct a corporate-wide investigation.

Under current law, OSHA can ask for this information during an inspection. It is clearly relevant to OSHA's decision as to whether a violation is willful. For example, if a company has ten facilities with conveyors and employees have gotten injured in the conveyor at several facilities, that information could serve as potent evidence that the company either knew of the conveyor's danger or was indifferent to the danger. Either way, such a violation could be characterized as willful. So if OSHA wanted the information, and its request that it be turned over was denied, the Agency could issue a subpoena for the documents and seek to judicially enforce the subpoena if necessary.

OSHA faces a practical problem, however, in doing so. The OSH Act requires that it issue citations within six months of beginning its inspection. If a company resists OSHA's efforts to obtain company-wide information about hazards, the process of ju-

dicially enforcing a subpoena—a process which may require an adversary hearing in federal court—could easily drag on for over six months. And, why would a company voluntarily supply information to OSHA about company-wide health and safety hazards, when doing so will likely increase the fine they face and refusing to do so will run out the statute of limitations? So, in practice, OSHA is likely to negotiate for far fewer documents than it needs to identify company-wide problems. To correct this imbalance, Congress should require that employers provide OSHA with documents about hazardous processes or conditions across company facilities whenever a serious violation has been identified.

Critics of expanded OSHA enforcement may suggest that imposing such a mandate would encourage fishing expeditions by OSHA. I believe such an argument lacks merit. The Supreme Court has ruled that OSHA investigations must be consistent with the Fourth Amendment to the US Constitution. An employer's ability to challenge an OSHA subpoena for documents as unreasonable under the Fourth amendment guards against overly broad document requests by OSHA.

Large companies should have an obligation, once a serious hazard has been identified at one facility, to conduct internal investigations to determine whether the same hazard exists at other facilities. Current law imposes no such duty. In fact, it creates incentives to delay abatement at all facilities. This is true because an employer is not required to abate an OSHA violation until after all appeals to OSHRC have been exhausted. The OSHRC appeals process often takes years, and in one recent GM case, OSHRC just upheld citations issued more than 15 years ago after a General Motors employee died on the job. During the interim, GM was under no duty to abate the conditions which killed this worker and GM had no duty to determine whether similar conditions existed at other sites. Further, OSHA interprets the OSH Act to bar it from inspecting an individual establishment for the same violation while its challenge to existing citations is pending. This is a huge loophole in the OSH Act and severely limits OSHA's ability effectively to conduct corporate-wide enforcement. It also means that when OSHA finds hazardous conditions, it often feels that it must negotiate away fines and willful designations just to obtain quicker abatement of hazards. Congress should correct this problem. Companies which delay fixing hazards or turn a blind eye to how prevalent the problem is within their facilities should pay a heavy penalty for doing so. Existing law provides just the opposite—a safe harbor.

OSHA's penalty structure provides little added incentive for large companies with multiple facilities proactively to find violations throughout the company and fix them before OSHA inspections. OSHA penalties for each serious violation are a maximum of $7000 and for each willful violation $70,000. These penalties may be significant for small companies, but are unlikely to pose a deterrent for larger companies. Besides, OSHA routinely negotiates penalty amounts and often accepts a fraction of the penalty it initially proposes. OSHRC penalties are almost always lower. Large companies, usually represented by experienced OSHA counsel, take advantage of these penalty reductions frequently. OSHA resources are spread so thin that OSHA can inspect every workplace under its jurisdiction only once every 133 years. Thus, a company cited at one location has little fear that OSHA will follow-up at a different location, or that such a follow up inspection will impose significant costs, particularly when the two facilities are in different OSHA regions.

Further, criminal penalties under the OSH Act are laughably weak and, therefore, provide little reason for companies to proactively identify problems across facilities. OSHA may prosecute a company for criminal violations only when there is a death and it was caused by a willful violation of a standard. Even then, the crime is a misdemeanor and two courts have ruled that OSHA may not prosecute individuals for the violation, so there is no threat under Federal law that a manager will go to jail for OSHA violations. Criminal fines for the company are just another cost of doing business. Criminal penalties for violating environmental laws are substantially more rigorous.

Finally, I can foresee one additional obstacle to broader corporate-wide enforcement. OSHA currently enforces the OSH Act in approximately one-half of the states. States enforce state OSHA law in the others. So, when a company has facilities in several states, each facility may be subject to different OSHA laws and enforcement by different agencies. If OSHA gets information about hazards in a state plan state, it can notify the state of the hazard, but it cannot inspect. Likewise, states which learn of hazards have no duty to notify OSHA or sister states of the problem. One state may cite a company for lockout violations and when another state or the federal government find similar violations at other facilities, they may not be able to impose the higher, repeat violation penalties provided for in the OSH Act. Congress should create an effective method of coordination among the different state plans

and between federal OSHA and the states so that the patchwork of enforcing agencies does not prevent the discovery of patterns of misconduct.

ENDNOTES

[1] Baggs, Silverstein, and Foley, "Workplace Safety and Health Regulation: Impact of Enforcement and Consultation on Workers' Compensation Claims Rates in Washington State" 43 Am. J. Ind. Med. 483 (2003).

[2] OSHA must initiate inspections in response to formal complaints. 29 U.S.C. §656(f)(1). OSHA does not routinely initiate inspections in response to phone and other informal complaints or in response to complaints from non-employees. But see L.R. Wilson & Sons, Inc., 17 O.S.H. Cas. (BNA) 2059 (O.S.H.D. 1997), aff'd in part & rev'd in part, remanded, 134 F.3d 1235 (4th Cir. 1998) (initiating inspection in response to the Assistant Secretary's observations).

[3] Section 9(a) provides that "if, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order prescribed pursuant to this act, he shall with reasonable promptness issue a citation to the employer."

[4] United States v. Dye Construction Co., 510 F.2d 78, 81-2 (10th Cir. 1975) (holding "evil motive" not an essential element of willfulness).

[5] 29 U.S.C. §666(a).

[6] 29 U.S.C. §666(e).

[7] United States. v. Doig, 950 F.2d 411, 412 (7th Cir. 1991) (holding that Congress did not intend to subject employees to charges of aiding and abetting employers in criminal violations under § 666(e)).

[8] Illinois v. Chicago Magnet Wire, 534 N.E. 2d 962, 966-70 (Ill. 1989).

[9] Sydney A. Shapiro & Randy S. Rabinowitz, Punishment Versus Cooperation in Regulatory Enforcement: A Case Study of OSHA, 49 ADMIN. L. REV. 713, 731 (1997).

[10] 29 U.S.C. §659(a).

Chairwoman WOOLSEY. Thank you very much. What an informed, delightful panel you all are. Mr. Torres, of course, we are all so deeply sorry about your father's death and that it was preventable. That was the worst—I mean, that was the toughest part of the whole thing.

Let us talk about—and you can respond through your father's experience if you feel comfortable—Mr. White, Ms. Rabinowitz and Mr. Taylor may want to respond also—about the difference between policy and practice in a corporation or in a business where the policy is you do not walk on this equipment. The practice is you do not shut down the equipment to get a rag unstuck or a piece of the material. What happens to the employee who is told one thing maybe at an initial training and watches—particularly the employee that was filling in—watches his or her co-workers do just the opposite? Would you like to respond to that?

Mr. TORRES. I mean, if it was really enforced, I don't think they would have done it, you know. That wasn't his job, you know. My dad, that wasn't his official title, you know. And like the tape showed everybody did it. They didn't really enforce it for the full strength. He was filling in for somebody.

Chairwoman WOOLSEY. So he did what they do?

Mr. TORRES. Yeah.

Chairwoman WOOLSEY. Right. And, Mr. White, would you like to respond?

Mr. WHITE. Yes, I would. The difference between policy and what I will call culture is very important. And safety culture is kind of what goes on when nobody is looking and I think you have to certainly look below the policy to see what the practices and what the drivers really are to worker behavior, and if you don't have that leadership commitment, which is actually truly driving the behavior, if there is something else going on, there are other pressures, pressures for production, whatever else is going on, you know, there has to be a level of commitment. But there also has to be this

management system that I mentioned that actually drives that hopefully, that top level of commitment down through the organization and creates a culture where employees do feel like they can say, wait a minute, this is not right. We have to stop this safe practice and get management to respond. And it takes a long time to build that culture. It may not be present in the circumstances that we have seen here, but I think it is going to take a lot of work. But there is definitely a disconnect in some cases between what the company says and what actually goes on on the shop floor.

Chairwoman WOOLSEY. So therefore, Ms. Rabinowitz, who is accountable? The employer who is the adult supposedly in the situation or the employee?

Ms. RABINOWITZ. Obviously——

Chairwoman WOOLSEY. Turn on your microphone.

Ms. RABINOWITZ. Excuse me. Obviously I believe that the employer should be held accountable, and one of the things—comments that I made in my written testimony that I didn't have an opportunity to say orally is that the penalties under the OSHA Act are really far too weak, both the civil penalties and the criminal penalties, to hold employers effectively accountable, and I think that is particularly true for large corporations that are making billions of dollars a year when paying a 50 or $70,000 fine just becomes a cost of doing business.

So that is unfortunate. I think it is unfortunate that there is a tendency among a few too many companies to blame workers when they have these accidents instead of taking management responsibility.

And I would also like to point out that legally when these cases get contested, it is often the case where companies will say that we had these policies on paper and they were wonderful and the employee was just acting inappropriately, and when the case is litigated the testimony is overwhelmingly that, well, no, nobody really ever enforced the policy and we were told to wink and nod at it. And there were just dozens and dozens of cases where that issue is litigated and there is often evidence that it was really observed in the breach.

Chairwoman WOOLSEY. Well, I was a human resources professional for 20 years and I can tell you employees who act inappropriately in corporations and companies that actually have good management practices have these employees on notice that if they continue to do the inappropriate activity then they will—could possibly lose their job. And I don't believe that was happening at all at Cintas.

Mr. Wilson.

Mr. WILSON. Thank you, Madam Chairwoman, and thank you all for being here today.

Mr. Taylor, in previous hearings there has been criticism of voluntary compliance. Your testimony supports the use of voluntary compliance combined with enforcement to achieve a safer work environment. Can you provide some examples of how this works in the real world? And another side to this question, it is not just the employer, employee and OSHA, but the insurance industry is certainly a very important factor for any business as to risk and pre-

miums and inspections. Where does the insurance industry fit into this?

Mr. TAYLOR. Thank you, Mr. Wilson. It is important to recall, as your comments allude, that the Occupational Safety and Health Act does not exist in a vacuum. There are any number of factors at play which induce employers voluntarily—not just through the fear of enforcement action, but voluntarily to reach out and to try to attain a safer and more healthy workplace. One of those reasons is the fear of enforcement and the perspective that people don't want to be labeled a bad actor. Their corporate reputation is valuable to them. And I have clients that have come to another conclusion with respect to using OSHA as a resource, and they have found that to be a very beneficial thing.

With respect to the insurance, it is important—as I mentioned, the act does not exist in a vacuum. When workers are injured, there are worker's compensation direct costs, there are recurring costs through increases in worker's compensation premiums. In addition, insurance companies police these things and my clients have told me that their insurance premiums, general liability, not just worker's compensation, increase simply as a result of getting a serious citation, which is 76 percent of the citations that OSHA issues, even in the absence of any accident. So there is a built-in incentive, even if nobody has been hurt, and an issue with respect to workplace safety and an allegation that somebody hasn't complied with an applicable standard, that has potential ramification. Good corporate citizens understand as a result of all of those things, peer pressure, the need to motivate employees, to build morale, to involve them, you won't have happy, productive employees if they are fearful of their lives, I think. But all of those things lead to the conclusion that I think most large employers have reached, which is that safety is good business. It is not just right, it is good business, and I believe that most corporate employers, my clients and the clients of the people that I have worked with at the American Bar Association, are committed to that practice.

Mr. WILSON. We have also heard discussion about the Enhanced Enforcement Program, EEP, that was started in 2003. Do you have any experience with the program? Are there further improvements that the Agency can make to effectively target indifferent employers as the program is intended?

Mr. TAYLOR. As Mr. White alluded during his testimony, the Agency revamped its program and refocused it earlier this year in January of 2008 and released a revised compliance directive which focuses more on an employer's history of OSHA compliance or noncompliance, as the case may be, across all States. I think that that is a useful change and I will look forward to see how that plays out.

I would note that the Agency, OSHA, has one of the best Web sites of any government agency that I have seen right now. It is a very useful tool. They provide a lot of very helpful information to employers as they educate themselves and their workers with respect to hazards. They just added a new posting yesterday about teen safety as we approach the summer when students are out of school and things like that.

Compliance officers in my experience always look at that inspection history. And it contains data for every employer, for every job site, whether it is a State planned, State or Federal-State. That is available to and used by the compliance officers in determining whether or not a violation is willful or should be issued as a repeat.

So there are tools out there that will enable them, and I think that they are taking the right steps toward reforming the EEP to focus it more on employers who really may not have gotten the message, which I hope is a relatively minor number of people.

Mr. WILSON. And the Web site address is what?

Mr. TAYLOR. *www.osha.gov.*

Mr. WILSON. Thank you very much.

Mr. TAYLOR. My pleasure.

Chairwoman WOOLSEY. That was a good commercial.

Mr. Payne.

Mr. PAYNE. Thank you very much. I think that in industry the tone is sort of set, I think, by the employer. If you have got goals that are very difficult to reach, then it seems that those companies know that people are going to try to shortcut and try to do things to increase their production. Listening to one of the employees this morning that I met with from Cintas, they talked about the fact that they have in their work area, they are color coded, you know, if you are behind in production, it is red, if you are sort of almost making it, it is yellow. If you are meeting the production goal, it is green. Now, I think that there are certainly—there should be bonuses and incentives for people to perform. However, this seems to be almost a negative kind of a connotation. And I am not sure they get a bonus because they are green. It is just that, well, if you are yellow or in the red zone, other employees might look at you like I am carrying your load or it is someone who is in the red zone is concerned about their employment, am I going to be able to make it. As you know, many of these men—most of these laundries are not unionized and so the intimidation of the employer to the employee is the way it is.

So I just wonder if any of you would like to tackle that, either Mr. Taylor, Mr. Williams. Even you, Ms. Rabinowitz. What about this color—what about the attitude of the employer and what kind of impact does it have for people to go and break the law because they are worrying about their job, worrying about making production?

Mr. WHITE. Thank you, Congressman. I will take a crack at that. I have never seen any data that demonstrate that bad safety practices are profitable. And to pick up on Mr. Taylor's point, there is plenty of evidence that a good safety program is going to add value to the business, it is going to make the company more productive and more profitable. So I think we do probably need to do a better job of convincing companies that that is actually true. Because it is clear that—it is certainly clear in this case—you know, it is hard to believe that when a situation such as happened to Mr. Torres' father happened that that didn't—in addition to traumatizing the entire workforce, that didn't create serious losses in productivity, and these ongoing practices are just not only intolerable from a safety standpoint, but they make no sense from a business standpoint. And I think that OSHA has a role in making that clear. I

think other organizations who understand the value of safety have to do a better of job of convincing businesses that bad safety is bad business.

Ms. RABINOWITZ. I would just like to note that you often hear recurring stories about a trend among some companies where employees are actually rewarded for not reporting occupational illnesses and injuries. And you get a Turkey, you get a TV. You know, the team gets certain gifts if they go so many days without reporting an injury or an illness and a lot of those practices have the effect of sending a message that management doesn't want to know if something goes wrong. They want you to keep working. And if you report an injury, you are going to let down your fellow employees who are going to lose their turkey or whatever other reward is built into the system. They are unfortunately way too common and they are very pernicious, I think.

Mr. TAYLOR. If I may, Congressman Payne. I agree with Mr. White that it is important that the company demonstrate leadership for safety, And I think that is one of the reasons to support the consultative approach that OSHA has adopted. It is consonant with the spirit of the act and it enables employers to get recognition for their efforts. If we just lead with the stick and don't offer any sort of recognition for employers that voluntary seek out OSHA and undergo a lot of administrative review and hard work to qualify for some of these qualitative plans, then we are sending a wrong message to employers. I think the right mix—the difficulty is finding what is the right mix between those things. But I think it is an important adjunct to any form of enforcement program.

Mr. PAYNE. Thank you.

Chairwoman WOOLSEY. Mr. Kline.

Mr. KLINE. Thank you, Madam Chair. Thank you, panel. And again I want to extend my condolences, Mr. Torres. It is a brutal and heart wrenching story.

The title of this hearing today is "Improving Workplace Safety: Strengthening OSHA Enforcement of Multi-Site Employers." So I would like to kind of focus on that issue if I could for a minute.

Mr. Taylor, I think I understand that OSHA may have limited access to a workplace when cooperation breaks down among the parties. Again, we are talking about multi-site. Is it possible that corporate-wide inspections create legal problems relating to the Supreme Court's ruling in Barlow's that would require OSHA to take the additional step of getting search warrants? Is there a legal impediment here?

Mr. TAYLOR. Yes, Congressman Kline, there could be. In addition to the Supreme Court in the late 1970s, the Supreme Court enunciated that corporate citizens of the United States are entitled to the protections of the fourth amendment just as we as individual citizens are entitled to the amendment to the protection of the Constitution.

I would disagree with Ms. Rabinowitz's comment that OSHA's enforcement is piecemeal. I think that it does have limited resources, and to say that simply because they find a violation at one site of a multi-site employer that all of the sudden we need to trigger enforcement activities that misallocates resources because it is going to be a huge commitment, particularly of an employer with

any large size or number to commit all those people at once when there is no evidence at that point that there are necessarily violations elsewhere. And the fourth amendment protects all citizens, including corporate citizens, from unreasonable searches and seizures.

Mr. KLINE. Okay. Thank you.

Ms. RABINOWITZ. Excuse me. May I respond?

Mr. KLINE. Yes, please.

Ms. RABINOWITZ. First, I would like to correct what I said, because I think Mr. Taylor incorrectly repeated it, which is I think if OSHA finds violations at one site they could inquire as to whether other sites have the same processes that were dangerous in the first place and, if they have the same processes, they should look and see if the processes are equally as dangerous. And they don't—you don't need to just go investigate every facility to do that. You can ask the company to give you information, and the company has fourth amendment protections. They routinely negotiate what they are going to give you, how you get it, and that is part of the process. And in my experience, OSHA is obligated to respect the fourth amendment, and they do so. And if they have to go to court to enforce their subpoena or get a warrant if an employer refuses them entry, then they do that. But if they know there is a hazardous process in Tulsa at Cintas, for example, and they want to go into another facility where they know they have the exact same equipment and the memo that the Chair cited in the beginning says, you know, this is a companywide problem, they can go to a judge and get a warrant.

Mr. KLINE. So they have the ability to do that now?

Ms. RABINOWITZ. The tests under the fourth amendment for an administrative warrant is not as difficult as it is to get a criminal warrant. And that would, I believe, you know, not being a judge——

Mr. KLINE. So we are looking—thank you. We are looking for ways to strengthen OSHA enforcement of multi-site employers. What I think I heard is, yes, there is a fourth amendment protection but it is not difficult to get that warrant. Would both of you agree with that?

Mr. TAYLOR. I would agree with that. And any lawyer who told his client to resist a warrant in the face of a serious accident is looking for—taking a risk.

If I can add one more important—there is already an incentive built in through the repeat citation. When an employer receives the citation even for something that—if it is a systemic process in particular, it has an obligation to correct that at all of its sites. So OSHA comes and that is the purpose of the repeat citation. And in my experience, they have not been reluctant to make use of that. So there is a couple of safeguards there, I would say, Congressman.

Mr. KLINE. Okay. Thank you very much. I had a question I was going to address on rulemaking. But in the spirit of staying within the time—I see the light is about to turn red—I will yield back, Madam Chair.

Chairwoman WOOLSEY. Why don't we give you 2 seconds to do your question.

Mr. KLINE. It will be more than 2 seconds.

Chairwoman WOOLSEY. Well, I wanted to take the privilege of the Chair to make a comment on this last discussion.

Would it not be possible and positive if OSHA helped corporations put in place policies where—we are talking about near misses, right? So you learn from one near miss or one accident how to prevent in the future or any other place in the organization.

Ms. RABINOWITZ. Well, I would note that OSHA has made efforts to do that and this committee has supported those efforts to do that. In the—OSHA has a voluntary policy, I believe it is, on companywide corporate health and safety programs in the—I believe it was the mid-1990s, OSHA made an effort to make that a binding regulation. So companies had to have safety and health programs, and that effort was defeated by business opposition to the plan.

This committee also twice reported legislation that would mandate health and safety programs by all employers of at least a certain size. I don't recall immediately. And that legislation was strongly opposed by business and went nowhere.

A variety of States already have that requirement on the books. California is one of them.

Chairwoman WOOLSEY. All right. Thank you very much. I took somebody else's time to do this. Congresswoman Shea-Porter.

Ms. SHEA-PORTER. Thank you.

Chairwoman WOOLSEY. Well, Mr. Hare gets to be our cleanup batter today.

Mr. HARE. Go ahead.

Ms. SHEA-PORTER. Thank you very much for being here, and I extend my sympathy. It is a horrific story and one that shouldn't have happened. We are very, very sorry.

I have worked in factories through my college years and I understand the difference between the policy on the books and the practices, and while I do believe that most companies strive, I can tell you that every day they cut corners, they do what they have to do, they have fill-in people there. Sometimes they do it by mistake, they don't realize employees aren't properly trained, but the reality is that there are the rules on the books and the rules that actually happen and a lot of the employees aren't even aware that they are violating it because of lack of training.

Having said that, I do think that most companies strive and they don't intend to violate. But there are companies that do violate, and this is my concern about the voluntary aspects for OSHA. We have been sitting here listening to hearings about BP oil, oil refineries, mines, other horrible, horrible accidents, and you have to wonder about the voluntary aspects.

Mr. Taylor, I have asked this question before of other witnesses who really support these voluntary aspects. But do you think the IRS would be effective if it were a voluntary compliance on the part of American taxpayers? Do you think there are certain things that simply have to be law, not just voluntary compliance? Are you a true believer in that aspect?

Mr. TAYLOR. I think that purely negative reenforcement ultimately is ineffective. I think that people have to understand that there is a greater purpose, that this government, for example, if I don't pay my taxes, if I am a scofflaw, would not be able to fulfill many of the things that I come to rely on as a citizen in the United

States. And I think that if it is purely negative, you create incentives for me to skirt the law. I think the way to get above a minimum, which is what you are talking about with purely negative, is just pay only the taxes—and that is not a good example in the area of safety. But it creates a disincentive for employers to look for ways to go beyond the minimum that is necessary, to be proactive, to involve employees and management together.

Ms. SHEA-PORTER. Let me interrupt you there. Because while I agree with you and I think the best thing to do is create programs that encourage employers and rewards for that, and I think that most really do want to do the right thing but there are certain things that are just essential to the bottom line, and the reality is, for example, that this country needs to collect taxes in order to pay its bills and we can't make it a voluntary program, although we can do certain things and I think it is the same thing here with safety, worker safety, that there have to be certain bottom-line requirements and then you work with employers to reward good behavior and to encourage compliance. But I think that we have fallen below the absolutely essential minimum standards.

So I am going to turn—and I appreciate your response. I am going to turn to Ms. Rabinowitz, please.

Ms. RABINOWITZ. Could I respond to the comment that you made, which there is some empirical evidence that OSHA enforcement works better than voluntary programs. And there is very limited empirical evidence and none that I am aware of that says the voluntary programs are empirically better at reducing injuries and illnesses in the workplace than traditional enforcement. And OSHA spends a lot of money on something that they don't know whether it is working or not. And so we—I think we ought to have better information on what, if any, of the voluntary programs work and why before OSHA shifts more of its resources away from enforcement and into voluntary programs.

Mr. TAYLOR. Ms. Shea-Porter, may I add one additional thought? Because I would like to add something in response to Ms. Rabinowitz's comments. A follow-up study done in Washington State in 2004 and 2005 relating to enforcement inspections by DOSH in that State and consultation visits on compensation rates noted that in general there was approximately a 20 percent decline in compensable claims when there was either consultation or enforcement. The enforcement led to slightly greater than the consultation, but there was—it wasn't magnitudes different.

The other thing that is really sort of interesting, is that they have noticed that the largest decline in compensable claims, 34.7 percent, occurred when there was inspection but without any citations. That I think should be the goal.

Ms. SHEA-PORTER. I appreciate—and, Ms. Rabinowitz, would you like to answer that since he took another minute there?

Ms. RABINOWITZ. I believe the authors of the study would tell you that they—it is often cited for the fact that there is statistically significant beneficial effect from traditional enforcement versus consultation.

Ms. SHEA-PORTER. And I think the reason we came out with the enforcement principles is because voluntary compliance was not as effective as it could be. And what we have been hearing when we

sit here and hear people come before Congress, we recognize that there is a role for compliance.

So thank you both.

Mr. TAYLOR. I don't mean to suggest that enforcement should be scuttled. My point is there needs to be a mix.

Mr. WHITE. Can I weigh in here? I have sort of worked at both ends of the spectrum with OSHA and also with corporations, and I was at a meeting one time with the head of the Irish OSHA. And he basically said there are four kinds of companies. There are the committed companies, the compliant companies, the confused companies, and then there are hopefully a few criminal companies. So there is kind of—in those categories. So we really do need the range of services. I mean, we really do need enforcement both for the confused and certainly for the criminal. But we also need voluntary programs to bring the ones who want to comply up to a higher level and certainly for those who are committed, who maybe don't need as much enforcement.

So it is certainly not an either/or. We certainly need enforcement as the baseline for any other programs.

Ms. SHEA-PORTER. I would agree that we need those minimum standards so there is some teeth when OSHA walks into a workplace.

Thank you.

Chairwoman WOOLSEY. Thank you.

Mr. Hare.

Mr. HARE. Thank you, Madam Chair. I wish we had more than 5 minutes.

Mr. Torres, let me ask you, a year ago when you came to see me, shortly after your dad died, you told me—I think your family had gotten a letter or something from Cintas indicating that your father may—the implication was that he may have committed suicide and then when that didn't work, they basically sent another letter out to your family indicating, or some communication indicating to you that your father just didn't quite have the intellectual capabilities to operate the machine; is that correct?

Mr. TORRES. Yeah. They sent something like that.

Mr. HARE. And I would assume that that kind of incredibly poor behavior had to have a—you lose your dad and on top of that you get that kind of news.

Mr. TORRES. Yeah.

Mr. HARE. At that time we had talked about any compensation. Have you received any, your family received any?

Mr. TORRES. Like, from Cintas?

Mr. HARE. Yeah.

Mr. TORRES. No. I mean—to help my mom, they keep on sending his checks to my mom. But that is——

Mr. HARE. And this is what troubles me and I have a question, I guess, for the whole panel. Just a couple of things. Let me just say with all due respect, Mr. Taylor, when you say a minor uptick. In 2005, we had over 5,700 workers who were killed. In the years between 2005 and 2006, it has shown a 2 percent increase in that. So part of that—I believe fundamentally that most corporations in this country are good, decent corporations. They want the best for their employees. They want to treat them fairly. But there has to

be a fundamental right, when you have a company like Cintas and what I am amazed at—and I would ask that the Wall Street Journal article be entered into the record, Madam Chair. But here you have a company that ended with $3.71 billion and a profit of $334.5 million in fiscal year 2007 in State after State after State. We absolutely know that this company is probably continuing to do what they have been doing. I find it extremely difficult and I am more than angry that they couldn't take the time out of their busy schedules to come to this hearing today, yet we have workers who work for Cintas that came here from Illinois and all over this country to talk about the way they are treated each and every day. And I find that to be quite frankly an insult. Not just to this committee. I am used to that. But to the families, to Mr. Torres and to the people who are here because I think that they—that this corporation has got to help hold its feet to the fire.

So here is my question to all of you. When you have a company like Cintas that just basically says it doesn't matter, you can cite us all you want, you can fine us all you want, $2.8 million in fines, we will just litigate it out, and the treatment of Mr. Torres' family and that kind of thing and all of these things that go on and on and on. What do we have to do to get a company like Cintas to step up to the plate and become a responsible corporation that is responsible to their employees, to make sure that the basic fundamental right of a person going to work every day and being able to come home and be with their families is something that they have earned? They are earning these kinds of profits for this corporation. And I am appalled by it and I don't know—I mean, what—this legislation or whatever it takes for companies, not just this one, but if there are other ones. And if you have to get a warrant, you know, I think—so be it. But if you look at States—in Yakima—or from the State of Washington, Illinois, Oklahoma, New York. I mean, this is a company that just absolutely has total disregard for the law. So I am wondering, what could we do from our end of it to be able to make sure that Mr. Torres' father didn't lose his life in vain because of some company that thinks they can just either skirt it or just totally disregard it?

Mr. WHITE. Here is my answer to that. You are doing it now by holding this hearing. I can guarantee you that a couple of articles in the Wall Street Journal will have a serious impact on Cintas because there is no time that businesses are more media shy than when the media is bad. And frankly what is going to drive a company like Cintas—and I am not intimately familiar with the facts—is the business reality that they can't be in the news day after day and sustain their own customer base and convince their shareholders they are a good corporate citizen. It is this kind of publicity and notoriety frankly that will eventually wake them up, and I have seen companies who were in similar situations do a 180-degree turnaround. It takes time and eventually this CEO or some other CEO will say this is enough, this can't happen anymore. And eventually the message will get through and you will see a change.

It is unfortunate that it has to take this, but that is what is going to drive business. It is not the $2.78 million fine, but the attendant publicity, public pressure and business pressure to make the change.

Mr. HARE. Ms. Rabinowitz. I am sorry, Madam Chair. I know I am over.

Ms. RABINOWITZ. The union lawyer in me can't resist. The best way to remedy the problem is for the workers to organize because self-help in the end will do more to protect them on the job than the government possibly can.

Mr. HARE. Thank you. I yield back.

Chairwoman WOOLSEY. Thank all of you.

First of all, I would like to ask unanimous consent to include in the record three items. One, Cintas memorandum of April 30, 2004; two, OSHA interpretation letter dated July 7, 2005; three, OSHA citation against Cintas in Central Islip, August 11th——

Mr. KLINE. Madam Chair, reserving the right to object, could I just see what you have got there quickly?

Chairwoman WOOLSEY. Sure. Those were the letters that I referred to in my opening statement.

Mr. KLINE. Yes, ma'am. But I haven't had a chance to see them.

Chairwoman WOOLSEY. All right. Go ahead.

Mr. KLINE. Okay.

Chairwoman WOOLSEY. Thank you to the witnesses. Thank you for being here. Thank you for——

Mr. KLINE. I have no objection.

Chairwoman WOOLSEY. Thank you, sir. And again, thank you, Mr. Torres, for telling us about your father. It continues to be shameful that he worked and died in an unsafe workplace. What we have heard today, and I am sorry to say, describes a company that failed to address deadly hazards that it was actually aware of and a government agency that has failed to adequately enforce safe working conditions beyond the facility level until after a terrible tragedy had occurred. We are not going to let this stand. It is tragic that it took the death of Mr. Torres-Gomez to put this issue back on the public agenda. But we must, we will. We will develop better policies at both the corporate and government levels to adequately address worker safety.

OSHA cannot in this endeavor, however, become the enemy. It must fulfill its original intention, which is to assist employers to make the workplace healthy and safe.

So again I want to thank the witnesses for helping us chart our course forward. Next Monday is Workers Memorial Day and that day is dedicated not just to remembering those who have lost their lives or have been injured as a result of unsafe health and safety conditions, but also to fight for safer works conditions for all who go to work every single day. So on that day we'll remember Mr. Torres-Gomez. We will remember him again. We will remember all the thousands of others who lost their lives in the workplace just this past year. We will redouble our efforts to create healthy and safe workplaces for all Americans.

With that, this hearing is adjourned.

Any member who wishes to submit follow-up questions in writing to the witness or witnesses should coordinate with majority staff within 7 days. Without objection, the hearing is adjourned.

[Whereupon, at 12:56 p.m., the subcommittee was adjourned.]

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