

TESTIMONY OF
WALFRED A. NELSON
DEPUTY ASSISTANT DIRECTOR
ENFORCEMENT PROGRAMS AND SERVICES
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FIELD HEARING
AUGUST 2, 2004
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND
INTERNATIONAL RELATIONS
HOUSE GOVERNMENT REFORM COMMITTEE
SAN MATEO, CALIFORNIA

Thank you, Mr. Chairman, Mr. Lantos, and members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss ATF's role in explosives enforcement in the United States.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) enforces Federal explosives laws and regulates commerce in explosives. I would like to provide you with a general overview of ATF explosives expertise and assets, and then explain in more detail ATF's role in ensuring the safe storage of explosives.

A primary ATF strategic goal is the investigation of explosives and arson related crimes such as bombings and explosives thefts. ATF aggressively investigates bombings, fires, and explosives thefts to protect the public from the criminal or unsafe use of explosives. ATF's vigorous enforcement efforts include keeping explosives out of the hands of those who would use explosives for criminal or terrorist purposes. One of the ways ATF accomplishes this is by investigating all applicants for explosives licenses and permits and by inspecting those entities.

On July 6, 2004, a break-in at the San Mateo County explosives storage facility was discovered. The San Mateo County Sheriff's Office, San Francisco Police Department and FBI advise ATF that they use five explosives magazines housed in San Mateo County on property owned by the City/County of San Francisco. ATF immediately responded to the crime scene and began an investigation. From the onset, ATF's efforts to recover the explosives and bring those responsible to justice have been supported by many law enforcement agencies, including the United States Attorney's Office, California Highway Patrol, Alameda County Sheriff's Office, Hayward Police Department, Union City Police Department, Oakland Police Department and the Walnut Creek Bomb Squad.

As part of the response, information received by Alameda County Sheriff's Office led law enforcement to possible suspects and suspect vehicle. As a result of the intensive investigation, we believe ATF has recovered all the stolen explosives and arrested four individuals who were later indicted by Federal Grand Jury charging 21 counts relating to the theft, possession and distribution of the explosives.

STATUTES ATF ENFORCES

ATF's criminal and regulatory authority over explosives extends back to the Organized Crime Control Act of 1970, enacted in part in response to the political violence of the late 1960's. This statute imposed controls over the manufacture, distribution, importation and storage of explosives, and gave ATF enforcement responsibility for these controls. This statute was recently amended by the Safe Explosive Act of 2002 in response to the September 11, 2001 terrorist attacks. The Safe Explosive Act, among other things, restricted the availability of explosives to felons and other prohibited persons, strengthened licensing and permitting requirements and imposed new controls over explosives. These laws set forth a comprehensive framework of licensing, permitting, and record-keeping controls designed to protect interstate, intrastate and foreign commerce against interference and disruption from the misuse and unsafe or insecure storage of explosive material.

RESOURCES ATF BRINGS TO BEAR

ATF maintains a variety of licensing, regulation and criminal enforcement initiatives that comprise a comprehensive strategy to help ensure that explosives are not available for use by terrorists or those who would commit violent crimes.

The ATF workforce includes approximately 420 field inspectors who are responsible for inspection of all 120,000 firearms and explosives licensees nationwide. Approximately 12,000 of that total are explosives licensees and permittees. Since 9/11, inspection of explosives storage facilities has been ATF's highest priority. The length of time it requires to conduct an inspection of any explosives facilities can vary dramatically, from as little as several hours to as much as several weeks.

A key asset in the tracking of bombing and explosives theft incidents is ATF's National Explosives and Arson Repository. The National Repository was established by Congressional mandate in the 1996 Anti-Terrorism Act as a national collection center for information on arson and explosives related incidents throughout the United States. The National Repository databases incorporate information from various sources such as ATF investigations and theft reports, the Federal Bureau of Investigation and the United States Fire Administration, as well as state and local agencies. The Repository can be queried with data from Federal and state/local law enforcement and fire service agencies. The Repository also provides resource material to assist investigators with the identification and tracing of explosive material and techniques used to commit arsons and explosives related crimes.

ATF maintains three National Laboratories that provide forensic expertise in explosives and arson investigations. In addition, the ATF National Explosives and Arson Detection Canine Training Center has trained and deployed 35 ATF special agent canine handler and dog teams and 58 teams for state and local law enforcement.

ATF also maintains the Bomb and Arson Tracking System (BATS), which is a joint partnership effort between ATF and members of the nation's fire and critical incident response communities to develop a comprehensive incident based information sharing system. Deployed in 2003, this web-based system allows law enforcement agencies and their investigators responsible for investigation of these violent crimes to share information real-time in a national secure system solely dedicated to fire and post-blast incidents. The BATS program also offers members of the Bomb Squad/EOD community the ability to see real-time data on improvised explosive and incendiary devices being used throughout the country.

One of the strengths of the ATF explosives program is our Special Agent Certified Explosives Specialist (CES) program. The primary missions of the ATF 325 CES are explosives investigations and the destruction of seized, purchased, recovered, and abandoned explosives. The CES strive to maximize public safety as it relates to explosives by providing expert explosives crime scene examination, support at special events, and assistance throughout the United States to other Federal, state and local agencies. They are also tasked with enhancing the overall quality of scene examinations by educating law enforcement personnel in various explosives matters. CES perform their mission while remaining active, case producing ATF special agents.

Additional assets ATF brings to explosives enforcement include four National Response Teams (NRTs) which can be deployed on 24 hours' notice anywhere in the United States to respond to major bombing or fire investigations. These teams consist of highly trained Special Agent Certified Explosives Specialists, Explosives Enforcement Officers, Special Agent Certified Fire Investigators, forensic chemists, laboratory specialists, explosive or arson detection canine teams, and financial auditors. Since the inception in 1978, the NRTs have responded to 581 crime scenes and critical incidents; there have been 25 call-outs in 2004.

A key asset ATF provides for state and local law enforcement officers is a variety of explosives related training including post blast investigative techniques, improvised explosive device training, and advanced access and disablement training.

EXPLOSIVES STORAGE REGULATIONS ENFORCED BY ATF

All persons storing explosives, including state and local government agencies, must meet certain storage requirements. Only Federal government agencies are exempt from storage requirements, as described in 18 USC Sec. 845(a)(6).

A checklist of items ATF would inspect when visiting an explosives storage facility would include:

- verifying all magazines meet the construction, lighting and housekeeping requirements
- verifying the types and locations of all magazines and inspecting all structures onsite
- verifying storage descriptions and any unreported changes or additions
- verifying all outdoor magazines meet table of distance requirements

- determining the class of explosives and appropriate type of magazine for each class
- conducting an inventory to compare to the transactions records

EXPLOSIVES INCIDENTS, THEFTS, AND STATISTICS

In 2003, there were 11,770 explosives licensees and permittees in the United States. ATF conducted 7,883 inspections of those licensees and uncovered 1,165 public safety violations.

Additionally, last year ATF opened in excess of 4,000 explosives and arson criminal investigations, and received reports of 79 thefts of explosives. By law, any person who has knowledge of the theft or loss of explosive material from his or her stock must report that theft or loss to ATF within 24 hours of discovery. Of the 79 thefts report in 2003, 73 were from private or commercial licensees and six were from public sector facilities. Of those, three were from law enforcement facilities, two were from military facilities, and one was a local government facility. In a concerted effort to keep explosives out of the hands of those who would use them for criminal or terrorist purposes, ATF investigates 100 percent of all reported thefts and losses of explosives.

Recently, ATF developed an Explosives Threat Assessment and Prevention Strategy (ETAPS) at the request of the Attorney General. Part of this strategy involves Threat Assessment Guidelines that we have issued to explosives industry groups. It covers security and other areas that industry members would voluntarily strengthen that are not covered by ATF regulations, such as employee security awareness training. ATF inspectors will be using this guideline on current inspections. A copy of this threat assessment guideline is attached to my testimony.

Although we cannot conduct mandatory inspections of state and local storage facilities, we do often provide inspections for public storage facilities if requested. In fact, in 2003 and 2004, ATF has conducted 39 voluntarily requested inspections for explosives storage facilities owned by government entities.

ADDITIONAL ATF REGULATORY ENFORCEMENT EFFORTS

Our increased inspection efforts post 9/11 have included a number of initiatives:

- On September 17, 2001, ATF sent out a letter to all Federal Explosives Licensees and Permittees, requesting them to conduct a full inventory of all explosive items in their possession. ATF requested industry members to report any thefts, losses or suspicious activities immediately to ATF using ATF's hotline number (1-888-ATF-BOMB).
- In October 2001, ATF initiated a program (B6H) to inspect as many explosives industry members as possible to gather intelligence on possible criminal activities and to access and correct security and storage vulnerabilities. A total of 7,459 Federal explosives licensees and permittees were contacted in the ensuing three

months. The results of this program included 198 referrals of suspicious activities to ATF's Law Enforcement and the issuance of 372 violations. This increased inspection effort led to the discovery and immediate seizure of **4,461,166** pounds of improperly stored explosive materials, the largest seizure of explosives in ATF's history. That explosives licensee had its Federal explosives license revoked.

- In May 2002, June 2003, and July 2004, ATF sent out additional special notices to all Federal Explosives Licensees and Permittees, again stressing the need for continued vigilance and security assessment as a result of the events of September 11, 2001.

ATF believes in partnering with industry to promote public safety. Two examples of those partnerships include "Be Aware for America/Be Secure for America" and "America's Security Begins With You."

- In response to the World Trade Center bombing in 1993 and the Oklahoma City Murrah Building bombing in 1995, ATF and The Fertilizer Institute began coordinating an awareness program to prevent ammonium nitrate from being obtained by those with criminal intent.
- The "Be Aware for America" campaign was officially launched in 1997.
- The campaign was designed to help the fertilizer industry be alert to suspicious purchasers, to heighten security, to increase vigilance over storage and distribution, and to ensure that persons are able to recognize the theft from, or the misreporting of, fertilizer product shipments.

ATF continues to work with explosives industry members such as the Institute of Makers of Explosives (IME), International Society of Explosives Engineers (IME), and the American Pyrotechnics Association (APA), and the National Mining Association. ATF personnel attend numerous seminars and events sponsored by these organizations and work with these groups to quickly and accurately distribute new information.

Again, Mr. Chairman and Mr. Lantos, I appreciate the opportunity to testify today and share with you information on ATF's explosives enforcement efforts. I would be happy to answer any questions you may have.