

BORDER PATROL HIRING, TRAINING AND INFRASTRUCTURE ISSUES

A REPORT BY THE NATIONAL BORDER PATROL COUNCIL

JUNE 2008

BACKGROUND

The porosity of our Nation's borders in the wake of the September 11, 2001 terrorist attacks, coupled with the steady influx of illegal aliens, has prompted an unprecedented public outcry and concomitant expansion of the U.S. Border Patrol. As recently as 1994, there were fewer than 4,000 Border Patrol agents protecting our borders. There are now about four times that number, with plans to add approximately 2,000 more by the end of this year.

When President George W. Bush took office in 2001, there were slightly more than 9,000 Border Patrol agents. During the first five years of his tenure, the average annual increase in the number of agents was barely above 500. In May of 2006, the President announced that he would double the size of the Border Patrol by the time he left office. In order to meet that overambitious goal, the Border Patrol was tasked with hiring and training approximately 10,000 agents in the space of about two and a half years.¹ It should be noted that the President's goal could have been achieved with modest annual increases of less than 1,150 agents if he had embarked on that course at the beginning of his term.

Although the National Border Patrol Council has long advocated the need to dramatically increase the size of the Border Patrol, and believes that a minimum of 25,000 agents are needed to secure our borders, it is deeply concerned by some of the shortcuts that are currently being taken in the hiring and training processes.

REPORT METHODOLOGY

This report is not intended to be an exhaustive examination of every aspect of the hiring and training processes of the Border Patrol, nor of its infrastructure. The information, conclusions and recommendations herein are gleaned from interviews with more than 50 current and former instructors at the Border Patrol Academy, as well as dozens of Post-Academy instructors and Field Training Officers, and hundreds of other front-line Border Patrol agents.²

It is hoped that those who are in a position to influence or change the current system will carefully consider this report's recommendations and take appropriate actions to implement measures that ensure the Border Patrol's hiring and training processes, as well as its infrastructure, yield the desired results: highly-qualified and properly-trained Border Patrol Agents who will remain with the Agency throughout their career, thus enhancing the security of our Nation.

¹ This includes the numbers required to replace agents who leave.

² In early March of 2008, three high-ranking Council officers and one Local officer spent two days and three nights visiting with staff and students at the Border Patrol Academy in Artesia, New Mexico.

HIRING ISSUES

Educational and Medical Standards

The Border Patrol recently dropped its educational requirements. Previously, applicants needed to possess a high school diploma or a certificate of General Educational Development.³ This relaxation of standards is a matter of concern. Anecdotal and other evidence suggests that the reading comprehension and writing abilities of a small percentage of new-hires are no better than those of middle-school students. In an occupation where poorly-written documents can result in miscommunication of critical information and botched prosecutions, this is completely unacceptable.

The medical standards utilized by the Border Patrol continue to be comprehensive and strict, and effectively screen out individuals who have medical conditions that would prevent them from performing the rigorous duties required of Border Patrol agents.

Age Requirements

Like most Federal law enforcement officers, Border Patrol agents are covered under the provisions of a special law enforcement retirement system which has a mandatory retirement age of 57. In order to reap the benefits of that system, participants are required to serve twenty years in a covered law enforcement position, meaning that they have to be hired before their 37th birthday. The Border Patrol recently received authority to waive that requirement, and has extended the entrance and exit ages by three years, to 40 and 60, respectively. This was done in an effort to recruit recently retired military personnel, many of whom are in their late 30's. This has proven beneficial in several respects, at least for the short term. Many of these military retirees are assuming leadership roles in their Academy classes. The long term ramifications of this initiative will not be felt for decades, however, when these employees reach the twilight of their careers. It remains to be seen if agents approaching 60 years of age have the stamina to perform effectively in the field, where the terrain is often rugged, the climatic conditions can be extreme, and the physical demands are high.

Entrance Examinations

Optimally, the entrance examination process will assist in determining whether or not an applicant possesses the aptitude to learn the skills necessary to perform the most common, as well as the most important, job tasks. The Border Patrol's written entrance examinations focus on two primary skills: logical reasoning and language aptitude. While both of these skills are important, they are by no means the only ones required to be a competent Border Patrol Agent. Although some of the other required skills are somewhat intangible and therefore difficult to measure and/or predict, not all are. For example, it is easy to develop and score tests for both verbal and written communications skills, which are vital for interacting with the public, as well as for effective report writing.

³ Although an Agency spokesperson recently stated that there has never been an educational requirement, that claim is not credible.

While the hiring standards do not appear to have been lowered, the push to hire so many additional agents in such a short period of time has resulted in the Border Patrol being less selective. Rather than cutting off the hiring levels of the qualification examination somewhere around the eighty-fifth percentile as in the past, everyone who achieves a passing score is now selected. One Academy instructor noted: “We definitely know when we get a class from the seventieth percentile.” If the Border Patrol hopes to regain its status as an elite law enforcement organization, it needs to be more selective with respect to the people it is hiring.

In addition to the aforementioned written tests, prospective employees are required to pass an oral interview with a panel of three Border Patrol agents. According to the Agency’s hiring website, “[t]he interview consists of situational questions that do not require technical knowledge. The structured interview assesses a candidate’s judgment/decision making, emotional maturity, interpersonal skills, and cooperativeness/sensitivity to the needs of others.” Some of the agents who serve on such oral boards, however, are complaining that they now lack the authority to disqualify candidates in all but the most egregious circumstances. This was not always the case, and the change appears to have been instituted to meet the demand to bring so many agents on board in such a short period of time.

Physical Fitness Testing

In order to graduate from the Border Patrol Academy, candidates must be able to run one and a half miles in thirteen minutes or less, run two-hundred and twenty yards in forty-six seconds or less, and complete the Confidence Course in two and half minutes or less. In order to ensure that new-hires are reasonably physically fit before they arrive at the Academy, the Agency has recently instituted a pre-employment physical fitness test. Applicants are required to complete twenty proper form push-ups in sixty seconds, twenty-five proper form sit-ups in sixty seconds, and a “step test” wherein the applicant must step up and down on a twelve-inch high bench at a rate of one hundred and twenty steps per minute for a total time of five minutes. Although this initiative has helped somewhat by ensuring that recruits are better prepared for the rigorous physical training program, the compressed overall curriculum at the Academy has caused the number of injuries there to increase.

Background Investigations

A background investigation is by far the most important facet of the screening process for law enforcement occupations. It allows agencies to thoroughly examine the character and history of applicants **prior** to offering them employment and teaching them law enforcement methods and techniques. Paradoxically, this is usually one of the first areas where shortcuts are taken when law enforcement agencies undergo rapid expansion. Unfortunately, the Border Patrol has also succumbed to that pressure. It is now hiring employees that it deems to be “low risk” after the successful completion of a criminal history check and polygraph examination, deferring their background investigations until later. This is extremely unwise, and could easily allow criminals or even terrorists to infiltrate the Border Patrol. Apart from criminal misconduct, early indicators of decreased integrity have also been observed, including an alarming rise in the theft of personal and government property at the Academy.⁴

⁴ Despite prevalent rumors of gang activity at the Academy, the Council could not find any corroborating evidence.

For more than a decade, background investigations have been conducted by contractors approved by the Office of Personnel Management. Prior to that, they were performed by Special Agents of the Federal Bureau of Investigations. The thoroughness and accuracy of the contractors' investigations leave much to be desired. In one of the more well-known and embarrassing cases, they failed to check the immigration status of Oscar Antonio Ortiz, who admitted on his application that he had used drugs and had been arrested on suspicion of smuggling illegal aliens. After he was caught smuggling hundreds of illegal aliens while on duty, it was discovered that he was also an illegal alien. More recently, Miguel Angel Avina was arrested while attending the Border Patrol Academy. He was charged with fraud and conspiracy related to his participation last year in a ring that smuggled more than 100 guns into Mexico. These are by no means isolated incidents. Several gang members have also been hired as Border Patrol agents, and subsequently used their positions of authority to further their criminal activities.

Recruitment

Recruitment efforts have been significantly expanded recently in an effort to meet the President's goal of doubling the size of the Border Patrol. In addition to sending recruiters to all parts of the country, the Border Patrol has sponsored various sporting events and teams, including NASCAR, the NFL, and Professional Bull Riding. The cost of these sponsorships has been substantial, and there is some concern that the return on investment does not justify the high cost. Current agents are being paid recruitment bonuses of up to \$1,500 for signing up new agents. Despite all of these efforts, it is questionable whether the Border Patrol will be able to meet the President's goal of 18,319 agents by December 31, 2008.

TRAINING ISSUES

Academy Infrastructure

Until the late 1970's, all aspects of Border Patrol training were controlled by the U.S. Border Patrol, and its training academies were located in various parts of Texas. Under President Carter, the oversight of the Border Patrol's training was transferred to the Federal Law Enforcement Training Center, and recruits were sent to that facility in Brunswick, Georgia. In 1996, a satellite training facility was opened in Charleston, South Carolina at the vacated Naval Base.⁵ This served as the Border Patrol's main training facility until the operation was moved to Artesia, New Mexico in 2004. Artesia is a small, rural community with a population of about 10,000 people that does not have the capability to absorb the hundreds of additional people required to staff the U.S. Border Patrol Academy. The closest neighboring communities are Roswell, New Mexico, located about 45 miles to the north, with a population of approximately 45,000 people, and Carlsbad, New Mexico, located about 40 miles to the south, with a population of approximately 25,000 people. Due to lodging and housing shortages, approximately one-third of the instructor staff are housed in each of these three communities.

⁵ Not coincidentally, U.S. Senator Ernest "Fritz" Hollings from South Carolina was the Chairman of the Appropriations Subcommittee that controlled the funding for the U.S. Border Patrol at that time. There is no suggestion that this action was in any way improper. The Council is concerned, however, that decisions concerning the location of the Border Patrol's training facilities are being made for political rather than practical reasons.

Because of the high demand for lodging in all of these communities, hotels and landlords are able to charge twice the rate established by the General Services Administration. Up until now, the agency has authorized an exemption that allows employees to be reimbursed for that entire amount, but it is considering ending that practice in order to cut costs. Since hotels and landlords are unlikely to scale back their profits, this will leave employees scrambling to find housing that conforms with the reduced reimbursement amounts. This is precisely the type of situation that led to widespread confusion and a large number of unwarranted disciplinary actions being proposed against employees on temporary assignment to Douglas, Arizona several years ago. In the accompanying investigations by the Office of Special Counsel and Office of Inspector General, it was recommended that the Agency seek to negotiate lodging agreements with hotels and landlords in areas where long-term temporary assignments and lodging shortages are expected. So far, that advice has been ignored.

To worsen matters, employees on temporary assignment to the Border Patrol Academy who are living in the surrounding communities are not being fully reimbursed for their daily commute, even though they are legally entitled to it.⁶

The construction of additional student dormitories on the Artesia campus has largely alleviated the need to house three or four recruits in small rooms designed for double occupancy. Study facilities still need to be expanded, however, in order to provide an environment that is conducive to learning the large amount of material that trainees are expected to absorb on and off the clock.

Although the quality and variety of food in the cafeteria are adequate, the capacity of that building is not. In order to overcome this problem, bag meals are currently offered. While this is a viable short-term solution, a more permanent solution needs to be pursued.

Even though the Drivers Training and Firearms facilities are located on the same campus as the other training buildings and dormitories, they are separated by a distance of about a mile. Thus, instructors and trainees must drive or take shuttles to and from those areas. The facilities there are clearly inadequate. Instructors' offices are cramped, and there is only one desk for every six firearms instructors. There is also a shortage of computers for instructors in those facilities. There are insufficient and inadequate lavatories and hand-washing stations and no dining or break areas.⁷

New-hires are receiving a \$1,500 allotment for uniform purchases upon arrival at the Academy, and VF Solutions, the uniform supplier, has a presence there. Nonetheless, there are still regular shortages of uniform items. The large influx of new employees also affects the ability of field agents to receive their uniform orders in a timely manner. If the single-source uniform supplier is unable to keep up with the demand, then additional sources need to be authorized.

⁶ After the Council raised this issue with the Office of Border Patrol in Washington, D.C., the limit was raised slightly, but not enough to provide full reimbursement for all affected employees.

⁷ Additional lavatories and hand-washing stations were added in response to the concerns raised by the Council following its visit to the Academy.

Academy Staff

At the present time, there are nearly 500 permanent and temporary instructors at the Border Patrol Academy. About 190 of the instructors are permanently assigned there, and of that number, about 55 are rehired annuitants. This is augmented by about 300 temporary instructors, most of whom are serving eleven-month assignments. The long-range plan is to have a ratio of three permanent instructors for every temporary one. The Council believes that it would be a serious mistake to fill these positions with contract employees or rehired annuitants who have been out of the field for more than a few years. There is no substitute for recent field experience, and that needs to remain a prerequisite for instructing at the Border Patrol Academy. A number of permanent and temporary instructors, as well as Field Training Officers, have echoed this concern.

Several factors contribute to the recent difficulties that the Border Patrol has experienced in finding volunteers for temporary instructor assignments to the Academy. The length of most of these assignments is now nearly a year, almost double that of previous ones. The isolated location and lack of housing, schools, medical facilities and other necessities and amenities of Artesia, New Mexico and the surrounding area also makes it difficult to attract temporary and permanent instructors. This was never a problem in either Brunswick, Georgia with the nearby Golden Isles, or in Charleston, South Carolina. Although managers at the Academy claim that they are not forcing any instructor to remain there against their will, this does not always appear to be the case. Moreover, a number of instructors only “volunteer” after being confronted with more unpleasant alternatives such as a longer involuntary detail or one that would occur during a period that is inconvenient or undesirable to the employee.

Temporary instructors are rarely allowed to use annual leave while at the Academy, except for a day here and there. This precludes most of them from returning home to see their families during the long temporary assignment, and it is causing severe hardships.

Firearms and Drivers Training instructors are being forced to work extended hours without being properly compensated. Night courses are routinely scheduled, and the lack of instructors requires those who are assigned to such classes to also work their normal shifts, resulting in twelve to fifteen hour days. They are being ordered to claim this work as Administratively Uncontrollable Overtime, which is improper and shortchanges employees.⁸

Despite the aforementioned problems and hardships, morale among the Academy’s staff is surprisingly high. If the foregoing issues are not promptly addressed, however, it will undoubtedly plummet.

Border Patrol Academy Curriculum

The basic training curriculum at the Border Patrol Academy has changed dramatically during the past several years. Two years ago, the course was 91 days in length, and then it was cut to 81 days in response to the pressure to train a large number of recruits to meet the President’s goal of doubling the size

⁸ After this issue was raised by the Council, Border Patrol management promised to add more instructors in these two programs. It is unclear if this has happened yet.

of the Border Patrol.⁹ Late last year, the curriculum was radically restructured, with the Spanish language portion being separated from the rest of the course. All topics except Spanish are now taught in 55 days, and recruits who cannot demonstrate the requisite degree of proficiency in the Spanish language are retained at the Academy for an additional 40 days of “immersion” Spanish training.¹⁰ The examination to determine who will be required to participate in the Spanish course is conducted over the telephone in a crowded and noisy room, which has resulted in a number of proficient Spanish speakers failing the test and being required to undergo the 40 days of language training. A number of instructors, field training officers and front-line agents have expressed reservations about the training methodologies employed in the new Spanish program. Instead of the traditional grammar-based curriculum, the new system is conversation-based, teaching through the use of pictures, story boards, and scenarios.¹¹ Instead of requiring students to learn how to speak in complete sentences in order to collect the biographical data necessary to complete arrest reports, they are often only taught single-word questions, such as “name” or “address.” During some of the field simulations with role players, the students are completely stumped when they receive a response that uses unfamiliar vocabulary. There is a great deal of concern that agents who are taught under this method will no longer be able to elicit enough information in Spanish to effectively perform their jobs, such as taking sworn statements in smuggling cases.

Although the 55-day training curriculum represents a slight expansion of the non-language courses compared to the 81-day training program, the compressed schedule is making it more difficult for students to assimilate all of the information that is taught. While it is too soon to determine if this is affecting the ratio of failures, anecdotal evidence suggests that students who fall behind early are now less likely to catch up and pass courses despite being afforded additional opportunities to do so.¹² Another concern expressed by instructors is that this condensed period leaves less time to evaluate new-hires, likely resulting in a greater number of unsuitable candidates graduating and being sent to the field.

Since only a few of the new dual-curriculum classes have graduated so far, it is impossible to tell how that will affect attrition at the Border Patrol Academy. Most managers at the Academy are very much in favor of the split curriculum, which is not surprising, but not a single permanent or detailed instructor could be found who supports it. All of the trainees who were interviewed by the Council were opposed to the split curriculum, and related that their classmates who were not participating in the Spanish

⁹ The Agency claims that the jettisoned courses were superfluous. The Council is skeptical, to say the least.

¹⁰ This is not a true immersion course, as some of the lessons are taught in English, and students are allowed to speak English during portions of the classes.

¹¹ Although the Agency calls the new method “task-based learning,” that is an oversimplification, as not all of the lessons are tied to job-related tasks.

¹² The Border Patrol Academy has implemented a program called “Project Second Chance” or “P2C” in which students are able to retake any examinations that they fail. Only the higher of the two scores is counted. Thus far, this program has not had a significant effect, as few employees are able to achieve passing scores on the second attempt.

curriculum expressed a desire to remain at the Academy for further instruction in Spanish and Operations utilizing their foreign language skills.

Despite a more scientific approach to physical conditioning and the pre-employment physical fitness requirements, the number of injuries sustained by participants in the Physical Training program remains unacceptably high. The percentage of attrition at the Academy attributable to medical conditions and injuries now accounts for nearly seven percent of the early departures. This has occurred in spite of the fact that trainees are no longer required to demonstrate proficiency with oleoresin capsicum spray or the collapsible steel baton in order to graduate from the Academy.¹³

The Drivers Training course has been significantly improved, and does a better job of preparing trainees for the types of driving conditions that they will actually encounter in the field, especially with respect to off-road driving. There are problems, however, with course maintenance, which is the responsibility of the Federal Law Enforcement Training Center. Thus far, there have been no serious accidents or injuries due to the lack of required maintenance, but that could change in an instant.

The Council is troubled by the fact that the management of the Border Patrol Academy continues to violate the decision of the D.C. Circuit Court of Appeals regarding the number of hours of remedial training provided to trainees who fail the firearms program, only providing them with a tenth of the required amount. A fair number of recruits have little or no previous experience handling firearms, and others have years of improper techniques that need to be corrected. Affording only eight hours of remedial training to such employees is not only unfair, but also illegal.

Front-line agents report that the trainees who are now returning from the Academy are noticeably less prepared than their predecessors. The reasons for these deficiencies are not entirely clear, but are probably the result of a combination of the factors discussed in this report. Agents should leave the Academy ready to learn the nuances of their assigned duty post and the finer points of the job, but otherwise be able to perform the general duties of a Border Patrol agent. Graduation from the Academy should be a marked transition in their career, not merely a waypoint to further training.

Post-Academy Training

As part of the new training program, the post-Academy Spanish and law tests have been eliminated. Although those examinations were largely utilized as a tool to eliminate unsuitable candidates based upon supervisory and peer evaluations, they served other useful purposes.¹⁴ The examinations encouraged employees to continue studying Spanish and law well beyond the first few months of their careers, significantly increasing their proficiency in both subjects.

¹³ The requirement to demonstrate proficiency with these non-deadly force devices has not been dropped. Employees who are not required to qualify with them at the Academy must do so at their assigned duty stations.

¹⁴ The administrators of the Spanish examination had discretionary control of 40% of the points on a test that required a 70% score to pass. Even though the Border Patrol always had the ability to remove unsuitable candidates without relying on academic failure, it rarely chose to do so.

Since the previous post-Academy curriculum was primarily designed to assist trainees in their preparations for post-Academy examinations that have since been abolished, it needed to be substantially revamped. Instead of designing a curriculum that would assist trainees in their transition from the classroom to the field, the new course of instruction utilizes computer-based modules to transmit information that is largely redundant or irrelevant. This is a poor substitute for individualized interactive training presented by experienced agents who can impart essential knowledge in an interesting manner, and readily answer students' questions.

Field Training

An effective field training program must not only convey all of the necessary skills in a logical, understandable manner, but must also afford training officers adequate opportunities to evaluate how well recruits are assimilating and applying such lessons. Thus, one-on-one instruction and mentoring are critical elements of such programs. Because of the high number of inexperienced employees, this is not occurring. It is now quite common for one Field Training Officer to be assigned to instruct twelve or more trainees. This method is wholly inadequate, and fails to prepare recruits for the situations that they will encounter in the field. Moreover, it does not allow for the proper evaluation of these trainees, increasing the odds that unsuitable candidates will be retained.

Under the new field training program, trainees are no longer allowed to work with experienced front-line agents who are not certified as Field Training Officers until after they complete that program. In addition to increasing the ratio of trainees to instructors, this makes it more difficult for these trainees to assimilate into their patrol groups after they complete the field training program.

Peer Evaluations

Recently, the significance of peer evaluations of trainees has been diminished substantially, with most of those responsibilities being assumed by Field Training Officers who are responsible for large groups of trainees and are therefore not in the best position to evaluate them. Previously, experienced agents were paired with trainees on a biweekly rotating basis for at least six months, and required to complete a "Conduct and Efficiency" report outlining the trainees' strengths and weaknesses. While far from perfect, this system did provide an opportunity for trainees' peers to evaluate their performance. The failure of the new system to institutionalize meaningful peer evaluations is a shortcoming that needs to be corrected.

Probationary Period

For the past several years, all Border Patrol agents have been hired under the authority of the Federal Career Intern Program, the purpose of which "is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs."¹⁵ Participants in the program

¹⁵ Executive Order 13162, July 6, 2000.

are required to undergo a two-year probationary period rather than the normal one-year period. The inclusion of Border Patrol agents in this program is clearly an abuse of discretion on the part of the Agency. It creates needless uncertainty on the part of trainees, and encourages them to act tentatively in situations that call for decisiveness, out of fear of summary dismissal for making an improper decision. This can lead to disastrous consequences, especially when these employees are working alone during their second year of employment. A one-year probationary period is more than adequate for evaluating the performance and suitability of new employees.

INFRASTRUCTURE ISSUES

This report would not be complete without a discussion of some of the underlying issues that impede the Border Patrol's ability to effectively accomplish its mission.

Support and Infrastructure

An often-overlooked aspect of workforce expansion is the need for auxiliary personnel and infrastructure to adequately support all of the new employees. Many of the Border Patrol's facilities are outdated and were designed for a small fraction of the employees slated for assignment there. Because the property procurement and construction processes are lengthy, it is imperative that they commence as soon as possible. Moreover, adequate support staff needs to be hired at the same time as additional agents, not as an afterthought when the need for their services becomes critical.

Equipment and Technology

A lack of appropriate, serviceable equipment continues to hamper the Border Patrol's ability to accomplish its mission. There are an inadequate number of functional vehicles. The rigors of law enforcement use, especially in the rugged terrain in which the Border Patrol generally operates, dramatically shorten the useful life of all types of patrol vehicles. The need to repair and replace vehicles is fairly predictable, and needs to be incorporated into annual budget requests. Likewise, the cost of acquiring and replacing other equipment can usually be predicted with a fair degree of accuracy, and should be factored into the cost of hiring additional agents.

The single type of soft body armor that is currently provided is not suitable for all climates in which Border Patrol agents operate, and it is not being replaced as frequently as necessary. There are also shortages of state-of-the-art night vision equipment. In many areas, radio communications are spotty or non-existent, and most radios do not have the capability to interface with those of other law enforcement agencies.

Even though almost all of the Border Patrol's reports are now digital, very few of its vehicles are equipped with portable computers. Moreover, there are insufficient computers in most offices, and several employees are expected to share one computer.

Border Patrol agents are increasingly encountering heavily-armed criminals, yet their primary weapon continues to be a pistol. Although there are a limited number of long-arms available, internal policies discourage or outright prevent agents from carrying them.

Some of the technologies being promoted by various entities are not well-suited for use by the Border Patrol, and experienced front-line agents are rarely consulted before such devices are developed and/or procured. As a result, millions of dollars are wasted on inadequate or even useless technologies.

Counter-Productive Policies

A number of policies thwart the accomplishment of the Border Patrol's mission and demoralize employees. For example, Border Patrol agents are rarely allowed to conduct enforcement operations away from the immediate border, resulting in countless illegal aliens brazenly living in communities near Border Patrol facilities. When citizens report these lawbreakers, they are usually directed to the Bureau of Immigration and Customs Enforcement, which rarely responds. This is frustrating to citizens and Border Patrol agents alike.

The "strategy of deterrence," which requires agents to remain in relatively fixed positions in close proximity to the border in hopes of deterring illegal entries,¹⁶ is problematic from the standpoint of operational effectiveness and officer safety. It is evident that smugglers have adapted their tactics in response to this enforcement strategy, and continue to find ways to successfully move large numbers of people and significant quantities of contraband across the border. This "forward deployment" of Border Patrol agents has left them vulnerable to all manner of assaults, and the number of such attacks continues to skyrocket. During the last fiscal year, there were 987 reported assaults against Border Patrol agents. At the current pace, the number for this fiscal year will again rise significantly.

The Border Patrol's vehicle pursuit policy does not allow agents to chase fleeing vehicles unless they have specific permission from a supervisor, which is rarely granted.¹⁷ This encourages smugglers to flee, endangering the motoring public as well as the people who are being smuggled.

Command Structure

The Border Patrol is but one of several components within the Bureau of Customs and Border Protection, which is not only responsible for preventing the unlawful entry of people and contraband into the United States, but also facilitating the legitimate entry of people and goods. The natural tension between those competing interests results in compromises that do not serve either mission well. One of the byproducts of that bureaucracy is a command structure that is not attuned to the specific needs of the Border Patrol's unique law enforcement mission. This has yielded a number of poor decisions that have negatively impacted the ability of the Border Patrol to accomplish its mission. For example, the dissolution of the Border Patrol's Anti-Smuggling Unit greatly diminished its ability to prosecute alien smugglers. Also, the consolidation of the Border Patrol's air and marine assets with those of the former Customs

¹⁶ The previous rigid requirement that agents remain in the same spot without regard to nearby illegal activity has recently been relaxed slightly.

¹⁷ Although the Agency is in the process of issuing a revised policy that would grant more discretion to agents and supervisors concerning vehicle pursuits, such guidelines still allow a manager who is detached from the situation to veto the judgement of the agents on the scene.

Service has hampered the ability of that unit to provide the specialized type of support necessary to carry out the Border Patrol's unique mission. In order to alleviate these problems, the Council strongly recommends that the Border Patrol be given exclusive control over all of the assets necessary to accomplish its mission, and that it be elevated to the status of a separate bureau within the Department of Homeland Security.

Retention

The current overall attrition rate in the Border Patrol is about 13%, meaning that about 2,000 agents will leave this year for one reason or another. As the workforce grows, the number of agents who leave will also increase, assuming that the attrition rate remains constant. There are, however, solid indications that the rate itself is increasing. Historically, employees are far more likely to leave during the first five years of their career. The overall attrition rate at the Border Patrol Academy is more than 21%. Of those, about 8% leave prior to graduation for "personal reasons" or because they "made the wrong career choice."

The primary reasons for dissatisfaction cited by field agents are low pay, lack of transfer and promotion opportunities, policies that thwart their ability to enforce the law, and an endless series of attacks on their workplace rights.

Despite these problems, the Border Patrol is making little effort to entice current employees to remain with the organization. It is not utilizing its statutory authority to pay retention bonuses to employees, and provides few meaningful incentive awards to employees. Although the Border Patrol has had the authority to pay foreign language awards to its employees since 1991, it has never done so. Its budget contains insufficient amounts for transfers of front-line employees. Moreover, the Border Patrol has not given serious consideration to raising the pay of front-line agents.¹⁸

In addition to doing little to make the job more attractive to existing employees, there is a concerted effort to strip away employees' rights at the workplace. Even though the Courts have ruled against the Agency's attempts to implement a new personnel system and Congress has withdrawn its support for that initiative, the Agency acts as if it is not bound by current labor laws. The Department and Bureau's perpetual low ranking in employee satisfaction surveys should not surprise anyone.

It makes little sense to spend so much money on recruitment and training while ignoring the need to retain the good employees who are brought on board through those efforts. The purpose of augmenting the size of the Border Patrol should be to enhance border security. If employees leave the Border Patrol shortly after being hired, this overarching goal will never be attained.

¹⁸ Some high-level managers in the Border Patrol are floating the idea of a one-grade pay increase worth about \$5,000 annually in exchange for employees forfeiting their right to Fair Labor Standards Act overtime pay worth nearly twice that amount. This can hardly be considered an initiative that would boost retention and morale.

CONCLUSION AND RECOMMENDATIONS

The Bush Administration's push to double the size of the Border Patrol during its final two and a half years has overburdened the agency's capability to properly screen and train new agents. Disastrous experiences in other law enforcement agencies have amply demonstrated the folly of trying to exceed the capability of an organization to properly screen, train and absorb new recruits. Inevitably, it takes far longer to fix such problems than it does to create them. By the end of this calendar year, almost half of all Border Patrol agents will have less than two years experience. This ratio of inexperienced agents is unacceptably high.

While the Council fully supports the call for significant increases in the number of Border Patrol agents, it advocates a steady, incremental approach that will allow the agency to ensure that all new employees are properly screened and trained. It is far better to steadily hire a reasonable number of high-quality agents who will remain with the agency for decades than to quickly hire a larger number of people, many of whom will leave the agency within a short period of time. In order to address these concerns, the Council makes the following recommendations:

- Educational requirements need to be reinstated immediately, with a high school diploma or certificate of General Educational Development being the minimum acceptable threshold.
- Employees who possess specialized training and/or degrees in fields that will enhance their value to the agency need to be rewarded with higher pay and increased promotional opportunities.
- The entrance examination needs to be revised to include an evaluation of candidates' written and verbal communication skills.
- The passing score for the entrance examination should be raised to the 85th percentile.
- Employees who administer the oral hiring boards need to be given the power to veto the appointment of unsuitable candidates.
- Complete control of the background investigation process needs to be shifted to the Border Patrol, which needs to be held accountable for all of its actions.
- The Border Patrol needs to be granted total autonomy over its training program, eliminating the Federal Law Enforcement Training Center's role in that process.
- The Border Patrol Academy needs to be relocated to a site that is close to a major airport and a population center that is large enough to accommodate the housing and other needs of the instructor staff.
- All instructors who are involved in the training of Border Patrol agents need to be required to have recent Border Patrol field experience.
- All new Border Patrol agents need to be trained in the full Academy curriculum, including the Spanish language portions.

- The Post-Academy training curriculum needs to be revamped to bring it into line with the revised basic Academy curriculum. Additionally, the method of delivery needs to be personalized, with knowledgeable instructors providing classroom instruction.
- The Field Training program needs to be expanded dramatically by involving enough experienced agents to provide one-on-one mentoring and evaluation.
- Peer evaluations need to be afforded greater weight in the overall evaluation process.
- The length of the probationary period needs to be shortened to one year, with increased individualized involvement by instructors and mentors during that period.
- Support and infrastructure requirements need to be factored into the long-range planning and budget for the Border Patrol.
- Suitable equipment and technologies need to be acquired in sufficient quantities to facilitate the accomplishment of the Border Patrol's mission. Front-line employees need to be consulted in the design and deployment of such equipment and technologies. Research, development, repair and replacement costs need to be included in the Border Patrol's budget requests.
- Counter-productive policies need to be abolished or modified to ensure that the accomplishment of the Border Patrol's mission is facilitated rather than frustrated.
- The Border Patrol needs to be granted exclusive control over all of the assets necessary to accomplish its mission, and must be established as a separate bureau within the Department of Homeland Security.
- Meaningful changes need to be made to deal with the root causes of attrition. Moreover, a variety of retention bonuses and other initiatives need to be implemented.