

Commission Sensitive

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MEMORANDUM FOR THE RECORD
GUS DE LA VINA, BORDER PATROL CHIEF (1999-present)

Event: Interview of Gus de la Vina, Border Patrol Chief, INS and CBP, DHS (1999-current) and Robert Harris, Deputy Border Patrol Chief.

Dates: November 19, 2003

Special Access Issues: [none]

Prepared by: Janice Kephart-Roberts on November 20, 2003

Team Number: 5 (Border Security)

Location: GSA

Participants - Non-Commission: Gus de La Vina
Robert Harris

Participants - Commission: Janice Kephart-Roberts
Susan Ginsburg

Note: no classification required

Documents received: summary of BP actions taken in response to 9/11

Need to get from DHS/DOJ under pending document request: letter from Ziglar/AG to DOD requesting support for the border patrol in technology and personnel

Documents requested:

Native American After Action report 2001

1994 Border Patrol strategy

1998 revised Border Patrol strategy

NOTES:

Background.

Chief de la Vina. After I graduated from college, I joined the BP in 1970 as an agent. Been with the BP for 31 years. From trainee to a supervisor, to a management at sector level, to assistant chief, to chief of the border patrol academy, chief in El Paso in San Diego, western regional director for INS (field operations, not BP from '95-'97, '98). National chief since 1999.

Robert Harris. 19 years in BP. Started in San Diego as a BP agent and held positions in SW border. Did time in the academy. Was associate chief for operations in BP, and now the deputy BP chief. Bachelor degree and business degree from war college.

Mission of BP pre 9/11. Pre 9/11, BP was responsible for the protection of all US borders other than ports of entry (POEs), North (N) and South (S) and coastal border areas. The BP's mission specifically is to prevent, detect and apprehend those illegally entering b/w POEs. That includes narcotic traffickers, aliens, contraband, anything b/w POEs is illegal by definition. We also had primary responsibility for alien smuggling.

Mission of BP post 9/11. Since the reorganization of BP into CBP DHS, our primary mission has remained the same, with the exception of adding the prevention and detection of terrorist entry and WMD b/w the POEs, and the deletion of a primary responsibility in alien smuggling, which is now with ICE.

Deployment pre 9/11. We had almost 9,500 BP agents on 9/11. In '96, we experienced a huge jump up in resources. In 1994, we had 4,000 agents. Between '95-'98, doubled the agents to 8,000. Since 1998, we've been slowly incrementing up. The big jump in '94 was caused by an uncontrolled SW border. The numbers were very high, 1.6 million being arrested on yearly basis. Primary entry point was San Diego, then El Paso. For example, I was chief in San Diego from '90-'95. We were doing 2,000-3,000 arrests on daily basis. It was widely recognized that we didn't have adequate equipment, personnel, technology. Recognized by congress that we needed more. We had a strategic plan implemented in San Diego and El Paso and success were clear w/in 30 days (El Paso), although it took 4 -5 yrs for San Diego to get better.

BORTAC. A tactical unit began in the 1980s for crisis response consisting of highly trained BP agents. This unit is a permanent cadre used in the event of emergency. Have been used in the Utah Olympics to augment security and other unique law enforcement situations. Used in 27 countries, many with a terrorism nexus, to provide assistance, and train and enhance interdictions. Since 1999 to present, 151 training support missions to foreign countries. CT, border enforcement, civil unrest, high risk warrant, dignitary operations, riots during Cuban uprising, Atlanta prisons for INS detention, LA riots. (BORTAC Unit.) We're using them to work with Native American tribes on N border (Akwesasne tribe Swanton VT).

BP within the INS organization. As of 9/11, we were under the regional concept. No straight chain of command to sectors. They reported to regional director, then he'd report to Associate Commissioner for Field Operations, Mike Pearson. I was under the Associate Commissioner as well, but without direct reporting line through me to the Associate Commissioner. I was part of BP program, but w/o a chain of command to field. So each district director reported to Pearson. So even though I was chief of the border patrol, I was really only an advisor on policy. However, even on policy my impact was limited, as Bob Bach ran policy as an Executive Associate Commissioner reporting to the Commissioner. I was only consulted, even with title of BP chief. My other chain was to the Commissioner, she would go directly to me, but this was awkward, because inevitably I'd have to report those contacts back up to Pearson.

The value of being BP chief at headquarters, however, was that where there was centralization, I could see the big picture, while at the region, I could only see a slice of

it. The three sectors would compete for resources, tech, personnel. I'd have very little to say about these, except to the commissioner. The vetting process was thru Pearson, to Commissioner, to the Office of Policy and Planning, to budget, and then up and on elsewhere. My ability to get things done was not based on my title, but on my personal relationship with Commissioner Meissner and Ziglar. They knew I had authority to work with the field, and they recognized that. I did propose reorganization.

Support/liason activities within the INS. Field Operations and regional directors' staffs supported us, as well as the intel program. No interaction with interior enforcement.

Intel Unit. Our contact was limited with the intel unit. We had two agents there doing stats, reports on migration, but nothing they produced was considered critical to our operations. They provided no active intel and were severely understaffed. All our agents are collectors of info, but there was no analytic support at headquarters.

Databases. At each sector, we had designated intel, which acted as fusion cells. That information would go into a national system, ORION NET LEADS. That intel run by Pearson. We had manual typewriters in early 90s, but in late 90s, we bought into IDENT system, with personnel upgrade. Every alien apprehended is IDENTED, with 2 fingers and photo and NCIC with Marshal Service. IAFIS is coming on board now to interface with NCIC. (IAFIS will do fingerprint match with state/local databases.) Used ENFORCE to do forms of records of deportable alien. Primary mechanism for turning person away is voluntary departure, although everyone subject to deportation. Lookouts primarily generated thru Landsman. For us, the IDENT are the lookout systems. We do come across people who have A-files. With these we used to have to do manual separate runs, which we didn't do but when thought necessary, as we had to process people every two minutes. Don't now have to do separate runs. At 3,000 apprehensions a day, at 2 min per day, and detention space a premium, we'd turn them back.

No work with NSU pre 9/11. Sometimes we'd get names on a watchlist, but the names had to match. Most of the people we deal with we don't have a clue as to their identity, because generally have no id or can't trust the id they've got. The feed into NSU was via the JTTF. No watchlist info pre 9/11. Unless a biometric, the WL is unhelpful.

One of biggest problem facing us then and now is that everything coming out is classified, so very limited in getting information where it needs to go. Our agents in the field don't have *clearances*, b/c too expensive to do, although they receive an extensive background check.

We have details IAIP, intel network now. I can go to a briefing with Commissioner. Our command staff has clearances, but rank and file don't. Have details at the TTIC and FTTF. Not aware of Terrorist Screening Center being stood up in December by the FBI.

We convey info to JTTF, and some limited info, we get WL or lookout, and one of us responds, and we will run thru National Targeting Ctr.

Relationship with DOJ. There was no day to day relationship between BP and DOJ, but there was occasional contact. Interaction would come primarily at request of AG on operation deployment, crisis, areas of concern. When Janet Reno visited the SW border and saw what it was like, the response was "what do you need?" She went to San Deigo and said what can I do? Also, the AG had us involved with Elian; BORTAC got him out. With Ashcroft, I've traveled with him to SW border and visiting our sectors and field operations and good view of SW border. Beyond that, no contact. Neither AG was interested in N border; it just wasn't on the radar screen.

Relationship with other agencies. BP worked with DEA at the national level, but work limited at field level but for task forces whereby seizures were turned over by MOU. We kept them very busy. FBI, we had support on investigations of our agents (assault on agent w/ local jurisdiction, limited task force interaction in certain locations, limited on alien smuggling).

What triggered our focus on alien smuggling occurred in about 1995; we knew we had to address smuggling to do a good job on a border.

We never received any intel from NSA, nor had any relationship.

DOD was very instrumental in 1985 or so when the President made the military involved in war on drugs with nexus to support law enforcement. That's when we became involved with DOD. They had El Paso operations, Joint Task Force Six, controlled out of fifth armored division. They provided us with construction assistance. Their work had to have a nexus to drugs, and the military would provide (1) eyes and ears on land and water, acting as a listening post and working outpost with binoculars and would communicate with us. DOD's was a small team plugged into national command. (2) National guard provided construction. If we needed a fence, they'd have national guard come down and help do it. The beauty was it gave the National Guard a real mission outside of training. National Guard had different laws and no posse comitatus like feds. (3) DOD would also provide techno leftovers from military, binoculars and infrared; they'd implant sensors, and fly unmanned vehicles. (It was a good thing they were unmanned, because they crashed a lot.) Some increases over years. In '96 or '97, DOD took away the eyes and ears after the Redford incident, where a military personnel shot and killed a civilian which was mistook as a threatening armed alien.

Has been very supportive of our mission, especially with drugs. Have built fences, and all kinds of support. W/o their involment, we wouldn't be where we are today. Worked roads, built towers, get technology.

Technology support. BPSCC using UAV from military. UAVs wouldn't be able to support our mission until near future. Idea behind is that N border where we can't patrol it, we'd like the aerial view to provide leads on interdiction.

1995 was the turning point on personnel and technology. Tech was part of our budget, but R&D was not because we weren't in charge of those resources at INS, so couldn't really ask for it. Tech was to support the agents, not the big overview of us.

White House. No contact. Did provide a briefing to Clinton on border issues and attended the signing of big border bill.

Intelligence. As Chief, from our field offices (alien smuggling, narcotics) thru hdqtrs to the intel office. Unclassified law enforcement sensitive information we shared across sectors, and sectors would share at the local level. At the national level, the Chief had no contact with CIA. When Harris was in intel, he did receive a classified brief from eh CIA at the intel unit under Landsman. The briefing about what was going on overseas, so of limited help to BP.

Terrorist entry. Have seen no evidence of terrorists using alien smuggling. On the SW border, 98-99% of illegals are Mexicans. On N, 10-13,000 per year, 65-70% were Mex nationals.

1999 DOJ OIG report. Our focus was on the SW border because of volume. 1 million to 1.6 million on an annual basis, or 98% on SW with less than 1 % of crossings on the N border. N only 13,000. A SW sector would be 100-300K per year. San Diego was 600K. There was a lot of internal pressure to do SW. Congressional interest was important to get resources, and that support was consistent. Congressional interest in the with N border barely existed.

Report was flawed analysis. Type of Mex cooperation was limited to none. We have open exchange with Canadians and we share crim info. If went further on the numbers, a lot caught and put in jail within the border, not on the border.

Terrorist mention in OIG report. The N border was not a focus, primarily b/c of activity we were seeing. A lot of movement attempting legal entry thru POEs. Limited illegal entry. Some of these were through the POEs. At that point, not a terrorist issue for us. We had a national strategy. We were building up N slowly, in interim, sending 30-40 agents up north. We knew even if we put 10K agents along the N, it wouldn't be effective. We had identified hot spots. On N, we needed, tech, equipment, personnel and liaison with other agencies, and that's when we started IBET in Blaine Washington. More intel up north. In S, complete opposite strategy. We beefed up Phase IV due to report.

Migrant Trafficking Coordination Center. Not part of process, and opposed to it, b/c at time the lead was with us.

SW Border Council. Don't know. Perhaps a law enforcement contact group.

Allen Berson. When I was chief in San Diego, US attorney and very supportive and aiding our alien smuggling prosecutions and he was later designated as SW border coordinator in getting the resources we need. Another conduit to Reno.

IV. 9/11.

I was at hdqtrs. I went upstairs and watched when first tower hit. Harris' office was in command center, and so Harris was watching on the big screen. Chief said when second plane hit, get command center ready. Met with Pearson in command ctr, we'd been trying to set up BP command center with phones, radios, electronics and been putting money in every year and almost ready when 9/11 hit. Then Commissioner came in, he asked for recommendations. Don't recall other recommendations made by Cronin or Pearson. I did mine on the side and asked for chain of command and he granted it right then. That's when Operation Safe Passage began. That command did not last.

Operation Safe Passage. The day of 9/11, the commissioner brought us in, I made recommendation that I could deploy 300 agents to airports at any location in US via BORTAC. He carried that to AG, and word came back saying do it. I can do it, but need a straight chain of command. I had tried before, you get competition. Ziglar provided an oral authorization. I went immediately out to field, and within 36 hours, we had 318 agents full armed and trained at JFK, Logan, and others for Operation Safe Passage. There was a problem. I had all these people ready to go, but I needed chain of command and transportation. Thru DOJ command ctr, via the Marshal Service, and Customs to move us from primarily SW to designated airports. These BORTAC did relief for 30-45 days. I got command from Comm'r that National Guard would come in as replaced. Operation lasted Sept. 12 - Oct. 26, 2001.

Received a handout of all BP 9/11 activities.

Operation Northern Passage. How threat level one affected BP: no real effect, but I had to go to Ziglar again to get 110 BP agents to N land POEs and 42 to El Paso and San Diego. I initiated it, not requested. Purpose was to relieve INS inspectors and wait times and Ziglar told Pearson to do it. It took at least a week; ran into a regional bureacracies. It showed Ziglar immediately that chain of command was essential for reorganization. (That was in restructure plan of Sept. 10).

After that, got chain of command ad hoc until Ziglar made announcement in April 2002. By that point, it was clear we needed straight command to the field. So important b/c we were moving 2000 agents across the country per year, so we needed the direct line through regional lines.

After 9/11, we were receiving general information and criticism about the vulnerability of the N border. B/c of heightened level of security, no allowance for inspectors to get time off. Reason for deployment was due to proximity of NYC and DC to N border and open source info from Canadians that they were a safehaven for terrorists, but no actionable intel.

DOD. Prior to the February 2002 MOU, I requested military support for N border. 600 listening post eyes and ears, and additionally aircraft. That was my request and then went to Ziglar and to AG and to DOD. DOD also received request from inspectors.

Memo went from Ziglar to Thompson to DOD.

We didn't get military personnel or listening, but 16 intel analysts (2 to each location) and 6 aircraft. No extra eyes and ears on the ground. The intel analysts were helpful, gave us a level of confidence and nothing was going to fall through the cracks. Lasted about 6 months.

We moved up deployments from Phase IV and gave ourselves 6 months to get new deployments out and send additional agents. Had 368 authorized (some vacant), by end of this calendar year, will be up to 1000. We've upgraded all security clearances at our intel centers in sectors. We beefed up intel along northern border.

Our aircrafts fly low and slow. BP agents first, and patrol day and night, like vehicles for sky. Numbers haven't gone up. We're getting info on persons of special interest countries. Basically N side. No significant terrorist interest.

In Blaine, did get one recently who was a smuggler. Had info from airport that the aliens was a smuggler. We had info and we were looking out for him.

V. DHS.

Generally we like our new home. Bonner is very supportive. We don't have particularly good relations with ICE, however.

Loss of alien smuggling jurisdiction. On SW border, clear jurisdiction b/w interior and BP, but on N, not a lot on immediate border, so interior will work intel w/in 100-150 miles of border. If they enter illegally, legacy investigations picks them up. Most of our interdictions are cold, and we don't know what we are dealing with- alien smuggling load or narcotics- we used to have an anti-smuggling unit that would develop information and we'd work handoff with interior. We don't have intel for our agents, we need more, and real time info would increase the safety of our agents. A lot of deaths are vehicle accidents. DEA working strictly narcotics, they will take load down, with Customs, with some form of a network, they are prepared, but w/o intel, we deal cold. We need RT intel. We no longer have the alien smuggling. These alien smuggler agents were former BP that became 1811. All those 1811s were transferred to ICE. We're evaluating whether this has hurt us in our effectiveness. Info flow on alien smugglers has slowed down. We want mom and pop 3d category level smuggling. Not a priority others for others, but it is for us. When we arrest a smuggler, we call BICE. If they don't take it, we have no choice but to return to Mexico.

We have agent at DHS intel agent at the command center, and if he has something we get that info quick and we can ramp up.

My biggest concern, if there is a crisis, is that we can be first responders (BORTAC), we are highly trained to any location within US if we have transportation. They are trained in emergency response. Added training in border search and rescue and life saving techniques, radiation training, and biological /chemical for first response.

How do you infiltrate v. terrorists? We have a difference strategy on the NW, the key is intelligence, liaison, task force, and technology and int'l relations with RCMP. We just met with Mex, but they are more involved with BICE.

No training in Arabic or Arabic culture now.

We have agents with Roy Surrett's shop. We know Blaine, Buffalo, Detroit are our high threat area. I get a weekly intel with Commissioner, Loy, Jay Ahern, senior advisors.

The kind of info we need is from NSA from an intercept... On a very limited basis that's occurred.

Environmental hoops to deploy technology on the border delay us years.

GUS DE LA VINA
Nov. 19, 2003

I. Background.

II. Mission of border patrol. Explain the day to day activities of the border patrol. How does a border patrol agent determine the national security risk an individual may pose to the US? What is the process for dealing with such individuals? Has that process changed since 9/11? How did CT fit into this mission pre 9/11? Post 9/11?

III. Pre 9/11.

a. Border Patrol within the INS bureaucracy.

What was the chain of command from headquarters out to the field. What changed over the years in that organization?

What relationships within the INS were essential to every day operations of the border patrol? (other border patrol sectors? headquarters intel? NSU? Investigations?)

b. Working relationships with other agencies pre 9/11.

What relationships outside of INS were essential to the every day operations of the border patrol? (DOD, NSA, FBI, DEA)

Describe your relationship with DOJ. Who you worked with on a day to day basis? On what issues? When? How did the relationship change b/w administrations?

Describe your relationship with the White House? Did you ever attend meetings? On what? When?

c. What intelligence did you have access to? How often briefed? By whom?

d. Did you ever acquire information indicating that terrorists were attempting to EWI? What about terrorists use of smuggling to enter?

e. Work with DoD.

Use of national guard.

Use of air observation.

Use of intelligence analysis support.

f. Intelligence. FBI, CIA, NSA, etc.

What type of info.

From whom.

g. Northern Border. December 1999 OIG draft report "*Border Patrol Efforts Along the Northern Border*". B/w '93 and '98, about 311 agents along the northern border and 7000+ on southern border. Why was this the case?

The OIG concluded that the northern border encountered more organized crime activity than along the SW border. N border 14 times more likely to encounter an alien involved in smuggling weapons and 9 times more likely to find smuggling drugs than SW border. Was this accurate information? Why do you think this was the case?

INS Anti-Smuggling strategy said "intel info indicates a rise in smuggling along the N border". Was this accurate information? Why do you think this was the case? The OIG report also states that not until Phase IV of the 1994 Border Patrol Strategy is the N border even mentioned, and lacks sufficient detail. Was this accurate information?

Why do you think this was the case? Why such the focus on the southern border?
(congress, #s of people?)

Also discusses the threat of terrorism. (Windsor Tunnel in Detroit a terrorist thoroughfare; 1997 Abu Mezer for the Brooklyn Bomb Plot who had been turned away twice as EWI before claiming asylum on the third attempted entry; Canadian officers stating that Canada was a stepping stone for terrorists to enter the US, citing an alien arrested by the DEA for heroin importation having bought tracks of land on both sides of the N border and linked with the Air India bombing.). Was this accurate information? Why do you think this was the case?

What did you do in re to the following recommendations:

- More officers
- Better intelligence
- Secure radio network (smugglers were listening in)
- Cameras to determine sensors, with human backup
- Boats
- N BPAs detailed to SW
- Lack of detention space

g. Migrant Trafficking Coordination Center. In Feb. 2000, DOJ contacted James Castello stating that the INS was not being responsive to setting up an interagency center on alien smuggling, and the group of agencies involved were considering moving on without them.

h. SW Border Council. What was it? When operate? What did it do?

i. Allen Burnson, the US Attorney for San Diego was appointed the border czar by the AG to coordinate with other agencies on policy. What was your relationship to him?

IV. 9/11. What orders did you receive on 9/11? What orders did you send out to border patrol?

Operation Safe Passage. 300 border patrol to 9 airports w/in 24 hrs.

Operation Northern Passage. 110 West/Central agents to POEs and BP sectors on the northern border.

Native American Border Security. Conference held in 2002.

Operation Sentinel. BP and Coast Guard in Great Lakes Region Nov. 2001.

Operation Northern Vigilance 2002. b/w POEs 100 BP.

V. DHS.

Has DHS improved border security?

What needs to be changed?

What should Mr. Bonner, Mr. Hutchinson and Mr. Ridge know about the border patrol that they don't?

What role of border patrol in war on terror?

VI. What did we forget to ask that you think we should know?