

MFR 04013818

Commission Sensitive

**MEMORANDUM FOR THE RECORD
ADMIRAL JAMES LOY
PART I**

Event: Interview of Admiral James Loy

Coast Guard Commandant (May 1998 – May 2002)

Transportation and Security Administration Administrator (May 2003-November 2003)

Deputy Secretary, DHS (December 2003-current)

Date: Wednesday, December 10, 2003

Special Access Issues: None

Prepared by: Bill Johnstone and Janice Kephart-Roberts (Dec. 10, 2003)

Team Number: 7 (Aviation security) and 5 (Border Security)

Location: Building 3 SCIF; DHS Headquarters, Washington, DC

Participants - Non-Commission: James Loy
Joe Whitley, General Counsel
Brandon Straus, TSA counsel

Participants - Commission: Sam Brinkley,
Janice Kephart-Roberts, counsel
Bill Johnstone
Steve Dunne, deputy general counsel

Note: no classification required

Documents provided or requested. none

Recording: no

NOTES:

The Work of the Commission

Loy: We need to have all the cards face up on the table to let us press on. Will be helpful in anyway I can to assist the Commission.

Work at the Coast Guard

Q: When you were in charge of the Coast Guard, was there a focus on terrorism? Loy: We were very conscious of smuggling in general, whether Levis or drugs or WMD or people. The notion of smuggling has been a fundamental issue for a long time, and Coast Guard and Customs were established soon after 1787 to address the issue. Alexander

Hamilton as Treasury Secretary didn't get "hosed by big guys coming in." As we get closer to 9/11, there were a number of us that saw ourselves as crying in the dark about asymmetric threats, including terrorism. At that time, it was pretty clear as to the connectivity and underpinnings of capacity between smuggling and terrorism. Furthermore, I am wedded to the idea that drug cartels and activities and their money making have become more available to people in the business of smuggling (with business or terror enterprises).

[REDACTED] I would like to think that we as a nation would place a high priority on collecting and connecting this kind of information.

Loy: It took 9/11 to wake us up collectively as a nation to the threat of terrorism. For example, the Hart-Rudman Commission didn't capture people's imaginations. Complacency is an issue for each of us, and can manifest itself in organizations and nations as well. After the implosion of the Soviet Union, the question was "now what do we do?" It was thought, "If you can handle this, the lesser offenses can be handled." After mutual assured destruction and the 50-year effort in the Cold War, we woke up and nobody was on the other side of the Fulda Gap. There was a 12-year window to "relax" as a nation, and that complacency gene manifested itself; that's a dramatic example. So my concern then became, as the late 90s came, and we were reading think tank products, in a Coast Guard context, trying to assess our responsibilities with respect to the asymmetric array of threats that had different players than what we had experienced in our nation's history.

Loy: As Commandant of the Coast Guard I was concerned about how to modernize ourselves to deal with these future threats and to determine what our responsibilities were in the new era. We tried to do a thorough effort to plan and to produce a vision document on what the roles and missions of the Coast Guard should be in 2020. We wanted to make sure we were headed in the right direction. Historically we were focused on illegal smuggling, broadly defined including alien smuggling. For example, in the late summer and fall of 1996, the 65,000 Haitians and Cubans came at us, with DOJ and DOD putting together strategy and the Coast Guard helping to carry it out. Can I say in the late 90s we were specifically oriented toward terrorism? We were discussing it as part of the asymmetric threat we were dealing with, with knowledge that counter-drug efforts could be of great utility against terrorist acts, with containers or people.

Q: Did the Coast Guard ever apprehend a terrorist pre 9/11? Loy: I don't recall in the window leading up to 2001 any known terrorist being intercepted by Coast Guard units. But I can give hundreds of examples of what we uncovered that scared the "be-Jesus" out of me and that could have been very serious. For example, I remember standing on a pier in Houston unloading 6 metric tons of cocaine in a "coffin" that was hiding under a load of iron ingots. At sea, this had been transferred from one ship to another. My mind was questioning what could have been in that box: WMD; illegal aliens; terrorists? So much of what we were encountering could have been so much worse for us. I spent 20 years in counter-narcotics, and I have always taken the threat very seriously.

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Q: Did the Coast Guard look at whether merchant mariner travel documents are susceptible to fraud or are adequate for our security purposes? Loy: With respect to merchant mariner documents and fraud, we looked at it from a commercial perspective rather than as a security concern. Licensing of seamen we took very seriously, including background documentation. But our examination of these documents was secondary, as Customs took the lead for people and goods inspection of travel documents coming into the country. Sometimes we had task forces to board boats at sea. We weren't concerned about terror issues at this time, however.

Q: Please describe the Coast Guard response to 9/11. Loy: I continued to do the Coast Guard job for 8 months after 9/11. We did good thinking then on maritime security, and this manifested itself in sound policies that have been strongly supported by the Congress and the Administration. I was enormously proud, and will be grateful until the day I die for the work done by the Coast Guard team in New York between September 11 and 15, 2001. Admiral Dick Bennis (sp?) had had treatment for a brain tumor the morning of 9/11, but went back into work and initiated the first steps to secure the harbor. Together with the maritime community, we evacuated 300,000-400,000 people from New York City on that day; there was no other way for these people to get away. To grab anything that floated and pull off a larger than Dunkirk operation to facilitate getting people out of New York and then organizing that process to Staten Island or New Jersey was an incredible achievement.

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DHS Organization on borders

Q: Right now, border security is within DHS, with the Coast Guard and Citizenship and Immigration Services reporting directly to the Secretary, but TSA, CBP and ICE all under Hutchinson. How is DHS working to assure policy, information and technology integration between all border sectors? Loy on *integration*: I began to question whether the old paradigm used by federal agencies of prevention, response and consequence management of ethos of DC agencies worked well enough and I wanted to figure out how to improve it. On Friday (December 12, 2003) I'm going to convene a leadership team to determine strategic goals for DHS, including that paradigm. I don't think such a meeting has happened to date. The most important thing about this thought pattern for me is about the front end, knowing what we need to prevent, and how we improve our "situation awareness." At the Coast Guard, I called it "maritime domain awareness" and we needed to do it better. This kind of awareness has national security and cabinet level implications.

Loy: We are at DHS doing all three things: work on prevention, mitigate vulnerabilities, and prepare to respond. In that array, we must articulate to the public our "vision" and interpret a national strategy for DHS so we can hold on to the sense of urgency in the

fight against terrorism which is fading already in U.S. Maintaining a sense of urgency, while we are still learning how to grapple with the new, stateless enemy, is one of my main recommendations for the 9/11 Commission. My intelligence briefings ruin my day every day. We still don't know enough about this enemy, and we must learn to deal with this whole notion of confronting an enemy with no national territory, and no flag or formal government.

Loy: The homeland security law, largely through protective efforts by key members of Congress (including Sen. Stevens), made sure that the Coast Guard held on to its military character and non-security related missions. It was recognized as a multi-mission military and maritime service. As one member of Congress noted, "If it is hard and wet, give it to the Coast Guard". This was very important to Ted Stevens (R-AK).

Loy: On the 10th of September 2001, we in the Coast Guard were spending 3% of our budget on homeland security. Shortly after 9/11, the figure was over 50 percent on homeland security issues. That's about agility and adaptability, and those notions must be held elsewhere within DHS and other government agencies.

Loy on policy integration: Asa Hutchinson has to find way to integrate all of the DHS agencies into a normal process for developing policy. To do so, he has a policy council every Friday morning and invites all relevant DHS entities including the Coast Guard. These meetings are aimed at the whole notion of recognizing the need for a border strategy, including the tools DHS has, as well as the need for integration of state, local and private sector entities. So we need to know who can talk to whom and those things are recognized well. The one concern I have is probably just an organizational adjustment, but in the Homeland Security Act, there was no recognition of the need for a policy shop at the Secretary's level. I don't know whether it is a "mother may I" to the Hill, but we need a deputy chief of staff on policy who focuses on major policy issues on protection, restoration, and response, and whom everyone knows has direct access to Secretary.

Loy: It has to be remembered that 22 agencies were delivered in mass into DHS and this is still a work in progress. It took 40 years to get DOD right and fix the national security "culture." We have to go through that at DHS as well. We have to adjust agility into the DHS and do it thoughtfully in a way to re-link necessary organizational attributes to fulfill our mission. This is both an obligation but also an "amazing opportunity" for the bureaucracy.

Loy: The biggest difference between TSA and other DHS components is that two years ago, there was no pre-existing baggage brought to bear on the newly created agency. Its challenge instead was 31 impossible-to-reach deadlines, but we had an empty palate upon which to build a model agency for the 21st century. Elsewhere, DHS has 22 different cultures with their own baggage, traditions and legacies so the challenge is how to forge a common culture focused on DHS's overall mission while remaining mindful of the legacies of the individual agencies. In response, the judgment of Secretary Ridge has been to move toward first strengthening the functional priorities, so CBP can focus on

border control, without distractions of law enforcement responsibilities, while ICE can provide enforcement and support service to the rest of agency. Such changes are not without pain, to individuals and to organizations. Customs post 9/11 is a different entity, and the challenges of change and leadership are not insignificant. But if we have the vision thing in everyone's mind, it is very doable.

Loy on information sharing. In DHS, IAIP is charged with gathering, analyzing and disseminating information in a better way than ever done before. TTIC and TSC are also involved. From the perspective of my time at TSA, I felt better served with information sharing efforts than I had been at the Coast Guard, no doubt. I don't know whether the FBI should be made a part of DHS, but I know when I'm at Oval Office in the morning for meetings in place of Sec. Ridge, Directors Tenet and Mueller are doing quantum levels better than ever before at information. However, I'm puzzled by the creation of these other elements, TTIC and TSC, which are performing functions the law had supposedly given to DHS and IAIP. But these are experiments in better information sharing and dissemination. We may find, once this has matured, we may find that the external elements should be incorporated into DHS. In any event, this is on the front burner more and better than ever before. We're mixing data elements never before mixed in one "bowl," like pieces of national security information with SSI and commercial information and the net value of mixing these things holds great promise.

Loy on technology integration: I frankly believe that the Science & Technology (S&T) directorate has enormous potential to do good things for us, especially core R&D work on detection. Dr. McQuery is a really bright guy, and this core R&D work should be done on a centralized basis at DHS, linked with similar Pentagon efforts. However, "applied R&D" should be left to the individual agencies. So if CBP, Coast Guard, or TSA need better detection technology, S&T should do that, but specificity with respect to the devices themselves should be left to applied R&D within each agency. This is related to a buzzword here at DHS called "integration" which refers to efforts to balance regionalization versus centralization. We need to understand that really well.

Risk Assessment and CAPPS II

You referred in your May 2003 testimony before Senate Appropriations confirmation hearing for TSA about a "threat-based risk management plan". Is there a threat-based risk management plan for immigration related security issues? Loy: One of the things I feel most strongly about is the CAPPS II project; a step-function value increase in what is currently deployed, once its risk assessment model is built. It is a "hugely important project to get right," including with respect to privacy concerns. I've had a number of offsite meetings at Wye River and elsewhere on privacy concerns, including the scope of the project. One of CAPPS II's key components is the ability to tap key commercial databases of information and not just depend on traditional background checks. Now we have the need and ability to determine through link analysis who is a terrorist and who is not. As we were working to address concerns about CAPPS II, TIA (Total Information Awareness) came along, and CAPPS II was perceived as a privacy violator, and as a

result we are now another 6 months away from securing our airlines better by deploying the new system.

Emergency Command and Control

Q: Is there a command and control strategy in place for a fully integrated and seamless border and transportation agency response in the event of another national emergency?

Loy: We've had a number of examples where local command and control of incident management has worked very well. There's either the DOD line of authority way to do things; or there is the ICS model that I think is the best framework for DHS. Maybe a good example of that would be an oil spill, like the Exxon Valdez; the aftermath of that was astonishing. As Commandant of the Coast Guard, I made 10 to 12 trips to Valdez, Alaska and 12 years later we were still doing regular projects from 1989.

Loy: As an example of localized incident management, weekly port security council meetings are held, where the Coast Guard port captain convenes with key local stakeholders, including sheriffs and other law enforcement representatives and representatives from the private sector to discuss environmental and safety issues, with security added after 9/11.

Loy: In November 2003 we conducted a strategy session about security planning and credentialing. This is a cascading process to permit an integrated command and control effort and to determine what model of incident management should be used. Our big issue at DHS is what does the Secretary want to pursue with respect to creation of regional offices. It is a huge question and one that the Homeland Security Act requires us to take on. There is an existing DHS command and control array, in a 24/7 mode, and it must continue to do its work, while being able to respond to incident management requirements. So the question of factoring in regional offices while allowing the local level to do its job with respect to incident management and response is a key one. The question is even more challenging because of differences in the approach of the various DHS entities with respect to regional offices (FEMA has 10 regions, INS 58, Coast Guard 12, and TSA none). As an interim step while considering the issue of departmental regions, DHS is moving to make existing agency regional boundaries consistent. Whatever is done with respect to regional organization, a capacity for networking state and local levels in incident management must be built into the system, before the next crisis. This remains a work in progress, and we plan on using innovative ideas from other entities in building the DHS incident management system. After 9/11, we realized that the local level is robust with respect to incident management. The guys on the ground just make it happen time and again. Now we need a job description on the regional levels and the Secretary is just pulling that back up on the front burner again.

Loy: I think we are about to get some Homeland Security Presidential Directives (HSPD) out of the White House on critical infrastructure and on preparedness and these will facilitate our ability in DHS to press ahead. We have a security plan at TSA that is awaiting the issuance of an HSPD. A key component of the Presidential directive will designate a lead agency for various aspects of homeland security (including the 13, now

14 with the addition of national "icons," critical sectors). DHS has fundamental expertise in these areas, but the lead agency designation will be key to the department's ability to do the necessary external outreach (for example to the various DOT modal administrations and associated stakeholders). It will also facilitate the identification of external expertise (for example, the Centers for Disease Control and Prevention within HHS) and allow a raft of good ideas to flow across departmental lines. The HSPD will also be a key enabling device as a means for the protection piece to emerge.

Loy on *public-private partnerships*: As we composed a national security plan at TSA, I pulled all the players to table, including private industry. From my days at the Coast Guard, I have been a strong believer in the private-public partnership, and I believe if we don't get all the right people to the table, we may put out something really stupid. For example, there's a formal MOU between the Coast Guard and the American Waterway Operators (barges) and I know there are fewer oil spills and more people alive today because of that partnership. At the same time we were slapping the industry with fines for pushing the wrong things over the side, we were sitting down with them to help industry comply with the law and produce better ideas. This is a fundamental lesson.

Homeland Security Council

Qs: What is the role of the Homeland Security Council in the day to day life of DHS? What value, if any do you see in the HSC for DHS? Should that role continue? Should it be folded into the National Security Council (NSC)? Loy: There is a duplication of counsel issue. There is some value in the HSC providing focus during the start-up period and it has served as a central place to provide counsel and advice for the President after the 9/11 crisis. It may evolve, and in the future have its functions dispersed perhaps to NSC and DHS. On the people side, DHS Secretary Ridge served as that counselor to the President, and many here at DHS now were with him there. Falkenrath, now number two at HSC, was there from the start, and helped write the Homeland Security Act, and HSC continues to play a valuable role in holding onto the original intent and keeping us on track. But it should be a learning organization so that new ideas can be validated along the way. I've sat in a lot of HSC meetings and the relationship seems congenial between HSC and NSC. Condi Rice only has the interest of the well being of the entire country as her goal, and both Councils play well in the "sandbox" of the White House.

Loy: Now almost a year after its formation, I'm sure HSC has opinions on where we should be on certain issues. This is a target rich environment, and you could spend all hours of the day on 100 things, and keeping all the balls in the air. While HSC has no day-to-day operational role within DHS, it does have a daily impact on interchanges across departments and helps us all the in prioritization process with the President. If there is a plan for them to go out of business in five years, I don't know it.

TSA

Q: Please describe the mission of TSA as you saw it, as well as its strengths and weaknesses and challenges and effectiveness. Loy: Sec. Mineta wasn't satisfied with the

direction of the agency under John Magaw. Norm wanted security but better balanced with attention to customer service. We needed to gain the confidence of the American people so they would return to flying. He thought John's secret service background was too security oriented. That's the deal when I came aboard. I came in as COO, not Administrator. Working through the *Aviation and Transportation Security Act (ATSA)*, which is really good at fighting the last war, we spent billions to federalize screening and to keep guns and bombs off planes in order to regain public confidence. TSA did do work on other transportation modes but OMB and Congress stultified us over what our mission was: were we designing a transportation security plan or an aviation security plan? This is an example of tragedy, followed by an emotional legislative response, followed by a give and take on mission and resources.

Loy: In our case, as a brand new agency, TSA had to establish a base foundation, and screeners are part of that foundation. The FY05 TSA budget will do much to establish that baseline and in many respects will be its first budget to legitimize its broader mission. It will not include much for maritime security, given the assessment that the Coast Guard is handling this mode, will provide a continued concentration on aviation, and will not have as much as I would like to see for land modes. Our prioritization matrix includes the transportation modes (maritime, aviation and the four land modes) on one axis with people, cargo, infrastructure and preparedness on the other. It also includes risk management and accountability features. And all of this must meet the initial challenges and deadlines driven by 33 priorities set out by Congress.

Loy: As a first requirement, we had to federalize the screeners. Secretary Mineta had a year to do it, so he wanted to take six months to figure out what to do and how to do it right, and the six months to implement it. Michael Jackson at DOT was key to making this all come about. Hiring 6,000-7,000 screeners per week and deploying them around the country was an astonishing accomplishment in a short time, and the initial TSA staff accepted hardships, inadequate work space, and long hours for the first six or seven months, and thus came to their jobs with great patriotism and as a calling.

Loy: By January 2004, any airport can determine whether they want to petition TSA to have screening privatized again. Under ATSA five airports currently have pilot programs to test the concept, and TSA needs to collect the data on these before making any determinations.

Loy: TSA has faced several challenges in its short history. It had to build a new organization, while getting its mission done, and then move over to a new department. These were three huge jobs to be undertaken. Secretary Mineta had a significant background in working with private sector, and would call Fortune 500 companies to get their help at the drop of the hat. It became a quest for Mineta and Michael Jackson, and they wouldn't let us not meet the one-year deadline for screening. We had to massively ramp up our procurement of equipment. For example, we ordered 1100 EDS systems overnight; and previously the production rate for ETD trace detectors was 200 a year, and we ordered 6000 of them overnight. And, oh, by the way, we had to keep the airlines running. Some 85% of the screener workforce didn't come back to work after TSA's

higher standards (for security checks, etc.) went into effect. In fulfilling our mandates, we followed the gospel that it is better to ask for forgiveness than for permission, and we used every tool in the law. It was the post-tragedy environment that enabled us to do our job. It was an astonishing professional challenge for me.

Q: Some have said that TSA is careening from one Congressional deadline to another. So how did you do long term planning under those circumstances? Loy: We have a strong strategic management group within TSA. We are strapped a bit with existing technology, with good efforts for training people. My biggest regret at TSA was in not being able to design an optimal workplace for our workforce. People are putting up with a lot of crap, and only so long can our workforce survive on patriotism. I have committed to the design, development and deployment of a model workplace for our screeners, who are 5500 of TSA's total of 6000 employees. Anyone at TSA can guarantee you that we are doing work with 1/3 to 1/5 of the normal level of headquarters personnel because I wanted a lean organization at the top. We developed a strategic plan for TSA and where we wanted to be in 10 years, including at the checkpoint, and so we are looking at the detection devices very carefully.

Organizational Principles

Q: In your view, what are the fundamental principles of transportation security? Loy: The first offsite visit for TSA I organized dealt with our core organizational values. When I started at the Coast Guard we didn't have a management development shop, and we didn't have a formal set of core values. In time, these became honor, value, and dedication to duty. That was in 1992, and that was at the start of my last decade in the Coast Guard and these principles resonated with everyone. They became a rallying point for service. At TSA our core values became "integrity, teamwork and innovation." Integrity was important to demonstrate, for example, in reassuring customers when we opened their bags for screening. Teamwork is very important at the checkpoint, where eight people must work together effectively as a team to get the job done. And innovation underlies the notion of continuous improvement that must be the business of all at DHS. (This applies to equipment modernization in addition to people.) We must also be good stewards of taxpayer dollars, and that can mean, for example, using technology to reduce personnel needs, such as is accomplished by substituting EDS detection equipment for the more labor intensive ETD.

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[U] These meetings are aimed at the whole notion of recognizing the need for a border strategy, including the tools DHS has, as well as the need for integration of state, local and private sector entities. So we need to know who can talk to whom and those things are recognized well. The one concern I have is probably just an organizational adjustment, but in the Homeland Security Act, there was no recognition of the need for a policy shop at the Secretary's level. I don't know whether it is a "mother may I" to the Hill, but we need a deputy chief of staff on policy who focuses on major policy issues on protection, restoration, and response, and whom everyone knows has direct access to Secretary.

[U] Loy: It has to be remembered that 22 agencies were delivered in mass into DHS and this is still a work in progress. It took 40 years to get DOD right and fix the national security "culture." We have to go through that at DHS as well. We have to adjust agility into the DHS and do it thoughtfully in a way to re-link necessary organizational attributes to fulfill our mission. This is both an obligation but also an "amazing opportunity" for the bureaucracy.

[U] Loy: The biggest difference between TSA and other DHS components is that two years ago, there was no pre-existing baggage brought to bear on the newly created agency. Its challenge instead was 31 impossible-to-reach deadlines, but we had an empty palate upon which to build a model agency for the 21st century. Elsewhere, DHS has 22 different cultures with their own baggage, traditions and legacies so the challenge is how to forge a common culture focused on DHS's overall mission while remaining mindful of the legacies of the individual agencies. In response, the judgment of Secretary Ridge has been to move toward first strengthening the functional priorities, so BCP can focus on border control, without distractions of law enforcement responsibilities, while ICE can provide enforcement and support service to the rest of agency. Such changes are not without pain, to individuals and to organizations. Customs post 9/11 is a different entity, and the challenges of change and leadership are not insignificant. But if we have the vision thing in everyone's mind, it is very doable.

Information Sharing

[U] Loy: In DHS, IAIP is charged with gathering, analyzing and disseminating information in a better way than ever done before. TTIC and TSC are also involved. From the perspective of my time at TSA, I felt better served with information sharing efforts than I had been at the Coast Guard, no doubt. I don't know whether the FBI should be made a part of DHS, but I know when I'm at Oval Office in the morning for meetings in place of Sec. Ridge, Directors Tenet and Mueller are doing quantum levels better than ever before at information. However, I'm puzzled by the creation of these other elements, TTIC and TSC, which are performing functions the law had supposedly given to DHS and IAIP. But these are experiments in better information sharing and dissemination. We may find, once this has matured, we may find that the external elements should be incorporated into DHS. In any event, this is on the front burner more and better than ever before. We're mixing data elements never before mixed in one

“bowl,” like pieces of national security information with SSI and commercial information and the net value of mixing these things holds great promise.

CAPPS II

[U] Loy: One of the things I feel most strongly about is the CAPPS II project; a step-function value increase in what is currently deployed, once its risk assessment model is built. It is a “hugely important project to get right,” including with respect to privacy concerns. I’ve had a number of offsite meetings at Wye River and elsewhere on privacy concerns, including the scope of the project. One of CAPPS II’s key components is the ability to tap key commercial databases of information and not just depend on traditional background checks. Now we have the need and ability to determine through link analysis who is a terrorist and who is not. As we were working to address concerns about CAPPS II, TIA (Total Information Awareness) came along, and CAPPS II was perceived as a privacy violator, and as a result we are now another 6 months away from securing our airlines better by deploying the new system.

Technology

[U] Loy: I frankly believe that the Science & Technology (S&T) directorate has enormous potential to do good things for us, especially core R&D work on detection. Dr. McQuery is a really bright guy, and this core R&D work should be done on a centralized basis at DHS, linked with similar Pentagon efforts. However, “applied R&D” should be left to the individual agencies. So if CBP, Coast Guard, or TSA need better detection technology, S&T should do that, but specificity with respect to the devices themselves should be left to applied R&D within each agency. This is related to a buzzword here at DHS called “integration” which refers to efforts to balance regionalization versus centralization. We need to understand that really well.

Emergency Command and Control

[U] Loy: We’ve had a number of examples where local command and control of incident management has worked very well. There’s either the DOD line of authority way to do things; or there is the ICS model that I think is the best framework for DHS. Maybe a good example of that would be an oil spill, like the Exxon Valdez; the aftermath of that was astonishing. As Commandant of the Coast Guard, I made 10 to 12 trips to Valdez, Alaska and 12 years later we were still doing regular projects from 1989.

[U] Loy: As an example of localized incident management, weekly port security council meetings are held, where the Coast Guard port captain convenes with key local stakeholders, including sheriffs and other law enforcement representatives and representatives from the private sector to discuss environmental and safety issues, with security added after 9/11.

[CS] Loy: In November 2003 we conducted a strategy session about security planning and credentialing. This is a cascading process to permit an integrated command and

control effort and to determine what model of incident management should be used. Our big issue at DHS is what the Secretary wants to pursue with respect to creation of regional offices. It is a huge question and one that the Homeland Security Act requires us to take on. There is an existing DHS command and control array, in a 24/7 mode, and it must continue to do its work, while being able to respond to incident management requirements. So the question of factoring in regional offices while allowing the local level to do its job with respect to incident management and response is a key one. The question is even more challenging because of differences in the approach of the various DHS entities with respect to regional offices (FEMA has 10 regions, INS 58, Coast Guard 12, and TSA none). As an interim step while considering the issue of departmental regions, DHS is moving to make existing agency regional boundaries consistent. Whatever is done with respect to regional organization, a capacity for networking state and local levels in incident management must be built into the system, before the next crisis. This remains a work in progress, and we plan on using innovative ideas from other entities in building the DHS incident management system. After 9/11, we realized that the local level is robust with respect to incident management. The guys on the ground just make it happen time and again. Now we need a job description on the regional levels and the Secretary is just pulling that back up on the front burner again.

Homeland Security Presidential Directives

[U] Loy: I think we are about to get some Homeland Security Presidential Directives (HSPD) out of the White House on critical infrastructure and on preparedness and these will facilitate our ability in DHS to press ahead. We have a security plan at TSA that is awaiting the issuance of an HSPD. A key component of the Presidential directive will designate a lead agency for various aspects of homeland security (including the 13, now 14 with the addition of national "icons," critical sectors). DHS has "fundamental" expertise in these areas, but the lead agency designation will be "key" to the department's ability to do the necessary external outreach (for example to the various DOT modal administrations and associated stakeholders). It will also facilitate the identification of external expertise (for example, the Centers for Disease Control and Prevention within HHS) and allow a raft of good ideas to flow across departmental lines. The HSPD will also be a key enabling device as a means for the protection piece to emerge.

Public-Private Partnerships

[U] Loy: As we composed a national security plan at TSA, I pulled all the players to table, including private industry. From my days at the Coast guard, I have been a strong believer in the private-public partnership, and I believe if we don't get all the right people to the table, we may put out something really stupid. For example, there's a formal MOU between the Coast Guard and the American Waterway Operators (barges) and I know there are fewer oil spills and more people alive today because of that partnership. At the same time we were slapping the industry with fines for pushing the wrong things over the side, we were sitting down with them to help industry comply with the law and produce better ideas. This is a fundamental lesson.

Homeland Security Council (HSC)

[U] *Q: Should it be folded into the National Security Council (NSC)?* Loy: There is a duplication of counsel issue. There is some value in the HSC providing focus during the start-up period and it has served as a central place to provide counsel and advice for the President after the 9/11 crisis. It may evolve, and in the future have its functions dispersed perhaps to NSC and DHS. On the people side, DHS Secretary Ridge served as that counselor to the President, and many here at DHS now were with him there. Falkenrath, now number two at HSC, was there from the start, and helped write the Homeland Security Act and HSC continues to play a valuable role in holding onto the original intent and keeping us on track. But it should be a learning organization so that new ideas can be validated along the way. I've sat in a lot of HSC meetings and the relationship seems congenial between HSC and NSC. National Security Advisor Rice only has the interest of the well being of the entire country as her goal, and both councils play well in the "sandbox" of the White House.

[U] Loy: Now almost a year after its formation, I'm sure HSC has opinions on where we should be on certain issues. This is a target rich environment, and you could spend all hours of the day on 100 things, and keeping all the balls in the air. While HSC has no day-to-day operational role within DHS, it does have a daily impact on interchanges across departments and helps us all in the prioritization process with the President. If there is a plan for them to go out of business in five years, I don't know it.

TSA

[U] *Q: Please describe the mission of TSA as you saw it, as well as its strengths and weaknesses and challenges and effectiveness.* Loy: Sec. Mineta wasn't satisfied with the direction of the agency under John Magaw. Norm wanted security but better balanced with attention to customer service. We needed to gain the confidence of the American people so they would return to flying. He thought John's secret service background was too security oriented. That's the deal when I came abroad. I came in as COO, not Administrator. Working through the *Aviation and Transportation Security Act (ATSA)*, which is really good at fighting the last war, we spent billions to federalize screening and to keep guns and bombs off planes in order to regain public confidence. TSA did do work on other transportation modes but OMB and Congress stultified us over what our mission was: were we designing a transportation security plan or an aviation security plan? This is an example of tragedy, followed by an emotional legislative response, followed by a give and take on mission and resources.

[U] Loy: In our case, as a brand new agency, TSA had to establish a base foundation, and screeners are part of that foundation. The FY05 TSA budget will do much to establish that baseline and in many respects will be its first budget to legitimize its broader mission. It will not include much for maritime security, given the assessment that the Coast Guard is handling this mode, will provide a continued concentration on aviation, and will not have as much as I would like to see for land modes. Our

prioritization matrix includes the transportation modes (maritime, aviation and the four land modes) on one axis with people, cargo, infrastructure and preparedness on the other. It also includes risk management and accountability features. And all of this must meet the initial challenges and deadlines driven by 33 priorities set out by Congress.

[U] Loy: As a first requirement, we had to federalize the screeners. Secretary Mineta had a year to do it, so he wanted to take six months to figure out what to do and how to do it right, and the six months to implement it. Michael Jackson at DOT was key to making this all come about. Hiring 6,000-7,000 screeners per week and deploying them around the country was an astonishing accomplishment in a short time, and the initial TSA staff accepted hardships, inadequate work space, and long hours for the first six or seven months, and thus came to their jobs with great patriotism and as a calling.

Loy: By November 2004, any airport can determine whether they want to petition TSA to have screening privatized again. Under ATSA five airports currently have pilot programs to test the concept, and TSA needs to collect the data on these before making any determinations.

[U] Loy: TSA has faced several challenges in its short history. It had to build a new organization, while getting its mission done, and then move over to a new department. These were three huge jobs to be undertaken. Secretary Mineta had a significant background in working with private sector, and would call Fortune 500 companies to get their help at the drop of the hat. It became a quest for Mineta and Michael Jackson, and they insisted on meeting the one-year deadline for screening. We had to massively ramp up our procurement of equipment. For example, we ordered 1100 EDS systems overnight; and previously the production rate for ETD trace detectors was 200 a year, and we ordered 6000 of them overnight. And, oh, by the way, we had to keep the airlines running. Some 85% of the screener workforce didn't come back to work after TSA's higher standards (for security checks, etc.) went into effect. In fulfilling our mandates, we followed the gospel that it is better to ask for forgiveness than for permission, and we used every tool in the law. It was the post-tragedy environment that enabled us to do our job. It was an astonishing professional challenge for me.

[U] *Q: Some have said that TSA is careening from one Congressional deadline to another. So how did you do long term planning under those circumstances?* Loy: We have a strong strategic management group within TSA. We are strapped a bit with existing technology, with good efforts for training people. My biggest regret at TSA was in not being able to design an optimal workplace for our workforce. People are putting up with a lot of crap, and only so long can our workforce survive on patriotism. I have committed to the design, development and deployment of a model workplace for our screeners, who are 5500 of TSA's total of 6000 employees. Anyone at TSA can guarantee you that we are doing work with 1/3 to 1/5 of the normal level of headquarters personnel because I wanted a lean organization at the top. We developed a strategic plan for TSA and where we wanted to be in 10 years, including at the checkpoint, and so we are looking at the detection devices very carefully.

Organizational Principles

[U] *Q: In your view, what are the fundamental principles of transportation security?*

Loy: The first offsite visit for TSA I organized dealt with our core organizational values. When I started at the Coast Guard we didn't have a management development shop, and we didn't have a formal set of core values. In time, these became honor, value, and dedication to duty. That was in 1992, and that was at the start of my last decade in the Coast Guard and these principles resonated with everyone. They became a rallying point for service. At TSA our core values became "integrity, teamwork and innovation." Integrity was important to demonstrate, for example, in reassuring customers when we opened their bags for screening. Teamwork is very important at the checkpoint, where eight people must work together effectively as a team to get the job done. And innovation underlies the notion of continuous improvement that must be the business of all at DHS. (This applies to equipment modernization in addition to people.) We must also be good stewards of taxpayer dollars, and that can mean, for example, using technology to reduce personnel needs, such as is accomplished by substituting EDS detection equipment for the more labor intensive ETD.

MEMORANDUM FOR THE RECORD

Event: Admiral James Loy; Dep. Secretary, Department of Homeland Security

Type: Interview

Prepared by: Bill Johnstone

Special Access Issues: None

Team: 7

Date: December 15, 2003

Participants - Non-Commission: James Loy; Joe Whitley, DHS General Counsel;
Brandon Straus, TSA counsel

Participants - Commission: Sam Brinkley; Bill Johnstone; Steve Dunne

Location: Building 3 SCIF; DHS Headquarters, Washington, DC

NOTE: At the request of DHS, this interview was not taped.

Pre-9/11 Aviation Security System

[U] Admiral Loy indicated that he has not spent a lot of time studying the pre-9/11 aviation security system because his focus has been on moving forward. However, when asked to analyze the old system, Loy stated that the "aggregate" of the pre-9/11 system was "less than satisfactory." As evidence, he cited the following:

- Screeners were not good at doing their job, in large part because of inadequate investment in their training and technology.
- There was considerable inconsistency in security measures from airport to airport.
- Security was perceived by industry as a "cost item," and thus ran up against the economic pressures of driving down costs to increase company revenues.
- Government oversight was inadequate.

Post-9/11 Changes

[U] Loy indicated that after the 9/11 attacks first the Congress and then the Administration made an intense effort to proceed in aviation security in a different manner, which included the following elements:

- There was a need to first hold on to and upgrade the existing screening capability, until better-qualified replacements were available. (Loy reported that eventually TSA had replaced 86 percent of the 9/11 screening workforce.)
- Secretary Mineta determined that DOT and TSA would not seek "quick fixes" but instead would take six months to study the situation and prepare a more

thoughtful "game plan," which they would implement over the following six months.

- DHS and TSA needed to recognize the economic situation of the airlines.

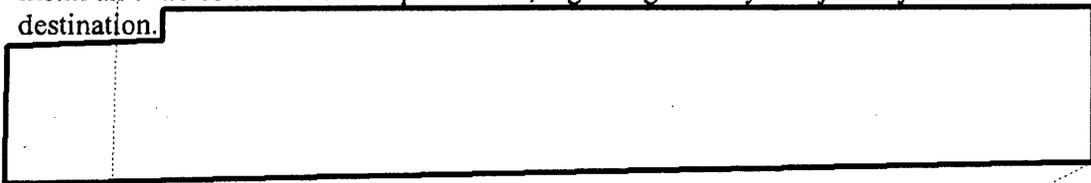
[U] Upon his hiring at TSA, Loy sought to develop a stronger aviation security paradigm while paying attention to customer service and the economic well being of the country. As he analyzed aviation security, Loy realized that there were no "silver bullets" that would assure security, and that it was the "nature of the business" that one could not achieve any 100 percent solutions.

[U] Loy indicated that his response to the situation was to seek to build a system "with a bunch of [redacted] solutions," arrayed together in a way to pose substantial hurdles to anyone seeking to gain unauthorized access to the cockpit (i.e. a cockpit-centric defense system, which replaced the previous system which focused on keeping bombs off of the aircraft).

[U] In reviewing current aviation security layers, Adm. Loy pointed to improvements in the form of:

- Armed pilots
- Hardened cockpit doors
- An enhanced Federal Air Marshal (FAM) program
- Increased use of Explosives Detection Systems for screening checked baggage
- Strengthened and more consistent checkpoint screening of passengers and carry-on baggage
- Better perimeter security.

[SS] Loy indicated that the new approach takes advantage of the "law of aggregate numbers" (i.e. the whole is greater than the sum of its parts). Furthermore, he sought to instill an ethic of continuous improvement, regarding security as a journey and not a destination.



Testing and Red Teams

[U] Loy believes there is a great need for the new aviation security system to pay closer attention to its Red Teams and to the people (human factors) side of the equation.

[U] As TSA was stood up, Loy wanted to have the capability to test the whole checkpoint screening system, and not just the screener. He asked Dave Holmes in the Internal Affairs and Program Review (IAPR) division to develop such a capacity. Loy believes that testing lends itself to getting better (under the continuous improvement philosophy), and will allow TSA to raise the standard, once a given proficiency level is achieved.

[~~SSI~~] Loy reported that he was "desperate" to get more Threat Image Projection (TIP) screener test systems deployed. He indicated that over 2,000 such units were needed.

[U] With regard to the testing program and screening operations, Loy stated that TSA is on its way, but still has a long way to go.

Risk Management

[U] Loy indicated that risk management was still in the "conceptual" stage of development at DHS and TSA. He stated that the department and agency's approach was "threat-based risk management, with consequence management."

[U] Loy believes that as the threat analysts do their work and develop a more "modern" capability to understand the threat, operators will receive more discrete targeting information.

[U] With regard to TTIC (Terrorist Threat Integration Center), Loy doesn't feel there is enough evidence yet to make an evaluation. He pointed out that, under the statute that created it, DHS was originally intended to be the gathering point for domestic threat information. Now he believes that the President and Congress want to be sure that this capability is not lost, and that both TTIC and TSC (Terrorist Screening Center) must be able to evolve. While Loy strongly supports the need to produce coordinated and vetted watchlists, he is not sure a separate entity is needed.

[U] Loy reported that TSA's Transportation Security Intelligence Service (TSIS) is the "owner" of both the selectee (from CAPPs I) and No-Fly lists, and he believes that it has "excellent connectivity" with the relevant entities of the intelligence community. He feels that the current process for generating the lists is a "healthy" one, in full recognition of the need to legitimize the names included. He believes that TSIS and its partners are doing a good job in building the lists,



[U] Admiral Loy reported that cooperation between TSA and the National Targeting Center (NTC) had improved within the last four or five months, and that the two had been building a good working relationship (including the exchange of liaisons).

[U] According to Loy, OMB had taken a significant interest in DHS's Assessment office in developing the FY05 budget, with funding for a range of risk assessments, including CAPPs II, the Registered Traveler program, and NTC's targeting programs. Loy indicated that this approach is a good one.

[U] In general, Loy believes we need to have a mental shift away from a focus on “guns and bombs” toward a concentration on passengers. Developments since 9/11 allow us to focus on individual risks, for example via link analysis under CAPPS II.

[U] Loy stated that DHS was developing a Consequence/Likelihood matrix, which would identify threats and weigh in factors that could mitigate the risks.

Homeland Security Strategy

[U] Loy feels that we need to recognize the new post-9/11 terrorist threat, and that designing a “game plan” to deal with this new environment is a necessity. The various Commissions that have examined or are examining terrorism, including the 9/11 Commission, are important in helping the country grapple with the philosophical underpinnings of such a game plan.

[U] Loy characterized the current National Strategy for Homeland Security as “not bad” but somewhat traditional in its usage of generalities for prevention, response and dealing with consequences. In Loy’s view, it is important for DHS to lay out a clear strategic vision to cope with the basic elements of the National Strategy, with the understanding that the old paradigm will be inadequate.

[U] Loy sketched the following outline of improvements he is seeking in each of the major categories of homeland security:

1. Prevention: Improve situational awareness (knowledge of what is going on in one’s area of responsibility); expand accessing of proprietary data (like manifests and bills of lading); and translate threat information into “actionable” information for security forces. If such steps are done well, Loy believes they will dramatically aid not only prevention efforts, but protection and response as well.
2. Protection: Conduct meaningful vulnerability assessments; and expand accountability and enforcement efforts. Loy indicated that the fact that the 9/11 attacks had been aimed at national icons had lead DHS to make that one of 14 categories of key sectors whose critical assets were being inventoried and prioritized.
3. Response: Broaden the concept to include consequence management and restoration and recovery as well.

[U] In all areas, Loy feels that the strategic plans must be “hooked” to budgetary and implementation plans. In addition, he believes a good “business case” must be developed that includes an analysis on where investments can yield the most security value.

COMPUTER ASSISTED PASSENGER PRESCREENING SYSTEM (CAPPS II)

[U] Admiral Loy termed recent privacy concerns expressed by EPIC and other groups as “bullshit.” He believes that privacy concerns must indeed be satisfied, and he indicated that the Congress had written such a requirement into law (via the FY2004 DHS

appropriations bill), mandating DHS to provide GAO with answers to eight specific questions (including several related to privacy) by February 15, 2004.

[U] Loy stated that the fundamental philosophy and activity of CAPPS II must provide for passenger redress, and TSA has already created the position of privacy ombudsman for CAPPS (Ms. Kelly). He indicated further that he believed that there had been “dramatic” changes between the 1/03 and 7/03 privacy notices sent out by TSA with respect to CAPPS II. In summary, he reported that privacy protection must be satisfied, and he feels TSA and DHS have done the necessary homework to do so.

[U] Loy reported that monitoring of CAPPS II implementation must and will be consistent. DHS and TSA recognize the need for objective, outside oversight, by representatives of the interested community. This will afford CAPPS II’s owners and operators the opportunity to allow the privacy community to check on the system’s real-world operation.

[U] In response to concerns about “mission creep,” Loy indicated that creating CAPPS II entails the building of a sophisticated risk assessment engine, and if the program were to be limited to terrorists and airplanes, it would mean that this capability was not being fully utilized. He pointed out that originally, CAPPS II was to be limited to finding foreign terrorists in aviation, whereas DHS has now left open the possibility that it may be used to target violent criminals as well.

[U] Loy believes that it is important to first get CAPPS II in place for aviation, and then to consider expansion to other modes and to including domestic terrorists. He believes such an expansion will provoke a less volatile debate in the aftermath of successful implementation in aviation.

[U] Adm. Loy made clear his strong support for CAPPS II, which he termed a “step function increase” in security over CAPPS I.

Trusted (or Registered) Traveler Program

[U] Loy stated that the main issues facing the Registered Traveler initiative are what is to be done (in terms of security measures) with the rest of the “unregistered” population, and how can the system protect against a Registered Traveler “going over to the dark side.” He believes CAPPS II, which has the possibility of catching every potential risk every time he or she purchases a ticket, is a more important investment, but he supports the Registered Traveler program as a good supplement. He likened the latter to taking some of the hay off of the needle to allow for a greater concentration of available resources.

Relations with Industry

[U] Loy reported that while at TSA he worked hard to meet with the airlines and airports, pointing out that he attended all meetings with airline CEOs and COOs requested by the

Air Transport Association (ATA), for example. He specifically sought out the ATA leadership (Carol Hallett and then Jim May) to get their advice, and he hired Tom Blank to handle stakeholder outreach. In addition, he met with union representatives.

[U] Loy recalled his time as Coast Guard Commandant, and his long-standing belief that those most impacted by regulations (i.e. stakeholders) must be brought to the table by government. In his experience, he found some significant differences in the approaches of the maritime and aviation industries. In the former case, when he was with the Coast Guard, he felt that the partnership between the Coast Guard and the maritime industry aided the safety environment, and aided security too in the post-9/11 world.

[U] Loy found that there was an "adversarial tone" in the relationship between government and the airports and airlines, with it often being hard to find common ground. As head of TSA, however, he would always have to err on the side of security versus customer satisfaction, if a dispute arose. Overall, Loy was "sometimes pleased, sometimes disgusted" with the aviation industry (in the latter cases, because of what he felt was a sole focus on money).

[U] Within the new airline security system, Loy believes that the airlines need to participate in the design of policies (help the government to help them), and then follow through on Security Directives and other security measures. [REDACTED]

[REDACTED] Both need to have a "conscience" about their obligations to security. Furthermore, Loy believes the public must "put up" with necessary security measures, and that the airlines and airports need to "stand up and be counted" in supporting such measures.

Recommendations to 9/11 Commission

1. [U] The most important recommendation in Admiral Loy's view is the need to combat complacency by finding a means of sustaining diligence and a sense of urgency in fighting terrorism.
2. [U] Loy believes DHS needs to develop a strategic plan to take the Presidential national homeland security strategy and homeland security Presidential directives and develop a "road map" for implementation. He encouraged the Commission to highlight the need to press ahead on this front.
3. [U] Reinforce the importance of information sharing, and recognize the multi-dimensionality of this requirement.
4. [U] In technology, focus on staying one step ahead of the enemy (for example by developing total coverage magnetometers) and provide researchers with specific problems to solve in order to better target their efforts.

5. [U] Establish appropriate criteria for evaluation of any airport requests for re-privatization of checkpoint screening. Loy laid out some general principles as follows:
 - Efficiency and Effectiveness with respect to operational capability and testing procedures
 - Cost Allocation (how the system is to be paid for)
 - Cost Effectiveness (security return on investment)

6. [U] Describe for the public the pre-9/11 versus post-9/11 security environments:
 - What we knew/know about the enemy (harder to research stateless enemy) and how this was/is translated for policy-makers.
 - The tools of the security trade from the Cold War may or may not be valuable now. For example, the approach to background checks has to change, with different questions that need to be answered and different methods (including link analysis and data manipulation) that need to be utilized.