

**Hearing on the Nomination of the Honorable Janet A. Napolitano to be Secretary, U.S. Department of Homeland Security Before the United States Senate Committee on Homeland Security and Governmental Affairs**

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**Chairman Lieberman:** The hearing will come to order. Good morning. Welcome to this hearing, which is called to consider President-elect Obama's nomination of Arizona Governor Janet Napolitano to become the nation's third Secretary of Homeland Security. Governor, I welcome you tonight, and I want to say that the fact that you've asked not just Senator Kyl but Senator McCain to introduce you today is just another sign of your personal confidence and courage.

It's a great pleasure to welcome our dear friends John McCain and Jon Kyl, and obviously speaks well of what Arizona thinks about you as you assume this new responsibility.

I personally believe that Governor Napolitano is a superb choice to lead our nation's domestic security agency and help in its ongoing transition from a startup operation to a mature agency whose component parts work together so well that the whole is much greater than the sum of those parts.

This nomination has received support from an assortment of different groups and individuals, whose names I will put into the record.

Let me just say a few words by way of setting the scene. The Department of Homeland Security was created six years ago, its origins coming out of this committee, which was then the Governmental Affairs Committee. It was created obviously in direct response to the Islamist terrorist attacks against the United States on 9/11/01. Former Homeland Security Secretaries Tom Ridge and Michael Chertoff have done great work, I think, in leading the Department through the growing pains of its early years, and making progress in turning this initial amalgam of 22 agencies and now more than 200,000 employees, all with different cultures and missions, into a single department with a singular mission, which is to protect the safety of the American people. Now, Governor, as the Department goes through its first presidential transition, we have confidence that you will build on the work of your predecessors.

To help advance this transition, Senator Collins and I intend to bring before this committee a comprehensive authorization bill for the Department of Homeland Security that outlines key areas of improvement we think can make the Department more efficient and effective in its various missions. And we will also recommend levels of funding for the Department in that authorization bill. We hope that this can become an annual exercise in which we will work with you to both become advocates and authorizers for a sufficient level of funding for this critical department, but also to use the authorization bill as a way to improve the authority and functioning of the Department.

I do want to say parenthetically in that regard that an important milestone in the history of the Department of Homeland Security was reached just a few days ago when the National Capitol

Planning Commission gave its final approval to a new Department of Homeland Security headquarters on the St. Elizabeth's campus, which means that this department, which is meant to function as a unit, but has been spread throughout the capital area, now will have a house in which you can work together.

I do want to say this. Six years into the Department's mission, and in spite of the significant improvements in its performance in protecting the safety and security of the American people, there are still those who believe that the Department should be chopped up and its parts shipped off to other agencies. And there's always a prospect as we go through the first presidential transition of the Department that those who have those aims will attempt to act on them now.

I believe that is exactly the wrong way to go. It makes no sense. It would take us back to where we were, after all, on 9/11 when the terrorists exploited the vulnerability, our national vulnerability, caused by the balkanization of our many homeland security agencies, to attack and kill 3,000 people. Some, as you know, have proposed removing FEMA from the Department and making it a freestanding agency. I will do all I can, and I know Senator Collins and I will be working once again side by side on that, to stop such disintegration because we feel so strongly that FEMA benefits – not only has it been improved dramatically post-Katrina, but it benefits from the cooperative atmosphere and environment in which it works with the other relevant disaster response and preparedness agencies in the Department of Homeland Security.

I'm going to include the rest of my statement in the record. I want to simply say for the record, and I'll be asking questions about this, we have some priorities and unfinished business that we've discussed with you, and we want to work together with you on those priorities. One is, though we have dramatically improved the security of aviation transportation post-9/11, we have not done as well in non-aviation transportation, rail and transit. That's unfinished business which we want to work on together.

Our preparedness to both deter and, God forbid, respond to an attack with weapons of mass destruction, particularly biological weapons, is – we have raised our guard, but we're not where we need to be. We want to work with you on that. The same is true of chemical security, where the existing legislation needs to be reauthorized in the year ahead. And of course, as the Secretary of Homeland Security, you preside over the immigration and border security agencies of our government, and there is obviously a lot that we need to do together to improve the functioning of those agencies in the enforcement of law.

Bottom line, we welcome you. We look forward to a good exchange of ideas here today. We're going to work very hard to get this nomination of yours to a point where it can be confirmed by the Senate as soon as after the President-elect is inaugurated next Tuesday as possible. I think we all on this committee, and I hope people generally, feel that getting you into the office of Secretary of Homeland Security today is as important as seating the Secretary of Defense to the security of our country.

I thank you very much for your willingness to take on this assignment, and I would now call on the Ranking Member, Senator Susan Collins.

**Senator Collins:** Thank you, Mr. Chairman. Mr. Chairman, I know that Senator McCain and Senator Kyl have very busy schedules, so I would be willing to allow them to do their introductory statements prior to my giving my opening statement if that would be helpful to them.

**Chairman Lieberman:** That's very –

**Senator Collins:** I still do want to give my statement, of course. But having them proceed –

**Chairman Lieberman:** That's very gracious of you. Do our colleagues accept the offer? Senator McCain?

**Senator McCain:** Well, thank you, both thank you, Mr. Chairman, and thank you, Senator Collins, for your usual gracious consideration. I welcome the opportunity. And it is with great pleasure that I introduce, along with my friend and colleague Senator Kyl, to the committee Governor, Janet Napolitano.

Janet Napolitano has served Arizona as a United States Attorney, Attorney General, and currently is the state's 21st governor. In 2005, she was voted one of America's top five governors by Time Magazine, which stated, and I quote, "Positioning herself as a no-nonsense, pro-business centrist, she has worked outside party lines since coming to office." I agree wholeheartedly with Time's assessment, and am confident she will use this same no-nonsense attitude toward running our nation's third-largest department, that employs over 200,000 men and women who work each day to protect our homeland.

Not only does Janet Napolitano possess a no-nonsense attitude, she also possesses remarkable stamina and unlimited energy. She has hiked the Himalayas, climbed Mt. Kilimanjaro, and battled cancer. She'll need this same energy to lead a department that was created five years through the merger of 22 agencies. After some time on the job, she may find climbing Mt. Kilimanjaro far easier than navigating the halls of the Department.

One of the major challenges facing the Department and our country is the issue of illegal immigration. If the new administration chooses to tackle this difficult issue, I stand ready to assist in their efforts by working closely with this outstanding nominee. I know that Governor Napolitano would provide this administration and Congress a unique perspective as it attempts to tackle comprehensive immigration reform.

Governor Napolitano explained her experience far more eloquently than I could when she testified before the House last April. She said, "Unlike many in Washington, I have actually walked, flown by helicopter, and even ridden a horse over much of the border's rough, rugged desert and mountainous terrain." She went on to say, "I have toured the drug tunnels where cocaine and marijuana enter our country by the ton. I have seen the sewers where children who are crossing the

border alone sleep at night, and have seen the campsites strewn with abandoned clothing, human waste, and refuse."

"As U.S. Attorney for the District of Arizona," she went on to say, "I have supervised the prosecution of more than 6,000 immigration felonies, and broken up drug trafficking, human smuggling, and money laundering rings. As governor, I have sought to continue to provide for the vital health care, education, and infrastructural needs of the nation's fastest-growing state, all while shouldering the disproportionate burden of the federal government's inability to control the borders and provide a meaningful plan for immigration reform."

Clearly, Arizona's loss is the nation's gain. We're very fortunate to have such a dedicated, capable person in public service. I thank you, Governor Napolitano. I commend the President-elect for selecting such an outstanding and capable individual to fill this important leadership position, and look forward to working with Governor Napolitano in her new role.

**Chairman Lieberman:** Thanks, Senator McCain, for that very strong statement on behalf of the nominee.

Senator Kyl, welcome. Good to see you.

**Senator Kyl:** Thank you, Mr. Chairman, members of the committee. I too am pleased to join my colleague Senator McCain in introducing Arizona's governor, the Honorable Janet Napolitano, to be the next Secretary of the Homeland Security Department. She will bring a wealth of experience to the Department, particularly having served as governor of a border state, which is dealing, as Senator McCain said, with the critical problem of illegal immigration.

Governor Napolitano's distinguished career well prepares her for this unique position. Elected as governor of Arizona in 2002 and reelected in 2006, she has important executive experience. She's Arizona's third female governor, the first woman to be reelected to the post, and the first in the country to succeed another elected female governor. She became the first Arizonan to chair the National Governors Association, after having served as chair of the Western Governors Association. And prior to her service as governor, she was appointed by President Bill Clinton to serve as the United States Attorney for the District of Arizona. In that capacity, she supervised the prosecution of more than 6,000 immigration cases, of course among many others.

She subsequently served as Attorney General of the state of Arizona. [Audio issues.]

I congratulate Governor Napolitano on her nomination, and look forward to working with her as she assumes the important duties as Secretary of the Department of Homeland Security.

**Chairman Lieberman:** Thank you very much, Senator Kyl, Governor Napolitano. Your state and its Senators are clearly strongly behind you. We appreciate that both of you are here. We obviously understand that you've got to go on to other work now. Have a good day. Thank you.

And now, Senator Collins and I both agreed, in response to the statement that Arizona was a very progressive state since it had had already three women governors. And with that, I will call on my Ranking Member, Senator Susan Collins of Maine.

**Senator Collins:** Thank you, Mr. Chairman. I join our chairman in welcoming Governor Napolitano to our committee.

Two great national traumas, the terrorist attacks of September 11, 2001, and Hurricane Katrina, tragically demonstrated the loss and suffering that occur when our nation's guard is down and we are unprepared. As the Department of Homeland Security nears its sixth anniversary, those of us who advocated for its creation can salute its accomplishments while still recognizing that it remains very much a work in progress.

The men and women at DHS have helped to deter and protect our nation from terrorist attacks. Our nation's ability to prepare for and respond to disasters has also improved dramatically with the reforms that this committee made to FEMA. Nevertheless, constantly evolving terrorist threats and the forces of nature require further improvements at the Department, and its vital mission demands a strong, skilled leader at its helm.

I recently met with the governor to discuss a wide range of issues, including security at our borders and seaports, cooperation with state and local law enforcement, and the myriad tests that DHS will confront in coming years. I was impressed with the governor's background and knowledge of homeland security issues. Her experience as a border state governor in particular is most welcome to those of us who represent border states with extensive cross-border travel and trade.

Residents of our border communities work, shop, worship, and visit family on both sides of the border, complicating the challenge of border security. Governor Napolitano understands that we have to let our friends in while keeping our enemies out, enforcing border regulations in a practical manner as we seek to protect the American people.

Among the significant emerging challenges that the new secretary will face is the need to enhance security at our nation's biological laboratories. The Commission on Weapons of Mass Destruction has predicted a terrorist attack using a biological weapon within the next five years. The commission pointed to lax security at biological labs as one of the basis for that chilling assessment.

Another threat that the Department must address is the security of our nation's cyber infrastructure. Our federal systems require an empowered coordinator that understands the cyber threat and who can establish and enforce best practices across the executive branch. We must also redouble our efforts to work with the private sector on cyber security.

Another area where the next secretary must forge a partnership with the private sector is the security of our nation's critical infrastructure. With more than 85 percent of those assets in private hands, this is a daunting task. Seaports and chemical facilities are two categories of infrastructure that we have made more secure through legislation that this committee authored. During the 111th

Congress, I look forward to working with the next secretary to authorize these critical programs, while continuing to strengthen the framework embodied in the national infrastructure protection plan.

In the last six years, the Department has improved our all-hazards preparedness and response capabilities. Homeland security grant funding for our state and local first responders has certainly played a critical role in that effort. But consistently, funding levels have been under attack by the executive branch, and DHS has not yet fully complied with the requirement to establish an all-hazards risk formula. Since every state is at risk for terrorist attacks, especially if terrorists see gaps in our defenses, it is critical that we maintain strong funding for these programs and continue to support a baseline of capabilities for each and every state.

It is the Federal Emergency Management Agency that forms the core of the Department's ability to perform its preparedness, response and recovery missions. After Hurricane Katrina, as the chairman has indicated, this committee launched an intensive bipartisan investigation and wrote the law that has resulted in vital reforms of FEMA. If you look at FEMA's handling of disasters since then, whether it's wildfires, tornadoes, or severe storms and floods, you see a new FEMA, with improved capabilities bolstered by increased coordination with state and local governments and military resources.

FEMA's documented improvements and the logical combination of all-hazards prevention, preparedness, response and recovery in a single department, underscore the need to keep FEMA within DHS. Detaching FEMA in the vain hope of recapturing some mythical FEMA of long-past days would weaken its effectiveness, reduce the ability of DHS to carry out its all-hazards planning mandate, cause needless duplication of effort, and cause confusion among state and local first responders. And that is why I am confident that the governor, in reviewing this issue in more depth, will listen not only to the chairman and to me, but to our nation's firefighters and other first responders, who have taken a very clear position on this important issue.

As a relatively new department, DHS still suffers from some significant integration and management challenges. That is to be expected. With a department that has over 200,000 employees and combined more than 22 agencies, there are going to be management challenges. But we have seen great progress in the last nearly six years, from the program's management and resource allocations to the basic need for a consolidated headquarters. The new secretary, however, will need to focus intently to remove the remaining obstacles to effective integration and improved performance.

The challenges are many, but the new secretary can look forward to a bipartisan stance of commitment and resolve from this committee. Thank you, Mr. Chairman.

**Chairman Lieberman:** Thank you very much, Senator Collins, for that excellent opening statement.

I mentioned in my opening statement that there were many groups that had welcomed President-elect Obama's nomination of Governor Napolitano. There may be many in the room. I note in the first row and I want to welcome Harold Schaitberger, head of the International Association of Fire Fighters. And I also saw here in a different sense, but very important to the whole history of the Department, and that is Mary Fetchet, who's a founding director of the Voices of September 11th, which has continued to be involved in the ongoing work of protecting the security of the American people so that no other families would experience the loss that they did, that the Fetchets did, certainly, loss of a son on September 11th.

Governor Napolitano has filed responses to a biographical and financial questionnaire, answered prehearing questions submitted by the committee, and had her financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data which, as is our custom, will be on file and available for public inspection in the committee's office.

Governor, our committee rules require that all witnesses at nomination hearings give their testimony under oath, so I'd ask you now to please stand and raise your right hand.

[Witness sworn.]

**Chairman Lieberman:** Thank you, and please be seated. Governor, it will be our honor and pleasure to hear your opening statement at this time.

**Governor Napolitano:** Well, thank you, Mr. Chairman, and good morning. Good morning, Ranking Member Collins, members of the committee. It is a privilege and honor to be seated before you today in nomination to serve as the Secretary of the Department of Homeland Security. And it is humbling because, as you know better than anyone, the urgent mission of this important agency is critical to the lives and security of every citizen of the United States.

Mr. Chairman, Senator Collins, I want to particularly note and commend your foresight and leadership with respect to this agency. After the tragedy of 9/11, you understood the need for a more organized, systematic approach to domestic terrorism, to homeland security, and you held the vision to forge a new Department.

I also would like to commend the first two Secretaries of the Department of Homeland Security, Secretary Ridge and, most particularly, Secretary Chertoff, for their work in building this department, and particularly Secretary Chertoff for his work on the transition, which has been extensive and very thoughtful, not just by him but by a number of members of the Department. We have come a long way. The Department has come a long way. But there is a ways to go, as you have noted, and I look forward to helping the Department become even better as time goes on.

To secure the homeland means to find and kill the roots of terrorism, to stop those who intend to hurt us, to wisely enforce the rule of law at our borders, to protect our nation's infrastructure, particularly things like our cyber infrastructure, as you mentioned, and to be prepared for and to

respond to homeland disasters with speed, skill, compassion, effectiveness, and common sense. This is a mission of paramount importance to the Obama administration, to this committee, and to me. And as we seek to meet that responsibility, I seek to bring to this committee several things.

One is a close working relationship with this committee and with the Congress. I recognize this committee's unusual expertise with respect to the subject matter here, and I will cooperate fully with its oversight and investigative functions as we work together to keep building the Department.

I also look forward to the committee's assistance on making changes as changes need to be made. After all, we do share that common goal, a strong and vigorous Department of Homeland Security.

I will also bring to this role, should I be confirmed, a great deal of experience. As Senator McCain and Senator Kyl noted, as a border governor on the southwestern border, I have dealt with the immigration issue from every aspect since I entered public life in 1993. I know that border very well and the challenges presented there. I look forward to getting to know the northern border as well as I know the southwest border because it is different, and we have already spoken, some of us, about the need to get as familiar with the north as I am with the south.

As a governor, I bring other types of experience to this role. I was the governor during the Lewis Prison hostage crisis in Arizona, a 15-day standoff with several of our prison officers kept hostage by armed inmates. And we were able to resolve that after 15 days without loss of life.

The pipeline, the Kinder Morgan pipeline, that brings basically all the gasoline into the Phoenix area ruptured, and it was there that I recognized not only the criticality of infrastructure but how fragile it is and how necessary it is to have a working relationship with the private sector, which controls much of that physical infrastructure. It only takes one hot Sunday afternoon in August in Phoenix where people cannot get gasoline for a governor to recognize how critical that infrastructure is.

I have dealt with drought and response to drought, and also with the major natural catastrophe that affects Arizona, which are forest fires that are ever-increasing and ever-larger.

As governor, we created a 211 system in our state to provide alternative sources for information to the 911 system. That is updated on a current basis and realtime basis during any type of emergency.

We mobilized early and effectively to accept evacuees from Hurricane Katrina, and we were among the first states to create a statewide anti-terrorism fusion center that is now being used as a model for other states.

On the issue of cyber security, when I was the Attorney General, I created the first cyber crime unit within the Attorney General's office. We brought one of the first prosecutions, or some of the first prosecutions, in the country in that area. And as governor, by executive order, I created a statewide information security and privacy office to deal with all of the issues affecting the collection of data in databases, not just from a security side but from a privacy side as well.

Because I am a governor, a chief executive, I have a lot of experience with budgets and management and the like. And though the Department of Homeland Security is larger than the administration of the state of Arizona, it shares with it some of those same features.

There are many issues with the Department of Homeland Security, and I look forward to working with the committee on them. We must work to make sure the Department continues to merge as a whole, and has a unified vision for homeland security. We must work to streamline communications. We must work to recruit, train, and retain the best and the brightest amongst our employees.

We must continue to work on federal relationships with other agencies, and I will share with this committee that during the course of the transition, President-elect Obama has held a number of exercises with the national security team, and then indeed this week, on Tuesday, there was one with President-elect Obama's security team and President Bush's current security team. And all of those exercises have illustrated the central role now that the Department of Homeland Security plays.

And as we strengthen these federal links, we must recognize the important partnerships we have with state and local law enforcement and first responders. The federal government cannot do the homeland security function alone. Amongst all the departments, it is as essential as anything to make sure that we have linked in, planned with, exercised with our state and local partners. And that is something that I hope to spend a great deal of effort on.

We hope to move our security team in place at the Department as quickly as possible. I look forward again to working with this committee, and I am privileged to appear before you today to discuss the issues of concern with you.

I want to thank you for hearing me today, and I again am very humbled and privileged to receive this nomination.

**Chairman Lieberman:** Thanks very much, Governor.

Let me start the questioning with the standard questions that we ask of all nominees. First, is there anything you're aware of in your background that might present a conflict of interest with the duties of the office to which you've been nominated?

**Governor Napolitano:** No.

**Chairman Lieberman:** Second, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you've been nominated?

**Governor Napolitano:** No.

**Chairman Lieberman:** And finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

**Governor Napolitano:** Yes.

**Chairman Lieberman:** Thank you. You're doing very well so far.

We're going to start our first round of questions, limited to seven minutes each.

I hadn't planned this as my first question, but I want to – you said something that leads me to say this. From you and others that I've talked to, President Bush and his administration have really been quite remarkable and proactive in this transition. And as far as I can remember, it's one of the best ever, maybe the best. You said something – and I appreciate that you thank Secretary Chertoff for what he's done to get you ready to assume these jobs. I mean, this is obviously way beyond anything that's political, and certainly not partisan. We're talking here about homeland security.

But you said something, and I hadn't heard about it. I hadn't known about it. And if you're comfortable just saying a little more, that you've actually gone through some exercises. I presume you mean exercises in responding to a virtual, kind of imagined national security crisis alongside the Bush administration team. Can you say a little more about that?

**Governor Napolitano:** Yes, Mr. Chairman. On Tuesday, in the Old Executive Office Building, there was an exercise with the current President Bush team and the incoming nominees to walk through in sort of a briefing-tabletop fashion a scenario that is one that could happen. There's no firm intelligence that it would, but it's a scenario that – multiple IEDs going off in different places over a period of time and how that information would be received, processed, what different departments would begin to do, and the like.

And that followed on the heels of several sessions that President-elect Obama has had just with the incoming nominees on the security side to really forge that national security team. And that has been ongoing over the last several months as well.

**Chairman Lieberman:** Well, that's very reassuring on both counts, and obviously should encourage the American people that next Tuesday, when the new administration takes over, you're going to be ready. Also, I will state from the point of view of this committee that I'm grateful and proud that you were right there in the middle of it because the Secretary of Homeland Security needs to be in the middle of it. It happens to be the newest department of our government, but I will tell you that in my opinion, and I hope everybody else's, it ranks in importance with the very first departments created by our government in its history. So I thank you for your answer to that question.

There have been many wonderful things, positive things, said about you in response to your nomination. Perhaps the only critique that I've heard, and I want to give you a chance to respond to

it, is that yes, you've had extraordinary law enforcement experience. You've had the management experience and all the substantive experience that comes with a governor, and indeed a border state governor managing response to disasters and crises, as you mentioned.

But the criticism has been, or the question has been, that you have had no specific involvement in counterterrorism, as it were. And I wanted to give you a chance at the outset to respond to that.

**Governor Napolitano:** Yes. Thank you, Mr. Chairman. I think my direct experience with counterterrorism began when I was United States Attorney for Arizona in 1995, when our office handled a large segment of the investigation of the Oklahoma City bombing case. As you may recall, the planning for that crime occurred within Arizona, and we were responsible for setting up the command center and all of the investigative measures that were taken in connection with that matter.

Since then, both on the prosecution side, I've handled cases that had aspects of that. I've prosecuted a militia group, for example, that was filming federal buildings in the Phoenix area with the intent to blow them up simultaneously, and cases of that sort. Now, have I done that on a daily basis? Fortunately not. And for that, you know, that's just the reality of it. But the whole issue of terrorism, counterterrorism, the investigative mechanisms that must be employed, the appreciation of good quality, credible intelligence, the understanding that not all intelligence received initially is accurate and you really have to work to make sure you get to the bottom of things, that is something I have direct experience with.

**Chairman Lieberman:** I appreciate that. And obviously, you bring, as you said in your opening statement, and Senator McCain and Senator Kyl said, the unique management experience of a governor, regardless of what the particular threat that you're responding to.

Let me ask you one of those questions we always ask, and it's interesting, but never definitive as you start up. But based on what you know now and the briefings you've had, give us a sense of what your first one or two – let's say two – priorities will be as you go in as Secretary of Homeland Security.

**Governor Napolitano:** Well, I think initially I go in with the idea of continuing to create a unified vision for this department, and to create a culture, as it were, that this is a Department of Homeland Security that has many aspects to it, not 21 separate agencies or 22 separate agencies. And that means having consistent guidance department-wide on everything from the nuts and bolts of acquisition, program management, procurement, to how we handle getting information to me, out from me, and the like, from a management perspective.

The second thing, Mr. Chairman, is this department has a lot of parts to it, many of which require presidential appointment and confirmation. And we want to, as I said in my statement, recruit the best and the brightest –

**Chairman Lieberman:** Right.

**Governor Napolitano:** – to move into those leadership roles. And that will be an immediate priority.

The third thing is, in a way, to complete the work of transition. I've had hours of initial briefings. Indeed, the secretary was kind enough to send teams to Arizona so I could do briefings there while I continue to serve as governor. But should I assume the role as secretary, should I be confirmed, there will be a whole other level I will want to get at, and we'll go methodically through that.

Some of the areas of the Department I have a lot of day-to-day experience with, some not so much. We'll want to get those things equivalent.

**Chairman Lieberman:** Thank you. That's a good beginning. My time is up.

Senator Collins.

**Senator Collins:** Thank you.

Governor, you mentioned in your opening remarks that for our nation to be fully protected, there has to be a robust relationship with state and local governments. And indeed, we talked about that in our private meeting as well.

Yesterday the Associated Press reported that key provisions of Arizona's homeland security plan, which you first announced back in 2003, have not yet been implemented. And some of them are important provisions, such as establishing a statewide interoperable radio communications program for first responders.

What did you find to be the obstacles that prevented you on the state level from fully implementing a plan that you announced five or six years ago?

**Governor Napolitano:** I'm glad you asked that question, Senator. I think it will not surprise you when I say I don't think the newspaper story was entirely accurate. Indeed, it even misspelled the name of the homeland security director in Arizona.

Be that as it may, we had ten action items in our homeland security plan. Eight were fully effectuated. Two were not. One was to computerize all criminal records within the state of Arizona. We are well on our way to doing that. The records that have not yet been totally computerized come from the more rural parts of the state. The major urban areas, the urban areas that cover 90 percent or so of the state's population, now have been unified and computerized, so there's easy access for officers on the street. And the rest, should I have stayed as governor the remainder of my term, would have been complete.

On the interoperability issue, the key obstacle was funding. And that is something that, as the secretary, I would hope to take up in an operational way because I know of no state really that's

been able to get to full interoperability. That being said and given the true fiscal issues involved there, what we did in Arizona was we purchased a series of what I would call patch trucks, trucks that can be moved into different areas at different times to provide a connect between different types of radio systems.

So, for example, if you have a forest fire in one area and you have a number of different responders working there, you send up the trucks to help make sure you have interoperability. You have flooding in the Nogales Wash at the border, you send the trucks down to make sure you've got some functional interoperability. The trucks were asked for response to Hurricane Rita, and we sent them over there. So we patched together an interoperability system that has worked for us while we deal with the greater – and I think it's really a national issue, of the entire interoperability concern.

**Senator Collins:** Well, this is an area that the chairman and I have worked a great deal on. We were appalled, when Hurricane Katrina struck, to find the same inability to first responders to communicate with one another that marked the attacks on our country on 9/11. And that lack of interoperability truly costs lives. It's something that the chairman and I have created a special funding program to assist states in this area.

Do you anticipate helping us to increase the funding for that program, given your experience with the cost obstacle in Arizona?

**Governor Napolitano:** Senator, not just that. I really want to bring some people who are technically savvy to look at this interoperability issue to make sure that we're getting the kinds of system we really need with the best and most current technology available. One of the things I'm concerned about, having dealt with this for the last five years, is I'm not sure we have the right people talking with the right people about how this actually gets done. So it's a money issue, but I also want to make sure that from a technology standpoint, we're really getting at it.

**Senator Collins:** In your response to Senator Lieberman's question about priorities, you talked mainly about management issues. I would like to hear from you more about your priorities in the area of terrorism and counterterrorism.

This committee has attempted over the years to identify emerging threats and vulnerabilities such as our seaports, our chemical plants, and to enact legislation in this area. We've undertaken a major investigation into homegrown terrorism, which isn't solved by better border security, for example. We are looking at the vulnerabilities of biological labs, of cyber security.

When you look at emerging threats, what areas worry you the most? What areas are you going to particularly focus on?

**Governor Napolitano:** Senator, I think one of the things we can do at the Department is to focus on areas that other departments don't necessarily focus on because in the intelligence world, what I have perceived is there's a lot of duplication of people looking at the same things. But in my view, two areas that this department ought to focus on are transportation security because – from a

prevention and protection standpoint, not just aviation but surface transportation as well, and to pick up Senator Lieberman's comment, that is a work in progress. We haven't done as much there as we have done on the aviation. But also, working with the private sector on the private infrastructure, and that's chemical. On the biological, now you get in part into the academic sector because many of those facilities are on universities, who don't necessarily view themselves as a security risk the same way, say, a nuclear plant might.

So those are the types of things where we want to guide the Department. Let's go where the gaps are that our department is uniquely qualified to fill.

**Senator Collins:** Thank you.

**Chairman Lieberman:** Thanks very much, Senator Collins. We'll go in the normal committee custom, which is in order of arrival here.

Senator Voinovich, welcome. You're next.

**Senator Voinovich:** Thank you.

First of all, I really appreciated the opportunity that I had to spend some time in my office with you, and there's no question that you have the management qualifications to be secretary of the Department. You've mentioned some experiences that you've had as governor that are relevant to the operation of the office. I am impressed with the grasp that you have of the Department, even though you haven't, you know, been there.

And one of the things that I'm interested in and I think would be very helpful to this committee is that once you've had a chance to get in the saddle is to come back with some of the priorities that you have outlined that you think are the most important for you to get the job done, and to share with us ways that we can be of help. Maybe it's legislatively or maybe it's getting involved with the administration on getting some things done, questions about whether you have the flexibility to hire and retain and reward people that you're going to have to get the job done, and also even in the area of the budget that you need to get the job done. My observation around here is that so many of you have been asked to do work and not given the resources to do it. And I've always said that if you don't give someone the resources that they need to get the job done, you're basically telling them that you don't think very much of the job you've asked them to do.

One of the things that's been of real concern to me, and I know that some of the members of this committee have been concerned about it, is that the 9/11 report made a recommendation to provide better and more streamlined oversight of the Department of Homeland Security. And I remember when the sense of the Senate that was accepted during this committee's markup of the 9/11 bill calling on the Senate to reorganize itself was removed from the bill before floor consideration.

And it's one of the big things that we have not done. And I think, for the record, you should know and the American people should know, that we have 88 committees – 88 – in the House and Senate.

And last year, you were subjected, and your team, to 375 visits to the Hill. And that doesn't include the meetings that many Senators and Congressmen may have had with top people in your office.

Now, I think that is absolutely unacceptable. And as a committee, we should do what we can to try and respond to this recommendation of the 9/11 Commission so that this woman can get her job done, and the people that are working for her can get it done, without having to come up here so many times to respond to Congress. So I think that's something that I'd like you to look at, and I'd like the President, perhaps, to even jawbone that it's time that we enforce that provision of the 9/11 Commission report.

The other thing that you and I talked about was the Visa Waiver Program. I got very much involved in that, and I was pleased that the State Department and the Department of Homeland Security came together and we've come up with a new system. That system, I think, is one that we should all be happy about. It not only improves the sharing of information between countries that are now eligible for the Visa Waiver Program, but it also has responded to a very major public diplomacy problem that we've had where many of these nations that have come into NATO who are our friends have been kept out of that program.

And I know there's going to be some heat that you're going to experience on the program, and I'd like you to tell me whether or not you're familiar with the recommendations that GAO has made to look at them, which I think are objective, and just where do you stand in regard to this issue?

**Governor Napolitano:** Well, thank you, Senator. And to your first comments, thank you for those comments.

With respect to Visa Waiver [Program], I have looked generally at the GAO. I have not drilled down on the recommendations themselves. There is a balance, obviously, to be struck between the security issues implicated in Visa Waiver and the public diplomacy elements associated with Visa Waiver. So I look forward to working with you and the committee on those, and with the State Department, which has a very, very important role to play. But I'm very cognizant of the very important balance that needs to be struck.

**Senator Voinovich:** Well, I know I mentioned to a member of the State Department that if we were to, overnight, try and yank Visa Waiver from the 27 countries that now have it, it could be a disaster in terms of public diplomacy. And I think we ought to be able to handle that in a more diplomatic way and get them to do some things we want them to do.

The other is the relationship that we have with Canada, and you're familiar with the problems because you've been a governor and chairman of the NGA. One of the things that we've been promoting is to allow the PASS card to be used – a PASS card to be used today. You can do it for land and sea. We'd like to have it available for air travel, and we'd like you to look into that. You're probably going to be seeing some legislation to make that happen. But I really think it's important that we calm the fears of our friends from Canada particularly that some of the stuff that we're implementing may interfere with this wonderful relationship that we have with them.

There are other issues we talked about, but I'll mention the interoperability issue. I have visited all four of our communities, and spent several hours in each one of them, about interoperability, and most of them aren't where they're supposed to be. And you have a really great program, and Columbus, Ohio, is lucky because when I was governor, we instituted the Mark system, which is one of the best in the country in terms of statewide communication.

But the real problem that most of them are having is they don't have the wherewithal to get the equipment that they need. And I think you kind of alluded to the issue of the technology here, and what kind of technology, and looking at the issue of is everybody using the same stuff or is there a problem with that. And then the other issue, of course, is interoperability between state to state. For example, we've been working with the state of Michigan to try to make sure there's some interoperability there.

So a lot of these issues are things that you've got to dot the I and cross Ts. But I think, as you know from your experience as governor, that's where you get the job done is when you do that.

**Governor Napolitano:** Thank you, Senator. And it is a resource issue. It's a regional issue. It's a state issue. But we've got to get this done, and I think it's something that, given my own experience in Arizona and working with other governors, this is something that the Department really should take a leadership role on now.

**Senator Voinovich:** And I'm glad you understand that Ian Petrie is very important to making that happen.

**Governor Napolitano:** Thank you.

**Senator Voinovich:** Thank you.

**Chairman Lieberman:** Thanks, Senator Voinovich. I just want to say a word about the very strong point that Senator Voinovich made, that 9/11 Commission recommendation that we reduce the number of committees the Secretary of Homeland Security reports to. We actually tried and when we brought that out on the floor, we got overwhelmed. You'll be surprised to hear that there's a certain protection of turf that occurs here. Some consider subcommittee and committee chairmanships to be the beginning of policies of manifest destiny, and so it's hard to resist.

I don't know that we can offer you – and it's really not a good situation. I don't know that we can offer you really the prospect of legislative help on this. But I would urge you at least to try to cut back on it by seeing if you can establish a rule of your own, that you're only going to testify at the full committee level. I think if you start getting picked away by subcommittees, except in rare circumstances when there's something really critical going on, it's going to be very hard for you to do the rest of what we want you to do.

Thanks, Senator Voinovich, for bringing that up.

Senator McCaskill?

**Senator McCaskill:** Thank you, Mr. Chairman. And let me start by making a comment.

As I watched this hearing unfold this morning, and I watched Chairman Lieberman gavel us in, and I watched Senator McCain introduce you and Senator Kyl introduce you, the thought kept running through my mind, our democracy is a class act. And I want to say that. I don't think there's anybody that could be more thrilled to have you sitting there than I am, and I want to welcome you and congratulate you. And I know you know this because we've talked about it: I think you're taking on one of the biggest and maybe one of the most difficult jobs in our country in terms of government. So enjoy today – because it's all going to be warm and fuzzy today, and that's probably going to be it.

Let me talk a little bit about immigration enforcement. As you and I have discussed, I'm a firm believer that enforcement on the employer side is the only way we are going to get to true immigration reform in this country. Americans are not willing to support comprehensive immigration reform right now because they believe that we are looking the other way on enforcement. And by the way, I don't think it's enforcement of the immigrants. You and I have talked about that these people are not coming to this country for a vacation. They are coming for a job. And I believe the federal government has hid behind the notion, these cases are too hard to make. These cases are too difficult to make against employers.

I believe the previous administration purposefully looked the other way as it related to employers. E-Verify or no E-Verify, the idea that the head of immigration enforcement in this country in early September of 2007 had no idea how many employers had received criminal sanctions was symptomatic of this attitude. And it took interns in my office, taking hours to go through records, to figure out how many employers had had enforcement actions against them.

We now know – because the head of ICE then undertook the effort of determining how many employers had been sanctioned – we now know that both in fiscal year 2007 and fiscal year 2008, it was around 10 percent of the total. That's not enough. And I would – because frankly, everyone in this room knows – and there were only 22 entities that were fined in the whole country. Twenty-two in the whole country. You could find 22 in Missouri if you halfway decided to concentrate on it.

So I would like to hear your plans for prioritizing the enforcement of our immigration laws against those who allow 40 or 50 people to use the same Social Security number in the workplace.

**Senator McCaskill:** Well, thank you, Senator, and I'll try to remember the warm and fuzzy feeling later on. So thank you for mentioning that.

With respect to employers, my experience is that you have to deal with illegal immigration from the demand side as well as the supply side. You have to enforce the rule of law at the border. That

requires manpower and technology and a good system at the border itself. But you also have to deal with what is drawing people illegally across the border, and particularly with respect to the southern border, to make that very torturous and dangerous journey. And it is the prospect of a job.

And we do have employers who use the lack of enforcement as a way to exploit the illegal labor market, to depress wages, to exploit workers on some cases, and that requires enforcement. Indeed, one criticism of the 1986 revision of our nation's immigration laws was that it lost its credibility because there was no sustained employer enforcement action undertaken after that. So we need to do that.

I signed the nation's strongest employer sanctions bill when I was governor, in part because of my belief that you have to get at the employer side as well as the employee side. But you've got to do it in the right way. You've got to do it in a smart way. And you have to target appropriately. And we have to have appropriate agreements with the Department of Justice and the U.S. Attorney's offices that they're going to bring actual cases. So one of the first things I will do should I be confirmed as secretary is begin a collaboration with the Department of Justice, and hopefully with the U.S. Attorney's offices throughout the country, so that we can start moving actual prosecutive cases through the system.

**Senator McCaskill:** And also, as we talked about, I think there is an opportunity. We have some unfortunate enforcement efforts, I think, that are going on at the state and local level. But I think that with some leadership from your office, that talent and that resource, could be channeled more effectively as we do a comprehensive enforcement strategy by utilizing local prosecutors. And that's why I think your experience – as a governor, you know what it feels like when Washington isn't doing it right. And I know that you won't forget what it feels like when Washington's not doing it right. So I think that's a great plus.

And the other thing I want to bring up with you is, you know, we used to say when I was a prosecutor that we were doing all the serious felonies and the rapes and the murders, but the face of the criminal justice system was municipal court because that's where most people were coming in to pay traffic tickets and that's how people got their impression of how we were running the system of enforcing the law in my community.

And I think the same thing is true on airport screenings as it relates to homeland security. And I've just got to tell you, a whole lot of it has appeared ad hoc to the general public. I mean, the best example, and I've talked about it in this hearing before, is mascara. You know, I mean, women across America were going, huh? You know, what is it about my mascara that's so threatening? And, you know, I never got a good answer to that question. By the way, they've quit worrying about mascara, quietly. Mascara is now okay to the women of America. You can take your mascara and not worry about it being taken from you. But, you know, they changed that without ever really telling anybody.

Now, I understand that there are things they change, like – and patdowns have changed. I know, because I have a fake knee, that I have to get patted down every time I go through. So I am on the front lines of knowing how we're doing in terms of these airport screenings. Well, they've changed

what they're doing on patdowns. Now, I don't recall ever, on this committee, us even being given any information about them changing patdowns. And so if you're not a United States Senator and these changes are going on, you go, well, what is going on? Why are they doing this? And it gives you a sense of unease that people that are in charge have no idea what they're doing. And I would like you to speak to that.

**Governor Napolitano:** Well, Senator, I think one of the things we need to do at the Department of Homeland Security is communicate because I believe the American people want to help participate in their own security, and are willing to undertake and do things that are inconvenient or somewhat of a hardship if they believe there's a real reason for it. But you can't take advantage of that goodwill, and one of the things that we will be working on at the Department of Homeland Security is explaining when there's a change in procedure or why we're doing certain things the way we are, and to make sure that if we're going to enact something that is going to inconvenience 53 percent of the traveling public, that there's a good data-based reason for that change, and that the change is explained, and then carried out uniformly because another critique I have received in the course of the transition is inconsistency at different places for the same action.

So again, we'll be, like I said – first of all, there are a lot of wonderful men and women working at the TSA, and they're doing a wonderful job. But we can work to make it even better, and then explain it better to the American traveling public.

**Senator McCaskill:** I don't want anyone to misinterpret. I am not anxious for the patdowns to come back. I don't miss the love pats, the extra love pats. So don't misinterpret my comment as saying I want there to be some good reason to reinstate the pats. So thank you, Mr. Chairman.

**Chairman Lieberman:** Thank you, Senator McCaskill. You left me speechless there for a moment.

Now we go to Senator Akaka. I was thinking about the membership of the committee, that this committee really is very geographically diverse in addition to the extraordinary capabilities on it, really from sea to sea and coast to coast. And you mentioned earlier about the northern border. Senator Tester has been a particular advocate for the security concerns of the northern border. Obviously, Senator Akaka, who I'm going to call on next, takes us all the way west to Hawaii. Senator Akaka.

**Senator Akaka:** Thank you very much, Mr. Chairman, for holding this hearing. For me, it has been exciting. Governor Napolitano, I want to thank you for taking the time to be with us this morning, and I just want to repeat again that I'm very, very impressed with you – your background, your experience, and also your performance prior to moving into the cabinet position here. And therefore you have really heightened my confidence in what's ahead for this administration of this country with your service as secretary of this department.

The Department of Homeland Security represents perhaps the most serious management challenge in the federal government today. At the beginning of a new administration, the focus often is on

new policy objectives. I urge you to focus closely on improving the Department's management functions as well.

At Secretary Chertoff's nomination hearing four years ago, I stated, and I believe it's worth highlighting again, the price of security should never erode all constitutional freedoms. There is an urgent need to review and revise policies at DHS that infringe on privacy and civil liberties, and I look forward to working with you on those issues.

But before I move on to my questions, Mr. Chairman, I want to ask that my full statement be made part of the record.

**Chairman Lieberman:** Thanks, Senator Akaka. Without objection, so ordered.

**Senator Akaka:** Thank you very much.

Governor Napolitano, you signed Arizona legislation rejecting REAL ID because of inadequate federal funding. As you may know, I support more secure driver's licenses, but I believe that REAL ID is deeply flawed. I have advocated repealing and replacing REAL ID with a more workable solution, to increase state buy-in, and improve privacy protections. Do you believe that it is time to review the REAL ID status, and if its flaws cannot be fixed through administrative action, to amend or replace it?

**Governor Napolitano:** Senator, I did sign a bill. I was one of a number of states that said we would not participate in REAL ID, not out of a philosophical objection to the goal of having a secure driver's license that could be relied upon in our country, but because it's a huge fiscal burden on the – it costs a lot of money to do it. I also think that we didn't have enough consultation and collaboration with states who, after all, is where motor vehicle divisions are run and have the whole mechanism by which the REAL ID would be accomplished.

So in response to your question, what I intend to do is to sit back down with a group of governors – the National Governors Association has formed a task force here, bipartisan – and get the sense of their recommendations and where we need to go with respect to REAL ID. And if it's a matter that needs to be taken up again legislatively, I hope to work with this committee on the necessary improvements because as it stands right now, we really have a patchwork of states and of what they're doing. And particularly with the condition of the states fiscally, I don't think we can reasonably anticipate that they have money available now to put into an enhanced driver's license program.

So we need to re-think, re-visit, re-consult, and then if necessary, come back to this committee.

As you know, at this moment half of the states have passed laws rejecting Real ID. DHS, Governor, has struggled through poor morale, high turnover, and high vacancies, due in part to the Department's efforts to alter collective bargaining and its rules in implementing pay-for-performance system. Now, these proposals were resisted by the employees and their

representatives and ultimately were blocked by the courts and Congress because of fairness concerns.

DHS must improve its ability to recruit, train, motivate, and retain skilled employees in order to meet its mission.

Please discuss your key priorities for investing in the Department's workforce and ensuring a fair and transparent personnel system.

**Governor Napolitano:** Well, Senator, I have been very impressed with the men and women I have met in the Department, both here in Washington, and those tend to be those in the higher reaches of the Department, but then out in the field, as I've run into them in different circumstances and the like, and so we start with that and we start with the premise that the men and women of this department want to work to keep America safe. That's why they're here, that is their mission, and so we start with the goodwill.

I think as the Secretary, we want to continue to enforce that. We want to provide for employees a sense of being part of this very important mission and some real career paths for them, so that if they begin at a low-level position, say in the TSA, they know that over the course of their career, if they perform well, they can advance and that it's -- it's a -- it's a real career path for them.

Those are the kinds of things that make for good morale and those are the kinds of things that we will be working on.

**Senator Akaka:** Yes. Governor, only one large U.S. flag cruise ship remains operating in Hawaii. Rapid growth in foreign flag ships has forced domestic ships out of business by avoiding U.S. tax, labor, and employment laws.

The Passage of Vessel Services Act restricts foreign flag ships from operating in U.S. ports, but it has not been enforced. Customs and Border Protection issued an interpretive rule on the PVSA clarifying the scope of the law, but the Office of Management and Budget returned that rule for further consideration.

Will you work to craft a new interpretive rule to enforce the existing statutes?

**Governor Napolitano:** Senator, yes, I'll be happy to look into that rule and its particular application to the Hawaii situation.

**Senator Akaka:** Thank you very much. Thank you, Mr. Chairman.

**Senator Lieberman:** Thank you, Senator Akaka. Senator Tester.

**Senator Tester:** Thank you, Mr. Chairman. I appreciate the opportunity to visit with Governor

Napolitano, and I just might add as a sidebar, I don't think you're the first guy that Claire McCaskill has left speechless.

But that aside, that aside, I want to say welcome. I appreciated the opportunity to visit with you yesterday and I think we've got a lot of work to do, but as we have these committee hearings with -- with nominees, I will just say that I think, as Claire said, it's fuzzy now and it's going to go away, but I think you've got -- you've got a real opportunity to make a difference in -- in the security of this country and -- and the efficiency of how the Department works and how tax dollars are spent, and so I think that there's some real opportunity with those challenges as they come forward.

I appreciate your willingness, as I do with everybody, for your service to this country. Thank you for what you've done. Thank you for what you're about to do. I think you will be confirmed and I hope it's done quickly.

We have tried to move the discussion, as the Chairman has said, to the northern border a time or two and -- and how we use those resources and making sure we use those resources nice. As we go up there, we see those Border Patrol with new stations and plenty of personnel. We see a lot of the ports on the northern border where there are too few Customs agents, inspectors. They're cramped, insufficient for -- for dealing with -- with the work that they have to do up there from my perspective, and I think it's bad for security and I think it's bad for commerce.

DHS does not appear to have an integrated, coherent strategy for the northern border security that matches up well with the public-identified threat. In the 9/11 Commission recommendations bill, I included an amendment to do a study to look at the vulnerabilities on the northern border and how DHS was going to plan to address them. Unfortunately, the document from my perspective was almost useless. There was no strategic plan for dealing with -- with the border. There was nothing to indicate that there was any real thought given to the northern border at all and this is more than seven years after 9/11.

To the questions. What actions as Secretary would you take to ensure that we have sufficient and appropriate use of resources along the northern border?

**Governor Napolitano:** Well, Senator, I think the -- one of the first things I want to do is go to the northern border physically, get a sense of the area, see the facilities that are there, talk to members of the communities in those border towns, the mayors, the sheriffs and like, talk to the employees who work in those Border Patrol stations, and then I want to see what work has been done toward having a northern border strategy and then really drill down on it to make sure that it is a cohesive strategy that makes sense for the geography that we're talking about.

**Senator Tester:** Okay. You've mentioned local law enforcement, visiting with them. What role do you see in your -- in your -- in your duration in this office, what role do you see the local -- local law enforcement playing in regards to border security?

**Governor Napolitano:** Well, I think it's at least twofold, Senator. One is through programs like Operation Stone Garden, through augmenting overtime and the like. They can help augment law enforcement interdiction, apprehension, prosecution.

But they also can and should be extra eyes and ears on the ground and that doesn't necessarily require a formal financial relationship. My experience is that law enforcement is law enforcement and if they are asked to keep an eye out for X or -- and know that -- that that information is welcome and will be acted on, and also if information that the Feds have is shared with them, that is the kind of ongoing partnership with -- with law enforcement that we want to build.

**Senator Tester:** Good. I look forward to you building those relationships. I think they're important and I think you get the most bang for the buck in those.

We have -- as we talked about yesterday, we've got reservations, Indian community, significant, that butts up against Canada in the northwest part of the state, I guess, northwest to north central, and there are -- there are some issues dealing with the sovereignty of that, those -- that tribe in particular and our goals and I don't think the goals are any different, but the sovereignty issue makes it a little different play.

Do you -- do you think -- I mean, you've got -- I think you've got a Shadow Roles Program in Arizona, I believe. Do you -- first of all, does that work pretty well, and second of all, do you think that that's something that could work in other areas of the country when you're dealing in Indian Country?

**Governor Napolitano:** Senator, I can't respond. I haven't looked at Shadow Roles for awhile, but I can say this. I'm very sensitive to the -- the sovereignty and jurisdiction issues that Indian Country presents. We -- actually in Arizona, we have an Indian reservation, the Tohono D'Odham reservation actually crosses the border into Mexico, and so working with tribal leaders there in terms of what measures would be taken along that stretch of border and it requires direct work and consultation and a realization that there are tribal jurisdictions involved in the Homeland Security picture and -- and there are differences there we need to appreciate.

**Senator Tester:** Good. I want to associate my -- with -- with Senator Akaka's comments on Real ID. I'm not going to get into it, not because I don't think it's important, I think it's very, very important, but time is limited and I think -- I think he hit on a lot of very good points that I absolutely agree with when you talk about freedom versus civil liberties.

I do want to talk about the small business contracting. This is a big agency that lays out some pretty good-sized contracts, and in that process, from my perspective, they only get big contractors to bid on those big contracts. I would hope that there's a lot of good ideas out there in small businesses that could really help border security. From what I've seen, I'm sure you'll get an opportunity to see some of that down the line, but would you make a commitment to -- to really take a look at the small businesses and give them an opportunity to be a part of our

security future as far as contracting goes?

**Governor Napolitano:** Senator, yes, I will take a look at that whole issue of contracting, small versus large, also the phenomenon of big contract to subcontract and how that's working within the Department.

**Senator Tester:** I would certainly appreciate that. Once again, Governor, I look forward to working with you on this committee. I look forward to you not having to come up and testify in front of all these committees, as Senator Voinovich said, because we'll know you'll be doing the right thing and we don't need to bring you up every other day to quiz you.

Thank you very much.

**Governor Napolitano:** Thank you, Senator.

**Senator Lieberman:** Thank you, Senator Tester. Senator Landrieu. Good morning.

**Senator Landrieu:** Good morning, Mr. Chairman. Thank you so much. I always learn some most extraordinary things, Mr. Chairman, when I come to your hearings and this morning I'm happy to know that I now know who to thank for being able to keep my mascara as I'm traveling.

**Senator Lieberman:** Yes.

**Senator Landrieu:** I did not know it was our own colleague.

**Senator Lieberman:** I had the same reaction myself.

**Senator Landrieu:** Yes, I know -- I know you enjoy keeping yours.

**Senator Lieberman:** Indeed.

**Senator Landrieu:** But also, more seriously, I want to associate myself with the remarks of our Ranking Member on the issue of interoperability and thank her again and the Chairman for their really relentless work in this area and although we've made progress, we have obviously a great deal more to go, and I would only refer to one comment that will forever stick in my mind.

When I was doing a CNN interview within a day or two of the storm, Katrina, and I happened to be interviewed with the National Guard general from Alabama who I couldn't see but I could hear because we were both being interviewed, and the question was posed to him, "General, what is the communication system that you're using now?" and his -- I'm going to paraphrase but it was generally, "I hate to report but we're basically using the technology that I imagine we used during the Civil War when we were sending runners," he said to the reporter. So I commented that that was basically the same thing happening in Louisiana.

So when I say on behalf of the people that I represent and the 1900 people that lost their lives in those days after this catastrophe, I just can't impress upon you, should you be confirmed as Secretary and you will in fact have my vote because of your outstanding credentials, the importance of getting this right.

As I look at the firefighters on the front row, we don't have to go too deep within ourselves to remember the horrifying days in New York and it's not fixed. This committee has done a tremendous amount of work in trying to fix it, but without the right leadership pushing with us, it's impossible.

So I look forward to working with you, but I have -- on interoperability, but I have two questions. One, Madam Governor, in President Bush's last press conference which was just a few days ago, he was quoted as saying, "People say, oh, well, the federal response was slow. Don't tell me the federal response was slow when there were 3,000 people pulled off the roofs right after the storm passed." He was referring to Katrina, prompted by a question by a reporter. "It's a pretty quick response."

Apparently the president has a lot on his mind the last two weeks of his administration and I can appreciate that, but a cursory review of the historic record will reflect that, although the storm hit on Monday morning, early in the morning when hurricane force winds, Hurricane 3 to 4, hit the metropolitan area, it was not until Friday that the first official military airplane or vehicle showed up.

Now, the Louisiana Wildlife and Fisheries was there, the National Guard called out under Governor Blanco's direction, and the Coast Guard, God bless them, acted on their own standing authority to rescue those people, but when the real investigation is ever completed, if it ever is, I think the record will probably indicate that more people saved themselves by giving up and swimming or floating off their roofs to safety than actually who was rescued. Now, I don't know because there's been no real investigation that thorough. However, having said that, no one, except maybe the outgoing president, would say in the entire world that the response was quick.

So my question to you is, can you just briefly talk about your philosophy now as the incoming Secretary of Homeland Security, your experience as Governor, how you would change and do you recognize -- how would you change the response and do you recognize the significant role that the Federal Government must play in a catastrophic disaster, whether manmade or naturally occurring, which in our case was both.

**Governor Napolitano:** Senator, yes, I appreciate not only the -- the gravity of Katrina and its uniquely-catastrophic impact but also the fact that there is work left to be done and one of the things I would seek to do, should I be confirmed as Secretary and you and I have talked about this, is come down to New Orleans with you and get a sense of what -- where we are, what needs to be done, what the obstacles are to completing the work that is underway, and get at it. I think that there have been a number of changes in FEMA post-Katrina in response to this

committee and others strong and legitimate criticisms of what did not occur there on a timely basis, but there still is work to be done, as well, and we want to make sure that, from my standpoint, FEMA plays a key role in our nation's homeland security, not just in mitigation of disasters before they occur and working to identify measures that can be undertaken, but also in quick response recovery and to demonstrate the incredible resiliency of this country, get people back in their homes, back to work, communities re-established as quickly as possible, and those are all areas that FEMA has expertise in. They must be marshaled and then recognize that FEMA, like so many other areas of this department, has to work in cooperation with state and local authorities because so much of emergency preparation and response initially is done at the state and local level because that's -- that's where the personnel are.

But there has to be training, education, communication, all of those things that knit together an emergency response framework that really works. It can be done, it has been done in other situations. So it's not as if it's been a record of -- of uniform total historical failure, but it also can be improved.

**Senator Landrieu:** Thank you. And one more question. I know I've just got a limited time. So if we could have a brief answer here.

The State of Louisiana, and I'm sure Mississippi and Texas are in this position, as well, I don't have their specific numbers, have appealed approximately 1,200 public assistance projects, work order sheets which you as a governor are very familiar with. Over a billion dollars is in dispute, but the actual number's about 4,000 that basically FEMA and the state can't come to grips with, so these projects are stalled, our recovery is stalled, and jobs are being lost because of this.

We'd like to get this fixed in the stimulus package because the benefit is it doesn't cost any more money. We've already appropriated it. If we could fix it, we could get the recovery done and create jobs which would, I think, meet the president's objectives, but I just wanted to say for the record in closing, and then ask a brief response, auditors hired by the State of Louisiana, one of them in particular, was R.S. Means, that is a construction cost standard firm that basically trains the FEMA personnel, was our auditor that said that the amount of money that FEMA owed was X.

Despite that independent record of an auditor that they obviously think well of because they trained FEMA, they still will not, you know, pay the money that the state believes it is owed.

Will you take an aggressive role to fix that, and would you consider a binding arbitration system that we could get this recovery underway or something equally as effective to resolve the differences between states and FEMA on what is owed after a disaster?

**Governor Napolitano:** Senator, I will take a serious look at that and -- and also look forward to working with you and this committee.

I think all of us share the desire to work with Louisiana and try to -- try to begin getting some

closure on some of these things.

**Senator Landrieu:** Thank you. Thank you, Mr. Chairman.

**Senator Lieberman:** Thank you, Senator Landrieu. I do want to mention, as Senator Landrieu indicated, that there was one great agency that performed heroically, federal agency, post-Katrina and right away and that's the U.S. Coast Guard. And you're going to have the pleasure and honor of -- of working with them because obviously they're now part of the Department, and may I say to those separationists, the Coast Guard, which in some ways might be seen to have a real strong claim to be separate, they seem to be the -- very happy with the interaction in the Department which speaks to the integrity of the Department and also particularly of their connection in the Department to FEMA because they're so much a part of rescue, but they really were heroes.

Senator Levin, welcome. Glad you --

**Senator Levin:** Thank you so much, Mr. Chairman. Welcome, Governor, here. You're a great appointment. We look forward to the -- your service.

I talked to you on the phone very briefly about a number of questions and I want to raise them here just very, very quickly. I know you've been asked about the number of Border Patrol agents that need to be hired, the additional ones and the requirement in the law that 20 percent of the additional increase in agents be assigned to the northern border. The northern border has been shortchanged severely in terms of the number of agents. I think at least one of my colleagues has already gone into that issue with you.

Are you aware of the requirement that 20 percent of the increase in agents, Border Patrol agents have to be assigned to be the northern border? Is that something you're familiar with?

**Governor Napolitano:** Yes, I'm generally familiar with it, Senator.

**Senator Levin:** All right. And will you take steps to see that the requirement is met? So far it has not been. Only six percent of the increase, apparently from '06 to '08, has been along the northern border. Will you take that on?

**Governor Napolitano:** Senator, I'm going to look at the entire allocation of Border Patrol and where they are and obviously we want to make sure the allocations meet the requirements of law.

**Senator Levin:** Thank you. The -- I think you also commented on interoperability issues. That's one of the -- I think the Number 1 request we get from all law enforcement, is focus on interoperability, the ability to communicate with each other at all levels of government. Six of the demonstration grants are supposed to be in border states because of the needs that we have not just to communicate with each other but also to communicate with Mexico and Canada, and is that something that you will look at and take seriously?

**Governor Napolitano:** Yes, Senator, and, indeed, I'll build on my own experience as governor of Arizona, where at the state level we built an interoperability project with the State Police of Sonora, Mexico, the state that borders us on the south, just because of the reason that when issues happen and you're a border area, they tend to go over the border.

**Senator Levin:** Thank you. The Permanent Subcommittee on Investigations of this committee, we call it PSI, which I chair, has looked into foreign corruption and the ability of corrupt foreign officials to receive financial safe haven here in the United States.

In August of '06, President Bush announced the National Strategy Against Kleptocracy, the use by corporate -- by foreign -- corrupt foreign officials of our financial system to hide money which is improperly in their hands.

What role, if any, do you see in the effort to make sure that kleptocrats do not receive safe haven physically or financially in the United States?

**Governor Napolitano:** Senator, I think this is one of those areas where the Department of Homeland Security has a relationship with the Treasury Department, the Department of Justice, all would have a role here, but again, drawing on my own experience, one of the ways you get at terrorism and counterterrorism is -- is through the money laundering and the money aspect channel and I have a lot of experience in terms of damming warrants and other things with respect to interrupting the whole money aspect of -- of not only terrorism but human trafficking, drug trafficking.

**Senator Levin:** At a time, Governor, when demand for fire grant funding appears to be increasing, the administration has continued to propose significant cuts in firefighting assistance, firefighters in our budgets.

Given the need and given the increase in demand for fire grants, to what extent do you believe that corresponding increases in firefighting, firefighter assistance is warranted?

**Governor Napolitano:** Again, Senator, an area that I have much experience in. Many people don't know, but Arizona's home to the largest Ponderosa Pine forest in the continental United States and we've had large fires during the course of my governorship, hundreds of thousands of acres-sized fires. So those grants are very, very important.

One other area I will want to look into, however, is funding for fire prevention and restoration of forest health which might go a long way to helping us protect persons and property before fires that are started from whatever cause become these great big mega fires.

**Senator Levin:** Mr. Chairman, I'm going to have to return to the Armed Services Committee where we have four nominees before us.

I thank you, the Ranking Member, for holding this hearing, for prompt consideration of the Governor's nomination, look forward to her confirmation.

I do have some additional -- three additional questions for the record. If we could get those answered promptly, I'd appreciate it.

**Senator Lieberman:** Thank you, Senator Levin. Thanks for making the extra effort to -- to come over and give our regards, Senator Cohen's and mine, --

**Senator Levin:** Thank you.

**Senator Lieberman:** -- to our committee members on the Armed Services Committee.

**Senator Levin:** You have explained your absence already.

**Senator Lieberman:** Thank you. Governor, we'll go to a second round. It looks like the three of us will go forward.

I want to thank you for listing, in response to Senator Collins' question, about substantive priorities after your understandable management priorities, non-aviation transportation. I appreciate that very much because I think it is -- it is urgent unfinished business.

We know that terrorists struck transit systems in Madrid and London and, in fact, in Mumbai, I believe it was 2006, before the urban Jihadist attack of last November. The latest number I've seen says that 14 million people use mass transit systems in the U.S. every day, so these are very -- these involve a lot of people.

I understand it's early in your term, in fact it hasn't begun yet, but what -- what thoughts do you have about the steps you might take to improve security, homeland security in rail and transit systems in our country?

**Governor Napolitano:** Well, Senator, should I be confirmed, one of the things I'll want to do -- there are -- first of all, there's some real expertise in this country and so solicit their advice and it's not necessary to reinvent the wheel here. Then we -- this is an area again where private entities need to be brought to the table and municipalities and the like, the actual owners and operators of these transportation systems. So we need to figure out a way how do we do that in as expeditious a way as possible.

And then we need to move forward and say what are the easy common sense -- what's the low-hanging fruit we should do now, over the next 30, 60, 90 days? What requires a longer-term strategy to accomplish, and -- and really, just as I told Senator Tester, I really want to look at a northern border strategy and plan. We want to do that for surface transportation and we don't want to wait for the plan to do what we already know needs to be done. So you do that to get yourself started, but then things should fit into a longer-term strategy.

**Senator Lieberman:** Okay. We're going to do a lot of work together on this and obviously there's a lot to be learned at this point from other countries that have -- that are dealing with this problem.

Interesting, I think I mentioned when we spoke in my office, the PEW Center did a poll on various government services awhile ago, and asked the American people to rate them favorable or unfavorable and, interestingly, encouragingly, and probably surprisingly to some people, one of the highest-rated federal services was the Transportation Security Agency. It was -- it was at 70 percent or higher.

Unfortunately, one of the lowest-rated was Border Security. I want to come to that in a minute.

One of the theories given by the organization that did the polling was that maybe more people have contact with TSA and they're generally positive. People are troubled by the controversies around border security, but I know, being a border security governor, that you know that these are real problems that go to the integrity of our immigration law and also obviously in some sense to our security.

So I know you've spoken -- Senator McCaskill asked you about enforcement of some of the laws relating to employing illegal immigrants and Senator Tester did somewhat with regard to using law enforcement personnel.

I want to ask you more broadly, as you come in with some experience in border security, what are your thoughts about how better to secure our border and enforce our immigration laws. We've struggled with this. We've acted on it. We've spent a lot of money so far. You know, do you think we should attempt to cover the entire southern border with a fence? Maybe I'll start -- stop there and let you begin to answer.

**Governor Napolitano:** Well, I think border security requires a system and a system has several parts to it. It requires boots on the ground and so one of the things, you know, I will be counting as the Secretary is how many -- not just how many agents we have or in training or what have you but how many boots on the ground do we have in places at shift time and the like.

It requires technology. It requires things like ground sensors. The SBI Net, which has had a problematic start, is something I think, however, could hold great promise and we want to -- we want to keep -- we want to keep pushing the issue of technology because these borders are vast and manpower alone is -- is not going to do it. You need to be able to augment manpower with technology and keep pushing that technology fence, as it were.

There is a role for some fencing, particularly around urban areas, because it -- it helps prevent those who are crossing illegally from blending immediately into a town population, but these borders are -- are so vast that the notion that a -- a fence alone is worth the expense to go, say, from San Diego to Brownsville, I don't think I would be giving good advice to the committee if I

said that's the way we're going to protect the border.

It needs to be done strategically as part of a border system and then you've got to have interior enforcement because, once someone has run the gauntlet of the border, if they get through, and we have to anticipate that you're never going to have 100 percent protection against that. You need to have some means of -- of interior enforcement and that's really where the employer actions come in.

I'd like to mention, as well, however, Senator, that there are those who use that border not just for labor. I mean, they are drug traffickers. There are human traffickers and there are -- and we have to be cognizant that there could be potential terrorists using that border.

**Senator Lieberman:** Sure.

**Governor Napolitano:** To the extent we deploy law enforcement to deal with the illegal immigrant coming to work, we have to -- we have to do the right thing to make sure that we -- we continue the -- the key focus on those that are coming to do real evil in our country --

**Senator Lieberman:** Right.

**Governor Napolitano:** -- and make sure that we haven't diluted our law enforcement resources to such a degree that we don't really have an adequate focus on -- on those evil-doers, and I want to make sure that we're -- that we are working with state and locals and others on those borders, northern and southern, creating a good balance.

I have a particular concern right now. Mexico, as you know, is -- is -- is undergoing a very serious issue with violence related to President Calderon's really quite, quite honorable initiative going after the big drug cartels, but it has caused a lot of violence in those border states along the U.S. border.

**Senator Lieberman:** Right.

**Governor Napolitano:** So we have to be very cognizant of that, in addition to all the other concerns.

**Senator Lieberman:** Let me ask you a quick question. When we spoke in my office, you had some interesting practical sort of common sense things to say about your experience in Arizona with the National Guard in terms of border enforcement.

I wonder if you'd expand on that a little bit now and -- and indicate -- well, do you think we ought to make use of the National Guard in -- in terms of border security?

**Governor Napolitano:** Senator, I was one of the first governors to say the National Guard could play a very useful role here to augment Border Patrol, not to substitute for it but to

augment; so, in essence, you expand the manpower hours that we have, and I look forward to working with Secretary Gates to see whether there is and can be a continuing role for -- for the Guard at the borders.

**Senator Lieberman:** Am I right that you -- one of your conclusions, feelings was that the presence of the Guard or even the announcement that the Guard was involved in border security had a deterrent effect, perhaps particularly on some of those evil doers who are -- who are thinking of coming over, like drug dealers and human traffickers?

**Governor Napolitano:** Yes, Senator, that was my perception. When Operation Jumpstart began, which was the name given to the Guard at the Border Initiative, there was an awful lot of press in Mexico about it and I think that press in and of itself was very helpful.

**Senator Lieberman:** Well, I agree with that position. I know there's all sorts of sensitivities, but I -- I -- I thank you for your intention stated here to work with Secretary Gates and the Department of Defense on this, and I think it can be done in a thoughtful way that can both assure the enforcement of our laws and also keep out some of the people we want to keep out.

Thank you.

Senator Collins, and then we'll go to Senator Carper.

**Senator Collins:** Thank you, Mr. Chairman. Governor, the challenges of border security on the northern border are very different from the focus on the southern border and I've already invited you to come to Maine to learn more about those challenges, but let me just give you a few examples.

In border communities in Maine, Canadian nurses are absolutely essential to the operation of some of the smaller hospitals. They're crossing back and forth every single day. There's a golf course in Northern Maine where the course is on the American side of the border and the clubhouse is on the Canadian side of the border and lately Customs and Border Protection is trying to enforce the crossing of the border in a way that affects that golf course.

Another example is the potato farmer in northern Maine who literally has fields on both sides of the border, not really practical for him to have to drive many miles to go to a crossing in order to plow his fields.

There are all sorts of practical realities because, prior to the attacks on our country on 9/11 of '01, the border was very integrated in Maine and it still is in many ways. Many families have relatives on both sides of the border.

We're going to be facing in June the full implementation of the Western Hemisphere Travel Initiative which has caused some concern in the State of Maine about what the impact will be on legitimate travel and trade. I would also point out that Canada is our biggest trading partner in

the United States. An astonishing \$1.5 billion of trade occurs every day between the United States and Canada.

What will you do to ensure that, as we keep implementing more stringent security requirements, that we do not impede the legitimate flow of travel and trade between two friendly countries?

**Governor Napolitano:** Senator, your question really illustrates how there is a -- there are two competing interests really in the border area. One is security and we must continue to work to enforce the law, our immigration laws, and our laws to keep evil doers out, but there are border communities all over where people need to go back and forth and have for years, for generations, and so how do you accommodate those within a real and ever-increasing border enforcement strategy?

I think it's going to require some creativity on our part and without saying today what we're going to do, I do have some ideas in this regard, and it may be the kinds of identification that can be used by those who live in the border and must go back and forth regularly versus those that are only episodic travelers, say for example.

So I will look forward to working with you on some ideas there, but it is -- I think you recognize that there is a lot -- there are a lot of legitimate family, trade, commerce, tourism issues that are embodied here, even as we enforce border security, and that really an effective border security mechanism means that we have to accommodate both of those competing tensions.

**Senator Collins:** Thank you. I look forward to working with you on that. Governor, there are a couple of federal programs where you have been critical of the implementation and now you're going to be in a position to solve all of these problems.

I -- I want to talk to you about two of them. One is a series of exercises that the Department of Homeland Security undertakes with state and local governments called the Top-Off Exercises. I have participated in two of those and my impression is quite different from yours. I thought they were very well run, very helpful to state and local governments and focused on -- on real-life scenarios.

By contrast, in October of 2007, you participated in a Top-Off exercise and were very critical in a letter that you sent to Secretary Chertoff in early November of 2007 in which you described the processes as "too expensive, too protracted and too removed from a real-world scenario." You also said "there wasn't sufficient information sharing, there wasn't a good feedback system."

Well, now you're going to be in charge of those Top-Off exercises. What are you going to do to address the concerns that you experienced?

**Governor Napolitano:** Thank you, Senator. What goes around comes around, I guess, is the -- is the point there, but one of the key concerns I had was the expense.

I mean, I think exercises benefit from frequency and -- and one of the real benefits to be gained is people learning how to work with each other, who to call, who's going to be on the other end of a communiqué, who's prepared to stand up under what circumstances, and the like. One of the problems with Top-Off is they're so big and gigantic and expensive that they really don't permit of that.

A second one and -- is -- is that they're too slow to get feedback to the participants. For example, we participated in October of '07. We don't yet have an analysis of what happened, why, and -- and what worked and didn't work. Well, now the top officials who were involved in that, such as myself, many of us have moved on. So we've got -- if we're going to be doing these kinds of -- of things -- and they are valuable, the underlying philosophy is a good one, but they need to be, in my view, streamlined and the response in terms of analysis and improvement and recommendations and the like needs to be much more -- much quicker.

**Senator Collins:** Thank you. Mr. Chairman, I'll wait to ask my next question till after Senator Carper.

**Senator Lieberman:** Good. Then we'll do one more quick round. Senator Carper, thanks for coming. I know you've had a busy morning, but we appreciate seeing you. You have an uncanny way of -- you're a very steadfast member of the committee, but you're always here when there's a governor testifying.

**Senator Carper:** I come before you as a recovering governor. With a little luck, Janet, you'll come before us as a recovering governor in the -- in the years to come.

I want to thank you for -- for your service to the people of Arizona and to say it's just a real pleasure to serve with -- with you as the board members of the board that you chaired for Jobs for America's Graduates which was a non-profit organization that's designed to help reduce drop-outs in our schools, but thank you. I enjoyed that very, very much and appreciated your leadership then and appreciate your leadership as the Governor of Arizona and also look forward to your leadership in the Department of Homeland Security.

I apologize for being late. We're saying good-bye today to two of our colleagues and one of those is our senior Senator Joe Biden and for two months now, ever since he was elected Vice President-elect, people have been calling me senior senator and people kept coming up to my wife and me at the National Convention after he had been nominated and saying, "Well, how does it feel that your husband's going to be the senior senator?" and she said, "I don't know." Dozens of people came up to say, "How does it feel that your husband's going to be the senior senator?" "Well, I don't know." We got back to our hotel room that night and she said, "I just have one question about this senior senator stuff." I said, "What is that?" She says, "Does it pay more?"

I said, "Well, no." She said, "Well, who cares?" Well, Joe Biden's going to be the senior senator for another five hours and two minutes and then it's my turn and then we'll usher him out

the door, but he just said -- he gave -- I've had to follow him on giving speeches in Delaware for 30 years. He's about as good as there is and I had to follow him again today on the Senate Floor as he said good-bye and then we said good-bye to him -- we finished that up. Hillary Clinton gave her farewell address. It was very poignant, and so I apologize for being late, but I hope you understand.

I -- I -- later this week, this weekend in fact, the train is going to be coming down from Philadelphia down to Washington, D.C. They're going to make a stop in Wilmington and Joe Biden and Barack Obama will make their way down to our Nation's Capital, sort of a modern day version of a whistle-stop tour, and we're excited about it and looking forward to it.

I know in Arizona you have some trains and some transit. I come from a part of the country where there's a whole lot more of that, as you know, and we have more people literally in a tunnel or in the tunnels that lead under the river into New York City at any given time. They fill up 7 or 8 747s during the course of the day. I think there are hundreds of thousands of people filling those tunnels. Every day people going up and down the Northeast Corridor going through the Baltimore Tunnel, which is about 150 years old. We have all kinds of bridges and places where people could do mischief to the folks that are using our -- our trains or our transit.

We've been blessed and fortunate that we haven't had the kind of terror attacks that we had in London and Madrid where a lot of lives have been lost, but I know others have spoken to you about -- here today about -- to make sure we don't just focus on air travel but we also focus on -- on rail and given the sort of renaissance that's going on with train travel across this country, ridership is up, again I guess by more than 10 percent, more and more people are taking the rails, not just in the Northeast Corridor but I think throughout the densely-populated corridors as well, I just ask that you be mindful of that.

I also learned recently that during the altercation where the Russian troops moved into Georgia, it wasn't just Russian troops that moved in, but they did a pretty good job of really almost eliminating the ability of the Georgian country to operate in a lot of ways by simply -- through cyber attacks, did something on a more modest level with another country, one of the Balkan countries, I think it was Estonia.

Sitting here today, our nation is under attack. Many of our departments are under attack and it's not just by kids, it's not just by criminal elements, it's by sovereign nations trying to hack their way into our Department of Defense and steal our weapon system ideas and any number of other places, not just folks interested in -- in getting -- capturing somebody, stealing somebody's identity, but actually putting our nation at peril and at risk, and I would just ask you to share with us some of your thoughts, and I know this is something you're interested about and know about, but just share with us some of your thoughts as to how we can better address -- because these -- my suspicion is those threats won't be diminishing by the time you leave the Department of Homeland Security. If anything, they're going to be increasing.

During the hearings that Senator Coburn and I've held, they suggest that we're not -- we're not

doing all we can to on that front, but I will welcome your comments as to what we might do.

**Governor Napolitano:** Well, Senator Carper, I -- I, in earlier comments, mentioned cyber infrastructure specifically as something that I think we're -- we are, in some important respects, at the beginning of attacking the attacks, as it were, and this is one -- again one of those areas where Homeland Security and the Department of Defense and the nation's intelligence structure and others all have some kind of cyber aspect, but Homeland Security has a key and central role to play.

We have the -- the Cyber -- the Cyber Center, but I think it's -- it's not heavily staffed and I think this is an area that I'm going to want to plow very deeply very quickly because I know that President-elect Obama has said several times that this is an area where he wants to get a national strategy and a national coordinated plan going and using the best and brightest minds that we have in America where the cyber world is concerned, to make sure that we are employing them to help us protect that very valuable infrastructure.

**Senator Carper:** I understand some of our adversaries are trying to figure out now how to hack into BlackBerries, particularly BlackBerries that are possessed by President-elects, and so I say this with tongue in cheek, but the threats -- the threats are very, very real.

The last -- another issue that I'm sure has been raised with you and I'll just ask this one and if you've already addressed it, maybe you can just truncate your response. There have been a lot of discussions. You can imagine the debate we had when we put Homeland Security together as a department, what should be in and what should be out, should FEMA report directly to the president, should it not, how do we put all this together and not end up with what we call in Delaware a "dog's breakfast," and I'm sure that some will think what we created is very much that.

But in terms of the structural change, what do you see about it that you like, for God's sake don't change this, this makes sense, and what are some things that you think might make some -- is it just too early to say?

**Governor Napolitano:** Well, I think, Senator, my key focus is to make the organization that we have work even better. There have been a number of reorganizations even within the Department's short life. All of those interrupt, cause delay and so forth, and my key -- I think my -- where I'm going to start right now is take the organization we have and how do we make it even better as opposed to moving a lot of boxes around.

**Senator Carper:** I think we -- we once had a vice president who said about the war in Iraq, that this is -- you go with the Army you've been given and so you'll have a chance to go with the Department that you've been given.

But we look forward to not only working with you on the issue of cyber attacks and the issues of wall safety, but we look forward to -- to working with you, once you've had a chance to settle in

and decide what does make sense and, frankly, what doesn't, and to see if there are any changes that should be made.

I've always felt that the most important thing is not necessarily the structure of an organization, although it is important, but even more important the kind of people that we choose to provide leadership in the various parts of that organization, and the -- and the selection -- we didn't always do so well in the current administration picking leadership, especially in areas of first responders. FEMA is a good example of that and sort of the poster child for that. We need to be -- we have a responsibility to scrutinize and look closely at the people that the administration, that you send to use for confirmation, and we'll just encourage you to find people who know how to do the job, those who have been nominated, and thank you again for your willingness to take this on.

Hopefully you'll be nominated. I'm pretty sure you're going to be not just nominated but confirmed and if that happens, we certainly look forward to working with you.

Thank you.

**Governor Napolitano:** Thank you, Senator.

**Senator Lieberman:** Thank you, Senator Carper. Listening to your telling of the conversation with your wife about being the senior senator, it struck me that if my late mother was here -- were here, she would say to you that the reward you deserve for being the senior senator from Delaware, you'll probably have to wait to receive it until the world to come and so I hope that gives your wife some encouragement. You shouldn't arrive there too soon.

All right. But anyway, we thank you for your service, senior or junior, on this committee.

**Senator Carper:** Mr. Chairman, the only thing I would say in response to that comment is I would ask unanimous consent to put my full statement in the record.

**Senator Lieberman:** No objection. I want to comment back to some issues related to how people get into the country that are -- that are under your jurisdiction as Secretary. I want to mention one that you may not have been briefed on, but I want to put it on your radar screen because it's concerned me. It relates to the Visa Waiver Program, which I think is -- is a good program. The intentions are -- are good, and it -- it has both commercial advantage to make it easier for tourists to get in here and it's also a diplomatic step with regard to certainly countries in the former Soviet Union who've now become our close and very supportive allies.

But it does involve risk when you make it easier for people to come in here and this risk is not just or even primarily associated with the new countries that have been just allowed into the Visa Waiver Program. It's true of the countries that have been in there a long time in Western Europe. I mean, after all, you know, Zacharias Moussaoui, one of the 9/11 terrorists, came in from France. Richard Reed, the shoe bomber, came in from England.

And this committee was very concerned about this potential vulnerability that was -- that was inherent in the Visa Waiver Program and in the -- the second wave of 9/11 Commission legislation, 2007, we included a provision to secure the Visa Waiver Program and the goal, to put it simply, was to make sure that any passenger who got on an airline from one of the Visa Waiver countries had to be checked against terrorist watch lists before they could get on to the airplane.

The department has -- now has created a mechanism for doing this which they call the Electronic System of Travel Authorization, E-S-T-A, ESTA. It went into effect just on Monday of this week, but I, as you may know, have made no secret of the fact that while I'm a supporter of the Visa Waiver Program, I believe the Department moved much too quickly to certify the Electronic Travel Authorization System as operational in order to allow the new countries to get into the program, and the fact is that GAO has been critical of ESTA and even some department officials have confirmed that -- to our committee that airlines lack the ability to determine whether travelers from Visa Waiver Program countries have obtained travel authorizations from -- from ESTA.

So I don't know whether you've been briefed on it, if you have any preliminary thoughts about it. I'd welcome them. If not, I'd ask that you make this a priority of your attention as you come in.

**Governor Napolitano:** Well, Senator Lieberman, as I responded to Senator Voinovich, the whole Visa Waiver issue is -- is a balance between the security needs of our country and public diplomacy and the other aspects. In some ways, it's reminiscent of actual enforcement border security. You're always -- you know, there's -- there's the good and the bad that always need to be looked at.

**Senator Lieberman:** Right.

**Governor Napolitano:** Secretary Chertoff did brief me on ESTA over the course of the last six weeks, but I have not had the opportunity obviously to look into what actually has occurred and what is the capacity there that's been operationalized. So I will be happy to look into that and to work with you on that, Senator.

**Senator Lieberman:** I appreciate it. A final question from me, a very different kind of question related to how people get into the country, and that is, how we treat those who seek asylum in our country.

I've been interested in this for a number of years, particularly after a report of the -- I forget the official name, but it's the Commission on Religious Freedom that was set up of our government that reports periodically, and they did a searing report on the way in which people coming to the U.S. seeking asylum based on discrimination at worst in their home countries because of their religion, also relates to people seeking political asylum, both in the way that they are housed.

I mean, these are not -- I understand this right of asylum can be gamed. We all understand that. That's why we create a filter, but non-criminal aliens here are being housed for very long periods of time in high-security detention facilities, and because there's not enough of them, and local and county jails where they're often denied medical care or basic needs. That's just the finding that the commission and others have had. They're also not permitted to request their release from an immigration judge. So it's just the kind of behavior that we don't, particularly for people who are -- who have in mind those moving words on the base of the Statue of Liberty about this being a sanctuary for those seeking freedom as it has been.

So I wanted to ask you whether you have any information on -- on that or an opinion now or as Secretary, of course, would you consider taking steps to improve the treatment of asylum-seekers while obviously also carrying out the law to make sure that they have a genuine cause to be granted asylum here in the United States?

**Governor Napolitano:** Mr. Chairman, you're correct, I haven't spent a lot of time working my way through that particular issue. I have been giving some attention to the whole area of detention and the ICE facilities and the like, but I will be more than happy to drill down, look into what is there, what allegations are being made, are they really fact-based, and to work with you and your staff on this.

**Senator Lieberman:** Good. Thank you. Senator Collins.

**Senator Collins:** Thank you, Mr. Chairman. Governor, in October you sent a very strong letter to the federal government with an invoice calling upon the federal government to reimburse Arizona for more than \$500 million for incarcerating criminal aliens and you say in the letter, "By refusing to fully reimburse Arizona for its SCAP," the name of the program, "costs, the Federal Government has unfairly forced Arizona to bear the Federal Government's costs arising from its failure to adequately secure its borders."

I suspect maybe in October you were not aware that you might be the Secretary of Homeland Security.

Now, you're going to have a role to play not only on border security but in helping to set priorities in the budget for the new administration.

Do you think this bill should be paid now?

**Governor Napolitano:** Senator, first of all, the bill went to the Attorney General of the United States, so if the new Governor of Arizona sends a bill I'll be happy to give it to the Attorney General.

But the greater point remains, and that is, I think one of the reasons President-elect Obama asked me to serve in this position, is the real-world experience I've had in dealing with an immigration

system which, when broken, falls unfairly on border states.

\$500 million for a state like Arizona, where the annual budget is just about 10 billion, is a lot of money. So I would hope to contribute to the discussions within the Executive Branch and bring to bear that experience and suggest some options that might be proposed.

**Senator Collins:** In all seriousness, it is a significant burden for border states and I do think, given that the law requires the reimbursement and as you eloquently point out in your letter, “the Federal Government is only paying pennies on the dollar,” it is an issue that does need to be reviewed, and I think it’s very helpful to have a governor in the Cabinet who’s been on the other side of unfunded mandates and unfulfilled promises.

A similar one is the Real ID law. I completely support the goal of having more secure driver’s licenses. The 9/11 Commission pointed out that some of the hijackers were able to use their licenses in order to board airplanes. It is unacceptable that people in this country illegally are able to get driver’s licenses because it is a gateway card.

On the other hand, there’s no doubt that it’s an expensive process for states to come into compliance. I do hope that you will work to come up with additional financial assistance to help states comply with the goals of the Real ID Program. Otherwise, we’re imposing a very expensive unfunded federal mandate on the states.

**Governor Napolitano:** Well, Senator Collins, I -- I will take that. As I said to Senator Akaka earlier, it’s -- it’s the unfunded mandate aspect of it, but I -- I think, as well, getting governors back to the table because this -- in the end, if it is going to work, the states really are where it’s going to be operationalized and so we’re going to have to build that partnership in a much different way than we’ve had heretofore.

**Senator Collins:** And finally, I do have some questions that I would ask to submit for the record as well as some questions for the record from Senator Specter and Grassley that I would ask unanimous consent be submitted, as well.

I do want to reinforce what the chairman said about the Coast Guard. It is an absolute gem. It is the one agency that at all levels of government that performed extraordinarily well in the wake of Hurricane Katrina. It needs budget help, especially given the new White House Directive on the Arctic Region. It’s going to have a need for additional ice-breakers and I’m going to be submitting some questions to you about that, as well.

And finally, I would be remiss in my capacity as the Ranking Minority Member if I did not supplement the question that the chairman asked you at the beginning and that is to ask you, in addition to responding to requests for information from the chairman or joint requests, will you also be responsive to requests for data and other information from minority members of this committee?

**Governor Napolitano:** Yes, and with respect to the Coast Guard, Senator Collins, I would be remiss if I didn't mention that the Admiral in charge, the Commandant of the Coast Guard is actually from Arizona. So it's --

**Senator Collins:** That's a seafaring state.

**Governor Napolitano:** There it is.

**Senator Collins:** Surprising. Thank you, Mr. Chairman, and again I want to join you in expressing the -- my hope for a very long and productive relationship with the nominee.

**Senator Lieberman:** Thank you, Senator Collins. Without objection, the questions from our colleagues will be submitted for the record. Also without objection, we're going to keep the record open until the close of business today for the submission of any written questions or statements for the record. Now that's very quick but that's because of the sense of urgency that the committee has about how important it is to get you confirmed as soon after President-elect Obama becomes our president by taking the oath as possible.

Governor, I thank you for your testimony today. You've been very informed, very helpful. Occasionally, you've been funny, and -- overall you have shown yourself ready to take on the awesome responsibilities that come with being Secretary of Homeland Security. I'll -- I'll be very proud to support your nomination on the floor and I look forward to working with you, as I know Senator Collins does, in the years ahead.

With that, the hearing is adjourned.

**Governor Napolitano:** Thank you.

(Whereupon, at 12:20 p.m., the hearing was adjourned.)

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