

Opening Statement of David S. Kris
Nominated as Assistant Attorney General for National Security
Before the Senate Judiciary Committee
February 25, 2009

Madame Chairman, Senator Specter, and distinguished Members of the Committee, it is an honor to appear before you. I am grateful to President Obama for nominating me, to Attorney General Holder for supporting me, and to the Committee for considering me. I also appreciate the Members who met with me prior to this afternoon.

The National Security Division is a new but vital institution of government. To date, it has had only two Assistant Attorneys General – both (like me) originally career prosecutors. The most recent of these, Pat Rowan, was enormously helpful during the Presidential transition period, and I want to take this opportunity to thank him again.

Pat's predecessor, Ken Wainstein, is currently teaching a law school class with me. Ken and I agree on some things, and we disagree on others, but we share a common respect for professionalism and serious legal argument. As a result, we work well together even when we differ. In fact, I think our students benefit from the diversity of views; they get more from both of us than they would from either of us.

Together, Ken and Pat and the men and women of NSD have done a remarkable job establishing the Division. I support many of the things that they have done – including NSD's basic organizational structure, its strong relationships with ODNI and the FISA Court, and its innovative enforcement of export controls.

Of course, I have some ideas of my own about how to build on this foundation and move the Division forward. In keeping with my position as a nominee, and an outsider, these ideas are necessarily tentative. But I will share them nonetheless in an effort to inform your decision about whether or not to confirm me. In the short run, if I am confirmed, I would hope to focus on three procedural issues, and three substantive ones.

Procedurally, I would like first to continue strengthening connections among NSD's various components. I hope this will generate even more coordinated operations and policy development, and foster a more distinct DOJ national security culture. Fundamentally, NSD exists because of the potential synergies between its criminal and intelligence lawyers; I want to maximize those synergies.

Second, if confirmed, I will also focus on NSD's relationships with the Intelligence Community and the NSC, in part by continuing to develop the intelligence perspective and credentials of the Division's lawyers, including its prosecutors. I will also try to respond appropriately and quickly to Congressional oversight, and maintain strong, cooperative relationships with this and other Committees.

Third, I would hope to continue the very positive evolution of NSD's working relationship with the FBI, particularly at the operational level. I believe this will help the FBI continue its transformation into a security service, and also enhance protection for civil liberties.

Substantively, I also anticipate three areas of focus if I am confirmed. First, GTMO and detainees. NSD has already bequeathed its senior career deputy to serve as Executive Director of the GTMO Task Force, and I am sure it will continue to support the Task Force as needed.

Second, the FISA Amendments Act. This is a new statute, and I do not yet know exactly how it functions, but I do know that it provides enormous authority and underlies an enormously important collection program. If confirmed, I intend to learn in detail how it works.

Third and finally, the FBI's Domestic Operations Guidelines. In at least two ways, I think, these new Guidelines reflect positive developments; in other ways, however, they raise some questions I would like to explore further. If confirmed, I will need to know how the Guidelines operate at ground level, so I can work with the Bureau, advise the Attorney General, and help keep this Committee fully informed.

Again I want to emphasize that these ideas are tentative, and will yield to the ground truth. But they do reflect my current thinking, from my current position, and I wanted to put them before you. I look forward to answering your questions.