

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (including any former names used).

David Schaefer Kris.

2. **Position:** State the position for which you have been nominated.

Assistant Attorney General for National Security.

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office addresses:

Time Warner, Inc.
800 Connecticut Ave., N.W., Suite 800
Washington, D.C. 20006

One Time Warner Center
New York, NY 10019.

Residential address:

[REDACTED]

4. **Birthplace:** State date and place of birth.

September 28, 1966.
Boston, Massachusetts.

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

Jody Ann Kris (Jody Ann Manier)
Partner
Wilmer, Cutler, Pickering, Hale & Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006.

Two dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School (August 1988 to June 1991)
J.D. (June 1991).

Haverford College (August 1984 to May 1988)
B.A. (May 1988).

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

A. President-Elect Transition Team (November 2008 to January 20, 2009)
Member of the DOJ Agency Review Team.

B. Time Warner, Inc. (June 2003 to present)
One Time Warner Center
New York, NY 10019

and

800 Connecticut Ave., N.W., Suite 800
Washington, DC 20006.

Senior Vice President and Deputy General Counsel (February 2006 to present)
Chief Compliance Officer (November 2005 to present)
Vice President, Legal Department (June 2003 to November 2005).

C. Georgetown University Law School (January 2008 to present)
600 New Jersey Ave., N.W.
Washington, DC 20001

Adjunct Professor of Law.

D. Brookings Institution (2008 to present)
1775 Massachusetts Ave., N.W.
Washington, DC 20036

Nonresident Senior Fellow.

- E. United States Department of Justice (September 1992 to May 2003)
950 Pennsylvania Ave., N.W.
Washington, DC 20535

Associate Deputy Attorney General (July 2000 to May 2003)
Attorney, Criminal Division (September 1992 to July 2000).

- F. Judge Stephen S. Trott, 9th Circuit (August 1991 to August 1992)
660 U.S. Courthouse
550 West Fort Street
Boise, ID 83706

Law clerk.

- G. Professor Philip Heymann (December 1989 to June 1991)
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Research Assistant.

- H. Ropes & Gray (June 1990 to August 1990)
One International Place
Boston, MA 02110

Summer Associate.

- I. Professor Laurence Tribe (October 1989 to February 1990)
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Research Assistant.

- J. Middlesex County District Attorney (June 1989 to August 1989)
40 Thorndike Street
Cambridge, MA 02138

Summer Intern.

K. Dr. Craig Henderson (July 1988 to August 1988)
44 Binney Street
Boston, MA 02115

Intern.

L. Fidelity Investments (June 1988 to July 1988)
World Trade Center
568 E. First Street
Boston, MA 02127

Secretary.

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Attorney General's Award for Exceptional Service (2002 and 1999).
Assistant Attorney General's Award for Special Initiative (1998).
Awards for Special Achievement (various dates prior to 2000).

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

I was a member of the American Bar Association from 1992 to 2003. I did not hold any office in the ABA.

11. **Bar and Court Admissions**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reasons for any lapse in membership.

Massachusetts (1991).
New York (2003).
Maryland (2008).

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

State courts listed in 11a.

United States Supreme Court (1995).

United States Court of Appeals, First Circuit (2000).

United States Court of Appeals, Fourth Circuit (1992).

United States Court of Appeals, Fifth Circuit (admitted 1992, lapsed 2003 because admission not renewed; no misconduct involved).

United States Court of Appeals, Ninth Circuit (1992).

United States Court of Appeals, Tenth Circuit (1993).

12. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Brookings Institution (2008 to present).

Palisades Pool Association (May 2007 to present).

Suburban Nursery School (September 2003 to present).

Westmoreland Hills Neighborhood Association (approximately 2000 to present).

Edward Bennett Williams Inn of Court (1995 to 2007).

I may have had a (free) membership in the Harvard Club shortly after graduating from law school.

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not to my knowledge.

13. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including

material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify books, articles, reports, letters to the editor, editorial pieces, or other published material through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Meet David S. Kris – Featured Author (October 2008).

West Key Authors, David Kris and Doug Wilson (date unknown but probably 2008).

Summary of amendments to the Foreign Intelligence Surveillance Act made after September 11, 2001 (July 2008).

David S. Kris, *A Guide to the New FISA Bill, Parts I-III* (June 21-25, 2008).

David S. Kris, *Modernizing the Foreign Intelligence Surveillance Act* (November 15, 2007). I recently submitted a revised version of this paper to Brookings, but it has not yet been published.

David S. Kris & J. Douglas Wilson, *NATIONAL SECURITY INVESTIGATIONS AND PROSECUTIONS* (August 2007). My co-author and I have done work on updates to this book, but the work is not yet complete.

David S. Kris, *Searching the Haystacks* (August 29, 2007);
David S. Kris, *Is Wiretapping at Embassies Off Limits Now* (August 29, 2007);
David S. Kris, *Continuing the Conversation* (August 30, 2007).

Response to Defense of Warrantless Wiretapping Program as Set forth in a Letter from the Department of Justice to Certain Members of Congress on December 22, 2005 and a Whitepaper Released by the Department of Justice on January 19, 2006 (March 2006).

The Rise and Fall of the FISA Wall, 17 Stan. L. & Policy Rev. 487 (2006).

Press Conference, Department of Justice, concerning the Foreign Intelligence Surveillance Court of Review's decision (November 18, 2002).

Collateral Review of Federal Criminal Conviction (monograph published internally by the Department of Justice) (1998).

Interpreting 18 U.S.C. § 2331 Under U.S. and International Law, 27 Harv. J. on Legis. 579 (1990).

Philip B. Heymann and David S. Kris, *And There Should be Other Prosecutions Too*, Washington Post, Page B7 (January 7, 1990).

I have testified before this Committee and other Committees of Congress, and my testimony is sometimes posted on Committee websites. See answer to part c.

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I can think of.

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify testimony, official statements, or other communications through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Statement of David Kris before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the House Committee on the Judiciary Hearing on H.R. 3189, the National Security Letters Reform Act of 2007 (April 15, 2008).

Letter to The Honorable John D. Rockefeller IV and The Honorable Christopher S. Bond, Chairman and Vice-Chairman of the Senate Select Committee on Intelligence concerning Comments on the Foreign Intelligence Surveillance Modernization Act of 2007 (May 1, 2007).

Answers to Questions for the Record for David Kris, sent to Senator Specter (April 21, 2006).

Testimony of David S. Kris before the Committee on the Judiciary, United States Senate (March 28, 2006).

Emails exchanged with Courtney Elwood re NSA surveillance (December 2005 – January 2006), released by DOJ under the Freedom of Information Act.

Testimony of David S. Kris before the Senate Select Committee on Intelligence (May 24, 2005).

Testimony of David S. Kris before the Subcommittee on Crime, Terrorism, and Homeland Security (April 28, 2005).

Interviews by Staff of the 9-11 Commission (January 15 and May 19, 2004), cited in the 9-11 Commission Report.

Statement of Associate Deputy Attorney General David S. Kris before the Senate Judiciary Committee Concerning the Foreign Intelligence Surveillance Act (September 10, 2002).

Testimony of David S. Kris before the Senate Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights (October 3, 2001).

Testimony of David S. Kris before the Senate Select Committee on Intelligence Concerning Legislative Proposals to Respond to Terrorism (September 24, 2001).

In addition to testifying before Congress, I have several times since 2001 briefed staff of the Judiciary and Intelligence Committees, typically on a bipartisan basis.

- d. Please supply four (4) copies, transcripts or tape recording of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify speeches or talks through a review of my personal files and searches of publicly available electronic databases. I have located the following:

American University Law School (October 28, 2008). I guest lectured at Professor Dan Marcus's class. I also guest lectured there on September 1, 2005; October 12, 2006; and March 4, 2008. No notes or transcript available.

I have for several years guest lectured at a class on national security taught by Magistrate Judge Jamie Orenstein and District Judge John Gleeson at NYU Law School. As far as I can determine, I guest lectured on October 17, 2007; October 11, 2006; October 3, 2005; and September 21, 2004. I recall speaking to the class in the fall of 2008, but cannot determine the exact date. No notes or transcript available.

NYU Law School (October 8, 2008). I guest lectured at Professor Sam Rascoff's class on national security. No notes or transcript available.

DOJ Cyber Deterrence Group, Department of Justice (July 10, 2008). I was invited by DOJ to a briefing and discussion of cyber deterrence issues. No notes or transcript available.

ABA Panel on Cyber Issues, Mandarin Hotel, Washington DC (June 19, 2008). I was part of a panel on cyber issues. No notes or transcript available.

RAND Conference on national security issues, Rand Office, Los Angeles, CA (May 5, 2008). I was part of a panel on privacy. No notes or transcript available.

University of California, Berkeley (April 14, 2008). I was part of a panel discussion on UK national security law with David Cole and John Yoo. No notes or transcript available.

University of Michigan Law School (April 2, 2008). I guest lectured on national security issues in Professor Joan Larsen's class and also spoke at an event sponsored by the Federalist Society. I gave a similar talk to Professor Larsen's class in 2007. I may do so again in 2009. No notes or transcript available.

ABA breakfast talk by Ken Wainstein et al., in which I asked a question from the audience (March 3, 2008), University Club, Washington, DC, as described in Ellen Nakashima and Paul Kane, *Wiretap Compromise in Works*, Washington Post at A3 (March 4, 2008).

Fordham Law School (February 20, 2008). I gave a talk on FISA modernization. No notes or transcript available.

Sentinel Society speech, New York Athletic Club, New York (January 24, 2008). I gave a talk on FISA modernization. No notes or transcript available.

AALS meeting in New York (January 4, 2008). I gave a talk on FISA modernization. No notes or transcript available.

ABA National Security Review (November 16, 2007). I spoke on a panel about surveillance law (substituting for Professor Jack Goldsmith). No notes or transcript available.

ABA breakfast talk, University Club, Washington, DC (September 27, 2007). I gave a talk on FISA modernization. Video available at <http://www.c-span.org/Watch/watch.aspx?MediaId=HP-A-7243>.

NCIX Counterintelligence and Cyber Threat Symposium, Park Hyatt Hotel, Washington, DC (October 19, 2007). I was part of a panel discussion on cyber issues. No notes or transcript available.

ABA National Security Forum, Washington DC (October 18, 2007). I was part of a roundtable discussion on detainee issues. The roundtable produced a pamphlet. I was listed as an "Observer" in the pamphlet: *The following individuals participated as observers in the workshop and the views expressed do not reflect the official policy or position of the Department of Defense, the Joint Staff, the Department of Army, the United States Marine Corps, the U.S. Coast Guard, the U.S. government, or the attorneys representing the litigants in these issues.*

FISA modernization Seminar, Georgetown University Law Center's National Security Center (September 10, 2007). I co-hosted this one-day seminar. No notes or transcript available.

Washington Post Editorial Board. I met with the members of this board to discuss FISA modernization (September 7, 2007). No notes or transcript available.

Federal Bar Council, New York. I spoke on a panel with David Kelley (former U.S. Attorney, SDNY) and Judge Keenan (former Judge of the FISC) (April 12, 2007). No notes or transcript available.

American University, Washington DC (March 19, 2007). I was part of a panel discussion on surveillance and other national security issues. No notes or transcript available.

ACS Convention (June 17, 2006). I was part of a panel discussion on surveillance. Audio available at <http://www.acslaw.org/node/3036>.

I spoke to the House Homeland Security Committee at its retreat held at the Wye River Plantation (March 2005). I gave an exegesis of the movie, *Day of the Jackal*. No notes or transcript available.

Kennedy School of Government, Fellows Program (October 3, 2004). I spoke at Vicki Divoll's class on national security. In 2007, I also spoke at Jim Baker's Fellows Program at the Kennedy School, and guest lectured at his class at Harvard Law School, but have not been able to verify the exact dates. No notes or transcript available.

ABA Program on White-Collar Crime, Lawyer or Snitch? The New Rules (March 4, 2004). I was part of a panel. No notes or transcript available.

ABA Program on the Foreign Intelligence Surveillance Act and the Courts: What the Recent Decision Means for Intelligence Intercepts (December 11, 2002). I was part of a panel. No notes or transcript available.

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify press interviews through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Katherine Shrader, *Bush Sees Legal Immunity for Telecoms*, Associated Press (August 31, 2007).

Tom Hamburger and Josh Meyer, *Loyalty to Bush, Cheney Shaped Policy and Advice*, Los Angeles Times (August 28, 2007).

Ellen Nakashima, *Telecom Firms Helped with Government's Warrantless Wiretaps*, Washington Post (August 24, 2007).

Matt Apuzzo, *Spy Court Gets New Home of Its Own*, Associated Press (August 21, 2007).

James Risen and Eric Lichtblau, *Concerns Raised on Wider Spying Under New Law*, New York Times (August 19, 2007).

Lead the Way, interview by Ethisphere Magazine regarding Time Warner's ethics and compliance program (date unknown but probably 2007).

Craig's Corner for Counsel: National Security, Metropolitan Corporate Counsel (July 2007).

I was interviewed by the producers of a PBS *Frontline* story on the NSA surveillance program in the summer of 2007, but was not part of the broadcast.

I discussed the post-September 11 environment with Eric Lichtblau in connection with his book, *Bush's Law*, and he sent me an e-mail based on that discussion on June 19, 2006. Similar material appears on pages 86-87 of the book.

Vanessa Blum, *Gonzales Mulls Need for Terror Reform*, Legal Times (June 3, 2005).

Eric Lichtblau, *A New Antiterror Agency is Considered*, New York Times (March 25, 2005).

National Public Radio, *FBI Investigates Gorelick Death Threats* (April 19, 2004). Audio available at <http://www.npr.org/templates/story/story.php?storyId=1842206>. I also recall speaking to ABC News on camera about this topic during this time period, but I could not find recordings of the interviews online; the gist of what I recall saying is consistent with views I later expressed in more detail in a law review article, *The Rise and Fall of the FISA Wall*, 17 Stan. L. & Policy Rev. 487 (2006), that is cited in part a, above.

National Public Radio, Secret Search Warrants (September 20, 2002). Audio available at <http://www.npr.org/templates/story/story.php?storyId=1150369>.

Since leaving government in May 2003, I have given briefings to members of the media on legal issues relating to national security, and also in connection with the publication of my book in August 2007, but these generally were not on the record and did not result in published accounts.

14. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, including the terms of service and whether you were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

- b. List all memberships and offices held and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an advisor to the campaigns of Senator Barack Obama and Senator Hillary Clinton in 2008.

15. Legal Career: Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to The Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit (August 1991 – August 1992).

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

United States Department of Justice (September 1992 – July 2000).

Attorney, Criminal Division, Appellate Section. During this period, I was also detailed to the U.S. Attorney's Office for the District of Columbia and spent several months prosecuting a series of cases in the United States District Court for the District of Montana.

United States Department of Justice (July 2000 – May 2003).

Associate Deputy Attorney General.

Time Warner, Inc. (May 2003 – present)

Senior Vice President and Deputy General Counsel (February 2006 – present).

Chief Ethics and Compliance Officer (November 2005-present). Formerly Vice President, Legal Department (May 2003 – February 2006).

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1992 through July 2000, I served as an attorney in the Criminal Division, primarily in the Appellate Section. At various times, I also worked on complex criminal trials, such as the trials of the Montana Freeman. In my first or second year of service, I performed a detail of approximately six months in the Office of the United States Attorney for the District of Columbia as a trial attorney in the misdemeanor section.

From July 2000 through May 2003, the character of my practice changed because I became an Associate Deputy Attorney General. I became involved in national security issues, both at the operational and policy levels. During this period, after the September 11, 2001 attacks, I also testified before (and briefed) Congress.

From June 2003 through November 2005, I spent almost all of my professional time managing Time Warner's inside and outside lawyers and others in defending AOL in a criminal investigation undertaken by the United States Attorney for the Eastern District of Virginia and a parallel SEC enforcement action, and related civil actions brought by various private parties. By November 2005, when I became Chief Ethics and Compliance Officer, Time Warner had settled those investigations with both the Department of Justice and the SEC, and had resolved many of the civil cases with the private parties.

From November 2005 through the present, I worked to improve and maintain Time Warner's ethics and compliance program, advised management and the Audit Committee regarding certain compliance issues, supervised and coordinated compliance teams at all of Time Warner's Divisions, and supervised outside counsel in individual matters falling under my purview as Chief Compliance Officer.

- ii. your typical clients and the areas, if any, in which you have specialized.

I have had two clients in my career: The United States (law enforcement and national security), and Time Warner (securities law, corporate law, ethics and compliance, litigation).

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:

- 1. federal courts;

From 1992-2000, virtually all of my practice was in federal trial and appellate courts and the Supreme Court (I spent six months as a prosecutor in the D.C. superior courts). I appeared in court frequently, handling trials and arguing appeals.

From 2000-2003, I spent almost no time on individual pieces of litigation, with the significant exception of the time I spent litigating the FISA wall and Patriot Act issues in the FISA Court and the FISA Court of Review, and other issues before those courts.

From 2003-2005, almost all of my time was spent managing a large criminal investigation in the United States District Court for the Eastern District of Virginia and a related SEC investigation, and working on related civil litigation brought by private parties, although I was not counsel of record and did not enter an appearance on behalf of Time Warner in court; my main role was to manage inside and outside counsel.

From 2005-present, I also have not appeared in court; a minority of my time is spent managing matters pending or threatened in federal court litigation.

- 2. state courts of record;

I have never spent significant time litigating in state court; some of my work at Time Warner involves matters that could arise in state court, or with state Attorneys General or other state regulatory or law enforcement entities.

- 3. other courts.

When I was Associate Deputy Attorney General, as noted above, I worked on matters in the FISA Court and the FISA Court of Review.

- ii. Indicate the percentage of your practice in

- 1. civil proceedings;

2. criminal proceedings.

At Time Warner, I am concerned with both civil and criminal proceedings. When I was at the Justice Department, I was focused almost exclusively on criminal (or national security) proceedings.

- d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 - i. What percentage of these trials were:
 - a. jury;
 - b. non-jury.

When I was in the U.S. Attorney's Office, I tried several misdemeanor jury trials and non-jury trials, typically in cases involving guns, drugs, and violent crime. Typically, I would be the sole prosecutor on these cases. It has been many years, and I cannot remember how many, but I would estimate a dozen jury trials and two dozen or more non-jury trials. When I was in the Criminal Division, I worked as part of a team of prosecutors on three trials of the Montana Freeman.

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never argued before the Supreme Court, but I contributed to writing merits briefs in the following cases when I was at the Department of Justice:

Jones v. United States, 99-5739

Felker v. Turpin, 95-8836

Carlisle v. United States, 94-9247

Libretti v. United States, 94-7427

Williamson v. United States, 93-5256

In addition, I contributed to writing certiorari petitions and/or briefs in opposition to certiorari petitions in many criminal cases when I was in the Criminal Division. The following are the certiorari petitions and briefs in opposition that I have been able to locate:

Ray v. United States, 92-5658

Aguirre v. United States, 92-5256

Locke v. United States, 92-6012

Spencer v. United States, 92-5006

Vasquez v. United States, 92-6091

Laboy v. United States, 92-6137 (not found)

Cook v. United States, 92-6339

Helton v. United States, 92-563

Lamman v. United States, 92-6592 (not found)

Meek v. United States, 92-6605

Eisen v. United States, 92-919

Morganti v. United States, 92-968 (not found)

Cheng v. United States, 92-1129

Fishman v. United States, 92-1222

Elliott v. United States, 92-9235

Hernandez v. United States, 92-7377

Staples v. United States, 92-1441

Saraff v. United States, 92-7641

Drake v. United States, 92-7978

Dean v. United States, 93-5224

DeLaGarza v. United States, 93-6098 (not found)

Green v. United States, 93-9105

Shields v. United States, 93-618

Reed v. United States, 93-6741

Coyne v. United States, 93-6627

Davis v. United States, 93-900

Byars v. United States, 93-7126

Vickery v. United States, 93-7477

Fonville v. United States, 93-7612

Hunnewell v. United States, 93-8037

Adams v. United States, 93-1348

Pierce v. United States, 93-8126

Bryant v. United States, 93-8463 (not found)

Gastiaburo v. United States, 93-8903

Freeman v. United States, 93-8967 (not found)

Bennett v. United States, 93-1508

Barnes v. United States, 93-8563

Gary v. United States, 93-9400

Wessels v. United States, 93-9021

Witherspoon v. United States, 94-5042

Reilly v. United States, 94-160

Russell v. United States, 93-9553

Hightower v. United States, 94-5881

Damerville v. United States, 94-5990

Trevino v. United States, 94-5294

Mitchell v. United States, 94-5499

Moore v. United States, 94-642

Napoli v. United States, 94-717

Ingram v. United States, 94-6500

Piper v. United States, 94-6876

Turner v. United States, 94-6776

Salcido v. United States, 94-7122 (not found)

Libretti v. United States, 94-7427

Blair v. United States, 94-7630

Wingo v. United States, 94-7980

Werth v. United States, 94-8196 (not found)

McCullough v. United States, 94-8314

Rutledge v. United States, 94-8769

Manarite v. United States, 94-1641

Tabas v. United States, 94-8845

Carlisle v. United States, 94-9247

Pierce v. United States, 95-6474

Williams v. United States, 95-6104 (not found)

Homrich v. United States, 95-6659

Delamotte v. United States, 95-5750

Cox v. United States, 95-5499

Breeland v. United States, 95-7025

Weir v. United States, 95-6393

Burden v. United States, 94-9255

Carlisle v. United States, 94-9247

Box v. United States, 95-5164

Corces v. United States, 95-1206

Breeland v. United States, 95-7025

Simon v. United States, 95-6966

Hunter v. United States, 96-5017

Jackson v. United States, 95-7436

Lowe v. United States, 95-1659

Salemo v. United States, 96-5539

Embrey v. United States, 96-7325

Durham v. United States, 96-7329

Zarnes v. United States, 96-1324

Tagbering v. United States, 96-8598

Rybar v. United States, 96-1738

Kirk v. United States, 96-1759

Sidali v. United States, 97-399

Jones v. United States, 97-6203

Davis v. United States, 97-7173

Romero v. United States, 97-6863

Spruill v. United States, 97-6467

Jones v. United States, 99-5739

Diaz v. United States, 99-6903

Flores v. United States, 99-6240

Farhad v. United States, 99-7127

Nesbeth v. United States, 99-8081

Kumar v. United States, 99-1283

Okolie v. United States, 99-1043

16. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. I briefed and argued before the Foreign Intelligence Surveillance Court in *In re All Matters*, 218 F.Supp.2d 611 (FISC 2002), and was the principal author of the briefs (but did not lead the oral argument – that was done by Ted Olson, Solicitor General) in the appeal of that decision before the Foreign Intelligence Surveillance Court of Review in *In re Sealed Case* 310 F.3d 717 (FISCR 2002). These cases concerned the FISA wall and the USA Patriot Act. The government lost in the FISC (where I argued the case) but won in the Court of Review (where Ted Olson primarily argued the case). The ACLU (and other groups) and the NACDL each filed briefs in the Court of Review (but did not appear at oral argument). The lead lawyer on the ACLU brief was Ann Beeson, ACLU, 1400 20th Street, NW, Suite 119, Washington, D.C., telephone 202-457-0800. The lead lawyer on the NACDL brief was John Cline, Jones Day, 555 California Street, 26th Floor, San Francisco, CA 94104, telephone 415-875-5812.

2. I was the principal author of the briefs, but did not argue, *United States v. McGuire*, 307 F.3d 1192 (9th Cir. 2002) (I participated in the trial for the government). This was an appeal from the prosecution of the Montana Freeman. The government prevailed on appeal. The judges on the panel were Circuit Judges Hawkins and Gould, and District Judge Ware (sitting by designation). The defense lawyers were Edmund F. Sheehy Jr., Cannon & Sheehy, 2801 Russell Street, Missoula, Montana 59801-8538, telephone (406) 549-8760; and Brian K. Kohn, Esq., 301 North 27th Street, Billings, MT 59101, telephone (406) 252-1269.

3. I briefed and argued *United States v. Prigmore*, 243 F.3d 1 (1st Cir. 2001) (I was not trial counsel for the government). This case involved charges of fraud in the manufacture of medical devices and oversight by the FDA. The government lost on

appeal. The judges on the panel were Circuit Judges Selya, Coffin, and Stahl. The lead defense lawyer was Richard Taranto, Farr & Taranto, Suite 800, 1220 19th Street, N.W., Washington, DC 20036-2435, telephone (202) 775-0184.

4. I briefed and argued *United States v. Holland*, 214 F.3d 523 (4th Cir. 2000) (I was not trial counsel for the government). This case involved an award of attorney's fees and costs to a criminal defendant under 18 U.S.C. § 3006A. The government lost on appeal. The judges on the panel were Circuit Judges Luttig and Motz, and District Judge Moon (sitting by designation). The defense lawyers were James C. Roberts, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point, Richmond, VA 23219, telephone (804) 697-1280; and Hunter W. Sims Jr., Kaufman & Canoles, 150 West Main Street, Post Office Box 3037, Norfolk, Virginia 23514-3037, telephone (757) 624-3272.

5. I briefed and argued *United States v. Lombera-Camorlinga*, 206 F.3d 882 (9th Cir. 2000) (en banc). This case involved application of the Vienna Convention on Consular Relations. The government won on en banc appeal. The judges on the en banc panel were Circuit Judges Hug, Browning, Schroeder, Boochever, Kozinski, O'Scannlain, Kleinfeld, Thomas, McKeown, Wardlaw, and W. Fletcher. The defense attorney was Benjamin Coleman, Federal Defenders of San Diego, Inc., 225 Broadway Street, Suite 900, San Diego, California 92101-5008, telephone (619) 234-8467.

6. I briefed and argued *United States v. Romero*, 189 F.3d 576 (7th Cir. 1999) (I was not trial counsel for the government). This case involved the kidnapping of a child, and the use of expert testimony at trial. The government won on appeal. The judges on the panel were Circuit Judges Ripple, Manion, and Evans. The defense lawyer was John L. Sullivan, Madgison and Sullivan, Chicago IL (I cannot locate his telephone number).

7. I briefed and argued *United States v. Bailey*, 123 F.3d 1381 (11th Cir. 1997) (I was not trial counsel for the government). This case involved convictions for fraud and firearms offenses. The government won in part and lost in part (on sentencing) on appeal. The judges on the panel were Circuit Judges Birch and Godbold and Senior District Judge O'Kelley (sitting by designation). The defense lawyer was Robert E. Sanders, Washington, DC, 7125 16th Street, NW, Washington, DC 20012, telephone (202) 723-2998.

8. I briefed and argued five cases involving the constitutionality under the Commerce Clause of the Child Support Recovery Act. In each, I was not trial counsel for the government and the government won on appeal. Those cases were as follows: (A) *United States v. Crawford*, 115 F.3d 1397 (8th Cir 1997). The judges on the panel were Circuit Judges McMillian, Henley, and Morris Shepard Arnold. The defense lawyer was Donald G. Kelly, Kelly, Townsend & Thomas, 137 St. Denis Street, Natchitoches, LA 71457-4635, telephone (318) 352-2353. (B) *United States v. Johnson*, 114 F.3d 476 (4th Cir. 1997). The judges on the panel were Circuit Judges Widener, Murnaghan, and Phillips. The defense lawyer was Dale Warren Dover, Suite 210, 228 S. Washington Street, Alexandria, VA 22314-5404, telephone (703) 519-0000. (C) *United States v. Bailey*, 115 F.3d 1222 (5th Cir. 1997). The judges on the panel were Circuit Judges

Politz, Smith, and Duhe. The defense lawyer was Henry Joseph Bemporad, Federal Public Defender's Office, 727 E. Durango Blvd., San Antonio, Texas, telephone (512) 229-6700. (D) *United States v. Mussari*, 95 F.3d 787 (9th Cir. 1996). The judges on the panel were Circuit Judges Noonan and Thomson, and District Judge Hagen (sitting by designation). The defense attorneys were David Lee Titterington and Sigmond G. Popko, Assistant Federal Public Defenders, 850 W Adams Street, Suite 201, Phoenix, AZ 85007, telephone (602) 382-2700. (E) *United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996). The judges on the panel were Circuit Judges Kelly, Logan, and Briscoe. The defense attorney was Timothy J. Henry, Federal Public Defender, 850 Epic Center, 301 N Main Street, Wichita, Kansas 67202-4800, telephone (316) 269-6445.

9. I briefed and argued *In re Grand Jury*, 103 F.3d 1140 (3d Cir. 1997) (I was not trial counsel for the government). This case involved the validity of an evidentiary privilege for parent-child communications. The government won on appeal. The judges on the panel were Circuit Judges Mansmann, Greenberg, and Garth. The defense lawyers were Gordon C. Rhea, Richardson, Patrick, Westbrook & Brickman, L.L.C., 1037 Chuck Dawley Boulevard, Building A, Mount Pleasant, SC 29464, telephone (843) 727-6656; Charles M. Oberly III, Oberly, Jennings & Rhodunda, P.A., 800 Delaware Avenue, P.O. Box 2054, Wilmington, DE 19899-2054, telephone (302) 576-2000; and George H. Seitz III, Seitz, Van Ogtrop & Green, P.A., 222 Delaware Avenue, Suite 1500, Wilmington, DE 19801, telephone (302) 888-7602.

10. I briefed and argued *United States v. Nevers*, 7 F.3d 59 (5th Cir. 1993) (I was not trial counsel for the government): This case involved a challenge to the constitutionality of the federal conflict-of-interest statute. The government won on appeal. The judges on the panel were Circuit Judges Johnson, Wiener, and DeMoss. The defense lawyer was George McCall Secrest Jr., Bennett & Secrest, L.L.P., The Neils Esperson Building, 24th Floor, 808 Travis Street, Houston, TX 77002, telephone (713) 757-0679.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) or whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

At Time Warner, apart from privileged matters, my responsibilities include the following:

- Oversee internal investigations, interactions with governmental enforcement authorities, and related matters, and report to senior management and the Board of Directors.

- Counsel senior management and the Board of Directors concerning legal risk in several areas, including acquisitions and dispositions, major transactions, quarterly financial certification, reporting and disclosure issues, and corporate governance and other requirements under the Sarbanes-Oxley law and NYSE listing requirements.
- Oversee company-wide ethics and compliance program, spanning Time Warner's seven operating divisions with offices in more than 50 countries.
- Manage the Legal Department's budget and related administrative and personnel matters as a member of the Legal Department's Operations Committee.

At the Department of Justice, apart from classified or privileged matters and litigation, my responsibilities included the following:

- developing and implementing national security law and policy, conducting oversight of the Intelligence Community, and representing the Department of Justice in the National Security Council and other inter-agency settings;
- briefing and testifying before Congress, in open and closed sessions, to support proposed legislation and respond to oversight requests;
- supervising national security wiretapping and related investigatory matters, including use of the Foreign Intelligence Surveillance Act of 1978 (FISA);
- devising and implementing an extensive national security curriculum and training program for more than six thousand FBI agents and Department attorneys who work on foreign intelligence matters.

18. Teaching: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have taught National Security Investigations and Litigation at Georgetown University Law Center (January – May 2008). I am teaching it again in 2009, but I have recruited two co-teachers in case I need to drop out if I am fortunate enough to be confirmed. The syllabus is attached. As explained in question 13, I have guest lectured at other law schools.

19. Deferred Income/Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in

the future for any financial or business interest.

I expect to be paid a bonus in 2009 by Time Warner for work performed in 2008. I also have stock options and restricted stock, some of which is already vested and some of which vests in early 2009. I receive small royalties from West for sales of my book. For additional detail, see attached SF-278 referred to in the answer to Question 21.

- 20. Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I am a Nonresident Senior Fellow at Brookings. This does not require any work, but I may have to resign under Brookings' conflict-of-interest policies. I am teaching at Georgetown now, but I have recruited two co-teachers in case I need to drop out if I am fortunate enough to be confirmed. I also expect to update my book (my co-author and I have done work on updates to the book, but the work is not yet complete).

- 21. Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978 may be substituted here.)

See attached.

- 22. Statement of Net Worth:** Please complete the attached net worth statement in detail (add schedules as called for).

See attached.

- 23. Potential Conflicts of Interest:**

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I could have a conflict of interest, or the appearance of a conflict, if the National Security Division becomes involved in litigation, e.g., concerning FISA, with AOL (or perhaps Time Warner Cable until its separation from Time Warner is complete), both of which are providers of communications services, at least until I have been paid my bonus or otherwise severed my financial ties to Time Warner.

I could have a conflict of interest, or the appearance of a conflict, with respect to prepublication review by the National Security Division of updates to my book under 28

CFR § 17.18. I would expect to ask the Deputy Attorney General, or another official who does not report to me, to conduct and/or supervise the review if necessary.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow governing rules concerning conflicts of interest and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

In recent years, my pro bono work consists primarily of writing, teaching, and speaking on issues of public policy, particularly national security, as detailed in question 13. Without compensation, I have taught (and am teaching) at Georgetown, and have guest lectured at other law schools, given talks, spoken on panels, and briefed and testified before Congress several times. I have written articles and a book, sometimes for no compensation and sometimes for little compensation. And I have spoken to members of the news media about unclassified national security legal issues in an effort to help make their stories more legally accurate.

Kris Family Statement of Net Worth as of December 31, 2008*

Assets

Cash on hand and in banks	45,332.00
U.S. Government Securities (see Schedule A)	301,287.00
Listed securities (see Schedule B)	393,163.00
Unlisted securities	0.00
Accounts and notes receivable	
Due from relatives and friends	0.00
Due from Time Warner (estimated contractual bonus earned in 2008, due to be paid in February 2009)	250000-350,000
Estimated Tax refund due from NY	20,000.00
Real estate owned (see schedule C)	2,416,640.00
Real estate mortgages receivable	0.00
Autos and other personal property (est)	273,785.00
Cash value - life insurance	0.00
Other assets (itemize)	
Retirement accounts	547,374.00
WilmerHale Capital Account	130,565.00
Education 529 Plans	42,448.00
Mortgage escrow balance	2,145.00
Vested stock options issued by Time Warner (see attached)	0.00
Unvested Restricted Stock issues by Time Warner (see Schedule D)	469,429.78

Total Assets

4,892,169 -
4,992,169**Liabilities**

Notes payable to banks - secured	0
Notes payable to banks - unsecured	0
Notes payable (as trustee) to trust (for benefit of a relative)	161211
Notes payable to others	0
Accounts and bills due	12220
Unpaid income tax	52600
Other unpaid income and interest	0
Real estate mortgages payable (see Schedule E)	443130
Chattel mortgages and other liens payable	0
Other debts	0
Total liabilities	669161
Net worth	4,223,008.00 - 4,323,008.00
Total liabilities and net worth	4,892,169 - 4,992,169

Contingent Liabilities**General Information**

As endorser, comaker or guarantor
On leases or contracts
Legal claims
Provision for federal income tax (est.)

0 Are any assets pledged	No
0 Are you a defendant in any suits or legal actions?	No
0 Have you ever taken bankruptcy?	No
52,600	

SCHEDULE A**U.S. Government Securities**

	Mkt val
Money Market US Treasury Cash Reserves, held in portfolio of David and Jody Kris at Welch & Forbes	288933
Money Market US Treasury Cash Reserves, held in portfolio of Hannah Kris Minority Trust at Welch & Forbes	8612
Money Market US Treasury Cash Reserves, held in portfolio of Audrey E. Kris Minority Trust at Welch & Forbes	3742
	301287

SCHEDULE B

Listed Securities

	Market Value of All Equities and Fixed income instrument
Welch & Forbes Account 756000529 (David and Jody Kris)	305392
Welch & Forbes Account 7550017963 (Hannah Kris Minority Trust)	11109
Welch & Forbes Account 7550024492 (Audrey Elizabeth Kris Minority Trust Account)	49412
Fidelity Investments (David Kris Time Warned vested stock)	27250
	393163

SCHEDULE C

Statement of Real Estate Owned

	Total value	Beneficial share held by David Kris
[REDACTED]	1166640	1166640
Partial Interest in [REDACTED]	5,000,000	1,250,000
Held in trust		
Total	6166640	2416640

Owned as tenants by the entireties by David Kris and Jody Kris
Last tax appraisal, January 1, 2008

Partial Interest in

Held in trust

Total

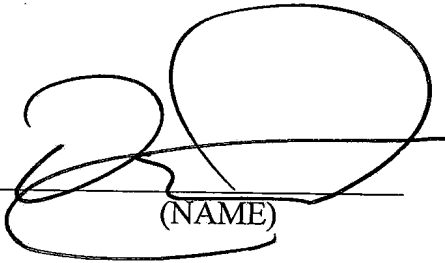
6166640 2416640

AFFIDAVIT

I, David S. Kris, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2-9-09

(DATE)


(NAME)


(NOTARY)
Comm. exp 8/14/2011