

Statement of

The Honorable Dianne Feinstein

United States Senator
California
February 25, 2009

Opening Statement
Senate Judiciary Committee Confirmation Hearing
for David Kris & Dawn Johnsen

I want to welcome everyone to this afternoon's confirmation hearing.

In today's hearing, we will hear from David Kris, who has been nominated to be the Assistant Attorney General for the National Security Division, and from Dawn Johnsen, who is nominated to head the Office of Legal Counsel.

These are both extremely important positions.

The National Security Division is the part of the Justice Department that handles all national security matters. It was created by Congress as part of the reauthorization of the PATRIOT Act in 2006, and it is responsible for:

?Investigating reports of terrorist activity,

?Prosecuting people who threaten our national security,

?Handling applications to the FISA court to conduct foreign intelligence surveillance, and

?Advising the Attorney General on intelligence issues and national security policy matters.

David Kris is a nominee who has both figuratively and literally "written the book" on national security.

He spent 11 years as a prosecutor in the Justice Department, and he knows its national security functions well.

During the Bush administration, he was the Associate Deputy Attorney General for national security, where he litigated national security cases and oversaw intelligence activities. When Congress considered merging the Department's national security functions under a single office, Kris was one of the experts consulted.

He is also the co-author of the most widely used legal treatise in this area. His book, titled National Security Investigations and Prosecutions, provides a step-by-step analysis of all of the law that governs government activity in response to terrorist threats. In addition to his expertise, Kris has received high marks for his commitment to the rule of law.

The Committee has received letters of support for this nomination from former officials like Larry Thompson, who was the Deputy Attorney General during the Bush administration, and from David Cole, a Georgetown Law Professor who has written extensively on civil liberties. Cole described Kris as "genuinely committed to protecting both security and liberty."

Another important endorsement letter came from Stewart Baker, who was the head of the NSA under the first President Bush and under President Clinton. He described Kris as an official who knows that the "rule of law is consistent with an aggressive pursuit of the national security interests of the United States."

By all accounts, Kris is a highly qualified nominee, and I look forward to hearing from him today.

Our second nominee, Dawn Johnsen, has similarly strong experience.

Professor Johnsen has been nominated to be the Assistant Attorney General for the Office of Legal Counsel. This office answers some of the government's most difficult legal questions and is responsible for providing objective legal advice to the entire Executive Branch.

Johnsen knows this Office well. She worked at OLC for five years during the Clinton administration and served as its acting head from 1997-1998. She knows its ins and outs, and will be ready from day one.

As has been well documented, OLC underwent a troubling transformation during the Bush administration. It became a rubber stamp for some of the administration's worst abuses of power.

This is the office that issued the "torture memo" in 2002, advising the President that interrogation techniques were not torture unless they inflicted pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

A month later, the office wrote that the President could use military force against Iraq without Congressional or international support, based in part on a new theory of "anticipatory self-defense."

In 2003, Jack Goldsmith, a respected conservative lawyer, came in to run OLC, but he found the problems so widespread that he resigned in less than a year, saying that he was "disgusted with the whole process."

Today, there are still over 35 secret OLC opinions from the 2001 to 2005 period that deal with important national security issues and that the Bush administration refused to release. One of these documents, for example, is believed to say that the Fourth Amendment does not apply to military operations on U.S. soil.

President Obama is well aware of these problems, and he has chosen Dawn Johnsen to restore the office to its position as the "conscience of the Justice Department."

Johnsen has already demonstrated that she has plans for reform. In 2004, she published a statement with 18 other former OLC officials called "Principles to Guide the Office of Legal Counsel." The statement lays out historical ground rules for how OLC should be run.

Let me read you just a few of these principles:

"OLC's advice should be thorough and forthright, and it should reflect all legal restraints, including the constitutional authorities of the . . . courts and Congress";

"OLC should maintain internal systems and practices to help ensure that OLC's legal advice is of the highest possible quality and represents the best possible view of the law"; and

"OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or disclosure."

These statements give me great confidence in Professor Johnsen, and I look forward to hearing more from her today about her plans for OLC.

I want to commend both Ms. Johnsen and Mr. Kris for their willingness to take on these critical positions at the Department of Justice.

I will now yield to the ranking member of this Committee, Senator Specter.