

The term “press” used in Richmond Newspapers would comprehend television in modern days. And certainly Justice Frankfurter’s use of the term “media” would comprehend television as well.

It is worth noting that Justices have frequently appeared on television. Chief Justice Roberts and Justice Stevens appeared on “Prime Time,” ABC TV. Justice Ruth Bader Ginsburg’s interview on CBS by Mike Wallace was televised. Justice Breyer participated in Fox News Sunday and a debate between Justice Scalia and Justice Breyer was filmed and available for viewing on the Web.

There is no doubt of the enormous public interest in what the Supreme Court does. When the case of *Bush v. Gore* was decided, the block surrounding the Supreme Court Chamber, just across the green from the Senate, was loaded with television trucks. Although the cameras could not get inside, there was tremendous public concern. The decisions of the Court are on all of the cutting edge issues of the day. The Court decides executive power, congressional power, defendants’ rights, habeas corpus, Guantanamo, civil rights, voting rights, affirmative action, abortion, and the list could go on and on.

In both the 109th and 110th Congresses, I introduced legislation calling for the Court to be televised. Twice it was reported favorably out of committee, but neither time did it reach the floor of the Senate. I intend to reintroduce the legislation and I intend to pursue it.

A number of Justices have commented about television. Justice Stevens said he favors televising the Supreme Court. He thinks, as he put it, “it is worth a try.” Justice Ruth Bader Ginsburg said she would support television and cameras as long as it was gavel to gavel. Justice Alito, in his Senate confirmation hearing, noted that when he was on the Third Circuit, he voted in favor of televising the proceedings, but had a reservation, saying if confirmed, he would want to consult with his colleagues about it. Justice Kennedy has said that he thinks televising the Court is inevitable. Chief Justice Roberts left the question open.

There is an obvious sensitivity in the Court if a colleague strenuously objects, and such a vociferous objection has been lodged by Justice Souter, who was quoted as saying, “I can tell you the day you see a camera come into our courtroom, it is going to roll over my dead body.” That is quite a dramatic statement. Justice Souter has announced his retirement. Perhaps in the absence of that strenuous objection, it is a good time for the Court to reconsider the issue.

I intend to ask Judge Sotomayor in her confirmation hearing whether she agrees with Justice Stevens that televising the Supreme Court is worth a try, whether she agrees with Justice Breyer that televising judicial pro-

ceedings is a valuable teaching device, whether she agrees with Justice Kennedy that televising the Court is inevitable. She can shed some light on the issue, because her courtroom was part of a pilot program where it was televised. There was a program from 1991 through 1994, where the Judicial Conference evaluated a pilot program conducted in six Federal district courts and 2 Federal circuits, and they found:

Overall, attitudes of judges toward electronic media coverage of civil proceedings were initially neutral and became more favorable after experience under the pilot program.

The Judicial Center also stated:

Judges and attorneys who had experience with electronic media coverage under the program generally reported observing small or no effects of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice.

I think that is a very solid step forth from some of the Justices who have expressed concern that the dynamics of the Court would be changed. With the ability to put a camera in a concealed position and the findings of the Judicial Center that is a solid argument in favor of proceeding and, to repeat, I will continue to press the issue; and the confirmation proceedings of Judge Sotomayor will be a good opportunity to ask her about her experience when she presided over the trial under the pilot program, and to further develop the issue and perhaps stimulate some more public interest.

I commend to the attention of my colleagues the report of the Judiciary Committee on the legislation I had introduced in the 110th Congress. I cite Calendar No. 907, Senate Report 110-448 to Accompany S. 344, “A Bill to Permit the Televising of Supreme Court Proceedings.” It is lengthy, but I think it has a good summary to supplement the remarks that I have made to acquaint the public with the issue and the importance of it.

SYRIAN AMBASSADOR

Mr. SPECTER. Madam President, I compliment the President for his decision to send an Ambassador back to Syria. I am a firm believer in dialog. I believe that even though we may have some substantial questions about Syria’s activities and Syria’s conduct, we ought to continue the dialog. I believe in the famous maxim that you make peace with your enemies and not your friends. The derivative of that would be to talk to people who may be adversaries—not that I necessarily put Syria in an adversarial position, and I certainly wouldn’t characterize them as an enemy. But the Ambassador was withdrawn 4 years ago as a protest to the assassination of former Lebanese Prime Minister Rafik Hariri.

The Security Council of the United Nations adopted a resolution on April 7, 2005, to establish an independent international investigating commission to inquire into all aspects of the

terrorist attack killing Prime Minister Hariri. That tribunal has faced considerable obstacles, but it is still in operation, and I think its report would be very important in making a determination as to who was responsible for the assassination of Prime Minister Hariri and whether Syrian officials were implicated in any way.

I do believe and have believed for a long time that Syria could be the key to advancing the peace process in the Mideast.

In connection with my duties as chairman of the Intelligence Committee in the 104th Congress and my work on the Foreign Operations Subcommittee of the Appropriations Committee during my tenure in the Senate, I have traveled extensively abroad and have concentrated on the situation in the Mideast. In connection with those travels, I have visited Syria 18 times and have studied the Syrian Government. I have gotten to know former President Hafez al-Asad, current President Bashar al-Asad, Foreign Minister Walid Mualem, who for 10 years was Ambassador to the United States and now is Foreign Minister.

It has long been my view that a dialog with Syria is very important. In December of 1988, I had my first meeting with Syrian President Hafez al-Asad, a meeting which lasted 4 hours 35 minutes. During the course of that meeting—President Hafez al-Asad was noted for his long meetings—we discussed virtually every problem of the world and every problem of the Mideast. It seemed to me from that meeting that President Asad was open to conversation. I have had many similar meetings with him. I was the only Member of Congress to attend his funeral in the summer of 2000. At that time, I met his successor, President Bashar al-Asad, and have gotten to know him, with meetings virtually every year in the intervening time.

There have been back-channel negotiations conducted through Turkish intervention between Israel and Syria, and I think dialog between the United States and Syria could promote future discussions between Syria and Israel. It would be my hope that the day would be sooner rather than later when Syria would be willing to talk to Israel directly. The Israeli officials, the Prime Ministers, have repeatedly stated their interest in direct conversations. Syria has resisted but has undertaken conversations through back channels. President Clinton came very close to effectuating—or made a lot of progress toward an agreement is perhaps more accurate to say—in 1995 when Prime Minister Rabin was in charge of Israel. In the year 2000, again, there was substantial progress made by President Clinton on those efforts. The back-channel communications brokered by Turkey suggest the time is right for promoting that kind of an effort.

Only Israel can make a determination as to whether Israel wants to give up the Golan Heights, which is key to

having the peace talks proceed. But it is a very different world today in the era of rockets than it was in 1967 when Israel captured the Golan Heights. Syria, obviously, wants the Golan back as a matter of national pride.

Former Secretary of State Kissinger told me that he found President Hafez al-Asad to keep his word on the negotiations for the disengagement in 1974, so that, obviously, any arrangements would have to be very carefully negotiated under President Reagan's famous dictum of "trust but verify."

It seems to me now is a good time to promote that dialog. The advantages would be if Lebanon could be stabilized. It is an ongoing question to the extent Syria is destabilizing Lebanon. The Syrian officials deny it. There is no doubt that Syria supports Hezbollah and Hamas, so that Israel could gain considerably if the weapons from Hamas were cut off and attacks from the south and Hezbollah were not a threat from the north.

The sending of an Ambassador is a very positive sign, a positive sign that Envoy former-Senator George Mitchell was visiting. I think this bodes well. The article I wrote in the Washington Quarterly some time ago sets forth in some greater detail my views on the issue of dialog.

I note my colleague has come to the floor, so I will conclude my statement and yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF HAROLD HONGJU KOH TO BE LEGAL ADVISER TO THE DEPARTMENT OF STATE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Harold Hongju Koh, of Connecticut, to be Legal Adviser of the Department of State.

The Senator from Missouri.

Mr. BOND. Madam President, I rise today to express my strong opposition to the nomination of Mr. Harold Koh to be the Legal Adviser to the Department of State. My concerns with Mr. Koh arise primarily from his own statements, writings, and testimony before Congress. In my opinion, he seems more comfortable basing his legal conclusions on partisan political opinions and trendy arguments rather than the facts and the law. We do not need more legal theorists in government. We need more legal realists in government, someone who pays attention to the hard work we do in this

body to pass laws. The Department of State and the country deserve better than that kind of advice.

Let me provide a few quick examples. On September 16, 2008, Mr. Koh testified before the Senate Judiciary Subcommittee on the Constitution. His written testimony included the following statement:

A compliant Congress repeatedly blessed unsound executive policies by enacting nominal, loophole-ridden "bans" on torture and cruel treatment and rubberstamping without serious hearings presidentially introduced legislation ranging from the PATRIOT Act to the Military Commissions Act to the most recent amendment of the Foreign Intelligence Surveillance Act.

In the same testimony, he argued that Congress should revisit the hastily enacted FISA Amendments Act with less emphasis on the issue of immunity for telephone and Internet service providers. He obviously was not paying attention.

Besides his condescending and inappropriate tone, I think his statements reflect a poor understanding of some of the most important pieces of national security legislation that have been passed since the September 11 terrorist attacks and passed on a bipartisan basis in both Houses.

As my colleagues may know, I was heavily involved in the legislative process surrounding the passage of the FISA Amendments Act. I can assure you that certainly was not the result of a congressional rubberstamp that was enacted hastily. We began working on the first one, the Protect America Act, debated it, and passed it in the summer of 2007. When we came back in the fall, the Senate Intelligence Committee went to work on a bipartisan basis, and we worked for months to get a truly bipartisan bill that came out of the committee. In that bill, we added many additional protections to American citizens to assure their rights would be protected from warrantless surveillance, even if they were overseas. We added that. And we added further protections. That bill passed the Senate. It went to the House, and it was stalled for months.

In the spring of 2007, I sat down with the Republican whip and the Democratic whip in the House of Representatives—STENY HOYER of Maryland and Mr. ROY BLUNT of Missouri. We went through and took account of all of the concerns they had on both sides in the House of Representatives. We worked with lawyers from the Department of Justice, from the intelligence community, and lawyers for the majority staff in the House of Representatives. It took us several months. What we finally came up with was a piece of legislation that overwhelmingly passed the House on a bipartisan basis and came back and passed the Senate on a bipartisan basis.

Another key aspect of the FISA Amendments Act was to ensure the intelligence community could continue to collect timely intelligence that could be used to prevent future ter-

rorist attacks. Another key aspect of the legislation was the carrier liability provisions that were designed to end frivolous litigation against companies alleged to have responded to requests for assistance from the highest levels of government. I don't know what planet Mr. Koh is living on, but if he thinks we can accept electronic communications without being able to give legitimate orders to the carriers of those communications, he doesn't understand the real world. That is where we find out what the terrorists' plans are, who the terrorists are, and where they are likely to strike. If we cannot say we are not going to have frivolous lawsuits against those who respond to lawful orders from the Federal Government, then we are not going to be able to have access to that information.

I am happy to report that earlier this month, the U.S. District Court for the Northern District of California, which had raised questions and entertained legislation, rejected the constitutional challenges to the carrier liability provisions and dismissed all but a few of the lawsuits involved in the multidistrict litigation. They found that, contrary to Mr. Koh, they were constitutional, and a well-reasoned opinion said they were right. A bipartisan majority in both Houses of Congress said they were right.

Let me be clear, the FISA Amendments Act was a necessary and important piece of national security legislation that is keeping us all safe. But despite the overwhelming bipartisan approval, apparently Mr. Koh does not see it that way. I urge my colleagues, even those who voted for cloture, to go back and think again, to see if legislation worked on for a year in this body on a bipartisan basis and passed by this and the other body should be dismissed as hastily approved.

In his book, he condemns the Democratic leaders in the Senate who played a leading role in making the improvements to the FISA Act. And to the Republicans, he condemned everybody who worked on it. Apparently, decisions need to be made in the Department of Justice, not through the elected will of those of us who represent the people of America. I think his charges and his disregard of Congress warrant a hard look at him.

Another example of Mr. Koh's partisan legal scholarship can be found in his May 2006 article in the *Indiana Law Journal*, where he wrote:

We should resist the claim that a War on Terror permits the commander in chief's power to be expanded into a wanton power to act as torturer in chief.

While that might appear to be a nice media sound bite in winning partisan plaudits, I think it is a bit premature to conclude that the United States illegally tortured detainees. We know the Department of Justice's Office of Legal Counsel reviewed the proposed interrogation procedures on several occasions and found them to be lawful. We in the Senate Intelligence Committee are