

STATEMENT OF HAROLD HONGJU KOH
NOMINEE FOR LEGAL ADVISER, U.S. DEPARTMENT OF STATE
SENATE FOREIGN RELATIONS COMMITTEE
April 28, 2009

Mr. Chairman, Ranking Member Lugar, and Members of the Committee:

I am honored to come before you today as the President's nominee to serve as Legal Adviser of the United States Department of State. I am deeply grateful to President Obama and Secretary Clinton for entrusting me with this challenging assignment. I would also like to thank Senators Dodd and Lieberman, from my lifelong home of Connecticut, and my friend of more than thirty years, Senator Russ Feingold of Wisconsin, for their friendship during this confirmation process.

Mr. Chairman, let me introduce my wife, Mary-Christy Fisher, my daughter Emily, my mother Dr. Hesung Chun Koh, my sister Professor Jean Koh Peters of Yale Law School, and my nephew Daniel Koh, who all join me here today. Only my son William could not be here, as he will soon enter exam period at his university. My family's love sustains me in all I do, and strengthens my resolve to do the very best job I can to serve our country.

Returning to government service would help me repay a debt for a life of opportunity that could only have happened in America. Sixty years ago, my parents, Dr. Kwang Lim Koh and Dr. Hesung Chun Koh, came to this country as students from South Korea. My father, an international lawyer, served South Korea's first freely elected government as its Permanent Representative to the United Nations and Charge d'Affaires in Washington. But when a military coup overthrew the South Korean government, my father refused to swear loyalty to a regime that did not respect human rights, democracy, and the rule of law. We took refuge here, and as we grew, my parents told us daily how lucky we were to live in America, a nation founded on these values. They urged me and my siblings – including my older brother Howard, who has just been nominated to be Assistant Secretary of Health in the Department of Health and Human Services – to serve our nation by upholding its principles.

During the summer that President Nixon resigned, I was a college student visiting Seoul. After someone tried to assassinate South Korea's president, army tanks rolled in the streets. I called my father and marveled that South Korea had never enjoyed a peaceful transition of government, even while the world's most powerful government had just changed hands without a shot. My father said,

"Now you see the difference: In a democracy, if you are president, then the troops obey you. But in a dictatorship, if the troops obey you, then you are president." It was the first time that I fully grasped what Chief Justice John Marshall meant, when he said that the Government of the United States is "emphatically ... a government of laws, and not of men."

My parents' teaching inspired me toward a career promoting America's commitment to law and human rights. After law school, I served as a law clerk for Justice Harry A. Blackmun and Judge Malcolm Richard Wilkey, and in both Republican and Democratic administrations: as an attorney at the Office of Legal Counsel in President Reagan's Department of Justice, and as Assistant Secretary of State for Democracy, Human Rights, and Labor under President Clinton. When I became a professor at Yale in 1985, the guiding themes of my teaching and scholarship became respecting human rights and the rule of law and preserving checks and balances. Since 1989, these ideas have also inspired the human rights work that I have pursued with my students. And during these past five years, these themes have been the driving principles of my time as Dean of Yale Law School.

My new assignment would continue these lifelong commitments. If confirmed, I would seek to provide the President and the Secretary of State with the very best legal advice possible and urge both our country and others to uphold the rule of law. As my professor, former Legal Adviser Abe Chayes once said: There is "nothing wrong" with a lawyer "holding the United States to its own best standards and best principles."

As America confronts a new set of global challenges, showing respect for international law and institutions will make us stronger and safer. As President Obama reminded us in his inaugural address, "earlier generations faced down fascism and communism not just with missiles and tanks, but with the sturdy alliances and enduring convictions." When Secretary Clinton recently appeared before this Committee, she called on American foreign policy to "use what has been called 'smart power,' the full range of tools at our disposal." To strengthen America's position of global leadership, commitment to the rule of law will be an essential element of American "smart power," and energetic diplomacy must go hand in hand with accomplished lawyering.

Having spent my career as a scholar and a government lawyer, I fully understand the difference between those two roles. For nearly thirty years, I have worked with the talented and dedicated attorneys from the Legal Adviser's Office, which I have always considered one of our government's very finest law offices, as

well as the preeminent international law firm in the world. And I firmly believe, as I have argued in my scholarship, that energy in the executive must be accompanied by genuine respect for the constitutional function of advice and consent and executive-legislative partnership in foreign affairs.

Mr. Chairman, if confirmed, I would be honored once again to take the oath to support and defend the Constitution of the United States. To me, those are not just words, but deeply held convictions. This country gave my family refuge, and gave me the chance to devote my life to promoting America's commitment to law and human rights. From my life experiences, I have learned several crucial lessons that I would bring to this task if confirmed: that obeying the law is both right and smart, for nations as well as individuals; that respecting constitutional checks and balances in foreign affairs defends our Constitution and leads to better foreign policy; and that making and keeping our international promises promotes our sovereignty and makes us safer.

Thank you. I now look forward to answering any questions that you may have.