

# THE GUY WHO'S ALWAYS RIGHT, HAROLD KOH, CHANGES HIS MIND

In her profile of Harold Koh's flip-flop on drones (and counterterrorism generally), Tara McKelvey shows that Koh joined the Administration with such certitude about his initial position—that drones were assassinations—he pissed everyone off.

"Everybody hated him," says Cartwright, describing how Koh would rip into him and other people: "He would say, 'Oh, you military guys, you're just so stupid.' "

One of Koh's key objections—and one of the obvious weak points in the Administration's current justification on drones—had to do with the difficulty in showing that drone targets presented an imminent threat.

Koh referred to President Bush as the nation's "torturer in chief" and told a *New York Times* reporter in December 2002 that the policy of targeted killings seemed to violate the government's longstanding ban on assassination: "The question is, what factual showing will demonstrate that they had warlike intentions against us and who sees that evidence before any action is taken?"

But now, after seeing a bunch of classified information that should not change the broad outlines of the law, Koh has decided they're not extrajudicial killings and assassinations after all. He denies this is a change in his opinion.

"I have never changed my mind," he says. "Not from before I was in the

government—or after.”

Sure, Koh is just one lawyer reviewing these questions, bureaucratically (though not morally, given Koh’s past comments on counterterrorism) a relatively minor one. But McKelvey’s portrait of Koh shows that what has remained unchanged about Koh are not his legal stances, but his certitude that he is correct, whatever his current legal stance.

Compare that with the thoughts of the guy who used to have Koh’s job, William Taft IV.

I ask Taft, “Why does the law matter when everyone thinks something is OK?”

“That is actually a deep question. When a human life is at stake, there needs to be a process for determining that a person can be executed or shot in an armed conflict,” he says. “Otherwise, we will have an individual just deciding that he wants to kill someone.”

“What if it’s the president?” I ask.

“Especially,” said Taft. “He’s the main person who might possibly have this authority, and you’ve got to watch it.”

We have a system that ensures that someone challenges the opinions of those, like Koh, who may be certain but may also be suffering from the tunnel vision of someone seeing the world of classified information our “democratic” government won’t share. It’s a process that guarantees all the very smart and unwavering in a belief in their own correctness have someone who challenges their certitude.

It’s called due process.

There’s a reason why the people who are certain they’re already right or the people who have unlimited power should not have the ability to approve the killing of someone else with no review. It’s because those people will be least

apt to question their own beliefs.