



Written by [Joe Wolverton, II, J.D.](#) on February 21, 2013

Lindsey Graham Puts a Number on the Drone War Death Toll

"He's a guy that was born in the United States, he radicalized Major Hasan, the guy at Fort Hood," Senator Lindsey Graham (R-S.C.) said. "He helped plan the underwear bomber attack that failed. He's been actively involved in recruiting and prosecuting the war for Al-Qaeda. He was found in Yemen and we blew him up with a drone. Good."

Graham (pictured) was referring to the murder of Anwar al-Awlaki by an American drone. Awlaki was an American citizen, accused by President Obama, Graham, and others of promoting radical Islam, aiding the cause of al-Qaeda, and, by extension, killing Americans.



None of these charges, however, were ever formally filed against Awlaki, and he was never afforded a right to defend himself in court, as required by the due process clause of the Fifth Amendment.

Apparently, when people are "bad," Lindsey Graham doesn't think the Constitution applies to them.

"I didn't want him to have a trial," Graham said of Awlaki. "We're not fighting a crime, we're fighting a war."

Graham reiterated this position during an [appearance on Fox News Sunday with Chris Wallace](#). When asked by Wallace if Senator Rand Paul (R-Ky.) was wrong to oppose the use of drones to kill American citizens, Graham responded:

I think the worst thing in the world is to have the courts decide who to target in the war on terrorism. Courts are not military commanders.

He insisted that the law of the United States gives the president that power as commander-in-chief of the military.

"We do need drones to patrol our borders, but I don't think you need a drone to attack an Al Qaeda operative inside the United States," Graham told Wallace. "I very much believe we're at war — and any American citizen who aids Al Qaeda should be treated as an enemy combatant not a common criminal."

Graham is wrong.

Those accused of "terrorism" can (and should) be tried in federal courts. For decades, in fact, those accused of terroristic crimes have been formally charged with those crimes, had those charges heard before an impartial federal judge, and been permitted to mount a defense to those crimes.

A survey of such trials conducted by [Human Rights Watch](#) reported that "Federal civilian criminal courts have convicted nearly 500 individuals on terrorism-related charges since 9/11."

Add to this the story of Timothy McVeigh, who was executed in June 2011 for the Oklahoma City



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bombing, the worst terrorist act on American soil until 9/11. Extending the full panoply of due process rights — including a trial in federal court — did not allow McVeigh or other convicted terrorists to evade justice. Furthermore, the purpose of protecting and providing civil liberties to those accused of crimes is not to set the guilty free, but to avoid punishing the innocent who are wrongly accused of crimes.

And should the president suggest that alleged evildoers cannot be apprehended, he should be reminded that “public enemy number one” Osama bin Laden was reportedly tracked and overtaken by a U.S. special operations team. Why could other less high-value targets not be similarly found by the military? Although bin Laden was reportedly killed in the raid, there is every reason to believe that a team skilled in this type of operation could have captured him alive if those had been the orders they were following. Once in the custody of the United States, these suspects could be brought to stand trial for their alleged crimes. This would preserve, protect, and defend the fundamental concept of due process, one of the pillars of liberty upon which our Constitution is built.

The constitutional preeminence of due process is found in *The Federalist Papers*, where [Alexander Hamilton warned against its violation in any form](#): “The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny.”

Next, Lindsey Graham is wrong to say that the United States is at war. The United States is not at war and hasn’t been legally at war since World War II. In this area and in so many others, Congress has surrendered its constitutional authority to declare war to the president.

As a result, the president can not only unilaterally decide when to put boots on the ground, but he has the final word on who is “bad” (known in the post-NDAA world as an “enemy combatant”) and when that person will be tracked, targeted, and assassinated by a drone.

That doesn’t bother Lindsey Graham, either.

“I support the president’s ability to make a determination as to who an enemy combatant is. It’s never been done by judges before. I support the drone program,” Graham declared.

During his [speech to the to the Easley Rotary Club on Tuesday](#), Senator Graham also revealed a quasi-official death count from the drone war.

“We’ve killed 4,700,” Graham said. “Sometimes you hit innocent people, and I hate that, but we’re at war, and we’ve taken out some very senior members of Al-Qaeda.”

This is the first time a number has put on the body count from the now decade-long drone program.

Although there have been no previous official estimates of the victims of drone strikes, private organizations have reported such calculations.

London-based [Bureau of Investigative Journalism](#), for example, estimates that between 3,072 and 4,756 people have been killed by drone in Pakistan, Yemen, and Somalia.

The Washington-based [New America Foundation](#) reports that the United States has carried out 350 drone attacks since 2004, the majority of which have been ordered by President Barack Obama since taking office in 2009. As for the death toll from this program, the foundation puts the range between 1,963 and 3,293, with at least 261 civilians among that number.



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When contacted by *The New American*, Graham's office refused to elaborate on the senator's comments, saying only that he stood by his statements.

Photo of Sen. Lindsey Graham: AP Images

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