

Questions for the Record from Senator Charles E. Grassley
Hearing on “‘Targeted Killing’ and the Rule of Law: The Legal and Human Costs of 20
Years of U.S. Drone Strikes”
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1. In your testimony, you describe a use of military force to clear an exit route for Yazidis fleeing from genocide in Iraq. These strikes could have saved thousands of lives. How are targeted strikes like these helpful to our mission to protect civilians? Is this the only examples of drone usage saving countless lives?

Drone strikes protect civilians, who are often targeted by terrorists, by removing terrorist leaders and operatives from the battlefield. Drone strikes also disrupt terrorist plotting – if terrorists are forced to play defense, it will be harder for them to play offense. Osama bin Laden himself acknowledged that the U.S. drone campaign against al Qaeda severely degraded the group’s ability to carry out terrorist attacks. Every terrorist plot that is foiled by a drone saves untold innocent lives.

2. Do terrorist organizations hide within civilian populations or utilize civilians as a shield from drone strikes?

Yes. Terrorists of all stripes – from ISIS to al Qaeda to Hezbollah to Hamas – routinely hide among innocent civilians, effectively using them as human shields in an attempt to deter strikes.

3. Would requiring certainty that no civilians are present in order to target a terrorist combatant incentivize terrorists to employ human shields?

According to media reporting, the United States normally requires that drone operators achieve “near certainty” that civilians would not be harmed by a drone strike before carrying out such a strike. This “near certainty” standard helps promote the United States’ strong legal and policy interests in avoiding, to the maximum extent possible, any unintended harm to innocent civilians. Drone operators might implement the “near certainty” standard by waiting to carry out a strike until a time when the target is observed to be far from civilians.

4. Are ISIS and Al Qaeda still targeting Americans at home and abroad?

Yes. ISIS and al Qaeda, and other terrorist groups as well, have long sought to conduct terrorist strikes against Americans and American interests across the globe.

5. Would ISIS and Al Qaeda members kill Americans if they could?

Yes.

6. It has been estimated that Afghanistan will become a terrorist safe haven from which attacks can be launched against Americans in a matter of months. Do you agree with this assessment?

Afghanistan is home to some of the world's most dangerous terrorist organizations, including an active ISIS affiliate and the Haqqani Network. In the absence of a U.S. military presence in or around Afghanistan to counter threats from these groups, it is likely that they will use the effective safe haven they enjoy in the country to reconstitute themselves and plot attacks against Americans and American interests. Terrorist groups in Afghanistan certainly have the intent to attack Americans, and with the removal of U.S. counterterrorism pressure it will be easier for them to pursue the capabilities to do so.

7. How can we protect ourselves from the threat of a resurgent ISIS and reconstituted Al Qaeda? Do drones have a role to play?

Counterterrorism must be a whole of government effort, with all tools of national power being mobilized to defeat our terrorist enemies. That means using economic sanctions to cut off the flow of money to terrorist groups. It means hardening our borders to prevent terrorists from infiltrating our country. It means prosecuting terrorists and their enablers in courts of law for the crimes they've committed. It means promoting narratives to counter terrorist radicalization and recruitment. And it means the judicious use of drones to remove terrorist leaders and operatives from the battlefield. Drones are not sufficient by themselves, but they are an important part of a balanced and integrated counterterrorism strategy.

8. The casualties associated with drones are disputed. See below:

In World War II, civilian deaths, as a percentage of total war fatalities, were estimated at 40 to 67 percent. In Korea, they were reckoned at 70 percent. In Vietnam, by some calculations, one civilian died for every two enemy combatants we exterminated. In the Persian Gulf War, despite initial claims of a vast Iraqi death toll, we may have killed only one or two Iraqi soldiers for every dead Iraqi civilian. In Kosovo, a postwar commission found that NATO's bombing campaign killed about 500 Serbian civilians, almost matching the 600 enemy soldiers who died in action. [...]

How do drones measure up? Three organizations have tracked their performance in Pakistan. Since 2006, Long War Journal says the drones have killed 150 civilians, compared to some 2,500 members of al-Qaida or the Taliban. That's a civilian death rate of 6 percent. From 2010 to 2012, LWJ counts 48 civilian and about 1,500 Taliban/al-Qaida fatalities. That's a rate of 3 percent.

The New America Foundation uses less charitable accounting methods. But even if you adopt NAF's high-end estimate, the drones have killed 305 civilians, compared to some 1,500 to 2,700 militants, which puts the long-term civilian death rate at about 15 percent. NAF's figures, like LWJ's, imply that the rate has improved: From 2010 to 2012, NAF's high-end civilian casualty tally is 90, and its midpoint estimate of dead militants is 1,410, yielding a civilian death rate of 6 percent.

The highest reckoning of noncombatant killings comes from the Bureau of Investigative Journalism. Since 2004, BIJ counts 473 to 893 civilian deaths, against a background of roughly 2,600 to 3,500 total killings. Using BIJ's high-end estimates, if every fatality other than a civilian is a militant, the long-term civilian death rate is 35 percent. Using BIJ's low-end estimates, the rate is 22 percent. But again, if you break down the data by year, they point to radical improvement. From 2010 to 2012, BIJ's count of 172 civilian deaths, against a background of 1,616 total fatalities, yields a civilian death rate of 12 percent.

In Yemen, NAF says drones have killed 646 to 928 people, of which 623 to 860 were militants. If you assume that everyone not classified as a militant was a civilian, that's a civilian death rate of 4 to 8 percent. LWJ's Yemen numbers are less kind: It counts 35 civilian deaths and 274 enemy deaths in 2011 and 2012, yielding a rate of 13 percent. BIJ hasn't tallied its Yemen data, but if you add up all the fatalities it counted as civilian in 2012, you get a civilian death rate of 10 to 11 percent. (For one strike last May, which several witnesses attributed to a plane, BIJ counts more noncombatant deaths than total deaths. If you don't include those fatalities in the drone column, the civilian death rate for 2012 is just 7 percent.)

You can argue over which of these counting systems to believe. But the takeaway is obvious: Drones kill a lower ratio of civilians to combatants than we've seen in any recent war.¹

See also:

[R]eports from local Pakistani organizations, and the Western organizations that rely on them, are [unreliable]: their numbers are frequently doctored by the Pakistani government or by militant groups. After a strike in Pakistan, militants often cordon off the area, remove their dead, and admit only local reporters sympathetic to their cause or decide on a body count themselves. The U.S. media often then draw on such faulty reporting to give the illusion of having used multiple sources. As a result, statistics on civilians killed by drones are often inflated. One of the few truly independent on-the-ground reporting efforts, conducted by the Associated Press last year, concluded that the strikes "are killing far fewer civilians than many in [Pakistan] are led to believe."

¹ William Saletan, *In Defense of Drones*, SLATE (Feb. 19, 2013), http://www.slate.com/articles/health_and_science/human_nature/2013/02/drones_war_and_civilian_casualties_how_unmanned_aircraft_reduce_collateral.html.

But even the most unfavorable estimates of drone casualties reveal that the ratio of civilian to militant deaths—about one to three, according to the Bureau of Investigative Journalism—is lower than it would be for other forms of strikes.²

- a. Testimony provided at the hearing suggested higher figures of civilian casualties than governmental estimates. Has any research or investigation been conducted to verify the authenticity and accuracy of nongovernmental reports?

I am not aware of any investigations that have verified or cast doubt on these nongovernmental reports.

- b. Even if the higher estimates were accepted, how do drones compare to other methods of warfare in terms of producing civilian casualties?

Drone strikes are one of the most precise forms of warfare ever devised, as they allow operators to subject targets to extensive surveillance, to carefully calibrate the lethal force that will be used in a strike to the circumstances, and to precisely direct such force at targets while avoiding unintended harm to civilians. Tragically, drone operators sometimes make mistakes, in which case transparency and accountability are of the utmost importance. The media reports quoted above suggest that the civilian casualties resulting from drone strikes, while undeniably tragic, are substantially lower than those that typically result from conventional warfare.

² Daniel L. Byman, *Why Drones Work: The Case for Washington's Weapon of Choice*, BROOKINGS (June 17, 2013), <https://www.brookings.edu/articles/why-drones-work-the-case-for-washingtons-weapon-of-choice/>.