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**OP-ED CONTRIBUTOR**

# Sometimes in War, You Can Put a Price on Life

**By Jon Tracy**

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LAST week the United States military compensated the families of 19 Afghans killed when a Marine Special Operations unit opened fire on a civilian crowd in March; the marines involved face charges for unlawful use of force. What did the Afghans receive? Just \$2,000 for each fatality, while the 50 people wounded in the same shooting got nothing but an apology from a Marine colonel.

Such cases are vivid reminders of what happens when soldiers at war run amok. As with the massacre of 24 Iraqi civilians at Haditha in 2005 and the rape and murder of a teenager and the killing of her family in Mahmudiya, Iraq, last year, prosecuting the soldiers is only the first step toward justice. Legitimate compensation and a real show of contrition must also be offered. In fact, there is a law authorizing such payments — the Foreign Claims Act — but the military continually fails to do the right thing.

The Foreign Claims Act was enacted in 1942 as the United States prepared to enter World War II. The first paragraph of the statute specifies that the purpose is to “promote and maintain friendly relations” with foreign civilians “through the prompt settlement of meritorious claims.”

From its inception, the act was intended to win the hearts and minds of the local population, a valuable tool in the military’s arsenal. Yes, many terrible things happen to civilians in war, and many are not the direct fault of combatants. But criminal acts should never be treated as just another part of

the business of war, and the act gives a method for the United States to accept financial and moral responsibility for atrocities committed by American troops.

It seemed that the Pentagon might be taking a step toward accountability this spring when it released documentation of civilian casualties in Iraq and Afghanistan (albeit only after the American Civil Liberties Union filed a Freedom of Information Act request). But as I examined the documents, my initial optimism again gave way to disappointment. The records — including hundreds of claims filed by families for the death and injury of loved ones — prove that the military's current policy is a failure.

I spent 14 months in Iraq as a military lawyer, adjudicating claims by Iraqis who had suffered combat- and noncombat-related injuries. We also used the Foreign Claims Act a few times to get financial compensation for wrongful acts by our troops. Clearly, atrocities like those at Haditha and Mahmudiya should have been addressed the same way. But thus far the Pentagon has not done so. In Haditha, the Marine Corps presented a \$38,000 “condolence payment” to the victims’ families — about \$1,500 for each Iraqi killed. In the Mahmudiya case, the family’s relatives got nothing, even though two American soldiers have pleaded guilty to the crimes.

A condolence payment — which is also what the money given to the Afghan families last week was labeled — is not the same thing as official compensation under United States law. The difference is substantial. Official compensation under the Foreign Claims Act acknowledges wrongdoing; a condolence payment explicitly denies wrongdoing, and the incident is considered, in effect, an accident of war. The Foreign Claims Act offers full compensation for the loss along the lines of what Americans can receive in civil court; condolence involves a nominal payment. But the military has conflated the two, giving condolence payments to the victims’ families even as it has investigated and punished wrongdoing by our troops.

In the files released to the A.C.L.U., compensation under the Foreign Claims Act was paid in only six cases of wrongful death, which in my experience is a shockingly small number. Imagine the feelings of the families in the rest of

the cases: they're devastated because a foreign soldier has brutalized a loved one, and then the military grossly insults them by offering a token sum with no acknowledgment of the egregious wrongs committed.

The Army's new counterinsurgency manual, which is the blueprint for the next stage of the Iraq war, places a strong emphasis on winning hearts and minds. Today's top brass should understand, just as their forebears did in 1942, that to allow injustice in the cases of American misconduct only breeds more resentment. Ignoring the Foreign Claims Act will only lengthen the time our troops will have to stay abroad. Offering honest compensation to the survivors may help the families of victims find forgiveness; more important, perhaps, it may give their neighbors, and all Iraqis, new respect for America's willingness to right its wrongs.

Jon Tracy, a former Army captain, was a judge advocate in Iraq in 2003-04.