

Did Defense Secretary James Mattis Commit War Crimes in Iraq?

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This article was first published in January 2017. Is “Mad Dog” James Mattis who is now in charge of the Pentagon a war criminal?

Retired Gen. James Mattis earned the nickname “Mad Dog” for leading U.S. Marines into battle in Fallujah, Iraq, in April 2004. In that assault, members of the Marine Corps, under Mattis’ command, shot at ambulances and aid workers. They cordoned off the city, preventing civilians from escaping. They posed for trophy photos with the people they killed.

Each of these offenses has put other military commanders and members of the rank and file in front of international war crimes tribunals. The doctrine that landed them there dates back to World War II, when an American military tribunal held Japanese Gen. Tomoyuki Yamashita accountable for war crimes in the Philippines. His execution later [was upheld](#) by the U.S. Supreme Court.

During the siege of Fallujah, which I covered as an unembedded journalist, Marines killed so many civilians that the municipal soccer stadium had to be turned into a graveyard.

In the years since, Mattis – called a “warrior monk” by his supporters – repeatedly has protected American service members who killed civilians, using his status as a division commander to wipe away criminal charges against Marines accused of massacring 24 Iraqi civilians in Haditha in 2005 and granting clemency to some of those convicted in connection with the 2006 murder of a 52-year-old disabled Iraqi, who was taken outside his home and shot in the face four times.

These actions show a different side of Mattis, now 66, than has been featured in most profiles published since his nomination as President-elect Donald Trump’s defense secretary, which have portrayed him as a strong proponent of the Geneva Conventions and an [anti-torture advocate](#).

Although Mattis argued against the siege of Fallujah beforehand, both international and U.S. law are clear: As the commanding general, he should be held accountable for atrocities committed by Marines under his command. Reveal from The Center for Investigative Reporting received no reply to messages sent to Mattis’ personal, business and military email addresses. Trump’s transition team likewise did not respond to inquiries. Mattis’ [biography](#) on the transition team’s website does not mention the battle.

There have been credible reports that U.S. troops under the command of Gen. Mattis did target civilians, conducted indiscriminate attacks and also conducted attacks against military objectives that caused disproportionate casualties to civilians during military operations in Fallujah,” said Gabor Rona, who teaches international law at Columbia University and worked as a legal adviser at the Geneva headquarters of the International Committee of the Red Cross at the time of the siege.

“All of these are war crimes,” Rona said. “Applying the doctrine of command responsibility, Gen. Mattis would be responsible for these misdeeds, these war crimes of troops under his command if he ... either knew, should’ve known or did nothing to prevent or punish this behavior.”

Nearly 13 years later, the siege of Fallujah has receded from the headlines. But for those of us who experienced the events firsthand, the death and destruction are seared into our memories. The lack of accountability for the killing of so many civilians grates like nails on chalkboard.

Given his command responsibility, Mattis’ confirmation hearing for defense secretary, which starts Thursday, provides an opportunity to probe his role in the killings, including asking whether he committed war crimes.

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I spent parts of three years in Iraq, covering the war as an independent, unembedded journalist, including work in and around Fallujah at the time of the April 2004 siege. The year before, in May 2003, I had spent \$10 to take a taxi from Baghdad to Fallujah and – as an American journalist armed only with a microphone – walked freely among the fruit and vegetable sellers, buying a Seiko watch with a fake leather band and sitting in on a Friday prayer to hear from Jamal Shakur, the city’s most strident and powerful imam.

Although AK-47s were being sold openly on the street and there already had been clashes with American troops, the imam urged nonviolence.

“Islam is a religion of peace,” he preached.

Do not confront the Americans, he said. Do not turn out to protest.

But as the U.S. government bungled the occupation, anti-American sentiment grew. Basic services such as electricity, knocked out during the initial invasion in March 2003, were not restored. Insurgent attacks increased, and along with them the number of civilians killed in American counterattacks. Thousands of Iraqis disappeared into Abu Ghraib prison, Saddam Hussein’s old lockup outside Baghdad, by then operated by the U.S. military.

A year later, Fallujah was destroyed by the Marines under Mattis’ command.



A day after the April 2004 siege of Fallujah was lifted, an Iraqi man surveys a shopping center destroyed by U.S. troops. (Credit: Eunji Kang)

Rotting bodies in Fallujah streets

More than 12 years later, I still remember the smell of bodies left to rot in the streets for weeks because they could be buried only after the Marines withdrew. Iraqi doctors told me that when they tried to bury bodies during breaks in the fighting, American snipers on rooftops would shoot at them.

“When you see a child, 5 years old with no head, what (can you) say?” Dr. Salam Ismael, the head of Iraq’s young doctors association, told me in Baghdad at the time. “When you see a child with no brain, just opened cavity, what (can you) say? Or when you see a mother just hold her child, still an infant, with no head and the shells all over her body.”



Iraqi volunteers in surgical masks pull a woman's corpse out of the front yard of a Fallujah home, where she was temporarily buried. (Credit: Eunji Kang)

My strongest memory of Fallujah came from the day the Marines withdrew from the city. On May 1, 2004, I watched as a team of volunteers wearing surgical masks pulled the rotting corpse of a middle-aged woman from a shallow grave in the front yard of a single-family home. The homeowner explained how the woman came to be lying dead in his yard.

An American warplane bombed her car as she fled the city with her husband, he said. The husband had been temporarily buried in the garden of the house next door, the charred remains of the car still visible a few yards from his front door.

The volunteers poured formaldehyde over the woman's body to cut the stench, then placed her on a gurney and took her away in a small pickup truck. I was struck by the sad, intense eyes of one boy – not more than 12 – helping with the operation. He didn't blink as he stood in the back of the open bed of the truck next to the body, which was covered with a white sheet.

The truck sped away. The boy was still standing, his hands on the side of the truck. In 10 minutes, he would be at the municipal soccer stadium helping bury the woman alongside hundreds of others who had died in the fighting.

Shooting at ambulances, refugee camp

Ismael told me Marines shot at his organization's ambulance twice while he was in it. One time, he said, he was trying to retrieve bodies for burial. The other time, he was trying to bring aid to civilians stranded in their homes.

"I see people carrying a white flag and yelling at us, saying, 'We are here, just try to save us,' but we could not save them because whenever we opened the ambulance door, the Americans would shoot at us. We tried to carry food or water; the snipers shoot the containers of food."

Proof often is elusive in a war zone. But that same week, British filmmaker Julia Guest showed me footage of a clearly marked ambulance, complete with blue flashing lights, riddled with bullet holes. The driver had a bandage around his head.

"It's very clearly an ambulance," she told me. "It's carrying oxygen bottles. The damage to the ambulance was such that two of the wheels are totally wrecked. ... They were left without an ambulance after that."

At the time, the Marine Corps did not deny it was shooting at ambulances, but it blamed insurgents. In a 2004 email, corps spokesman Lt. Eric Knapp told me that his forces had seen fighters loading weapons from mosques into ambulances.

"By using ambulances, they are putting Iraqis in harm's way by denying them a critical component of urgent medical care," he wrote. "Mosques, ambulances and hospitals are protected under Geneva Convention agreements and are not targeted by U.S. Marines. However, once they are used for the purpose of hostile intent toward coalition forces, they lose their protected status and may

be targeted.”

Both Ismael and Guest denied that the ambulances were used to ferry arms. Contacted for this story, Ismael, who now lives in England, still maintains that his ambulance should have been protected.

“We entered that area because we had been called for by civilians who were trapped,” he said.

The statement that ambulances were being used to smuggle arms was just one of the claims by Marine commanders that didn’t match up with what I heard on the ground from civilians and officials alike.

For instance, on one hand, the Marine Corps command consistently said it strategically targeted insurgent fighters. On the other, an official with the Iraqi Red Crescent Society told me outside Baghdad that the aid agency had to move a camp for civilians fleeing the violence because the U.S. kept shooting at it.

Civilians repeatedly told me they were targeted by Marine snipers who had taken up positions at high points around Fallujah, too. One 11-year-old boy, Yusuf Bakri Amash, said a sniper killed his best friend.

“Ahmed was in my class,” he said. “He was younger than me. He was standing next to the wall of the secondary school and was trying to cross the street. He was hit by a bullet. The American troops fired the bullet.”

Through it all, Mattis’ top deputies downplayed the number of civilian casualties. In one statement, Lt. Col. Brennan Byrne [told reporters](#) that 95 percent of the casualties were “military-age males.”

“The Marines are trained to be precise in their firepower,” Byrne said when confronted with an Associated Press report that 600 Iraqis had been killed, with many buried in a mass grave at the soccer stadium. “The fact that there are 600 goes back to the fact that the Marines are very good at what they do.”

In New York, a senior official with the United Nations Commission on Human Rights [requested an independent inquiry](#), citing reports that 90 percent of the people killed in Fallujah were noncombatants. The investigation never occurred. An [official Marine Corps history](#) of the battle later would put the number of civilian deaths in the first two weeks of fighting alone at 220.

Mattis initially opposed attack on Fallujah

The official Marine Corps history says Mattis was against the assault on Fallujah, reporting that he argued, presciently, “that a large-scale operation would send the wrong message, unnecessarily endanger civilians, and ultimately fail to achieve the primary objective” of apprehending the insurgents who had [killed four Blackwater security contractors](#).

But once it began, the official history says the Marines reporting to him carried out the

assault “in a state of confusion.” U.S. military veterans of the siege, who I’ve talked to since, describe ever-shifting rules of engagement with a self-defense provision that they were encouraged to stretch to the limit.

Adam Kokesh served as a sergeant in Fallujah during the April siege. I met him four years later, in 2008, when he was one of 36 veterans who spoke at a Winter Soldier gathering of antiwar veterans in Silver Spring, Maryland. There, veterans disclosed atrocities they perpetrated or witnessed in the wars in Iraq and Afghanistan.

At the gathering, Kokesh showed a trophy photo of himself next to a car with an Iraqi man killed by Marines at a checkpoint he staffed. He said the Marines in his unit took turns taking pictures with the dead Iraqi, who had been killed in a hail of machine-gun fire.



Marine Sgt. Adam Kokesh poses for a so-called trophy photo with a car that Marines shot up at a checkpoint, killing the Iraqi driver in the hail of machine-gun fire. (Credit: Courtesy of Adam Kokesh)

According to Kokesh, a whole group of Marines “unloaded into the vehicle with a .50-caliber machine gun,” even though the car was still far away.

“The bullets started at the bumper and went up through the engine compartment, and then one round at least hit this Iraqi in the chest so hard that it broke his chair backwards, and we saw the vehicle burning in the distance,” he said. “Everybody tried to justify it and said, oh, they heard rounds cooking off in the fire, AK-47 rounds were bursting in the trunk or somewhere in the car. And they dragged the car into the area where we were sleeping the next day. And we didn’t even question that, but it was clear that there were no ... holes from rounds that were cooking off in the side of this car.”

Kokesh also described how at one point during the siege, he and other men commanded by Mattis stood on a bridge over the Euphrates River and allowed women and young children to

flee Fallujah but pushed back all males 14 and older.

“It took me a long time before I could think about what a horrible decision we were forcing these families to make,” he said. They “could split up and leave their husband and older sons in the city and hope a Spectre gunship round doesn’t land on their head, or stay with them and hunker down and just hope they made it through alive.”



After the Marine Corps allowed women and children under 14 to flee Fallujah, but forced male civilians to stay behind, women pray for their loved ones behind barbed wire that troops had set up, cordoning off the city. (Credit: Eunji Kang)

Press on, Mattis said, as ire mounted

The decision to allow only some civilians to flee the city, which I witnessed – and [other media covered](#) as well – occurred when then-Maj. Gen. James Mattis was sent in to negotiate a ceasefire following tremendous blowback from across Iraqi society about the mounting number of civilian casualties.

The Iraqi army had [refused to fight alongside](#) Mattis’ Marines, while members of the hand-picked Iraqi Governing Council threatened to quit. The U.N.’s envoy, Lakhdar Brahimi, threatened to resign.

“Collective punishment is certainly unacceptable and the siege of the city is absolutely unacceptable,” Brahimi [said](#) at the time.

But Mattis wanted to keep fighting. In his book “Fiasco,” military journalist Thomas E. Ricks writes that Mattis was against the negotiations and the ceasefire.

“If you’re going to take Vienna, take fucking Vienna!” Ricks quotes Mattis as snarling to Gen. John Abizaid, then-head of U.S. Central Command.

Mattis eventually negotiated an end to the assault, which turned over control of the city to an Iraqi-run “Fallujah Brigade” [commanded](#) by a former general in Saddam Hussein’s army, who sported a beret and wore a thick Baathist mustache. The settlement did not deliver the strategic objective announced when the assault began, namely that the killers of the four Blackwater security contractors be apprehended.

Years later, Mattis referred to the withdrawal from Fallujah as one the toughest orders he ever had to follow.

Credit: [Sgt. Tony Nardiello](#), [Headquarters Marine Corps](#), Defense Department

“It was a difficult decision,” he said in a Marine Corps interview [posted in October](#). “It was a decision taken for reasons that had nothing to do with the tactical situation on the ground.”

“I was concerned to a degree that the Marines would lose confidence in their leadership,” he added, noting that sailors and Marines under his command had lost comrades in the assault.

“But they didn’t,” Mattis said, recalling a slow-talking gunner who sat for a television interview and told the reporter that he wasn’t troubled by the order to pull out of Fallujah. Mattis quotes the Marine as saying: “Doesn’t matter, we’ll just hunt ‘em down somewhere else and kill ‘em.”

Mattis ordered wedding party carnage

As the summer of 2004 began and it was clear that Fallujah had become a haven for insurgents, Mattis again was sent in to negotiate. Those talks failed and that November, Marines would return and, in an [even bloodier siege](#), take the entire city.

By then, Mattis was back in the U.S., having been promoted to lieutenant general and assigned to the Marine Corps Combat Development Command in Quantico, Virginia.

But before Mattis’ command in Iraq ended, he was involved in another controversial incident. On May 19, less than three weeks after his forces pulled back from Fallujah, Mattis personally authorized an attack on a wedding party near the Syrian border. The Iraqi government said the strike left 42 civilians dead, including at least 13 children.

The killings roiled Iraq, coming so soon after the carnage of Fallujah – but Mattis stood by his action, arguing the dead were insurgents.

“How many people go to the middle of the desert ... to hold a wedding 80 miles from the nearest civilization?” [he told The Guardian](#). “These were more than two dozen military-age males. Let’s not be naive.”

A few days later, the Associated Press obtained a videotape of the event. In it, a dozen white pickup trucks sped through the desert, escorting a bridal car decorated with colorful ribbons. The bride wore a white dress and veil and was ushered into a house by a group of women, while men reclined “on brightly colored silk pillows,” [the AP reported](#), “relaxing on the carpeted floor of a large goat-hair tent as boys” danced to tribal songs.

The video did not capture the strike itself, but soon after the footage was taken, the AP reported many, including the wedding videographer, were dead.

Mattis later told military historian Bing West that it had taken him less than 30 seconds to deliberate whether to bomb the location.

Exonerations for Haditha massacre

In media reports since Donald Trump's nomination of Mattis for defense secretary, the now-retired general consistently has been portrayed as the adult in the room, a veteran military man beloved by his fellow Marines. He's seen by many as a steady, well-read leader in a group that includes a national security adviser, Michael Flynn, who believes that [Islam is not a religion](#) and [wrote in a book](#) published last year that America already was "in a world war against a messianic mass movement of evil people."

"There's no doubt," Flynn wrote, that the Islamic State is "dead set on taking us over and drinking our blood."

These observers took heart, for example, when Trump emerged from a meeting with Mattis in November and reported that the general had argued against waterboarding, an interrogation technique broadly condemned as torture, which Trump embraced during his campaign.

"I've never found it to be useful," [Trump quoted Mattis as saying](#). "I've always found, give me a pack of cigarettes and a couple of beers, and I do better with that than I do with torture."

But my experience as a journalist reporting on Mattis' assault from the perspective of Iraqi civilians gave me insight into another side of the general, a man who was willing to look the other way – and even authorize attacks on civilians – when there were "fighting-aged males" nearby. While he has many aphorisms about the importance of international law and the Geneva Conventions, in the battle of Fallujah, his Marines were not sanctioned.

This pattern becomes even clearer when you look at Mattis' behavior once he returned to the U.S. and was promoted to general in charge of all Marine forces serving Central Command.

It was there where he used his position in the Marine Corps' justice system to wipe away charges against [three Marines charged with the murder of 24 civilians in Haditha](#), often called the [My Lai massacre](#) of the Iraq War.

[Time magazine](#) broke the story in March 2006, four months after the killings. Reporter Tim McGirk wrote that after a popular member of their unit was killed by a roadside bomb, a group of Marines "went on a rampage in the village ... killing 15 unarmed Iraqis in their homes, including seven women and three children." Marines also shot up a car and killed a man running on a ridge. The total number of civilian dead was 24, including a man in a wheelchair.

The Marines Corps initially did not investigate the attack because no one on the ground reported it. A subsequent [Department of Defense inquiry](#) found Naval Criminal Investigative

Service agents arrived on the scene only after Time published its exposé. Another military investigation by Army Maj. Gen. Eldon A. Bargewell found that the entire Marine Corps chain of command in Iraq ignored obvious signs of serious misconduct.

“All levels of command tended to view civilian casualties, even in significant numbers, as routine and as the natural and intended result of insurgent tactics,” [Bargewell wrote](#). “Statements made by the chain of command during interviews for this investigation, taken as a whole, suggest that Iraqi civilian lives are not as important as U.S. lives, their deaths are just the cost of doing business, and that the Marines need to get ‘the job done’ no matter what it takes.”

Mattis, then a lieutenant general stationed at Camp Pendleton, California, became the “convening authority” for the court martial – giving him ultimate authority of justice in the case. In that role, he took the rare step of writing public letters to Marines accused of murder, exonerating them for their roles in the massacre.

In [his letter](#) wiping away murder charges against Lance Cpl. Justin Sharratt, who stood accused of killing three Iraqi men in a home, Mattis referenced Supreme Court Justice Oliver Wendell Holmes Jr., who served as an infantryman in the Civil War, saying,

“Detached reflection cannot be demanded in the face of an uplifted knife.”

“You have served as a Marine infantryman in Iraq where our Nation is fighting a shadowy enemy who hides among the innocent people, does not comply with any aspect of the law of war, and routinely targets and intentionally draws fire toward civilians. As you well know, the challenges of this combat environment put extreme pressures on you and your fellow Marines,” Mattis wrote. “With the dismissal of these charges you may fairly conclude that you did your best to live up to the standards, followed by U.S. fighting men throughout our many wars, in the face of life or death decisions.”

After Mattis dismissed charges against three Marines, the cases against the others collapsed. In the end, only the alleged ringleader, Staff Sgt. Frank Wuterich, was held accountable, though his sentence did not include a day in prison. In 2012, more than six years after the massacre, Wuterich pleaded guilty to dereliction of duty, and, as punishment, his rank was reduced to private. [He told the court](#) that he regretted telling his men to “shoot first and ask questions later.”

Mattis has his defenders – and critics

Today, the prosecution of Marines involved in the Haditha massacre is widely seen as a debacle, said Gary Solis, a former Marine Corps prosecutor who teaches a course at the Judge Advocate General’s Legal Center and School called “Losing Haditha.”

But Solis, like other observers, doesn’t blame Mattis, saying he was hamstrung by inexperienced prosecutors. Compounding matters further was the lack of good evidence, the result of the initial failure of Marines on the ground to report the killings. Marine prosecutors also wasted three years [fighting CBS in court](#), trying to get the network to provide unreleased footage from a “60 Minutes” broadcast, Solis said, during which time memories faded and witness statements changed.

“I think so highly of Gen. Mattis,” Solis said, putting primary blame for the killings on the nature of the Iraq War itself. “Whenever you are involved with armed opposition groups who don’t identify themselves, civilians are going to die by the carload.”

Other observers, including Gabor Rona, the former attorney for the International Committee of the Red Cross, said Mattis’ actions in the Haditha aftermath deserve renewed scrutiny with his nomination as defense secretary.

“Mattis’ role in whitewashing, if in fact that’s what he did, would be a war crime under international law, and analogous to what we prosecuted and executed Yamashita for,” he said, referring to the Japanese World War II general.

Indeed, Haditha was not the only time that Mattis used his command authority to clear Marines in a war crimes case. He also granted clemency to three Marines convicted in the 2006 killing of a disabled Iraqi man in Hamdania, freeing them from prison.

The Washington Post reported that a group of Marines went into the home of a 52-year-old disabled Iraqi with a metal bar in his leg, pulled him out and [shot him in the face four times](#). The Marines then tried to frame him by planting a machine gun and shovel at the scene, to make it look as though he were an insurgent digging a roadside bomb. Eight servicemen initially were convicted and jailed; a year later, all but one had been released.

Among the three freed by Mattis was Lance Cpl. Robert Pennington, who [had pleaded guilty](#) to conspiracy to commit premeditated murder and kidnapping and was sentenced to eight years.

Faded Iraq War memories

Nearly 13 years have passed since the April 2004 siege of Fallujah. More than a decade has gone by since the Haditha massacre. The murder of a disabled man in Hamdania is nearly as old.

So much time has passed, in fact, that an inquiry to the Marine Corps press office for details of service member prosecutions related to the Fallujah siege was met with confusion. I was routed in sequence to the Marine Corps History Division, the Office of the Judge Advocate General of the Navy and eventually back to the Marine Corps’ main public affairs desk.

I told each officer I encountered that I was not aware of anyone being held accountable for atrocities, but wanted to be sure before I said so in a story.

After two weeks of phone calls and emails, a Marine spokeswoman, Lt. Danielle Phillips, offered this answer: I would have to submit a Freedom of Information Act request. The events simply were too long ago, she said.

Many of the international law experts contacted for this story likewise had forgotten the details, and I had to jog their memories with photographs, audio recordings and government documents.

With James Mattis’ nomination on the horizon, some suggest senators should press him

about his actions as commanding general of one of the war's bloodiest battles and his subsequent role in exonerating servicemen found guilty of war crimes.

At his confirmation hearing, senators should "ask about the high numbers of civilian casualties and whether there was adequate oversight and accountability," said Beth Van Schaack, a law professor at Stanford University who served as deputy to the ambassador-at-large for war crimes issues in the Obama administration.

Mattis also should be asked about his "personal role as commander over subordinates who committed what appear to be war crimes against Iraqi civilians by targeting civilians or using indiscriminate force that insufficiently verified whether the targets were civilians or combatants," Van Schaack said. "How did he supervise his troops, and what measures did he take after the fact?"

Gabor Rona, the former legal adviser to the International Committee of the Red Cross, said senators should remind Mattis that commanders in Yugoslavia and Rwanda have been convicted in international war crimes tribunals for failing to prevent or punish lower-ranking war criminals, a doctrine also recognized in U.S. law through Yamashita's case and enshrined in the Department of Defense Law of War Manual.

"Troops are between a rock and a hard place," Rona said, "obligated to follow orders but also obligated to disobey manifestly unlawful orders" such as mistreatment of civilians or captured combatants.

Mattis' hearing, he said, offers Congress an opportunity to put commanders on notice that they have a duty to prevent and punish abuses committed by their troops.

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