

4. As an editor, would you be more likely to run a photograph of someone being murdered if the event happened in your own community, or if it happened thousands of miles away and none of your readers would be likely to know the victim or his family?
5. Do you see any distinction in:
  - a. whether a violent photo is run in color or black and white?
  - b. whether it is run on the front page or on an inside page?

## Macro Issues

1. Is aesthetic, dramatic, or photographic value ever reason enough to run a picture, regardless of how intrusive it may be or how it may violate readers' sensitivities?
2. Is it your responsibility as an editor to find out if a photographer could have saved a life by intervening in a situation rather than taking pictures of it? Is that information you need to share with your readers?
3. Is it your responsibility as an editor to find out if the presence of the camera at the scene in any way helped incite or distort an event? Is that information you need to share with your readers?
4. When dramatic photographs are printed, how important is it for readers or viewers to be told all the background of the story or situation?

## CASE 8-F

### PHOTOGRAPHING FUNERALS OF FALLEN SOLDIERS

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**Editor's note:** *In 2012, the war in Afghanistan became the longest-running war in US history, and that August was one of the bloodiest months in the history of that conflict. With American soldiers dying weekly, the case below about their funerals is repeated across the nation.*

On May 11, 2004, an improvised explosive device struck the vehicle in which Army Spc. Kyle Adam Brinlee, 21, was riding in Iraq. He was killed in the explosion, the first combat-related death of an Oklahoma National Guard member since the Korean War. On May 19, more than 1,000 people gathered in the Pryor (OK) High School Auditorium for his funeral. Guests included the governor of Oklahoma, who spoke

at the ceremony. Members of the media were allowed to attend but confined to a sectioned-off area. Most of the media were reporters from Oklahoma City and Tulsa media outlets.

In attendance also was photographer Peter Turnley, who was shooting a photo essay for *Harper's Magazine*. It was to be the first of four "major eight-page photo essays" of Turnley's work that *Harper's Magazine* would showcase in 2004, according to a press release on the National Press Photographers website. Turnley was a well-known photographer whose work had been on the cover of *Newsweek* more than 40 times according to Turnley's own website. His photos had appeared in such publications as *Life*, *National Geographic*, *Le Monde*, and *The London Sunday Times*, among others. He had also covered wars in such locations as Rwanda, South Africa, Chechnya, Haiti, Afghanistan, and Iraq.

In August 2004, three photos from Brinlee's funeral appeared in *Harper's* in a photo essay entitled "The Bereaved: Mourning the Dead in America and Iraq." The essay focused on both American and Iraqi funerals with several pictures of grieving families, a photo of doctors unable to save a 10-year-old Iraqi boy, and a stark scene of Iraqis passing by a corpse lying on the street in Baghdad. In an interview given before the essay was published (Winslow 2004), Turnley said, "This first essay speaks in images about a very important theme touching our world today in a way that I don't think has been seen much before elsewhere."

One of the photos shows Brinlee in an open casket at the rear of the auditorium with several mourners still seated in the background. As of 2018, this photo does not appear on a website of all the Turnley photo essays for *Harper's Magazine*. It was not available for printing in this book, but can be found on page 47 of the August 2004 edition of the magazine.

Brinlee's family filed suit against Turnley and the magazine claiming a variety of torts including intentional infliction of emotional distress, invasion of privacy, and unjustly profiting from the photos. In their filing, the family claims that despite the large crowds in a public school, the funeral was a "private religious ceremony." They added that the photos went "beyond all bounds of decency."

The family claimed that Turnley had been told by the funeral director to abstain from photographing the body of the soldier. In a response to the court, Turnley denied he had received the instructions and claimed the body was placed near the media section for access. In a later interview with CNN, Turnley claimed, "It seems to me that the responsibility of a journalist today is to tell as much as possible about the true realities of what is taking place in the world. My desire is to simply

try to dignify the reality of what people experience in war by showing the public what does happen there.”

“The casket was open for friends and family—not to gawk at and take pictures and publish them. Not for economic gain,” the lawyer for the family argued in an interview with the Associated Press.

The family sought \$75,000 in actual damages on complaints including publication of private facts, appropriation of Brinlee’s photo for commercial purposes and intrusion. In December 2005, a federal judge ruled that the family privacy was not invaded by the photos. “[P]laintiffs appear to have put the death of their loved one in the public eye intentionally to draw attention to his death and burial,” Judge Frank Seay ruled in granting summary judgment to the media defendants. Elsewhere in the ruling, Seay pointed out that the plaintiffs lost their right to privacy during the funeral by choosing to publicize the event.

*Harper’s Magazine* publisher John R. MacArthur echoed the ruling of the judge. “For me, from the beginning, it was a First Amendment issue and it was also a matter of our integrity. I have not met anyone yet who thought that photograph was disrespectful in any way.”

### Micro Issues

1. Can a funeral that is held in a public place be considered a private event?
2. Does it make a difference that Turnley and other media were given permission to attend the funeral?
3. Does it make a difference that the photos taken were of images in plain view of those attending the funeral?

### Midrange Issues

1. Is newsworthiness a legal defense to the claim of invasion of privacy? Is it an ethical defense?
2. Does the fact that the family allowed media coverage of the funeral prevent them from suing for the distress that the Turnley photos allegedly caused? If the family had not allowed media coverage of the funeral, would your opinion of Turnley’s photos be different?
3. In what way, if any, would video of the funeral differ from the still photographs of Turnley? 4. Are open-casket photos of soldiers a reality that journalists should be covering as Turnley contends or “beyond all bounds of decency” as the family contends? Can the two sides be reconciled?

## **Macro Issues**

1. Is this a First Amendment issue as the judge and the media maintain? When other rights, such as the right to privacy, come into conflict with the First Amendment, how is the conflict best resolved?
2. What is the role of the media in covering conflicts such as the war in Afghanistan or the Arab Spring, which turned genocidal in Syria? Do wounded soldiers or civilians have any privacy rights that trump the public's right to know?