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PICTURE POWER: THE IMAGE IN WARTIME AND THE DIGITAL AGE

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To most Americans, the images from Iraq were as deeply unsettling as they were intensely graphic. The most famous photograph showed a hooded Iraqi prisoner standing atop a box with what appeared to be electric wires attached to his wrists and ankles in a form of torture. In another photograph, a prisoner on his hands and knees recoiled in terror from a snarling black dog held tightly by the collar by an American soldier. Still other photos showed Iraqi prisoners at the sprawling United States Army-controlled Abu Ghraib detention center in Baghdad apparently in the throes of humiliation by their American captors, posed naked, hooded, shackled, and seemingly forced to perform sexual acts with each other.

First widely published in the last week of April 2004, the photos in some ways represented old news. More than three months earlier, in fact, the Army had announced a major investigation of allegations of abuse and torture at Abu Ghraib. Evidence included confiscated digital photographs taken by the perpetrators themselves and testimony of whistle-blowers. That investigation, along with news of the suspension of guards and the prison's company commander, was first reported by newspapers and networks, including the *New York Times* and CNN, beginning in January 2004.[1]

But it was not until CBS *60 Minutes II* actually broadcast the *images* on Wednesday, April 28—images rapidly disseminated around the world by newspapers and on the Internet in succeeding days—that the full impact of the news story hit home to the American public and the world. And it was then that the firestorm erupted. Amid an international furor, Islamic extremists vowed revenge for the mistreatment, Congress launched its

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1. Eric Schmitt, *Inquiry Ordered Into Reports of Prisoner Abuse*, N.Y. TIMES, Jan. 17, 2004, at A7; Barbara Starr, *Details of Army's Abuse Investigation Surface*, CNN, Jan. 20, 2004, *at* http://www.cnn.com/2004/US/01/20/ sprj.nirq.abuse/ index.html (on file with the Notre Dame Journal of Law, Ethics & Public Policy); *see also 17 Soldiers Suspended Over Abuse*, SEATTLE TIMES, Feb. 24, 2003, at A2.

own investigation of the abuses, and administration officials were compelled to apologize to the nation and the world as United States public opinion polls soon began to show a reactive decline in support for the war and occupation.[2]

In the end, the scandal at Abu Ghraib helped shed light on serious problems in the system of military detention in America's war against terror. It also marked for the American public an ethical crisis point in the divisive Iraqi experience. Here was a war, ostensibly fought for human liberation and other democratic ideals, that had cost thousands of lives and billions of dollars to American citizens who were shocked and shamed by the moral depravity on display.

But in a wider sense, the scandal also revealed, once again, the sheer and immediate power of images—both still and moving—to provoke, inflame, inspire, and repel millions in ways that other forms of communication simply could not. In our modern democratic society dependent on public opinion and in which a sizeable majority of citizens today receives news and information chiefly by visual means, particularly television, the *image* in many ways carries far greater influence than the printed or even spoken word, especially at a time of war when images can appear so profoundly dramatic.

In this war, perhaps more than any other in recent history, American and other governments recognizing the power of images have sought mightily to control their use—no matter whether the images were in the hands of private citizens or the press—even as officials sought to harness that same power to build political support for their aims.

In an age when practically anyone with access to a digital camera and a computer can become a worldwide publisher with words and pictures accessible to millions on the Internet, that ability to completely control imagery has been highly elusive at

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best. No one has proven this more graphically than Islamic ter-
rorists. Time and again, the extremists have turned to imagery
and the Internet to document their violence, including the
beheading of hostages, in order to communicate fear and revul-
sion directly into the hearts of Americans and other Westerners
otherwise shielded from the actual barbarism of war by the main-
stream press.

It was with the invention of photography in the early nine-
teenth century that humans were first provided a new and deeply
compelling medium to observe themselves and the world around
them—in portraits, in landscapes, and, by the time of the Cri-
mean War in the 1850's and the American Civil War a decade
later, in conflict and death.[3] In September 1862, New York-based
photographer Mathew Brady—who was already famous for his
portraits of celebrities including Abraham Lincoln—sent two
protégés, Alexander Gardner and James Gibson, to the Maryland
countryside to take history's first full-scale photographs of the
aftermath of battle. The site was Antietam, where more than
4,800 men had been killed and some 18,500 wounded the previ-
ous week in one of the bloodiest engagements in United States
history.[4]

When the photographers arrived on the scene, the dead
remained where they had fallen, bodies bloated, faces swirling
with flies. The photographers went about their work, and when
they returned to New York City, Brady put the photos on display
in his studio. For the first time, Americans were able to witness
the true toll of the conflict in the form of *images*, and the effect
was stunning, with long lines of visitors reaching out into the
street. The show was entitled *The Dead of Antietam*, and in the
October 20, 1862, *New York Times* an anonymous reviewer wrote:

> Mr. Brady has done something to bring home to us the
> terrible reality and earnestness of war. If he has not
> brought bodies and laid them on our dooryard and along
> the streets, he has done something very like it . . . . It seems
> somewhat singular that the same sun that looked down on
> the faces of the slain, blistering them, blotting out from the
> bodies all semblance to humanity, and hastening corrup-

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3. *See* AMERICAN PHOTOGRAPHY: A CENTURY OF IMAGES (Middlemarch
Films 1999) (providing a comprehensive and compelling examination of the
impact of photography on American life).

4. WILLIAM A. FRASSANITO, ANTIETAM: THE PHOTOGRAPHIC LEGACY OF
AMERICA'S MOST BLOODY DAY 14–17, 288 (1978). For a wide collection of
Brady's war photographs, see GEORGE E. SULLIVAN, IN THE WAKE OF BATTLE: THE
CIVIL WAR IMAGES OF MATHEW BRADY (2004).

tion, should have thus caught their features upon canvas, and given them perpetuity for ever.[5]

By the time the World War I era arrived some fifty-five years later, photography had become much more than a cultural curiosity and was assuming an influential, central, and profitable role in the working of the mainstream press. Entire newspapers, including the *New York Daily News*, would soon focus their enterprises almost exclusively on tabloid photography, relying on the power of images and sensationalism to attract busy city customers.

However, that "singular" light, to which the *New York Times* writer poetically referred in the description of Brady's *Dead of Antietam*, by then had also become a target for tight government control during the war. The government saw the image of war as a clear danger to public policy. The American press—in both word and photo—was strictly censored during World War I by the Committee on Public Information under journalist George Creel, which tightly restricted newspapers and magazines from publishing any photos or stories that might undermine the war effort. That included images of human hardship and slaughter.[6]

This official censorship and self-censorship by American news organizations continued in various fashions through subsequent conflicts including World War II, when newspapers and magazines were restricted from publishing photos of war dead until the war's last six months, when the government eased up on the controls.[7] To this day, the most lasting and compelling images of the war include the raising of the United States flag on Iwo Jima by United States Marines, the celebratory Times Square embrace and kiss between a nurse and a sailor at war's end, and newsreel footage of victims and survivors of the Nazi death camps. Many of those images were shot by official government photographers upon the Allied liberation of Europe, and they became powerful tools in shaping public opinion and foreign policy in Europe and the Middle East in the postwar era. Images that in any way reflected poorly on the American conduct of the war were rarely, if ever, made available to the public.

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5. *Brady's Photographs: Pictures of the Dead at Antietam*, N.Y. TIMES, Oct. 20, 1862, at 5. *See also* FRASSANITO, *supra* note 4, at 15–17.

6. *See* SUSAN D. MOELLER, SHOOTING WAR: PHOTOGRAPHY AND THE AMERICAN EXPERIENCE OF COMBAT 87–88, 92 (1989). This text furthermore provides a comprehensive look at seminal war photographs and the relationship between photojournalists and military and government censors in conflicts from the Spanish-American War to Vietnam; *see also* AMERICAN PHOTOGRAPHY: A CENTURY OF IMAGES, *supra* note 3.

7. MOELLER, *supra* note 6, at 181–200.

During the Vietnam conflict, however, some corners of the American press departed sharply from previous norms of war coverage. A rare breed of independent-minded still photographers and television cameramen who aimed not to extol the American soldier but to cover the actual news and shed light on the day-to-day effects of United States policies in Indochina shot provocative and deeply disturbing images that were seared on the minds of the public via the print and broadcast media. The image of a Buddhist monk setting himself ablaze in a public square in Saigon showed the horrifying lengths to which even the most peaceful Vietnamese citizens were willing to go to protest their oppressive, United States-backed government. The image of a young Vietnamese girl running and screaming in agony after suffering napalm burns in an American military strike became a symbol of the horrific suffering of innocent, unarmed civilians in a conflict funded largely by American taxpayers, growing numbers of whom began to question its very morality. And the image of a young female antiwar protester weeping over the body of a compatriot gunned down by United States National Guardsmen during a demonstration at Kent State University revealed to many Americans the tragic domestic repercussions of a foreign policy that seemed badly awry.

Under the administrations of Ronald Reagan and George H.W. Bush, that chastening and chilling Vietnam experience—and the proven power of images to inform and influence public opinion—was not lost on military planners. Despite sharp protests by the American media, the Pentagon instituted tight controls on journalists covering the 1980's and 1990's conflicts in Panama, Grenada, and the Persian Gulf.[8] The independence and critical eye that characterized the finest of American print and visual journalism during Vietnam was repressed by official Pentagon policies that kept journalists at a long distance from the conflicts and were designed to make them almost entirely dependent on United States military planners for news and information.

With the Iraq War in 2003, the story of the image, war, and American society entered a new chapter—one still defined largely by the struggle for control over its use and power, but now also characterized by dramatic new questions spawned by the birth of modern technologies. When practically anyone can take

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8. *See* JOHN R. MacARTHUR, SECOND FRONT: CENSORSHIP AND PROPAGANDA IN THE GULF WAR (1992) (examining the effect of military censorship on the American press in the Gulf War as well as the precedents and performance of the press during the Grenada and Panama police actions).

pictures with a digital camera and disseminate those images to millions via the Web, how can government possibly gain control over their release, particularly images considered critical and undermining of their war aims? Just as important, in the age of the citizen publisher, when digital tools supply anyone with the skills to distort and fabricate photos for propaganda purposes, how can those very same millions in the audience tell what is real and what is not?

During the Iraq War, the Pentagon plan to embed journalists with troops during the invasion was generally considered a success by Americans. While critics questioned the ability of reporters to maintain journalistic independence under the system, the reporters and their organizations generally reveled in the experience. After previous wars over the past twenty years saw press and government increasingly at loggerheads over their frequently conflicting missions, here was a system that allowed the military to keep a close eye on the reporters. It allowed the military to have final approval over their stories while also affording the journalists a chance to relive the experience of Ernie Pyle, the martyred World War II reporter honored for bringing to life the exploits of G.I. Joe in the European and Pacific fronts. The modern tools the journalists brought to the challenge were dazzling—satellite telephones, laptop computers, digital cameras—and the images they transmitted of United States fighters on land, air, and sea often breathtaking.

But once again the power of imagery posed questions about its use and misuse. When television viewers witnessed the toppling of a statue of Saddam Hussein in Baghdad upon the arrival of American troops—one of the most famous and lasting images from the war—was it really a result of a spontaneous expression of triumph or was the scene far more muted and sparsely attended, as a wide-angle shot from a distance of the same scene taken by an amateur photographer later seemed to evoke, with streets nearly devoid of people and vehicles except for American tanks? What was reality, and what was not?

For some journalists themselves, the question was indeed a blurry one in which reality could easily be manipulated. In one of the war's more notable press ethics controversies, a *Los Angeles Times* photographer was fired in 2003 after admitting that he had digitally enhanced the dramatic quality of an image of a British soldier guarding Iraqi civilians by combining features of two different photos—in essence, trying to improve on the dramatic power of truth by creating one composite photo made of two

separate images.[9] The faked photo was published on the front page of the *Times* and featured prominently in the *Chicago Tribune*[10] and *Hartford Courant*,[11] testimony in part to the temptations of deception in the digital age.

This was just one of numerous ethical transgressions by the press, many deriving from the sensationalist manipulation of images and outright hoaxes. Perhaps the most explosive press scandal occurred at the tabloid *Daily Mirror* of London, an outspoken opponent of British involvement in the war, which in May 2003, published an exclusive photo said to depict a British soldier urinating on a hooded Iraqi prisoner as part of a series of stories alleging systematic abuses by British troops.[12] The paper, which originally reported that it had received the photo from a military source in Iraq, was forced to admit within a week that the photo had been staged, somewhere in Britain, and the editors had been hoaxed.[13] In the modern era it seemed as difficult for professional editors to discern the difference between reality and fantasy as it was for the viewing public.

If the 2003 image of an exultant President Bush wearing a military flight suit and surrounded by adoring sailors on the deck of an aircraft carrier freshly returned from Iraq represented the visual high point of the administration's war experience, nothing symbolized the opposite more than images of dead American soldiers in flag-bedecked coffins returning from the same conflict. Throughout the war and occupation, the administration prohibited journalists from taking photos of the dead, citing a desire to protect the privacy of family and loved ones. Critics charged that the policy represented a cynical form of press censorship by an administration more concerned about the power of images to influence public opinion and undermine war support.[14] But soon the photos *were* seen. And just as in the Abu Ghraib experience, the images were first taken with digital cameras and disseminated by insiders and common citizens, not journalists. Working for a United States contractor in Kuwait, a cargo handler named Tami Silicio took photos of coffins containing bodies of dead American soldiers in the hold of a cargo plane

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9. LOS ANGELES TIMES, Apr. 2, 2003, at 1.

10. CHICAGO TRIBUNE, Mar. 30, 2003, at 1.

11. HARTFORD COURANT, Mar. 30, 2003, at 1.

12. DAILY MIRROR (London), May 1, 2003, at 1.

13. DAILY MIRROR (London), May 14, 2003, at 1.

14. The administration's controversial ban on photographs of war dead returning home was reported widely in the American press during 2003 and 2004. *See, e.g.,* James T. Madore, *Ban on Media Pictures: Fallen GI's Return Unseen,* NEWSDAY, Apr. 19, 2004, at A4.

and sent them via e-mail to a friend in Arizona, asking her to send them on to her hometown newspaper, the *Seattle Times*. Her intent, she later said, was to do honor to the dead by showing Americans back home their sacrifice. The *Times* published the compelling image, and indeed Seattle readers reportedly responded overwhelmingly favorably. However, in yet another indication of the timeless struggle for government control over war imagery, Silicio was fired from her post.[15]

It was Ted Koppel of ABC's *Nightline* program, however, who sparked perhaps the most dynamic example of imagery's sway over contemporary war politics and culture when he devoted a thirty-minute show to reciting the names and depicting the faces of all 786 Americans who had been killed in action by that point in the conflict, in all their youth and vitality. Koppel said he intended the program, entitled *The Fallen*, to provide a way for American viewers to remember and honor the dead. The program was a clear echo of a controversial issue of *Life* magazine, which in 1969 published photos of dozens of American dead from one week in the Vietnam war.[16] The *Nightline* controversy that ensued was in some ways history repeating itself, with modern overlays of media corporate synergy and other ethical issues. For what soon transpired was an effort by a major media corporation itself, not the administration, to prevent American viewers from witnessing the broadcast. The Sinclair Broadcasting group, a heavy contributor to Republican causes and a strong supporter of the Iraq War, objected so strenuously to the program that it prohibited it from being broadcast on the six ABC affiliates it owned, charging that the show was "motivated by a political agenda designed to undermine the efforts of the United States in Iraq."[17]

Cynics might have wondered: Who needed government to control and censor imagery when the corporate news media itself could do the job just as well?

The power of still and moving images to inspire, trick, infuriate, inform, and influence public perception and policy has manifested itself during the Iraq War and occupation in more complex and dynamic ways than ever. And this power has continued without abatement as the conflict rages on. In November 2004, the world was reminded yet again of imagery's power when an embedded NBC cameraman filmed a United States Marine

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15.   Michael R. Francher, *Worldwide Interest in Coffin Photo Was Surprising, Gratifying*, SEATTLE TIMES, May 2, 2004, at A2.

16.   *Vietnam: One Week's Dead*, LIFE, June 27, 1969, at 20.

17.   *Perspectives*, NEWSWEEK, May 10, 2004, at 25.

soldier shooting and killing a wounded and unarmed Iraqi insurgent during the American military campaign to wrest control of Falluja from insurgents. The horrific film clip was rapidly disseminated around the world via the Web after NBC and the BBC first broadcast it, raising an international furor over American military ethics and administration fears that al Qaeda terrorists and Iraqi rebels would use the clip for propaganda purposes to drum up support for their causes in the Islamic world.[18] Then, in December, the United States military was once again compelled to launch an investigation into its practices when photographs appearing to show more instances of abuse of hooded, handcuffed, and bloodied Iraqi prisoners, this time by Navy SEALS, were published. To the administration's alarm, the digital photos—which reportedly had been brought back to the United States by a Navy serviceman, published on a website, and eventually discovered by an Associated Press reporter—were subsequently reprinted on front pages of newspapers around the Arab world.[19]

Thanks to new technologies and a vast array of sources for information, Americans have choices as never before in discovering and understanding the world, in peace and war, and imagery remains at the center of that process. Sifting through those choices, however, and finding the best and most credible and accurate representations of reality remains a difficult and highly subjective process at best. Should the citizen trust Fox News to portray the true human toll of the American bombing of Iraq,

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18. *See U.S. Investigation of Mosque Killing is Expanded,* MSNBC NEWS, Nov. 17, 2004, *at* http://msnbc.msn.com/id/6502452/ (Jim Miklaszewski and the Associated Press, contributing) (on file with the Notre Dame Journal of Law, Ethics & Public Policy); *see also Shooting Enrages Iraqis; Marine's Killing of Wounded, Unarmed Man in Fallujah Mosque Sparks Probe, Controversy,* HAMILTON SPECTATOR (Ontario, Canada), Nov. 17, 2004, at A12. The NBC cameraman who shot this footage while embedded with the Marine unit in Falluja, Kevin Sites, also explained the incident on a Web log he publishes from Iraq, *Kevin Sites Blog, at* http://www.kevinsites.net (last visited Feb. 15, 2005). In the wake of the incident the Web blog attracted hundreds of comments from visitors, many supporting his actions as a journalist, others accusing him of treachery.

19. *See* Rupert Cornwell, *U.S. Navy to Investigate New Images of Apparent Abuse of Hooded Detainees,* INDEPENDENT ON SUNDAY (London), Dec. 4, 2004, at 18; Seth Hettena, *Navy SEAL Photos Trigger Inquiry,* WASH. POST, Dec. 4, 2004, at A15; Associated Press, *Arab Anger Over New Photos, available at* http://www.cbsnews.com/stories/2004/11/11/iraq/main655030.shtml (on file with the Notre Dame Journal of Law, Ethics & Public Policy). According to a Navy spokesperson, a preliminary Navy inquiry into the controversy suggested that some of the photos "were taken for legitimate intelligence-gathering purposes and showed commandos using approved procedures." *Detainee's Capture Proper,* SEATTLE TIMES, Dec. 7, 2004, at A14.

for example, or the BBC or Al Jazeera? Should the citizen click on a computer keyboard to witness the unedited, uncensored videotaped slaughter of an innocent hostage by propagandizing Islamic extremists, or should one rely on the mainstream media to deliver the news—and its meaning—in more sanitized form?

In recent years, top executives of the American news media have become increasingly concerned about the public's attitude toward the press. Recent polls indeed show growing public skepticism about the media's values, honesty, and independence. In one study, conducted in 2002 by the Pew Research Center for the People and the Press, 56% of 1,201 Americans surveyed said news organizations "often report inaccurately," 62% thought the media "try to cover up mistakes," and 53% believed the media "are politically biased."[20] A similar poll conducted by Pew in 2003, assessing public attitudes toward media consolidation, found that 71% of Americans believe the media are "often influenced by powerful people and organizations," a rise of 18% from 1985 when the organization first asked citizens the same question.[21] Many media leaders are disturbed by such polls because they appear to show a citizenry increasingly disconnected and untrusting of an estate whose very credibility is critical to the health of democratic society.[22]

But it is possible that a corollary to that conjecture may also be at least partly true. At a time when the very reasons for going to a war that has cost, by the most conservative estimates, at least 21,000 lives,[23] remain highly debated in American society, and

20. PEW RESEARCH CENTER FOR PEOPLE & THE PRESS, NEWS MEDIA'S IMPROVED IMAGE PROVES SHORT-LIVED (2002), *available at* http://people-press.org/reports/display.php3?ReportID=159 (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

21. PEW RESEARCH CTR. FOR PEOPLE & THE PRESS, STRONG OPPOSITION TO MEDIA CROSS-OWNERSHIP EMERGES (2003), *available at* http://people-press.org/reports/display.php3?ReportID=188 (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

22. The Pew surveys of American attitudes about the news media were widely cited and examined in the American press. *See, e.g.,* Peter Johnson, *Public Unsettled by Media Consolidation, Poll Shows,* USA TODAY, July 16, 2003, at 3D; Reed Johnson, *Trashing the Media: Veteran Journalists Are Coming to Some Grim Conclusions About Their Industry,* L.A. TIMES, Jan. 11, 2004, at E4; David Shaw, *Half in Poll Say Media Biased and Inaccurate,* L.A. TIMES, Nov. 29, 2001, at A36; Eric Boehlert, *Setback for Big Media,* SALON, June 25, 2004, *at* http://archive.salon.com/news/feature/2004/06/25/fcc/ (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

23. The figure 21,000 is the most conservative estimate of deaths in Iraq, combining coalition, Iraqi military, and civilian losses. It does not include numbers of insurgent deaths, which were unobtainable. As of December 31, 2004, a total of 1,481 coalition forces—including 1,331 Americans—had been killed in

when many press organizations themselves are critical of their failure to aggressively challenge the administration's claims about the war's necessity in the months before it began, this skeptical public reaction may represent something else. It could signify a natural and perhaps not unhealthy response to a media landscape that is rapidly changing, complex, dynamic, multidimensional, and intensely unpredictable. In such a landscape rife with competing realities—where even *seeing* should not necessarily mean believing—citizen skepticism could prove one of democracy's most useful and timely assets *if* it forces the news media to redouble their efforts to prove their credibility and societal worth as gatekeepers of truth and information.

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the Iraq war and occupation, according to the U.S. Department of Defense. Estimates of Iraqi military dead during the war range from 5,000 to 6,000. *See* Patrick J. McDonnell, *Body Count Goes on Rising Despite the Handover of Sovereignty in Iraq*, FINANCIAL TIMES, Sept. 1, 2004, at 9. Definitive figures on Iraqi civilian deaths during the war and occupation are also difficult to come by and vary widely. An independent group in Baghdad, the Iraqi Human Rights Organization, places the number at greater than 30,000. *See* Jefferson Morley, *The War's Toll on Iraqi Civilians*, WASHINGTON POST, Sept. 21, 2004, *at* http://www.washingtonpost.com/wp-dyn/articles/A37968-2004Sep21.html (on file with the Notre Dame Journal of Law, Ethics & Public Policy). In October 2004, a team of researchers published a study in the medical journal *The Lancet* in which, using interviews and aerial-bombardment extrapolations, they estimated civilian casualties at over 100,000. Les Roberts et al., *Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey*, 364 THE LANCET 1857, 1861 (2004). However, a London-based Anglo-U.S. human rights research group, *Iraq Body Count*, which has sought to provide an "independent and comprehensive public database of media-reported civilian deaths in Iraq" since the March 2003 invasion, puts the toll at between 14,619 and 16,804. *See* Rory McCarthy, *Blair Rejects Call for Count of Iraqi Deaths*, GUARDIAN, Dec. 9, 2004, at 17. The wide discrepancy between these figures led to a public campaign in Great Britain at the year's end to compel the government of Tony Blair to come up with a full and accurate accounting of civilian deaths.