

A Hoax?

September 30, 2000, Netzarim Junction in the Gaza Strip: France 2 correspondent Charles Enderlin offers the world a front seat on the video shooting of Mohammed al-Durra and his father Jamal. Targeted, according to Mr. Enderlin's voice-over commentary, by "gunfire from the direction of the Israeli positions." A few seconds later: "Mohammed is dead, his father is critically wounded." The France 2 cameraman, later identified as Palestinian stringer Talal Abu Rahma, caught the child killers in the act. A prize-winning scoop!

Independent analysts and Israeli officials seeking clarification of inconsistencies in the al-Durra news report encountered stubborn resistance from the state-owned French channel and its Mideast correspondent. An Israeli army investigation concluded the gunfire could not have come from their position; independent investigators went further and declared that the incident had been staged. Exasperated by the controversy, France 2 and Mr. Enderlin sued four Web sites for defamation, won three cases and lost the fourth on a technicality. Philippe Karsenty, director of the Media-Ratings watchdog site (www.m-r.fr), convicted of defamation for calling the al-Durra report "a hoax," took the case to the Court of Appeals.

May 21, 2008, Palais de Justice, 11th Chamber of the Court of Appeals: Presiding judge Laurence Trébucq announced the verdict with a delicate smile: Philippe Karsenty is acquitted; the plaintiff's claims are dismissed. France 2 counsel Maître Bénédicte Amblard blanched, shrugged her shoulders, and disappeared into thin air. Mr. Karsenty celebrated the decision as an admonition to reckless media who provoke violence with falsified inflammatory news.

An honest reading of the ruling calls into question the al-Durra myth. French media didn't bother to come to the funeral. Were they confident that Charles Enderlin would be vindicated? Did they think Philippe Karsenty, whose honor they had sullied by likening him to Holocaust deniers and 9/11 conspiracy nuts, was already dead and buried?

Mr. Karsenty's defamation conviction in the court of first resort had been celebrated as proof that the al-Durra death scene was authentic. Reactions to his acquittal, which can be counted on the fingers of one bony hand, reassert that impression. In a three-second segment at the tail end of Wednesday's primetime news, France 2 implied -- with the famous al-Durra image in the background -- that the report had, once again, been authenticated despite the acquittal of an -- unnamed -- defendant.

Playing on the complexity of the law dating back to July 29, 1881, Charles Enderlin and his allies insist that Mr. Karsenty is still guilty of defamation. The incriminated statements Mr. Karsenty made in 2004 on his Web site did damage their reputations. But the court found that despite the lack of absolute proof, the statements were nevertheless justified by the defendant's good faith, due diligence and appropriate language. The judge therefore acquitted Philippe Karsenty of all charges.

In a move unprecedented in media litigation, France 2 and Mr. Enderlin have referred the case to France's highest court (the Cour de Cassation), which rules solely on technicalities, not on substance.

The 13-page ruling is drafted with the same ethical and intellectual clarity exercised by Judge Trébucq throughout the proceedings. The court first establishes the principle that Charles Enderlin "...as a professional journalist reporting from Israel and the Palestinian territories for primetime France 2 newscasts...cannot shield himself from criticism; he is...[necessarily] exposed to...scrutiny...from citizens and colleagues." And then the court validates, exhibit by exhibit, the evidence that led Philippe Karsenty to question and ultimately denounce the al-Durra report.

While Mr. Karsenty submitted voluminous evidence, France 2 and Mr. Enderlin relied on an above-suspicion strategy based on the elevated reputation of the journalist, his total confidence in the Palestinian cameraman who filmed those images without the French correspondent there, and the unquestionable dignity of the state-owned television network. Their position weakened when Judge Trébucq ordered them to submit the unedited raw footage filmed on Sept. 30, 2000. They only partially complied. In lieu of "unedited raw footage," Mr. Enderlin presented an 18-minute excerpt and, for the first time since litigation began, appeared in court on Nov. 18 to oversee the screening.

Reinforcements were brought in for the final hearing on Feb. 27 -- news director Arlette Chabot to bolster Mr. Enderlin, and Maître François Szpiner to assassinate Mr. Karsenty's character, comparing him to 9/11 conspiracy theorist Thierry Meyssan, Holocaust denier Robert Faurisson, and "the Jew who pays a second Jew to pay a third Jew to fight to the last drop of Israeli blood." This aggressive strategy backfired.

The court kept its eyes on the evidence. It is impossible in the limited space available here to do justice to a document that deserves line-by-line appreciation. The following examples drawn from the decision are a fair indication of its logical thrust: Material evidence raises legitimate doubts about the authenticity of the al-Durra scene. The video images do not correspond to the voice-over commentary. Mr. Enderlin fed legitimate speculation of deceit by claiming to have footage of Mohammed al Durra's death throes while systematically refusing to reveal it. He aggravated his case by suing analysts who publicly questioned the authenticity of the report. Examination of an 18-minute excerpt of raw footage composed primarily of staged battle scenes, false injuries and comical ambulance evacuations reinforces the possibility that the al-Durra scene, too, was staged. (There is, strictly speaking, no raw footage of the al-Durra scene; all that exists are the six thin slices of images that were spliced together to produce the disputed news report.)

The possibility of a staged scene is further substantiated by expert testimony presented by Mr. Karsenty -- including a 90-page ballistics report and a sworn statement by Dr. Yehuda

ben David attributing Jamal al-Durra's scars -- displayed as proof of wounds sustained in the alleged shooting -- to knife and hatchet wounds incurred when he was attacked by Palestinians in 1992. In fact, there is no blood on the father's T-shirt, the boy moves after Mr. Enderlin's voice-over commentary says he is dead, no bullets are seen hitting the alleged victims. And Mr. Enderlin himself had backtracked when the controversy intensified after seasoned journalists Denis Jeambar and Daniel Leconte viewed some of the raw footage in 2004. The news report, he said, corresponds to "the situation." The court, concurring with Messrs. Jeambar and Leconte, considers that journalism must stick to events that actually occur.

The frail evidence submitted by France 2 -- "statements provided by the cameraman" -- is not "perfectly credible either in form or content," the court ruled.

Enderlin. One week before the verdict was announced, pay-to-view TV station Canal+ aired a documentary seemingly concocted for the purpose of branding Philippe Karsenty -- and anyone who challenged the al-Durra story -- as conspiracy-theory crackpots.

Mr. Enderlin is the dean of French Middle East reporting. On France 2, he has full latitude to present his editorializing as factual news. Pointedly ignoring the al-Durra controversy, France 2 continued to give Mr. Enderlin -- in tandem with cameraman Talal Abu Rahma -- high-profile status on primetime news. Every few years Mr. Enderlin collects his material into another "authoritative" book on the Arab-Israeli conflict. Mr. Enderlin has been the driving force in convincing French public opinion that Israel was to blame for the breakdown of the July 2000 Camp David talks. Further, Mr. Enderlin argues that the "Al Aqsa" or second intifada turned violent because of the disproportionate repression of



The landmark ruling closes with an eloquent affirmation of the right of citizens to criticize the press freely, the right of the public to be informed honestly and seriously, the right of expression guaranteed by Article 10 of the European Convention on Human Rights, a right that applies not only to inoffensive ideas but also to those that are shocking, disturbing, troubling.

The media that dramatically reported the killing of Mohammed al-Durra are deathly silent today. They didn't inform the public about the ongoing controversy, didn't attend the trials and have apparently decided to place this story into an artificial coma. As if this judgment against a colleague who placed blind trust in his Palestinian cameraman and, when called to clarify his report, attacked the questioner instead of questioning his own competence were not newsworthy?

The press corps has consistently closed ranks with Charles

civilian protest by uncontrolled Israeli military personnel.

Mr. Enderlin claims ultra-Zionist Likudniks want to prevent him from reporting objectively on the Arab-Israeli conflict. He is now replaying the Karsenty case on his French state-TV blog where, in the absence of the wise Judge Trébuçq, he wins hands down. He claims the al-Durra controversy was fomented in response to the publication of "Le Rêve Brisée" (Shattered Dreams), where he pinpointed Israel's responsibility for the collapse of the peace process.

France Télévisions director Patrick de Carolis and the CSA -- roughly equivalent to the U.S. Federal Communications Commission -- have been repeatedly called by media watchdogs to intervene in the al-Durra controversy. Can they all remain deaf to the wisdom of a courageous judge who has reasserted the journalist's responsibility to serve the people and account for the way he does his job?