



Leiser

shortly after the incident, based on what the network believed at the time were reliable eyewitness accounts. Nevertheless, Joyce expressed dismay last week that the Israeli government has decided not to investigate the matter further.

The two men, a cameraman and a soundman, were killed as they were filming a UPI Television News car just after it had been fired upon by Israeli troops sweeping an area in southern Lebanon for terrorists on March 21. The two men, in a clearly marked press car, were killed by two shells from an Israeli tank. A third man, the news crew's driver, was severely injured. All were Lebanese.

The Israeli government considers the case closed. The government's conclusion is that the killings were, in the words of a press spokesman with the Israeli embassy in Washington, "a tragic accident... a case of mistaken identity." Last week, after conferring with Leiser on his findings, Joyce issued a statement conceding that the killings may indeed have been an accident. "It appears that contrary to earlier eyewitness reports, which placed the Israeli tank at between 500 and 900 yards away, it may have been a good deal further, perhaps as much as a mile and a half. If this were the case, it is entirely possible that the tank crew was unable to make out the camera and the press signs on the car."

That is exactly the position taken by the Israelis, said the embassy spokesman. The tank crew, he said, believed the camera crew to be "terrorists with antitank weapons on their shoulders." He said it was the army's contention that the press car was a mile and a half from the tank and therefore the press markings were not distinguishable.

But Joyce, in a follow-up letter to Israeli Prime Minister Shimon Peres, said it was a "matter of regret that the prime minister has elected not to investigate the incident further, and plans no measures which could prevent a recurrence of last week's tragedy." But as far as the Israeli government is concerned, the embassy spokesman said, "the facts are now clear and there is no need for any further investigation." He added that CBS was "wrong in passing judgment" on the nature of the killings, a reference to Joyce's claim that they were "unprovoked and deliberate."

But there were no apologies extended by either side—not for the killings and not for what turned out to be hasty accusation by CBS News. The Israeli government spokesman said "we expressed sorrow for the

deaths. But our soldiers acted strictly according to military regulations." Leiser was quoted in Jerusalem last week, before flying back to New York, as saying that "knowing what I know now, we might have qualified our language somewhat." He said he could not yet tell whether the Israeli army should take some blame for the deaths.

Back in New York, Leiser declined to comment either on his visit to the Middle East—where he spoke with Peres, military officials and visited the site of the shelling in Southern Lebanon—or what he told Joyce. "There is nothing more that can usefully be said on the matter," he said. Leiser did indicate, however, that during his trip CBS was granted an interview with the commanding general to whom the tank crew involved in the killings reported. He said the interview would be broadcast "shortly."

CBS News said it was canceling planned special coverage by the *CBS Morning News* of a week in Israel just before Easter and Passover as a gesture of "mourning" for the slain camera crew. Israeli officials saw the cancellation more as a punitive measure, however. But, said one official, "they are only punishing their own audience." □

Courts continue to grant wider First Amendment rights to cable

Appeals court in Atlanta rules Supreme Court's 'Pacifica' standards of indecent material are not applicable to cable

The cable television industry is continuing on a roll in court decisions involving cable's First Amendment rights. A panel of the U.S. Court of Appeals for the 11th Circuit, in Atlanta, has affirmed a lower court decision that a Miami ordinance designed to prohibit cable systems from transmitting "indecent material" violates the constitutional guarantee of free speech. The panel also affirmed the lower court's holding that the ordinance violated the notion of fairness "implicit in one's right of due process of law."

The decision marks another judicial declaration that cable systems are different from broadcasting stations and, as a result, must be accorded a greater degree of First Amendment protection. Miami, in seeking reversal of the U.S. district court ruling in the case, had relied on the Supreme Court decision in the 1978 *Pacifica* case, in which the FCC was held to have the authority to impose sanctions on stations broadcasting "offensive" and "shocking" language at a time when children could be expected to be exposed to it. The high court was concerned about the "pervasiveness" of radio. But Miami's effort to extend the high court's "pig in the parlor" analogy to cable television did not persuade the appeals court panel.

The high court had said that "government is entitled to keep the pig out of the parlor," however it entered, whether "through the

door of broadcast, cable or amplified speech." But the panel said "that if an individual voluntarily opens his door and allows a pig into his parlor, he is in less of a position to squeal." The panel noted that the subscriber to Miami Cablevision, the system serving the city, "must affirmatively elect to have cable service come into his home... must make the additionally affirmative decision whether to purchase 'extra' programming services... must make a monthly decision whether to continue to subscribe to cable, and if dissatisfied with the cable service, he may cancel his subscription."

Thus, the court said, "although we recognize the complicated and uncertain area of unconstitutional interpretation which we are entering and the importance of the interests asserted by the city, we are persuaded that *Pacifica* cannot be extended to cover the facts of this case."

The Miami case is the third in which legislation aimed at outlawing allegedly offensive cable television programming has been struck down. In two earlier cases, both in Utah, an ordinance adopted by the town of Roy City and a state statute were struck down by U.S. district courts, both on grounds distinguishing cable television from broadcasting. However, now pending before the U.S. district court in Utah is a challenge to a new statute drafted by the legislature with an eye to meeting what the court said were the infirmities of the earlier one.

The Miami case was brought by a would-be subscriber to Miami Cablevision, Ruben Cruz, who wanted the Playboy Channel, which the cable system, because of the ordinance, was not providing. HBO, which has been fighting local and state laws like the one in Miami, entered the case as a plaintiff.

However, the decision in that case does not rule out ordinances aimed at barring obscenity, provided they observe the standard established by the Supreme Court in its *Miller* decision—that is, whether, among other things, "the average person, applying contemporary community standards, would find the work taken as a whole, appeals to the prurient interest." The ordinance uses that language in prohibiting "obscene" material, and Cruz and HBO did not challenge that definition or the city's constitutional right to ban it from cable television service. They challenged only the provision of the ordinance seeking to regulate "indecent material." The definition of that term in the ordinance tracked the language used by the commission in its *Pacifica* decision.

The appeals court panel also endorsed the district court's conclusion that the ordinance structured a procedure for dealing with allegedly offensive material that was unfair. Under the ordinance, the city manager receives all complaints, reviews them to determine whether there is probable cause to believe a violation has occurred, presides over hearings in cases where probable cause is found and issues decisions that include the sanctions to be imposed. The district court found that the procedures presented a high risk of unfairness in "an area of moral judgment that might well try the neutrality and impartiality of Solomon."

Said the panel: "We find ourselves in agreement with the district judge." □