

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 25/90

Dated the 21st day of November 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

SONIA WHITE

of Auckland

Broadcaster

TV3 NETWORK SERVICES

LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

The 3 National News bulletin screened by TV3 at 6.30 pm on 18 May included an item concerning the conviction and sentencing of two men for torturing a man who carried the Aids virus.

The charges had arisen after the two defendants, Stephen and Andrew Barker, accompanied by Joanna McCoy, had kidnapped and tortured the Aids carrier in retribution for his having had unprotected sex with Ms McCoy without informing her of his infection. Ms McCoy had subsequently had sex with Stephen Barker, thereby putting him at risk of the Aids virus.

The news item mentioned that the Barker brothers had received their sentences for their part in the attack which had been described in court as "a horror show". Extracts from the court proceedings were quoted, both verbally and visually, and the man's scars resulting from the torture session were shown on screen. The quoted extracts included descriptions of the torture inflicted, namely forcing the victim to eat cigarette butts and his own excrement and threatening to put his penis in the fire.

Mrs Sonia White considered that the broadcast of this item breached certain Programme Standards in the Codes of Broadcasting Practice for Television and made a formal complaint to the Authority on 31 May. The complaint was immediately referred, in accordance with the requirements of the Broadcasting Act 1989, to the broadcaster for



consideration together with an earlier letter received from Mrs White.

### Mrs White's Complaint

Mrs White alleged that TV3, in screening the item, breached standards 2, 18, 19, 21, 22 and 23 of the Codes. These standards are as follows:

#### General

In the preparation and presentation of programmes, broadcasters are required:

2. To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

#### Protection of Children

In the preparation and presentation of programmes and news and current affairs output broadcasters are required to observe the following points:

18. To be mindful of the effect any programme may have on children during their generally accepted viewing periods.

19. Themes and scenes dealing with disturbing social and domestic friction or sequences in which children or animals may be humiliated or badly treated are to be avoided.

#### Violence

21. Broadcasters have a responsibility to ensure that when violence forms an integral part of drama or news coverage the context can be justified.

22. The gratuitous use of violence for the purposes of heightened impact is to be avoided.

23. Ingenious devices and unfamiliar methods of inflicting pain or injury - particularly if capable of easy imitation - should not be shown without the most careful consideration.

Mrs White considered the material included in the item to have been repulsive, offensive and totally unnecessary. The court case and its outcome could have been reported without what she called "explicit torture details". As a mother of two children aged 7 and 9, she was angry and distressed that her children should have heard the item (she was not able to switch off the sound in time). In her view, offensive material should not be included in news viewed between 6 and 7 pm.



### TV3's Response to Mrs White's Complaint

TV3 described the item as one giving the background to and coverage of the trial and sentencing in the Timaru High Court of the Barker brothers relating to charges of kidnapping and causing grievous bodily harm.

TV3 noted that a large proportion of the item consisted of extracts of court proceedings, including statements from the defence counsel and the summing up of the Judge, Williamson J. It also considered that the language used in the report was entirely appropriate given the nature of the case: the delivery was unemotional and the reporting accurate. In general, the report summed up, accurately and fairly, an unusual, newsworthy and very important trial.

As to Mrs White's allegations concerning the portrayal of violence, in breach of the standards, TV3 submitted that the item showed the results of violent actions and not the violent acts themselves.

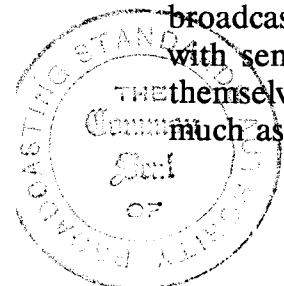
"Television News requires the use of pictures to show the viewer what has happened. The item in question showed the scars resulting from a torture session. The case involved a man who used his body as an offensive weapon, that is, knowing he was an Aids carrier, he had unprotected sex with a woman. Further, the woman and the Barker brothers took retribution outside the law by torturing the Aids carrier. The whole incident is without precedent and the case was of genuine news value. In this context, showing the scars was entirely justified ... the report may have been disturbing [but] the incident being covered was of a disturbing nature. We cannot and should not suppress the news, nor can we influence and alter events. Our job is to report the news and that is what we did in a reasonable, accurate and professional report."

### Mrs White's Referral of the Complaint to the Broadcasting Standards Authority

Mrs White was dissatisfied with TV3's decision not to uphold her complaint and referred the matter to the Authority.

In a letter dated 9 August, Mrs White stressed that she did not take issue with TV3's assertions that it was a newsworthy item; that it was reported accurately, fairly and unemotionally; and that a broadcaster should not suppress the news or influence or alter events. What she did object to, however, was the amount of detail reported.

Mrs White maintained that "the public did not need to be informed of the specific acts of torture applied" and that TV3 had chosen to ignore her charge that it had breached standard 23. When graphic descriptions of specific methods of torture are verbally described and the resulting scars are then shown pictorially, there is little else that the broadcaster could have shown, "short of actually re-enacting the scene". It was playing with semantics to argue that the results of violent acts, rather than the violent acts themselves, were portrayed. Mrs White therefore contended that TV3 portrayed as much as possible to the viewer of the violence of the torture and its results, in breach



of standards 19, 21 and 22. In her view, viewers could have been informed as to the general facts without being subjected to gruesome details such as the reference to " ... the girl wished to place his penis in the fire".

Mrs White also commented on the fact that TV3 had made no attempt to justify showing such material during children's generally accepted viewing periods (standard 18). If TV3 considered it absolutely essential that viewers be informed of the details of the torture, "a brief summary could have been given at 6.30" and details kept for the 10.30 pm news bulletin.

Mrs White also believed this depth of reporting did not take into consideration currently accepted norms of decency and taste in language and behaviour (standard 2) and regretted that TV3 had not specifically addressed this element of her complaint.

Finally, Mrs White maintained that the torture details were included as a "gratuitous use of violence for the purposes of heightened impact", in breach of standard 22, and that "viewing ratings were of more concern than taste or responsible reporting".

### TV3's Response to the Authority

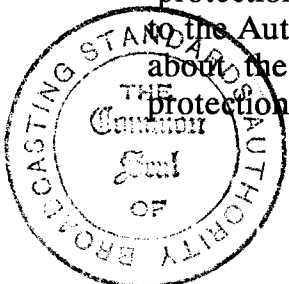
TV3 was invited to respond to Mrs White's comments and in a letter dated 4 September denied that the item breached any of the standards mentioned in the complaint. The letter also mentioned that Mrs White's complaint was the only one (formal or informal) received in relation to the item and that the story received similar coverage in other New Zealand media.

### Mrs White's Final Comment to the Authority

Mrs White wished to add nothing by way of a final substantive comment. She did, however, comment that it was irrelevant to a breach of the standards to say that hers was the only complaint received (something she had cause to doubt as she knew one person who had made an informal complaint by telephone) or that other media also carried the story.

### Decision

Mrs White's complaint alleges a breach of standards 2, 18, 19, 21, 22, 23 of the Codes of Broadcasting Practice for Television which cover three different areas: "good taste and decency", the "protection of children" and the "portrayal of violence". The first two areas mentioned in the Act for which the Authority should "encourage the development and observance of codes" are *the protection of children* and *the portrayal of violence*. The "protection of children" and the "portrayal of violence" are also of particular relevance to the Authority because of its awareness of the high level of concern in the community about the portrayal of violence on television and the perceived lack of adequate protection of children during children and family viewing times.



Standard 2 requires broadcasters, in the preparation and presentation of material, to

Take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.

In Decision 2/90, the Authority gave its view that:

the concept of good taste and decency in a given situation or context pertains to conformity with such standards of propriety as the Authority considers to be in accord with generally accepted attitudes, values and expectations in New Zealand society.

There is no question that the acts of retribution described in the programme are distasteful and abhorrent to most New Zealanders. Most also would agree with the comments that Williamson J. is reported to have made in the decision:

"... what the victim did was wrong and immoral but his act was not criminal ... in future there may be laws to deal with Aids carriers but presently there is not. However, if we were to all administer our own punishment, we wouldn't live in a civilised society."

Nor is there any doubt that the item was of genuine news value and the public should be informed of it, despite the disgusting and distasteful acts which the report contained. Therefore, the question becomes one of presentation. The Authority agrees with TV3 that:

"... the delivery of the case was unemotional and that the reporting was accurate and that in general, the report summed up, accurately and fairly, an unusual, newsworthy and important trial".

While the subject matter of the news item was distasteful, the material was not presented in a way to heighten the prurient nature of the item. The only "live" coverage was of the healed scars which had been burned on the victim's torso with a hot poker. The other details of the torture were reported in a straightforward manner and depicted on screen only as written words from the text of the Judge's decision.

**For this reason the Authority declines to uphold the complaint that the programme breached standard 2 regarding good taste and decency.**

The next part of Mrs White's complaint alleges a breach of the section of the Codes developed by broadcasters regarding the "protection of children" and she specifically named standards 18 and 19. This section states:

In the preparation and presentation of programmes and news and current affairs output broadcasters are required to observe the following points:

To be mindful of the effect any programme may have on children during



their generally accepted viewing periods.

19. Themes and scenes dealing with disturbing social and domestic friction or sequences in which children or animals may be humiliated or badly treated are to be avoided.

The 6.30 pm TV3 News is a programme screened during a time when children may be expected to be viewing. In the Authority's view, it is not likely that the attention of preschool children would have been caught by the way the item was presented since the pictures of the healed scars on the victim's body were not graphically gruesome and the other torture methods, as noted earlier, appeared on the screen only as written extracts from the Judge's decision while the reporter read the words. Preschool children would be unlikely to have the understanding necessary to comprehend the verbal presentation since it is unlikely that they would have been concentrating their attention on that news item, sandwiched as it was between other items equally uninteresting to preschool children.

However the Authority believes that children in the early years of primary school would have understood the verbal descriptions of the torture inflicted -- forcing the victim to eat cigarette butts and his own excrement and the threat of putting his penis in the fire - - and their attention is likely to have been caught by the described torture.

Young primary school aged children have vivid imaginations and although the news coverage did not re-enact those tortures, that age group could easily be disturbed by the torture described. In the Authority's view, the news item described scenes of such "social and domestic friction" that they were likely to disturb young children; in order to comply with standard 19, they should have been avoided.

The Codes provide standards designed to "protect" children and children should be able to watch television in the early evening without being unduly frightened by the content of programmes. Children have the right to feel "safe" in their own homes and not be subjected to programmes which may not only lead to feelings of insecurity but also actually frighten them. Teachers, parents and other care-givers report that it is not only the abnormally "sensitive" child who has nightmares from time to time or who cannot get to sleep at night because they feel fearful but also many perfectly normal children feel this way from time to time. Often stories without pictures can be even more frightening than those with pictures because the pictures serve as a "check" to keep a child's fertile imagination from running rampant.

It should be noted that standards 18 and 19 specifically include news and current events programmes and are not restricted to only drama programmes. Therefore a broadcaster can not use the argument, in defence of a news item that frightens young children, that the item is "newsworthy" and that the public has a right to know. Broadcasters must be careful to avoid scenes in any type of programme, screened during the early evening when children are likely to be viewing, which may adversely affect young children.

The Authority is aware that the currently accepted research is not conclusive that viewing violence leads to increased violence in society. However there is a general belief that



exposing children to descriptions and visual images of violent scenes desensitises them towards violence so that they begin to view violence as an acceptable part of life.

The Authority acknowledges that many experts on child development also argue that adults have become so desensitised themselves to violence that they do not appreciate that children are more impressionable and have less experience of life from which to evaluate the violence which they see on television. Therefore adults may under-estimate the impact which the depiction of violence or, in this case, the description of violence, is having on young children.

The Authority believes that these views have merit and it is particularly concerned that children should be protected from the portrayal of violence, which in its view, includes both verbal descriptions and visual depictions of violence, during the generally accepted viewing periods of children.

**For the above reasons the Authority upholds the complaint that the programme breached standards 18 and 19.**

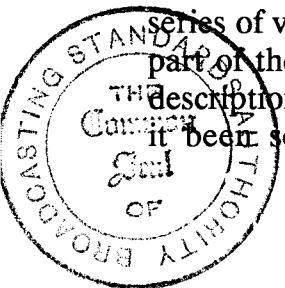
The Authority notes that the news item could have been presented on the 6.30 pm news without breaching these two codes by deleting the description giving the details of the tortures and using instead an innocuous nonspecific statement about "acts of torture inflicted on the victim."

Having decided that the complaint should be upheld because it breached standards related to the "protection of children" the Authority could have declined to consider whether it also breached the other standards about the portrayal of violence, which Mrs White cited, namely standards 21, 22 and 23:

21. Broadcasters have a responsibility to ensure that when violence forms an integral part of drama or news coverage the context can be justified.
22. The gratuitous use of violence for the purposes of heightened impact is to be avoided.
23. Ingenious devices and unfamiliar methods of inflicting pain or injury--particularly if capable of easy imitation--should not be shown without the most careful consideration.

However, the Authority felt that its views upon the question of whether standards 21 - 23 would have been breached, had the programme been screened in the late evening news instead of the early evening news, would be of interest to broadcasters.

The actual acts of retribution which were the reason for the court proceedings were a series of violent incidents and it could be legitimately argued that they were an integral part of the news story on the court's decision. It is the view of the Authority that the description of the torture could be justified in the context of this particular incident, had it been screened outside the normal family viewing time, and so would not have



breached standard 21.


However, the Authority hastens to add that a description of the torture was not essential and that it has sympathy with those who claim that the public can be given the facts without violent and distasteful details. (The Authority's own comprehensive public opinion survey conducted this year shows that the majority of people are concerned about the level of violence on television in New Zealand.)

As noted earlier the description was given in a simple, straightforward manner and avoided emotive language and graphic visuals, apart from the scars on the torso, which would have heightened the impact of the violence. Consequently, it is the Authority's view that the description did not breach standard 22 prohibiting the gratuitous use of violence.

Finally, the Authority considered that the devices and methods of inflicting pain or injury which were portrayed in the programme were not "ingenious" or "unfamiliar" and consequently standard 23 would not have been breached, had the news item been shown on the late evening news and not at 6.30 pm.

**For the above reasons, the Authority declines to uphold the complaints based on standards 21, 22, and 23 relating to the portrayal of violence.**

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



21 November 1990