

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 9/91

Dated the 19th day of March 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

MARTIN JOHN HINE

of Auckland

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

Introduction

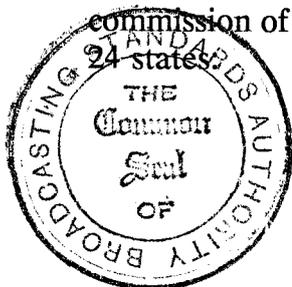
Each of the *Crimewatch* programmes of 1 and 22 May 1990, broadcast by TV1, contained items which included rape reconstructions. Mr Hine, upon being advised by the Authority of the correct procedure, complained to TVNZ that the items breached the Codes of Broadcasting Practice applicable to television.

The Complaint

In a letter to TVNZ dated 11 May 1990, Mr Hine complained that the item broadcast on 1 May had breached standards 9 and 24 of the Television Programme Standards and thus failed to observe good taste and decency. Standard 9 reads:

"Care should be taken in depicting items which explain the technique of crime in a manner which invites imitation".

Mr Hine listed four techniques portrayed which, he said, would assist first in the commission of a similar offence and secondly, the avoidance of apprehension. Standard



"The combination of violence and sexuality in a way designed to titillate is not sanctioned".

Mr Hine considered that the reconstruction was gratuitous and would not assist in the apprehension of the offender.

In his letter to TVNZ of 25 May complaining about *Crimewatch* of 22 May, Mr Hine described a rape reconstruction involving the use of handcuffs as gratuitous and salacious. He added that the item both failed to observe good taste and decency and involved the needless display of actual or implied violence.

TVNZ's Decision on the Formal Complaint

TVNZ's Complaints Committee dealt with the two complaints on 24 July 1990 in the context of standards 2, 9 and 24 of the Television Programme Standards. Standard 2 requires broadcasters, in the preparation and presentation of programmes:

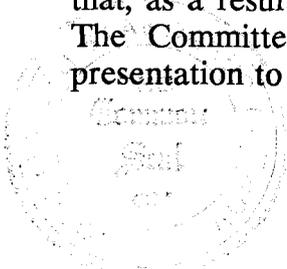
"To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs".

In a letter to the complainant dated 31 July 1990 explaining the Complaints Committee decision, TVNZ recalled the August 1987 guidelines for rape reconstructions on *Crimewatch* which emphasised the need to find a balance between the ugly realities of rape and gaining assistance in identifying offenders while avoiding unnecessary sensationalism. It added that reconstruction requires the victim's consent, that it involved the police case officer, that nudity and sex acts were excluded and that details of perversities were withheld unless they provided essential clues.

It continued that *Crimewatch* was regarded by the police co-ordinator as effective for crime prevention and education and in apprehending offenders. A comparatively high proportion of the cases offered to the programme, it was said, involved rape and the steps taken in preparing rape reconstructions were listed in detail.

Regarding the item in the programme of 1 May, it was stated that the techniques portrayed were those suggested by the police as most likely to encourage other victims or the rapist's friends and acquaintances to phone in. These were important issues in this instance, it was added, as one previous similar attack had been reported and there might be other victims who had not reported an attack. The context was designed to suggest to the offender's associates his need for help.

Regarding the use of handcuffs in the item on the programme of 22 May, the Complaints Committee accepted the police advice that it was an issue of some importance and stated that, as a result of the reconstruction broadcast, the police had a nominated suspect. The Committee accepted that TVNZ when showing violence "agonises over its presentation to ensure that the motives are always positive".



The Committee concluded that the broadcasting standards had not been breached and the complaints were not upheld.

Mr Hine's Complaint to the Broadcasting Standards Authority

As Mr Hine was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority, pursuant to s8(a) of the Broadcasting Act 1989, in a letter dated 22 August 1990. He later forwarded two completed Complaint Referral Forms.

He argued, first, with regard to the 1 May broadcast, that although the reconstruction might encourage other victims or the offender's associates to phone in, this did not excuse the non-compliance with standard 9 concerning the depiction of techniques which invite imitation.

Secondly, the fact that crime was extensively dealt with in the news, on television and in the movies did not excuse TVNZ from complying with standard 2 regarding standards of decency.

Thirdly, the depiction of the use of handcuffs in the item on 22 May breached standard 9 as the use of handcuffs as a means of restraint "was not widely known until the item aired".

Fourthly, he did not accept the Complaints Committee's findings that no standards had been breached. Mr Hine added that he had also written to the Commissioner of Police and that, taking into account the Commissioner's response (a copy of which was enclosed) and the Committee's findings:

"It seems to me that the Police and Television New Zealand have more regard to the financial integrity of the programme and to artistic license than to the requirements of the Code".

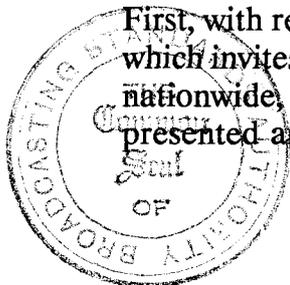
He noted some personal circumstances which gave him heightened sensitivity to the issue.

Mr Hine's letter was referred to TVNZ for a response.

TVNZ's Response to the Authority

In its response in a letter dated 22 November, TVNZ discussed separately each of the four points made by Mr Hine.

First, with regard to standard 9 relating to depicting techniques, the phrase "in a manner which invites imitation" was highlighted. It was argued that the reconstruction, broadcast nationwide, rather than inviting imitation, would act as a deterrent. Moreover, it presented an act which was depicted as cowardly, illegal and subject to severe penalty.



TVNZ also referred to the requirement of s4(1)(b) of the Broadcasting Act 1989 which requires standards consistent with the maintenance of law and order and expressed the opinion that *Crimewatch* played an active role in promoting that standard. Although TVNZ did not accept that s4(1)(b) and standard 9 were in conflict, the situation could be clarified, it said, by the rescission of standard 9 or the addition of a qualification to allow specifically for the broadcast of crime reconstructions in cooperation with the police for the purpose of apprehending offenders.

Secondly, TVNZ rejected the linkage between *Crimewatch* and other media depictions of crime. The reconstructions, it was said, were prepared to minimise the chance that criminals, or potential criminals, would learn techniques.

Thirdly, on police advice, TVNZ accepted that the use of handcuffs in crime was unusual in New Zealand. In the instance under discussion, and although an unusual feature, it was brought to the public's attention as a very real clue and as an essential item for public understanding.

Fourthly, TVNZ believed Mr Hine had used selected quotations from the Police Commissioner's and TVNZ's correspondence to argue the point that financial viability and artistic licence overshadowed observance of the codes. TVNZ maintained that community interest was the basis of the programme and its undoubted success in assisting with the apprehension of offenders could be measured by the clearance rate of the crimes featured.

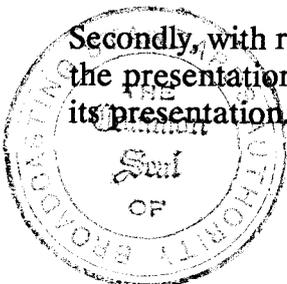
The letter concluded with an expression of sympathy for Mr Hine but added that the rape reconstructions were designed to stress the extreme horror of the act. This message, it was added, should not be confused with a programme overall which was concerned with the maintenance of law and order.

Mr Hine's Final Comment to the Authority

At the Authority's invitation, Mr Hine commented on TVNZ's response in a letter dated 24 December 1990. He responded to the points in the order noted above.

First, he said that TVNZ, by acknowledging the need for standard 9 to be altered, accepted a potential breach of the existing standard and he maintained that breaches had occurred in the items complained about. Further, in contrast to TVNZ's view that the manner of the reconstructions would deter potential rapists, he maintained that conventional wisdom accepted that pornography stimulated viewers and may lead to imitative practices. Thus, he argued, graphic rape scenes would have the same effect, especially for rapists or would-be rapists. In addition, he believed that *Crimewatch* referred only implicitly to the illegality of rape and had not commented on the severity of sentencing.

Secondly, with regard to the depiction of criminal techniques, he repeated the point that the presentation of material which breached the broadcasting standards did not justify its presentation. On the basis that reconstructions allowed potential offenders to learn



techniques and that, from his experience, techniques of offending are learnt or mimicked, he maintained that *Crimewatch* contained material which would be educational for potential offenders.

Thirdly, he accepted that *Crimewatch* might identify a method for committing crimes but maintained that the "graphic reconstruction", such as had occurred with the use of handcuffs, breached the Standards.

Fourthly, he objected to the introduction by TVNZ of police press statements, questioned their relevance and described one statement as fatuous. With regard to the apprehension of offenders whose activities appeared in *Crimewatch*, he argued that identikit pictures or a spoken description of the crime and its circumstances could well lead to the same result.

He concluded by accepting the reasons for the presentation of *Crimewatch* but observed that similar programmes he had seen overseas dealt with the issues with more taste and sensitivity than was apparent in the items to which he had objected.

Having discussed the programme with some rape victims, he argued that the Codes of Broadcasting Practice provided for the presentation of a sensitive and viable programme with artistic integrity. However, the two programmes about which he complained had breached the standards in that Code.

Decision

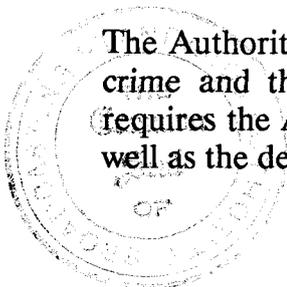
The Authority has studied the correspondence and carefully considered the arguments put forward by Mr Hine in support of his complaints and by TVNZ in response. All members have viewed the items which gave rise to the complaint.

The Authority accepts without hesitation the point made by Mr Hine on a number of occasions that the standards set by the Broadcasting Act 1989 and by the Codes of Broadcasting Practice override other considerations in the preparation and presentation of programmes. As well as applying to the obvious examples of programmes which maintain a broadcaster's commercial viability and display artistic integrity, programmes which offer useful community services, or, indeed, increase the rate of the apprehension of offenders must also comply with the standards.

Much of the argument has focussed on Standard 9 which in view of its importance to these complaints is repeated in full:

"Care should be taken in depicting items which explain the technique of crime in a manner which invites imitation."

The Authority accepts that both items complained about have explained techniques of crime and that the techniques disclosed may be imitated. However, the standard requires the Authority to examine whether the manner of depiction invites imitation as well as the degree of care taken in the depiction. The Authority considers that the items



did not "invite" imitation in the sense of the first dictionary definition of a "courteous request". Similarly, the Authority rejects the second dictionary definition of "invite" which is to tend to bring on unintentionally. The Authority considers the Concise Oxford third definition of "invite", as to present inducements or to attract, correctly conveys the meaning of standard 9. With the definition, the standard means:

"Care should be taken in depicting items which explain the technique of crime in a manner which might attract imitation".

Neither the present standard nor the definition accepted prohibits the depiction of criminal techniques which might attract imitation. Rather, the depiction must be done carefully. The Authority acknowledges that the TVNZ guidelines relating to the explanation of techniques on *Crimewatch* require the exercise of caution. The Authority has examined thoroughly the portrayal of the techniques in the programmes complained about and of particular concern to it were the portrayal of the use of towels and the detail in which the circumstances surrounding the rape were presented in the 1 May programme. Following extensive deliberation about whether this rape reconstruction was unduly prolonged, a majority decided that although the portrayal verged on the margin of breaching the standard, on balance, sufficient care was taken in depicting criminal techniques despite the fact that they might attract imitation. Thus, by a majority vote, the Authority declined to accept that the 1 May item failed to comply with standard 9. The Authority agreed unanimously that the reconstruction broadcast on the programme of 22 May complied with standard 9.

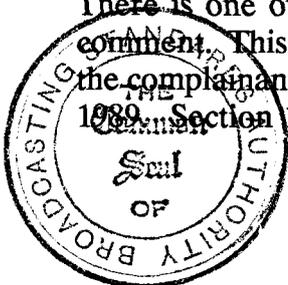
Standard 24 was the second standard cited by Mr Hine. It reads:

"The combination of violence and sexuality in a way designed to titillate is not sanctioned."

Mr Hine argues that the combination of violence and sexuality, in itself, may titillate. It is accepted by the Authority that this is true for some people. However, the definition of "titillate" (Concise Oxford) refers to pleasant excitement. Although the reconstruction of rapes may titillate an unknown percentage of viewers, the Authority accepts that the *Crimewatch* reconstructions are not designed or presented as pleasant events. Accordingly, the two items complained about do not breach standard 24.

The complaint alleging breach of standard 2 was not pursued vigorously. The Authority understands that rape victims, because of their experience, bring a heightened sensitivity to rape reconstructions. The requirement for the victim's consent to a reconstruction used on the programme seems to be a conscientious effort on TVNZ's part to acknowledge this concern although obtaining the victim's consent does not, in itself, mean that the standards will not be breached. In this case, however, the Authority considers that the items do not breach currently accepted standards of decency.

There is one other issue which was raised in the correspondence and requires a brief comment. This concerns the consideration of material from the Police submitted by both the complainant and the broadcaster. The Authority is governed by the Broadcasting Act 1989. Section 10 requires that:



- (2) In considering every complaint referred to it under section 8 of this Act, the Authority shall provide for as little formality and technicality as is permitted by -
- (a) The requirements of this Act; and
 - (b) A proper consideration of the complaint; and
 - (c) The principles of natural justice.

In accordance with s10, the Authority accepted the material from both parties and gave them each the weight which it considered appropriate in reaching its decision.

For the reasons set forth above, the Authority declines to uphold the complaints.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson

19 March 1991

