

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 104/92

Dated the 23rd day of December 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

NEW ZEALAND POLICE

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

The Remand of Ivan Curry was the title of a documentary broadcast by Television New Zealand Ltd on TV1 on Sunday evening 12 July 1992. It dealt with the arrest of Ivan Curry, a man with severe hearing disabilities, on the charge of murder and his remand in custody until his acquittal nearly two years later.

The Commissioner of Police complained to TVNZ that the programme was unbalanced, that it lacked objectivity and that it had not dealt with the Police spokesperson justly and fairly. Moreover, it used deceptive programming practices and, the Commissioner said, he "despised" the programme's efforts to undermine police integrity.

Denying that the programme was unbalanced, that it lacked objectivity, that it had dealt with the Police spokesperson unfairly, or that it would deceive anyone, TVNZ declined to uphold the complaint. Dissatisfied with TVNZ's response, the Commissioner referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have viewed the programme complained about and have read the extensive correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

A documentary entitled *The Remand of Ivan Curry* was broadcast by TVNZ on Sunday evening 12 July 1992. It dealt with Ivan Curry, a man with severe hearing disabilities, arrested on a charge of murder of his young nephew and his remand in custody until his acquittal some 22 months later.

TVNZ and the Police both seem to agree on that brief and bald description of the programme. They also concur that the documentary lasted 64 minutes. However, further analysis brings forth disparate views. They are covered at length in the Appendix but some of the comments (admittedly out of context) are noted here in order to give an impression of the respective attitudes.

The Police Perspective

Comments from the Police included:

- * Portraying Ivan Curry as a "blameless gentle giant" was not totally accurate. The programme chose not to present information which would have damaged the "gentle giant" image.
- * The dramatised courtroom scenes omitted important aspects of the prosecution's case.
- * The programme sought to undermine police integrity and, the Police Commissioner wrote:

It was extraordinarily selective in its use of information and in the methods used to present that information to achieve its objective.

- * It was "highly subjective", "one-sided and contrived", and it was:

a vehicle for emotively promoting the position of an apparently blameless deaf person at the expense of the Police
- * The programme aroused "public emotions and controversy" at the expense of "balance and objectivity".
- * It had vilified the Police and the interpreter in their attempts to communicate with Ivan Curry and alleged that the Police were incompetent from the start of the investigation.

The programme was a "launching pad" to attack the role of the Police and comment was not sought from senior police officers in case it spoiled "a



good story".

- * Viewers, rather than the producer, should have decided the relevance of Ivan Curry's full criminal history.
- * The programme contained a level of advocacy journalism and was "emotively constructed" in a way which ensured that certain conclusions were drawn that were at the expense of the Police.
- * The Police complaint concluded:

The overall lack of impartiality and objectivity and balance and fairness is at the heart of our complaint.

The Broadcaster's Perspective

TVNZ argued:

- * Parts of the programme dealt with issues involving the deaf - not the Police.
- * It dealt with people with disabilities in their struggle with the "system".
- * Ivan Curry was a "gentle giant" although not blameless. It continued:

We believe it quite appropriate, given the quantity of the research undertaken by the producer, for him to reach certain conclusions which he then relayed to the viewing public by way of the programme.

- * The programme was based on very thorough research, and it "was both truthful and accurate".

[T]here was no misrepresentation, nor was the programme unbalanced. Viewers were not deceived

- * It was repeated on several occasions:

We submit that there was no lack of balance or objectivity.

- * The programme was not used as a launching pad to attack the role of the Police. It had dealt with areas of weakness in one specific case which were broadcast in the public interest.

- * The starting point of the programme:

was that a profoundly disabled man had been disadvantaged by his handicap. A corollary was that the Police did not perform their



function in a situation where a man was charged with murder.

- * TVNZ concluded that the programme was neither biased nor inaccurate but was:

a very fine piece of documentary film making.

The Police Complaints Authority's Report

At about the same time that the programme was broadcast, the programme's producer complained to a number of people, including the Ministers of Justice and Police, about some aspects of the Police investigation into the death of a child and the subsequent arrest of Ivan Curry on a charge of murder. That complaint was referred to and investigated by the Police Complaints Authority (PCA) and the report, dated 4 September 1992, was made available to the Authority. A summary of the aspects of the report which the Police submitted were relevant to the complaint is included in the Appendix.

Standards Allegedly Breached

The Police alleged that the programme breached s.4(1)(d) of the Broadcasting Act 1989 and standards 4, 6 and 7 of the Television Code of Broadcasting Practice. Section 4(1)(d) requires broadcasters to maintain standards that are consistent with:

- (d) The principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest.

The standards in the Television Code require broadcasters:

- 4 To deal justly and fairly with any person taking part or referred to in any programme.
- 6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.
- 7 To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

Some months after referring the complaint to the Authority, the Police requested that one aspect of the programme - the allegation that Ivan Curry was not aware for many months while on remand in prison that he had been charged with murder - be assessed under standard 1 of the Code. It requires broadcasters:

- 1 To be truthful and accurate on points of fact.

TVNZ opposed the application and it was withdrawn by the Police before the Authority



had ruled on it. The Authority would record that one of its functions (s.7(3)) is to "investigate and review" the broadcaster's decision on a formal complaint. The Authority interprets this provision to mean that it reviews complaints only under standards raised in the initial complaint to the broadcaster. It will, however, accept arguments which were not raised in the initial complaint provided they are related to the standards referred to initially and provided that the broadcaster has had an ample opportunity to respond. Accordingly, in this instance the Authority has received and reviewed the Police's concern about Ivan Curry's awareness of the reason for his remand under standard 6.

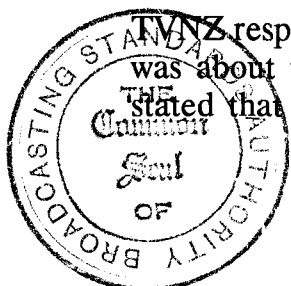
In the formal complaint to TVNZ, the Police alleged the following specific breaches of the standards.

- * As the Police spokesperson was allowed less than five minutes to respond to the allegations in a 64 minute programme, he had not been given a reasonable opportunity to present the views of the Police as required by s.4(1)(d).
- * Standard 4 was breached when TVNZ extensively edited the lengthy interview with the Police spokesperson, Detective Senior Sergeant Peter Scott of the Wanganui Police.
- * The portrayal of Ivan Curry as a blameless gentle giant was unbalanced in contravention of standard 6.
- * The omission of a number of aspects of the prosecution case breached standard 7.

During the Authority's process of information gathering, there was some variation to these arguments. The complaints under s.4(1)(d) and standard 6 were amalgamated and additional arguments were raised. For example, the Police alleged that the thrust of the programme had changed during the time which elapsed after the first letter to the Wanganui Police explaining the programme's focus and requesting an interview, and the interview with Mr Scott some three months later and, further, that Mr Scott was only advised of the changed direction in the letter faxed to him three days before the interview. As it was intended to broadcast the programme nationwide, the complainant argued that the Police at regional or national levels should have been approached. The issue of Ivan Curry's knowledge of the reason for his time in prison also comes under these standards.

Under standard 7, the Police argued that the programme was judgmental and, by not advising viewers of Ivan Curry's criminal history, had adopted an approach of advocacy journalism aimed at exciting the viewer's imagination at the expense of balance and fairness.

TVNZ responded at length to each of these points. Arguing that the programme's theme was about the experiences of people with disabilities in dealing with the "system", it stated that the perspectives on that general issue were put by people other than the



Police. With reference to the standard 4 complaint, TVNZ said that large cutting ratios between filmed and broadcast interviews were not uncommon in documentaries. Referring to the difficulties in obtaining any Police comment, TVNZ denied that the programme's approach had changed from the time of the initial letter to the Wanganui Police and the time of the interview with Mr Scott. It provided the Authority with copies of three letters to the Police to justify that argument.

Acknowledging that the facts disclosed by the programme might be controversial, TVNZ denied that controversy was the intention of the broadcast. It also denied that Ivan Curry had been described as blameless, as his police record had been acknowledged, but considered that the gentle giant appellation was appropriate in view of the research carried out for the programme.

The standard 7 aspects of the complaint were also rejected as TVNZ, in what it described as its watchdog role, had broadcast an exhaustively researched programme which had presented the issues in a balanced and accurate way.

In response to the later arguments added by the Police about approaching more senior Police officers, TVNZ maintained that it wanted to discuss the case of Ivan Curry with the Police officers who had been involved with him and that it was the Police's task, not TVNZ's, to refer the enquiries upwards if need be.

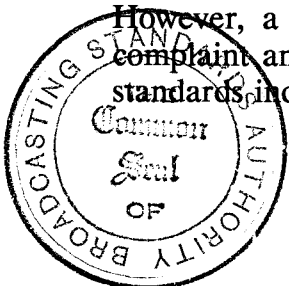
TVNZ maintained that the programme was not unbalanced when it stated that Ivan Curry was not aware that he had been charged with murder when remanded to prison. Acknowledging the variety of views on this issue held by different people, TVNZ listed the interviews it had recorded and which showed that the overwhelming weight of evidence was on the side of those who argued that he was not aware of the murder charge for at least some months while on remand in prison.

In conclusion, TVNZ maintained that the programme had presented Ivan Curry's criminal record to the extent considered necessary and the "gentle giant" description was not an emotive label but a "factual and objective assessment" made following a detailed investigation.

The Authority's Approach

The Authority approached the complaint by assessing the theme of the programme. Was it, to put the Police complaint in extreme terms, a manipulative account of selected facts broadcast with the intention of casting aspersions on Police integrity? Or was it, as TVNZ argued, an objective, accurate, thorough and competently researched documentary about one disabled and innocent person's unhappy and uncompensated experiences with the criminal justice system?

The Authority did not accept either of these extreme positions. Having viewed the programme, it did however incline more to TVNZ's arguments than those of the Police. However, a general assessment alone is not adequate when determining a formal complaint and the Authority has considered each aspect of the alleged breach of the standards individually.



Section 4(1)(d) and Standard 4

The Authority first investigated the aspect of the complaint which alleged that the programme breached s.4(1)(d) of the Act and standard 4 of the Television Code by giving Mr Scott less than five minutes of a 64 minute programme to present the Police perspective and by not giving him notice of the thrust of the questions.

As the programme dealt with Ivan Curry's experiences with the system and with deafness in general and not just with his encounter with the Police, and as some other people put the view of some of the other agencies within the system, the Authority decided that the Police were given an adequate opportunity to present their point of view. This finding was confirmed by noting that the programme gave more than five minutes in total of the courtroom dramatisation to a part of the *voir dire* hearing in which the arresting constable gave his evidence and explained the procedures he had followed. The actor who played that constable portrayed an officer who was forthright in his answers to the questions from both prosecution and defence counsel. The Authority was of the opinion that he created an impression which was favourable to the Police.

In regard to the aspect of the complaint about the change to the programme's direction and the absence of advice to the Police that this had occurred, TVNZ supplied the Authority with the letters from the programme's producer to the Wanganui Police dated 5 June, 16 June and 13 September 1991. Each letter contained more detail about the issues to be covered during the interview but the Authority agreed with TVNZ when it said that the programme's focus did not change. The programme's approach explained in the 5 June letter remained its theme. It was recorded in that letter:

The documentary's principal areas of focus are Mr Curry's handicap and lifetime experience as a profoundly and pre-lingually deaf person, the circumstances pertaining to his arrest, and his period of remand in Wanganui Prison from October 1988 to July 1990.

The Authority also agreed with TVNZ when it stated that it was the responsibility of the Police, not of the programme producer, to refer the enquiries up through the Police structure. It declined to uphold this aspect of the complaint.

Standard 7

The Police complained that standard 7 was breached by a number of aspects of the programme. The standard requires broadcasters:

- 7 To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

The standard was interpreted in a recent decision (No: 93/92) where the complainants alleged that it was breached because a *Foreign Correspondent* item was unbalanced. Accordingly, the complainants maintained, viewers' confidence in the integrity of that programme was misplaced. The Authority wrote:



Finally, the Authority considered the complaint under standard 7. It rejected the complainants' argument that viewers could be so misled by the programme's view of the facts that a "deceptive programming practice" had been employed. The Authority noted that advocacy journalism is a well-established journalistic technique and its use on this occasion was legitimate. The fact that a programme is highly respected is not a sufficient ground for asserting that information given in it will not be critically evaluated by the viewer or listener. In the Authority's view, the standard refers to a "contrived" technique or approach which deceives viewers. The Authority could find no evidence of the use of any contrived technique in this programme which took advantage of the confidence viewers have in the integrity of broadcasting.

Taking into account that this ruling was issued after the current complaint had been referred to the Authority and pointing out that the issues referred to under this heading are also relevant to the question of balance under standard 6, the Authority declined to uphold this aspect of the complaint as there was no evidence of "contrived" practices.

Standard 6

Standard 6 requires balance, impartiality and fairness in programmes such as *The Remand of Ivan Curry* and the Authority examined a number of the aspects of the complaint to see if the programme breached these criteria.

(a) Describing Ivan Curry as innocent

The programme began by describing Ivan Curry as innocent of the murder of his nephew. He was found "not guilty" after his trial in the High Court. The programme presented and visually displayed the evidence which justified the "not guilty" decision and which the producer used to assert Ivan Curry's innocence. It was a piece of evidence, the programme explained, which was not known to the prosecution and came to the attention of the defence only shortly before the actual trial began. The Authority accepted that the evidence, vividly portrayed on the programme, was sufficiently overwhelming to justify the programme's conclusion that, with the benefit of hindsight, Ivan Curry was indeed innocent.

While accepting that Ivan Curry spent a long time in custody while on remand, the Police objected to what it described as the programme's theme - that the lengthy remand occurred only because the Police got it wrong from the start. The issue of the programme's theme is dealt with below when, under the heading **Broadcasting Standards and the Overall Programme**, the Authority considers the complaint that the programme was, in alleging that the Police got it wrong from the start, used as a "launching pad" to attack Police integrity.

(b) The "gentle giant" image

The Police also complained that Ivan Curry's criminal record, which rebutted the "gentle giant" image explicitly advanced at the start of the programme, was submerged. The Police Commissioner advised the Authority that Ivan Curry had 39 convictions and that



he had spent four periods in jail ranging from one month to one year for burglaries and unlawfully taking motor vehicles. Furthermore, he had been fined \$250 for common assault in 1988. In addition, he had been directed by the Wanganui District Court to receive counselling for anger management in respect of violence towards his son.

That information, the Police argued forcefully, questioned TVNZ's portrayal of Ivan Curry as a "gentle giant".

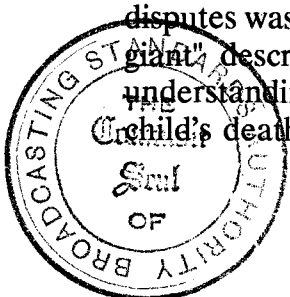
TVNZ responded in detail to this aspect of the Police complaint. It said that the programme had reported that Ivan Curry had a criminal record but also that his acquaintances had exploited his handicap to avoid being blamed themselves. The producer had investigated the assault charge and discovered that even the victim's mother believed that an assault had not occurred. As for the injuries following the alleged violence towards his son, a police officer had signed a report which recorded that the injury was probably accidental. The programme omitted the assault charge but recorded that Ivan Curry had been accused of violence by his wife's family.

In addition, TVNZ stated that its research showed that Ivan Curry had served three periods of imprisonment - all for property offences - and that the programme reported that he had served time in prison. TVNZ said that all the other information gathered, some of which was broadcast and which did not relate to his criminal record, justified the "gentle giant" description.

As the Police complaint about the "gentle giant" phrase focused on Ivan Curry's criminal record, the Authority considered whether TVNZ, as the Police argued, should have reported it in full and left it for viewers to reach their own conclusions about Ivan Curry's character.

The Authority accepted that it was not necessary for the programme to include Ivan Curry's full record of, and punishment for, the property offences. Property offences are distinct from offences against the person. Previous convictions for offences against the person may well be highly relevant when a person is later accused of violence and the Authority did not accept TVNZ's argument that it would be an invasion of Ivan Curry's privacy to investigate and to report on them. As Ivan Curry was a substantial focus of the programme, the Authority was of the view that, by agreeing to participate, he had forfeited any privacy claims to disallow the broadcast of relevant aspects of his character.

TVNZ provided the Authority with information about some strain between Ivan Curry and his wife's family which certainly seemed relevant to the broadcaster's decision to dismiss the incident of alleged child abuse. It also explained why the information on which Ivan Curry was acquitted did not become generally known until his High Court trial nearly two years after his arrest. Moreover, the information about the discordant family relationships might have been relevant to explain why he was unable to nominate an address at which to live on his bail applications. The information about family disputes was touched on during the programme and although it did not affect the "gentle giant" description, its fuller inclusion could well have been of value to viewers in understanding Ivan Curry and the circumstances surrounding the investigation of a small child's death.



Considering whether the broadcast should have referred more fully to Ivan Curry's criminal history, the Authority noted that it could also have emphasised that on earlier occasions he had pleaded guilty to offences with which he had been charged and thus could well be unfamiliar with the procedures - such as a lengthy remand in custody - which might occur following a not guilty plea.

Although it is not possible to reach a definite conclusion on the "gentle giant" description, and in spite of some reservations, a majority of the Authority accepted the validity of the producer's research and the depth of the evidence gathered. Taking this obviously extensive work into account together with the evidence advanced by the Police when they argued that the label was unreasonable, a majority of the Authority decided that the requirements in standard 6 were not breached by the use of the "gentle giant" appellation.

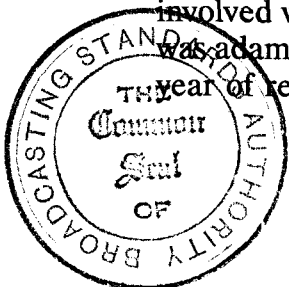
A minority disagreed. It decided that the information broadcast about Ivan Curry and the information later supplied to the Authority was insufficient to justify that title. The minority believed that full particulars of the previous convictions should have been broadcast to allow viewers to make up their own minds about the accuracy of the designation. It concluded that, because insufficient information was broadcast, the programme was neither balanced nor fair when it used the "gentle giant" phrase to describe him.

(c) Ivan Curry's awareness of the murder charge and his ability to communicate

In assessing whether the programme complied with standard 6 when it said that Ivan Curry, when in prison, was unaware for many months that he had been charged with murder, the Authority observed first that this did not involve any criticism of the Police as their direct responsibility for a person ceases once the accused is brought to court. The Authority also noted that the allegation had been specifically covered by the Police Complaints Authority when interviewing defence counsel during its investigation of the programme producer's complaint. The Police Complaints Authority reported:

That assertion had to be investigated by me and was. I spoke with his senior counsel, Mr Lance, and he assured me he had many sessions with his client whilst he was in prison on remand and he was never in doubt Ivan Curry knew he was in prison at all times because he was charged in connection with the death of a child. Furthermore, Ivan Curry had been extensively examined by many experts directly concerned with his ability to understand and communicate for the purposes of evidence in the first *voir dire* in Auckland one year after his arrest. There was never a suggestion that for a year he was under a fundamental misapprehension as to why he was in prison.

TVNZ's report to the Broadcasting Standards Authority included comments, some of which were reported verbatim, of a number of experts and prison officers who were involved with Ivan Curry during his period of remand. Of the eight spoken to, only one was adamant that Ivan Curry knew that he had been charged with murder during the first year of remand.



When the complaint was initially referred to the Broadcasting Standards Authority, the Police contested the programme's portrayal of Ivan Curry as a profoundly deaf person. He could, they alleged, communicate with his family through lip reading and other means and they wrote:

He can both understand and communicate. He has partial hearing in one ear sufficient to respond to the telephone ringing and comprehend basic sentences from the telephone.

TVNZ replied:

Quite frankly, this is an area in which we simply disagree with the Commissioner.

We would state categorically that it is absurd for the Commissioner to imply that Ivan Curry has acceptable hearing and a reasonable ability to communicate. He does not.

It is our view, based on the producer's own direct dealings with Mr Curry and on the comments made by members of his family (including his wife), that Ivan Curry does not lip read with any degree of competence.

In assessing this disagreement, the Authority also took note of Mrs Freda Pearce's comments. She was the official interpreter during Ivan Curry's second year in prison and the person who, the family stated, understands him better than anyone else. Asked whether Ivan Curry knew why he was in jail, TVNZ reported that she said:

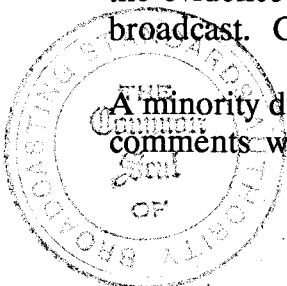
No no. And I still feel that even today. I don't think he fully understands the whole scenario, and even though, you know, we've hashed it so many times, that he's really gone through it. I still don't know if he innately, if he really understood that he was imprisoned because someone thought he had killed that baby.

Referring to Ivan Curry during the broadcast, but speaking generally about the deaf, she said:

There seems to be this myth about lip reading. Can they lip read? ... No they can't. They can lip read as well as hearing people. They are not born with the great gift to lip read. To lip read presupposes you know the language you're speaking. Ivan doesn't have good English. It's no good saying he can lip read.

The Authority was not prepared to decide which view was correct - whether Ivan Curry knew or did not know for many months that he was in prison because he had been charged with murder. However, a majority of the Authority was prepared to state that the evidence it had seen and read was plausible and justified the view expressed in the broadcast. Consequently, that aspect of the complaint was not upheld.

A minority disagreed. It focused in particular on the PCA's report and, balancing those comments with the other information presented to the Authority, decided that the



evidence was not sufficiently conclusive to justify the programme's conclusion on this point. Accordingly, it considered that this aspect of the complaint should be upheld under the standard 6 requirement for balance.

(d) The absence of the Crown Prosecutor's perspective

The Police also expressed concern that, whereas both defence counsel were interviewed, the Crown Prosecutor was not. TVNZ reported that the latter had been interviewed but that nothing of the interview was broadcast as it contained no new material. The Authority found that decision surprising. Even if only a brief extract was shown, it would have helped avoid any misunderstanding about the roles of the respective agencies. The Authority examined the programme carefully to see whether the Crown Prosecutor's absence, particularly when extracts from the interviews with the two defence lawyers were broadcast on a number of occasions, reduced the credibility of the prosecution's case. Even though he might have had little to add to what was presented by others, the members of the Authority with a legal background believed that his appearance might well have helped to clarify the roles of the various agencies within the criminal justice system. Nevertheless, a majority of the Authority decided that the omission was insufficient to conclude that the programme breached the requirements of the broadcasting standards for objectivity and impartiality. A minority decided that the absence of the Crown Prosecutor's perspective contributed to a sufficient lack of balance in the programme to rule that a relatively minor breach had occurred.

(e) The reference to the Court of Appeal's decision

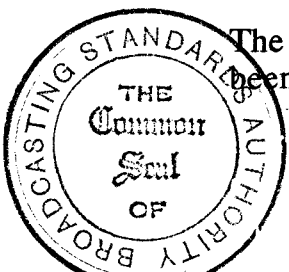
In addition the Police complained that the programme gave insufficient attention to the Court of Appeal decision that the second confession was admissible as evidence. The Authority decided that it had been given adequate attention although the minority which considered a relatively minor breach under (d) had occurred, was of the opinion that the reference to this decision might well have provided an opportunity to introduce counsel for the prosecution who had been successful in the Court of Appeal.

Broadcasting Standards and the Overall Programme

The Authority returned to the broad theme of the documentary *The Remand of Ivan Curry* before deciding whether the entire programme breached the standards nominated by the Police - ie s.4(1)(d) of the Broadcasting Act 1989 or standards 4, 6 and 7 of the Television Code of Broadcasting Practice.

The Authority approached the issue of the item's theme by focusing on the Police complaint that the programme, by alleging that the Police got it wrong from the start, was a "launching pad" to question their integrity. The Police pointed to the advantages of hindsight for the programme maker and for some of the people interviewed. The Police Complaints Authority also addressed the point of the programme's theme when the PCA's report recorded:

The starting point of the documentary was that Ivan Curry should never have been put on trial in the first place ...



TVNZ described this aspect of the Police complaint as unwarranted and argued, without acknowledging the benefit of hindsight:

It is our view that the programme conclusively, and correctly, showed that the methods of interrogation initially used in this case and the individuals involved in that interrogation were inappropriate where the suspect was profoundly deaf.

In response to the PCA's report, TVNZ stated:

The starting point of the documentary was that a profoundly disabled man had been disadvantaged by his handicap. A corollary was that the police did not properly perform their function in a situation where a man was charged with murder.

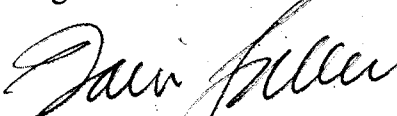
Having studied the programme carefully, the Authority did not agree with the Police allegation about the programme's theme. The Authority decided that the broadcast focused on the experiences of a profoundly disabled man and, if it had been used as a "launching pad" at all, it was to question the criminal justice system and, specifically, that system's ability to deal with people with major hearing disabilities. The programme evoked emotions but was not emotive. The "system" was at fault and those faults were displayed by a number of people within it - whether they were Police Officers, pathologist or interpreter.

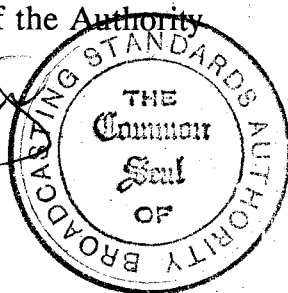
Moreover, after viewing the programme and reading the extensive material which was made available, the Authority decided that the Police had not been presented as badly nor criticised so extensively as they apparently believed they had.

Whereas a minority of the Authority decided that three specific aspects of the programme had breached the requirement for balance in standard 6 and those parts have been noted in the body of the decision, the majority, after weighing the evidence carefully, disagreed with the minority on those specific points. Furthermore, the Authority, unanimously, decided that the entire programme did not breach the other standards nominated.

For the reasons set forth above, a majority of the Authority declines to uphold the complaint that the broadcast by TVNZ of the programme *The Remand of Ivan Curry* on 12 July 1992 breached standard 6 of the Television Code of Broadcasting Practice. The Authority unanimously declines to uphold the other aspects of the complaint.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson
23 December 1992



Appendix

The Police Commissioner's Complaint to Television New Zealand Limited

In a letter dated 14 July 1992, the Commissioner of Police complained to Television New Zealand Ltd about the documentary *The Remand of Ivan Curry* broadcast on TV1 on Sunday evening 12 July. The Commissioner stated that the broadcast breached s.4(1)(d) of the Broadcasting Act 1989 and standards 4, 6 and 7 of the Television Code of Broadcasting Practice.

Section 4(1)(d) requires that a reasonable opportunity be given to parties to present significant points of view and, the Commissioner stated, the provision was breached as the Police were allowed only about four to five minutes to respond to the allegations made in a controversial 64 minute programme.

The Commissioner said that standard 4, which requires that people be dealt with justly and fairly, was breached when the programme only presented severely edited segments of a lengthy interview with Det. Senior Sergeant Peter Scott.

Standard 6 requires balance, impartiality and fairness and the programme failed to achieve that, the Commissioner continued, by portraying Ivan Curry as a "blameless gentle giant". Adequate inquiries by the programme's makers, the Commissioner added, would have shown that this was not totally accurate.

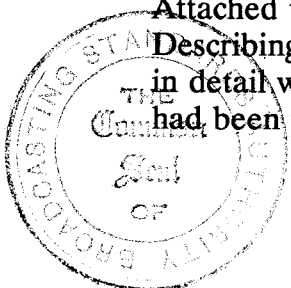
The avoidance of deceptive programming practices is the requirement in standard 7 and the Police listed three aspects of its complaint under this heading. First, the broadcast did not make clear that the Police were in a difficult position to respond fully to the programme's allegations as Mr Curry had been acquitted. That might deceive viewers, the complainant added, into thinking that the Police were either incompetent or were hiding something. Secondly, the programme did not record that the Courts had not criticised the Police handling of the case, and thirdly, the dramatised courtroom scenes in focusing on the defence case omitted important aspects of the prosecution.

In conclusion, the Commissioner, while admiring the professional skills of the programme maker, said that he despised the "single-minded manner" in which the broadcast sought to undermine Police integrity.

It was extraordinarily selective in its use of information and in the methods used to present that information to achieve its objective.

The broadcast of an apology was demanded.

Attached to and part of the Police formal complaint was a draft media release. Describing the documentary as "highly subjective", "one sided and contrived", it dealt in detail with some aspects of the investigation and provided reasons why Mr Curry had been prosecuted for murder. While agreeing that Mr Curry had hearing



difficulties, it emphasised that he had been charged because he twice admitted punching the child. The draft release expressed concern that the documentary excluded the Crown Solicitor's comments and concluded by pointing out that the Court of Appeal had ruled that Mr Curry's second statement (made through an interpreter) acknowledging the offence was admissible as evidence.

The Police later advised that this draft paper was not in fact released to the media.

TVNZ's Response to the Formal Complaint

TVNZ advised the Police Commissioner of its Complaints Committee's decision in a letter dated 5 August 1992 and it dealt with each of the complainant's specific allegations.

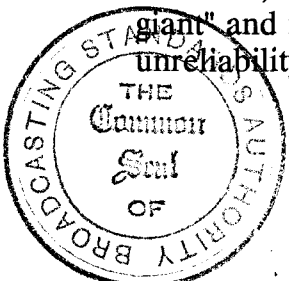
In regard to the s.4(1)(d) complaint, TVNZ agreed that the comments from the Police spokesperson amounted to four or five minutes but noted, first, that the "prosecution" side was advanced in other aspects of the programme, and secondly, parts of the programme dealt with issues involving the deaf - not the Police. Further, the programme did not deal with Mr Curry's dispute with the Police - as the complaint implied - but with people with disabilities in their struggle with the "system".

Moreover, TVNZ reported, Police comment was forthcoming only because of the producer's persistence over three months - and then only one police officer was prepared to be interviewed. TVNZ recorded the lengthy efforts made by the programme makers in order to obtain any Police comment and stated:

Given the documentation provided, the Committee came to the view that the Police had been given every opportunity to comment on the Ivan Curry case. It was not for want of trying that the producer was unable to secure comment from any police officer other than Mr Scott.

The Police had complained that Det. Senior Sergeant Scott had not been dealt with fairly and, TVNZ responded, large cutting ratios between filmed and broadcast interviews were not uncommon in documentaries. Further, having watched a videotape of the original interview, TVNZ pointed out that Mr Scott's discomfort in front of a camera was part of the reason for the length of the interview. It did not believe that standard 4 had been breached.

In dealing with the standard 6 aspect of the complaint, TVNZ stated that although the facts might have been controversial, the programme had not set out to be so. TVNZ denied that Mr Curry was described by the programme as blameless as it was broadcast that he had a criminal record and that he had been accused of violence. However, TVNZ accepted the producer's conclusion that Mr Curry was a "gentle giant" and recorded the evidence produced to substantiate that claim along with the unreliability of the contrary accusations. TVNZ decided:



The evidence of the man's gentle nature seems overwhelming.

TVNZ then discussed the three aspects of the deceptive programming complaint under standard 7. First, TVNZ observed that the complaint about Police difficulties in view of the acquittal seemed to contradict other aspects of the complaint where the Police comment was forthcoming. Secondly, the producer had not been told of that restraint while making the programme. Thirdly, TVNZ wondered why the Police had advanced a spokesperson at any stage when they could not discuss the evidence which was now part of the public record. TVNZ concluded on the point:

With due respect, the Committee noted that the programme did not "deceive" anyone. The message in the programme is crystal clear.

Moving on to the aspect of the standard 7 complaint that the Police had acted in a less than competent fashion, TVNZ wrote:

If, after exhaustive research, a documentary maker (or for that matter a historian, or investigative reporter) finds fault with the activities of any public body or public figure beholden to the citizenry at large it should say so.

Such is the watchdog role of the media in this and other western countries.

The Committee was satisfied that the implications made in this programme were based on very thorough research - documentation of which was produced in volume at the Committee meeting.

In view of the legal advice it had received that it was unusual for a Court to comment on Police performance in the case of an acquittal, TVNZ was perplexed by the aspect of the complaint that the broadcast did not record the absence of criticism from the Court. TVNZ did not accept the complaint that the programme had excluded the prosecution's comments on Mr Curry's ability to understand as it was not aware of any prosecution comment on the point.

The Police had attached a draft press release to its complaint to TVNZ to which TVNZ responded in detail over six pages. As noted in the final paragraph in the section above outlining the Police formal complaint to TVNZ, this draft release was not in fact released to the media.

In its response, TVNZ stressed that the documentary was not one-sided and contrived. "It was both truthful and accurate". The documentary accepted, TVNZ continued, that the Police believed that they had a confession. "What the programme questioned was the environment in which that 'admission' was secured". It reported that the Complaints Committee had questioned the programme's producer about the claim that Mr Curry was in prison for many months before he realised he had been charged with murder and, in view of the number of sources quoted, accepted his explanation.

After dealing with some details of the investigation - including whether the Police



should have ascertained earlier the reason for the child's death - TVNZ noted that witness credibility was of great importance. None of the points raised in the draft release caused TVNZ to change its mind not to uphold the complaint.

The Police Commissioner's Complaint to the Broadcasting Standards Authority

As he was dissatisfied with TVNZ's response, in a letter dated 31 August the Commissioner of Police referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

He repeated that the complaint was made under s.4(1)(d) of the Broadcasting Act and standards 4, 6 and 7 of the Television Code of Broadcasting Practice. He began:

The programme was an independent production which, we are told, originally set out to document issues facing the deaf in relation to the justice system.

Instead, it became a vehicle for emotively promoting the position of an apparently blameless deaf person at the expense of the Police who were inadequately forewarned of the shift in emphasis.

While acknowledging that justified criticism of the Police was acceptable, the Commissioner objected to contrived criticism based on misrepresentation and lack of balance which brought the Police into disrepute. He argued that the promotional material for the broadcast was "deliberately controversial" and was designed to engage the viewers' emotions and added:

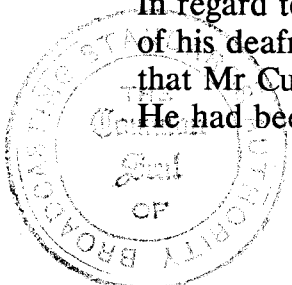
By playing on two factors - emotions and controversy - I believe there was a more compelling responsibility than usual for the programme to also provide objectivity and balance.

Referring to an earlier complaint about a TV3 programme about the Police which had been upheld by the Authority (*Secret Witness* - Decision No: 15/92), the Commissioner said that there were similarities in the complaints as both started from a particular standpoint and gave the Police limited opportunities to comment. Having stated that the Wanganui Police were neither advised of the programme's direction nor that it would criticise the Police, the Commissioner wrote that the main point of the referral of the complaint was:

[T]o challenge the right of a broadcaster to arouse public emotions and controversy at the expense of balance and objectivity.

He proceeded to give examples of the programme's approach.

In regard to the programme's portrayal of Ivan Curry as a "gentle giant" who, because of his deafness, was out of his depth in the justice system, the Commissioner advised that Mr Curry had 39 convictions (including one for assault) between 1983 - 1992. He had been fined and had served four terms of imprisonment ranging from one



month to one year. He had also been ordered to receive anger counselling. The Commissioner concluded on this point:

The programme deliberately, and with a clear knowledge of many of the facts about Curry's criminal background, chose to submerge information which would have damaged the "gentle giant" picture it set out to create.

The letter then dealt with the programme's portrayal of Mr Curry as not only a profoundly deaf person but one with little or no ability to understand and communicate. It began:

He can both understand and communicate. He has partial hearing in one ear, sufficient to respond to the telephone ringing and comprehend basic sentences from the telephone.

In addition, through lip reading and other means, Mr Curry was able to communicate with this family. Recording the process by which Mr Curry had been interviewed and attaching the records of the interviewing officer, the Commissioner observed that the Courts had accepted Mr Curry's ability to communicate.

On this aspect, the Commissioner concluded that the programme in its single-minded pursuit to maintain that Mr Curry was unable to comprehend had vilified the ability of the Police and the interpreter.

The Commissioner next discussed the point raised in the programme that Mr Curry may not have been aware he was facing a murder charge. Pointing to the numerous people who would have spoken to him while on remand, the Commissioner described the picture as one based on selective interviews, inferences and conjecture.

While accepting that Mr Curry spent a long time in custody while on remand, the Commissioner objected to the programme's theme that this only occurred because the Police "got it wrong from the start". Regarding the claim that the Police were incompetent, the Commissioner recorded:

In constructing the programme, the producer had the luxury of interviewing critical participants who had the benefit of three years hindsight. For instance, defence counsel were encouraged to think of, or answer, critical points which had not been dreamed of at the time of Curry's court appearances. Three years down the track, the producer was in a position to draw a range of generalised conclusions which, at face value, fitted the story he was promoting.

By way of summary, the Police argued that while other aspects of the justice system could have been at fault, TVNZ had constructed the programme in a way which pointed viewers towards Police actions. The letter continued:

Given all the optional ways of portraying the Ivan Curry story, the nub of this formal complaint is not just whether TVNZ fairly represented the issues - but whether it presented viewers with a balanced, objective, and factual



programme.

Whereas some television reviewers considered that the Police were at fault by not providing TVNZ with appropriate information from the outset, the Commissioner responded by pointing out that the programme had made a "fundamental change" in direction after the local Police were initially approached for general comment on issues associated with the deaf. Instead, the programme had been used as a "launching pad" to attack the role of the Police and he concluded:

It also bears noting that the producer made no attempt to put the programme's contentions to the Palmerston North based Region Commander, under whose responsibility the Wanganui District comes, or myself.

There again, going to these lengths might just have spoiled what TVNZ obviously thought was a good story.

The Police Complaints Authority's Report "The Ivan Curry Investigation"

Shortly after the Police had referred its complaint to the Broadcasting Standards Authority, the Police Complaints Authority issued its report entitled "The Ivan Curry Investigation". The report recorded that Mr Keith Hunter, the maker of the programme "The Remand of Ivan Curry", had sent a tape of the programme to the Minister of Police, the Minister of Justice and the trial judge and it had been passed on to the Police Complaints Authority (PCA).

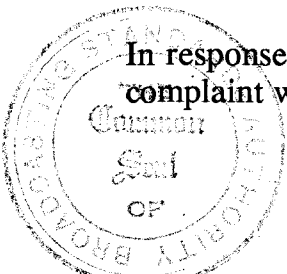
The covering letters from Mr Hunter had raised a number of points and the PCA's report summed up their contents:

Different points were made to each of the recipients which will be dealt with hereafter but the central point of the author was contained in the letter to the Minister of Police in which he said the documentary is critical of the Police prosecution in 1988-90 of a profoundly deaf man on a charge of murder. He said his documentary investigated the manner of Mr Curry's arrest and the quality of the Police investigation into the death of the child involved. He said it indicates that while the formalities were observed, Mr Curry was not afforded justice. Mr Hunter further stated:

I submit that the arrest and prosecution of Mr Curry and also the conduct and competence of the police during both investigation and trial require further enquiry.

In view of the extensive nature of the PCA's report, at TVNZ's suggestion the Police were asked to identify those aspects of the report which related to the complaint to the Broadcasting Standards Authority.

In response, in a letter dated 28 September, the Commissioner recalled that the complaint was based on balance, objectivity and adverse deception and wrote:



I believed it was the prerogative of the BSA to consider which parts of the PCA report were directly relevant to the formal programme complaint we have lodged - and I had no wish to pre-empt that right.

In meeting your request to delineate areas in the PCA report which I consider the BSA should assess, I stress that I am largely confining myself to comment by the PCA about the construction and production of the programme.

The aspects of the report which the Commissioner mentioned included the following observations by the Police Complaints Authority. The quotations from his report have been numbered by the Authority for ease of reference when summarising TVNZ's later response (pages xiii - xv below).

- 1) I think the programme is most accurately described as a documentary for the dramatic segments are faithful to the actual Court records. However, throughout the 64 minutes of running time of the programme there is a regular narrative comment the central theme of which is direct criticism of the Police investigation in several respects that are nominated hereafter, and direct and implied criticism of a justice system that put Ivan Curry on trial for murder. (page 7)
- 2) The use the programme makes of the jury's verdict of acquittal is to reinforce the message of the programme that he should never have been tried. The programme's contention was that the trial came about because of Police rigidity and incompetence in the investigation, and a justice system that was powerless to provide a remedy. (page 8)
- 3) The overall approach is not disinterested investigation because it started from a given premise of absolute innocence. The central thrust of the programme is to level unambiguous criticism against Police conduct and less noticeable, but nevertheless powerfully present, is encoded criticism of the justice system that allows an innocent man to be put through such a terrifying experience over nearly two years as to be charged with murder. (page 8)
- 4) The subject is dealt with in a responsible manner but there are some questionable assertions in the narrative and by some persons interviewed. (page 8)
- 5) The programme is television journalism and had as its foundational fact the indisputably safe and secure position, a jury had acquitted the accused of criminal conduct. It also was not journalism that permitted the viewers to reach their own conclusions after a cool and detached exposure of the facts, but it was advocacy journalism aimed primarily at stirring viewers' indignation. (page 8)

Before turning to the precise complaints against the Police which can be extracted from the material, I feel bound to make the following observations on the television programme. Given that the programme was television



journalism it nevertheless did not demonstrate any concessions, or a full understanding, of several relevant factors. (page 10)

- 7) Arising out of the foregoing and probably the major point the documentary could have made and failed to make clear, is that New Zealand's highest Court in criminal appeals, the Court of Appeal, by its judgment, ruled that the confession of Ivan Curry that he had struck the child in the chest some three times on that morning was a jury question. (page 11)
- 8) One final observation on the Court of Appeal's decision. This programme was well researched and without question the significance of that decision would have been understood by the programme's producer. That there was virtually no reference to the effect of the decision in the programme must have been the choice of the producer and not by oversight. (page 13)
- 9) The documentary gave no recognition to the careful treatment the justice system of New Zealand gave to this case. There are problems and they will be faced, but it was at least worth a mention that the case was very unusual, and complex. As far as I could ascertain there was hardly a positive comment made in the documentary about a system that, in my view, worked properly with a satisfactory result. (page 13)
- 10) The starting point of the documentary was that Ivan Curry should never have been put on trial in the first place, but my investigation does not justify that proposition. The Crown in bringing the prosecution, with its plainly justified reasons on the available evidence, was simply not given a hearing in the documentary. (page 13)

The Police Commissioner finished his letter to the Authority:

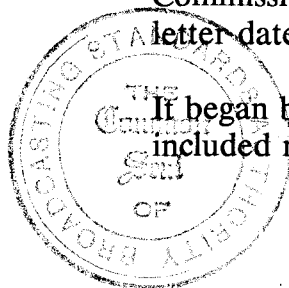
As the producer's allegations formed the basis of his television programme, it would thus seem appropriate for the BSA to also consider the PCA report in its totality where it bears on the construction and production of his programme.

We hold strongly to the view that the programme seriously breached the Broadcasting Act and Television Programme Standards as specified in my formal complaint of 31 August.

TVNZ's Response to the Broadcasting Standards Authority

TVNZ responded to the Authority's request for comment on both the Police Commissioner's complaint and the Police Complaints Authority's report in a lengthy letter dated 21 October 1992.

It began by noting that the Police, when referring the complaint to the Authority, included material which had not been part of the original complaint. In addition it



rejected some of the complainant's general criticisms, observing:

We believe there was no misrepresentation, nor was the programme unbalanced. Viewers were not deceived, and the only criticisms implied of the Police, are the same as those referred to by Mr Jeffries in the Police Complaints Authority's report.

TVNZ also rejected the suggestion that the newspaper television reviewers, quoted by the Police, were evidence of "public deception" and in response quoted from one reviewer who wrote about the programme:

Voice-over was informative rather than emotive, although not pretending a dishonest neutrality either.

TVNZ continued by expressing disagreement paragraph by paragraph with the complainant's general comments. The general points stressed by TVNZ were that the programme showed facts which had been meticulously gathered over 18 months. While agreeing that the programme involved some "advocacy" journalism and reported about an adversarial system, it had not in itself been adversarial in approach.

Responding to the specific Police complaint that limited opportunities had been given to comment, TVNZ mentioned briefly the numerous requests made to the Police for comment and concluded:

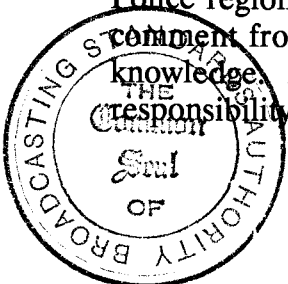
The Commissioner's claim that the Police had very "limited opportunities" is patently absurd.

TVNZ also disputed the specific allegations that the programme's theme changed direction while being made and that the Wanganui police were not advised of the direction finally taken. Attaching copies of the letters written to the Wanganui Police by the programme's producer, TVNZ included a quote from the first dated 5 June 1991 which, it said, was a fair synopsis of the programme which was broadcast:

The documentary's principal areas of focus are Mr Curry's handicap and lifetime experience as a profoundly and prelingually deaf person, the circumstances pertaining to his arrest, and his period on remand in Wanganui Prison from October 1988 to July 1990.

Later correspondence, TVNZ added, had made it even clearer that the programme would deal with the Police's handling of the case and it repeated that the programme's emphasis had not changed while being made.

With regard to the aspect of the complaint that the producer had not approached Police regional or national headquarters, TVNZ explained that the producer wanted comment from the officers actually involved rather than from those with no first-hand knowledge. Moreover, TVNZ continued, surely it was the Wanganui Police's responsibility to refer matters upwards as they knew that the programme was to be



broadcast nationwide.

TVNZ disagreed with the Police comment as to why named police officers had not agreed to an interview. The lack of "camera" experience, which was cited, did not stop other police officers from being interviewed on television. While not disputing that only a small part of the interview with Det. Senior Sergeant Scott had been broadcast, TVNZ said it was not its task to teach police officers how to present well on camera and it was not company policy to involve interviewees when exercising editorial discretion. TVNZ agreed with the Police that defence counsel had been interviewed twice - not to allow him to "improve his performance" as alleged by the complainant - but to ask about some information which had come to light during the interview with Mr Scott of which counsel had not been aware during the trial.

In dealing with the aspect of the Police complaint alleging that Mr Scott had been treated unfairly, TVNZ reiterated that the programme's direction had not changed during production and that Mr Scott would have been aware of its direction had he carefully read the earlier correspondence (quoted above) and it stated:

We find it inconceivable that Mr Scott did not deduce from the first two letters that an examination of the Ivan Curry case was to be the basis of the documentary into the way the judicial system was not equipped to handle the special needs of the deaf.

TVNZ then dealt with the complaint that the programme was unbalanced, beginning:

We submit that there was no lack of balance or objectivity

The programme reported, TVNZ pointed out, that Ivan Curry had been in trouble with the law before but it had also recorded that that had occurred when others had exploited his handicap. The producer had investigated thoroughly the one previous conviction for violence and concluded that an assault, in fact, had not occurred. The Police complaint referred to an incident of child abuse (the scalding of a baby with hot water) but that, TVNZ maintained, had been accepted in 1988 by a number of the parties, including the Police, as an accident.

Expressing amazement that the Police should publish an individual's criminal record, TVNZ noted that it mainly involved minor property offences and that it did not record that Mr Curry had been violent towards any child. TVNZ stated:

Considering the non-violent nature of Mr Curry's criminal background, to have given more emphasis to these matters would have been a gross injustice to him, and an unconscionable invasion of his privacy.

Further, as each previous appearance included a guilty plea, Mr Curry was not familiar with the trial procedure dealt with in the current programme.

TVNZ attached as an appendix the producer's extensive research undertaken before deciding to portray Mr Curry as a "gentle giant" and remarked:



We believe it quite appropriate, given the quantity of research undertaken by the producer, for him to reach certain conclusions which he then relayed to the viewing public by way of the programme.

This work can be likened to an author who, on completing an investigation, relays his findings to the public by way of a book.

The Commissioner's concerns as to whether the programme had correctly portrayed Mr Curry's ability to communicate were next discussed by TVNZ. Pointing out that a great deal of new material had been included in the complaint when it was referred to the Authority, TVNZ stated:

Quite frankly, this is an area in which we simply disagree with the Commissioner.

We would state categorically that it is absurd for the Commissioner to imply that Ivan Curry has acceptable hearing and a reasonable ability to communicate. He does not.

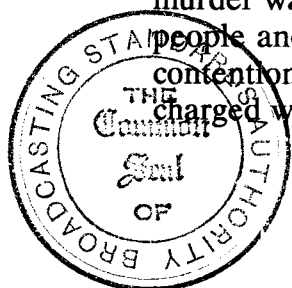
It is our view, based on the producer's own direct dealings with Mr Curry and on the comments made by members of his family (including his wife), that Ivan Curry does not lip read with any degree of competence.

Furthermore, Mr Curry's wife believed that the interpreter, Mrs Freda Pearce, was the only person who communicated even moderately with him. Referring to the information gathered during the preparation of the programme, TVNZ expressed the following opinion:

In drawing the attention of the Authority to the "brief of evidence" we respectfully suggest that the Commissioner is being misleading. Ivan Curry is incapable of making the responses to which the Commissioner refers. He does not have access to this sort of language. He does not speak in sentences. That this is so was confirmed in court by many expert witnesses, is averred by the producer of the programme and is the view of literally dozens of people contacted during the making of the programme.

TVNZ continued by presenting evidence and comments about Mr Curry's inability to communicate and, in passing, questioned the accuracy of the Police Commissioner when he described the officer who interviewed Mr Curry as a member of the Criminal Investigation Unit rather than a member of the uniformed staff then attached to the CIB.

The question of whether the programme was misleading in suggesting that Mr Curry was in prison "for many months" before realising that he had been charged with murder was then addressed. TVNZ said that that information was given by eight people and it included quotes from recorded interviews as the evidence of that contention. Recorded comments stating that Mr Curry did not realise he had been charged with murder when remanded in prison came from Mrs Freda Pearce, official



interpreter during Ivan Curry's second year in prison, Mrs Linda Prouse, official interpreter during Ivan Curry's first year in prison, Dr John Thickpenny, defence psychologist throughout Ivan Curry's remand in prison, Dr John Rogers, defence psychiatrist during the latter period of Ivan Curry's remand in prison, and two prison officers. TVNZ believed that these views outweighed the contrary opinion expressed by the defence psychiatrist at the beginning of the period of remand.

Mrs Freda Pearce was asked:

Do you think he understood that he was in jail because he was accused of murdering a Child?

She answered:

No no. And I still feel that even today. I don't think he fully understands the whole scenario, and even though, you know, we've hashed it so many times, that he's really gone through it. I still don't know if he innately, if he really understood that he was imprisoned because someone thought that he had killed that baby.

In response to the complainant's contention that the allegation meant that numerous official personnel did not realise that Mr Curry did not understand the charge, TVNZ pointed out that the Police advised that only one police officer had spoken to Mr Curry about the matter and he acknowledged that he had never previously spoken to a deaf person. The other people mentioned did not speak to Mr Curry and, TVNZ concluded:

His two interpreters agree that Mr Curry did not properly understand the trial or, for a long time, the charge. The defence psychologist and psychiatrist felt the same way. Both defence counsel emphasise Mr Curry's inability to readily understand.

TVNZ then described as unwarranted the complaint that the programme was unfair when it alleged that the Police "got it wrong from the start". It continued:

That the Police got it wrong from the start is borne out by the decision of the Jury - and supported in the report of the Police Complaints Authority.

It is our view that the programme conclusively, and correctly, showed that the methods of interrogation initially used in this case and the individuals involved in that interrogation were inappropriate where the suspect was profoundly deaf.

Four extracts were cited from the Police Complaints Authority's Report which, TVNZ maintained, indicated that the Police acted in a "less than competent manner".

Moving on to the Conclusion in the complainant's letter, TVNZ denied, first, that the programme had undergone a substantial change in direction while being made, and



secondly, that it was used as a launching pad to attack the role of the Police. Areas of weakness in one specific case, it said, had been broadcast in the public interest. Thirdly, TVNZ maintained that Mr Scott had been advised of the interview's line of question three months, not four days, before the interview took place.

TVNZ next addressed the aspects of the Police Complaints Authority's (PCA) report which the complainant had asked the Authority to take into account. Describing the PCA's approach as unusual, it began:

The [Police Complaints] Authority is required by statute to enquire into the behaviour of Police in respect of complaints made to it by the public. In this case the producer of "The Remand of Ivan Curry" was the complainant - and his complaints were in respect of the actions taken by the Police.

The producer made no complaint about his own television programme - yet fully twenty per cent (seven pages) of the Police Complaints Authority's report is taken up with what can only be described as a critique of the programme - something we would have thought was outside the authority, responsibility and competency of the Police Complaints Authority.

TVNZ reported that while it disputed the contents of some of the PCA's report, for example its list of "facts", it intended to respond only to the ten specific points raised (pages vii - viii above). Wondering whether the Commissioner of Police had raised point one on the basis that he really believed that the Police should not be criticised, TVNZ moved to the second point which recorded the PCA's conclusion about an aspect of the programme - a conclusion which, TVNZ noted, did not include a criticism. Similarly, point three contained one person's opinion about the programme's thrust. In response, TVNZ wrote:

We do not agree that the programme offered "unambiguous criticism" of the Police. Rather it raised questions which the Police were requested to answer. How well they did that is a matter for the viewer to decide.

TVNZ also disagreed that the use of the word "remand" in the programme's title was used in contrast to the term "trial". "Remand" was used to emphasise the time spent awaiting trial and, in addition, was not intended to suggest that Mr Curry should not have been charged.

With regard to the next point noted (number 4), TVNZ agreed with the PCA's opinion that the subject was dealt with responsibly but, as they were not specified, it could not comment on the PCA's comment that the programme made "questionable assertions".

The PCA's next comment (point 5) contained an implied criticism of the producer's method in making the programme and TVNZ reported the producer's comment in

full.

prime responsibility I accepted consciously at the very beginning of the



exercise was to ensure that my documentary would in no way re-try Ivan Curry on television. He is an ingenuous man and it would have been a simple matter to gain his consent to treat his story and then betray him, as happened so often in the past. I took this responsibility extremely seriously to the point where I would not have continued with the project unless I was sure that it would not betray him. One of my answers to the problem was to state categorically at the beginning of the film that he was innocent, which is my profound belief.

The programme reported facts, the producer continued, and, while not aimed at stirring viewers' indignation, the simple act of telling the story might, because of the information presented, stir the viewers' emotions.

Stating that point 6 did not require a response as it only reported the PCA's opinion, TVNZ responded to point 7 where the PCA accused the programme of not clearly presenting a ruling from the Court of Appeal. Beginning with the words "with due respect", TVNZ quoted the script to explain that the fact was indeed presented clearly.

Describing point 8 as a minor one, TVNZ contested the PCA's assertion in point 9 that the justice system had given Mr Curry's case "careful treatment". Apart from defence counsel and some prison officers, TVNZ wrote:

[T]he Police Complaints Authority seemingly ignores the facts that the "system" put an innocent, disabled and uncomprehending man in prison for nearly two years, then released him suddenly, without any form of preparation and even more vulnerable, back into the world without so much as an apology, let alone any form of compensation.

TVNZ also disagreed with the PCA, on point 10, when the report stated:

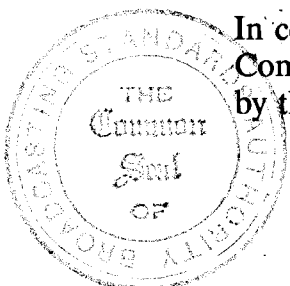
The starting point of the documentary was that Ivan Curry should never have been put on trial in the first place.

TVNZ replied:

The starting point of the documentary was that a profoundly disabled man had been disadvantaged by his handicap. A corollary was that the police did not properly perform their function in a situation where a man was charged with murder.

It also reported that the Crown Prosecutor had been interviewed but, as his comments were not considered relevant, they were not included in the programme. TVNZ concluded:

In concluding this summary of the ten points raised by the Police Commissioner we would note that they essentially reiterate an opinion, shared by the Commissioner, that the programme criticised the Police.



We reiterate that if it did, such criticism does not imply bias or inaccuracy.

In responding to this complaint, the Company has commented on a number of issues which were not raised in the original complaint to Television New Zealand. We have felt the need to provide the extensive detail herein lest criticisms of the programme left unchallenged cast a slur on what the Company believes was a very fine piece of documentary film making.

Referring you to our letter to Mr Jamieson dated 5 August, we remind you respectfully that the complaint was originally lodged on the basis of Section 4(1)(d) of the Broadcasting Act 1989, and Codes 4, 6 and 7 of the Television Programme Standards.

The Police Commissioner's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 4 November, the Police Commissioner stated that he would confine his remarks to those matters regarded as the most serious.

In regard to the complaint under s.4(1)(d) of the Broadcasting Act 1989 and standard 6 of the Television Code of Broadcasting Practice, three points were noted. They were:

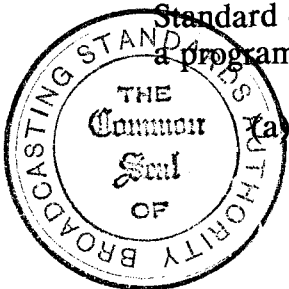
- (a) that the police were allowed less than five minutes in a controversial 64 minute programme which spent a considerable amount of time directly and indirectly criticising the police;
- (b) despite the producer's difficulties in obtaining local interviews for a programme that was going to be broadcast nationwide, no effort was made to contact the regional commander;
- (c) that even TVNZ accepted that the programme contained a level of advocacy journalism which, however, must not be allowed at the expense of balance, impartiality and fairness.

On this aspect of the complaint, the Commissioner wrote:

Under Clause 4(1)(d) of the Act and TV Programme Standard 6, I ask the Authority to rule that "reasonable efforts" were not made to present significant points of view on a controversial issue of public importance - and that "balance, impartiality and fairness" were not shown in dealing with a current affair/controversial nature programme.

Standard 4 of the Television Code requires that persons taking part or referred to in a programme be dealt with justly and fairly and, again, three points were made:

despite TVNZ's protestations, the thrust of the programme had changed



to add to its controversial nature and its censure of the police. Referring to the requests and the tone of the producer's three letters to the Wanganui Police, the complainant said that the last one delivered to Mr Scott shortly before the interview contained a new set of questions directed at policing practices while the earlier two, which dealt with general issues, included no suggestion of criticism of the Police;

- (b) the producer did not advise of the shift in emphasis until the last minute;
- (c) by not advising the police of the shift, they had not received "just and fair" treatment.

The Commissioner asked the Authority to find that the Police, given the above sequence of events, had not been treated justly and fairly.

In regard to the complaint under standard 7 of the Television Code which prohibits the use of any deceptive broadcasting practice which takes advantage of the viewer's confidence in the integrity of broadcasting, the Police began:

- (a) The programme was judgemental, basing its premise on the emotive argument that Curry was a gentle giant who was totally out of his depth in dealing with the justice system.

While criticism of the system's failure to deal adequately with Mr Curry was legitimate, the deliberate suppression of Mr Curry's criminal background, his previous offending and prison record was not.

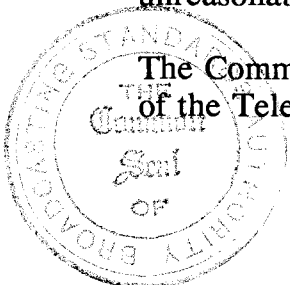
- (b) Viewers, rather than the producer, should decide the relevancy of Mr Curry's full history.
- (c) The independent Police Complaints Authority described the programme, not as cool and detached, but as advocacy journalism "aimed primarily at stirring viewers' imagination".

The Commissioner submitted:

Under TV Programme Standard 7, I ask the Broadcasting Standards Authority to rule that "The Remand of Ivan Curry" was deceptive in that it deliberately minimised or obliterated aspects of Curry's character or background which could, or would, have changed viewer perceptions.

In conclusion, the Commissioner expressed the opinion that the programme had been "emotively construed" in a way which allowed only certain conclusions and they were unreasonably at the expense of the police.

The Commissioner also asked the Authority to consider one matter under standard 1 of the Television Code of Broadcasting Practice which requires broadcasters to be



truthful and accurate on points of fact. The letter noted:

The programme made great play on an allegation that Curry did not know he had been remanded to prison for murder - and that once in prison he did not know for a year thereafter when a fellow prisoner is said to have told him.

We draw this to the Authority's attention because, if true, it may have helped underpin the programme's factual validity and lent some credence to the claim that Curry was so profoundly deaf that he did not know what he had been charged with or what was going on.

This, after all, was the fundamental basis of the programme. It was effectively repeated by TVNZ in its response of 21 October on p10/11.

Because of the degree of concern about this point, the Police Complaints Authority had spoken to defence counsel about the allegation and had been assured that Mr Curry "knew he was in prison at all times because he was charged in connection with the death of a child". The Commissioner referred to the PCA's conclusion when he said:

Furthermore, Ivan Curry had been extensively examined by many experts directly concerned with his ability to understand and communicate for the purposes of evidence in the first voir dire in Auckland one year after his arrest. There was never a suggestion that for a year he was under a fundamental misapprehension as to why he was in prison. I regard all that as authoritatively disposing of the assertion. In my view the prison inmate's statements are completely unreliable and without foundation and I reject them.

As this information in the PCA's report came to Police notice after the complaint had been referred to the Authority, the Commissioner asked what was the appropriate procedure to follow to ensure that the matter was considered by the Authority under standard 1.

TVNZ's Response to the Authority on the Procedural Issue

When asked to comment on the Police request that the complaint now include the standard 1 requirement of truth and accuracy, in a letter dated 12 November TVNZ offered three reasons why the Authority should not accede to the request. They were:

- 1) that the Authority could not consider material which had not been assessed by the broadcaster's Complaints Committee for it would be in contravention of the spirit of s.6 of the Act;

that the Police earlier had been asked to specify the aspects of the PCA's report considered relevant and what was now described as a "grave" matter had, nevertheless, not been identified at that time;



- 3) that the Authority should only assess the programme, not, in effect, review the PCA's report.

In addition, TVNZ stated that it was unusual to respond to some matters included in the final comment received from a complainant but, in view of the tone of the contents, it did so on this occasion.

TVNZ emphasised, first, that as the programme dealt with Police practice, not policy, comment from local rather than regional officers was required. Secondly, it repeated its claim that the programme's thrust had not changed while it was being made and that the specific questions provided 72 hours in advance followed the general line indicated three months earlier. Thirdly, the programme had presented Mr Curry's criminal record to the extent considered relevant and the description of him as a "gentle giant" was not an emotive label but a factual and objective assessment following a detailed investigation. It also repeated its opinion that the PCA had stepped outside its boundary when completing its report and added that surely the recommendation in the report that two police officers be counselled amounted to a "censure". With reference to the point that the Police were not criticised by the Court of Appeal in its March 1990 judgment, TVNZ explained that the Court was not then aware of some events which emerged at the trial.

The Police Commissioner's Final Comment

Noting that TVNZ raised some points which were central to the complaint, the Commissioner responded to two of them in a letter dated 19 November,

First, as the programme put Police practices on trial before a national audience, it was extraordinary that the programme maker had confined his enquiries to the local Police. Secondly, the programme's approach was not readily apparent from the first two letters to the Wanganui Police and the real issues only came to light in the third letter which imposed a stringent timeframe.

Referring back to the procedural issue, the Commissioner concluded:

We were really reinforcing our contention that "The Remand of Ivan Curry" deliberately set out to achieve a programme goal irrespective of the alternative facts available to a programme maker who had literally months to put a balanced story together.

The overall lack of impartiality and objectivity and balance and fairness is at the heart of our complaint.

In the interests of early resolution, I will not pursue our request for consideration of a further complaint under Code 1 but ask the Authority not to overlook the fact that alternative facts have emerged.

