

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 15/92

Dated the 15th day of April 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

NEW ZEALAND POLICE

Broadcaster

TV3 NETWORK SERVICES  
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

Sir Joseph Ongley Co-opted Member

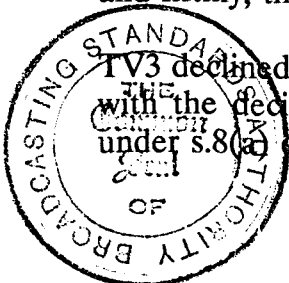
DECISION

Introduction

"Secret Witness" was the title of an item broadcast by TV3 Network Services Ltd on its *60 Minutes* programme on Sunday 5 May 1991. It included an interview with witness "B" who had been a paid police informer and had given evidence in the trial of two people charged with the murder of Peter Plumley-Walker. The item indicated that the police paid or otherwise offered inducements to witnesses to give evidence and it questioned whether there were witnesses prepared to give false evidence in those circumstances. The item also included interviews with several defence counsel, the Minister of Justice and with Superintendent Colin Wilson from the police. Mr Wilson denied that the police paid witnesses to give evidence and he agreed with *60 Minutes'* questioning comment that it was "appalling" to suggest that the police paid witnesses to give false evidence.

The Police complained to TV3 that the item did not comply with the standards which require, first, that reasonable opportunities are given to present significant points of view, secondly, consistency with the maintenance of law and order, thirdly, that people referred to are dealt with justly and fairly, fourthly, balance in dealing with controversial issues, and fifthly, the avoidance of deceptive programme practices.

TV3 declined to uphold the complaint on all grounds and as the Police was dissatisfied with the decision, it referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



## Decision

### **The Programme "Secret Witness"**

The members of the Authority have viewed the item to which the complaint relates and have read the correspondence (summarised in the Appendix). The programme, from the outset, questioned both the motives of "secret witnesses" who gave evidence of "jailhouse confessions" and the basis of their relationship with the police.

The item, which was about 17 minutes in length, included interviews with three prominent defence counsel, a police spokesperson, the Minister of Justice and a "secret witness" who had given evidence for the prosecution. It was filmed, at various times, in a courtroom, a prison, and the holding cell at the Auckland Police Station. All the questions and commentary were presented by one reporter who adopted an adversarial style.

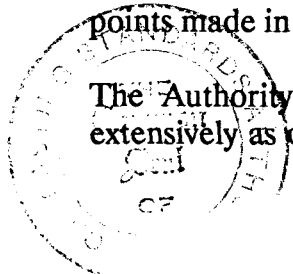
The Authority noted that some of the reporter's observations which cast doubt on the integrity of the police were introduced by way of question. That is a common and acceptable journalistic technique provided that the question, or its components, are put to the people being interviewed. At times this practice made it difficult to know what question was being answered. For example, the reporter referred to allegations about the police paying witnesses to tell lies. This was put to a defence lawyer, who said it was a practice adopted occasionally. When the police spokesperson appeared it was not immediately apparent if he was responding to the original question or the lawyer's comment.

### **Gathering Information**

Upon reading the police's referral of the complaint to the Authority and the preceding correspondence, the Authority believed that the points to which the complaint related were reasonably clear. As is its practice, the Authority upon receiving the complaint sought the broadcaster's comments. TV3 in its response described the programme as "one of the most carefully, and thoroughly researched *60 Minutes* productions to date" and offered to provide staff affidavits containing corroborating evidence for the programme's allegations, without identifying the journalists' sources.

That offer was accepted and affidavits were received from Mr K.R. Slater, executive producer, Mr R.E. Riddiford, producer, and Mr K.J. Davies, reporter. In response, the police filed affidavits from Superintendent C.W. Wilson and Detective Inspectors G.S. Cox and R.F. Cooper. Because of some of the material raised by the police, TV3 requested the opportunity to file further affidavits and second affidavits were received from Mr Slater and Mr Davies. Finally, in response, a letter was received from Mr Wilson. The detailed contents of all this material are presented in the Appendix. The points made in them will be recorded in the body of the decision when they are apposite.

The Authority records that it is most unusual to gather the parties' responses as extensively as occurred with this complaint. It did so partly because of the importance



given by the complainant to its complaint and by the broadcaster to the item but also, and this is the substantial reason, because it was apparent from the preliminary correspondence that the police and the broadcaster were talking past each other rather than to each other. Each party was convinced that its approach was based on a correct interpretation of the underlying facts. Each party found it hard to accept that the other party clung to its interpretation despite, on the one hand, the research done by TV3 and despite, on the other, the long experience of the police on which it based its practices.

### The Standards

In determining the complaint, the Authority began with the original letter of complaint from the police to TV3 dated 22 May 1991. The police alleged that the item breached s.4(1)(d) and s.4(1)(b), of the Broadcasting Act 1989 and standards 4, 6 and 7 of the Television Code of Broadcasting Practice. The police stressed s.4(1)(d) which requires broadcasters to maintain standards 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.

Section 4(1)(b) requires broadcasters to maintain standards consistent with:

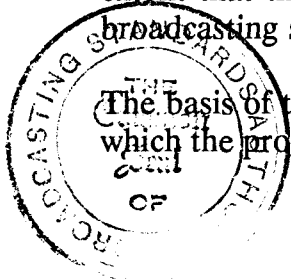
- (b) The maintenance of law and order.

The standards in the Television Code requires 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.

The police said that the item's use of deceptive allegations was the basis of its complaint under standard 7. In the Authority's opinion, standard 7 is relevant when a complainant alleges that a broadcaster knowingly practices a deceit rather than asks questions which the complainant alleges are misleading. Accordingly, as the complaint in this instance alleged misleading questions rather than the use of a deceptive programming practice, the Authority declined to determine the police complaint under standard 7. To the extent that the police, under standard 7, raised matters relevant to some of the other broadcasting standards allegedly breached, they will be considered at that time.

The basis of the complaint under standard 4, the police recorded, was the unfair way in which the programme had dealt with Superintendent Wilson's contribution. In Decision



No: 26/90, when ruling on the standards under which a complaint from the NZ Business Roundtable about the *Frontline* programme "For the Public Good" would be assessed, the Authority considered the relationship of standard 4 to standard 6 and stated that standard 6 had both a general and specific aspect. It continued:

It is general in its broad requirement of "balance, impartiality and fairness" but is specific in that it applies only to programmes which deal with political matters, current affairs and controversial questions. Standard 4 is characterised by its general application (i.e. to all programmes) but in more specific circumstances of unjust or unfair dealings with a person taking part or referred to in a programme.

The Authority decided in that instance that standard 6's more general requirements subsumed the more specific statements in standard 4. With this complaint, the Authority considered that the issues raised under standard 4 would also be more appropriately dealt with under standard 6. Accordingly, it declines to determine the complaint under standard 4.

Standard 6 of the Code and s.4(1)(d) of the Act both impose reasonably broad requirements but whereas the former refers to balance, impartiality and fairness, the latter focuses on the requirement for reasonable opportunities to present significant points of view. To the extent that they are both concerned with "balance", there is some overlap but neither can be subsumed in the other. However, as the police complaint under standard 6 refers for the most part to the programme's structure and content and the time that Mr Wilson was given to present the police perspective, which is also included as part of the complaint under s.4(1)(d), the Authority has considered the alleged breach of s.4(1)(d) is fundamental to the complaint. Accordingly, it will assess the programme against standard 6 only to the extent that separate issues are raised under it.

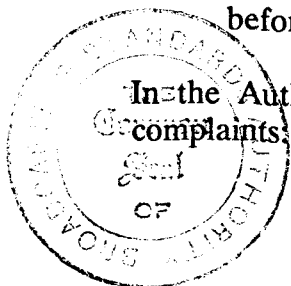
Thus, for the reasons set forth above, the Authority will determine the police complaint as allegations that the programme breached s.4(1)(d) and s.4(1)(b) of the Broadcasting Act 1989 and, to the extent that the complaint is not subsumed into the former provisions, standard 6 of the Television Code of Broadcasting Practice.

### **The Police Complaint and TV3's Response**

In its letter of complaint to TV3 dated 22 May 1991, the police complained (under s.4(1)(d)) that the *60 Minutes* item:

confused or ignored the well-established and legitimate practice of paying informants (not witnesses) and manufactured a controversial issue by implying that the New Zealand Police pay witnesses to tell lies in Court. This was in spite of considerable discussion between the police and the reporter and producer before filming, about the crucially important difference.

In the Authority's view, the first sentence quoted above raises two totally distinct complaints: (a) that the item confused the distinction between paid informers and



unpaid witnesses, and (b), that the item implied that the police paid witnesses to tell lies. Some of the lack of clarity evident in the subsequent correspondence has occurred because of the police tendency to run the issues together and because of TV3's disbelief in the police's distinction between paid informers and unpaid witnesses or its determination not to suggest that there might be a distinction. Nevertheless, it is a distinction which is fundamental to the complaint.

The police complaint continued by alleging that some of the issues raised in the programme were either not put to the police spokesperson (Superintendent Wilson) or were edited out. Accordingly, the police alleged that the programme was unbalanced as it had not provided the police with a reasonable opportunity to respond adequately to the controversial issues raised.

Further, the police complained, the programme breached s.4(1)(b) as, by alleging the police use of a corrupt practice, it undermined the police's ability to maintain law and order.

In its reply, TV3 referred to the Court of Appeal decision in *R v Chignell* [1991] 2 NZLR 257 which showed that witness "B", who was used as a witness in the Plumley Walker case and who was interviewed for the item, had received payments from the police for some two years before the trial. It continued:

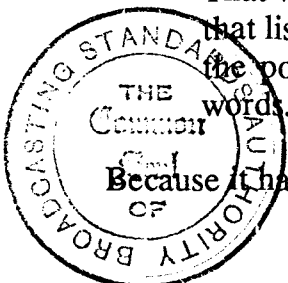
Further, the Appeal Court found that these payments, along with other considerations, were sufficient grounds to rule out the evidence supplied by Witness B to the Plumley Walker case. The Court of Appeal felt that they were sufficiently linked to have a bearing on the case.

TV3 maintained that the item itself had not criticised the police but had reported the views of others (eg defence lawyers) or had asked questions of viewers. TV3 also stated that Mr Wilson was informed of the areas to be covered in advance of the taped interview. It argued that, in view of the broadcast comments from defence counsel and the information obtained confidentially from former or retired High Court judges and others, the reporter was entitled to put to viewers the very serious allegation that police paid witnesses to give false information. That question, it was noted, was also put to, and rebutted by, Mr Wilson.

Referring to the general issues raised by the complaint, TV3 maintained that, because of the recent use of secret witnesses in several high profile cases, it was a subject which warranted examination. It continued:

*60 Minutes* gave reasonable opportunities to all parties to present significant points of view. The police spokesperson denied that Secret Witnesses were paid. That was the police position despite the existence of an Appeal Court judgment that lists payments in cash or kind to Secret Witness B. By holding to his position the police spokesperson was compromised, not by *60 Minutes*, but by his own words.

Because it had dealt with a controversial practice openly, TV3 said that it had increased



public knowledge of the process and had not undermined the ability of the police to maintain law and order.

When referring the complaint to the Authority, the police denied that the programme had presented the questions to the viewer fairly and, thus, it asserted that the programme was unbalanced. It also criticised the presenter's sarcastic manner and the programme's confusion between "informers" and "witnesses". In response, TV3 stood by the programme's balance and offered affidavits from staff members (referred to above) to corroborate the information contained in the programme.

At this stage, the reader is reminded that the police alleged that the programme breached s.4(1)(d) and standard 6 (the balance and fairness principles) and s.4(1)(b) (the maintenance of law and order) in that the programme (a) confused the distinction between informers and witnesses, and (b), alleged that the police paid witnesses to tell lies.

### Further Correspondence

As noted in the **Gathering Information** section of this Decision (above), over a period of some six months affidavits and letters were received from both parties elaborating on the issues. The details of that correspondence are contained in the Appendix and in this section the Authority merely records some of the comments which it found particularly relevant.

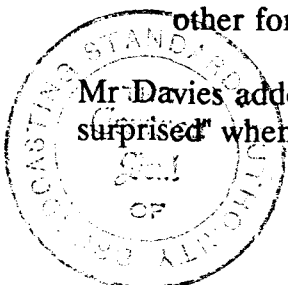
On a number of occasions the police questioned the purpose of the Authority's continuing inquiries and steadfastly maintained that its complaint should be assessed against the item which was broadcast "as it was seen by the public". As will now be apparent, the Authority believed the information was essential in view of the discordance in each party's perspective. Mr Davies, TV3's reporter, in his 15 November 1991 affidavit, stated that 3 or 4 former High Court Judges expressed concern, not that informers and secret witnesses were used but

that the Police failed to disclose that inducements were given to the individuals who inform and then give evidence. ... None of these Judges had any doubts that the police made payments to informants and/or witnesses.

Further, two former police officers had advised him that the distinction between paying informers and giving evidence was blurred in that, first, informants were paid to give evidence and secondly, it was "not uncommon" to indicate

to an informant/potential witness that should that person, after having spent some time in a cell with a person accused of crime and [sic] thereafter give any evidence of a confession, he would receive reduced sentences, charges or some other form of inducement for the "confession".

Mr Davies added that, in view of the information he had gathered, he was "extremely surprised" when Mr Wilson said witnesses came forward to do their "public duty". The



superficial distinction, he added, between paying an informer and giving an inducement to someone to give evidence was "more apparent than real" and was not drawn by the Court of Appeal in the *Chignell* case. Referring to that case, he claimed:

There was no distinction made between payment as an informant and payment as a witness by the Court of Appeal. Any inducement, whether it be under the Witness Protection Scheme or otherwise is nevertheless an inducement to a witness whose evidence is to be scrutinised by a jury. This is the precise point made by all the High Court Judges spoken to and it is on this issue that defence counsel, it transpires, are at the greatest disadvantage because like the jury they are not aware of these inducements.

Superintendent Wilson's affidavit (5 December 1991) noted that TV3 had assured him that the item would be balanced and that all the issues to be dealt with would be put to him. He continued:

I went to a lot of trouble to explain to Davies the significant differences between informers - or "narks" as he kept calling them - and witnesses who gave evidence. I detailed the clear differences between informers, witnesses and protected witnesses.

He described the term "secret witness" as emotive and misleading and explained that a special scheme, carefully monitored and audited, dealt with protected witnesses. "At the end of the discussion", he observed, "Davies could not have misunderstood the differences between informers and witnesses". The issues had also been covered during the taped interview and "I am satisfied that if even a reasonable segment were broadcast the issues would be put in perspective". He added that he had not been told that secret witness "B" had been interviewed nor had defence counsels' allegations about police tactics been disclosed to him.

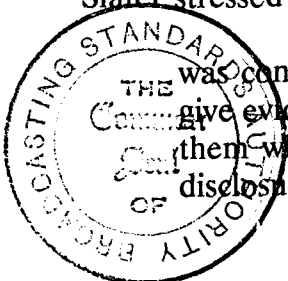
Detective Inspector Cox's affidavit noted that he had also explained to TV3 the difference between "paid informants" and "witnesses" and that witness "B" was a

paid informer who subsequently gave evidence. The payment related to prior matters, not the matter on which he gave evidence.

In his affidavit, Detective Inspector Cooper said that the broadcast of the programme resulted in the police deciding not to call two new secret witnesses at Chignell's and Walker's third trial and thus, he implied the programme breached s.4(1)(b) dealing with the maintenance of law and order.

In his second affidavit dated 31 January 1992, which replied to the police affidavits, Mr Slater stressed that the programme

was concerned with those who received jailhouse confessions and subsequently give evidence of those confessions in Court for which some benefit is obtained by them whether it be monetary or in kind and the consequential disclosure/non disclosure of it to the jury.



He attached the Court of Appeal's decision in *R v Chignell* and continued:

The decision of the Court of Appeal in connection with the payments/benefits received by Witness B speaks for itself and is clearly a finding contradictory to the statements made by Mr Wilson in the interview. Those statements surprised us. I was fully expecting Mr Wilson to acknowledge that the police do give payments/inducements to these witnesses as all the information we received indicated that was the case.

He added that, as the item focused on witnesses who gave evidence of jailhouse confessions, the difference between informers, witnesses and protected witnesses, although it had been explained, was not relevant to the broadcast.

Mr Davies in his second affidavit pointed out that the term "protected witness" was not used in TV3's written request to the police for an interview. The letter had specifically used the term "secret witness" on several occasions. He acknowledged that Mr Wilson was not told of TV3's interview with witness "B" as, first, a decision whether to use the material had not been reached, and secondly, Mr Wilson had been adamant that he would not discuss specific cases.

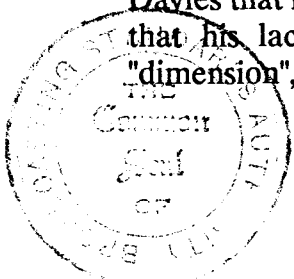
Mr Davies expressed surprise that Mr Wilson had maintained that witnesses were not paid as that was contrary to the Court of Appeal decision and to the other material gathered for the item. He deposed:

The fact is that Witness B received payments/inducements (a fact found by the Court of Appeal), he gave evidence of that information for which had been paid (fact found by the Court of Appeal) and he was prepared to state as much on film. Yet despite all of this Mr Wilson denied that witnesses are either paid or receive inducements. It is that statement by Mr Wilson which changed the face of the documentary.

A little later, he added:

I had fully expected Mr Wilson to acknowledge that witnesses do sometimes receive inducements. He would not. Instead he persisted in this dichotomy between informers and witnesses which to my mind is more apparent than real.

Mr Wilson commented in a letter dated 24 February 1992 on the second affidavits from Mr Slater and Mr Davies. He referred back to the point made in the original police complaint about the programme's allegation that the police paid witnesses to give evidence and argued that he had not been given a reasonable opportunity to present the police point of view on that issue. Before the interview with TV3 for the item, he and Mr Cox had been concerned that TV3 held "an actual or confused" belief that the police paid witnesses to give evidence. Considerable effort had been made in an attempt to disabuse TV3 of that notion. He now read in the affidavits from Mr Slater and Mr Davies that he had been expected to admit to that practice. The affidavits also disclosed that his lack of that admission added a "new dimension" to the programme - a "dimension", Mr Wilson commented, that had not been disclosed to either Mr Cox or



himself.

He claimed that Mr Slater misinterpreted the Court of Appeal's decision in *R v Chignell* as:

The Court found witness B had previously received reward payments and inducements as an "informer" and not as a witness. As a "protected witness" in respect of the Chignell trial, witness B was provided with accommodation, travel and living expenses in accordance with well founded, established and known Police practices.

Noting that Mr Davies agreed with Mr Slater, he recorded:

From the very outset in the making of this programme, it is now clear ... that they believed the Police were paying secret witnesses to give evidence and that I was deceitful on this issue. Nothing can be further from the truth.

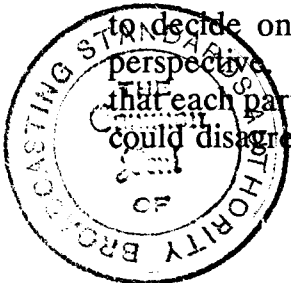
He concluded by arguing that Mr Slater's and Mr Davies' misunderstanding of the point was profound and, as the issue was central to the programme, their inability to grasp the distinctions affected its credibility, fairness and balance.

### **The Authority's Findings**

The above discussion records that each party adamantly advanced its perspective as the correct interpretation of the current practice regarding the use of some witnesses variously described as "secret" or participants in the witness protection programme. TV3 based its case substantially on the Court of Appeal decision in *R v Chignell*. That decision, it claimed, showed that witness "B", because he had received a number of payments in the preceding two years and because he received assistance from the police (both financial and in relation to some charges he faced) as a result of giving evidence, was paid or received inducements as a secret witness. (At one point in the broadcast, it was claimed by *60 Minutes* that he "made a living" that way. The Authority has since ascertained that witness "B" received \$4500 in a two year period. Although that is a substantial supplement to other income, the Authority would not regard it as a "living".)

The police, on the other hand, denied that the Court of Appeal decision upset the police's traditional distinction between informers (who may be paid), witnesses (who do not receive payment), and protected witnesses (who receive assistance according to well established rules).

The Authority does not have to decide the current complaint on the accuracy or otherwise of each of the two perspectives. If it was to do so, then by way of comment it would note that commonsense could suggest that TV3's perspective has merit. If it was to decide on the basis of technical distinctions, it would probably favour the police perspective. However, for the purposes of the current complaint, the Authority notes that each party was convinced that its approach was correct and was amazed that anyone could disagree with its point of view.



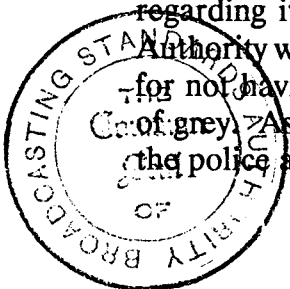
Taking the issues raised in the complaint, the Authority was required to decide, first, whether the item's presentation of the police distinction between informers, witnesses and protected witnesses was important to the police and, if so, whether the distinction was adequately portrayed or was deficient to the degree that the requirements for balance, impartiality and fairness in s.4(1)(d) and standard 6 were breached. Secondly, the Authority was required to decide whether the item implied that the police paid witnesses to tell lies and thus breached, in addition to the above standards, the requirement for standards consistent with the maintenance of law and order in s.4(1)(b) of the Broadcasting Act 1989.

On this latter aspect of the complaint, the Authority noted that the reporter described as appalling the suggestion that the police use the tactic of paying witnesses to give false evidence and that he put it to the police spokesperson (Superintendent Wilson) who agreed that it was an appalling suggestion. In the Authority's view, Mr Wilson's denial that the practice occurred was strong, clear and forthright. Thus, despite the overall tone of the programme, the Authority did not consider the implication sufficiently strong as to undermine the maintenance of law and order.

However, because of the gravity of the allegation the Authority believed the police should have been given the opportunity to respond completely. In view of some of the editing evident in the programme, the Authority studied closely the allegations and comments made by some of the people interviewed. Whereas only one defence counsel (Mr Peter Williams QC) stated explicitly that, in a few cases, witnesses had been paid to give false evidence, the item's definition and use of the terms inducements, payments and bribes were such that the interviews with other defence counsel and the Minister of Justice strongly implied that the police paid witnesses to give false evidence. In the Authority's opinion, the editing and the different interpretations of the terms had resulted in confusion as to the precise point being made at any one time.

The Authority agrees with TV3 that the programme's subject matter was relevant and important and that its airing increased public knowledge about a practice not previously examined on television. The Authority notes that, because of its adherence to the *sub judice* rule, the police refused to discuss specific cases and consequently were, to some extent, the authors of their own misfortune. But in the Authority's view that did not absolve the programme makers from the responsibility of informing the police that the programme was not merely talking in generalisations and that a clear allegation had been made to which it would undoubtedly wish to respond.

In one of his affidavits, Mr Davies said "Mr Wilson was given the opportunity to answer the issues that had been raised. I do not believe that there is an obligation to put to him specific allegations." The Authority believes that in this case, as the allegation struck at the heart of the country's justice system by suggesting corruption of a serious nature on behalf of the police, that there was such an obligation. However, the police's attitude regarding its refusal to discuss specifics to some extent stood in the way. Indeed, the Authority wondered whether the police did not inadvertently provide TV3 with an excuse for not having to complicate a provocative black-and-white story with confusing shades of grey. As it was, the reciprocal poor levels of understanding between TV3's staff and the police and the police's subsequent ignorance of some aspects of the programme, left



them looking flat-footed at best and, at worse, devious.

Accordingly, although the Authority decided that the allegation about paying witnesses to tell lies did not amount to a breach of s.4(1)(b), it was of the opinion that the police were not given the opportunity to answer that allegation fully. By not providing the police with a comprehensive opportunity, the Authority upheld the aspect of the complaint that the programme, by allowing an implication to be drawn that the police paid witnesses to give false evidence, breached the requirements in s.4(1)(d) and standard 6.

When the Authority requested affidavits from the police, one in response noted that the broadcast of the programme had influenced the decision not to call two new secret witnesses in Chignell's and Walker's third trial, thus implying that the broadcast interfered with the maintenance of law and order. Because the Authority's function is to review a broadcaster's decision when responding to a formal complaint and as the point was not raised in the initial complaint nor its referral to the Authority, the Authority declines to determine the issue. It would add, nevertheless, taking into account the late stage at which the point was raised together with the fact that the use of secret witnesses had been addressed by the Court of Appeal, that the Authority does not consider it to be a major aspect of the complaint.

On matters of relevance to the first aspect of the complaint, dealing with the importance to the police of the distinction between, informers, witnesses and protected witnesses, the Authority decided:

- a) It was important for *60 Minutes* to allow the police's view on informers, as opposed to witnesses, to be heard even if the programme makers regarded the distinction as absurd. Viewers should have been allowed to form their own judgments on whether the distinction was credible or not.
- b) The presentation in the item of a brief summary of the developing legal requirements about disclosing information about witnesses may have helped to explain the police's seemingly obdurate perspective and its reluctance to accept the programme maker's point of view. The programme did not explain, as the Authority became aware, that it has not always been the practice for juries to be informed about payments or inducements to informers.
- c) That the *60 Minutes* approach in using rhetorical questions and its "worst case scenario", was usually sufficiently related to a comment from an interviewee to be an acceptable journalistic technique. However, the overall impression created by this approach was such as to create a strong element of doubt about the credibility of the police.
- d) That the police complaint, that its views were presented in only two minutes of a 17 minute programme, was not a major issue in itself. The Authority is of the view that the quantity of time given to the parties in a debate and, indeed, the quantity of speakers is less important than the



quality, or eminence, of the speakers. Furthermore, the Authority's task is to assess the significance of the views being presented and to ensure that, overall, a balance in the presentation of significant views is achieved. The Authority considered the question of balance, not on the grounds of the allocation of time, but whether the item broadcast significant views.

Nevertheless, the allotment of less than one eighth of the available time, in this case, is some indication of the lack of adequate opportunity afforded the police to deal with certain allegations and comments which were made in the programme.

Taking up point c), the Authority decided that, because of the adversarial style adopted in the item, it was especially important that the police be given an adequate opportunity as required by s.4(1)(d) to present its view. Mr Slater said the programme was about the benefits obtained by secret witnesses who received and gave evidence of jailhouse confessions. The police response to TV3 about that theme was that secret witnesses, unlike informers, did not receive benefits, or payments, or inducements. Secret witnesses came forward and gave evidence because of a sense of civic responsibility.

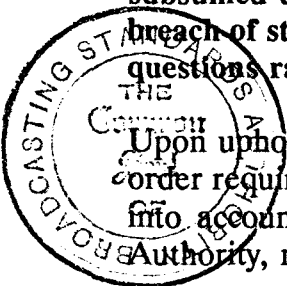
The Authority acknowledges that some may find this approach naive - especially in view of the disclosures in the *Chignell* decision. However, as the Authority has stressed, it was not required to decide whether the police or *60 Minutes* were right or wrong in their respective beliefs. The Authority was required to decide, given that the police regard the distinction between informers, witnesses and protected witnesses as essential, whether or not the police view was sufficiently explained in the item either by the police spokesperson or by someone else. The Authority concluded that the complainant was not given a reasonable opportunity to present that point of view and that point of view was not explained by other means. The distinctions, which were of such fundamental importance to the police and which were reflected in well-established practices, did not come across.

For the reasons set forth above, the Authority upholds that part of the complaint which claimed that TV3, in broadcasting "Secret Witness" on 5 May 1991, breached s.4(1)(d) of the Broadcasting Act 1989 and standard 6 of the Television Code of Broadcasting Practice.

The Authority declines to determine that part of the complaint which alleged that the broadcast breached s.4(1)(b) of the Act by influencing the decision not to call two new secret witnesses at the third trial on the grounds that the point was not raised in the initial complaint. It declines to uphold the other part which alleged a breach of s.4(1)(b) by implying that the police paid witnesses to give false evidence on the grounds that the police spokesperson's denial of the practice was strong, clear and forthright.

The Authority declines to determine that part of the complaint which alleged that the broadcast breached standard 4 of the Television Code on the grounds that it was subsumed under standard 6. It also declines to determine that part which claimed a breach of standard 7 of the Code on the grounds that the complaint alleged misleading questions rather than a deceptive broadcasting practice.

Upon upholding a complaint, under s.13(1)(a) of the Act, the Authority may make an order requiring the broadcaster to broadcast a statement related to its decision. Taking into account that the issue of an order under s.13(1)(a) is not exercised lightly, the Authority, nevertheless, has decided to impose one on this occasion for the following



reasons.

The Authority agreed with TV3 that the issue discussed by the programme was one of considerable public importance. Because the item discussed the situation in New Zealand, because the police force is a major social institution, because the issues were grave, and because the item adopted an adversarial style towards the police, the Authority believes that it was more important than usual that the programme complied with the broadcasting standards. The Authority, having concluded that TV3 failed to achieve the requirements, imposes the following order.

### Order

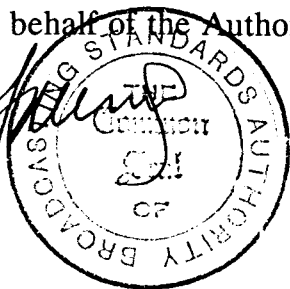
**The Authority orders TV3 to broadcast between 7.30pm and 8.30pm on a Sunday within one month of this decision a brief summary of this decision approved by the Authority.**

### Co-opted Member

The Hon Sir Joseph Ongley, a former High Court Judge and current chair of the Press Council, was co-opted as a person whose qualifications and experience were likely to be of assistance to the Authority. He took part in the deliberations of the Authority but the Decision is that of the permanent members.

Signed for and on behalf of the Authority

  
Iain Gallaway  
Chairperson



15 April 1992

## Appendix

### New Zealand Police's Complaint to TV3 Network Services Ltd

In a letter dated 22 May 1991, the New Zealand Police complained to TV3 Network Services Ltd about an item called "Secret Witness" broadcast on the *60 Minutes* programme on Sunday 5 May.

The complaint listed the broadcasting standards which the programme was said to have breached. It referred, first, to s.4(1)(d) of the Broadcasting Act 1989 which requires broadcasters to maintain standards 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 item, the letter continued, confused the accepted practice of paying informers (not witnesses) and implied that the police paid witnesses to tell lies in court. That "crucially important" distinction between informers and witnesses had been explained to TV3 by the police before the item's broadcast. However, that distinction was not dealt with clearly in the item. As a result:

Viewers were likely to have been persuaded that the police have attempted to pervert the course of justice.

The police acknowledged that a police spokesperson, Superintendent Colin Wilson, had been interviewed extensively but the item had neither broadcast his general comments about police practices nor his specific rebuttal to the allegation that witnesses were paid. By not broadcasting the police views on a controversial issue, viewers were not made aware that the item's premise was both incorrect and misleading.

The complaint then referred to s.4(1)(b) of the Act which requires broadcasters to maintain standards which are consistent with the maintenance of and order. The police stated that the programme's allegations that the police used an illegal practice would undermine its ability to maintain law and order.

The letter then referred to standards 4, 6 and 7 of the Television Code of Broadcasting Practice which requires broadcasters respectively:

- 4. To deal justly and fairly with any person taking part or referred to in any programme.

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.

The item, the police stated, had not dealt with Mr Wilson justly and fairly in view of the limited extent that it had broadcast parts of the lengthy interview. The emasculation of Mr Wilson's contribution also resulted in an unbalanced programme while the views of the reporter, witness "B" and the defence lawyers were given excessive prominence. The editing of the item produced a series of unjustified allegations which took advantage of viewer confidence at the expense of the police.

After outlining the substance of the complaint, the police dealt in detail with the item's structure and contents and the evidence in support of its complaint. The police began by noting the item's introduction raised the questions whether secret witnesses were either telling lies in court for money or being fed false information and suggested, the police argued, that the programme would provide affirmative answers to these questions. At no stage, the police continued, was Mr Wilson allowed to answer these allegations. (The following numbering of specific allegations in support of the complaint is adopted by the Authority to assist the reader.)

- i) The police argued that the reporter's reference in the script to payments for witness "B" incorrectly suggested that the money was paid for giving evidence in the Plumley-Walker trial whereas the money had been for information prior to the court case.
- ii) The reporter's statement that there was "a disturbing new trend" in relying increasingly on jail-house confessions, the police maintained, was not substantiated by evidence but lead to the categorical statement that "innocent people are being convicted on evidence paid for by the police".
- iii) Further, the police wrote, Mr Wilson had declined to comment on *sub judice* matters but TV3 had not been so constrained and had cast aspersions on the validity of the verdicts in the cases mentioned.
- iv) The police then stated that the script's reference to interrogation techniques breached the truth and accuracy requirement in the Television Code as well as s.4(1)(d). The police were not permitted to use "threats, promises and deals" as the reporter claimed. Moreover, the reporter's comment that the police "conceded" that informers were planted in jail was objected to because, first, it was not conceded and, secondly, the police did not operate in that way. Objection was also taken to the reporter's sarcastic tone when alleging, incorrectly, that jail-house confessions were usually made in the Auckland Central Police Station holding cell.
- v) The police then referred to a series of comments which confused the distinction between paid informers and lying witnesses on the one hand,

and, on the other, witnesses telling lies in court as a result of police instruction for which they were paid or otherwise rewarded. For example, the reporter's question to witness "B", which he described as the crux of the matter, as to whether informers were prepared to give false evidence omitted the crucial point as to whether the police encouraged or paid witnesses to tell lies. As another example, the police noted that when the reporter summarised the issues, he presented as a fact the point that witnesses were lying in return for favours or payment from the police.

- vi) The reporter's reference to the witness "B"'s livelihood indicated his belief that the police were unaware of the full facts. Another similar example occurred when the reporter made the point that "B" was being paid by TV3 and apparently assumed that its practice equated with police practice in paying witnesses to tell lies in court which, of course, it did not do. Finally, the police objected to the reporter's presentation of the "the worst case scenario" which took as a fact that the police paid witnesses to tell lies. The scenario disclosed the reporter's ignorance about court room procedures.
- vii) Whereas the interview with barrister Mr Peter Williams provided balancing comment when he said it was incorrect to state that the police encouraged people to lie, the balance was taken away when Mr Williams remarked, without giving examples however, that some recent cases disclosed otherwise.
- viii) In addition, Mr Williams' allegation about police not disclosing material required evidence to substantiate it.

The police concluded:

The "60 Minutes" programme item, "Secret Witness", set out to achieve an objective which has no basis in fact.

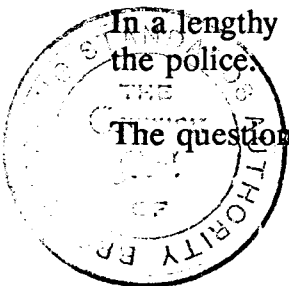
It made allegations which (a) were not supported by evidence, and (b) allowed little direct comment by a senior police representative.

TV3 allowed its reporter and production team to script and present a highly subjective programme which misled the public, diminished the stature of the New Zealand Police, and clearly breached a series of broadcasting rules.

### **TV3's Response to the Formal Complaint**

In a lengthy letter dated 19 July 1991, TV3 responded to the formal complaint from the police.

The questions in the item's introduction, it began, were rhetorical and the statement



about police paying witnesses was later put to Superintendent Wilson who denied it. TV3 then dealt with the specific points.

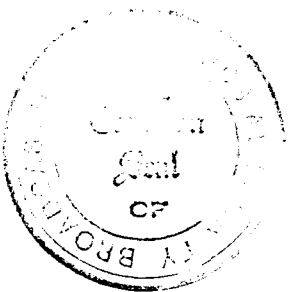
- i) The item had stated clearly that the payments to witness "B" were made before the Plumley-Walker case but the Court of Appeal believed that the payments and the case were sufficiently linked to have some bearing on the evidence he gave in that case.
- ii) The defence lawyers interviewed, not TV3, described the increasing reliance on jail house confessions as a "disturbing new trend". TV3 reported their views accurately and fairly. Moreover, TV3 had reported their views accurately when it said that there was "a real danger" of an innocent person being convicted as a result of paid evidence. The police allegation that the comment emanated from TV3 was both untrue and a misrepresentation.
- iii) TV3 denied that it had breached the *sub judice* rules.
- iv) Regarding the reference to interrogation techniques, TV3 argued that the police were surely familiar with the latest practices and, in addition, it had been relying on information gathered from other sources. The police had not been asked to comment on the point as it was presented as a rhetorical question for viewers adding "the programme did not make categorical statements" and therefore did not require a direct response from the police spokesperson.

The comment that "it is now conceded the police plant narcs in jail", TV3 stated, had been made by one of the defence counsel interviewed. The item had not stated that this concession had been made by the police. TV3 denied that the reporter had delivered a judgment about the holding cell at the Auckland Central Police Station. Rather it was a question made while in a place of custody and referred to all prisons.

- v) With regard to the complaint about what the reporter described as the item's crucial question, TV3 referred to the reporter's follow-up question about offering money as encouragement in response to which witness "B" listed the inducements which he had been offered before being put in the holding cell. TV3 continued:

The Appeal Court findings reinforce the statements, questions and implications presented by 60 Minutes. Further, these fears are held not only by defence lawyers spoken to by 60 Minutes but also High Court Judges and indeed by the Minister of Justice.

Concerning the police's concern about the lack of information supplied to Mr Wilson in advance of the interview, TV3 stated that it had broached the subject and outlined the areas of interest in a letter to



Det. Inspector John Hughes from Takapuna. It had been then advised that Superintendent Wilson would respond on behalf of the police and he had also been informed verbally of the issues at the time of the interview. TV3 added:

It should also be made clear that much of the treatment of the programme was determined by the responses supplied by Supt. Wilson. The complaint's reference that Supt. Wilson was in some way "set up" is not sustainable.

TV3 also maintained that the question about witnesses lying in return for favours from the police was fairly put in view of the information gathered.

- vi) The comment about witness "B" earning a living by informing was not made to suggest disbelief of the police answer but, TV3 said, to indicate a disparity between Mr Wilson's answer about secret witnesses' civil duty and the opinions of others about their motives for giving evidence.

TV3 stated that Mr Wilson was asked, as a distinct question, about whether police feed information to people who lie on oath. It was not linked to any earlier comments but arose from the concerns expressed by the defence lawyers interviewed and others.

The allegations exist specifically and are implicit in interviews with lawyers contained in the programme.

TV3 also maintained that, by disclosing that witness "B" had been convicted for perjury and that he was being paid to appear on the programme, it had acted with absolute propriety. That information, it noted, would have been inadmissible in court.

Regarding the complaint about the "worst case scenario", TV3 held that the monologue was neither a statement nor a fact. "It was asking the viewer to consider the scenario." Again, reference to defence counsel lacking knowledge about the details of possible arrangement with witnesses was, contrary to the police assertion, the comment by one defence counsel about the difficulty in adducing the total arrangements even during cross-examination. That view, TV3 added, was shared by the Minister of Justice.

- vii) Mr Williams was not asked for specifics about his allegations about the payment by police to witnesses because of the *sub judice* rules.

- viii) Mr Williams' comment about the police not disclosing information completely was his honestly held opinion and he commented further that the police had to deal with shocking crimes yet had to hand over material which might harm their case.



Dealing with the general complaints made by the police, TV3 introduced its response by noting that it had investigated a topic "that is by its nature fraught with potential innuendo, deceit and self-interest". It then gave some examples of the conflicting self-interests of defence counsel, the police and secret witnesses and continued:

Given that Secret Witnesses had been used in a number of recent high profile cases, the subject was one that warranted examination by *60 Minutes*. *60 Minutes* interviewed a number of eminent defence lawyers. All were of the same view, that inducements are made, that full disclosure is not made and that justice is not always served by the use of Secret Witnesses. These views were shared by several High Court judges and the Minister of Justice. *60 Minutes* could not ignore these views, they were clearly in the public interest.

The programme, TV3 added, had given all parties, including the police, a reasonable opportunity to present their views. TV3 denied that the programme was unbalanced, partial or that it undermined the ability of the police to maintain law and order. Furthermore, TV3 had increased public knowledge about a practice not previously examined on television and thus the public could be reassured that justice was not dispensed behind closed doors.

#### New Zealand Police's Complaint to the Broadcasting Standards Authority

As the police were dissatisfied with TV3's reply, in a letter dated 13 August 1991 the complaint was referred to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

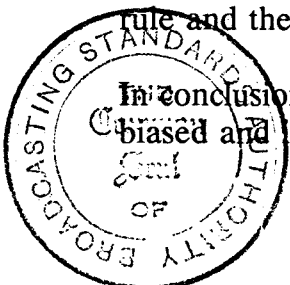
The police maintained that the programme manifestly failed to give a balanced presentation of the issues discussed. In addition to the points in its letter of complaint to TV3, it objected, first, to the presenter's sardonic and sarcastic approach which made the programme's suggestion clear that the information supplied by the police was unbelievable. Moreover, the lack of balance in the programme was reinforced by the lack of time allowed for the police response.

Secondly, the item frequently confused "informers" and "witnesses". Dealing with the item's approach to witness "B", the police wrote:

The overall impression left by the programme was that witnesses were paid to give evidence, and public confidence in the police has been undermined as a result of the confusion.

Thirdly, the police, but not the broadcaster, had been constrained by the *sub judice* rule and the item had had a substantial impact on a trial pending at the time.

In conclusion, the Commissioner of Police said that the item dealt with the police in a biased and inadequate manner.



### TV3's Response to the Authority

As is its practice, the Authority sought the broadcaster's comment on the complaint. The request is dated 10 August 1991 and TV3's response, 26 August 1991.

TV3 maintained that the item was one of the most carefully and thoroughly researched productions for the *60 Minutes* programme. During the research, information had been obtained from current and former High Court judges and former police officers. They had provided corroborative information but had also been advised that their identities would remain anonymous.

In the circumstances, TV3 formally requested that its representatives appear before the Authority. As an alternative, it offered to supply affidavits from staff giving the substance of their corroborating evidence without identifying sources.

### Further Correspondence

When TV3's suggestion was put to the complainant, in a letter dated 2 September the police expressed concern that TV3 persistently continued to fail to address the complaint about broadcasting standards. Those issues included:

- \* failure to distinguish informers from witnesses
- \* the inadequate opportunity given to the police to respond to the allegations (2 minutes out of 18)
- \* Lack of balance and impartiality and unprofessional presentation
- \* the presenter's apparently "neutral" comments which discredited the police
- \* the clear inference of use by the police of corrupt practices.

Describing as strange TV3's plan to use "secret witnesses" before the Authority about an item questioning the use of "secret witnesses" in Court, the police requested that a substantive response be sought from TV3. It also requested the right to participate in a hearing if one was granted. It claimed that the programme, through its deliberate use of misinformation, had brought the police into disrepute.

Realistically, however, we will be quite content that the Authority judges our complaint against what was actually broadcast. That is the core purpose of the relevant provisions in the Broadcasting Act and Codes of Practice.

The Authority decided to accept TV3's offer of affidavits and, in addition, to seek an affidavit from Supt. Wilson. The parties were advised of the Authority's decision and its request on 16 October 1991. The Authority also sought from TV3 the field tapes of the interview with Mr Wilson.



### Affidavits from TV3

After the Authority accepted TV3's offer, affidavits were received from Mr K.R. Slater, executive producer, Mr R.E. Riddiford, producer and Mr K.J. Davies, reporter.

Mr Slater stated that comprehensive national research had been undertaken prior to the interview with the police spokesperson (Superintendent Wilson). He noted that, since the broadcast, an unidentified police officer and witness "B"'s relatives had commented to him on the accuracy of the programme. He concluded by recording that the field tapes used for the interview with Mr Wilson were now unavailable as they had been re-used.

The extent of the research was also noted in Mr Riddiford's affidavit and he mentioned specifically interviews with a number of lawyers, two High Court judges and former police officers. Referring specifically to two counsel who had formerly represented the Crown, he wrote:

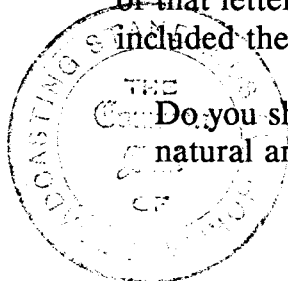
Neither of them indicated directly that the prosecution used witnesses who had been "bribed" by police but it was clear that witnesses were given inducements to give information to the police and to ensure that they gave evidence at trial. They were concerned about the large numbers of cases where the police were relying upon the evidence of a secret witness. While they were aware that inducements were given to informants and witnesses to give evidence it was not their role to assist the defence by making this information available unless specifically asked. The reason for the concern expressed about the police use of secret witnesses was their particular tendency to arise in the context of jail-house confessions.

Mr Riddiford said the range of views from lawyers covered the following points:

All acknowledged that the police gave witnesses/informants inducements to give them information and use that information in evidence. Thereafter the dichotomy ranged between those who were concerned with the extent of its use in recent cases and more particularly with the failure of the police to disclose what kind of inducement was given to defence counsel and to the jury (a view consistent with that of the Judges spoken to). On the other hand there was the view that the police were justified in using secret witnesses or witnesses who had been given inducements to give evidence or inform on others and did not have a difficulty with their use provided the Judge and jury were made aware of the circumstances in which these inducements were given.

He described the process followed by TV3 to obtain the police views. It had begun when he had written to Detective Inspector John Hughes at Takapuna who had been involved in prosecutions which had made use of secret witnesses. He attached a copy of that letter which, while not indicating an attitude the programme might take, included the questions:

Do you share the view of many judges that this (the use of secret witnesses) is a natural and acceptable extension of the police informer "narc" system?



What steps can the police take to ensure a secret witness is not lying for personal gain?

He was later advised that police headquarters in Wellington would respond and arrangements were made, through a Mr Cox, for an interview with Mr Wilson. That interview took place after an interview with witness "B". The affidavit then contained the following statement:

An accurate summary of the views expressed by Detective Wilson on behalf of the police are contained in the documentary. It should be noted that throughout the interview with Detective Wilson, [he] repeatedly denied that the police gave any inducement to any person to ensure that they gave evidence or indeed to secret witnesses.

The affidavit concluded:

[T]he documentary concentrated on the issue of jailhouse confessions in the end because it defined what we were concerned with and what others focused their concern on. Everyone confirmed that inducements were given to informants to give evidence. The significance of jailhouse confessions however was heightened by the frequency of their use in recent notable cases, all of which largely involved other prisoners on serious charges testifying against the alleged murder.

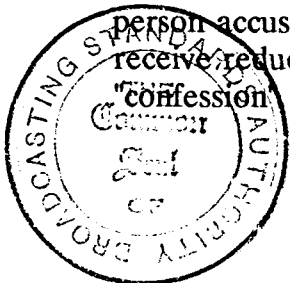
Mr Davies, the reporter, also referred in his affidavit to the extensive inquiries undertaken before the interview with Mr Wilson. That involved one discussion with a Crown prosecutor and Mr Davies said:

He acknowledged that it was necessary for the police to pay individuals to give information to the police and that those same people were used to give evidence at the trial. It was not the prosecutor's role to assist the defence by providing this information.

The former High Court judges spoken to "(3-4 in number)" expressed concern that the police "failed to disclose what inducements were given to the individuals and then give evidence. ... None of those Judges had any doubts that the police made payments to informants and/or witnesses".

Two former middle-ranking detectives, the affidavit stated:

indicated that it was also common for the police to pay informants to appear at trial and give evidence, i.e. the distinction between paying an informant and giving evidence became blurred. They indicated that it was not uncommon for a Detective in charge of an investigation to indicate to an informant/potential witness that should that person, after having spent some time in a cell with a person accused of crime and thereafter give any evidence of a confession, he would receive reduced sentences, charges or some other form of inducement for the



That view was shared by the three defence counsel who were interviewed for and screened on the programme.

Having gathered that information, Detective Inspector John Hughes was approached but, instead, an interview with Mr Wilson was arranged by the police. The interview with Mr Wilson lasted about one hour of which approximately 20 minutes were taped. The specific issues to be discussed were covered with Mr Wilson prior to taping the interview. Mr Davies assumed that Mr Wilson had seen TV3's letter earlier sent to Mr Hughes. Mr Davies summarised his response to Mr Wilson's comments.

In view of the information given to us by those who represented the Crown, former High Court Judges, two former Police Officers, the Minister of Justice, defence counsel and Witness "B", I was extremely surprised when in response to my questions as to what was offered he answered that they are merely requested to come forward and do their public duty - quite a contradictory statement to that made by Secret Witness "B".

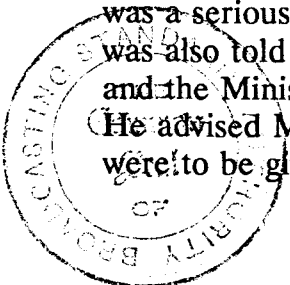
Mr Davies rejected the distinction made by Mr Wilson between paid informers and prosecution witnesses who were offered inducements to give evidence. That distinction had not been made by other people interviewed, nor was it accepted by the Court of Appeal in its decision on the evidence of witness "B" in the Plumley-Walker trial. Mr Davies summarised that decision and its relevance to the programme by saying:

There was no distinction made between payment as an informant and payment as a witness by the Court of Appeal. Any inducement, whether it be under the Witness Protection Scheme or otherwise is nevertheless an inducement to a witness whose evidences is to be scrutinised by a jury. This is the precise point made by all the High Court Judges spoken to and it is on this issue that defence counsel, it transpires, are at the greatest disadvantage because like the jury they are not made aware of these inducements.

#### Affidavits from New Zealand Police

Affidavits were received from Superintendent C.W.Wilson and Detective Inspector G. S.Cox, both from Police National Headquarters, and from Detective Inspector R.F.Cooper in Rotorua.

Mr Wilson stated that TV3's letter of 10 April 1991 to Detective Inspector Hughes was referred to National Headquarters for response in view of the issues raised and an interview was conducted by TV3's Mr Davies on 18 April. Before the interview began, Mr Wilson said that he had been told by Mr Davies said that the programme was a serious documentary about the increasing police use of "secret witnesses". He was also told that interviews had been conducted with two named defence counsel and the Minister of Justice, and that one or two secret witnesses might be spoken to. He advised Mr Davies that it was "grossly" inappropriate to interview people who were to be give evidence and was told that TV3 would not breach the *sub judice*



rules. It was also agreed that he would not refer to actual cases or incidents. The affidavit continued:

Davies assured me that the programme would be balanced. That all the issues covered by him with me would be in the programme.

Davies told me that on the programme the police, through me, would be given the last chance towards the end of the programme to rebut any criticism and put things into perspective.

Mr Wilson said that he explained the significant differences between informers "or narks as he kept calling them", witnesses and protected witnesses. Informers, who are rarely paid, supply highly confidential information for a number of reasons and it was rarely used in Court. He also explained that defendants when first put in prison, for some inexplicable reason, were likely to disclose information to experienced prisoners. If the disclosures were credible, he added, the police had a responsibility to use them as evidence, whether for or against the defendant. He stated:

I explained very carefully to Davies that witnesses whether protected or not are not paid, have never been paid, nor will they ever be paid for giving evidence.

He objected to the "emotive" term "secret witness", adding that the system for protected witnesses was carefully audited, and said that, following the discussion, Mr Davies could not misunderstand the difference between informers and witnesses. The issues had been dealt with during the taped interview but:

A reasonable segment of those issues discussed on camera were not broadcast and I consider that to be a gross unfairness.

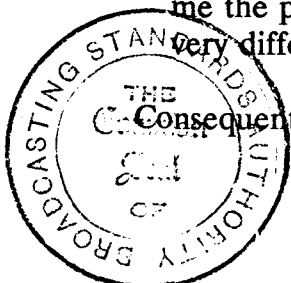
He should have been told, he added, that secret witness "B" had been interviewed and to have been given a chance to respond to the issues raised. Further, as the defence lawyers' claims had not been put to him for comment, the interview was both unfair and unprofessional. In addition, it was unfair that the Minister of Justice's opinions had not been put to him for comment.

He concluded:

Despite the fact that I had no previous experience with Davies I trusted him on the day. He gave me an assurance that the programme would not be sensational, that it would not contain any surprises and that it would be well balanced with adequate footage of the police position on issues.

When I saw the programme I realised that Davies had not accurately spelled out to me the programme agenda - at least his original theme as articulated to me was very different from that which was broadcast.

Consequently, he deposed, TV3 had treated the police unfairly and unprofessionally.



Detective Inspector Cox, the co-ordinator of Witness Protection operations, said that he had arranged TV3's interview with Mr Wilson on the basis that it was a serious documentary on the topic of "secret witnesses". He established that Mr Davies used the term to refer to "jailhouse confessions" but that the programme would not discuss cases where the *sub judice* rules applied. Mr Cox told Mr Davies that the case involving secret witness "B" and the trial of Walker and Chignell for the murder of Peter Plumley-Walker fell into that category. However, as that case was discussed in the broadcast, two further witnesses who had come forward were not called for the third trial because of "the tone of the programme". He also recorded:

I told him that inducements were not made to witnesses; that would be counterproductive to Police aims and objectives, because inducements would compromise the evidentiary integrity of the witnesses.

He had also explained the difference between "paid informers" and "witnesses".

Witnesses were not paid to give evidence. There was a clear distinction, and "Witness B" was a paid informer who subsequently gave evidence. The payment related to prior matters, not the matter on which he gave evidence.

He concluded by expressing his concern about the item's lack of balance.

Detective Inspector Cooper recorded that he was the officer in charge of the Plumley-Walker homicide investigation. Late during the second trial of the defendants Walker and Chignell, he had been approached by two prisoners who advised him that Walker had talked about the case with them. He continued:

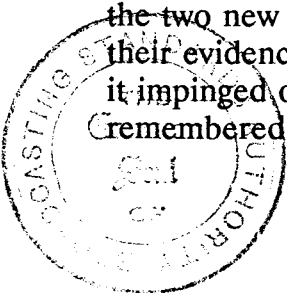
Subsequently these persons were interviewed in detail and statements taken. It was decided that they could give probative evidence, and so should be called as witnesses. The defence counsel were notified and discovery material made available.

Before the trial began, however, the programme was broadcast and:

The damaging and unfounded aspects of this programme were:

- \* Comments by the Narrator that it was conceded that the Police plant narks in jail (this was flatly denied by Superintendent WILSON and even by Witness "B").
- \* Innuendo again by the Narrator that witnesses lied because Police told them to.

In discussion with Crown Counsel, Mr Cooper continued, it was decided not to call the two new witnesses as jurors who had seen the programme would not examine their evidence objectively, that there might be a flow-on effect to other witnesses, that it impinged on the Crown's responsibility for a fair trial, that the broadcast would be remembered as it took place three weeks before the trial, and the late arrival of the



witnesses to the proceedings would be seen to confirm the programme's "worst excesses". He concluded:

In my view the programme usurped the jury function and directly prevented the availability of this evidence for their consideration.

### TV3's Response to the Police Affidavits

The Authority decided to forward to TV3 the affidavits received from the police and to the police the affidavits from TV3 and to seek comment. In a letter dated 14 January 1992, TV3 asked, in view of the matters raised in Mr Cooper's affidavit, for further time in order to forward more affidavits including one from Mr Grieve who had been Ms Chignell's counsel when she was tried for murder. In balancing the demands of natural justice and minimal delay, the Authority acceded to TV3's request. To avoid further delay, however, it asked TV3 to ensure that its response dealt with all the matters it wanted to bring to the Authority's attention.

Affidavits dated 31 January 1992 were received from Mr K.R. Slater, the programme's producer, and Mr K.J. Davies, the programme's reporter.

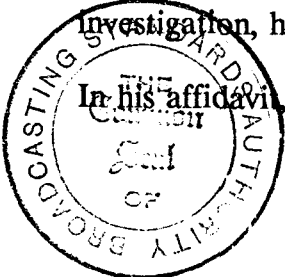
Mr Slater noted that he had read the affidavits from the police and had reviewed the programme. He confirmed his belief that the programme was balanced. He said the programme had been concerned with those:

who received jailhouse confessions and subsequently give evidence of those confessions in Court for which some benefit is obtained by them whether it be monetary or in kind and the consequential disclosure/non-disclosure of it to the jury.

He attached the Court of Appeal's decision in the *Chignell* case and a decision from Mr Justice Robertson dealing with a prosecution application in regard to the media references to witness "B". The former decision, he wrote, made it clear that the police gave payment or inducements to witnesses and he expressed surprise that Mr Wilson continued to deny that point. He also recorded that a Queen's Counsel's opinion was sought before broadcasting the interview with witness "B" in view of the *sub judice* rule.

He acknowledged that the police had distinguished between informers, witnesses and protected witnesses but that the distinction had not been made in the programme as it had focused on secret witnesses who gave evidence of jailhouse confessions. He expressed surprise that Mr Wilson denied that those witnesses received payment or inducement. As well as the *Chignell* decision and the defence lawyers who appeared on the programme and made that point, he attached an extract from the Royal Commission which investigated the *Crewe* murders to show that the police, in that investigation, had used secret witnesses who expected inducements.

In his affidavit, Mr Davies responded in detail to the one from Superintendent



Wilson. He explained that from the outset the police were informed that the programme focused on secret witnesses - not protected witnesses. He agreed with a number of the points about the programme's content which he and Mr Wilson had discussed but denied Mr Wilson's comment that the programme's structure had been agreed on. He had not been in a position, he added, to have given assurances about that.

He also agreed that Mr Wilson had explained the differences between informers, witnesses and potential witnesses. However, he said that Mr Wilson agreed that the programme focused on "jailhouse confessions and the payment/inducements to those witnesses who give evidence of the confessions".

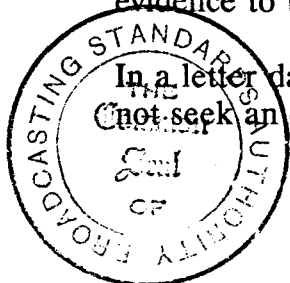
Whereas Mr Wilson had said witnesses did not get paid, had not got paid and will not get paid, that statement was contrary to the *Chignell* decision and the other evidence gathered for the programme. In view of the contrary evidence, Mr Wilson's comment was surprising but the item had not focused on it. The item focused on the issue of whether inducements, because they were becoming more frequent, should be disclosed. He continued:

The trouble with Mr Wilson is that, contrary to what the Court stated in the Plumley-Walker appeal an inducement, like a payment, can be a "bribe" (for want of a better word) and it is the failure to disclose those benefits that is material - the essence of the programme. I had fully expected Mr Wilson to acknowledge that witnesses do sometimes receive inducements. He would not. Instead he persisted in this dichotomy between informers and witnesses which to my mind is more apparent than real.

He strongly rejected Mr Wilson's suggestion that his answers to the main issues were not included in the programme. He stated that Mr Wilson had been given an opportunity to respond to the issues generally, if not specifically. He agreed with Mr Wilson that he had not told him about the interview with witness "B", observing that he had followed that course as it had not been decided whether or not to use the interview in view of the *sub judice* rules and as Mr Wilson had declined to discuss specific cases. He argued that it had not been necessary to put witness "B"'s allegations to Mr Wilson as they were also made by the lawyers interviewed and those comments had been put to Mr Wilson. The lawyers had also covered the issues discussed with the Minister of Justice so it had not been necessary to put the details of the Minister's comments to him.

In later parts of his affidavit, Mr Davies maintained that the programme's agenda had been put to Mr Wilson, that he had not promised any specific quantitative coverage of the police point of view and that he had given no undertakings, or promises or assurances, other than that the item would be balanced. Mr Wilson's "surprising" comment that witnesses did not receive payments or inducements, "despite all evidence to the contrary", changed the programme.

In a letter dated 21 February 1992, TV3's solicitor advised that the broadcaster did not seek an order from the Authority requiring Ms Chignell's counsel to provide an



affidavit nor did it want to be represented when the Authority next considered the complaint.

### The Police Response to TV3's Affidavit

The substantive police reply to Messrs Slater's and Davies' affidavits dated 31 January 92 came in a letter from Superintendent Wilson dated 24 February 1992.

He reiterated the point that the police complaint was essentially based on the view that the programme did not provide the police organisation a reasonable opportunity to put its case. He acknowledged that TV3, when it approached the police, assumed that the police were paying "secret witnesses" to give evidence. Both he and Detective Inspector Cox, he added, went to some trouble to dispel that idea and to ensure that the allegations were rebutted on air so that the viewing public got a balanced perspective.

Responding specifically to Mr Slater's affidavit, he expressed surprise, in view of the care which the correct situation had been explained to him, that Mr Slater had been taken aback when it was denied that the police gave payments or inducements to witnesses. He added that he was alarmed at Mr Slater's reaction as it showed that Mr Slater had misinterpreted the Court of Appeal in the *Chignell* appeal. He explained that there were vital differences between an informer and a protected witness, that witness "B" had been both at different times, and that was the distinction he had been trying to make on the programme.

Mr Wilson said that Mr Davies, in his affidavit, claimed that the distinction was contrary to the Court of Appeal's findings. That indicated, Mr Wilson added, that TV3 staff had misinterpreted that decision. He continued:

From the very outset in the making of this programme, it is now clear from the affidavits of SLATER and DAVIES that they believed the Police were paying secret witnesses to give evidence and that I was deceitful on this issue. Nothing can be further from the truth.

I had a duty to rebuff such factually wrong and most damning allegations. I realised that DAVIES was fundamentally confused in respect of this issue and could not discern with clarity the differences when Police pay informers for information as against care for protected witnesses - classed in their terms as "secret witnesses".

Their affidavits now show how profound that misunderstanding was then, and still is now. Whilst SLATER and DAVIES could not grasp it, this issue was central to the credibility, fairness and balance of the programme.

In the event it was explained and this is where the programme started to go off the rails and became seriously distorted and flawed.



**Complaint:**

**NZ Police - TV3 (Secret Witness)**

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**Summary of Decision**

The New Zealand Police complained to TV3 about an item on *60 Minutes* in May 1991 entitled "Secret Witness". The item indicated that the police paid witnesses or otherwise offered inducements to witnesses to give evidence and it questioned whether witnesses were prepared to give false evidence in those circumstances. The police spokesperson who was interviewed (Superintendent Colin Wilson) denied that the police paid witnesses to give evidence and agreed with the *60 Minutes*' reporter's statement that it was appalling to suggest that the police paid witnesses to give false evidence.

The item included an interview with Witness "B" who had given evidence at the trials of the people (Mr Walker and Ms Chignell) charged with the murder of Peter Plumley-Walker.

The Police complained to TV3 that the item did not comply with the standards which require:

- that reasonable opportunities are given to present significant points of view;
- consistency with the maintenance of law and order;
- that people referred to are dealt with justly and fairly;
- balance in dealing with controversial issues;
- the avoidance of deceptive programme practices.

In its submissions to the Broadcasting Standards Authority, the police argued that the *60 Minutes* item did not distinguish between informers, witnesses and protected witnesses. The police said it had gone to considerable lengths to explain the difference to the reporter.

In reply TV3 said the distinctions were more apparent than real. It submitted this approach was justified by the recent Court of Appeal decision arising from Ms Chignell's and Mr Walker's trial.

The Authority decided that because of the importance to the police of the distinction between informers and witnesses, that even if *60 Minutes* regarded the distinction as absurd, it should have dealt with it in the programme to allow viewers to form their own judgment about its credibility.

Emphasising that it was not deciding whether *60 Minutes*' or the police's view was correct, the Authority concluded that the police were not given a reasonable opportunity to present their view. Accordingly, it upheld the complaint that the item was unfair to the Police in that it did not give them a reasonable opportunity to present their perspective.

In regard to the police complaint that the item implied that the police paid witnesses to give false evidence, the Authority noted that Superintendent Wilson had denied the suggestion in a forthright manner. Accordingly, the item did not breach the standard relating to the maintenance of law and order.

However, because it amounted to an allegation of police corruption, the Authority upheld the complaint on the grounds of imbalance and unfairness as the police were not given adequate opportunity to answer the allegation fully.

On the other aspects of the complaint, the Authority declined to determine the allegation that the police had not been dealt with justly and fairly as the issues had been subsumed into the points already decided. It also declined to determine the allegation about deceptive programming practices as the complaint referred only to misleading questions.

Because of the gravity and sensitivity of the topic, the Authority considered that it was highly important that TV3 dealt with the issue in a balanced way. Having decided that TV3 did not meet that standard, the Authority has ordered TV3 to broadcast a brief summary of its decision.