

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 92/93

Dated the 9th day of August 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

OWEN BRACEY

of Howick

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

"Tubou, Tale of Terror", was the story of a man convicted of a number of offences relating to sexual attacks on women and who, the programme reported, had also raped other women but had not been convicted of those offences. It was broadcast as an item on Channel Two's *60 Minutes* between 7.30 - 8.30pm on Sunday 4 April 1993.

Mr Bracey complained to Television New Zealand Ltd that the item breached the broadcasting standard requiring balance in that it focussed on the activities of one criminal and paid insufficient attention to the victims of crimes, especially rape victims, and to their rights and remedies.

Explaining that the item was not a general examination of rape but had focussed specifically on the activities of one serial rapist and the difficulties of law enforcement in that case, TVNZ described the programme as a "chilling" reminder of the nature of some individuals. However, because the story could stir painful memories for rape victims, at its conclusion viewers had been advised that the contact number of the local Rape Crisis Centre could be obtained from Citizens Advice Bureaux.

Dissatisfied with TVNZ's response, Mr Bracey referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.



Decision

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

An item on Channel Two's *60 Minutes* programme broadcast on 4 April examined the activities of a man named Tubou who had recently been convicted of a number of serious offences relating to sexual attacks on women and who, the programme reported, had also raped other women but had not been convicted of those offences. Describing the item as excellent, Mr Bracey complained however that it rendered both victims and the public powerless by increasing the climate of fear and, to ensure balance, should have included empowering information. He listed some information of that kind about resources available to victims of crime which he believed the item should have contained. In addition, he argued that information about the imprisonment process and parole eligibility should have been broadcast for the information of the public. He noted that the item concluded by stating that victims could obtain the address of the local Rape Crisis Centre from Citizens Advice Bureaux but, he added, that was insufficient to balance the item's impact.

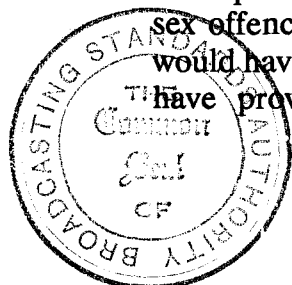
At one stage TVNZ advised Mr Bracey, incorrectly, that his complaint had been assessed under standard G2 of the Television Code of Broadcasting Practice. That was clearly a mistake and the complaint was considered under standard G6 of the Code which requires broadcasters:

- G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

TVNZ reported that the item was not a general discussion about rape or the services available to rape victims but had focussed on the activities of one specific serial rapist and the law enforcement authorities' difficulty in obtaining a conviction against him. Adding that the programme was "a chilling and timely reminder about the predatory nature of some individuals", TVNZ argued that the advice on how to contact the local Rape Crisis Centre was appropriate for those for whom the story stirred painful memories.

The Authority considered that Mr Bracey had raised an important issue through his complaint and examined the programme carefully before deciding what TVNZ's appropriate actions should have been to ensure that victims of crime and, specifically, rape victims were adequately taken into account by the broadcast. It agreed with TVNZ that the item's theme was the way Tubou had successfully avoided conviction for a number of years before finally being sentenced to a lengthy term of imprisonment.

With regard to Mr Bracey's concern that the effect of the programme could be to disempower victims, the Authority believed that in view of the advance publicity, many sex offence victims who feared that the programme might rekindle painful memories would have chosen not to watch it. Moreover, it believed that the programme might well have provided a useful service in making women aware of the need for more



assertiveness and vigilance in dealing with men like Tubou who apparently hid his predatory nature behind a bland and pleasant exterior. It also thought that the item would be unlikely to add to the fears already held by women. The Authority also noted that some of the frightening aspects of the item would be alleviated by the fact that justice had eventually prevailed when Tubou was convicted and imprisoned.

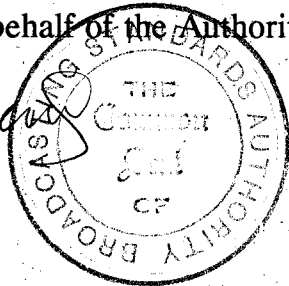
As for the reference at the end of the programme about how to contact a local Rape Crisis Centre, the Authority was pleased that some attempt had been made to provide the information, even though TVNZ was under no obligation to do so. However, although further information might have been useful both about services available to victims and the parole process which applied to Tubou, it did not believe that any further information was necessary.

The Authority considered that as this powerful investigative programme focussed on a named serial rapist and dealt with the process until he was eventually convicted, the services available to rape victims were outside its basic theme. Therefore, the Authority was unable to agree with Mr Bracey that the item was unbalanced. It concluded that it did not contravene standard G6 of the Television Code of Broadcasting Practice by not including more information either about victims' rights or the situation regarding inmates' release from prison.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



9 August 1993

Appendix

Mr Bracey's Complaint to Television New Zealand Limited

In a letter dated 22 April 1993, Mr Owen Bracey of Howick complained to Television New Zealand Ltd about the item "Tubou, Tale of Terror", broadcast on Channel Two's *60 Minutes* programme between 7.30 - 8.30pm on Sunday 4 April.

Describing the account of a serial rapist as compelling and chilling, Mr Bracey commented:

The programme was so good it was disempowering

However, he continued:

As a documentary it lacked balance in providing information to victims and the public. Programmes which focus upon dangerous offenders have a social responsibility to counter-balance fear with empowering information.

Tubou, he stated, had frequented night clubs for some years and had been suspected of other rapes but these other victims had not been advised of the HELP Foundation in Auckland nor of the specially trained ACC staff. He added that the reference to CABs and Rape Crisis Centres at the end of the programme was ineffectively placed.

The other matters about which victims and the public were not advised were the parole requirements which applied to Tubou and the treatment facilities available for him. Mr Bracey remarked:

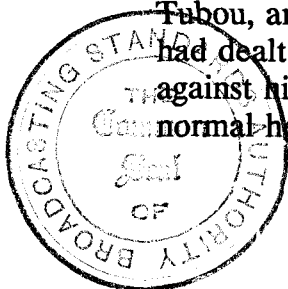
This excellent fast-moving programme had punch, but lacked balance in rendering victims and the public powerless.

He also attached information from a number of sources including the Minister of Justice, the Department of Justice and the Victims' Task Force.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Bracey of its Complaints Committee's decision in a letter dated 27 May 1993. It reported that the complaint had been assessed under standard G2 of the Television Code of Broadcasting Practice which requires broadcasters to take into account the norms of good taste and decency in context.

Pointing out that the item examined the specific activities of one serial rapist, Mr Tubou, and was not a general discussion about rape, TVNZ said that the programme had dealt with the law enforcement authorities' difficulty in obtaining a conviction against him. His victims, appearing as witnesses, commented on how persuasive and normal he had appeared to be and he had also proved persuasive when giving



evidence in court. TVNZ continued:

It was a chilling and timely reminder about the predatory nature of some individuals in our community.

TVNZ maintained that the programme was not an occasion for a wide-ranging examination of the services available to victims of rape but, conscious that the story could stir painful memories for rape survivors, had included in the programme the advice that the contact number of the local Rape Crisis Centre could be obtained from the Citizens Advice Bureaux. The centres, TVNZ concluded, would have been able to supply the information Mr Bracey referred to.

TVNZ concluded:

Taking everything into account, the Complaints Committee believed that the "60 Minutes" item on the serial rapist did not breach the code G6 - especially as advice was provided at the end of the item. The feeling of the Committee was that the item added a useful new dimension to the subject of rape, and that it provided some salutary warnings about the difficulties of bringing offenders to justice.

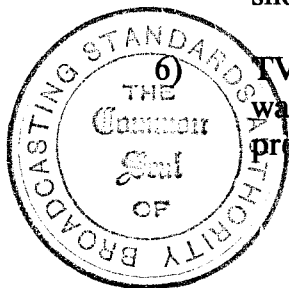
Mr Bracey's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 13 June 1993 Mr Bracey referred the complaint to the Broadcasting Standards Authority.

He made the following points:

- 1) The complaint was made under standard G6 of the Television Code - the balance requirement - not standard G2 - the good taste requirement.
- 2) He accepted that the item profiled Tubou and the dilemmas he had raised and, indeed, the item was so good that it had rendered the victims and the public powerless.
- 3) The item lacked balance as it had not referred to the HELP Foundation in Auckland, where Tubou's activities were based, nor the ACC's specialist services for victims of sexual abuse. He added:
- 4) In view of the tenor of the programme, he doubted whether victims would follow TVNZ's suggestion and contact a CAB, and if so, whether all their concerns would be addressed by the CAB and the Rape Crisis Centre.
- 5) In view of the publicity given to home-leave for prisoners, the programme should have explained what provisions applied to Tubou.

TVNZ's claim was that the victims rights had been canvassed in recent years was met with the question - when? The complainant recalled only one brief programme in February 1992 which had dealt with the issue in the past three



years or so.

- 7) The complainant described as a "cop-out" the provision in the legislation that it was not necessary to examine every aspect of a topic when the subject was brought up.

Referring to the impact of crime and the use made of it by the media and the entertainment industry, Mr Bracey pointed out that "most crimes have victims". He concluded:

I reiterate ... that as a documentary it lacked balance in providing information to victims and the public. Programmes which focus upon dangerous offenders have a social responsibility to counter-balance fear with empowering information. "Tubou, Tale of Terror" would have added to any community climate of fear.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 21 June 1993 and TVNZ's reply, 28 June.

It began by reporting that the complaint had been assessed under standard G6 - the balance requirement - and apologised for the incorrect reference to standard G2 at the beginning of its letter to Mr Bracey.

Repeating that the item focussed on the law enforcement personnel's difficulties in successfully prosecuting a "particularly ruthless sex offender", TVNZ stated:

This was not we submit, an appropriate occasion on which to examine the separate issue of victims' rights. In that it was likely to raise painful memories in some rape victims, it was appropriate however, to direct them to Rape Crisis Centre contacts.

Mr Bracey's Final Comment to the Authority

When asked to comment on TVNZ's response, in a letter dated 9 July 1993 Mr Bracey repeated his concern about the inadequacy and poor timing of the item's concluding reference to Rape Crisis Centres. Furthermore, he added, there had been no reference either to HELP or the ACC.

Observing that TVNZ misrepresented his complaint by arguing that the item was not an appropriate occasion to discuss victims' rights, he noted that he had been concerned about informing and empowering the public. He added:

I accept the limitations of television with its reliance upon story re-enactment, sensation seeking and superficiality in dealing with depth issues. Victims' rights are but an aspect of a complex, difficult and vast subject which is far beyond the capacity and expertise of television.

