

Anglican layman gave evidence of his prejudice against the rosary and the offensiveness of showing it on television which implied that people who were members of SPUC were also persons who said rosaries. We found this argument quite extraordinary and an indication of the lengths to which people will go to find prejudice and bias in a programme.

Objection is taken to the failure of the programme to explain the existence of an unborn child. In fact news film of Dr Diana Mason and Mr J. D. Dalgety set that view out clearly and succinctly and there was no attempt made to express any opposing point of view. No viewer saw the abortion sequence at the end of the programme without first having heard the views of those opposed to the centre.

There is a tendency in such a hearing to produce ingenuous reconstructions of the complaint or the programme in order to criticise or to justify steps taken in the preparation of the programme. While the Tribunal considers there are minor criticisms which could be made of the way in which the programme was prepared and presented, few programmes could be expected to be free of such imperfections.

More serious is the question of the diagrams. The principal objection was that the diagrams which were produced to show the procedures carried out in the operation and the instruments used did not depict a foetus in the uterus. Obviously there was a space in the uterus but it was not clear what filled that space. Logically there must have been something present or the space would not have occurred.

The reason stated by the executive producer was that the foetus is the central issue in an emotional, moral, and medical debate and to attempt any representation of the contents of the uterus would have involved a judgment of his own on these issues.

He claimed that the cross-section diagram was consistent with the style of the graphics used and advanced his argument partly on the grounds of good taste and partly on the grounds of ambiguity over the size of the foetus. He relied on an activist handbook for a diagram of the operation, and the absence of the foetus from the handbook and consequently from the television graphic appeared to the Tribunal to sidestep the issue that a human foetus was being aborted.

For the producer to rely on good taste as his reason for not showing the foetus could lend substance to Mr O'Neill's claim that a vital fact had been suppressed. If it is bad taste to suppress the unsavoury aspect of the operation, that might be interpreted as favouring one view over another.

It is obvious however that something must be being sucked from the uterus in the operation and the script made it clear in neutral words (not dissimilar from those used by the Royal Commission in its report issued later) "the doctor then switches on the vacuum pump and the contents of the uterus are sucked through the tube into the vacuum container."

Mr Andrews' other argument that he suppressed the graphic representations of the 8-week foetus being discussed because he could not get a definitive size, has greater validity. Mr O'Neill's expert witness Associate Professor Gwynne conceded that there was some room for disagreement as to the likely size of an 8-week foetus.

However, it is clear that there is a foetus and it would have a likely shape and in a true representation of the reproductive organs it would have adopted a recognisable shape of a foetus. In a stylised representation it would not be essential that exact shape be shown, but perhaps colouring or opaqueness could have indicated there was something more than just some vague "matter" in the uterus. We do not consider that this amounted to a bias nor that it was more than a misjudgment in what was generally a carefully balanced programme.

The Tribunal does not consider this matter should be elevated beyond its importance, but does consider the programme would have been improved if it had been better dealt with by the producer. It is perhaps pertinent to suggest that in such matters it might have been appropriate to have approached a university or other authoritative medical sources rather than consulting only one doctor who had, albeit occasionally, worked at Aotea, and a partisan handbook.

It is unfortunate that Mr O'Neill's complaint was dealt with in a somewhat cavalier approach by Television Two. The corporation now accepts it was wrong in stating that the foetus was not included as it would only have amounted to a dot on the television screen. Regardless of the lengthy arguments we heard about the size of the foetus it was quite clear that it would not have been a dot and Mr Andrews conceded this. Correct information would have been available from medical sources independent of the clinic or other lobbies on the topic.

While it is likely that this particular complainant would not have been satisfied with any answer from the corporation that did not fully meet Mr O'Neill's personal position, care should be taken to ensure that answers given to complainants are vetted for accuracy.

Another matter which possibly led to the complaint being lodged was the television credit to Marcia Russell as writer for the programme. She had been named as a person supporting the establishment of the Aotea clinic and was known to have a public position on the matter of the debate. Mr Andrews informed us that her use in the programme had been referred upwards and had been approved. He considered that it was a further incentive to him as executive producer to ensure that the programme was completely unbiased.

We do not rule out an activist as a person who may be employed in some news capacity, but great care has to be taken when using such people in key positions to interpret sensitive issues with which they are strongly identified. In this case, Marcia Russell was not just identified with the abortion issue but with the establishment of the clinic itself.

It might be seen as a courageous step on the part of South Pacific Television to identify her as one of those responsible for the production, but it must have been obvious that the appearance of her name in the credits would produce a response from some viewers that if *she* were involved in the programme there would be no possibility of it being unbiased. This attitude, while not necessarily logical, is one which the administration should take into account in the preparation of such programmes.

In the event we are satisfied that the executive producer took real responsibility for the compilation, production, and editing of the programme and that the vital decisions taken were his. We therefore consider that Marcia Russell's participation in the production of the programme did not compromise its impartiality.

Evidence for Mr O'Neill was given by Mr John Kennedy, editor of the *Tablet*, who had attacked the programme in an editorial in the *Tablet*. He considered *inter alia* there were some slipshod journalistic techniques and that the programme might have shown simulated rather than actual procedures. In fact actual operations were shown and his other objections and criticisms were satisfactorily explained by Mr Andrews.

There was no dispute between the producer and this witness on what acceptable journalistic standards should be. The Tribunal could not, however, accept that Mr Kennedy's was an unbiased professional opinion of the programme and in view of his own lapses from strict adherence to accuracy some doubt was cast upon his judgment on this programme.

Mr O'Neill sought to introduce evidence from three other people who had been concerned by the programme and one who had not apparently seen it. It was ruled that the evidence would not have been relevant to the allegation of bias but the statements prepared were accepted as submissions. In the event the Tribunal has found no reason to place any weight on these submissions.

Mr O'Neill submitted finally that the only way in which satisfaction could be obtained and a just and fair presentation ensured would be by two programmes prepared from each point of view and jointly presented. This is an impracticable suggestion in relation to this particular programme. While the adversary system may serve justice well, there appears to be no justification for its use in this instance on television.

The Tribunal does not consider that the programme was in breach of the programme rules or of section 24 (1) (e) or in breach of regulation 50 of the Radio Regulations, nor does it consider that it was an advertisement in breach of the advertisement rules.

#### Membership

When Mrs Sommerville a permanent member of the Tribunal, realised that one of the points raised by Mr O'Neill related to her sister Mrs Stanton, who worked at the centre and who was shown on the programme, Mrs Sommerville asked that it be made clear to Mr O'Neill from the outset that this relationship existed in case he had any objection to her hearing the complaint. Mr O'Neill courteously objected to her continuing and asked that the remaining members of the Tribunal deal with the complaint.

The Tribunal took time to consider the points raised and although it did not uphold the objection, Mrs Sommerville herself decided that she would prefer not to continue in view of the objection having been taken. She withdrew from the hearing. Both the corporation and Mr O'Neill consented to the remaining members continuing with the hearing which was agreed to because Mr O'Neill was keen to have the complaint disposed of without delay.

In accordance with section 61 of the Broadcasting Act 1976, Sister M. Murray and Mr G. C. Ell were co-opted to the Tribunal as persons whose qualifications or experience were likely, in the opinion of the Tribunal, to be of assistance to the Tribunal. They took part in the hearing and in the deliberations, but the decision in accordance with the Act, is that of the two permanent members.