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Case No: CO/2142/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 May 2012

Before :

LORD JUSTICE MOSES
and
MR JUSTICE EADY

- -

Between :

THE QUEEN **on the application of** **(1) BRITISH SKY BROADCASTING LTD** **(2) INDEPENDENT TELEVISION NEWS LTD** **(3) THE BRITISH BROADCASTING CORPORATION** **(4) HARDCASH PRODUCTIONS LTD** **(5) JASON NEIL PARKINSON**	**Claimants**
- and -	
CHELMSFORD CROWN COURT	**Defendant**
- and -	
ESSEX POLICE	**Interested Party**

- -

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Gavin Millar QC (instructed by **Bindmans LLP**) for the **Claimants**
James Lofthouse (instructed by **Essex Police Legal Department**) for the **Interested Party**

Hearing date: 25 April 2012

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Approved Judgment

Mr Justice Eady :

1. These claims for judicial review are brought against the background of the Dale Farm evictions, which took place in Essex on 19 and 20 October 2011. Essex Police were engaged on a large scale operation in the full glare of publicity for the purpose of seeking to support Basildon Borough Council in its attempts to enforce a court order. This was a challenging task and they were met with considerable violence and disorder in carrying it out. It attracted widespread news coverage. We were told that 16 police officers were injured in the course of the operation.

2. In these proceedings Essex Police is an interested party represented by Mr Lofthouse. At the core of his submissions is the proposition that it is necessary, not least for the prevention of similar disorder on future occasions, to identify as many as possible of those who committed indictable offences in attempting to frustrate the lawful enforcement procedures.

3. So far, we understand that three people have been arrested on charges of violent disorder and a further ten people in respect of other public law offences. It is thought that there are between 15 and 20 other people suspected of participating in the violence who are yet to be identified. Most of the violence seems to have taken place over a relatively short time span, during the first hour or so after the operation began. We were shown extracts of footage taken at the time, which illustrate what the police had to contend with. They were attacked with missiles and weapons, including for example with a spade, and urinated upon from above by people located on a scaffolding.

4. The first three Claimants are British Sky Broadcasting Ltd ("BSkyB"), Independent Television News Ltd ("ITN") and the British Broadcasting Corporation ("BBC"), whose representatives were covering the events for the purposes of news broadcasting. The Fourth Claimant, Hardcash Productions Ltd, is an independent company which was engaged upon filming with a view to making a Panorama programme for the BBC. The Fifth Claimant, Mr Jason Parkinson, is a freelance video journalist who was also filming for news purposes.

5. On the application of Essex Police, production orders were made on 15 February 2012 at the Chelmsford Crown Court by His Honour Judge Gratwicke, in identical terms, against each of the Claimants. The applications were made under Schedule 1 to the Police and Criminal Evidence Act 1984 ("PACE") and primarily supported by the evidence of Detective Inspector Jennings. The orders required each of the relevant Claimants to produce within seven days all of the footage recorded by them. The orders cover a period of 17 hours on 19 October (06.00 to 23.00) and 9 hours on 20 October (07.00 to 16.00). The Claimants' applications, heard by this court on 25 April 2012, were for the purpose of challenging the lawfulness of these production orders.

6. It is right to say that Mr Millar QC opened their case against a rather wider background. He said that there was concern on the part of media organisations and journalists, generally, as to the increasing number of police applications for wide-ranging production orders in circumstances of this kind. Reference was made, for example, to student protests in 2010 and the notorious riots which took place in August 2011. There is widespread concern that such applications are being made,

impermissibly, on an unfocused and scattergun basis. This case is said to provide an example where the production orders sought did not relate to specific indictable offences, alleged to have been committed at particular times and at particular places, but rather to "fishing" for any evidence there might be of such offences occurring over the many hours of visual recording.

7. It is submitted that because of the context of Article 10 of the European Convention on Human Rights and Fundamental Freedoms particular care is required in formulating the scope of production orders to be sought and that corresponding rigour should be applied by the court in analysing the necessity for any proposed order and its proportionality: see e.g. *R (Gaunt) v Ofcom* [2011] 1 WLR 2355.

8. Turning to the facts of the present case, the court was told by Mr Mark Evans that BSkyB holds some 32 hours of recorded material relating to the period. Furthermore, the BBC through the evidence of David Attfield has indicated that it would have to disclose hundreds of clips recorded on a number of cameras on more than 50 tapes. It seems clear that the first four Claimants, at least, would have to incur considerable time and expense in collating the material. The scale of the problem is not in dispute, since the Essex Police have estimated that the Claimants together would hold more than 100 hours of footage which would be embraced by the terms of the current production orders.

9. It is necessary to identify the statutory framework within which the applications were made at the Chelmsford Crown Court.

10. In Part II of PACE, under the heading "Powers of entry, search and seizure", s.9(1) provides as follows:

> "A constable may obtain access to excluded or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 below and in accordance with that Schedule."

The term "excluded material" is defined, so far as relevant, in s.11 of the Act, as follows:

> "(1) Subject to the following provisions of this section, in this Act 'excluded material' means –
>
> …
>
> (c) journalistic material which a person holds in confidence and which consists –
>
> (i) of documents; or
>
> (ii) of records other than documents.
>
> (2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject –

> (a) to an express or implied undertaking to hold it in confidence; or
>
> (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in an Act passed after this Act.
>
> (3) A person holds journalistic material in confidence for the purposes of this section if –
>
> (a) he holds it subject to such an undertaking, restriction or obligation; and
>
> (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism."

The term "journalistic material" is defined by s.13 as follows:

> "(1) Subject to subsection (2) below, in this Act 'journalistic material' means material acquired or created for the purposes of journalism.
>
> (2) Material is only journalistic material for the purposes of this Act if it is in the possession of a person who acquired or created it for the purposes of journalism.
>
> (3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes."

11. In this instance, it is accepted that the court is concerned not with "excluded material", but rather with "special procedure material", which is defined by s.14 of the Act as follows:

> "(1) In this Act 'special procedure material' means –
>
> (a) material to which subsection (2) below applies; and
>
> (b) journalistic material, other than excluded material.
>
> … "

12. It is thus necessary to turn to the relevant provisions of Schedule 1, as amended, which are concerned with the "special procedure":

> "(1) If on an application made by a constable a judge is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4 below.

> (2) The first set of access conditions is fulfilled if –
>
> (a) there are reasonable grounds for believing –
>
> (i) that an indictable offence has been committed;
>
> (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application …
>
> (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
>
> (iv) that the material is likely to be relevant evidence;
>
> (b) other methods of obtaining the material –
>
> (i) have been tried without success; or
>
> (ii) have not been tried because it appeared that they were bound to fail; and
>
> (c) it is in the public interest, having regard –
>
> (i) to the benefit likely to accrue to the investigation if the material is obtained; … ”

13. It was emphasised in this court in *R (Bright) v Central Criminal Court* [2001] 1 WLR 662 that it is necessary on such an application for a circuit judge to be satisfied, first, that the relevant access conditions are fulfilled. It would not be appropriate to proceed on the basis of a bare assertion by a police officer (even in cases involving national security). Judge LJ (as he then was), in words with which Maurice Kay J expressed his agreement, explained the position at p.677, as follows:

> “In my judgment … it is clear that the judge personally must be satisfied that the statutory requirements have been established. He is not simply asking himself whether the decision of the constable making the application was reasonable, nor whether it would be susceptible to judicial review on *Wednesbury* grounds … . This follows from the express wording of the statute, ‘If … a circuit judge is satisfied that one … of the sets of access conditions is fulfilled’. The purpose of this provision is to interpose between the opinion of the police officer seeking the order and the consequences to the individual or organisation to whom the order is addressed the safeguard of a judgment and decision of a circuit judge. …
>
> In my judgment it is equally clear that the constable making the application must satisfy the judge that the relevant set of

> conditions is established. This appears to follow as an elementary result of the fact that an order will force or oblige the individual against whom it is made to act under compulsion when, without the order, he would be free to do otherwise. … And I should emphasise that, under the rules currently under consideration, grounds for belief, not merely grounds for suspicion, are required, and the material to be produced or disclosed is not merely general information which might be helpful to police inquiries, but evidence in the sense in which that term is applied in the Crown Court, 'relevant and admissible' at a trial."

If, and only if, the access conditions are satisfied, the court would then have a discretion, to be exercised judicially, in the light of a balancing exercise to be carefully conducted on the facts of the individual case.

14. It is clear that full account must be taken of Article 10 considerations when determining an application under Schedule 1. It is helpful to have in mind the words of Dyson LJ (as he then was) in *Malik v Manchester Crown Court* [2008] EMLR 19, at [47]-[48], albeit immediately concerned with (comparable) wording from another statute:

> "47. There is no disagreement between the parties as to the relevant legal principles. Courts are public authorities under s.6(3) of the Human Rights Act 1998 (the HRA). Accordingly, a production order cannot be made if and to the extent that it would violate a person's Convention rights. The discretion conferred by para 6 must be exercised compatibly with an affected person's Convention rights even if the two access conditions are satisfied.
>
> 48. The correct approach to the Art 10 issues as articulated in both the Strasbourg jurisprudence and our domestic law emphasises that: (i) the court should attach considerable weight to the nature of the right interfered with when an application is made against a journalist; (ii) the proportionality of any proposed order should be measured and justified against that weight; and (iii) a person who apples for an order should provide a clear and compelling case in justification of it."

His Lordship added at [56]:

> "In our view, it is relevant to the balancing exercise to have in mind the gravity of the activities that are the subject of the investigation, the benefit likely to accrue to the investigation and the weight to be accorded to the need to protect the sources. … "

15. The three grounds of the Claimants' challenge on this application inevitably overlap to an extent. First, it is said that the learned judge had no power to make the production orders. This was for the simple reason that there was insufficient evidence before the court for him to be satisfied that there were reasonable grounds for believing that the footage to which the applications related was likely to be of substantial value to the investigation within the meaning of Schedule 1 paragraph 2(a)(iii). It was thus impossible to satisfy the access conditions. Secondly, it is submitted that each of the production orders constitutes an interference with the relevant Claimant's Article 10 rights which cannot be justified in accordance with Article 10.2. Thirdly, there is the argument that the Claimants were not accorded a fair hearing at the Crown Court.

16. I have considered with care the transcript of the judge's reasons in the light of which Mr Millar made the following criticisms.

17. He argues that no adequate reasons are to be found in the judgment as to why the relevant access condition was made out. It was for the Essex Police to establish by evidence why it was being submitted that the material to which access was sought was likely to be of substantial value to their investigation. Some explanation would surely be required as to what the relevant footage would be likely to contain. A clear example would be where a police officer was able to identify a particular period in time when an indictable offence took place and reasons for supposing that it was likely to have been captured by cameras located in the vicinity.

18. In this instance, as we understand it, the case put forward on behalf of the Essex Police is not so much that any particular offence, known to have occurred, was being filmed by any of the Claimants' representatives, but rather that some of the footage *might* contain material which would assist in the identification of a person or persons involved in violence which had already taken place. What is suggested is that there might have been some occasion when an individual let slip his mask and provided an opportunity thereby to link him with the image(s) of a person earlier committing or encouraging an offence by reason of similarities of clothing, build or other physical characteristics.

19. The speculative nature of this exercise is perhaps underlined by the scattergun approach towards identifying the material sought. No attempt is made, for example, to narrow down the footage requested by reference to either time or place. An indiscriminate application is made to acquire everything filmed by the relevant Claimants.

20. One can gain an insight into the judge's approach by reference to the only passage in his judgment where this particular issue seems to have been addressed (at p.18C-E):

> "In this case I have heard Detective Jennings (*sic*) give evidence. He was cross-examined by the respondents. He explained clearly to me the vantage points from which the police and the bailiffs' cameras were filming and why any footage that the respondents had taken from a different position both before and during and after the incidents of violent disorder were likely to be of substantial assistance both in

> relation to incidents of violence and identifying those involved over one or two days.
>
> It is clear from the evidence that the respondents have placed before me that they all do have to a certain extent unbroadcast material. I have listened to the respondents' submissions in respect of disclosure with care, and I specifically reject the assertion that the police should make available for them to consider all the hours of footage that they (the police) hold. The issue of disclosure is for the court. It is for the court to decide whether there has been sufficient material placed before it to enable it to make an informed decision in each case as to whether the material is of substantial value.
>
> In my judgment, on the evidence both oral and that filed, there has been sufficient disclosure made to me to enable me to be satisfied against all the respondents that the material sought over both days is likely to be of substantial value.
>
> Pursuant to Schedule 1 paragraph 2(a)(iv), the court is further required to consider whether the material is likely to be relevant. Clearly in my judgment any material which goes towards the identification of an as yet unknown person committing an indictable offence must be relevant, and any material which goes to the corroboration of an allegation against a known suspect that he committed an offence to which he stands charged again must be relevant evidence."

21. It is thus submitted that the learned judge was taking a compendious, not to say formulaic, approach towards his deliberation on the access conditions. No reasons of substance are given as to why any of this footage, let alone all of it, would be of substantial value to the outstanding police investigations. The relevance of the "vantage points" is not explained. The passage seems to consist of a recitation of the criteria without any demonstration of how it is said that they have been fulfilled.

22. The primary case advanced on behalf of the Essex Police appears to have been that the Claimants' footage *might* show an unidentified suspect at some point revealed (presumably unmasked) in the hours after the violence had come to an end. One theory is that such persons might have felt more relaxed when they felt confident that the police, or those associated with the police, were no longer filming them. That is the theory, but it is no more than speculation. There is no solid evidence to show that this did happen in any particular case.

23. Mr Millar submits that the explanation for the learned judge's approach is simply that he had no evidence before him capable of supporting his conclusions and, therefore, it is hardly surprising that he was unable to articulate any reasons.

24. There was a need to balance the competing public interest considerations in the context of journalistic material. It is difficult to dispute that there is a real public interest in tracing any of those persons who were involved in public disorder or violence, but that has to be set against the level of interference with the Claimants'

Article 10 rights inherent in the production orders made: see e.g. *R v Shayler* [2003] 1 AC 247 at [55] *et seq*, *per* Lord Hope. Having regard to the terms of Article 10.2, it was for the Essex Police to demonstrate that this degree of interference and the wide scope of the production sought was necessary and proportionate because of the "substantial value" attaching to the relevant material in the context of the investigation. There is, however, nothing to justify any such conclusion. There was no intense focus upon, or scrutiny of, any evidence of "substantial value" because there was none. There was no material to enable the judge to carry out the necessary balancing exercise.

25. We were reminded of the principles discussed in the Strasbourg court in the case of *Bergens Tidende v Norway* (2001) 31 EHRR 16 at [52]:

> "Where, as in the present case, measures taken by the national authorities are capable of discouraging the press from disseminating information on matters of legitimate public concern, careful scrutiny of the proportionality of the measures on the part of the court is called for."

Here, it is argued that production orders of this scope are indeed capable of discouraging those responsible for visual news coverage from carrying out their task. If the perception takes hold that such people are working on behalf of the police, or are likely to co-operate with them by supplying such material routinely, life could become very difficult. They might find it more difficult to obtain access to areas where demonstrations are taking place or to work in the vicinity of those who are prone to violence. Moreover, at its most acute, the perception could increase the risk of violence towards cameramen or their equipment. At the moment, to the extent that they are perceived as being separate from the police and relatively neutral when disputes are taking place, they have more opportunity of carrying out their task and, correspondingly, the public has a greater opportunity of receiving the coverage they intend to provide. All the judge had to say on this topic was that he did not accept the assertion of Mr Parkinson " … that if he was forced to hand over the material he would be seen as part of the police and would thus lose his objectivity and independence". The point is not that he would be actually losing his objectivity or independence, but rather that he would be disadvantaged by the perception of others.

26. It is true that in the transcript at p.22C-D the judge did refer to the notion of balancing in these terms:

> "Taking all the evidence I have heard into account, and mindful of my discretion and the balancing exercise I need to perform, I am of the opinion that there is in the first respondent's case a clear and compelling case for disclosure of the material held by Mr Parkinson, and I so rule, and I make the required Production Order."

Similar observations were made in relation to the material of the other Claimants. Yet more is required than merely to cite the words "balancing exercise" and assert that it has been carried out. The factors being taken into account, on both sides, clearly need to be identified and the reasons for coming down on one side rather than the other should be spelt out. The Claimants are entitled to no less.

27. This second ground of challenge clearly, as I have already said, overlaps with the first. The learned judge was unable to carry out the balancing exercise because he had not been supplied with the materials to enable him to do so. The point is the same. There was no evidence of "substantial value" and thus no basis for concluding that there was a pressing need to interfere with the Claimants' rights under Article 10.

28. The third ground is very similar. Because the cupboard was bare, when it came to demonstrating that the material would be of substantial value to the police investigation, the Claimants were denied a fair opportunity to demonstrate to the court why much, if not the totality, of their material was unlikely to be of any assistance. They were deprived of any case to meet.

29. One aspect of the argument is that the police were unwilling to reveal how much information they had. The relevance of this, so far as the Claimants are concerned, is obvious. They were not in a position to dispute that their filmed material was incapable of adding value to that which was already available. They simply did not know. Because this was not forthcoming, the police were obviously inviting the court to speculate.

30. It is well established that full disclosure may be required of a party seeking a production order: see e.g. *Bright*, cited above, at p.673A. The court should be provided with the evidence necessary for a judge to make a proper determination as to whether the access conditions can be satisfied on the particular facts. In view of the reluctance of the police to reveal what footage they have, the judge was clearly handicapped in carrying out his balancing exercise (whether at the stage of considering the access conditions or of exercising a discretion). The Claimants were correspondingly disadvantaged.

31. In these circumstances, I have concluded that the Claimants are entitled to succeed on all three of their grounds. There is no doubt that the statutory provisions governing disclosure orders can be of great value in tracing those responsible for public order and other offences and thus in serving the public interest. The importance of establishing the access conditions, however, should never be underestimated. There is a burden to be discharged and disclosure orders against the media, intrusive as they are, can never be granted as a formality. There must at least be cogent evidence as to (i) what the footage sought is likely to reveal, (ii) how important such evidence would be to carrying out the investigation and (iii) why it is necessary and proportionate to order the intrusion by reference to other potential sources of information. Unfortunately, in the present proceedings, the burden was not discharged and the judge was accordingly unable to justify ordering disclosure against any of the Claimants.

32. I would, therefore, quash the orders.

Lord Justice Moses:

33. I agree. This case affords a good example of the need for a judge to be scrupulous in specifying the evidence on the basis of which he concludes that the conditions for access to 'special procedure material' are satisfied, and the justification for interference with rights enshrined in Art. 10.

34. In considering whether the evidence satisfies the access conditions specified in Schedule 1 of PACE, the judge must have in mind that the person applying for an order must establish a clear and compelling case (*Malik* [48]). A close and penetrating examination of the facts advanced by way of justification is required (Lord Hope in *R v Shayler* (2003) 1 AC 247 [61], *Bergens Tidende* [52]).

35. The judge must then exercise his discretion; the fact that the applicant has satisfied the access conditions is not enough. He must exercise that discretion compatibly with Art. 10, even if the access conditions are satisfied. First, the objective must be sufficiently important to justify the inhibition such orders inflict on the exercise of the fundamental right to disseminate information. Second, the means chosen to limit the right must be rational, fair and not arbitrary and third, the means used must impair the right as little as is reasonably possible (*Gaunt* [33]).

36. In the instant case, there were no reasonable grounds for believing that the footage of over 100 hours included material likely to be of substantial value to the investigation (Schedule 1(2)(a)(iii)). To reach such a conclusion, it was necessary to postulate that there existed relevant and admissible evidence of the identity of a participant in the violence; the violence had occurred mainly at the start of the police and bailiffs' entry on the site on 19 October 2011. Since the participants concealed their identity both by covering their faces and by the uniformity of their dress, it was necessary to postulate that in the remaining hours of the day or on the next day, a camera would have caught one of the participants with their face-covering removed and that they would have had on their clothing, or elsewhere, so distinctive a feature as to enable the police to match it to a similar feature on the clothing, or about the person, of a participant in the violence.

37. Such a possibility could not be ruled out, but it is only a remote possibility. The judge said no more as to why he concluded that the condition at Schedule 1(2)(a)(iii) was satisfied than that recorded in the first paragraph of the quotation at Eady J's judgment [20]. He appears to have relied upon the evidence of DI Jennings. But that officer merely asserted in his deposition that the images in the respondents' footage "will assist us to identify suspects and investigate the role played by individuals during the commission of serious offences". When cross-examined, all that officer could say is that the respondents' filming was from a more advantageous vantage point than that of Essex Police evidence-gatherers who were stationed behind the advancing police and bailiffs.

38. Such evidence was wholly inadequate to satisfy the first condition. It did not deal with events once the police had successfully occupied the site, nor did it afford an adequate basis for concluding that the material was likely to be of substantial value. It did not begin to show why the chances of being able to match an identifying feature on a participant, with the same feature on an uncovered participant, who happened to remain on site, were other than remote. Of course if such evidence were obtained, it would be of substantial value, but where was the basis for such optimism?

39. The evidence from the police was defective in other respects. The respondents sought, particularly through Mr Millar QC, to establish how much film the police had obtained themselves and the extent to which it had assisted them. Such evidence was relevant both to the chances of the respondents' filming providing additional evidence of identification and the extent to which it was necessary to seek other material. If the

police had continued to film for the first and second days, that would have been relevant, but not determinative, evidence, as to how much more successful the respondents might have been in obtaining evidence to assist in identification. But the police were unable to adduce such evidence, because DI Jennings did not know how much film had been obtained and there was no evidence of what it showed or where any, if any, film was shot after the initial violence was over and the police and bailiffs occupied the site.

40. The judge dismissed the importance of that evidence. Whilst it might not have been necessary for the police to produce everything they had obtained, at the least there should have been a clear account of the extent of the film they had obtained, the period over which it had been obtained and what it showed. Without such material the judge was in no position to judge the value which the respondents' film might add to that which the police had already obtained. Nor was he in any position to judge the necessity of its production. The police, in such applications, ought to be in a position to give a full and accurate account of the evidence they have obtained; this is possible without the production of the material itself.

41. Absent such an account, there is no basis for assessing the additional value of any material. The extent to which material obtained might add to that which the police already had was of particular importance to any assessment of proportionality.

42. As Eady J explains, the application failed at the first hurdle. I should, however, underline the errors which followed. There was no proper consideration of the exercise of discretion at all. No reasons were given for exercising it in favour of the police; no reasons were given as to why it was proportionate to do so. It is incumbent on judges to set out with clarity their reasons. To do so provides an important discipline on the decision-maker and assists in providing some assurance that the judge has scrupulously examined the facts and those features which favour disclosure against those which militate against it. Merely expressing a conclusion, as this judge repeated, (see [26]), is not sufficient. A judgment, in this difficult exercise, must set out fully the steps which lead to the conclusion. This does not require length, but it does demand a demonstration that the requirements of Art. 10 have been followed.

43. The judge did refer to the evidence of some of the respondents' witnesses. He dismissed part of Mr Parkinson's evidence as to hostility or retribution if he handed over material. The judge took the view that those who broadcast their film would not be perceived in a way any different to those who handed material to the police. No more suspicion or distrust would be aroused by filming with a view to broadcast, than by the possibility that those filming would be required to hand over their material to the police. The judge dismissed the concerns of other witnesses for similar reasons.

44. In my view, the judge failed to give any sufficient weight to the inhibiting effect of production orders on the press, as explained in *Bergens Tidende* [52]. The interference caused by such orders cannot and should not be dismissed merely because a small proportion of that which is filmed may be published. The judge should have feared for the loss of trust in those hitherto believed to be neutral observers, if such observers may be too readily compelled to hand over their material. It is the neutrality of the press which affords them protection and augments their ability freely to obtain and disseminate visual recording of events. There was no basis on which the judge could dismiss the evidence of a number of witnesses of the effect

of handing over a vast amount of film, whether under compulsion or no. Still less should he have done so in the furtherance of a merely speculative exercise.

45. Nothing I have said should discourage the police, where necessary, from seeking to obtain material which is likely to contain evidence to assist in successfully prosecuting those who participate in violence. But it is not easy to do so and it should not be easy. I hope, on the contrary, these judgments will assist in identifying the need for specific and clear evidence and grounds for making production orders. That the judge was unable to justify the orders he made stemmed from the inadequacy of the evidence and the grounds advanced by the police.