[GB] High Court Decides that Broadcasters Do not Have to Give Film of Violent Disorder to the Police

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On 17 May 2012, the English High Court overturned the decision of a lower court that had required a number of broadcasters, including Sky, the BBC and Independent Television News, to hand over to the police footage of violent disorder accompanying the eviction of the inhabitants of a travellers' site. The police had applied under s.9 of the Police and Criminal Evidence Act 1984, which empowers a court to grant access to 'special procedure material', including journalistic material, if there are reasonable grounds for believing that a serious offence has been committed, if the material would be of substantial value to the investigation and likely to be relevant evidence, if there was no other means of obtaining the evidence and if it was in the public interest to make the order. Chelmsford Crown Court had made an order for disclosure of over 100 hours of footage in order to help identify the perpetrators of the violence, who had worn masks during the disorder.

The High Court considered that the order should not have been granted, on three grounds. First, there was insufficient evidence before the judge for him to have been satisfied that the footage would be likely to be of substantial value to the investigation. No adequate reasons for the order had been given by the judge, and a 'speculative' or 'scattergun' approach had been taken in identifying the material sought. It had merely been suggested that the film might help in identifying the perpetrators if it showed them unmasked later; there was no evidence that it did so. Secondly, the court should have balanced the need for the material against the rights of the broadcasters under Art.10 of the European Convention of Human Rights, and in particular against the inhibiting effect of disclosure on the ability of broadcasters to carry out their work. No reasons were given by the judge to suggest that requiring disclosure would amount to a proportionate balancing of these opposing considerations. Finally, as no material had been produced clearly showing why the order should be granted, the broadcasters had no opportunity to show why much of the material would not be of assistance.

R (on the application of British Sky Broadcasting et al) v. Chelmsford Crown Court and Essex Police [2012] EWHC 1295 (Admin)

http://www.bailii.org/ew/cases/EWHC/Admin/2012/1295.html

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