



# BIG CHILL

Current legislation places journalists in an impossible position, writes **Richard Watson**

From left to right: Rania Khan, Louise Christian, Shiv Malik, Richard Watson and Jo Glanville  
Credit: Julian Lass



The subtitle of this session is 'the consequences of legislation for journalists and the media's coverage of terrorism'. I want to address the latter point, because certainly *Newsnight* and other outlets have come in for a lot of flak over recent years for actually tackling this area of journalism, where we have reported the views of some extreme or violent Islamists and how some of them are being prosecuted for terrorist offences.

I started investigating this field before 9/11, when we began to look at al Muhajiroun and Omar Bakri Mohammed. At the time, the criticism we received was that we were vilifying the Muslim community by looking at these people and examining these views. The sentiment was that if only we ignored these people, they would go away. We profoundly disagreed with that – we felt it was interesting to find out these people's views on Britain, British democracy and geopolitical issues. Obviously after 7/7, suddenly the views of these people were much more interesting. My standpoint on this is that obviously I don't want to limit any freedom of expression – I think it's absolutely right that we broadcast these views, though it should not be

disproportionate. I'm sure some people here may feel that it is disproportionate, but I don't think that's the case.

The main focus of this paper is the attitude of the police in Britain as they increasingly pursue journalists to obtain journalistic materials for counter-terror investigations. This started for me personally in 2005. I had interviewed Abu Izzadeen, the man who was recently convicted of terrorism offences. I had first met him in 2001, and spoken to him then about his views on democracy and jihad. What we're talking about here is militaristic jihad, leading to the establishment of the caliphate and overthrow of democracy – much favoured by Omar Bakri Mohammed and others.

When 7/7 happened, we thought it would be interesting for *Newsnight* to go back to the people we had spoken to earlier and find out if they still believed in the notion of attacking the state and unravelling democracy in Britain in pursuit of a wider caliphate.

The people I turned to were Abu Izzadeen and Abu Uzair, who were leading lights in al Muhajiroun. When al Muhajiroun was wound up in 2004, they went on to found al Ghurabaa and the Saved Sect. We contacted Abu Izzadeen and said we would like to talk to him about his views in the light of the 7/7 bombings. We agreed to meet Abu Izzadeen and Abu Uzair in a park in Walthamstow, where we would record an interview to be broadcast on *Newsnight* several days later. When we spoke to Abu Izzadeen, it became apparent that his views hadn't changed since 7/7, and in some cases had even hardened. In a wide-ranging interview he described the 7/7 bombings as 'martyrdom operations', and suggested that the west 'wake up and smell the coffee', in his terms.

Abu Uzair, for his part, stressed that the 'covenant of security', which Omar Bakri Mohammed insisted had protected British citizens, no longer existed. This 'covenant of security' is the notion that Muslims, no matter what their political persuasion, could not attack their 'host community', which gives them security and free speech. Abu Uzair insisted this covenant had gone out the window, making British citizens legitimate targets for attack on home soil.

Most people would agree this was a pretty newsworthy interview and certainly in the public interest. We went ahead and broadcast the 12-minute interview a couple of days later.

That's when the fun and games started. I had a call from the Metropolitan Police shortly after the broadcast. They suggested to me it was an interesting interview. Obviously I had to agree, and we had a chat



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about it. It was clear to me they wanted a copy of the broadcast interview, which obviously I had no problem with, as it was in the public domain. I said it would be more of a problem to give away any other materials, as we had to protect our journalistic methods. The conversation ended there.

The next thing we knew, the BBC was served, without notice, with a very wide-ranging production order that asked for the broadcast interview, the untransmitted rushes and 'any other material documentation, notes or other videotapes that may be relevant to the programme and those interviewed that would assist the anti-terrorism branch in their investigation'. Essentially that would include computer notes, file notes, contact numbers and details of meetings I've had over the previous six years.

The BBC's position on this was that this order was in effect unlimited, and was putting the BBC in a position of trying to second-guess what the police wanted. The idea that we were going to produce 'relevant material' puts the broadcaster in the position of trying to make a value judgment on what the police want. It was a very unsatisfactory position as far as we were concerned, and the BBC decided to oppose it.

Under the Terrorism Act 2000, our legal team advised that there is no absolute right to be heard in court. I feel this is a substantial weakness in the law. The BBC argued that we should be allowed to be heard in court, and Judge Matheson agreed with us. So there was an early victory.

We went before the court and proceedings went on for about six months. A lot was being done between the barristers for the police and the BBC's legal team.

Our position, apart from the issue of no notice, was that if we were to be subject to a production order, then that order should be very tightly drafted, and we shouldn't have to be in the position of trawling through our material trying to figure out what the police wanted. It clearly doesn't take a genius to recognise that if we were to hand over notes and tapes, it would essentially make journalists an arm of the state. It would have a chilling effect on investigative journalism, would have security issues for sources who wished to remain anonymous and effectively make the work of journalists almost impossible. If we were to arrange an interview with anyone, whether an Islamist radical or otherwise, and they had it in the back of their mind that we would turn over details of private conversations, we would never get another decent story in our lives.

The ultimate suggestion was that the production order should be changed dramatically. After some discussion, the barristers for the police agreed that virtually all the demands in the original production order would

be dropped, so there would be no reference to any other relevant material, or other vague notions like that. What was left was the broadcast story and the untransmitted rushes. As a working journalist, I didn't feel particularly comfortable with the idea of unbroadcast material being handed over. However, in the circumstances, where we felt there were no source protection issues in this case, and considering we had already broadcast 99 per cent of the materials in an extended interview, it was agreed – as it had no material effect upon us. It is not a great position to be in, but that was the position we were put in by quite aggressive action by the police.

This illustrates to me how the police can go after journalistic material in what, to me, are fishing expeditions, which are later refined far down the road.

I'd like to finish with a scenario: let's say a source of mine, who wishes to remain anonymous, and will not speak to the police, as he does not trust them, is aware of a training camp of sorts where young British citizens are being trained to hate British society, and possibly even to go for military training abroad. This is clearly in the public interest.

The police would probably argue to me that we should tell the source to go to the police, but we don't live in an ideal world. So I am put in the dilemma of either following the story and breaking the law, or not doing the story at all. If I do the story, and I want to protect the source, I have to break the law. There is no special protection for journalistic sources at all. Under current legislation, we are obliged to reveal confidential sources. That is clearly unacceptable. □

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