

ONE BRICK COURT 1BC

'Thwack' News of the World spanked

The *News of the World* breached Mr Mosley's legal right to privacy, as Mr Mosley has established in his legal claim in the High Court. There is no public interest, however interested the public may be, in a newspaper exposing that Mr Mosley enjoyed "plenty of spanking" and, in S and M parlance, dominatrices "doing a judicial on him".

Surprising and sensational this case may have been (The New York Times compared it to a sketch from Monty Python: 'a judge and a bank of lawyers, all stern-as-you-like in horsehair wigs, exploring the finer points of bottom-spanking'), it was not in its final result.

As Mr Justice Eady explained in his judgment, there are three main reasons why Mr Mosley's case had to succeed.

Firstly, people's sex lives are to be regarded as essentially their own business – provided at least that the participants are genuinely consenting adults and there is no question of exploiting the young or vulnerable. How and with whom Mr Mosley likes to have sex is none of our business. There must exist particularly serious reasons before intrusions by a newspaper can be legitimate because sexual behaviour "concerns a most intimate aspect of private life".

Secondly, there was no public interest to justify the intrusion. On the principal argument, that Mr Mosley had "parodied Holocaust horrors", the judge held that the videos disclosed no evidence of the participants imitating, adopting or approving Nazi behaviour.

Thirdly, it is not for the state or for the media to expose sexual conduct which does not involve any significant breach of the criminal law. Where the law is not breached the private conduct of adults is essentially no-one else's business. "The fact that a particular relationship happens to be adulterous, or that someone's tastes are unconventional or 'perverted', does not give the media *carte blanche*."

However, it is doubtful that this case will have the damaging effect of deterring newspaper editors from publishing stories that impinge on privacy where there are good public interest reasons to do so. Also interestingly, and importantly for the media, the judge said that had Mr Mosley's sex life involved acting out fantasies about concentration camps, that would be information which, in the light of his role at FIA, people arguably should have the opportunity to know and evaluate.

Moreover in ruling out exemplary or punitive damages the judicial spanking was not too painful. It is right that the judge's award of £60,000 is the highest award from the court for breach of privacy to date. But as the Court of Appeal have recognised in the case brought by Catherine Zeta Jones and Michael Douglas against Hello! in 2005 ordinary compensatory damages in privacy may represent no real deterrent to a large media organisation contemplating the publication of sensational private photos. Here, notwithstanding that the judge accepted that Mr Mosley "is hardly exaggerating when he says that his life was ruined", the sum is not much more than what newspapers have paid out in the past in actions brought, for example, by Sienna Miller and Sara Cox for the unauthorised publication of nude photos, and is dwarfed by the high watermark for libel claimants. Will the *News of the World* consider the price of £60,000 (albeit plus costs) worth paying for two sensational splashes and a global scoop. Some will say that they got some pleasure from the pain of the "judicial".

Sarah Palin

This article was first published on [Telegraph Online](#) on 24 July 2008.