negligence concerns the manner in which the appeal itself was argued. But there are doubtful situations where the client's claim against his advocate for compensation, which concerns the result at first instance, is in potential collision with the outcome of the appellate process, which affirmed that result. For example, what if the litigant was refused permission to appeal? What if he lost the appeal without negligence on the part of his lawyer in the conduct of that appeal, but he alleges that negligence explains his defeat at first instance? Finally, what of the aggrieved litigant who decided, without or despite legal advice, not to appeal against the civil judgment and now seeks compensation from his lawyer? Is this last case an abuse of process because an aggrieved civil litigant declined to appeal and instead wishes to sue his lawyer? Lord Hobhouse in the *Hall* case seems to say "no" to this question (pp. 613–614, 615 G, 622 A–B). But the other six speeches are tentative, unclear or silent on the abuse of process doctrine's impact in the civil context (pp. 552 A, 557 A, 574 C–F, 578 A–E).

Other courts will instead have to wrestle with these points. One vexing question, noted by Lord Hope (pp. 582, 594), will be whether the abuse of process doctrine can be deployed here without violating the qualified guarantee of formal access to justice based upon Article 6(1) of the European Convention and its parallel in the Human Rights Act 1998.

N. H. Andrews

NAMING AND SHAMING YOUNG OFFENDERS

In the criminal justice system's scheme of unpleasant things, what official part is played by "naming and shaming" the offender?

For adults, the unspoken premise seems to be that being named in the newspaper is a part of the sanction, and the risk of public shame is part of the law's system of deterrents. For children and young persons, however, the considerations are different—as the Divisional Court recently reminded us in *McKerry* v. *Teesdale and Wear Valley Justices* (2000) 164 J.P. 355.

The basic rules on naming juvenile defendants are contained in sections 39 and 49 of the Children and Young Persons Act 1933. Between them, these two sections provide that where (exceptionally) juvenile defendants are tried in the Crown Court the media are free to identity them unless the court rules otherwise, but where (as usual) they are tried in the youth court the presumption is the other way round: the media must not reveal their names unless the court expressly says they may.

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Section 39—the Crown Court provision—gives no guidance as to when the courts should order the name of a juvenile to be withheld, leaving them to make up the rules themselves. By contrast section 49—the youth court provision—does try to guide the courts as to when they should allow the name of the young offender to be published. It originally said this could be done wherever it was "in the interests of justice". In 1969, Parliament substituted a more protective test: henceforth the name could be published only "for the purpose of avoiding injustice to the child or young person". But in 1997 a "law and order" Parliament scrapped this in favour of a new test, similar but not identical to the first one. As section 49 now stands, the youth court can allow the name of the young offender to be published "if it is satisfied that it is in the public interest to do so".

But what in this context is meant by "in the public interest"? A range of possibilities presents itself. At its loosest and widest, "public interest" could mean that the offence has attracted widespread attention, so that the public, avid for details, are particularly keen to know exactly who it was that committed it. Scarcely less widely, it could mean that the court thinks the young offender was exceptionally wicked, so that—unlike most juvenile offenders—he deserves the extra punishment incurred by being "named and shamed". Or, similarly, it could mean that the court thinks the crime was exceptionally harmful, so that other potential offenders—even young ones—need the extra dose of deterrence that stems from the knowledge that if you get caught you will probably be named and shamed as well as punished. Or, more narrowly, the "public interest" could require the naming of the offender because he is likely to reoffend—so that the public needs to be able to recognise him in order to avoid him.

In *McKerry* v. *Teesdale and Wear Valley Justices* a sixteen-year-old boy, with a long record of offending, pled guilty at the local youth court to taking a vehicle without the owner's consent. At the request of the local newspaper, and over the objection of the boy's solicitor, the magistrates made an order permitting his identity to be revealed. As they explained to the Divisional Court when the boy appealed against the order by way of case stated: "We announced our view that the appellant constituted a serious danger to the public and had shown a complete disregard for the law. These were our reasons for relaxing the reporting restrictions."

Upholding the magistrates' order, the Divisional Court said that these reasons were acceptable ones, because "no doubt the justices had in mind that members of the public, if they knew the appellants name, would enjoy a measure of protection if they had

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cause to encounter him". The Divisional Court added that the power to dispense with anonymity "must be exercised with very great circumspection", and that it will "very rarely be the case" that the public interest criterion is met. They said that it would be "wholly wrong for any court to dispense with a juvenile's *prima facie* right to anonymity as an additional punishment", and that it is "very difficult to see any place for 'naming and shaming'".

This is a more restrictive approach than the courts have taken when interpreting the power of the Crown Court to withhold names under section 39. In the leading case of *Lee* [1993] 1 W.L.R. 103 the Court of Appeal upheld the refusal of a judge to ban the media from identifying a fourteen-year-old boy convicted of robbery and rape because it would involve "no real harm to the applicant, and [be] a powerful deterrent effect on his contemporaries, if the applicant's name and photograph were published".

An important factor that underlay the Divisional Court's more restrictive approach to section 49 was the UK's international obligations—a matter discussed at length in the *McKerry* case, but in *Lee* mentioned not at all. These obligations include the 1989 UN Convention on the Rights of the Child, Article 40 of which guarantees the right of a child defendant "to have his or her privacy fully respected at all stages of the proceedings".

The truth is that many countries take a different view from ours about the proper role of "naming and shaming" as a sanction in the legal system, just as at one time many failed to share our earlier taste for "stripping and whipping". In Holland and in Germany, for example, it is normally thought decent and proper for the media to suppress the names of those whom the courts have convicted, even where they are adults. Against this international background, the rule proclaimed in Article 40 of the UN Convention should cause us no surprise.

J.R. SPENCER

ADMITTING ACQUITTALS AS SIMILAR FACT EVIDENCE OF GUILT

AN accused is charged with rape. He will claim that the complainant consented. The Crown can prove that on four previous occasions that selfsame accused has been tried on other counts of rape, but on all but one of them has been acquitted. The trial judge rules that, had the accused been convicted of all four earlier rapes, such evidence would have been admissible at the fifth

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