The New York Times
nytimes.com

September 5, 2002

Ending Legal Secrecy

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One of the most troubling, and least scrutinized, aspects of the child sexual abuse scandal now roiling the Roman Catholic Church is the enabling role played by the court system. In case after case, judges have signed off on secret settlements of child-molestation suits, freeing the offending priests to molest again. In one Boston case, brought on behalf of a boy who was raped by a priest, the judge sealed all the records and the priest moved to New Hampshire, where he later pleaded guilty to abusing two more children.

South Carolina's 10 active federal judges recently struck an important blow against this kind of secrecy when they voted unanimously to ban secret settlements in all kinds of cases. If South Carolina's federal courts formally adopt the rule after a public comment period ends later this month, it will be the nation's strictest ban on secret settlements. Michigan, the only state with such a rule, requires that secret settlements be revealed after two years.

It is not hard to see why secret settlements are popular; they often advance the interests of everyone in the courtroom. Defendants, usually a corporation or a large institution, can dispense with an embarrassing lawsuit without exposing its wrongdoing to public scrutiny. Plaintiffs, by agreeing to remove an obstacle to settlement, can generally get a resolution, and damages, more quickly. For judges, secret settlements make it easier to resolve cases, reducing often overcrowded dockets.

The main loser in secret settlements is the public. Consumers are deprived of information they need to protect themselves from unsafe products. Workers are kept in the dark about unsafe working conditions. And, as we now know, parishioners have been prevented from learning that their priests have been successfully sued for abuse. In 1933 the Johns Manville company settled a lawsuit by 11 employees who had been made sick by asbestos. If that settlement had not been kept secret for 45 years, thousands of other workers might not have contracted respiratory diseases.

The move by the South Carolina judges is still just a start. It would prohibit judges from sealing court files, but it does not prevent the parties themselves from contracting to keep a settlement secret — which could be in their narrow self-interest but is clearly not in the broader public interest. Some experts, including Stephen Gillers of New York University Law School, have put forward the provocative notion that private secrecy agreements constitute illegal obstruction of justice. And they have urged that state legal ethics rules be rewritten, or in some cases simply applied in their current form, to prohibit lawyers from participating in such settlements.

One Boston judge who sealed court records in a priest molestation case told The Boston Globe earlier this year that she might not have done so "if I had been aware of how widespread this issue was." It was, of course, rulings like hers across the country that helped hide just how big a problem sex abuse was in the church. The American public is entitled to know when lawsuits are settled. Judges around the country should follow South Carolina's lead and ban court-approved secret settlements. Obstruction of justice laws and legal ethics rules should be used to prohibit the rest.

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