

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

THURSDAY, JANUARY 27, 1984



Peter S. Prichard
Editor
Karen Jurgensen
Editor of the
Editorial Page
Thomas Curley
President and Publisher

Today's debate: SECRET COURT AGREEMENTS

Open up the books on Jackson-type settlements

OUR VIEW The legal habit of negotiating secret deals neither serves nor satisfies the public interest.

Michael Jackson has agreed to pay untold millions to end a civil suit alleging he sexually assaulted a young companion. But what exactly has he bought?

Surely, not an end to speculation and suspicion. The secrecy of the settlement virtually assures more to come.

Not an end, at least now, to the criminal investigation of Jackson spawned by the suit. Prosecutors say it will go on.

Whatever benefit Jackson or his accuser may obtain, the public is ill-served by the secrecy.

Most directly, parents of other children who spent time with Jackson should know the facts, good or bad. More broadly, the interests of the public's courts should be to settle openly conflicts brought before them. That's how the public judges the course of justice.

Yet, too often, secrecy prevails at the public's expense.

Out-of-court settlements with secrecy clauses helped the Upjohn Co. delay

widespread awareness that Halcion sleeping pills might produce psychotic side effects. Dow Corning Corp. relied on such settlements to help keep the public in the dark about the risks posed by its gel breast implants.

Court-sanctioned secrecy has other unsavory uses. Malpractice settlements often contain a shut-up clause, enabling some unfit physicians to continue practice. Secrecy agreements can also benefit government agencies, which use them to hide settlements that may cost taxpayers millions of dollars.

Fortunately, the practice is under increasing assault. As of last June, eight states had acted to limit confidentiality in out-of-court settlements. Laws are pending in five more. Courts in 10 states have either adopted or are considering rules to "disfavor" secret settlements.

Sometimes, secrecy is warranted — in some trade and family court cases, for instance. But more often, it hurts the public or encourages the presumption of guilt, as Jackson is about to discover.

Whether the issue is product liability or a singer's private predilections, civil cases that entail criminal behavior or public hazard are best resolved up front.

Respect settlement privacy

OPPOSING VIEW Forcing disclosure of out-of-court settlements would not be in the public interest.

By Royal F. Oakes

Forcing disclosure of the terms of settlement agreements would invade the parties' privacy, and the benefit to the public would be non-existent.

Because some court proceedings are made public does not justify mandatory disclosure of settlement terms. The purpose for conducting court activity in the open is to make sure those in a position of power — judges, prosecutors and juries — don't abuse that power. Justice in secret isn't justice. But once parties to a suit voluntarily agree to resolve the dispute, no reason exists to shine the bright light of public scrutiny on their dealings.

The Michael Jackson case is the worst kind of example to use in support of making settlements a matter of public record. We know the precise nature of the boy's allegations. Jackson's denials have been beamed around the globe. What possible justification could there

be to force Jackson and his accuser to announce the size of the settlement?

Forced disclosure would discourage the settlement process and further clog already-congested courts. High-profile defendants know that most people interpret payment of a sizable sum as an admission of guilt. If they were required to disclose settlement terms, many defendants would decide to roll the dice and go to trial, figuring the fallout from a loss couldn't be any worse than announcing the terms of a boxcar-figure settlement.

Even in cases where an injured party alleges a health and safety problem that could affect the public generally, the allegations of the complaint are already a matter of public record. And, smart plaintiffs usually play the publicity card anyway, to boost the size and likelihood of an out-of-court deal.

Forced disclosure of settlements might satisfy public curiosity, but the cost, including loss of privacy and deterrence of settlements, makes it a bad idea.

Royal F. Oakes is a Los Angeles lawyer with the firm of Barger & Wolen and a legal analyst for KFWB radio.