

# Section 0

## Lawyers, Guns and Money: The Ethics of Court Secrecy

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**Lawyers, Guns & Money:  
The Ethics of Court Secrecy**

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**Who We Are**

- You
- Me
- Public Justice



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**Public Justice**

- Only national public interest law firm in America created by trial lawyers.
- Works with members throughout the country to:
  1. Take on cases that need to be brought, whether or not they'll make any money.
  2. Litigate cutting-edge legal issues and keep the courthouse doors open for all.
  3. Educate the public about the critical importance of civil justice system and standing up for their rights.



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**What We're Up Against**

- Corporations and government officials are violating the law, cheating people, injuring people, even killing people – and don't want to be held accountable.
- They know the courts are the one place they can be held accountable.
- And they know information is power.

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**What We're Up Against**

- So they're trying to limit and eliminate the rights to a day in court and a jury trial.
- They're trying to keep their wrongdoing secret, so the public doesn't know the truth.
- They're using NDA's, arbitration, secrecy agreements, protective orders, sealing orders, and settlements to avoid accountability and keep violating the law.

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**Court Secrecy: Why We Need to Fight**

- Based on legitimate need for some secrecy, but massively abused, spreading, and doing great harm.
- Injures and kills.
- Prevents justice from being done.
- Undermines our democracy and system of justice.

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### Court Secrecy: Why We Need to Fight

- Public increasingly aware of dangers of secrecy. *See, e.g.,* Trump, Cohen, Daniels, Nassar, USA gymnasts, priests, #MeToo, VW, Takata airbags, etc.
- Rulings show law is on our side, but too many lawyers and judges not enforcing it. *See, e.g., Haeger v. Goodyear.*



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### What We Need to Do

- Commit yourself and your clients to the battle.
- Insist “good cause” be proven in discovery and enforce compliance.
- File key documents and insist that higher “compelling reasons” standard for court records be met.
- Use the ethical rules: Iowa Rules of Professional Conduct 32:3.4(f)(2), 5.6(b), and 8.4(a).



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### What We Need to Do

- Rule 32:3.4 Fairness To Opposing Party And Counsel  
A Lawyer shall not: ...  
(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless: ...  
(2) the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.



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### What We Need to Do

- Rule 32:5.6 Restrictions On Right To Practice
  - A lawyer shall not participate in offering or making: ...
  - (b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.
- Rule 32:8.4 Misconduct
  - It is professional misconduct for a lawyer to:
  - (a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another



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### What We Need to Do

- Use state laws limiting court secrecy, *See, e.g.*, AR, CA, FL, LA, MT, NC, NV, OR, SC, TX, VA, WA.
- Insist on sharing provisions. *See* AIEG.
- Preserve right to share with governmental officials and agencies. *See, e.g.*, CPSC Litigation Guidance, 81 Fed. Reg. 87023 (Dec. 2, 2016) and NHTSA Enforcement Guideline, 81 Fed. Reg. 13026 (March 11, 2016).



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### What We Need to Do

- Work with Public Justice, other public interest groups, and the press.
- Understand the difference we can make. *See, e.g.*, [www.RemingtonDocuments.com](http://www.RemingtonDocuments.com).
- Call on us for help and join us in the battle. [www.publicjustice.net](http://www.publicjustice.net)



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