No. 90355-7

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

S.J.C.,

Respondent.

AMICUS CURIAE MEMORANDUM OF WASHINGTON COALITION FOR OPEN GOVERNMENT and ALLIED DAILY NEWSPAPERS OF WASHINGTON

Katherine George
WSBA No. 36288
HARRISON-BENIS LLP
2101 Fourth Avenue, Suite 1900
Seattle, WA 98121
(425) 802-1052
Attorney for Amici

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I. PREFACE

This brief is submitted without the benefit of reviewing the trial court record due to the public's inability to review or even find the sealed file, which is not publicly indexed. Amici cannot evaluate contentions that S.J.C. met statutory conditions for sealing juvenile files, and must rely on very limited facts in the appellate briefing to frame the arguments herein.

II. INTRODUCTION

The trial court used the wrong standard when sealing all records of S.J.C.'s juvenile conviction for sexually assaulting a younger child. This Court should hold that Article I, Section 10 of the Washington State Constitution applies to juvenile courts, and that S.J.C.'s file must be open unless he meets the five-part *Ishikawa* test for sealing records.

S.J.C. argues that neither he, nor any offender seeking to hide "past juvenile adjudications," should be burdened with meeting the *Ishikawa* test protecting the public's Constitutional right to open courts.[1] Under S.J.C.'s reasoning, Washington courts must automatically remove all traces of juvenile crimes from public court records whenever an offender satisfies statutory conditions for sealing. S.J.C. would dispense with the essential question posed by Article I, Section 10: whether the particular

[1] Brf. of Resp., p. 16 ("This Court should affirm the juvenile court's conclusion that Article I, section [10] is not implicated by a motion to seal records of past juvenile adjudications").

offender's interest in secrecy outweighs the public's interest in scrutinizing the justice system. Such reasoning, if embraced, would thwart the purposes of Article I, Section 10 to promote public confidence in this state's courts and to ensure fairness in all cases.

While juvenile defendants may be immature and currently do not have the right to a jury, this warrants *more* public scrutiny, similar to the civil commitment hearings required to be open in *In re Detention of DFF*, 172 Wn.2d 37, 256 P.3d 357 (2011) (finding a court rule requiring closure unconstitutional). As this Court stated in *Dreiling v. Jain*, 151 Wn.2d 900, 903-04, 93 P.3d 861 (2004), "Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny." The public cannot be confident that juveniles are treated fairly if the system is blanketed in secrecy.

Moreover, it is already established that Article I, Section 10 applies to juvenile courts and to vacated convictions such as S.J.C.'s, requiring courts to look beyond the governing statutes. The former RCW 13.50.050 merely permitted, and did not mandate, the sealing of certain juvenile files. For these reasons, and because the public's faith in juvenile courts depends on enforcing Constitutional safeguards against unnecessary secrecy, this Court should remand the sealing order for application of the proper test.

This Court also should clarify that the "experience and logic" test adopted in *State v. Sublett*, 176 Wn.2d 58 (2012), is for determining if a courtroom closure has occurred and does not apply in a dispute over sealing court records. The parties incorrectly argue that *Sublett* places the burden of proof on the opponent of sealing. On the contrary, the proponent of sealing bears the burden of proving that the sealing comports with both GR 15 and the *Ishikawa* test implementing Article 1, Section 10.

III. INTEREST OF AMICI

The Washington Coalition for Open Government (WCOG) is a non-profit statewide organization dedicated to promoting and defending the public's right to know about government conduct and matters of public interest. WCOG regularly advocates for public access to government and court records as part of government accountability to the citizens of this state. Allied Daily Newspapers of Washington (Allied) is a trade association representing 25 daily newspapers, which use court records to inform readers about cases of public interest. Allied and WCOG often participate as amicus in cases involving Article I, Section 10 and have a strong interest in protecting public access to court records.

IV. DISCUSSION

A. The Statute At Issue Did Not Compel the Sealing of the File.

The trial court said that juvenile files must be sealed whenever statutory requirements have been met, as if the Legislature had removed the courts' control over public access to court records. Brf. of App., p. 2. This erroneous thinking should be corrected.

1. **RCW 13.50.050 was not a sealing mandate.**

S.J.C. relied on RCW 13.50.050 to vacate his gross misdemeanor convictions and seal the related juvenile court records. Brf. of Resp., p. 2. The sealing motion was brought in December 2011. Brief of App., p. 2. The former RCW 13.50.050, effective at that time, said in relevant part:

> (1) This section governs records relating to the commission of juvenile offenses....
>
> (2) *The official juvenile court file of any alleged or proven juvenile offender* ***shall be open*** *to public inspection, unless sealed* pursuant to subsection (12) of this section....
>
> (12)....(b) *The court shall not grant any motion to seal* records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section *unless*:
>
> (i) Since the date of last release from confinement..., entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense...;
>
> (ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

> (iii) No proceeding is pending seeking the formation of a diversion agreement with that person;
>
> (iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and
>
> (v) Full restitution has been paid....
>
> (14)(a) *If the court grants the motion to seal* made pursuant to subsection (11) of this section, it shall...order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed....

Laws of 2011 ch. 338 § 4 (emphasis added).

By saying the court "shall not grant" a sealing motion "unless" certain conditions are met, the statute permitted - but did not require – the sealing of records upon satisfying the conditions. *Id.*; *State v. D.S.*, 128 Wn.App. 569, 572-574, 115 P.3d 1047 (Div. 2, 2005) (detailing the "evolution of RCW 13.50.050" from "shall grant...if" to "shall not grant...unless").[2] The 2011 statute did not say that a sealing motion "shall" be granted, nor did it purport to provide an exclusive list of

[2] The lack of mandatory language in the 2011 statute distinguishes this case from *State v. T.K.*, 139 Wn.2d 320, 987 P.2d 63 (1999), and its progeny, which discussed a "right" to seal juvenile records. *T.K.* was expressly based on "mandatory language" which was removed by the Legislature in 2001. 139 Wn.2d at 332; Laws of 2001, ch. 49 § 1; *In re Carrier*, 173 Wn.2d 791, 809, 272 P.3d 209 (2012) (noting *T.K.* is superseded by statute).

considerations. Laws of 2011 ch. 338 § 4. Rather, the statute presumed that files are open, and merely set minimum conditions for sealing. *Id.*

2. GR 15 and Art. I, Sec. 10 trump Chap. 13.50 RCW.

General Rule 15, adopted by this Court, "sets forth a uniform procedure for" sealing court records. GR 15(a). GR 15 "applies to *all* court records." *Id.* (italics added). The rule expressly applies to juvenile court records. GR15(c)(1) (referring to "juvenile proceedings"); GR 15(d) (a juvenile's name must remain on public indices after a file is sealed).

GR 15(c)(2) outlines the test for sealing, as follows:

> After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. *Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:*
> (A) The sealing or redaction is permitted by statute; or
> (B) The sealing or redaction furthers an order entered under CR 12(f) or...CR 26(c); or
> (C) A conviction has been vacated; or
> (D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or
> (E) The redaction includes only restricted personal identifiers contained in the court record; or
> (F) Another identified compelling circumstance exists that requires the sealing or redaction.

(italics added). Thus, a statute permitting sealing, such as RCW 13.50.050, is just one of the "concerns that may be weighed against the public interest" when determining if a record should be sealed. GR15(c)(2). GR 15 does not compel sealing based solely on a statute. *Id.*

State v. C.R.H., 107 Wn.App. 591, 596-97, 27 P.3d 660 (Div. 1, 2001), held that RCW 13.50.050 – the statute at issue here - does not supplant GR 15. When GR 15 conflicts with a procedural statute such as RCW 13.50.050, "the court rule governs." *Id.*, quoting *State v. Blilie*, 132 Wn.2d 484, 491, 939 P.2d 691 (1997). Accordingly, GR 15 authorizes a trial court to seal a file even if statutory conditions are not met. *C.R.H.*, 107 Wn.App. at 596. By the same reasoning, a court may choose *not* to seal a file based on GR 15, even if RCW 13.50.050 conditions *are* met.

Similarly, Article I, Section 10 controls access to court records when there is a conflict with a statute. *Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 207, 848 P.2d 1258 (1993) (striking a law prohibiting courts from disclosing names of child sexual assault victims because it conflicted with Article 1, Section 10).

B. Both GR 15 and the *Ishikawa* Test Apply to Juvenile Records.

This case is controlled by *State v. Waldon*, 148 Wn.App. 952, 202 P.3d 325 (Div. 1, 2009), and *State v. McEnry*, 124 Wn.App. 918, 103 P.3d

857 (Div. 2, 2004). These cases establish that when an offender moves to vacate convictions and seal the related files, as S.J.C. did here, the trial court must apply both GR 15 and *Ishikawa* to determine if the offender's interest in secrecy outweighs the public's interest in open court records. *Waldon* at 962; *McEnry* at 925-26.[3] Although these cases involved adult convictions, the same reasoning applies to juvenile convictions because GR 15 applies to "all" court records and Article I, Section 10 says, "Justice in *all* cases shall be administered openly." (Italics added.) As discussed below, there is no exception for juvenile criminal records.

1. ***Waldon* is dispositive of this appeal.**

In *Waldon*, a woman brought a motion in 2007 to vacate her 1985 theft conviction and seal the related court file. 148 Wn.App. at 955. She argued that the Constitutional test for sealing records did not apply because, under GR 15(c)(2)(C), "a vacated conviction constitutes a sufficient privacy interest that outweighs the public interest." *Id.* at 956. The *Waldon* respondent also argued that a "compelling" privacy concern

[3] Under the constitutional *Ishikawa* test, the moving party must show a need for redaction or sealing and "state the interests or rights which give rise to that need." *Indigo Real Estate Services v. Rousey*, 151 Wn.App. 941, 948, 215 P.3d 977 (2009). "If closure and/or sealing is sought to further any right or interest besides the defendant's right to a fair trial, *a serious and imminent threat* to some other important interest must be shown." *Id.* at 948 (italics added). The test also requires: an opportunity for the public to object; analysis of whether the method of curtailing access is the least restrictive possible and effective in protecting the threatened interest; weighing the competing interests of the secrecy proponent and the public; and an order that is no broader in application or duration than necessary to serve its purpose. *Id.* at 949.

outweighed the public's interest in her file, satisfying GR 15(c)(2), because "she was about to reenter the job market...and her theft conviction would severely limit her chances of finding employment." *Id.*

The Court of Appeals reversed the sealing order and held that a motion to seal court records must satisfy both GR 15 and the Article I, Section 10 test outlined in *Seattle Times v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). *Waldon*, 148 Wn.App. at 962. The Court reasoned that GR 15, standing alone, "does not meet the constitutional benchmark established by *Ishikawa*" and was not intended to displace it. *Id.* at 962-964. Most importantly, the *Ishikawa* test, unlike GR 15, requires a person seeking to seal a vacated conviction – such as S.J.C. - to establish that disclosure poses a "serious and imminent threat" to an important interest. *Id.* at 962. "This requires a showing that is more specific, concrete, certain and definite than a 'compelling' concern." *Id.* at 962-63.

The *Waldon* court said that GR 15(c)(2), which lists six "concerns that may be weighed against the public interest" in considering a sealing motion, "does not create a presumption that the movant can satisfy the compelling interest standard merely by showing that one or more of these concerns are present in her case." *Id.* at 966. "For example, one of the 'sufficient' privacy concerns in the revised [GR 15] is a finding that a

conviction has been vacated." *Id.* The rule "merely acknowledges what the legislature has expressed: a vacated conviction is an important interest." *Id.* at 967. "It does not foreclose application of *Ishikawa* in determining whether sealing...meets constitutional requirements." *Id.*

> Accordingly, when a trial court finds that the sealing proponent meets one or more of the listed criteria [in GR15(c)(2)], the court can comply with *Ishikawa* by analyzing whether the identified compelling concern also poses a serious and imminent threat.

Id. Thus, the analysis does not end with the GR15(c)(2) concerns.

Here, like the *Waldon* respondent, S.J.C. sought to hide an entire criminal file without demonstrating that disclosure would pose a serious and imminent threat to employment or another interest as required by *Ishikawa.* The lack of access to S.J.C.'s file makes it impossible to tell whether sealing may be warranted under the proper test on remand. The point is that the *Ishikawa* test is not optional even if a statute authorizes sealing, a conviction is vacated, or some other GR 15(c)(2) concern exists.

An authorizing statute such as RCW 13.50.050 is one of the six "concerns" listed in GR 15(c)(2) which may be weighed against the public interest in open courts. *Waldon,* 148 Wn.App. at 966. Thus, RCW 13.50.050 establishes that juvenile offenders have an "important interest" in hiding their past once they meet the specified statutory conditions. *Id.*

at 967. But that interest, by itself, is not enough to justify sealing under GR 15 and *Ishikawa*. *Id.* In sum, just as the *Waldon* sealing was remanded for application of the proper test, here the sealing of S.J.C.'s file should be remanded because the trial court failed to apply *Ishikawa*.

2. ***McEnry* is equally instructive here.**

In *McEnry*, a trial court sealed the entire file of a drug and firearm case after the convictions were vacated. 124 Wn.App. at 920. The Court of Appeals reversed the sealing order because the defendant merely speculated that an open file would harm his future employment and housing, and because the public interest was not considered. *Id.* at 926 ("McEnry conceded that potential loss of housing...was 'not an issue' because he owns his home" and "he did not expect his employer to conduct a security or records check on him").

Significantly, the Court held that McEnry's criminal court file should remain open to public scrutiny although RCW 9.94A.640 released him "from all penalties and disabilities resulting from" the vacated conviction. *McEnry*, 124 Wn.App. at 926. The vacation statute even gave McEnry the right to say he was never convicted, similar to the juvenile statute. RCW 9.94A.640(3); RCW 13.50.050(14)(a). In fact, RCW 9.94A.640 has the same purpose as the statute at issue here, RCW

13.50.050, which is to help offenders obtain jobs and housing after they have fulfilled sentences and maintained clean records. But such a statute does not authorize courts to seal court records without considering the public's constitutional right of access. *McEnry* at 927.

In sum, just as vacating an adult conviction does not guarantee that the adult's conviction file will be sealed, satisfying the conditions of RCW 13.50.050 does not guarantee that a juvenile conviction file will be sealed. S.J.C. and other juvenile offenders must meet the GR 15 and Constitutional standards for sealing, in addition to satisfying Chap. 13.05 RCW, in order to conceal their juvenile criminal files from the public.

C. *In Re Lewis* Does Not Establish an Exception to *Ishikawa*.

S.J.C. argues that *Ishikawa* does not apply because of this Court's 57-year-old ruling in *In Re Lewis*, 51 Wn.2d 193, 316 P.2d 907 (1957), which upheld a trial court's order excluding the public from a juvenile delinquency hearing. Brf. of Resp., pp. 3-5. S.J.C. is wrong. *Lewis* is based on outdated laws, it is limited to its facts, and it does not carve out an exception to *Ishikawa* for all cases involving juveniles.

Lewis upheld the constitutionality of a former statute, RCW 13.04.090, which authorized the court to close a non-criminal hearing to determine if a child should be "made a ward of the court" based on

"delinquency." 51 Wn.2d at 195, 200. That case was decided 25 years before *Ishikawa* set the Constitutional standard for courtroom closures in 1982 (97 Wn.2d 30) and it predated this Court's adoption of GR 15 by 32 years. In fact, *Lewis* dealt with a 1913 statute which ceased to exist a half-century ago. Laws of 1961 ch. 301 § 17 (repealing RCW 13.04.090).

Lewis has almost nothing in common with this case. It was not a criminal proceeding. *Lewis*, 51 Wn.2d at 195. It did not involve sealing of records. *Id.* The statute at issue did not contain a presumption of openness, whereas here, RCW 13.50.050(2) states that juvenile court files "shall be open." Also, in *Lewis,* the boy who was the subject of the proceeding actually sought an open public hearing, which is consistent with the oft-stated belief that open hearings promote fairness by exposing judges to scrutiny. *Lewis*, 51 Wn.2d at 195; *Dreiling*, 151 Wn.2d at 903-04. Here S.J.C. takes the opposite position.

S.J.C. relies heavily on the language of *Lewis* explaining how the juvenile delinquency system in 1957 differed from the adult criminal system, including that children were rehabilitated rather than punished. *See*, Brf. of Resp., pp. 3-4, quoting *Lewis*, 51 Wn.2d at 198. But S.J.C. acknowledges that this state's policy has evolved since 1957, such that today juvenile proceedings are open to the public. Brf. of Resp., p. 6. He

also overlooks that in 1957, when *Lewis* was decided, there was not yet any rule or law requiring the general public's interest in open courts to be weighed against privacy interests. Now, such weighing is the "affirmative duty of the trial court." *McEnry*, 124 Wn.App. at 926.

Not surprisingly, the Court of Appeals has rejected the argument that *Lewis* permanently removed all types of juvenile cases from analysis under Article I, Section 10. *State v. Loukaitis*, 82 Wn.App. 460, 466, 918 P.2d 535 (Div. 3 1996). In *Loukaitis*, a 15-year-old murder defendant obtained an order excluding the public from a hearing on whether he should be tried as an adult. *Id.* at 463. The case involved the highly publicized shooting of a teacher and two students at a Moses Lake, Wash., high school, and had provoked public concern and outrage. 82 Wn.App. at 463, 469. Similar to S.J.C's arguments here, the defendant in *Loukaitis* relied on *Lewis* in arguing that the *Ishikawa* test did not apply in juvenile court. *Id.* at 465. The Court of Appeals said:

> *Lewis* is distinguishable because it was a delinquency proceeding under former RCW 13.04.090....Here, the declination hearing statute differs from the statute in *Lewis*; it presumes public access....In sum, the public has the same right to access in a declination hearing as in other pretrial criminal proceedings, subject to closure for good cause.

Id. at 466, citing RCW 13.40.140(6) (stating a presumption that declination hearings will be open). The Court applied the *Ishikawa* test

and concluded that closure was not warranted because of the important public purpose of demonstrating how the justice system works and because the defendant failed to show specifically how an open hearing would deny his right to a fair trial. *Id.* at 469-70. Thus, contrary to S.J.C.'s arguments, *Lewis* does not carve out a broad exception to *Ishikawa* for any case involving juveniles.

D. The *Sublett* Test Does Not Apply.

Both the appellant State of Washington and respondent S.J.C. devoted lengthy discussion to the "experience and logic" test announced in *State v. Sublett*, 176 Wn.2d 58, 292 P.3d 715 (2012), as if it applies here. Brf. of App., pp. 8-18; Brf. of Resp., pp. 5-16. Although Allied and WCOG wholeheartedly agree with the State's excellent analysis of the logic supporting open juvenile courts, they disagree that *Sublett* provides the analytical framework for this case. This case should be analyzed under *Ishikawa* and its progeny, including *Dreiling*, *Waldon* and *McEnry*, which deal with the sealing of records. *Sublett* is not about court records and should not apply here, particularly because it places the burden of proof on the party opposing closure, which contradicts decades of case law placing the burden of proof in a sealing case on the party proposing closure.

1. ***Sublett* deals solely with courtroom proceedings.**

In *Sublett,* two defendants argued that their right to a public criminal trial under Article 1, Section 22 was violated when the judge responded to a jury question in chambers with only counsel present. *Sublett*, 176 Wn.2d at 70. This Court said, "Before determining whether there was a violation, we first consider whether the proceeding at issue implicates the public trial right, thereby constituting a closure at all." *Id.* at 71. Thus, the primary question in *Sublett* was how to "identify a closure." *Id.* at 74. This Court explained that "a closure occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave." *Id.* at 71, quoting *State v. Lormor*, 172 Wn.2d 85, 93, 257 P.3d 624 (2011). But "not every interaction between the court, counsel and defendants will implicate the right to a public trial, or constitute a closure if closed to the public." *Id.*

Embracing the reasoning of the U.S. Supreme Court in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S.Ct. 2735 (1986), this Court adopted the "experience and logic" test for determining when a closed courtroom proceeding implicates a defendant's rights under Article I, Section 22 and the public's parallel right to open court hearings under Article 1, Section 10. *Sublett*, 176 Wn.2d at 73. The first part of the test asks "whether the place and process have historically been open to the

press and general public." *Id.* The logic prong asks "whether public access plays a significant positive role in the functioning of the particular process in question." *Id.* The criminal defendant has the burden of showing that the public trial right attaches to the proceeding in question. *Id.* at 73.

Sublett has spawned a long line of cases involving courtroom closures, but this Court has never applied the logic and experience test to sealing records. This is not surprising because a court record is well defined and has a fixed physical form. GR 31(c)(4) (defining court record).[4] There is no question that sealing a record constitutes a "closure." GR 15(b)(4) ("to seal means to protect from examination by the public..."). By contrast, a "trial" is a fluid "event" and may not encompass everything that occurs in a courtroom. *In re Morris*, 176 Wn.2d 157, 173, 288 P.3d 1140 (2012) (J. Chambers concurrence describing the *Sublett* test as "a new test for determining whether an event constitutes a courtroom closure"). Illustrating the relative difficulty in defining what a "trial" encompasses, the public trial right does not attach to a jury's request for a tape measure and masking tape (*State v.*

[4] A court record is any "document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding," and any "index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created or prepared by the court that is related to a judicial proceeding."

McCarthy, 178 Wn.App. 90, 312 P.3d 1027 (Div. 2, 2013)), but does include conducting part of voir dire in chambers (*Morris*, 176 Wn.2d at 173).

2. **The burden of proof rests with the sealing proponent.**

There is no need to apply the *Sublett* test to sealing of records because it is well established that sealing is a closure implicating the public's right to open courts under Article 1, Section 10. *See, e.g.*, *Dreiling*, 151 Wn.2d at 909-10 (applying *Ishikawa* to documents filed in support of dispositive motions); *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 114 P.3d 1182 (2005) (extending *Ishikawa* to "any records that were filed with the court in anticipation of a court decision (dispositive or not)"). As Justice Chambers wrote in his *Morris* concurrence, "Once this court has decided that a set of circumstances does or does not represent a closure, the issue is settled and it is no longer necessary to revisit the question with an experience and logic test or other analysis." 176 Wn.2d at 173. This Court should clarify that a *Sublett* analysis is unneeded here.

Such clarification will ensure that trial courts do not shift the burden of proof in sealing motions from the moving party to the opposing party. *Dreiling*, 151 Wn.2d at 909 (the party wishing to keep the record sealed has the burden of demonstrating the need to do so). Here, S.J.C.

cites *Sublett* for the proposition that the State – which opposes the sealing at issue - "bears the burden of establishing violation of Article I, Section 10." Brf. of Resp., p. 5. If this confused thinking takes hold, dubious sealing motions may be granted simply because there is no party willing or able to devote resources to defending the public interest in open courts. In sum, this Court should clarify that *Sublett* does not apply to any sealing motions, and that *Ishikawa* applies to sealing juvenile records.

E. Public Policy Supports Open Juvenile Courts.

S.J.C. argues that "juveniles do not enjoy the same constitutional protections as adults, most notably the right to a jury trial." Brf. of Resp., p. 9. The implication is that results cannot be trusted and therefore should be hidden. But such doubts are precisely the reason for *more* scrutiny of the system to ensure it operates fairly. Indeed, as this Court recognized in *Sublett,* when there is no jury present "to act as a safeguard," public access becomes "more significant." 176 Wn.2d at 74 (citation omitted).

S.J.C. also argues that judges cannot accurately "distinguish the few incorrigible juvenile offenders from the many that have the capacity for change." Brf. of Resp., p. 11. This, too, weighs in favor of an individualized weighing of public and private interests under *Ishikawa.* , While many juvenile offenses may reflect youthful mistakes, concealing

the file of a dangerous or incorrigible offender may jeopardize the peace and safety of the public.

The purpose of Article I, Section 10 is to show how the *entire* justice system works. *Rufer,* 154 Wn.2d at 548-49. Juvenile cases – adjudicated by elected Superior Court judges - are an important part of that system. If juvenile records are categorically closed by statute without an individual analysis under *Ishikawa*, the juvenile justice system as a whole will be shielded from scrutiny. The public will lose the ability to detect patterns of bias, injustice or unintended consequences of laws or rules. As the U.S. Supreme Court said in *Press-Enterprise*, 478 U.S. at 7, "one of the important means of assuring a fair trial is that the process be open to neutral observers." For these important policy reasons, in addition to the authorities discussed above, this Court should hold that the *Ishikawa* test applies to juvenile courts.

V. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and remand the sealing motion for application of the proper test.

Dated this 12th day of August 2014.

HARRISON-BENIS LLP

By: s/Katherine A. George
Katherine George, WSBA No. 36288

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on August 12, 2014, I served the foregoing Amicus Curiae Memorandum and related motion by email, per agreement, to:

Gregory C. Link
Washington Appellate Project
1511 Third Avenue, Ste. 701
Seattle, Washington 98101

James M. Whisman
King County Prosecutor's Office
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104-2316

s/Katherine A. George
KATHERINE A. GEORGE

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Dear Clerk,

Please find attached for filing in *State of Washington v. S.J.C.*, Case No. 90355-7, an amicus brief and related motion by Allied Daily Newspapers of Washington and the Washington Coalition for Open Government. This filing is made by the undersigned counsel.

Thank you,

Katherine A. George
WSBA No. 36288
Of counsel
Harrison-Benis LLP
2101 Fourth Avenue, Suite 1900
Seattle, Washington 98121
Cell phone: 425-802-1052
Office: 206 448-0402
Fax: 206 448-1843
Email: kgeorge@hbslegal.com