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STATE OF WASHINGTON

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No. 83645-1

CLERK

SUPREME COURT
OF THE STATE OF WASHINGTON

TACOMA NEWS, INC. d/b/a THE NEWS TRIBUNE,

Petitioner,

v.

THE HONORABLE JAMES D. CAYCE, KING COUNTY JUDGE,

Respondent.

PETITIONER TACOMA NEWS INC'S OPENING BRIEF

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A. INTRODUCTION

Quoting the Honorable William L. Downing, this Court has concisely explained the critical importance that transparent court action has for our system of justice:

“Whether the Court fairly and appropriately dealt with the parties and the issues that came before it are the matters of public interest that dictate the openness of judicial proceedings. Everything that passes before this Court, whether or not ultimately held to be admissible at trial or supportive of a viable claim, has relevance to that inquiry.”

Rufer v. Abbott Laboratories, 154 Wn.2d 530, 541-542, 114 P.3d 1182 (2005). In *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 35, 640 P.2d 716 (1982), this Court held that “[e]ach time restrictions on access to criminal hearings or the records from hearings are sought” the court must follow five required steps. (emphasis added). This analysis is constitutionally required under the Washington State Constitution Article I, Section 10, which provides that “Justice in all cases shall be administered openly”

The issue presented, here, is whether the trial court erred in refusing to consider the public’s right of access before closing a courtroom. Specifically, this action results from the Order of the Honorable James D. Cayce precluding The Tacoma News Inc. (herein

“The News Tribune”) and the public from attending a judicial proceeding in the criminal trial of *State v. Michael Andrew Hecht*, Cause No. 09-1-01051-1. Hecht, a Pierce County Superior Court Judge at that time, was on trial for, and later convicted of, felony harassment and patronizing a prostitute. CP 1-2, 70-72. On September 21, 2009, Judge Cayce convened in Pierce County Superior Courtroom 2-A for the purposes of: (1) conducting an immunity hearing regarding key witness Joseph Pfeiffer, (2) presiding over a preservation of testimony examination of Pfeiffer, and (3) adjudicating the question of bail for Pfeiffer who was held on a material witness warrant. While Pfeiffer testified, “[o]bjections were lodged” and “the Court made rulings” on those objections.¹ The courtroom remained open until a reporter for The News Tribune, along with Counsel, entered near the end of Pfeiffer’s examination. Judge Cayce then ordered the courtroom closed, reasoning that the proceeding was discovery and the public had no right to attend. VRP (9/21/09) at 13-14. Respectfully disagreeing, The New Tribune filed this action seeking access to the proceedings and a transcript from the closed proceeding.

As this Court has previously explained, “[o]pen access to government institutions is fundamental to a free and democratic

¹ Declaration of John Hillman (9/28/09) (Hillman Decl.) at ¶ 22.

society. Open access to the courts is grounded in our common law heritage and our national and state constitutions. For centuries publicity has been a check on the misuse of both political and judicial power.” *Dreiling v. Jain*, 151 Wn.2d 900, 908, 93 P.3d 861 (2004). It is difficult to imagine a case where this check is more critical than where an active Superior Court judge is the subject of a felony criminal trial. Judge Cayce should have, but did not, conduct an analysis of this situation under the frame work provided by *Seattle Times Co. v. Ishikawa*. This proceeding was not mere discovery, but instead, an in-court hearing where the Court considered evidence and ruled on objections. Hillman Decl. at ¶ 22.

Although the trial is now over, The News Tribune seeks the issuance by this Court of a writ of mandamus directing the Honorable James D. Cayce to provide a copy of all transcripts and videotaped testimony taken during the hearing on September 21, 2009, and directing the Court to keep any further proceedings, should they occur,² in the trial of *State of Washington v. Michael Andrew Hecht*, Cause No. 09-1-01051-1, open to the press and public, unless the Court first complies with the requirements of *Seattle Times Co. v.*

² Hecht has appealed. The News Tribune has filed a supplemental designation of Clerk’s papers to include Hecht’s Notice of Appeal.

Ishikawa. It is critical to the judicial system that future proceedings remain open.

B. ASSIGNMENT OF ERROR

The Honorable James D. Cayce erred by closing the courtroom to the press and public on September 21, 2009 without first complying with the requirements of *Seattle Times Co. v. Ishikawa*.

C. STATEMENT OF CASE

On February 27, 2009, the State of Washington filed criminal charges against Michael Hecht. CP 1-2. This included a count of felony harassment and a count of patronizing a prostitute. *Id.* At the time these charges were filed, Hecht was a Pierce County Superior Court Judge. CP 5.

One of the State's key witnesses was 20-year-old Joseph Pfeiffer. CP 4. Prior to the criminal charges, Pfeiffer told police that Hecht paid him for sex on multiple occasions. CP 4-5, 42-44. Pfeiffer later changed his testimony by signing an affidavit in which he asserted that "[a]t no time did he [Hecht] or I [Pfeiffer] exchange money for sex." CP 18. All versions of Pfeiffer's testimony were filed in open court. CP 73.

Trial was set for September 8, 2009. CP 60. However, the State was unable to serve Pfeiffer with a trial subpoena and the trial court issued a material witness warrant for Pfeiffer's arrest. CP 60. Because Pfeiffer's testimony was necessary to prove the charge of patronizing a prostitute, and because Pfeiffer was unaccounted for at the time of trial, the State requested a trial continuance. *Id.* This motion was granted. Hillman Decl at ¶ 8. Later, on September 15, 2009, Pfeiffer was located and arrested on the material witness warrant. *Id.* at ¶ 9.

After Pfeiffer was located, the State sought to take his testimony. Hillman Decl. at ¶ 10. At defense counsel's request, Judge Cayce agreed to preside over the examination. VRP (9/16/09) at 8. This was preservation testimony to use at trial, not a discovery deposition. VRP (9/16/09) at 5. In fact, Judge Cayce limited the scope of the examination "to what's already known" by the parties. *Id.*

On September 21, 2009, at 9:28 a.m., the Court convened in the matter of *State v. Hecht*. CP 69. The first issue considered was whether Pfeiffer should receive a grant of immunity from a potential charge of perjury related to the affidavit in which he changed his testimony. *Id.* After ruling on the question of immunity, Hecht brought a "motion to close hearing/video deposition to the public[,]" which the

Court did not grant at that time. *Id.*; VRP (9/21/09) at 7-9. Instead, the Court held that it would “allow the courtroom to remain open and address the issue if spectators enter the courtroom.” *Id.* The Court ruled as follows:

All right. I think that is the best approach. But we’re certainly not in trial.

This may or may not be admissible at trial. And I think I can close the courtroom and would probably intend to, although, if the press showed up, I’d give them an opportunity, or if the public showed up and wanted to weigh in on this, I would give them an opportunity to try to convince me otherwise. But at this point the doors are open, there’s no sign, and it’s a moot issue unless someone does come. And certainly Mr. Quillian has a right to be here.

VRP (9/21/09) at 9.

At this point, in open court, the parties began Pfeiffer’s examination. Katie Eskew, the same court reporter who transcribed the immunity hearing and later bailing hearing, CP 69, took Pfeiffer’s testimony. Hillman Decl at ¶ 15-16. While Pfeiffer testified, the Court ruled on objections. Hillman Decl at ¶ 22.

At approximately 1:30 p.m., Adam Lynn, a reporter for The News Tribune, entered the courtroom along with legal counsel. VRP (9/21/09) at 11. As soon as Mr. Lynn entered, the proceedings stopped. *Id.* The News Tribune asked that the courtroom remain open unless the court satisfied the requirements of *Ishikawa*. VRP

(9/21/09) at 12. Judge Cayce, however, viewed the proceedings as merely discovery and determined that the public had no right to attend. VRP (9/21/09) at 13-14. Judge Cayce then ordered the courtroom closed. *Id.* The complete discussion on this issue is as follows:

MR. FRICKE: Okay. That's all I have, Your Honor. Your Honor, I guess now we have the issue.

THE COURT: Unless there's no redirect.

MR. HILLMAN: I do have some redirect.

MR. FRICKE: I think we need to bring this up.

THE COURT: Yeah. We now have observers, one individual from the press. And this is a deposition normally conducted in a law office. The defense is moving to exclude all witnesses, and the State – are you still objecting?

MR. HILLMAN: Your Honor, I think it's kind of an unusual issue and I'll defer to your discretion, but I would ask that if the defendant's making that motion that he also waive his right to a public trial, at least for this deposition.

MR. FRICKE: This is – I'm not – obviously this is not the trial, so – and I'm not going to waive that right.

THE COURT: Waive your right to a public deposition, if there is any right to a public deposition?

MR. FRICKE: If there is any right. I'm asking that the only people, as I stated earlier, that are in this courtroom are those necessary for purposes of this. Otherwise, I'd ask that we move it to a law office and it won't be an issue.

THE COURT: And then since we are in a courtroom, if we were in a law office, I wouldn't ask the individuals that

have just come in if they wish to weigh in on this, but do either of you have any position with respect to whether you should be allowed to stay or not?

MR. BECK: Yes, Your Honor. This is James Beck on behalf of the News Tribune. This is – *Ishikawa v. Seattle Times* I think governs this. This is a proceeding in open court. There's five factors the Court must consider.

THE COURT: But let's talk about what this is. What – what is this hearing?

MR. BECK: It's – we're in open court, so it's testimony of a witness.

THE COURT: Okay. Let's all just move. It's going to be easier to move to another room.

MR. FRICKE: Either that or we put a "closed hearing" on – sign on. The only reason we didn't put a closed hearing sign on this thing was because it wasn't an issue this morning.

THE COURT: Right. But this is just a deposition normally conducted in a law office. And you're a lawyer?

MR. BECK: Yes, Your Honor.

THE COURT: Are depositions open to the public?

MR. BECK: Your Honor, this is not a deposition, as I understand it. It's a court presiding over a witness in open court. If it's – if the judge is going to be – Your Honor is going to be presiding over the same witness in another room in this courthouse, I don't see how that changes matters either.

THE COURT: Well, for instance, we get calls at the office when the attorneys are in the middle of a deposition. Is that open to the public because the judge is involved?

MR. BECK: Your Honor, I think this proceeding here today is a court proceeding subject to *Ishikawa*.

THE COURT: I think you're wrong, but you can certainly appeal.

MR. BECK: Thank you.

THE COURT: We'll just – we'll go ahead and put a closed sign on the courtroom.

(Mr. Beck exits.)

VRP (9/21/09) at 9-14.

After the examination ended, at 2:04 p.m. Judge Cayce reopened the courtroom and presided over the question of Pfeiffer's bail. CP 69. At 2:15 p.m. the court adjourned. *Id.*

The following day, September 22, 2009, The News Tribune filed this request for a writ of mandamus and sought expedited review of these matters. This Court denied the motion for expedited review.

Subsequently, trial was held in *State v. Hecht*, and on October 28, 2009, Hecht was convicted on both counts. CP 70-72.

D. ARGUMENT

1. Requesting A Writ of Mandamus Is Appropriate In This Matter Where An Improper Courtroom Closure Occurred

This Court has held that “[m]andamus by an original action in this court is a proper form of action for third party challenges to closure orders in criminal proceedings.” *Ishikawa*, 97 Wn.2d at 35. See also, RAP 16.2.

While the State previously suggested that The News Tribune could gain access to a transcript through the Public Records Act, this argument is not persuasive because: (1) the State cannot provide a transcript from a closed hearing without a modification of the trial court's order closing that portion of the proceedings, and (2) the Public Records Act does not address the question of whether the courtroom was lawfully closed and whether the courtroom should remain open in the future. The News Tribune's request for a Writ of Mandamus is appropriate.

2. The Issues Raised In This Case Are Not Moot

The News Tribune anticipates that Respondent may argue that this matter is moot because the September 21, 2009 hearing is over and the trial is now complete. If this argument is raised, this Court should reject it.

Initially, "[a] case is moot if a court can no longer provide effective relief." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793, 796 (1984). Here, the case is not moot because the Court can provide effective relief in the form of an order permitting the production of a transcript from the closed hearing and an order requiring any future proceedings, if Hecht's appeal is successful, to be open unless closure is justified under *Ishikawa*.

Assuming, *arguendo*, that the case was moot, this Court still has the discretion to consider the matter when continuing and substantial public interests are present. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) (“The Supreme Court may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved.”). When considering whether to decide such a case, there are three factors: “(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.” *Hart v. Department of Social and Health Services*, 111 Wn.2d 445, 448, 759 P.2d 1206 (1988). Here, all three factors are met: (1) the case is certainly of a public nature; (2) a decision as to what “criminal hearings” are subject to *Ishikawa*, 97 Wn.2d at 35, is of benefit to the press, the bar, and the trial bench; and (3) this same issue or similar issues are bound to occur in future trials where trial courts are confronted with issues and must make determinations of when and where the press and public’s right to access is implicated. Therefore, even if this matter were moot, this Court should still resolve the dispute.

3. Closing The Courtroom In This Case Was Improper Under Federal And State Law

Both the Federal and Washington State Constitutions protect the public's right of access to criminal trials. With respect to the United States Constitution, the First and Fourteenth Amendments secure this right. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). Likewise, Washington's Constitution also establishes a right of access to court proceedings by stating, in relevant part: "Justice in all cases shall be administered openly" Constitution Article I, Section 10. "This guarantees the public and the press a right of access to judicial proceedings and court documents in both civil and criminal cases." *Dreiling*, 151 Wn.2d at 908. This Court has confirmed that this entitles the public to openly administered justice. *Cohen v. Everett City Council*, 85 Wn.2d 385, 388, 535 P.2d 801 (1975). The press is part of that public. *Id.*

While Respondent characterizes this case as a question about the public's right to access discovery materials, this is not accurate. Indeed, the very case relied upon by Respondent,³ *Palm Beach Newspapers, Inc. v. Burk*, 504 So.2d 378, 384 (Fla. 1987), explains why having the Judge ruling on the examination transforms the proceeding from a deposition into a hearing:

Discovery depositions are judicially compelled for the purpose of allowing parties to investigate and prepare their case, but, unlike a suppression hearing, they are not judicial proceedings “for the simple reason that there is no judge present, and no rulings nor adjudications of any sort are made by any judicial authority.” *Tallahassee Democrat, Inc. v. Willis*, 370 So.2d 867, 872 n. 4 (Fla. 1st DCA 1979).

(emphasis added).

Here, Judge Cayce was both present for the examination and made rulings and adjudications. Furthermore, this was preservation testimony to use at trial, not a discovery deposition where the parties were unaware of what the witness would say. VRP (9/16/09) at 5 (Judge Cayce’s instruction to “limit the deposition to what’s already known.”). Even under the case law cited by Respondent, this was a judicial proceeding.

4. Judge Cayce’s Courtroom Closure Violated Federal Law

Under the United States Constitution, the press and the public have a right to attend criminal proceedings. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982). In fact, under the First Amendment, the press and the public “have a presumed right of access to court proceedings and documents.” *Oregonian Pub. Co. v. United States Dist. Court for Dist. Of Oregon*, 920 F.2d 1462, 1466 (9th Cir. 1990) (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S.

³ Answer to Writ at 14

501, 510 (1984) (*Press-Enterprise Co. I*). “This presumed right can be overcome only by an overriding right or interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Id.* (emphasis added).

The question is, of course, whether First Amendment rights pertain to an in-court examination as occurred here. In *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 7 (1986) (*Press-Enterprise Co. II*), the Supreme Court noted that “the First Amendment question cannot be resolved solely on the label we give the event, i.e., ‘trial’ or otherwise[.]” *Id.* at 7. But in assessing whether the First Amendment does apply, the Court will focus on two considerations. *Id.* at 8.

The first consideration is whether the “place” and the “process” have historically been open to the press and the general public. *Id.* Clearly the place, the courtroom, has been historically open to the public. Similarly, the “process” has historically been open. Specifically, the process, here, is one where a judge presides and rules upon the testimony of a witness in the courtroom. The live examination of witnesses is a central part of the criminal trial. Like a suppression hearing, the evidence at this hearing might not be used at trial, but rulings of the court will influence later events at trial regardless. Hearings where the court makes rulings on the party’s

examination of a witness for the purposes of trial have always been presumptively open to the public.

The second consideration is whether public access plays a significant positive role in the functioning of the particular process in question. *Id.* at 8. In *Press-Enterprise Co. II*, the court noted that there are some government operations that would be totally frustrated if conducted openly (e.g. grand jury proceedings). *Id.* While others, like pre-trial hearings, “plainly require public access.” *Id.* Public access to the examination of a key witness against a sitting Superior Court Judge presided over by another Superior Court Judge would seem to be another situation that “plainly require[s] public access.” *Id.*

Once it is determined that constitutional protections apply, the Supreme Court has made clear that the proceedings and documents may be closed to the public only after the court goes through an evaluation process, such as the one adopted by the Washington Supreme Court in *Ishikawa*. See *Oregonian Pub. Co.*, 920 F.2d at 1466. Here, the trial court refused to follow that procedure, in violation of the First Amendment.

5. Judge Cayce’s Courtroom Closure Violated State Law

The same principles are protected under the Washington Constitution, although perhaps more clearly. Article 1, Section 10 of

the Washington State Constitution states: "Justice in all cases shall be administered openly" Our Supreme Court has confirmed that this provision "clearly establishes a right of access" both to court proceedings and to court records. *Ishikawa*, 97 Wn.2d at 36. This Court has further confirmed that "this separate, clear, and specific provision entitles the public . . . to openly administered justice." *Cohen*, 85 Wn.2d at 388. This Court has also confirmed the purpose and importance of this right of access:

We adhere to the constitutional principle that it is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice. Openness of courts is essential to the courts' ability to maintain public confidence in the fairness and honesty of the judicial branch of government as being the ultimate protector of liberty, property, and constitutional integrity. This right of access is not absolute, however, and may be outweighed by some competing interest as determined by the trial court on a case-by-case basis according to the *Ishikawa* guidelines.

Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993).

This State Constitutional right of access applies to civil and criminal actions. It applies to trials, pretrial hearings, transcripts of pretrial hearings or trials, and exhibits introduced at pretrial hearings

and trials. *Seattle Times Co. v. Eberharter*, 105 Wn.2d 144, 155, 713 P.2d 710 (1986).

In *Seattle Times Co. v. Ishikawa*, the Court ruled that before a closure of access to a trial is ordered, the court must go through a process for analyzing alternatives and, after completing that process, must issue findings setting forth the basis for its decision and why the restrictions are the least restrictive means of protecting the competing interest of public access to the Courts. Here, Judge Cayce closed the courtroom to the public without following these procedures, in violation of the State Constitution.

Instead of going through the *Ishikawa* analysis, Judge Cayce ruled that *Ishikawa* did not apply because the hearing was simply a deposition and the situation was no different than if a deposition was occurring in a private law office.

Judge Cayce's decision that *Ishikawa* does not apply is incorrect. First, the testimony of Joseph Pfeiffer took place in Court, not a private office. Second, this was, in fact, a judicial proceeding; Judge Cayce presided over the examination, ruled on objections, and both parties questioned the witness. Third, the parties' conduct was no doubt influenced by the judge's rulings during the examination. The Court's rulings on certain questions and manner of ruling will either

decide definitively what evidence is allowed or at a minimum, guide the actions of the parties during trial. If the preservation testimony is shown to the jury, then the Court's rulings on the evidence stands. However, even if the witness is called live in court, opening statements and the examination of the witness will no doubt follow the Court's rulings during the pretrial proceeding. And, fourth, this may have been the only time the public could view Pfeiffer's testimony, whether live or otherwise. The video would not be shown if the case had been resolved through a plea, as is routinely done. If that was the circumstance, the public and press would not know what occurred between the Court, the witness, and the parties, and whether the examination and Court rulings lead to the resolution short of trial.

Consequently, this hearing was part of the justice process that must, under the State Constitution, be administered openly. As this Court said in *Ishikawa*: "Each time restrictions on access to criminal hearings or the records from hearings are sought, courts must follow these steps[.]" *Ishikawa*, 97 Wn.2d at 35. Judge Cayce's determination that *Ishikawa* did not apply was in error.

6. Respondent's Cases Are Inapplicable

In his pleadings thus far, Judge Cayce has cited several cases as support for his decision to close the courtroom. Each of these

cases, however, is readily distinguished by the fact that here (1) the proceeding at issue occurred in court and (2) the presiding judge, in fact, made rulings on the examination. Hillman Decl. at ¶ 22.

Judge Cayce cites *Eberharter*, 105 Wn.2d 144, 155, which held that neither the Federal or State Constitutions provide the press with the right to access a search warrant affidavit in an unfiled criminal case. Historically, there was no access to such search warrants. Often, they are obtained in chambers or even at the judge's home. Moreover, there was no case filed. This is in stark contrast to conducting a hearing in court in an on-going trial and making rulings that could influence the result in the trial. Interestingly, the trial court in *Eberharter* gave more deference to the *Ishikawa* process than did Judge Cayce. There, the trial judge issued findings and expressly balanced the interests of the press against the interests of the informants named in the affidavit and the interests of the police in conducting their investigation. 105 Wn.2d at 148.

Judge Cayce also cites the Court of Appeal's case of *Buehler v. Small*, 115 Wn. App. 914, 921, 64 P.2d 78 (2003) where the Court of Appeals declined to force a trial court judge to disclose his personal computer files.⁴ Although it does not appear that this was the focus of

⁴ Respondent's Answer to Writ at 12.

the case, (“Mr. Beuhler briefly argues that the right to a public trial guaranteed by article I, section 10 of the Washington Constitution requires access to Judge Small’s computer files[,]”) *Buehler* does not discuss, involve, or consider when it is appropriate to close a judicial proceeding. *Buehler* is not relevant to the question in this case.

7. Application Of *Ishikawa* To This Case Demonstrates That The Court Closure Was In Error

Although Judge Cayce did not apply *Ishikawa* to the September 21, 2009 hearing because he determined that the case was inapplicable, if he had applied this Court’s precedent, the result would be that the courtroom closure would be inappropriate. In *Ishikawa*, the Supreme Court explained that there are five requirements that must be met before a judge can close a courtroom: (1) the moving party must explain why a court closure is necessary; (2) the Court must allow the public to speak about the potential closure; (3) the Court, along with the parties, should consider alternatives to closing the courtroom; (4) the Court must weigh the interests and alternatives in a specific, non-conclusory, manner; and (5) the closure should be as limited as possible. *Ishikawa*, 97 Wn.2d at 37-39.

Here, consideration of these factors demonstrates that the proceeding should have remained open. First, Hecht never explained

why it was necessary to close the courtroom. If it was based on his Sixth Amendment right to a fair trial, he cannot claim that this was seriously at stake. Pfeiffer had already provided signed statements that he had sex with Hecht and received money. CP 4-5, 18, 42-44. This is certainly the same area of testimony that would be, and presumably was, elicited during the September 21, 2009 hearing. While these facts are no doubt embarrassing, they are the substance of the public charges against Hecht. More importantly, these facts were already in the public record. CP 73. Shielding the live testimony from the State's key witness is not needed to protect Hecht's Sixth Amendment rights to a fair trial.

Assuming *arguendo* there were some concerns about Hecht's Sixth Amendment right to a fair trial due to pre-trial publicity, there are a number of options available, including the use of jury questionnaires, *voir dire*, or even change of venue. Any or all of these are adequate protections against any perceived effect on Hecht's Sixth Amendment rights (although those rights would not be affected in this case without these protections).

Hence, even applying the *Ishikawa* standards, closing the courtroom would have been in error because there was no legal basis

to close the courtroom in this case, and even if there were a legitimate concern, there are less restrictive means to protect Hecht's rights.

8. The Court Should Award The News Tribune Fees and Costs Under RCW 7.16.260

If The News Tribune prevails in this action, this Court should award fees and costs pursuant to RCW 7.16.260.⁵ While Respondent argues that he is a nominal party within the meaning of RAP 14. 2, he is the party The News Tribune was required to name and the governmental official whose decision is at issue. Under RCW 7.16.260, the County, not the paper, should bear the costs of this litigation.

E. CONCLUSION

For the reasons set forth above, The News Tribune respectfully requests that this Court issue a writ of mandamus directing the Honorable James D. Cayce to provide a copy of all transcripts and videotaped testimony taken during the hearing on September 21, 2009 and directing the Court to keep all further similar proceedings in the trial of *State of Washington v. Michael Andrew Hecht*, Cause

⁵ RCW 7.16.260, provides: "If judgment be given for the applicant he may recover the damages which he has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate must also be awarded without delay."

No. 09-1-01051-1, open to the press and public, unless the Court first complies with the requirements of *Seattle Times Co. v. Ishikawa*.

Dated this 17th day of December, 2009.

Respectfully submitted,

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