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NO. 85665-6

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW H. RICHARDSON,

Respondent,

v.

MIKE SIEGEL,

Appellant/Intervenor/Petitioner.

**AMICUS CURIAE MEMORANDUM OF
ALLIED DAILY NEWSPAPERS OF WASHINGTON and
WASHINGTON NEWSPAPER PUBLISHERS ASSOCIATION**

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ORIGINAL

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I. INTRODUCTION

On July 18, 2012, the Associated Press reported that shortly before entering a state Senate race in eastern King County, candidate Brad Toft tried to seal court records of a 1995 contract dispute which led to his wages being garnished.¹ According to the story, which was published in several newspapers, his own party's incumbent senator took the rare step of endorsing the opposing party's candidate because court records in the 1995 case and numerous other cases revealed a "history of egregious and disreputable behavior" by Mr. Toft.

On July 21, 2012, the News Tribune reported that 10th Congressional District candidate Stan Flemming had agreed to a confidential settlement of a lawsuit which accused him of "mismanagement and cronyism" and "fiduciary and contractual breaches" while serving as president of a Yakima university.² According to the story, Mr. Flemming, who is a Pierce County Council member, claimed that he was falsely accused, but that records which would exonerate him "can't be examined due to the confidentiality agreement" with the university.

¹ See http://seattletimes.com/html/localnews/2018719195_toft19.html and <http://www.kitsapsun.com/news/2012/jul/18/wash-senate-hopeful-sought-to-seal-court-files/> and <http://www.heraldnet.com/article/20120718/NEWS03/707189796>.

² See <http://www.thenewstribune.com/2012/07/20/2221883/pierce-candidates-presidency-at.html#storylink=mirelated>.

These are just two recent examples of newspapers using open court records to inform the public about candidates for elected office who would prefer to hide aspects of their past. If all of the records and related court dockets had been sealed, the newspapers could not have revealed these stories. And the candidates could have avoided legitimate questions about their fitness for office.³

In the present case involving former Senate candidate and Sumner City Councilman Matthew Richardson, newspaper readers learned about his vacated criminal conviction only because the Seattle Times was able to obtain court records from sources other than the criminal court file which had been completely sealed from public view.⁴ Thus, voters learned the candidate's background despite the trial court's covering it up, including sealing the electronic docket so that it would not show up in a search of public court databases. This case illustrates how such secrecy threatens public confidence in the justice system.

³ Both Mr. Fleming and Mr. Toft ended up trailing their opponents in the August primary. See the state elections Web site: <http://vote.wa.gov/results/current/Legislative-District-5-State-Senator.html> and <http://vote.wa.gov/results/current/Congressional-District-10-US-Representative.html>.

⁴ According to an August 9, 2010 story, the Seattle Times "obtained the prosecutors' statement of facts" about Richardson's 1993 conviction "from a civil case file," and "received other court documents from sources who obtained them before records were sealed." See http://seattletimes.com/html/localnews/2012581024_richardson10m.html.

To seal an entire case file and docket is to make courts complicit in a deceit. The very purpose of such sealing is to convey the false impression that a prosecution never took place, although it did, and that guilt was never established, although it was. This kind of falsehood can threaten public safety, such as here, where Mr. Richardson worked with school children while hiding the fact that he once pleaded guilty to sexual abuse of young girls. Sealing a criminal file and docket also invites mistrust of the courts. If the public cannot rely on court records to reveal when persons of interest have been sued or charged with crimes, or to show how the courts handled those cases, the purpose of Article I, Section 10's mandate for open administration of justice - to foster confidence in this state's court system - will be frustrated.

Besides highlighting the importance of open court records to public trust, this case also illustrates the need to clarify the standard for unsealing records under GR 15 and Article I, Section 10. For the reasons explained below, this Court should hold that the current unsealing rule must be harmonized with the five-factor constitutional test outlined in *Seattle Times Co. v. Ishikawa*,⁵ and that the rule can be construed as constitutional if it requires the proponent of continued

⁵ 97 Wn.2d 30, 640 P.2d 716 (1982).

sealing to prove that current sealing standards are met. Otherwise, the presumption of openness is flipped on its head, contrary to the public's interest in a transparent court system.

II. INTEREST AND IDENTITY OF AMICI

Allied Daily Newspapers of Washington (Allied) is a trade association representing 25 daily newspapers across the state. The Washington Newspaper Publishers Association (WNPA) is a trade association representing 120 weekly community newspapers throughout Washington. Both Allied and WNPA (“The Newspapers”) regularly advocate for public access to records, including court records, to achieve government accountability for the citizens of this state. The Newspapers’ members frequently use civil and criminal court records to inform their readers about issues of public interest.

The Newspapers submit this brief upon request of this Court pursuant to RAP 10.6(c). The Supreme Court solicited participation of the Newspapers, along with various other organizations, by an email dated February 13, 2012, from Commissioner Steve Goff to the undersigned counsel. The Newspapers are pleased to participate.

III. DISCUSSION

A. Docket Information Must be Available to Find Cases.

Ordinarily the public can access dockets by entering a party name or case number in the state's online index of Superior Court cases at <http://dw.courts.wa.gov>. In this case, the sealing order removed Mr. Richardson's 1993 criminal case from searchable public indices. CP 14 (moving to unseal the "SCOMIS docket"); CP 44. When searching the online index for King County Superior Court case number 93-2-02331-2, or for "criminal" case records associated with Matthew Richardson, the user is told "no records found." Thus, if a voter, school administrator or other citizen relies upon the online court indices to check Mr. Richardson's background, the vacated 1993 conviction does not show up due to the absence of public docket information.⁶

The electronic court docket is the public's link to finding a case. For example, when the Seattle Times embarked on its "Your Courts, Their Secrets" investigation of improper sealing, it began by asking the Office of Administrative Courts to search electronic court dockets for codes or words suggesting a file had been sealed.⁷ The docket information helped the Times learn about 420 civil cases which were

⁶ While the docket for Case No. 11-2-40383-1 shows up through searches by either party name or case number, it reflects only the unsealing proceedings and does not indicate the "criminal" nature of the underlying case.

⁷ See

<http://community.seattletimes.nwsourc.com/archive/?date=20060305&slug=sealabout05> explaining how the newspaper found out about 420 civil cases which were sealed in their entirety and which were the basis for the March 2006 special report on court secrets.

sealed in their entirety, and the availability of party names made it possible to investigate further and to report important stories about hidden hazards and breaches of accountability. For example, the investigation exposed allegations that a medical device was unsafe, that a child-care corporation failed to prevent sexual abuse, that a Metro bus hit a pedestrian in a crosswalk, and that various professionals violated licensing standards designed to protect the public.⁸

Here, there is no electronic docket information to even alert the public that a criminal case existed. This violates GR 15(d), which says:

In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type..., the adult or juvenile's name, and the notation 'vacated.'

This rule balances public and private interests by allowing the public to learn about a vacated criminal case while making clear that the defendant is no longer viewed as convicted. This Court should clarify that GR 15(d) not only sets a *maximum* amount of vacation information available in public indices (“information...shall be limited to...”), it also requires a *minimum* amount. The rule refers to “the information in the public court indices” as if it necessarily exists, indicating that a

⁸ See

<http://community.seattletimes.nwsourc.com/archive/?date=20060305&slug=seal05m>.

complete absence of any publicly indexed information is not contemplated. Thus, the case number, case type and defendant's name should always be public along with the "vacated" notation, absent some extraordinary overriding interest justifying secrecy under the *Ishikawa* test. Otherwise the public cannot learn about vacated convictions or challenge the sealing of them, nullifying the right to open administration of justice.

B. The Constitutional *Ishikawa* Test Must Guide Application of GR 15(e)(2).

GR 15(e)(2) says:

A sealed court record in a criminal case shall be ordered unsealed *only upon proof of compelling circumstances*, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule...

(italics added). Mr. Richardson has argued that this means the party moving to unseal records carries a burden of proving some compelling circumstances which require openness. CP 61-62. If construed in such a manner, the rule erases the presumption of openness required by Article I, Section 10. *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 540, 114 P.3d 1182 (2005) ("In determining whether court records may be sealed from public disclosure, we start with the presumption of openness"); *Ishikawa*, 97 Wn.2d at 37-38 ("Because courts are presumptively open,

the burden of justification should rest on the parties seeking to infringe the public's right"). Such construction is impermissible.

"A court rule will not be construed to circumvent or supersede a constitutional mandate." *State v. Waldon*, 148 Wn.App. 952, 962, 202 P.3d 325 (Div. 1 2009). "Courts do not hesitate to invalidate rules or statutes that prevent compliance with *Ishikawa's* constitutional inquiry." *Id.* at 961, citing *Allied Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 212, 848 P.2d 1258 (1993) (holding unconstitutional a statute prohibiting courts from disclosing identities of child victims of sexual assault) and *In re Detention of D.F.F.*, 144 Wn.App. 214, 220, 183 P.3d 302 (2008) (holding unconstitutional a superior court rule requiring mental illness commitment proceedings to be closed to the public). Sealing of court records must comply with both GR 15 and the *Ishikawa* test because "GR 15, standing alone, does not meet the constitutional benchmark established by *Ishikawa*." *Waldon* at 962. If necessary to preserve its constitutionality, GR 15 must be harmonized with *Ishikawa*. *Id.*

The *Ishikawa* sealing test has five components. *Hundtofte v. Encarnacion*, 280 P.3d 513, 520 (Div. I 2012). "First, the proponent of closure of court proceedings or sealing of court records 'must make

some showing of the need therefore.’ ” *Id.*, citing *Ishikawa*, 97 Wn.2d at 37. “Where any interest other than a defendant’s right to a fair trial is sought to be protected, a ‘serious and imminent threat to some other important interest’ must be demonstrated.” *Id.* Second, the public must have an opportunity to object to a motion for closure. *Id.*, citing *Ishikawa* at 38. “Third, the court must determine that ‘the requested method for curtailing access would be both the least restrictive means available and effective in protecting the interests threatened.’ ” *Id.* Fourth, the court must weigh the competing public and private interests and articulate its reasoning as specifically as possible in written findings and conclusions. *Id.* Finally, a sealing order “must be no broader in its application or duration than necessary to serve its purpose.” *Id.*, citing *Ishikawa* at 39. GR 15(e)(2) must be construed consistently with these five constitutional requirements.

Importantly, the fifth *Ishikawa* factor requires that any sealing order “shall apply for a specific time period with a **burden on the proponent** to come before the court at a time specified **to justify continued sealing.**” *Waldon*, 148 Wn.App. at 963-64, quoting *Federated Publ’ns, Inc. v. Kurtz*, 94 Wn.2d 51, 62-63, 615 P.2d 440 (1980) (emphasis added). This is consistent with *Ishikawa*’s

overarching rule that courts are presumptively open and that any closure or sealing must be justified by “the parties seeking to infringe the public’s right” to open justice. *Ishikawa*, 97 Wn.2d at 37-38. Thus, if GR 15(e)(2) is construed to require the proponent of *unsealing* records to prove a particular need for openness, it conflicts with *Ishikawa*’s requirement that continued sealing must be justified by the proponent of *sealing*.

This unconstitutional construction of the rule can be avoided, however. This Court should hold that when a party intervenes in a criminal case and moves to unseal records under GR 15(e)(2), “compelling circumstances” for unsealing exist when the original sealing order did not require the sealing proponent to “come before the court at a time specified to justify continued sealing,” or when the defendant receives timely notice of the unsealing motion and the record contains no proof of present circumstances satisfying both the current GR 15(c) sealing test and the five-factor *Ishikawa* test. This way, the burden of justifying continued secrecy remains where it belongs – on the sealing proponent.

The Court of Appeals has recognized the constitutional difficulties with enforcing the similar rule for unsealing civil court

records, GR 15(e)(3), which requires “proof that identified compelling circumstances for continued sealing no longer exist.” *In re Marriage of R.E.*, 144 Wn.App. 393, 403, 183 P.3d 339 (Div. I 2008) (“when a party moves to unseal records that were sealed under the former rule and the original sealing order does not conform to the current rule, it is not appropriate to apply the current standard for unsealing”). The *R.E.* Court noted that “the unsealing provision of the current rule clearly contemplates that the sealing order was entered in compliance with the current” stricter version of GR 15 which makes it harder to skirt constitutional requirements. *Id.* at 402. Most notably, the Court said:

And applying the current standard for unsealing in these circumstances would run afoul of Rufer: “[A]ny records that were filed with the court in anticipation of a court decision...should be sealed *or continue to be sealed* only when the court determines...that there is a compelling interest which overrides the public’s right to open administration of justice.

Id. at 403, citing *Rufer*, 154 Wn.2d at 549 (italics in original).

R.E. did not go far enough, however, in remedying the problems of GR 15(e). The Court held that a party moving to unseal civil records may show that the original order does not comply with the current GR 15 instead of proving compelling reasons for openness. *R.E.* at 403. However, this still inappropriately places a burden of proof on the

proponent of unsealing, who most likely was not present when the original sealing order was entered and may be unable to discern the reasoning behind it, as in this case where intervenor Mike Siegel had “no idea” why Mr. Richardson requested secrecy. CP 20. Also, *R.E.* failed to recognize that the current GR 15(c), while stricter than the old version, is not a stand-alone test and cannot supplant *Ishikawa* in determining if sealing is appropriate - as the same Court later held in the *Waldon* case. Nor does *R.E.* acknowledge the independent duty of courts to ensure that sealing of court records comports with *Ishikawa*. The Court of Appeals recently affirmed the existence of such a duty in *Hundtofte*, stating “even where no party opposes a closure or redaction request, the trial court has an ‘independent obligation to safeguard the open administration of justice. Article I, Section 10 is mandatory.’” *Hundtofte*, 280 P.3d at 519, quoting *State v. Duckett*, 141 Wn.App. 797, 804, 173 P.3d 948 (2007). Thus, unsealing must not depend on whether a proponent of openness proves that a prior sealing order is deficient or that there are compelling reasons for openness, but must hinge on the court’s analysis of the *Ishikawa* factors, including whether the proponent of sealing has shown a continuing serious and imminent

threat to an important interest overriding the public's interest in open records.

C. The Third Ishikawa Factor is Not Met Here.

Applying the proper test to the present case, it is obvious that continued sealing is not justified. A sealing order must actually be "effective in protecting the interests threatened." *Hundtofte*, 280 P.3d at 520, citing *Ishikawa*, 97 Wn.2d at 38. Here, the Seattle Times has reported that Mr. Richardson "pleaded guilty in 1993 to a misdemeanor sex crime" involving two female relatives who were 8 and 5 years old at the time.⁹ The story described the deferred sentence, withdrawal of the guilty plea and vacation of the conviction, and quoted Mr. Richardson saying he was falsely accused. In sum, the Times told the whole story which the sealing order is designed to hide. The newspaper even quoted the sealed plea statement, which the Times obtained from sources other than the sealed court file.

In light of this publicity which can be read by anyone in the newspaper or on the Internet, continued sealing of the records does not meet the effectiveness test. It serves absolutely no purpose other than

⁹ CP 12 refers to the article as Exhibit A to the Siegel declaration supporting the unsealing motion. That article, and excerpts of other newspaper stories referenced in this brief, are attached herein for illustrative purposes and to facilitate the Court's understanding of the Newspapers' interest in open court records.

to promote mistrust of the courts by clinging to the now-exposed falsehood that Mr. Richardson has no criminal history. Accordingly, this Court should hold pursuant to *Ishikawa* and its independent duty to enforce Article I, Section 10 that the unsealing motion was improperly denied and that the burden of justifying continued secrecy rests with Mr. Richardson.

IV. CONCLUSION

For the foregoing reasons, reversal is warranted.

Dated this 4th day of September, 2012.

Respectfully submitted,

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By: s/ Katherine George, WSBA 36288
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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on September 4, 2012, I caused delivery of the Amicus Curiae Memorandum herein as follows:

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Dated this 4th day of September 2012,

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Attachments:

First page of July 18, 2012 Associated Press story

First page of July 21, 2012 News Tribune story

First page of March 5, 2006 Seattle Times story

Sidebar to March 5, 2006 Seattle Times story

Copy of August 9, 2010 Seattle Times story

The Seattle Times

Winner of a 2012 Pulitzer Prize

Local News

Originally published Wednesday, July 18, 2012 at 6:40 PM

Toft's past legal woes spotlighted in state Senate race

Brad Toft, the lone Republican candidate seeking to fill the Eastside state Senate seat held until recently by Cheryl Pflug, asked court officials to seal an old court case a couple of months before he filed for office.

By Mike Baker

The Associated Press

OLYMPIA — A couple of months before Brad Toft emerged as the only Republican in a crucial state Senate race, he pressed officials to seal records from a past court case.

In a signed letter, Toft seemed to suggest that he wasn't the same person cited in the court files, saying that he shared a name with one of the parties but arguing that "the specific identity of the defendant is unclear." He wanted the records blocked from public inspection, declaring that the files might damage his reputation.

Toft, however, acknowledged to The Associated Press that he was the defendant in the 1995 case, saying he was simply exploring whether an old judgment could be vacated.

"I wasn't saying it wasn't me," Toft said. "I was just saying it was a resolved issue."

The revelation comes as Toft's background is receiving scrutiny after a blistering open letter from the former occupant of the Senate seat, a fellow Republican.

The 5th Legislative District, which stretches from Sammamish to Snoqualmie Pass, could very well determine whether the GOP can maintain a foothold of power in the state Legislature, and a Republican loss could dash the party's hopes of gaining a majority in the chamber.

The disorder began in May when GOP Sen. Cheryl Pflug announced her resignation just a few days after the candidate-filing period ended. That left Toft as the only Republican in the race, and the party has rallied behind him.

Pflug, who took a governor-appointed post with the Washington Growth Management Hearings Board, has since sparred with fellow Republicans about her departure. Last week, in endorsing the Democratic candidate, Issaquah City Councilmember Mark Mullet, to replace her, she said Toft has a "history of egregious and disreputable behavior."

In an interview with The Seattle Times, she elaborated by producing information about 22 cases involving Toft — a mix of civil suits, speeding tickets and charges for driving with a suspended license, almost all of which occurred in the 1990s.

She also noted the 1995 case that Toft attempted to seal.

In that case, College Pro Painters filed a suit claiming he improperly enriched himself by becoming a franchisee but failing to make \$10,000 in payments back to the company. About \$4,000 in Toft's wages were garnisheed as part of the lawsuit, according to court records.

Toft said the case was a contract and royalties dispute that eventually was settled.

In March of this year, Toft sent his curious message to the court. He told officials that he found out about the ruling only after doing a background check on his name.

"Because I, to the best of my understanding, have never known or come into contact with the plaintiff, but share a name with the defendant, I am requesting that the judgment be vacated and, if possible sealed," he wrote.

Toft sent a similar letter regarding a 1998 case, in which someone sued for a couple thousand dollars in wages. The candidate didn't dispute in an interview that he was the target of the case but said he hadn't been aware of it.

Toft dismissed the old court cases, in addition to Pflug's attacks, as distractions.

"When I was young, I did dumb things," said Toft, who is now 39. "But I think voters reject these kinds of politics. People don't care about what happened nearly two decades ago; they care about what I'm going to do in office."

He said he is focused on persuading voters to support reducing regulations on businesses and altering the business-and-occupation tax to spur economic growth.

AdChoices

He faces a competitive race. Mullet, who is running as a conservative on fiscal issues and a liberal on social issues, has raised about \$86,000 for the race, according to public-disclosure documents. Toft has raised some \$63,000.

Democrats hold a 27-22 majority in the state Senate, though Republicans managed to bring over three conservative Democrats earlier this year to build a 25-24 majority for writing the state budget.

The News Tribune

Pierce candidate's presidency at medical school ended in lawsuits

SEAN ROBINSON
LAST UPDATED: JULY 21ST, 2012 08:40 AM (PDT)

Congressional candidate Stan Flemming, a Pierce County councilman, touts numerous public and civic accomplishments to underline his leadership skills. They include his tenure from 2007 to 2009 as president of the Pacific Northwest University of Health Sciences, a medical school in Yakima.

However, Flemming doesn't mention that his stint ended in a flurry of lawsuits and acrimony.

Court records tell two stories of Flemming's term as president. Both revolve around money.

Version A:

In 2007, Flemming reluctantly takes charge of Pacific Northwest University of Health Sciences, a new nonprofit college built on shaky financial footing and a dubious business model.

Flemming steers the place to long-term viability. He departs in November 2009 after local powers usurp his authority, offend his ethics and violate his contract. He sues the university for his severance pay: \$708,000.

Version B:

University leaders sue Flemming, saying he doesn't deserve his severance pay. They contend he verbally resigned his position on Nov. 10, 2009, after "a period of escalating misconduct, fiduciary and contractual breaches that would have otherwise led to his termination."

The stories ended at the same moment in May 2010: a settlement agreement with strict confidentiality provisions, noted at the end of the case file in Yakima County Superior Court.

Attorneys for both sides say they can't discuss terms of the settlement. Flemming says he never resigned. He says the university agreed to pay him in full, "100 percent."

Either way, Flemming doesn't work at the school anymore.

THE ALLEGATIONS

The News Tribune noticed the lawsuits in the course of standard campaign coverage, which included background checks of local candidates. Flemming, a Republican, is seeking a seat in the newly created 10th Congressional District.

Before the case settled, 11 university administrators and employees filed sworn declarations attesting to Flemming's actions.

The declarations allege mismanagement and cronyism. They state that Flemming's tenure left the college in financial turmoil, teetering at the edge of losing its accreditation: the right to graduate students and award degrees.

In a recent interview, Flemming said 90 percent of the allegations in the declarations were "proven to be wrong" during the course of settlement negotiations and related depositions. Those records can't be examined due to the confidentiality agreement, he said.

"I would have loved to have this in an open record," Flemming said.

Sunday, March 5, 2006 - Page updated at 12:06 AM

✉ E-mail article 🖨️ Print

Your Courts, Their Secrets

The cases your judges are hiding from you

By Neil R. McMillen, Justice reporter and former publisher
Seattle Times staff reporters

Four years ago, a lawsuit was filed in King County Superior Court, alleging that a medical device was unsafe. A woman using it wound up in a coma. You'd probably like to know: What's the device? Does anyone in my family use it? Unsafe how?

But you can't know. You're not allowed to know. Medtronic, the multibillion-dollar company that makes the device, asked a judge to conceal the whole file from public view — and the judge said OK.

Twelve years ago, an Eastside family sued KinderCare, one of the country's largest child-care companies, saying it was responsible for the sexual abuse of a child. You'd like to know: *Who* was accused of sexual abuse? How was KinderCare involved? Were police notified?

But you can't know. That file, too, is sealed — hidden away by a court commissioner who has sealed dozens of cases, stamping his name on one secrecy order after another.

Document after document, file after file, has been sealed — and sealed improperly — by the judges and court commissioners of King County Superior Court. A wrongful-death lawsuit against Virginia Mason Medical Center? Sealed. A lawsuit accusing a King County judge of legal malpractice? Sealed. A lawsuit blaming the state's social-services agency for the rape of a 13-year-old girl? Sealed.

Since 1990, at least 420 civil suits have been sealed in King County, The Seattle Times found. That means everything — from the complaint, which says who's accused of what, to the judgment, which says how the case wound up — has been concealed, locked behind electronic passwords or number-coded keypads that restrict access to computer records and shelved files.

These sealed records hold secrets of potential dangers in our medicine cabinets and refrigerators; of molesters in our day-care centers, schools and churches; of unethical lawyers, negligent doctors, dangerous dentists; of missteps by local and state agencies; of misconduct by publicly traded companies into which people sink their savings.

The Washington Constitution says: "Justice in all cases shall be administered openly." To this, many King County judges have effectively added: "unless the parties don't want it to be."

The judges have displayed an ignorance of, or indifference to, the legal requirements for sealing court records. They have routinely sealed files while 1) offering little or no explanation, 2) applying the wrong legal standard, and 3) failing to acknowledge, much less weigh, the public interest in open court proceedings.

At least 97 percent of their sealing orders disregard rules set down by the Washington Supreme Court in the 1980s.

The state's highest court says court records should be sealed only in rare circumstances. Its message is: Your taxes pay for the courts. You're entitled to know what goes on there. You elect the judges. You need to know how they do their job. The public cannot evaluate its court system — nor hold judges accountable — if the courthouse curtains are drawn.

Judges and commissioners have sealed at least 46 cases where a public institution is a party. Is some public agency slipping up? Some public employee? Are taxpayer dollars at risk? Good questions all, but you can't have the answers. Local school districts, the University of Washington, the state Department of Social and Health Services — all have had files sealed.

Judges and commissioners have sealed at least 58 cases where a fellow lawyer is a party, usually as a defendant. Leading firms, prominent lawyers, judges — all have had files about them sealed.

The courts have sealed cases where the person being sued was a licensed professional — for example, a doctor, psychologist or counselor — who was subsequently disciplined by the state. Those lawsuits might have served as a warning, had they not been concealed from the public.

And the courts have sealed one case after another at the request of the rich and influential, including leaders in real estate, advertising, banking, medicine, software development, the Internet, general business and sports.



MARK HARRISON / THE SEATTLE TIMES

The Times found 420 sealed civil cases, nearly all of which were sealed improperly.

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Your Courts, Their Secrets

About this project: Ferreting out who, what and why

For this project, we needed to do three things:

Find the sealed files. Figure out who's suing whom. Find out who sealed the file, and why.

Finding the files

The clerk's office at King County Superior Court doesn't keep a list of sealed court cases. So we searched for indicators.

The state Administrative Office of the Courts helped. It ran computer searches of electronic court dockets, looking for docket codes or words (for example, "seal" or "confidential") that suggested a case had been sealed in whole or part. These runs kicked up thousands of cases going back to 1990. (We were looking only for civil lawsuits, such as medical-malpractice cases. The searches did not cover divorce or criminal cases.)

We then checked the cases at the courthouse. You type a case number into the computer, and if the case is sealed, a message pops up, denying access.

We also checked older files that had been shelved instead of scanned into the computer. We walked down rows of files at the clerk's office, looking for yellow folder-sized markers that indicate a case is sealed and locked away in a separate room.

We discovered nearly 300 cases the clerk's office had sealed by mistake. In most, only part of the file was supposed to be sealed. Alerted to these errors, the clerk's office opened up those files.

We found more than 1,000 cases sealed in part. In some, such crucial records as the complaint or rulings summarizing the evidence were sealed.

In the end, we found 420 civil cases that have been sealed in their entirety since 1990. But there could be more.

Who's suing whom

If a case is sealed, the clerk's office gives you the names of the parties and the case type — for example, "wrongful death." But even these scraps can be a riddle. Take case No. 94-2-13372-1. The plaintiffs are John and Jane Doe. The defendants are John and Jane Roe. The case type is "minor settlement." There's no telling what happened here.

But most times, the parties are identified by name. So we tried to figure out who they were.

We ran their names through dozens of searchable databases, including ones for lawyers, health-care professionals, government employees and state-licensed occupations, and through court records and news archives.

Who sealed it and why

The Washington Supreme Court says sealing orders are supposed to be available to the public, unless they fall into a narrow statutory exemption. Otherwise, how could you know why secrecy was granted in a particular case?

The clerk's office helped us gather the sealing orders in 383 of the 420 cases. In the other cases, the order was missing from the file, the whole file was missing, or the court said the order was itself sealed.

The orders told us which judge or court commissioner sealed a file. They were also supposed to say why — but only half provided any explanation.

— Ken Armstrong and Justin Mayo, staff reporters

State Senate candidate Matt Richardson, of Sumner, says he was falsely accused

Candidate Matt Richardson pleaded guilty in 1993 to a misdemeanor sex crime stemming from allegations first made when he was a teenager.

By Keith Ervin
Seattle Times staff reporter

State Senate candidate Matt Richardson pleaded guilty in 1993 to a misdemeanor sex crime stemming from allegations first made when he was a teenager.

Richardson, 44, maintains he was falsely accused. In court records, he said he pleaded guilty to put the matter behind him and avoid the risk of a harsher sentence. The charge was later dismissed and the record of his conviction vacated and sealed by the court.

As a result, Richardson is legally entitled to say he was not convicted of a crime.

The Sumner City Council member and 9th-grade teacher is running for state Senate as a Republican in the 31st Legislative District.

He declined to discuss the 1993 case. In a written statement, he said, "These false allegations against me when I was a minor, 30 years ago, have no bearing on me as an adult, a candidate, or this campaign."

The case stemmed from allegations of sexual misconduct involving two girls for up to three years ending in 1982. At that time, the girls — extended family members — were 8 and 5, and Richardson was 18.

In court documents, prosecutors wrote that when the girls' parents learned of the allegations they didn't report them to police at the insistence of Richardson's mother and other relatives.

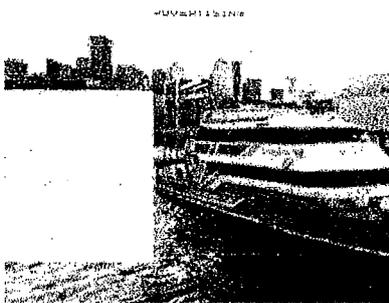
The allegations came to the attention of police 10 years later after the girls' parents learned Richardson was working as a security guard at Meridian Junior High School and they contacted school officials. The Kent School District investigated the claims and decided "the defendant's employment should be concluded immediately," prosecutors wrote in the criminal filing.

In a plea bargain, Richardson pleaded guilty to one count of communicating with a minor for immoral purposes, a gross misdemeanor.

Richardson's "Alford plea" allowed him to avoid admitting the facts alleged by the prosecutor while pleading guilty in order to take advantage of the prosecutor's sentence recommendation.

He wrote in his plea statement he had looked at one girl's private parts after asking to "play doctor" when he was 12 but didn't remember any similar incidents with the other girl.

Richardson was given a deferred sentence, ordered to do 240 hours of community service and pay court costs and victim assessment. He also paid \$950 for one girl's counseling costs.



Get the whole story.

Four months later, in 1994, the court allowed Richardson to withdraw his guilty plea and the charge was dismissed, apparently after he completed the terms of the deferred sentence. In 2002 the court vacated the record of conviction and ordered the records sealed.

The Seattle Times obtained the prosecutors' statement of facts from a civil case file, and received other court documents from sources who obtained them before records were sealed.

In his written statement to The Times, Richardson said that as a teacher, Navy professor and former congressional staffer, he's passed background checks and security clearances by the FBI, the

Washington State Patrol and the Department of Defense.

"With 3 court orders that dismiss, expunge, and vacate these false allegations against me, the benefit is that at least one member of the State Senate will know what it's like to be falsely accused and use this knowledge when it comes to making laws that affect the people of our state," he wrote.

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This filing is in Case No. 85665-6, *State of Washington v. Matthew Richardson*. The person filing the documents is the undersigned attorney, WSBA No. 36288. Attached for filing is an Amicus Curiae Memorandum of Allied Daily Newspapers of Washington and the Washington Newspaper Publishers Association, with certificate of service.

Thank you for your assistance.

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