

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I**

In re the Personal Restraint Petition of

No. 69593-2-1

CALVIN A. EAGLE,

PETITIONER’S SUPPLEMENTAL
REPLY BRIEF

Petitioner.

I. INTRODUCTION

Both the arraignment clause and the public trial guarantee appear in the Sixth Amendment. Nevertheless, the State argues that an arraignment on an amended information can be conducted in a closed courtroom. An arraignment on an amended information is governed by the same rules as an arraignment on the original information. Neither can be conducted in secret.

II. ARGUMENT

“[O]ur criminal law tradition insists on public indictment, public trial, and public imposition of sentence.” *Smith v. Doe*, 538 U.S. 84, 98-99 (2003).

An arraignment is a short but important proceeding whose purpose is “to inform the accused of the charge against him and obtain an answer from him.” *Garland v. Washington*, 232 U.S. 642, 644 (1914). The arraignment takes place in open court, and consists of calling a defendant to the bar, reading the indictment or information to him or otherwise informing him of the charges, and asking the defendant to plead guilty or not guilty. The arraignment is a *sine qua non* to the trial itself—the preliminary stage where

1 the accused is informed of the indictment and pleads to it, thereby formulating the issue
2 to be tried. *Hamilton v. Alabama*, 368 U.S. 52, 54 n.4 (1961).

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4 At common law, a defendant had the right to be judged by his peers. The
5 prosecution took place in a courtroom, a public area with sufficient space for members of
6 the community to observe the propriety of the state's actions against the accused. The
7 Magna Charta provides: “No free man shall be taken or imprisoned or (dispossessed) or
8 outlawed or exiled or in any way destroyed . . . except by lawful judgment of his peers
9 and the law of the land.” Magna Charta, 1215, 17 John, cl. 39 (Eng.).

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12 By the time the colonists were first coming to America, notification of the charges
13 was an established part of English law. The Sixth Amendment reflects this common law
14 and provides that in all criminal proceedings, the accused shall be informed of the
15 accusation and shall enjoy a right to a public trial. U.S. Const. amend. VI. It is a
16 safeguard against any attempt to employ our courts as instruments of prosecution. See,
17 *e.g.*, *In re Oliver*, 333 U.S. 257 (1948). See also *Estes v. Texas*, 381 U.S. 532, 588
18 (1965) (Harlan, J., concurring) (“[J]udges, lawyers, witnesses, and jurors will perform
19 their respective functions more responsibly in an open court than in secret proceedings.”).
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21 By the time the Constitution was written in 1789, most of the states had included
22 an Arraignment Clause in their state constitutions as well.

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25 Despite this history, the State argues that only arraignments on the first charging
26 document are covered by the public trial clause. At the risk of over-simplification, an
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1 arraignment is an arraignment. All arraignments are governed by the same statutory
2 provisions and court rules. There is no difference between the requirements for a first,
3 second, or subsequent arraignment.
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5 According to the logic of the State’s argument, a defendant could be charged an
6 arraigned in open court on a simple assault, but the arraignment on any later charge—
7 including aggravated murder—could be conducted in secret. With due respect, that
8 makes no sense. While sometime an amended to an information may be slight, other
9 amendments are much more significant. However, rather than applying some sort of
10 sliding scale of constitutional protections, all arraignments are covered by the right to a
11 public trial.
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15 The State further argues that Eagle has not shown sufficient prejudice from
16 counsel’s and the court’s failure to protect his public trial right. Eagle has already argued
17 that caselaw upends this argument. *In re Morris*, 176 Wash.2d 157, 288 P.3d 1140
18 (2012); *In re Orange*, 152 Wash.2d 795, 100 P.3d 291 (2004). In addition, *Owens v.*
19 *United States*, 483 F.3d 48, 64–65 (1st Cir.2007), held that prejudice is presumed
20 where counsel failed to object to the closure of the courtroom. *See also McGurk v.*
21 *Stenberg*, 163 F.3d 470, 475 (8th Cir.1998) (holding that “when counsel's deficient
22 performance causes a structural error, we will presume prejudice under *Strickland*.”).
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26 Justice must be administered openly. A prosecutor’s charging decision and a
27 defendant’s answer to that charge represents a critical stage of the criminal process.
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1 Certainly, no prosecutor would suggest that arraignments on the original information
2 could take place in a closed courtroom or that it conducting arraignments in secret was
3 only a trivial violation of the right to open and public trials.
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5 III. CONCLUSION
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7 “Openness thus enhances both the basic fairness of the criminal trial and the
8 appearance of fairness so essential to public confidence in the judicial system.” *Press-*
9 *Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (*Press-Enterprise*
10 *D*). Open public access provides a check on the judicial system that is necessary for a
11 healthy democracy and promotes public understanding of the judicial system. *State v.*
12 *Sublett*, 176 Wn.2d 58, 142 n.3, 292 P.3d 715 (2012) (Stephens, J., concurring); *Allied*
13 *Daily Newspapers v. Eikenberry*, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993).
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16 This Court should grant this petition; reverse and remand for a new trial.
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18 DATED this 27th day of January, 2016.
19

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2 **CERTIFICATE OF SERVICE**

3 I, Jeffrey Ellis, certify that on today's date I served opposing counsel with a copy
4 of the attached supplemental brief by efileing it causing a copy to be sent to:

5 Appellate_Division@co.whatcom.wa.us

6
7 January 27, 2016//Portland, OR

/s/Jeffrey Ellis