

SUPREME COURT OF UNITED STATES

Richmond Newspapers, INC.

Vs.

Commonwealth of Virginia

No. 79-243.

Argued Feb. 19, 1980.

Decided July 2, 1980.

Laurence H. Tribe, Cambridge, Mass., for appellants.

Marshall Coleman, Atty. Gen., Richmond, Va., for appellees.

Mr. Chief Justice BURGER announced the judgment of the Court and delivered an opinion, in which Mr. Justice WHITE and Mr. Justice STEVENS joined.

The narrow question presented in this case is whether the right of the public and press to attend criminal trials is guaranteed under the United States Constitution.

* In March 1976, one Stevenson was indicted for the murder of a hotel manager who had been found stabbed to death on December 2, 1975. Tried promptly in July 1976, Stevenson was convicted of second-degree murder in the Circuit Court of Hanover County, Va. The Virginia Supreme Court reversed the conviction in October 1977, holding that a bloodstained shirt purportedly belonging to Stevenson had been improperly admitted into evidence. *Stevenson v. Commonwealth*, 218 Va. 462, 237 S.E.2d 779.

Stevenson was retried in the same court. This second trial ended in a mistrial on May 30, 1978, when a juror asked to be excused after trial had begun and no alternate was available.

A third trial, which began in the same court on June 6, 1978, also ended in a mistrial. It appears that the mistrial may have been declared because a prospective juror had read about Stevenson's previous trials in a newspaper and had told other prospective jurors about the case before the retrial began. See App. 35a-36a.

Stevenson was tried in the same court for a fourth time beginning on September 11, 1978. Present in

the courtroom when the case was called were appellants Wheeler and McCarthy, reporters for appellant Richmond Newspapers, Inc. Before the trial began, counsel for the defendant moved that it be closed to the public:

"[T]here was this woman that was with the family of the deceased when we were here before. She had sat in the Courtroom. I would like to ask that everybody be excluded from the Courtroom because I don't want any information being shuffled back and forth when we have a recess as to what—who testified to what." Tr. of Sept. 11, 1978 Hearing on Defendant's Motion to Close Trial to the Public 2-3.

The trial judge, who had presided over two of the three previous trials, asked if the prosecution had any objection to clearing the courtroom. The prosecutor stated he had no objection and would leave it to the discretion of the court. *Id.*, at 4. Presumably referring to Va.Code § 19.2-266 (Supp.1980), the trial judge then announced: "[T]he statute gives me that power specifically and the defendant has made the motion." He then ordered "that the Courtroom be kept clear of all parties except the witnesses when they testify." Tr., *supra*, at 4-5.2 The record does not show that any objections to the closure order were made by anyone present at the time, including appellants Wheeler and McCarthy.

Later that same day, however, appellants sought a hearing on a motion to vacate the closure order. The trial judge granted the request and scheduled a hearing to follow the close of the day's proceedings. When the hearing began, the court ruled that the hearing was to be treated as part of the trial; accordingly, he again ordered the reporters to leave the courtroom, and they complied.

At the closed hearing, counsel for appellants observed that no evidentiary findings had been made by the court prior to the entry of its closure order and pointed out that the court had failed to consider any other, less drastic measures within its power to ensure a fair trial. Tr. of Sept. 11, 1978 Hearing on Motion to Vacate 11-12. Counsel for appellants argued that constitutional considerations mandated that before ordering closure, the court should first decide that the rights of the defendant could be protected in no other way.

Counsel for defendant Stevenson pointed out that this was the fourth time he was standing trial. He also referred to "difficulty with information between the jurors," and stated that he "didn't want information to leak out," be published by the media, perhaps inaccurately, and then be seen by the jurors. Defense counsel argued that these things, plus the fact that "this is a small community," made this a proper case for closure. *Id.*, at 16-18.

The trial judge noted that counsel for the defendant had made similar statements at the morning hearing. The court also stated:

"[O]ne of the other points that we take into consideration in this particular Courtroom is layout of the Courtroom. I think that having people in the Courtroom is distracting to the jury. Now, we have to have certain people in here and maybe that's not a very good reason. When we get into our new Court Building, people can sit in the audience so the jury can't see them. The rule of the Court may be different under those circumstances. . . ." *Id.*, at 19.

The prosecutor again declined comment, and the court summed up by saying:

"I'm inclined to agree with [defense counsel] that, if I feel that the rights of the defendant are

infringed in any way, [when] he makes the motion to do something and it doesn't completely override all rights of everyone else, then I'm inclined to go along with the defendant's motion." *Id.*, at 20.

The court denied the motion to vacate and ordered the trial to continue the following morning "with the press and public excluded." *Id.*, at 27; App. 21a.

What transpired when the closed trial resumed the next day was disclosed in the following manner by an order of the court entered September 12, 1978:

"[I]n the absence of the jury, the defendant by counsel made a Motion that a mis-trial be declared, which motion was taken under advisement.

"At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the Commonwealth's evidence on grounds stated to the record, which Motion was sustained by the Court.

"And the jury having been excused, the Court doth find the accused NOT GUILTY of Murder, as charged in the Indictment, and he was allowed to depart." *Id.*, at 22a.3

On September 27, 1978, the trial court granted appellants' motion to intervene *nunc pro tunc* in the Stevenson case. Appellants then petitioned the Virginia Supreme Court for writs of mandamus and prohibition and filed an appeal from the trial court's closure order. On July 9, 1979, the Virginia Supreme court dismissed the mandamus and prohibition petitions and, finding no reversible error, denied the petition for appeal. *Id.*, at 23a-28a.

Appellants then sought review in this Court, invoking both our appellate, 28 U.S.C. § 1257(2), and certiorari jurisdiction, § 1257(3). We postponed further consideration of the question of our jurisdiction to the hearing of the case on the merits. 444 U.S. 896, 100 S.Ct. 204, 62 L.Ed.2d 132 (1979). We conclude that jurisdiction by appeal does not lie;⁴ however, treating the filed papers as a petition for a writ of certiorari pursuant to 28 U.S.C. § 2103, we grant the petition.

The criminal trial which appellants sought to attend has long since ended, and there is thus some suggestion that the case is moot. This Court has frequently recognized, however, that its jurisdiction is not necessarily defeated by the practical termination of a contest which is short-lived by nature. See, e. g., *Gannett Co. v. DePasquale*[1979] USSC 146; , 443 U.S. 368, 377-378[1979] USSC 146; , 99 S.Ct. 2898, 2904[1979] USSC 146; , 61 L.Ed.2d 608 (1979); *Nebraska Press Assn. v. Stuart*, [1976] USSC 158; 427 U.S. 539, 546-547[1976] USSC 158; , 96 S.Ct. 2791, 2797[1976] USSC 158; , 49 L.Ed.2d 683 (1976). If the underlying dispute is "capable of repetition, yet evading review," *Southern Pacific Terminal Co. v. ICC*, [1911] USSC 36; 219 U.S. 498, 515[1911] USSC 36; , 31 S.Ct. 279, 283[1911] USSC 36; , 55 L.Ed. 310 (1911), it is not moot.

Since the Virginia Supreme Court declined plenary review, it is reasonably foreseeable that other trials may be closed by other judges without any more showing of need than is presented on this record. More often than not, criminal trials will be of sufficiently short duration that a closure order "will evade review, or at least considered plenary review in this Court." *Nebraska Press, supra*, 427 U.S., at 547, 96 S.Ct., at 2797. Accordingly, we turn to the merits.

II

We begin consideration of this case by noting that the precise issue presented here has not previously been before this Court for decision. In *Gannett Co. v. DePasquale*, *supra*, the Court was not required to decide whether a right of access to *trials*, as distinguished from hearings on *pre* trial motions, was constitutionally guaranteed. The Court held that the Sixth Amendment's guarantee to the accused of a public trial gave neither the public nor the press an enforceable right of access to a *pre* trial suppression hearing. One concurring opinion specifically emphasized that "a hearing on a motion before trial to suppress evidence is not a *trial* . . ." 443 U.S., at 394, 99 S.Ct., at 2913 (BURGER, C. J., concurring). Moreover, the Court did not decide whether the First and Fourteenth Amendments guarantee a right of the public to attend trials, *id.*, at 392 and n. 24, 99 S.Ct., at 2912, and n. 24; nor did the dissenting opinion reach this issue. *Id.*, at 447, 99 S.Ct., at 2940 (opinion of BLACKMUN, J.).

In prior cases the Court has treated questions involving conflicts between publicity and a defendant's right to a fair trial; as we observed in *Nebraska Press Assn. v. Stuart*, *supra*, at 547, 97 S.Ct., at 2797, "[t]he problems presented by this [conflict] are almost as old as the Republic." See also, *e. g.*, *Gannett*, *supra*; *Murphy v. Florida*, [1975] USSC 114; 421 U.S. 794, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975); *Sheppard v. Maxwell*, [1966] USSC 109; 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966); *Estes v. Texas*, [1965] USSC 138; 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543 (1965). But here for the first time the Court is asked to decide whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without any demonstration that closure is required to protect the defendant's superior right to a fair trial, or that some other overriding consideration requires closure.

A.

The origins of the proceeding which has become the modern criminal trial in Anglo-American justice can be traced back beyond reliable historical records. We need not here review all details of its development, but a summary of that history is instructive. What is significant for present purposes is that throughout its evolution, the trial has been open to all who care to observe.

In the days before the Norman Conquest, cases in England were generally brought before moots, such as the local court of the hundred or the county court, which were attended by the freemen of the community. Pollock, *English Law Before the Norman Conquest*, in 1 *Select Essays in Anglo-American Legal History* 88, 89 (1907). Somewhat like modern jury duty, attendance at these early meetings was compulsory on the part of the freemen, who were called upon to render judgment. *Id.*, at 89-90; see also 1 W. Holdsworth, *A History of English Law* 10, 12 (1927).

With the gradual evolution of the jury system in the years after the Norman Conquest, see, *e. g.*, *id.*, at 316, the duty of all freemen to attend trials to render judgment was relaxed, but there is no indication that criminal trials did not remain public. When certain groups were excused from compelled attendance, see the Statute of Marlborough, 52 Hen. 3, ch. 10 (1267); 1 Holdsworth, *supra*, at 79, and n. 4, the statutory exemption did not prevent them from attending; Lord Coke observed that those excused "are not compellable to come, but left to their own liberty." 2 E. Coke, *Institutes of the Laws of England* 121 (6th ed. 1681).

Although there appear to be a few contemporary statements on the subject, reports of the Eyre of Kent, a general court held in 1313-1314, evince a recognition of the importance of public attendance apart from the "jury duty" aspect. It was explained that

"the King's will was that all evil doers should be punished after their deserts, and that justice should be ministered indifferently to rich as to poor; *and for the better accomplishing of this*, he prayed the community of the county *by their attendance* there to lend him their aid in the establishing of a happy and certain peace that should be both for the honour of the realm and for their own welfare." 1 Holdsworth, *supra*, at 268, quoting from the S. S. edition of the Eyre of Kent, vol. i., p. 2 (emphasis added).

From these early times, although great changes in courts and procedures took place, one thing remained constant: the public character of the trial at which guilt or innocence was decided. Sir Thomas Smith, writing in 1565 about "the definitive proceedings in causes criminall," explained that, while the indictment was put in writing as in civil law countries:

"All the rest is doone openlie in the presence of the Judges, the Justices, the enquest, the prisoner, *and so manie as will or can come so neare as to heare it*, and all depositions and witnesses given aloud, *that all men may heare from the mouth of the depositors and witnesses what is saide*." T. Smith, *De Republica Anglorum* 101 (Alston ed. 1972) (emphasis added).

Three centuries later, Sir Frederick Pollock was able to state of the "rule of publicity" that, "[h]ere we have one tradition, at any rate, which has persisted through all changes." F. Pollock, *The Expansion of the Common Law* 31-32 (1904). See also E. Jenks, *The Book of English Law* 73-74 (6th ed. 1967): "[O]ne of the most conspicuous features of English justice, that all judicial trials are held in open court, to which the public have free access, . . . appears to have been the rule in England from time immemorial."

We have found nothing to suggest that the presumptive openness of the trial, which English courts were later to call "one of the essential qualities of a court of justice," *Daubney v. Cooper*, [1829] EngR 48; 10 B. & C. 237, 240[1829] EngR 48; , 109 Eng.Rep. 438, 440 (K. B. 1829), was not also an attribute of the judicial systems of colonial America. In Virginia, for example, such records as there are of early criminal trials indicate that they were open, and nothing to the contrary has been cited. See A. Scott, *Criminal Law in Colonial Virginia* 128-129 (1930); Reinsch, *The English Common Law in the Early American Colonies*, in 1 *Select Essays in Anglo-American Legal History* 367, 405 (1907). Indeed, when in the mid-1600's the Virginia Assembly felt that the respect due the courts was "by the clamorous unmannerlynes of the people lost, and order, gravity and decoram which should manifest the authority of a court in the court it selfe neglected," the response was not to restrict the openness of the trials to the public, but instead to prescribe rules for the conduct of those attending them. See Scott, *supra*, at 132.

In some instances, the openness of trials was explicitly recognized as part of the fundamental law of the Colony. The 1677 Concessions and Agreements of West New Jersey, for example, provided:

"That in all publick courts of justice for tryals of causes, civil or criminal, any person or persons, inhabitants of the said Province may freely come into, and attend the said courts, and hear and be present, at all or any such tryals as shall be there had or passed, that justice may not be done in a corner nor in any covert manner." Reprinted in *Sources of Our Liberties* 188 (R. Perry ed. 1959).

See also 1 B. Schwartz, *The Bill of Rights: A Documentary History* 129 (1971).

The Pennsylvania Frame of Government of 1682 also provided "[t]hat all courts shall be open . . . ," Sources of Our Liberties, *supra*, at 217; 1 Schwartz, *supra*, at 140, and this declaration was reaffirmed in § 26 of the Constitution adopted by Pennsylvania in 1776. See 1 Schwartz, *supra*, at 271. See also §§ 12 and 76 of the Massachusetts Body of Liberties, 1641, reprinted in 1 Schwartz, *supra*, at 73, 80.

Other contemporary writings confirm the recognition that part of the very nature of a criminal trial was its openness to those who wished to attend. Perhaps the best indication of this is found in an address to the inhabitants of Quebec which was drafted by a committee consisting of Thomas Cushing, Richard Henry Lee, and John Dickinson and approved by the First Continental Congress on October 26, 1774. 1 *Journals of the Continental Congress, 1774-1789*, pp. 101, 105 (1904) (*Journals*). This address, written to explain the position of the Colonies and to gain the support of the people of Quebec, is an "exposition of the fundamental rights of the colonists, as they were understood by a representative assembly chosen from all the colonies." 1 Schwartz, *supra*, at 221. Because it was intended for the inhabitants of Quebec, who had been "educated under another form of government" and had only recently become English subjects, it was thought desirable for the Continental Congress to explain "the inestimable advantages of a free English constitution of government, which it is the privilege of all English subjects to enjoy." 1 *Journals* 106.

"[One] great right is that of trial by jury. This provides, that neither life, liberty nor property, can be taken from the possessor, until twelve of his unexceptionable countrymen and peers of his vicinage, who from that neighbourhood may reasonably be supposed to be acquainted with his character, and the characters of the witnesses, upon a fair trial, and full enquiry, face to face, *in open Court, before as many of the people as chuse to attend*, shall pass their sentence upon oath against him. . . ." *Id.*, at 107 (emphasis added).

B

As we have shown, and as was shown in both the Court's opinion and the dissent in *Gannett*, 443 U.S., at 384, 386, n. 15, 418-425, 99 S.Ct., at 2908, 2909, n. 15, 2925-2929, the historical evidence demonstrates conclusively that at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open. This is no quirk of history; rather, it has long been recognized as an indispensable attribute of an Anglo-American trial. Both Hale in the 17th century and Blackstone in the 18th saw the importance of openness to the proper functioning of a trial; it gave assurance that the proceedings were conducted fairly to all concerned, and it discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality. See, e. g., M. Hale, *The History of the Common Law of England* 343-345 (6th ed. 1820); 3 W. Blackstone, *Commentaries* *372-*373. Jeremy Bentham not only recognized the therapeutic value of open justice but regarded it as the keystone:

"Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account. Recordation, appeal, whatever other institutions might present themselves in the character of checks, would be found to operate rather as cloaks than checks; as cloaks in reality, as checks only in appearance." 1 J. Bentham, *Rationale of Judicial Evidence* 524 (1827).

Panegyrics on the values of openness were by no means confined to self-praise by the English.

Foreign observers of English criminal procedure in the 18th and early 19th centuries came away impressed by the very fact that they had been freely admitted to the courts, as many were not in their own homelands. See L. Radzinowicz, *A History of English Criminal Law* 715, and n. 96 (1948). They marveled that "the whole juridical procedure passes in public," 2 P. Grosley, *A Tour to London; or New Observations on England* 142 (Nugent trans. 1772), quoted in Radzinowicz, *supra*, at 717, and one commentator declared:

"The main excellence of the English judicature consists in publicity, in the free trial by jury, and in the extraordinary despatch with which business is transacted. The publicity of their proceedings is indeed astonishing. *Free access to the courts is universally granted.*" C. Goede, *A Foreigner's Opinion of England* 214 (Horne trans. 1822). (Emphasis added.)

The nexus between openness, fairness, and the perception of fairness was not lost on them:

"[T]he judge, the counsel, and the jury, are constantly exposed to public animadversion; and this greatly tends to augment the extraordinary confidence, which the English repose in the administration of justice." *Id.*, at 215.

This observation raises the important point that "[t]he publicity of a judicial proceeding is a requirement of much broader bearing than its mere effect upon the quality of testimony." 6 J. Wigmore, *Evidence* § 1834, p. 435 (J. Chadbourn rev. 1976).⁸ The early history of open trials in part reflects the widespread acknowledgment, long before there were behavioral scientists, that public trials had significant community therapeutic value. Even without such experts to frame the concept in words, people sensed from experience and observation that, especially in the administration of criminal justice, the means used to achieve justice must have the support derived from public acceptance of both the process and its results.

When a shocking crime occurs, a community reaction of outrage and public protest often follows. See H. Weihofen, *The Urge to Punish* 130-131 (1956). Thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some form of vengeful "self-help," as indeed they did regularly in the activities of vigilante "committees" on our frontiers. "The accusation and conviction or acquittal, as much perhaps as the execution of punishment, operat[e] to restore the imbalance which was created by the offense or public charge, to reaffirm the temporarily lost feeling of security and, perhaps, to satisfy that latent 'urge to punish.'" Mueller, *Problems Posed by Publicity to Crime and Criminal Proceedings*, 110 *U.Pa.L.Rev.* 1, 6 (1961).

Civilized societies withdraw both from the victim and the vigilante the enforcement of criminal laws, but they cannot erase from people's consciousness the fundamental, natural yearning to see justice done—or even the urge for retribution. The crucial prophylactic aspects of the administration of justice cannot function in the dark; no community catharsis can occur if justice is "done in a corner [or] in any covert manner." *Supra*, at 567. It is not enough to say that results alone will satiate the natural community desire for "satisfaction." A result considered untoward may undermine public confidence, and where the trial has been concealed from public view an unexpected outcome can cause a reaction that the system at best has failed and at worst has been corrupted. To work effectively, it is important that society's criminal process "satisfy the appearance

of justice," *Offutt v. United States*[1954] USSC 66; , 348 U.S. 11, 14[1954] USSC 66; , 75 S.Ct. 11, 13[1954] USSC 66; , 99 L.Ed. 11 (1954), and the appearance of justice can best be provided by allowing people to observe it.

Looking back, we see that when the ancient "town meeting" form of trial became too cumbersome, 12 members of the community were delegated to act as its surrogates, but the community did not surrender its right to observe the conduct of trials. The people retained a "right of visitation" which enabled them to satisfy themselves that justice was in fact being done.

People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing. When a criminal trial is conducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case:

"The educative effect of public attendance is a material advantage. Not only is respect for the law increased and intelligent acquaintance acquired with the methods of government, but a strong confidence in judicial remedies is secured which could never be inspired by a system of secrecy." 6 Wigmore, *supra*, at 438. See also 1 J. Bentham, *Rationale of Judicial Evidence*, at 525.

In earlier times, both in England and America, attendance at court was a common mode of "passing the time." See, *e. g.*, 6 Wigmore, *supra*, at 436; Mueller, *supra*, at 6. With the press, cinema, and electronic media now supplying the representations or reality of the real life drama once available only in the courtroom, attendance at court is no longer a widespread pastime. Yet "[i]t is not unrealistic even in this day to believe that public inclusion affords citizens a form of legal education and hopefully promotes confidence in the fair administration of justice." *State v. Schmit*, 273 Minn. 78, 87-88, 139 N.W.2d 800, 807 (1966). Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public. While media representatives enjoy the same right of access as the public, they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard. This "contribute[s] to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system" *Nebraska Press Assn. v. Stuart*, 427 U.S., at 587, 96 S.Ct., at 2816 (BRENNAN, J., concurring in judgment).

C

From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice. This conclusion is hardly novel; without a direct holding on the issue, the Court has voiced its recognition of it in a variety of contexts over the years.⁹ Even while holding, in *Levine v. United States*, [1960] USSC 120; 362 U.S. 610, 80 S.Ct. 1038, 4 L.Ed.2d 989 (1960), that a criminal contempt proceeding was not a "criminal prosecution" within the meaning of the Sixth Amendment, the Court was careful to note that more than the Sixth Amendment was involved:

"[W]hile the right to a 'public trial' is explicitly guaranteed by the Sixth Amendment only for 'criminal prosecutions,' that provision is a reflection of the notion, deeply rooted in the common law,

that 'justice must satisfy the appearance of justice.' . . . [D]ue process demands appropriate regard for the requirements of a public proceeding in cases of criminal contempt . . . as it does for all adjudications through the exercise of the judicial power, barring narrowly limited categories of exceptions" *Id.*, at 616, 80 S.Ct., at 1042.

And recently in *Gannett Co. v. DePasquale*, [1979] USSC 146; 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979), both the majority, *id.*, at 384, 386, n. 15, 99 S.Ct., at 2908, 2909, n. 15, and dissenting opinion, *id.*, at 423, 99 S.Ct., at 2928, agreed that open trials were part of the common-law tradition.

Despite the history of criminal trials being presumptively open since long before the Constitution, the State presses its contention that neither the Constitution nor the Bill of Rights contains any provision which by its terms guarantees to the public the right to attend criminal trials. Standing alone, this is correct, but there remains the question whether, absent an explicit provision, the Constitution affords protection against exclusion of the public from criminal trials.

III

A.

The First Amendment, in conjunction with the Fourteenth, prohibits governments from "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." These expressly guaranteed freedoms share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted; as we have shown, recognition of this pervades the centuries-old history of open trials and the opinions of this Court. *Supra*, at 564-575, and n. 9.

The Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open. Public access to trials was then regarded as an important aspect of the process itself; the conduct of trials "before as many of the people as chuse to attend" was regarded as one of "the inestimable advantages of a free English constitution of government." 1 Journals 106, 107. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees. "[T]he First Amendment goes beyond protection of the press and the selfexpression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, [1978] USSC 138; 435 U.S. 765, 783[1978] USSC 138; , 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978). Free speech carries with it some freedom to listen. "In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas.'" *Kleindienst v. Mandel*, [1972] USSC 172; 408 U.S. 753, 762[1972] USSC 172; , 92 S.Ct. 2576, 2581[1972] USSC 172; , 33 L.Ed.2d 683 (1972). What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted. "For the First Amendment does not speak equivocally. . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." *Bridges v. California*, [1941] USSC 148; 314 U.S. 252, 263[1941] USSC 148; , 62 S.Ct. 190, 194[1941] USSC 148; , 86 L.Ed. 192 (1941) (footnote omitted).

It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a "right of access," cf. *Gannett, supra*, 443 U.S., at 397, 99 S.Ct., at 2914 (POWELL, J., concurring); *Saxbe v. Washington Post Co.*, [1974] USSC 143; 417 U.S. 843, 94 S.Ct. 2811, 41 L.Ed.2d 514 (1974); *Pell v. Procunier*, [1974] USSC 141; 417 U.S. 817, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974),¹¹ or a "right to gather information," for we have recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, [1972] USSC 169; 408 U.S. 665, 681[1972] USSC 169; , 92 S.Ct. 2646, 2656[1972] USSC 169; , 33 L.Ed.2d 626 (1972). The explicit, guaranteed rights to speak and to publish concerning what takes place at a trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.

B

The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance. From the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen.¹³ "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. Oregon*, [1937] USSC 3; 299 U.S. 353, 364[1937] USSC 3; , 57 S.Ct. 255, 260[1937] USSC 3; , 81 L.Ed. 278 (1937). People assemble in public places not only to speak or to take action, but also to listen, observe, and learn; indeed, they may "assembl[e] for any lawful purpose," *Hague v. CIO*, [1939] USSC 117; 307 U.S. 496, 519[1939] USSC 117; , 59 S.Ct. 954, 965[1939] USSC 117; , 83 L.Ed. 1423 (1939) (opinion of Stone, J.). Subject to the traditional time, place, and manner restrictions, see, e. g., *Cox v. New Hampshire*, [1941] USSC 78; 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); see also *Cox v. Louisiana*, [1965] USSC 29; 379 U.S. 559, 560-564[1965] USSC 29; , 85 S.Ct. 476, 478-480[1965] USSC 29; , 13 L.Ed.2d 487 (1965), streets, sidewalks, and parks are places traditionally open, where First Amendment rights may be exercised, see *Hague v. CIO, supra*, at 515, 59 S.Ct., at 963 (opinion of Roberts, J.); a trial courtroom also is a public place where the people generally—and representatives of the media—have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.

C

The State argues that the Constitution nowhere spells out a guarantee for the right of the public to attend trials, and that accordingly no such right is protected. The possibility that such a contention could be made did not escape the notice of the Constitution's draftsmen; they were concerned that some important rights might be thought disparaged because not specifically guaranteed. It was even argued that because of this danger no Bill of Rights should be adopted. See, e. g., *The Federalist No. 84* (A. Hamilton). In a letter to Thomas Jefferson in October 1788, James Madison explained why he, although "in favor of a bill of rights," had "not viewed it in an important light" up to that time: "I conceive that in a certain degree . . . the rights in question are reserved by the manner in which the federal powers are granted." He went on to state that "there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude." 5 *Writings of James Madison* 271 (G. Hunt ed. 1904).

But arguments such as the State makes have not precluded recognition of important rights not enumerated. Notwithstanding the appropriate caution against reading into the Constitution rights not explicitly defined, the Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees. For example, the rights of association and of privacy, the right to be presumed innocent, and the right to be judged by a standard of proof beyond a reasonable doubt in a criminal trial, as well as the right to travel, appear nowhere in the Constitution or Bill of Rights. Yet these important but unarticulated rights have nonetheless been found to share constitutional protection in common with explicit guarantees.¹⁶ The concerns expressed by Madison and others have thus been resolved; fundamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined.

We hold that the right to attend criminal trials¹⁷ is implicit in the guarantees of the First Amendment; without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and "of the press could be eviscerated." *Branzburg*, 408 U.S., at 681, 92 S.Ct., at 2656.

D

Having concluded there was a guaranteed right of the public under the First and Fourteenth Amendments to attend the trial of Stevenson's case, we return to the closure order challenged by appellants. The Court in *Gannett* made clear that although the Sixth Amendment guarantees the accused a right to a public trial, it does not give a right to a private trial. 443 U.S., at 382, 99 S.Ct., at 2907. Despite the fact that this was the fourth trial of the accused, the trial judge made no findings to support closure; no inquiry was made as to whether alternative solutions would have met the need to ensure fairness; there was no recognition of any right under the Constitution for the public or press to attend the trial. In contrast to the pretrial proceeding dealt with in *Gannett*, there exist in the context of the trial itself various tested alternatives to satisfy the constitutional demands of fairness. See *e. g.*, *Nebraska Press Assn. v. Stuart*, 427 U.S., at 563-565, 96 S.Ct., at 2804-2805; *Sheppard v. Maxwell*, 384 U.S., at 357-362, 86 S.Ct., at 1519-1522. There was no suggestion that any problems with witnesses could not have been dealt with by their exclusion from the courtroom or their sequestration during the trial. See *id.*, at 359, 86 S.Ct., at 1520. Nor is there anything to indicate that sequestration of the jurors would not have guarded against their being subjected to any improper information. All of the alternatives admittedly present difficulties for trial courts, but none of the factors relied on here was beyond the realm of the manageable. Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.¹⁸ Accordingly, the judgment under review is

Reversed.

Mr. Justice POWELL took no part in the consideration or decision of this case.

Mr. Justice WHITE, concurring.

This case would have been unnecessary had *Gannett Co. v. DePasquale*, [1979] USSC 146; 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979), construed the Sixth Amendment to forbid

excluding the public from criminal proceedings except in narrowly defined circumstances. But the Court there rejected the submission of four of us to this effect, thus requiring that the First Amendment issue involved here be addressed. On this issue, I concur in the opinion of THE CHIEF JUSTICE.

Mr. Justice STEVENS, concurring.

This is a watershed case. Until today the Court has accorded virtually absolute protection to the dissemination of information or ideas, but never before has it squarely held that the acquisition of newsworthy matter is entitled to any constitutional protection whatsoever. An additional word of emphasis is therefore appropriate.

Twice before, the Court has implied that any governmental restriction on access to information, no matter how severe and no matter how unjustified, would be constitutionally acceptable so long as it did not single out the press for special disabilities not applicable to the public at large. In a dissent joined by Mr. Justice BRENNAN and Mr. Justice MARSHALL in *Saxbe v. Washington Post Co.*[1974] USSC 143; , 417 U.S. 843, 850[1974] USSC 143; , 94 S.Ct. 2811, 2815[1974] USSC 143; , 41 L.Ed.2d 514, Mr. Justice POWELL unequivocally rejected the conclusion that "any governmental restriction of press access to information, so long as it is nondiscriminatory, falls outside the purview of First Amendment concern." *Id.*, at 857, 94 S.Ct., at 2818, (emphasis in original). And in *Houchins v. KQED, Inc.*[1978] USSC 140; , 438 U.S. 1, 19-40[1978] USSC 140; , 98 S.Ct. 2588, 2599-2610[1978] USSC 140; , 57 L.Ed.2d 553, I explained at length why Mr. Justice BRENNAN, Mr. Justice POWELL, and I were convinced that "[a]n official prison policy of concealing . . . knowledge from the public by arbitrarily cutting off the flow of information at its source abridges the freedom of speech and of the press protected by the First and Fourteenth Amendments to the Constitution." *Id.*, at 38, 98 S.Ct., at 2609. Since Mr. Justice MARSHALL and Mr. Justice BLACKMUN were unable to participate in that case, a majority of the Court neither accepted nor rejected that conclusion or the contrary conclusion expressed in the prevailing opinions.¹ Today, however, for the first time, the Court unequivocally holds that an arbitrary interference with access to important information is an abridgment of the freedoms of speech and of the press protected by the First Amendment.

It is somewhat ironic that the Court should find more reason to recognize a right of access today than it did in *Houchins*. For *Houchins* involved the plight of a segment of society least able to protect itself, an attack on a longstanding policy of concealment, and an absence of any legitimate justification for abridging public access to information about how government operates. In this case we are protecting the interests of the most powerful voices in the community, we are concerned with an almost unique exception to an established tradition of openness in the conduct of criminal trials, and it is likely that the closure order was motivated by the judge's desire to protect the individual defendant from the burden of a fourth criminal trial.

In any event, for the reasons stated in Part II of my *Houchins* opinion, 438 U.S., at 30-38, 98 S.Ct., at 2605-2609, as well as those stated by THE CHIEF JUSTICE today, I agree that the First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government, including the Judicial Branch; given the total absence of any record justification for the closure order entered in this case, that order violated the

First Amendment.

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL joins, concurring in the judgment.

Gannett Co. v. DePasquale, [1979] USSC 146; 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979), held that the Sixth Amendment right to a public trial was personal to the accused, conferring no right of access to pretrial proceedings that is separately enforceable by the public or the press. The instant case raises the question whether the First Amendment, of its own force and as applied to the States through the Fourteenth Amendment, secures the public an independent right of access to trial proceedings. Because I believe that the First Amendment—of itself and as applied to the States through the Fourteenth Amendment—secures such a public right of access, I agree with those of my Brethren who hold that, without more, agreement of the trial judge and the parties cannot constitutionally close a trial to the public.

* While freedom of expression is made inviolate by the First Amendment, and, with only rare and stringent exceptions, may not be suppressed, see, e. g., *Brown v. Glines*, [1980] USSC 4; 444 U.S. 348, 364[1980] USSC 4; , 100 S.Ct. 594, 600, 609, 611[1980] USSC 4; , 62 L.Ed.2d 540 (1980) (BRENNAN, J., dissenting); *Nebraska Press Assn. v. Stuart*, [1976] USSC 158; 427 U.S. 539, 558-559[1976] USSC 158; , 96 S.Ct. 2791, 2802[1976] USSC 158; , 49 L.Ed.2d 683 (1976); *id.*, at 590, 96 S.Ct., at 2817 (BRENNAN, J., concurring in judgment); *New York Times Co. v. United States*, [1971] USSC 145; 403 U.S. 713, 714[1971] USSC 145; , 91 S.Ct. 2140, 2141[1971] USSC 145; , 29 L.Ed.2d 822 (1971) (*per curiam* opinion); *Near v. Minnesota ex rel. Olson*, [1931] USSC 154; 283 U.S. 697, 715-716[1931] USSC 154; , 51 S.Ct. 625, 630-631[1931] USSC 154; , 75 L.Ed. 1357 (1931), the First Amendment has not been viewed by the Court in all settings as providing an equally categorical assurance of the correlative freedom of access to information, see, e. g., *Saxbe v. Washington Post Co.*, [1974] USSC 143; 417 U.S. 843, 849[1974] USSC 143; , 94 S.Ct. 2811, 2814[1974] USSC 143; , 41 L.Ed.2d 514 (1974); *Zemel v. Rusk*, [1965] USSC 147; 381 U.S. 1, 16-17[1965] USSC 147; , 85 S.Ct. 1271, 1281, 14 L.Ed.2d 179 (1965); see also *Houchins v. KQED, Inc.*, [1978] USSC 140; 438 U.S. 1, 8-9[1978] USSC 140; , 98 S.Ct. 2588, 2593-2594[1978] USSC 140; , 57 L.Ed.2d 553 (1978) (opinion of BURGER, C. J.); *id.*, at 16, 98 S.Ct., at 2598 (STEWART, J., concurring in judgment); *Gannett Co. v. DePasquale*, 443 U.S., at 404-405, 99 S.Ct., at 2918 (REHNQUIST, J., concurring). But cf. *id.*, at 397-398, 99 S.Ct., at 2914-2915, (POWELL, J., concurring); *Houchins, supra*, 438 U.S., at 27-38, 98 S.Ct., at 2609 (STEVENS, J., dissenting); *Saxbe, supra*, 417 U.S., at 856-864, 94 S.Ct., at 2818-2822 (POWELL, J., dissenting); *Pell v. Procunier*, [1974] USSC 141; 417 U.S. 817, 839-842[1974] USSC 141; , 94 S.Ct. 2800, 2829-2830[1974] USSC 141; , 41 L.Ed.2d 495 (1974) (DOUGLAS, J., dissenting).² Yet the Court has not ruled out a public access component to the First Amendment in every circumstance. Read with care and in context, our decisions must therefore be understood as holding only that any privilege of access to governmental information is subject to a degree of restraint dictated by the nature of the information and countervailing interests in security or confidentiality. See *Houchins, supra*, 438 U.S., at 8-9, 98 S.Ct., at 2593-2594 (opinion of BURGER, C. J.) (access to prisons); *Saxbe, supra*, 417 U.S., at 849, 94 S.Ct., at 2814 (same); *Pell, supra*, 417 U.S., at 831-832, 94 S.Ct., at 2808-2809 (same); *Estes v. Texas*, [1965] USSC 138; 381 U.S. 532, 541-542[1965] USSC 138; , 85 S.Ct. 1628, 1632, 14 L.Ed.2d 543 (1965) (television in courtroom); *Zemel v. Rusk, supra*, 16-17, 85 S.Ct., at 1280-1281 (validation of passport to unfriendly country). These cases neither comprehensively nor absolutely deny that public access to information may at times be implied by the First Amendment and the principles which animate it.

The Court's approach in right-of-access cases simply reflects the special nature of a claim of First Amendment right to gather information. Customarily, First Amendment guarantees are interposed to protect communication between speaker and listener. When so employed against prior restraints, free speech protections are almost insurmountable. See *Nebraska Press Assn. v. Stuart*, *supra*, at 558-559, 96 S.Ct., at 2802; *New York Times Co. v. United States*, *supra*, at 714, 91 S.Ct., at 2141 (*per curiam* opinion). See generally Brennan, Address, 32 Rutgers L.Rev. 173, 176 (1979). But the First Amendment embodies more than a commitment to free expression and communicative interchange for their own sakes; it has a *structural* role to play in securing and fostering our republican system of self-government. See *United States v. Carolene Products Co.*, [1938] USSC 104; 304 U.S. 144, 152-153, n. 4[1938] USSC 104; , 58 S.Ct. 778, 783-784, n. 4[1938] USSC 104; , 82 L.Ed. 1234 (1938); *Grosjean v. American Press Co.*, [1936] USSC 33; 297 U.S. 233, 249-250[1936] USSC 33; , 56 S.Ct. 444, 448-449[1936] USSC 33; , 80 L.Ed. 660 (1936); *Stromberg v. California*, [1931] USSC 132; 283 U.S. 359, 369[1931] USSC 132; , 51 S.Ct. 532, 535[1931] USSC 132; , 75 L.Ed. 1117 (1931); Brennan, *supra*, at 176-177; J. Ely, Democracy and Distrust 93-94 (1980); T. Emerson, The System of Freedom of Expression 7 (1970); A. Meiklejohn, Free Speech and Its Relation to Self-Government (1948); Bork, Neutral Principles and Some First Amendment Problems, 47 Ind.L.J. 1, 23 (1971). Implicit in this structural role is not only "the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, [1964] USSC 40; 376 U.S. 254, 270[1964] USSC 40; , 84 S.Ct. 710, 721[1964] USSC 40; , 11 L.Ed.2d 686 (1964), but also the antecedent assumption that valuable public debate—as well as other civic behavior—must be informed.³ The structural model links the First Amendment to that process of communication necessary for a democracy to survive, and thus entails solicitude not only for communication itself, but also for the indispensable conditions of meaningful communication.

However, because "the stretch of this protection is theoretically endless," Brennan, *supra*, at 177, it must be invoked with discrimination and temperance. For so far as the participating citizen's need for information is concerned, "[t]here are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow." *Zemel v. Rusk*, *supra*, at 16-17, 85 S.Ct., at 1281. An assertion of the prerogative to gather information must accordingly be assayed by considering the information sought and the opposing interests invaded.

This judicial task is as much a matter of sensitivity to practical necessities as it is of abstract reasoning. But at least two helpful principles may be sketched. First, the case for a right of access has special force when drawn from an enduring and vital tradition of public entree to particular proceedings or information. Cf. *In re Winship*[1970] USSC 77; , 397 U.S. 358, 361-362[1970] USSC 77; , 90 S.Ct. 1068, 1070-1071[1970] USSC 77; , 25 L.Ed.2d 368 (1970). Such a tradition commands respect in part because the Constitution carries the gloss of history. More importantly, a tradition of accessibility implies the favorable judgment of experience. Second, the value of access must be measured in specifics. Analysis is not advanced by rhetorical statements that all information bears upon public issues; what is crucial in individual cases is whether access to a particular government process is important in terms of that very process.

To resolve the case before us, therefore, we must consult historical and current practice with respect to open trials, and weigh the importance of public access to the trial process itself.

II

"This nation's accepted practice of guaranteeing a public trial to an accused has its roots in our English common law heritage." *In re Oliver*[1948] USSC 28; , 333 U.S. 257, 266[1948] USSC 28; , 68 S.Ct. 499, 504[1948] USSC 28; , 92 L.Ed. 682 (1948); see *Gannett Co. v. DePasquale*, 443 U.S., at 419-420, 99 S.Ct., at 2926 (BLACKMUN, J., concurring and dissenting). Indeed, historically and functionally, open trials have been closely associated with the development of the fundamental procedure of trial by jury. *In re Oliver; supra*, 333 U.S., at 266, 68 S.Ct., at 504; Radin, *The Right to a Public Trial*, 6 *Temp.L.Q.* 381, 388 (1932).⁶ Pre-eminent English legal observers and commentators have unreservedly acknowledged and applauded the public character of the common-law trial process. See T. Smith, *De Republica Anglorum* 77, 81-82 (1970);⁷ 2 E. Coke, *Institutes of the Laws of England* 103 (6th ed. 1681); 3 W. Blackstone, *Commentaries* *372-*373 (13th ed. 1800);⁸ M. Hale, *The History of the Common Law of England* 342-344 (6th ed. 1820);⁹ 1 J. Bentham, *Rationale of Judicial Evidence* 584-585 (1827). And it appears that "there is little record, if any, of secret proceedings, criminal or civil, having occurred at any time in known English history." *Gannett, supra*, 443 U.S., at 420, 99 S.Ct., at 2926 (BLACKMUN, J., concurring and dissenting); see also *In re Oliver; supra*, 333 U.S., at 269, n. 22, 68 S.Ct., at 505, n. 22; Radin, *supra*, at 386-387.

This legacy of open justice was inherited by the English settlers in America. The earliest charters of colonial government expressly perpetuated the accepted practice of public trials. See *Concessions and Agreements of West New Jersey*, 1677, ch. XXIII;¹⁰ *Pennsylvania Frame of Government*, 1682, *Laws Agreed Upon in England*, V.11 "There is no evidence that any colonial court conducted criminal trials behind closed doors . . ." *Gannett Co. v. DePasquale, supra*, 443 U.S., at 425, 99 S.Ct., at 2929 (BLACKMUN, J., concurring and dissenting). Subsequently framed state constitutions also prescribed open trial proceedings. See, e. g., *Pennsylvania Declaration of Rights*, 1776, IX;¹² *North Carolina Declaration of Rights*, 1776, IX;¹³ *Vermont Declaration of Rights*, X (1777);¹⁴ see also *In re Oliver*, 333 U.S., at 267, 68 S.Ct., at 504. "Following the ratification in 1791 of the Federal Constitution's Sixth Amendment, . . . most of the original states and those subsequently admitted to the Union adopted similar constitutional provisions." *Ibid.*¹⁵ Today, the overwhelming majority of States secure the right to public trials. *Gannett, supra*, 443 U.S., at 414-415, n. 3, 99 S.Ct., at 2923-2924, n. 3 (BLACKMUN, J., concurring and dissenting); see also *In re Oliver; supra*, 333 U.S., at 267-268, 271, and nn. 17-20, 68 S.Ct., at 504-505, 506, and nn. 17-20.

This Court too has persistently defended the public character of the trial process. *In re Oliver* established that the Due Process Clause of the Fourteenth Amendment forbids closed criminal trials. Noting the "universal rule against secret trials," 333 U.S., at 266, 68 S.Ct., at 504, the Court held that

"[i]n view of this nation's historic distrust of secret proceedings, their inherent dangers to freedom, and the universal requirement of our federal and state governments that criminal trials be public, the Fourteenth Amendment's guarantee that no one shall be deprived of his liberty without due process of law means at least that an accused cannot be thus sentenced to prison." *Id.*, at 273, 68 S.Ct., at 507.

Even more significantly for our present purpose, *Oliver* recognized that open trials are bulwarks of

our free and democratic government: public access to court proceedings is one of the numerous "checks and balances" of our system, because "contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power," *id.*, at 270, 68 S.Ct., at 506. See *Sheppard v. Maxwell*, 384 U.S. 333, 350[1966] USSC 109; , 86 S.Ct. 1507, 1515, 16 L.Ed.2d 600 (1966). Indeed, the Court focused with particularity upon the public trial guarantee "as a safeguard against any attempt to employ our courts as instruments of persecution," or "for the suppression of political and religious heresies." *Oliver; supra*, 333 U.S., at 270, 68 S.Ct., at 506. Thus, *Oliver* acknowledged that open trials are indispensable to First Amendment political and religious freedoms.

By the same token, a special solicitude for the public character of judicial proceedings is evident in the Court's rulings upholding the right to report about the administration of justice. While these decisions are impelled by the classic protections afforded by the First Amendment to pure communication, they are also bottomed upon a keen appreciation of the structural interest served in opening the judicial system to public inspection.¹⁷ So, in upholding a privilege for reporting truthful information about judicial misconduct proceedings, *Landmark Communications, Inc. v. Virginia*, [1978] USSC 70; 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978), emphasized that public scrutiny of the operation of a judicial disciplinary body implicates a major purpose of the First Amendment—"discussion of governmental affairs," *id.*, at 839, 98 S.Ct., at 1542. Again, *Nebraska Press Assn. v. Stuart*, 427 U.S., at 559, 96 S.Ct., at 2803, noted that the traditional guarantee against prior restraint "should have particular force as applied to reporting of criminal proceedings" And *Cox Broadcasting Corp. v. Cohn*, [1975] USSC 44; 420 U.S. 469, 492[1975] USSC 44; , 95 S.Ct. 1029, 1044[1975] USSC 44; , 43 L.Ed.2d 328 (1975), instructed that "[w]ith respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice." See *Time, Inc. v. Firestone*, [1976] USSC 27; 424 U.S. 448, 473-474, 476-478[1976] USSC 27; , 96 S.Ct. 958, 974, 975-977[1976] USSC 27; , 47 L.Ed.2d 154 (1976) (BRENNAN, J., dissenting) (open judicial process is essential to fulfill "the First Amendment guarantees to the people of this Nation that they shall retain the necessary means of control over their institutions . . .").

Tradition, contemporaneous state practice, and this Court's own decisions manifest a common understanding that "[a] trial is a public event. What transpires in the court room is public property." *Craig v. Harney*, [1947] USSC 124; 331 U.S. 367, 374[1947] USSC 124; , 67 S.Ct. 1249, 1254, 91 L.Ed. 1546 (1947). As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. See *In re Oliver*, 333 U.S., at 266-268, 68 S.Ct., at 504-505; *Gannett Co. v. DePasquale*, 443 U.S., at 386, n. 15, 99 S.Ct., at 2908, n. 15, *id.*, at 418-432, and n. 11, 99 S.Ct., at 2925-2932, and n. 11 (BLACKMUN, J., concurring and dissenting).¹⁸ Such abiding adherence to the principle of open trials "reflect[s] a profound judgment about the way in which law should be enforced and justice administered." *Duncan v. Louisiana*, 391 U.S. 145, 155[1968] USSC 152; , 88 S.Ct. 1444, 1451, 20 L.Ed.2d 491 (1968).

III

Publicity serves to advance several of the particular purposes of the trial (and, indeed, the judicial) process. Open trials play a fundamental role in furthering the efforts of our judicial system to assure

the criminal defendant a fair and accurate adjudication of guilt or innocence. See, e. g., *Estes v. Texas*, 381 U.S., at 538-539, 85 S.Ct., at 1630-1631. But, as a feature of our governing system of justice, the trial process serves other, broadly political, interests, and public access advances these objectives as well. To that extent, trial access possesses specific structural significance.

The trial is a means of meeting "the notion, deeply rooted in the common law, that 'justice must satisfy the appearance of justice.' " *Levine v. United States*, [1960] USSC 120; 362 U.S. 610, 616[1960] USSC 120; , 80 S.Ct. 1038, 1042[1960] USSC 120; , 4 L.Ed.2d 989 (1960), quoting *Offutt v. United States*, [1954] USSC 66; 348 U.S. 11, 14[1954] USSC 66; , 75 S.Ct. 11, 13[1954] USSC 66; , 99 L.Ed. 11 (1954); accord, *Gannett Co. v. DePasquale*, *supra*, at 429, 99 S.Ct., at 2931 (BLACKMUN, J., concurring and dissenting); see *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884) (HOLMES, J.). For a civilization founded upon principles of ordered liberty to survive and flourish, its members must share the conviction that they are governed equitably. That necessity underlies constitutional provisions as diverse as the rule against takings without just compensation, see *PruneYard Shopping Center v. Robins*, [1980] USSC 109; 447 U.S. 74, 82-83, and n. 7[1980] USSC 109; , 100 S.Ct. 2035, 2041, and n. 7[1980] USSC 109; , 64 L.Ed.2d 741 (1980), and the Equal Protection Clause. It also mandates a system of justice that demonstrates the fairness of the law to our citizens. One major function of the trial, hedged with procedural protections and conducted with conspicuous respect for the rule of law, is to make that demonstration. See *In re Oliver*, *supra*, at 270, n. 24, 68 S.Ct., at 506, n. 24.

Secrecy is profoundly inimical to this demonstrative purpose of the trial process. Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice. See *Gannett*, *supra*, 443 U.S. at 428-429, 99 S.Ct., at 2930-2931 (BLACKMUN, J., concurring and dissenting).

But the trial is more than a demonstrably just method of adjudicating disputes and protecting rights. It plays a pivotal role in the entire judicial process, and, by extension, in our form of government. Under our system, judges are not mere umpires, but, in their own sphere, lawmakers—a coordinate branch of *government*.²⁰ While individual cases turn upon the controversies between parties, or involve particular prosecutions, court rulings impose official and practical consequences upon members of society at large. Moreover, judges bear responsibility for the vitally important task of construing and securing constitutional rights. Thus, so far as the trial is the mechanism for judicial factfinding, as well as the initial forum for legal decisionmaking, it is a genuine governmental proceeding.

It follows that the conduct of the trial is pre-eminently a matter of public interest. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S., at 491-492, 95 S.Ct., at 1044; *Maryland v. Baltimore Radio Show, Inc.*, [1950] USSC 2; 338 U.S. 912, 920[1950] USSC 2; , 70 S.Ct. 252, 255[1950] USSC 2; , 94 L.Ed. 562 (1950) (opinion of FRANKFURTER, J., respecting denial of certiorari). More importantly, public access to trials acts as an important check, akin in purpose to the other checks and balances that infuse our system of government. "The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power," *In re Oliver*, 333 U.S., at 270, 68 S.Ct., at 506 an abuse that, in many cases, would have ramifications beyond the impact upon the parties before the court. Indeed, "

'[w]ithout publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account.' " *Id.*, at 271, 68 S.Ct., at 506, quoting 1 J. Bentham, *Rationale of Judicial Evidence* 524 (1827); see 3 W. Blackstone, *Commentaries* *372; M. Hale, *History of the Common Law of England* 344 (6th ed. 1820); 1 J. Bryce, *The American Commonwealth* 514 (rev. 1931).

Finally, with some limitations, a trial aims at true and accurate factfinding. Of course, proper factfinding is to the benefit of criminal defendants and of the parties in civil proceedings. But other, comparably urgent, interests are also often at stake. A miscarriage of justice that imprisons an innocent accused also leaves a guilty party at large, a continuing threat to society. Also, mistakes of fact in civil litigation may inflict costs upon others than the plaintiff and defendant. Facilitation of the trial factfinding process, therefore, is of concern to the public as well as to the parties.

Publicizing trial proceedings aids accurate factfinding. "Public trials come to the attention of key witnesses unknown to the parties." *In re Oliver, supra*, at 270, n. 24, 68 S.Ct., at 506, n. 24; see *Tanksley v. United States*, 145 F.2d 58, 59, 10 Alaska 443 (CA9 1944); 6 J. Wigmore, *Evidence* § 1834 (J. Chadbourn rev. 1976). Shrewd legal observers have averred that

"open examination of witnesses *viva voce*, in the presence of all mankind, is much more conducive to the clearing up of truth, than the private and secret examination . . . where a witness may frequently depose that in private, which he will be ashamed to testify in a public and solemn tribunal." 3 Blackstone, *supra*, at *373.

See *Tanksley v. United States, supra*, 145 F.2d at 59-60; Hale, *supra*, at 345; 1 Bentham, *supra*, at 522-523. And experience has borne out these assertions about the truthfinding role of publicity. See Hearings on S. 290 before the Subcommittee on Constitutional Rights and the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee, 89th Cong., 1st Sess., pt. 2, pp. 433-434, 437-438 (1966).

Popular attendance at trials, in sum, substantially furthers the particular public purposes of that critical judicial proceeding.²² In that sense, public access is an indispensable element of the trial process itself. Trial access, therefore, assumes structural importance in our "government of laws," *Marbury v. Madison*, [1803] USSC 16; 1 Cranch 137, 163[1803] USSC 16; , 2 L.Ed. 60 (1803).

IV

As previously noted, resolution of First Amendment public access claims in individual cases must be strongly influenced by the weight of historical practice and by an assessment of the specific structural value of public access in the circumstances. With regard to the case at hand, our ingrained tradition of public trials and the importance of public access to the broader purposes of the trial process, tip the balance strongly toward the rule that trials be open.²³ What countervailing interests might be sufficiently compelling to reverse this presumption of openness need not concern us now,²⁴ for the statute at stake here authorizes trial closures at the unfettered discretion of the judge and parties.²⁵ Accordingly, Va.Code § 19.2-266 (Supp.1980) violates the First and Fourteenth Amendments, and the decision of the Virginia Supreme Court to the contrary should be reversed.

Mr. Justice STEWART, concurring in the judgment.

In *Gannett Co. v. DePasquale*, [1979] USSC 146; 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608, the Court held that the Sixth Amendment, which guarantees "the accused" the right to a public trial, does not confer upon representatives of the press or members of the general public any right of access to a trial.¹ But the Court explicitly left open the question whether such a right of access may be guaranteed by other provisions of the Constitution, *id.*, at 391-393, 99 S.Ct., at 2911-2912. Mr. Justice POWELL expressed the view that the First and Fourteenth Amendments do extend at least a limited right of access even to pretrial suppression hearings in criminal cases, *id.*, at 397-403, 99 S.Ct., at 2914 (concurring opinion). Mr. Justice REHNQUIST expressed a contrary view, *id.*, at 403-406, 99 S.Ct., at 2917-2919 (concurring opinion). The remaining Members of the Court were silent on the question.

Whatever the ultimate answer to that question may be with respect to pretrial suppression hearings in criminal cases, the First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal.² As has been abundantly demonstrated in Part II of the opinion of THE CHIEF JUSTICE, in Mr. Justice BRENNAN's opinion concurring in the judgment, and in Mr. Justice BLACKMUN's opinion dissenting in part last Term in the *Gannett* case, *supra*, at 406, 99 S.Ct., at 2919, it has for centuries been a basic presupposition of the Anglo-American legal system that trials shall be public trials. The opinions referred to also convincingly explain the many good reasons why this is so. With us, a trial is by every definition a proceeding open to the press and to the public.

In conspicuous contrast to a military base, *Greer v. Spock*, [1976] USSC 47; 424 U.S. 828, 96 S.Ct. 1211, 47 L.Ed.2d 505; a jail, *Adderley v. Florida*, [1967] USSC 1; 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149; or a prison, *Pell v. Procunier*, [1974] USSC 141; 417 U.S. 817, 94 S.Ct. 2800, 41 L.Ed.2d 495, a trial courtroom is a public place. Even more than city streets, sidewalks, and parks as areas of traditional First Amendment activity, *e. g.*, *Shuttlesworth v. Birmingham*, [1969] USSC 52; 394 U.S. 147, 89 S.Ct. 935, 22 L.Ed.2d 162, a trial courtroom is a place where representatives of the press and of the public are not only free to be, but where their presence serves to assure the integrity of what goes on.

But this does not mean that the First Amendment right of members of the public and representatives of the press to attend civil and criminal trials is absolute. Just as a legislature may impose reasonable time, place, and manner restrictions upon the exercise of First Amendment freedoms, so may a trial judge impose reasonable limitations upon the unrestricted occupation of a courtroom by representatives of the press and members of the public. Cf. *Sheppard v. Maxwell*, [1966] USSC 109; 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600. Much more than a city street, a trial courtroom must be a quiet and orderly place. Compare *Kovacs v. Cooper*, [1949] USSC 22; 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513, with *Illinois v. Allen*, [1970] USSC 110; 397 U.S. 337, 90 S.Ct. 1057, 25 L.Ed.2d 353, and *Estes v. Texas*, [1965] USSC 138; 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d 543. Moreover, every courtroom has a finite physical capacity, and there may be occasions when not all who wish to attend a trial may do so.³ And while there exist many alternative ways to satisfy the constitutional demands of a fair trial,⁴ those demands may also sometimes justify limitations upon the unrestricted presence of spectators in the courtroom.

Since in the present case the trial judge appears to have given no recognition to the right of representatives of the press and members of the public to be present at the Virginia murder trial over

which he was presiding, the judgment under review must be reversed.

It is upon the basis of these principles that I concur in the judgment.

Mr. Justice BLACKMUN, concurring in the judgment.

My opinion and vote in partial dissent last Term in *Gannett Co. v. DePasquale*, [1979] USSC 146; 443 U.S. 368, 406[1979] USSC 146; , 99 S.Ct. 2898, 2919[1979] USSC 146; , 61 L.Ed.2d 608 (1979), compels my vote to reverse the judgment of the Supreme Court of Virginia.

* The decision in this case is gratifying for me for two reasons:

It is gratifying, first, to see the Court now looking to and relying upon legal history in determining the fundamental public character of the criminal trial. *Ante*, at 564-569, 572-574, and n.9. The partial dissent in *Gannett*, 443 U.S., at 419-433, 99 S.Ct., at 2926-2933, took great pains in assembling—I believe adequately—the historical material and in stressing its importance to this area of the law. See also Mr. Justice BRENNAN's helpful review set forth as Part II of his opinion in the present case. *Ante*, at 589-593. Although the Court in *Gannett* gave a modicum of lip service to legal history, 443 U.S., at 386, n.15, 99 S.Ct., at 2908, n.15, it denied its obvious application when the defense and the prosecution, with no resistance by the trial judge, agreed that the proceeding should be closed.

The court's return to history is a welcome change in direction.

It is gratifying, second, to see the Court wash away at least some of the graffiti that marred the prevailing opinions in *Gannett*. No less than 12 times in the primary opinion in that case, the Court (albeit in what seems now to have become clear dicta) observed that its Sixth Amendment closure ruling applied to the *trial* itself. The author of the first concurring opinion was fully aware of this and would have restricted the Court's observations and ruling to the suppression hearing. *Id.*, at 394, 99 S.Ct., at 2913. Nonetheless, he *joined* the Court's opinion, *ibid.*, with its multiple references to the trial itself; the opinion was not a mere concurrence in the Court's judgment. And Mr. Justice REHNQUIST, in his separate concurring opinion, quite understandably observed, as a consequence, that the Court was holding "without qualification," that " 'members of the public have no constitutional right under the Sixth and Fourteenth Amendments to attend criminal trials,' " *id.*, at 403, 99 S.Ct., at 2917, quoting from the primary opinion, *id.*, at 391, 99 S.Ct., at 2911. The resulting confusion among commentators¹ and journalists² was not surprising.

II

The Court's ultimate ruling in *Gannett*, with such clarification as is provided by the opinions in this case today, apparently is now to the effect that there is no *Sixth* Amendment right on the part of the public—or the press—to an open hearing on a motion to suppress. I, of course, continue to believe that *Gannett* was in error, both in its interpretation of the Sixth Amendment generally, and in its application to the suppression hearing, for I remain convinced that the right to a public trial is to be found where the Constitution explicitly placed it—in the Sixth Amendment.

The Court, however, has eschewed the Sixth Amendment route. The plurality turns to other possible

constitutional sources and invokes a veritable potpourri of them—the Speech Clause of the First Amendment, the Press Clause, the Assembly Clause, the Ninth Amendment, and a cluster of penumbral guarantees recognized in past decisions. This course is troublesome, but it is the route that has been selected and, at least for now, we must live with it. No purpose would be served by my spelling out at length here the reasons for my saying that the course is troublesome. I need do no more than observe that uncertainty marks the nature—and strictness—of the standard of closure the Court adopts. The plurality opinion speaks of "an overriding interest articulated in findings," *ante*, at 581; Mr. Justice STEWART reserves, perhaps not inappropriately, "reasonable limitations," *ante*, at 600; Mr. Justice BRENNAN presents his separate analytical framework; Mr. Justice POWELL in *Gannett* was critical of those Justices who, relying on the Sixth Amendment, concluded that closure is authorized only when "strictly and inescapably necessary," 443 U.S., at 399-400, 99 S.Ct., at 2915, and Mr. Justice REHNQUIST continues his flat rejection of, among others, the First Amendment avenue.

Having said all this, and with the Sixth Amendment set to one side in this case, I am driven to conclude, as a secondary position, that the First Amendment must provide some measure of protection for public access to the trial. The opinion in partial dissent in *Gannett* explained that the public has an intense need and a deserved right to know about the administration of justice in general; about the prosecution of local crimes in particular; about the conduct of the judge, the prosecutor, defense counsel, police officers, other public servants, and all the actors in the judicial arena; and about the trial itself. See 443 U.S., at 413, and n.2, 414, 428-429, 448, 99 S.Ct., at 2922, and n.2, 2923, 2930-2931, 2940. See also *Cox Broadcasting Corp. v. Cohn*, [1975] USSC 44; 420 U.S. 469, 492[1975] USSC 44; , 95 S.Ct. 1029, 1044[1975] USSC 44; , 43 L.Ed.2d 328 (1975). It is clear and obvious to me, on the approach the Court has chosen to take, that, by closing this criminal trial, the trial judge abridged these First Amendment interests of the public.

I also would reverse, and I join the judgment of the Court.

Mr. Justice REHNQUIST, dissenting.

In the Gilbert and Sullivan operetta "Iolanthe," the Lord Chancellor recites:

"The Law is the true embodiment of everything that's excellent,

It has no kind of fault or flaw,

And I, my Lords, embody the Law."

It is difficult not to derive more than a little of this flavor from the various opinions supporting the judgment in this case. The opinion of THE CHIEF JUSTICE states:

"[H]ere for the first time the Court is asked to decide whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without any demonstration that closure is required to protect the defendant's superior right to a fair trial, or that some other overriding consideration requires closure." *Ante*, at 564.

The opinion of Mr. Justice BRENNAN states:

"Read with care and in context, our decisions must therefore be understood as holding only that any privilege of access to governmental information is subject to a degree of restraint dictated by the nature of the information and countervailing interests in security or confidentiality." *Ante*, at 586.

For the reasons stated in my separate concurrence in *Gannett Co. v. DePasquale*, [1979] USSC 146; 443 U.S. 368, 403[1979] USSC 146; , 99 S.Ct. 2898, 2917[1979] USSC 146; , 61 L.Ed.2d 608 (1979), I do not believe that either the First or Sixth Amendment, as made applicable to the States by the Fourteenth, requires that a State's reasons for denying public access to a trial, where both the prosecuting attorney and the defendant have consented to an order of closure approved by the judge, are subject to any additional constitutional review at our hands. And I most certainly do not believe that the Ninth Amendment confers upon us any such power to review orders of state trial judges closing trials in such situations. See *ante*, at 579, n.15.

We have at present 50 state judicial systems and one federal judicial system in the United States, and our authority to reverse a decision by the highest court of the State is limited to only those occasions when the state decision violates some provision of the United States Constitution. And that authority should be exercised with a full sense that the judges whose decisions we review are making the same effort as we to uphold the Constitution. As said by Mr. Justice Jackson, concurring in the result in *Brown v. Allen*, [1953] USSC 12; 344 U.S. 443, 540[1953] USSC 12; , 73 S.Ct. 397, 427[1953] USSC 12; , 97 L.Ed. 469 (1953), "We are not final because we are infallible, but we are infallible only because we are final."

The proper administration of justice in any nation is bound to be a matter of the highest concern to all thinking citizens. But to gradually rein in, as this Court has done over the past generation, all of the ultimate decisionmaking power over how justice shall be administered, not merely in the federal system but in each of the 50 States, is a task that no Court consisting of nine persons, however gifted, is equal to. Nor is it desirable that such authority be exercised by such a tiny numerical fragment of the 220 million people who compose the population of this country. In the same concurrence just quoted, Mr. Justice Jackson accurately observed that "[t]he generalities of the Fourteenth Amendment are so indeterminate as to what state actions are forbidden that this Court has found it a ready instrument, in one field or another, to magnify federal, and incidentally its own, authority over the states." *Id.*, at 534, 73 S.Ct., at 423.

However high-minded the impulses which originally spawned this trend may have been, and which impulses have been accentuated since the time Mr. Justice Jackson wrote, it is basically unhealthy to have so much authority concentrated in a small group of lawyers who have been appointed to the Supreme Court and enjoy virtual life tenure. Nothing in the reasoning of Mr. Chief Justice Marshall in *Marbury v. Madison*, [1803] USSC 16; 1 Cranch 137, 2 L.Ed. 60 (1803), requires that this Court through ever-broadening use of the Supremacy Clause smother a healthy pluralism which would ordinarily exist in a national government embracing 50 States.

The issue here is not whether the "right" to freedom of the press conferred by the First Amendment to the Constitution overrides the defendant's "right" to a fair trial conferred by other Amendments to the Constitution; it is instead whether any provision in the Constitution may fairly be read to prohibit what the trial judge in the Virginia state-court system did in this case. Being unable to find any such prohibition in the First, Sixth, Ninth, or any other Amendment to the United States Constitution, or in the Constitution itself, I dissent.

