provide a public demonstration of fairness; they discourage perjury, the misconduct of participants, and decisions based on secret bias or partiality. Open trials educate the public about the criminal justice system, give legitimacy to it, and have the prophylactic effect of enabling the public to see justice done.[34] Though the Sixth Amendment expressly grants the accused a right to a public trial,[35] the Court has found the right to be so fundamental to the fairness of the adversary system that it is independently protected against state deprivation by the Due Process Clause of the Fourteenth Amendment.[36] The First Amendment right of public access to court proceedings also weighs in favor of openness.[37]

The Court has borrowed from First Amendment cases in protecting the right to a public trial under the Sixth Amendment. Closure of trials or pretrial proceedings over the objection of the accused may be justified only if the state can show "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."[38] In *Waller v. Georgia*,[39] the Court held that an accused's Sixth Amendment rights had been violated by closure of all 7 days of a suppression hearing in order to protect persons whose phone conversations had been taped, when less than 2½ hours of the hearing had been devoted to playing the tapes. The need for openness at suppression hearings "may be particularly strong," the Court indicated, because the conduct of police and prosecutor is often at issue.[40] Relying on *Waller* and First Amendment precedent, the Court similarly held that an accused's Sixth Amendment right to a public trial had been violated when a

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[34] Richmond Newspapers v. Virginia, 448 U.S. 555, 569–73 (1980) (plurality opinion of Chief Justice Burger); id. at 593–97 (Justice Brennan concurring).

[35] Estes v. Texas, 381 U.S. 532, 538–39 (1965).

[36] *In re* Oliver, 333 U.S. 257 (1948); Levine v. United States, 362 U.S. 610 (1960). Both cases were contempt proceedings which were not then "criminal prosecutions" to which the Sixth Amendment applied (for the modern rule *see* Bloom v. Illinois, 391 U.S. 194 (1968)), so that the cases were wholly due process holdings. *Cf.* Richmond Newspapers v. Virginia, 448 U.S. 555, 591 n.16 (1980) (Justice Brennan concurring).

[37] The Court found a qualified First Amendment right for the public to attend criminal trials in Richmond Newspapers v. Virginia. 448 U.S. 555 (1980) (opinion of Chief Justice Burger); id. at 582 (Justice Stevens concurring); id. at 584 (Justice Brennan concurring); id. at 598 (Justice Stewart concurring); id. at 601 (Justice Blackmun concurring). *See* First Amendment, "Government and the Conduct of Trials," *supra*.

[38] Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984) (Press-Enterprise I).

[39] 467 U.S. 39 (1984).

[40] Waller v. Georgia, 467 U.S. 39, 47 (1984) (indicating that the *Press-Enterprise I* standard governs such 6th Amendment cases).