preliminary hearing. The Court determined in *Press-Enterprise I*[977] that historically *voir dire* had been open to the public, and that "[t]he presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest."[978] No such findings had been made by the state court, which had ordered closed, in the interest of protecting the privacy interests of some prospective jurors, 41 of the 44 days of *voir dire* in a rape-murder case. The trial court also had not considered the possibility of less restrictive alternatives, *e.g.*, *in camera* consideration of jurors' requests for protection from publicity. In *Waller v. Georgia*,[979] the Court held that "under the Sixth Amendment any closure of a suppression hearing over the objections of the accused must meet the tests set out in *Press Enterprise*,"[980] and noted that the need for openness at suppression hearings "may be particularly strong" because the conduct of police and prosecutor is often at issue.[981] And, in *Press Enterprise II*,[982] the Court held that there is a similar First Amendment right of the public to access to most criminal proceedings (here a preliminary hearing) even when the accused requests that the proceedings be closed. Thus, an accused's Sixth Amendment-based request for closure must meet the same stringent test applied to governmental requests to close proceedings: there must be "specific findings . . . demonstrating that first, there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent, and second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights."[983] Openness of preliminary hearings was deemed important because, under California law, the hearings can be "the final and most important step in the criminal proceeding" and therefore may be "the sole occasion for public observation of the criminal justice system," and also because the safeguard of a jury is unavailable at preliminary hearings.[984]

Government as Administrator of Prisons.—A prison inmate retains only those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penologi-

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[977] Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984).
[978] 464 U.S. at 510.
[979] 467 U.S. 39 (1984).
[980] Gannett Co. v. DePasquale, 443 U.S. 368 (1979), did not involve assertion *by the accused* of his 6th Amendment right to a public trial; instead, the accused in that case had requested closure. "[T]he constitutional guarantee of a public trial is for the benefit of the defendant." Id. at 381.
[981] 467 U.S. at 47.
[982] Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986).
[983] 478 U.S. at 14.
[984] 478 U.S. at 12.