trial court closed jury selection proceedings without having first explored alternatives to closure on its own initiative.[41]

The Sixth Amendment right to a public trial and the First Amendment right to public access both presume that opening criminal proceedings helps ensure their fairness, but there are circumstances in which an accused might consider openness and its attendant publicity to be unfairly prejudicial. In this regard, the Sixth Amendment right of an accused to a public trial does not carry with it a right to a private trial. Rather, it is the accused's broader right to a fair trial and the government's interest in orderly judicial administration that are weighed in the balance against the public's First Amendment right to access.

The Court has no preset constitutional priorities in resolving these conflicts. Still, certain factors are evident in the Court's analysis, including whether restrictions on access are complete or partial, permanent or time-limited, or imposed with or without full consideration of alternatives. When the complete closure of the record of a normally open proceeding is sought, the accused faces a formidable burden. Thus, in *Press-Enterprise Co. v. Superior Court* the Court reversed state closure of a preliminary hearing in a notorious murder trial, a closure signed off on by the defendant, prosecution, and trial judge: "If the interest asserted is the right of the accused to a fair trial, the preliminary hearing shall be closed only if specific findings are made 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."[42] In the earlier decision of *Gannett Co. v. DePasquale*, by contrast, the Court upheld a temporary denial of public access to the transcript of a hearing to suppress evidence, emphasizing that the Sixth Amendment guarantee to a public trial is primarily a personal right of the defendant, not an embodiment of a common law right to open proceedings in favor of the public,[43] and further finding that any First Amendment right to access that might have existed was outweighed by the circumstances of the case.[44] Other cases disfavoring open access have involved press coverage that was found to be so inflammatory or disruptive as to undermine the basic integrity, orderliness, and reliability of the trial pro-

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[41] Presley v. Georgia, 558 U.S. ___, No. 09–5270, slip op. (2010) (per curiam).

[42] Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 14 (1986) (Press-Enterprise II).

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

[44] 443 U.S. 368 (1979). Cf. Nixon v. Warner Communications, 435 U.S. 589, 610 (1978).