cess.[45] Nevertheless, a First Amendment right to public access has found firmer footing over time, and the Court is reluctant to recognize any *per se* rules to wall off criminal proceedings, preferring instead that any restrictions be premised on particularized findings by the trial judge and an exploration of less restrictive options.[46]

RIGHT TO TRIAL BY IMPARTIAL JURY

Jury Trial

By the time the United States Constitution and the Bill of Rights were drafted and ratified, the institution of trial by jury was almost universally revered, so revered that its history had been traced back to Magna Carta.[47] The jury began in the form of a grand or presentment jury with the role of inquest and was started by Frankish conquerors to discover the King's rights. Henry II regularized this type of proceeding to establish royal control over the machinery of justice, first in civil trials and then in criminal trials. Trial by petit jury was not employed at least until the reign of Henry III, in which the jury was first essentially a body of witnesses, called for their knowledge of the case; not until the reign of Henry VI did it become the trier of evidence. It was during the seventeenth century that the jury emerged as a safeguard for the criminally accused.[48] Thus, in the eighteenth century, Blackstone could commemorate the institution as part of a "strong and two-fold barrier . . . between the liberties of the people and the prerogative of the crown" because "the truth of every accusation . . . . [must] be confirmed by the unanimous suffrage of twelve of his equals and neighbors indifferently chosen and superior to all suspicion."[49] The right was guaranteed in the constitutions of the original 13 states, was guaranteed in the body of the Constitution[50] and in the Sixth Amendment, and the constitution of every state entering the Union there-

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[45] Estes v. Texas, 381 U.S. 532 (1965); *see also* Sheppard v. Maxwell, 384 U.S. 333 (1966). *Compare* Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976) (prior restraint on pretrial publicity held unconstitutional). *Estes* found that live television coverage of criminal trials was an inherent violation of due process, requiring no specific showing of actual prejudice. This holding was overturned in Chandler v. Florida. 449 U.S. 560 (1981)

[46] Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982); Chandler v. Florida, 449 U.S. 560 (1981); Richmond Newspapers v. Virginia, 448 U.S. 555 (1980); Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976).

[47] Historians no longer accept this attribution. Thayer, *The Jury and Its Development*, 5 HARV. L. REV. 249, 265 (1892), and the Court has noted this. Duncan v. Louisiana, 391 U.S. 145, 151 n.16 (1968).

[48] W. FORSYTH, HISTORY OF TRIAL BY JURY (1852).

[49] W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 349–350 (T. Cooley, 4th ed. 1896). The other of the "two-fold barrier" was, of course, indictment by grand jury.

[50] In Art. III, § 2.