tected the public and the press in seeking to attend trials.[968] The right of access to criminal trials against the wishes of the defendant was held protected in *Richmond Newspapers v. Virginia*,[969] but the Justices could not agree upon a majority rationale that would permit principled application of the holding to other areas in which access is sought.

Chief Justice Burger pronounced the judgment of the Court, but his opinion was joined by only two other Justices (and one of them in a separate concurrence drew conclusions probably going beyond the Chief Justice's opinion).[970] Basic to the Chief Justice's view was an historical treatment that demonstrated that trials were traditionally open. This openness, moreover, was no "quirk of history" but "an indispensable attribute of an Anglo-American trial." This characteristic flowed from the public interest in seeing fairness and proper conduct in the administration of criminal trials; the "therapeutic value" to the public of seeing its criminal laws in operation, purging the society of the outrage felt at the commission of many crimes, convincingly demonstrated why the tradition had developed and been maintained. Thus, "a presumption of openness inheres in the very nature of a criminal trial under our system of justice." The presumption has more than custom to command it. "[I]n the context of trials . . . 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."[971]

Justice Brennan, joined by Justice Marshall, followed a significantly different route to the same conclusion. In his view, "the First Amendment . . . has a *structural* role to play in securing and fostering our republican system of self-government. Implicit in this structural role is not only 'the principle that debate on public issues should be uninhibited, robust, and wide-open,' but the antecedent assumption that valuable public debate—as well as other civic behavior—must be informed. The structural model links the First Amendment to that process of communication necessary for a democracy

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[968] *DePasquale* rested solely on the Sixth Amendment, the Court reserving judgment on whether there is a First Amendment right of public access. 443 U.S. at 392.

[969] 448 U.S. 555 (1980). The decision was 7 to 1, with Justice Rehnquist dissenting, id. at 604, and Justice Powell not participating. Justice Powell, however, had taken the view in Gannett Co. v. DePasquale, 443 U.S. 368, 397 (1979) (concurring), that the First Amendment did protect access to trials.

[970] *See* Richmond Newspapers v. Virginia, 448 U.S. 555, 582 (1980) (Justice Stevens concurring).

[971] 448 U.S. at 564–69. The emphasis on experience and history was repeated by the Chief Justice in his opinion for the Court in Press-Enterprise Co. v. Superior Court, 478 U.S. 1 (1986) (Press-Enterprise II).