U.S. Supreme Court Ruling on Public Trials

Remarks by Congressman Les AuCoin
in the House of Representatives
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• Mr. AuCOIN. Mr. Speaker, as a former journalist and an elected official committed to preserving First and Sixth Amendment rights, I rise today to express dismay at the ruling last week by the U.S. Supreme Court regarding public trials.

As the Washington Post said in an editorial following the decision:

"Thirty years ago, the Supreme Court said it had been 'unable to find a single instance of a criminal trial conducted in camera in any federal, state, or municipal court during the history of this country,' except for courts martial and juvenile proceedings. Yesterday, the justices said, in a vote of 5 to 4, that any trial can be conducted in secret whenever the defendant, the prosecutor and the judge want it that way."

The Post is quite right in pointing to the contradiction this ruling poses to our nation's judicial history. And The Post is also right in quoting the words of Lord Acton: "Everything secret degenerates, even the administration of justice."

For by this decision, the U.S. Supreme Court has contributed to the erosion of fundamental guarantees to American liberty.

Americans are prone to hyperbole. But in this case, the danger this ruling poses cannot be exaggerated.

Trials are public in the United States for good reason. Distrust of secret trials -- of inquisitions and Star Chamber proceedings -- was one of the strongest motives for the founding of this nation and the drafting of its Constitution. Among other things, the Sixth Amendment declares that "the accused shall enjoy the right to a speedy and public trial."

Now five members of the highest court say that does not mean the public must be allowed to attend a trial. With this ruling the court ignores 200 years of history as well as the basic principle that it is only through the guarantee of a public trial that the right of a fair trial ultimately rests, not only for the accused, but for all who someday may be accused.

How else, if the courts are not open to public scrutiny, are the rights of defendants to be protected? By what means is this basic institution of government, the judiciary, to be held accountable to the public if the public cannot keep watch?

Openness allows the people, on whose behalf the state and its agents act, to witness first-hand the apparatus of justice. Even if only one reporter oversees what happens in the courtroom, the public has a witness.

And it is the reporter who is the target of the Supreme Court ruling. Judges and prosecutors have grown understandably anxious as defense attorneys have undertaken a variety of delaying measures, often citing excessive and sometimes sensational pre-trial publicity as cause. Changes of venue, which frequently result, are expensive, and judges and prosecutors, as locally elected officials sensitive to the outcries of overburdened taxpayers, are looking to hold down costs.

From this standpoint, the Supreme Court's ruling might seem at first blush to have some credibility. But the potential costs of this precedent, extended to logical extremes as it most assuredly will be, far outweigh the savings to taxpayers.

Many states have focused attention on less drastic ways to minimize pre-trial publicity. Bench-bar-press guidelines have been one byproduct that has been relatively successful. If more needs to be done, this should be the course to follow.

Some insist the Supreme Court ruling's impact is being overstated. It is hard to imagine how. For the past 200 years of our nation's history, our Constitution has stood as an affirmation for open and speedy justice. A distrust of secrecy, and the excesses it breeds, is implicit in our body of law.

It is not reason enough to sweep away this fundamental precept with the explanation that a defendant, for whom a public trial is a right, may waive that right. A defendant is not the only party to a criminal action. The people also have a vested interest in seeing justice done.

The reasoning expressed by Justice Lewis F. Powell that the courts will protect the public against abuses is hollow rhetoric, and the Justice knows it. Who would tolerate such an answer from the legislative branch today? It is just possible for judges and prosecutors to abuse their high office, fail to perform their duties or become incompetent. They are human just like the rest of us.

Americans aren't accustomed or constituted to rely on paternalistic assurances. They like to see for themselves.

And that's exactly how it should be -- in government and in court. The doors of our courtrooms should be kept open so we can find out who is adjudged guilty and who is found innocent, and so we can see who is oppressed and who is the oppressor.

I hope the justices of our highest court will have an early opportunity to re-examine this ruling, which has come on the narrowest of margins and without a guiding consensus, to restore the intent of the framers of the Constitution and the expectation of Americans.