diate" national harm, Justice Brennan continued, but "the harm to a fair trial that might otherwise eventuate from publications which are suppressed . . . must inherently remain speculative."[447] Although the result in the case does not foreclose the possibility of future "gag orders," it does lessen the number to be expected and shifts the focus to other alternatives for protecting trial rights.[448] On a different level, however, are orders that restrain the press as a party to litigation in the dissemination of information obtained through pretrial discovery. In *Seattle Times Co. v. Rhinehart*,[449] the Court determined that such orders protecting parties from abuses of discovery require "no heightened First Amendment scrutiny."[450]

Obscenity and Prior Restraint.—Only in the obscenity area has there emerged a substantial consideration of the doctrine of prior restraint, and the doctrine's use there may be based upon the fact that obscenity is not a protected form of expression.[451] In *Kingsley Books v. Brown*,[452] the Court upheld a state statute that, though it embodied some features of prior restraint, was seen as having little more restraining effect than an ordinary criminal statute; that is, the law's penalties applied only after publication. But, in *Times Film Corp. v. City of Chicago*,[453] a divided Court specifically affirmed that, at least in the case of motion pictures, the First Amendment did not proscribe a licensing system under which a board of censors could refuse to license for public exhibition films that it found obscene. Books and periodicals may also be subjected to some forms of prior restraint,[454] but the thrust of the Court's opinions in this area with regard to all forms of communication has been to establish strict standards of procedural protections to ensure that the censoring agency

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Justice Brennan there also. Id. at 617. Justice White, while joining the opinion of the Court, noted that he had grave doubts that "gag orders" could ever be justified but he would refrain from so declaring in the Court's first case on the issue. Id. at 570.

[447] 427 U.S. at 599.

[448] One such alternative is the banning of communication with the press on trial issues by prosecution and defense attorneys, police officials, and court officers. This, of course, also raises First Amendment issues. *See*, *e.g.*, Chicago Council of Lawyers v. Bauer, 522 F.2d 242 (7th Cir. 1975), *cert. denied*, 427 U.S. 912 (1976).

[449] 467 U.S. 20 (1984).

[450] 467 U.S. at 36. The decision was unanimous, all other Justices joining Justice Powell's opinion for the Court, but Justices Brennan and Marshall noting additionally that under the facts of the case important interests in privacy and religious freedom were being protected. Id. at 37, 38.

[451] *See* discussion of "Obscenity," *infra*. *See also* Justice Brennan's concurrence in Nebraska Press Ass'n v. Stuart, 427 U.S. at 590.

[452] 354 U.S. 436 1957). *See also* Bantam Books v. Sullivan, 372 U.S. 58 (1963).

[453] 365 U.S. 43 (1961). *See also* Young v. American Mini Theatres, 427 U.S. 50 (1976) (zoning ordinance prescribing distances adult theaters may be located from residential areas and other theaters is not an impermissible prior restraint).

[454] *Cf.* Kingsley Books v. Brown, 354 U.S. 436 (1957).