so long as the discretion of the issuing official was limited to questions of time, place, and manner.[432] "[*O*]*nly* content-based injunctions are subject to prior restraint analysis." [433]

The most recent Court encounter with the doctrine in the national security area occurred when the government attempted to enjoin press publication of classified documents pertaining to the Vietnam War[434] and, although the Court rejected the effort, at least five and perhaps six Justices concurred on principle that, in some circumstances, prior restraint of publication would be constitutional.[435] But no cohesive doctrine relating to the subject, its applications, and its exceptions has emerged.

The Supreme Court has written that "[t]he special vice of a prior restraint is that communication will be suppressed . . . before an

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[432] Cox v. New Hampshire, 312 U.S. 569 (1941); Poulos v. New Hampshire, 345 U.S. 395 (1953). In Carroll v. President & Comm'rs of Princess Anne, 393 U.S. 175 (1968), the Court held invalid the issuance of an ex parte injunction to restrain the holding of a protest meeting, holding that usually notice must be given the parties to be restrained and an opportunity for them to rebut the contentions presented to justify the sought-for restraint. In Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971), the Court held invalid as a prior restraint an injunction preventing the petitioners from distributing 18,000 pamphlets attacking respondent's alleged "blockbusting" real estate activities; he was held not to have borne the "heavy burden" of justifying the restraint. "No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court. Designating the conduct as an invasion of privacy . . . is not sufficient to support an injunction against peaceful distribution of informational literature of the nature revealed by this record." Id. at 419–20. *See also* City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750 (1988) (ordinance vesting in the mayor unbridled discretion to grant or deny annual permit for location of newsracks on public property is facially invalid as prior restraint).

The necessity of immediate appellate review of orders restraining the exercise of First Amendment rights was strongly emphasized in National Socialist Party v. Village of Skokie, 432 U.S. 43 (1977), and seems to explain the Court's action in Philadelphia Newspapers v. Jerome, 434 U.S. 241 (1978). *But see* Moreland v. Sprecher, 443 U.S. 709 (1979) (party can relinquish right to expedited review through failure to properly request it).

[433] DVD Copy Control Association, Inc. v. Bunner, 75 P.3d 1, 17 (Cal. 2003) ("[a] prior restraint is a *content-based* restriction on speech *prior to its occurrence*," id. at 17–18). Regarding the standard for content-neutral injunctions, *see* "Public Issue Picketing and Parading," *infra*.

[434] New York Times Co. v. United States, 403 U.S. 713 (1971). The vote was 6-to-3, with Justices Black, Douglas, Brennan, Stewart, White, and Marshall in the majority and Chief Justice Burger and Justices Harlan and Blackmun in the minority. Each Justice issued an opinion.

[435] The three dissenters thought such restraint appropriate in this case. Id. at 748, 752, 759. Justice Stewart thought restraint would be proper if disclosure "will surely result in direct, immediate, and irreparable damage to our Nation or its people," id. at 730, while Justice White did not endorse any specific phrasing of a standard. Id. at 730–33. Justice Brennan would preclude even interim restraint except upon "governmental allegation and proof that publication must inevitably, directly, and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea." Id. at 712–13.