Manual Enterprises v. Day [1314] upset a Post Office ban upon the mailing of certain magazines addressed to homosexual audiences, but resulted in no majority opinion of the Court. Nor did a majority opinion emerge in *Jacobellis v. Ohio*, which reversed a convic-

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York, 390 U.S. 629 (1968), although the Court insists on a high degree of specificity. Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968); Rabeck v. New York, 391 U.S. 462 (1968). Protection of children in this context is concurred in even by those Justices who would proscribe obscenity regulation for adults. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73, 113 (1973) (Justice Brennan dissenting). But children do have First Amendment protection and government may not bar dissemination of everything to them. "Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." Erznoznik v. City of Jacksonville, 422 U.S. 205, 212–14 (1975) (in context of nudity on movie screen). *See also* FCC v. Pacifica Foundation, 438 U.S. 726, 749–50 (1978); Pinkus v. United States, 436 U.S. 293, 296–98 (1978).

[1312] Protection of unwilling adults was the emphasis in Rowan v. Post Office Dep't, 397 U.S. 728 (1970), which upheld a scheme by which recipients of objectionable mail could put their names on a list and require the mailer to send no more such material. But, absent intrusions into the home, FCC v. Pacifica Foundation, 438 U.S. 726 (1978), or a degree of captivity that makes it impractical for the unwilling viewer or auditor to avoid exposure, government may not censor content, in the context of materials not meeting constitutional standards for denomination as pornography, to protect the sensibilities of some. It is up to offended individuals to turn away. Erznoznik v. City of Jacksonville, 422 U.S. 205, 208–12 (1975). *But see* Pinkus v. United States, 436 U.S. 293, 300 (1978) (jury in determining community standards must include both "'sensitive' and 'insensitive' persons" in the community, but may not "focus[ ] upon the most susceptible or sensitive members when judging the obscenity of materials . . . ").

[1313] The First Amendment requires that procedures for suppressing distribution of obscene materials provide for expedited consideration, for placing the burden of proof on government, and for hastening judicial review. Additionally, Fourth Amendment search and seizure law has been suffused with First Amendment principles, so that the law governing searches for and seizures of allegedly obscene materials is more stringent than in most other areas. Marcus v. Search Warrant, 367 U.S. 717 (1961); A Quantity of Books v. Kansas, 378 U.S. 205 (1964); Heller v. New York, 413 U.S. 483 (1973); Roaden v. Kentucky, 413 U.S. 496 (1973); Lo-Ji Sales v. New York, 442 U.S. 319 (1979); *see also* Walter v. United States, 447 U.S. 649 (1980). Scienter—that is, knowledge of the nature of the materials—is a prerequisite to conviction, Smith v. California, 361 U.S. 147 (1959), but the prosecution need only prove the defendant knew the contents of the material, not that he knew they were legally obscene. Hamling v. United States, 418 U.S. 87, 119–24 (1974). *See also* Vance v. Universal Amusement Co., 445 U.S. 308 (1980) (public nuisance injunction of showing future films on basis of past exhibition of obscene films constitutes impermissible prior restraint); McKinney v. Alabama, 424 U.S. 669 (1976) (criminal defendants may not be bound by a finding of obscenity of materials in prior civil proceeding to which they were not parties). None of these strictures applies, however, to forfeitures imposed as part of a criminal penalty. Alexander v. United States, 509 U.S. 544 (1993) (upholding RICO forfeiture of the entire adult entertainment book and film business of an individual convicted of obscenity and racketeering offenses). Justice Kennedy, dissenting in *Alexander*, objected to the "forfeiture of expressive material that had not been adjudged to be obscene." Id. at 578.

[1314] 370 U.S. 478 (1962).