bears the burden of proof on obscenity, that only a judicial order can restrain exhibition, and that a prompt final judicial decision is assured.[455]

Subsequent Punishment: Clear and Present Danger and Other Tests

Granted that the controversy over freedom of expression at the time of the ratification of the First Amendment was limited almost exclusively to the problem of prior restraint, nevertheless the words speak of laws "abridging" the freedom of speech and press, and the modern cases have been largely fought over subsequent punishment. "[T]he mere exemption from previous restraints cannot be all that is secured by the constitutional provisions, inasmuch as of words to be uttered orally there can be no previous censorship, and the liberty of the press might be rendered a mockery and a delusion, and the phrase itself a byword, if, while every man was at liberty to publish what he pleased, the public authorities might nevertheless punish him for harmless publications . . . ."

"[The purpose of the speech and press clause] has evidently been to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them. . . . The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might pre-

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[455] Freedman v. Maryland, 380 U.S. 51 (1965); Teitel Film Corp. v. Cusack, 390 U.S. 139 (1968); Interstate Circuit v. City of Dallas, 390 U.S. 676 (1968); Blount v. Rizzi, 400 U.S. 410 (1971); United States v. Thirty-seven Photographs, 402 U.S. 363, 367–375 (1971); Southeastern Promotions v. Conrad, 420 U.S. 546 (1975); Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 229 (1990) (ordinance requiring licensing of "sexually oriented business" "does not provide for an effective limitation on the time within which the licensor's decision must be made [and] also fails to provide an avenue for prompt judicial review"); City of Littleton v. Z.J. Gifts D–4, L.L.C., 541 U.S. 774, 784 (2004) ("Where (as here and as in *FW/PBS*) the regulation simply conditions the operation of an adult business on compliance with neutral and nondiscretionary criteria . . . and does not seek to censor content, an adult business is not entitled to an unusually speedy judicial decision of the *Freedman* type"); Fort Wayne Books, Inc. v. Indiana, 489 U.S. 46 (1989) (seizure of books and films based on *ex parte* probable cause hearing under state RICO law's forfeiture procedures constitutes invalid prior restraint; instead, there must be a determination in an adversarial proceeding that the materials are obscene or that a RICO violation has occurred). *But cf.* Alexander v. United States, 509 U.S. 544 (1993) (RICO forfeiture of the entire adult entertainment book and film business of an individual convicted of obscenity and racketeering offenses, based on the predicate acts of selling four magazines and three videotapes, does not constitute a prior restraint and is not invalid as "chilling" protected expression that is not obscene).