at law by raising his constitutional defense in the state trial.[1321] But again, this policy disfavoring federal injunctions was never stated as an absolute.[1322]

In *Dombrowski v. Pfister*,[1323] the Court appeared to change the policy somewhat. The case on its face contained allegations and offers of proof that may have been sufficient alone to establish the "irreparable injury" justifying federal injunctive relief.[1324] But the formulation of standards by Justice Brennan for the majority placed great emphasis upon the fact that the state criminal statute in issue regulated expression. Any criminal prosecution under a statute regulating expression might of itself inhibit the exercise of First Amendment rights, he said, and prosecution under an overbroad statute,[1325] such as the one in this case, might critically impair exercise of those rights. The mere threat of prosecution under such an overbroad statute "may deter . . . almost as potently as the actual application of sanctions. . . ." [1326]

In such cases, courts could no longer embrace "[t]he assumption that defense of a criminal prosecution will generally assure ample vindication of constitutional rights," because either the mere threat of prosecution or the long wait between prosecution and final vindication could result in a "chilling effect upon the exercise of First

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[1321] The older cases are Fenner v. Boykin, 271 U.S. 240 (1926); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Beal v. Missouri Pac. R.R., 312 U.S. 45 (1941); Watson v. Buck, 313 U.S. 387 (1941); Williams v. Miller, 317 U.S. 599 (1942); Douglas v. City of Jeannette, 319 U.S. 157 (1943). There is a stricter rule against federal restraint of the use of evidence in state criminal trials. Stefanelli v. Minard, 342 U.S. 117 (1951); Pugach v. Dollinger, 365 U.S. 458 (1961). The Court reaffirmed the rule in Perez v. Ledesma, 401 U.S. 82 (1971). State officers may not be enjoined from testifying or using evidence gathered in violation of federal constitutional restrictions, Cleary v. Bolger, 371 U.S. 392 (1963), but the rule is unclear with regard to federal officers and state trials. *Compare* Rea v. United States, 350 U.S. 214 (1956), *with* Wilson v. Schnettler, 365 U.S. 381 (1961).

[1322] *E.g.*, Douglas v. City of Jeannette, 319 U.S. 157, 163–164 (1943); Stefanelli v. Minard, 342 U.S. 117, 122 (1951). *See also* Terrace v. Thompson, 263 U.S. 197, 214 (1923), Future criminal proceedings were sometimes enjoined. *E.g.*, Hague v. CIO, 307 U.S. 496 (1939).

[1323] 380 U.S. 479 (1965). Grand jury indictments had been returned after the district court had dissolved a preliminary injunction, erroneously in the Supreme Court's view, so that it took the view that no state proceedings were pending as of the appropriate time. For a detailed analysis of the case, *see* Fiss, *Dombrowski*, 86 YALE L. J. 1103 (1977).

[1324] "[T]he allegations in this complaint depict a situation in which defense of the State's criminal prosecution will not assure adequate vindication of constitutional rights. They suggest that a substantial loss of or impairment of freedoms of expression will occur if appellants must await the state court's disposition and ultimate review in this Court of any adverse determination. These allegations, if true, clearly show irreparable injury." 380 U.S. at 485–86.

[1325] That is, a statute that reaches both protected and unprotected expression and conduct.

[1326] 380 U.S. at 486.