

Seized Books' Return Ordered

A special three-judge federal court has held that books seized in a series of raids on newsstands in Jefferson and St. Bernard parishes in 1968 must be returned to those from whom they were taken.

The court also ordered that the materials be suppressed as evidence in cases pending against persons arrested in the raids and charged in state court with obscenity.

In ruling on two cases filed in federal court as a result of the raids and arrests, Judge John Minor Wisdom of the U.S. Fifth Circuit Court of Appeals

and District Judge Edward J. Boyle Sr. refused to hold that the entire Louisiana obscenity statute is unconstitutional but did hold that a certain portion is invalid.

In this connection the court, in an opinion written by Judge Boyle, said: "A simple reading of this subsection — LSA-RS 14:106, Subsection (7) of Paragraph (A) — reveals by its terms that it is overbroad. A literal application thereof would, for example, make it a criminal offense to display, for any purposes, universally accepted anatomical works or rec-

ognized works of art or the like anywhere but 'in art galleries'."

The court held that this subsection is unconstitutional, but its invalidity is not fatal to the whole statute.

The third member of the panel, District Judge Alvin B. Rubin, noted a dissent and said he will file written reasons at a later date.

Plaintiffs in the suits were Delta Book Distributing Inc., Fernin J. Farrell, who was arrested Aug. 23, 1968, at the Expressway Book Stand; Ronald J. Walker, who was arrested Sept. 6, 1968, at the Veterans News Stand; Lawrence P. Pittman, who was arrested Oct. 2, 1968, at the Broad Bruxelles Seafood and News Center; August M. Ledesma and Harold J. Speiss, who were arrested along with Pittman Oct. 16, 1968, at the Broad Bruxelles Seafood & News Center; and Charles Rhody, who was arrested along with Walker Oct. 18, 1968, at the Veterans News Stand.

The suits were brought against Jefferson and St. Bernard law enforcement officers.

Judges Wisdom and Boyle held that dissemination of a particular work, which is alleged to be obscene, should be completely undisturbed until an independent determination of obscenity has been made by a judicial officer, including an adversary hearing.

Citing other cases, the court said, "Applying these principals to the cases before us, the arrests, as well as the seizures claimed to be incident thereto, are clearly invalid for lack of a prior adversary determination of the obscenity of the materials upon which the arrests and seizures were based."

The court also held that the St. Bernard ordinance under which some of the defendants were charged is unconstitutional and unenforceable. It is poorly drafted and in some respects may be unintelligible, the court said.

Because use of the evidence seized in the raids was ordered

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suppressed, the court did not feel it necessary to rule on a request for an injunction against state court prosecutions.