

## Fair Trade Hit in Two Cases

### By U. S. Supreme Court

Backers of fair trade were turned down in two rulings by the U. S. Supreme Court on October 14. In one case, the Court rejected an appeal by Esso (N. J.), both a supplier and a retailer, for maintenance of its fair trade contracts with other retailers. In the other case, the Court declined to review a U. S. Court of Appeals decision in New York that General Electric could not enjoin Masters Mail Order Co., Washington, D. C., not a fair trade area, from selling GE products below fair trade prices in New York, a fair trade state. The sales in question took place in Washington, the Court ruled. Masters promptly announced a nation-wide, cut-price mail order drive.

The New Mexico Supreme Court early this month ruled unanimously that the "non-signer" clause of the state's fair trade law was unconstitutional. The decision, which reversed that of a lower court, dealt with two consolidated complaints against Skaggs Drug Center, Albuquerque, by General Electric Co. and Miles Laboratories (*PW*, September 24, 1956). By ruling invalid the provision that fair trade contracts are binding upon signatory dealers and non-signers alike, the state court has rendered the New Mexico price maintenance law virtually ineffective. General Electric, however, has stated that it will continue to place the prices of its smaller appliances under fair trade as long as no better system of protecting its outlets from cut-rate competition is available.

A similar ruling regarding the South Carolina fair trade act was issued by the supreme court of that state in a unanimous decision issued early in September. In that instance, General Electric had complained against cut-rate selling by a retailer, Rogers-Kent.

Non-signer clauses in state fair trade laws have now been declared unconstitutional in Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Michigan, New Mexico, South Carolina and Utah. The fair trade acts of Nebraska and Virginia have been

ruled out *in toto*. Missouri, Texas and Vermont have no fair trade legislation. In other states, the highest courts have either ruled the fair trade laws fully valid or have not ruled against them.

## "Howl" Ruled Not Obscene; Frisco Bookseller Cleared

In a ringing defense of the freedom to read, San Francisco Municipal Court Judge Clayton W. Horn on October 3 ruled that "Howl and Other Poems" by Allen Ginsberg is not "obscene" within the meaning of the California law. In so ruling, he dismissed charges of publishing an "obscene" book brought by San Francisco police last June against Lawrence Ferlinghetti, proprietor of the City Lights Pocket Bookshop, publisher of the paperback collection of Mr. Ginsberg's poetry, and a poet himself (*PW*, July 15, September 30).

Judge Horn's decision, the *San Francisco Chronicle* reported, "was hailed with applause and cheers from a packed audience that offered the most fantastic collection of beards, turtle-necked shirts and Italian hair-do's ever to grace the grimy precincts of the Hall of Justice." In a lead editorial, the *Chronicle* congratulated Judge Horn "for a sharp and staggering blow to the chops of prurience and censorship."

Judge Horn's 39-page decision, which laid down a set of rules for future literary ventures by the San Francisco Police Department, included the following statements:

"If the material has the slightest redeeming social importance, it is not obscene because it is protected by the First and Fourteenth Amendments of the U.S. Constitution and the California Constitution."

"If it does not have the slightest redeeming social importance, it may be obscene."

"The test of obscenity in California is that the material must have a tendency to deprave or corrupt readers by exciting lascivious thoughts and arousing lustful desires to the point that it presents a clear

## "Howl" Trial Concludes; Decision Due October 3

Lawyers and "expert" witnesses traded quotations from the world's literary classics in San Francisco Municipal Court on September 19 as the trial of "Howl and Other Poems" by Allen Ginsberg drew to a close. Judge Clayton Horn, conducting the trial without a jury, stated that he will decide on October 3 whether Lawrence Ferlinghetti, publisher of "Howl" and owner of the City Lights Pocket Bookshop, is guilty of publishing an "obscene" book. If convicted, Mr. Ferlinghetti could face a sentence of six months in jail and a fine of \$500.

"Howl" has been in legal difficulties in San Francisco since March of this year, when the U.S. Customs Bureau in San Francisco seized 520 copies of the book which Mr. Ferlinghetti was importing from England for publication in the U.S. (*PW*, April 29). Subsequently, Mr. Ferlinghetti had an edition of the book printed in the U.S., an edition completely removed from Customs' jurisdiction. On June 3, San Francisco police purchased copies of this edition at the City Lights Pocket Bookshop from clerk Shigeyoshi Murao and then arrested Mr. Murao and Mr. Ferlinghetti. At the time of the arrests, Police Captain William Hanrahan announced that he would await the decision in the "Howl" case before going ahead with a planned "crack down" on "obscene" literature being sold in the San Francisco area (*PW*, July 15).

Opening the "Howl" trial, Judge Horn stated that he will judge the book along the lines established by the U.S. Supreme Court's recent definition of "obscenity" in the Roth case: "whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest" (*PW*, July 1). Judge Horn said that he would admit "expert" testimony of the book's literary merits. Literary figures who appeared on behalf of the book included Mark Schorer, Walter Van

Tilburg Clark, Kenneth Rexroth and Vincent McHugh. Surveying the spectators at the trial, the San Francisco *Chronicle* commented: "There were probably more beards and baggy jackets and more copies of the *Partisan Review* than the Hall of Justice has seen in its history."

In cross-examining the "expert" witnesses, the prosecution failed to find a controversial word that one of the witnesses would concede was irrelevant and inserted just for the sake of obscenity. On the final day of the trial, the prosecution brought in two experts of its own, an assistant professor of English at the University of San Francisco and a free-lance writer of articles and radio scripts, who testified that "Howl" was obscene and of questionable literary merit.

In reply, defense attorney Lawrence Speiser read passages from some of the world's great literature—including the Bible, Shakespeare, Balzac and Joyce—to prove that stark language is often found necessary by great writers. J. W. Ehrlich, another defense attorney, read long passages from Judge John M. Woolsey's famous 1933 decision in the "Ulysses" case. Mr. Ehrlich said, "You can't be led to think common rotten things just because you read something in a book—unless it is your purpose to find common rotten things as you read."

Concluding the case for "Howl", Mr. Speiser said, "San Francisco needs a climate in which literature will be protected and encouraged. 'Howl' may or may not have great literary value, but if it is literature, that should be the major factor in the court's decision."

## Constable Publishes First Juvenile List

Constable & Co. of London is issuing this fall its first list of books for children, under the editorship of Grace Allen Hogarth, who, at various times, has served as editor of children's books for Oxford University Press in New York and in London, Houghton Mifflin and Chatto & Windus. She joined

porting the arrest. 'They are not fit for children to read.'

"Here is a new and startling doctrine and one which, if followed to the letter, would clear many of the world's classics from local bookstores, not excepting the Bible, wherein is many a chapter and verse not recommended for perusal by tiny tots.

"The Police Department's rampageous excursion into censorship may be explained by ignorance—not only of literature, but also of laws and court decisions pertaining to censors. No such pleading can be advanced for the Library Board, which is clearly guilty not only of a perversion of its function but also of an almost hysterical attempt to duck responsibility.

"For a year, the fearful board has kept under lock and key an assortment of Chinese books and pamphlets—ranging from fairy tales through art folios to the political pronouncements of Mao Tse-tung—while frantically petitioning the FBI, the U.S. Attorney General and the State Un-American Activities Committee to tell it if this reading matter is 'subversive.'

"We submit that this is a finding that any adult, reasonably intelligent Library Board could and should make for itself. We further submit that even if the publications were 'subversive,' a dutiful Library Board would be in there fighting for its constitutional right to stock and circulate them. For a library ought in all good conscience to be a repository for all writings, a collection of all books wherein the wisdom, and also the unwisdom, of all mankind can be glimpsed for the formation of judgments that are informed and intelligent."

### *Book Lifter Reported Active In New Brunswick, N.J.*

Charles Reed of Reed's Bookstore, New Brunswick, N.J., reports a book thief active in the New Brunswick area, specializing in leather-bound dictionaries and Skira art books. Contacting a number of other booksellers in the New Brunswick area, Mr.

Reed obtained from a dealer in second-hand books the following description of a man who had offered this bookseller dictionaries and Skira books, which the man said were second-hand: speaks with an accent, either German or Swiss; middle-aged; medium height; light hair; usually wearing short-sleeved shirt; usually carrying a bag.

### *Denver Booksellers Assn. Organized in Denver, Col.*

The Denver Booksellers Association, organized in April at the suggestion of Harold Dillon, Doubleday's Denver representative, held its second meeting several weeks ago. The Association's members include: the May Co., Denver Dry Goods Co., Daniels & Fisher, Kendrick-Bellamy, Capitol Book Shop, Barclay Book Shop, Pooh Corner Book Store, All Books and Harold's Book Store. Mrs. Gladys Dillon, wife of Harold Dillon, is secretary; Mrs. Hough of Harold's Book Store represents the booksellers.

The Association is chiefly concerned with the problem of how to get more book reviews and publicity about books into the Denver newspapers.

The Association is planning to sponsor a 26-minute radio program in the fall. A trial program, conducted by Gene Amole over KLZ, co-sponsored by Doubleday, was heard on June 1.

### *Newman Press To Publish New Paperback Textbook Line*

The Newman Press has announced a new paperback line, this one intended for the text market. It will be called the College Readings series and all books in the line will carry the customary text discount of 20%. List price of the volumes, each of which runs to well over 430 pages, will probably be \$2.50, perhaps a little less.

The series will consist of anthologies for use by Catholic college students, bring-

kin, president of Pocket Books, and James Jacobson, who, with Freeman Lewis, is one of the two executive vice-presidents of Pocket (*PW*, April 1). Pocket Books reports that last year it distributed more than 100,000,000 units, including Pocket Books and Little Golden Books.

### *Booksellers and Press Protest San Francisco Censorship*

The San Francisco Police Department's seizure last month of copies of a paperback poetry volume as not suitable for children and arrest of a bookstore clerk have been hotly protested by booksellers in the San Francisco area and by the San Francisco *Chronicle*.

In a formal resolution passed on June 15, the Northern California Booksellers Association protested "the police action taken by Captain [William A.] Hanrahan in arresting Lawrence Ferlinghetti and Shigeyoshi Murao for selling the allegedly obscene 'Howl and Other Poems' by Allen Ginsberg." Drawing support from the recent Supreme Court decision in *Butler vs. Michigan* (*PW*, March 4), the Northern California booksellers declared, "The proposition that adult literature must meet the standards of suitability for children is manifestly absurd. . . .

"The situation wherein a bookseller may be arrested for the sale of a book at the sole discretion of a police officer, regardless of his qualifications to so judge and regardless of his knowledge of judicial precedent in such cases, is insufferable. If this in fact is the law, it is clearly unconstitutional."

The Allen Ginsberg poetry collection, the prime target of the San Francisco police drive, was subject to censorship action earlier this year when the U.S. Customs Bureau seized 520 copies of the paperbound volume which were being imported for publication here by City Lights Books, San Francisco bookseller and publisher (*PW*, April 29). Lawrence Ferlinghetti, owner of City Lights, subsequently had an edition of the book printed in this country, an edition completely removed from Customs' juris-

diction. The copies seized by Customs were released early in June after U.S. Attorney Lloyd H. Burke declined to file condemnation proceedings against it.

Also released at that time were seized copies of a magazine, *The Miscellaneous Man*, printed in England. This magazine, said San Francisco *Chronicle* literary critic William Hogan, is "a quarterly that exists on a limited (almost microscopic) readership none of which includes children, simply because much of the experimental rhetoric in it is unintelligible to them."

On June 3, San Francisco police, led by Captain William Hanrahan, entered the City Lights Book Shop, purchased copies of "Howl" and *The Miscellaneous Man*, arrested clerk Shigeyoshi Murao and filed action against Lawrence Ferlinghetti. Bail for Mr. Murao was posted by the American Civil Liberties Union. If found guilty, Mr. Murao and Mr. Ferlinghetti face possible jail sentences of six months and possible maximum fines of \$500.

In the week following the arrests, the *Chronicle* reported, the police widened their search for the two proscribed books, visiting other bookstores in the San Francisco area. "We're interested in finding out whether those two particular books—the ones we made the pinch on—are around," Captain Hanrahan told the *Chronicle*. Reporting that his office is contemplating similar action against other San Francisco stores that may be stocking books that "are found to be obscene," Captain Hanrahan said, "We will await the outcome of this case before we go ahead with other books. I am not at liberty to say which books I'm talking about."

Surveying the situation and denouncing some recent derelictions of the San Francisco Library Board as well, the San Francisco *Chronicle* in an editorial headlined, "Making A Clown out of San Francisco," noted: "The Police Department has not only set itself up as a censor of literature, but has enunciated a remarkable code for the guidance of booksellers who are averse to jail. . . . 'We have purchased one of each of those books,' said Captain Hanrahan in re-

and present danger of inciting to anti-social or immoral action."

"The book or material must be judged as a whole by its effect on the average adult in the community."

"Scienter [willfulness to commit the offense] must be proved."

"Book reviews must be received in evidence if properly authenticated"; the defense introduced reviews in the "Howl" case.

"Evidence of expert witnesses in the literary field is proper."

"Comparison of the material with other similar material previously adjudicated is proper."

"The people owe a duty to themselves and to each other to preserve and protect their constitutional freedoms from any encroachment by government unless it appears that the allowable limits of such protection have been breached and then to take only such action as will heal the breach."

Judge Horn in his decision quoted U.S. Supreme Court Justice William O. Douglas: "I have the same confidence in the ability of our people to reject noxious literature as I have in their capacity to sort out the true from the false in theology, in economics, in politics or in any other field."

Judge Horn added, "In considering material claimed to be obscene, it is well to remember the motto 'Honi soit qui mal y pense.'" For the benefit of the Police Department and others in the court room, he translated the French motto, "Evil to him who evil thinks."

Dismissing the Police Department's contention that the presence of "dirty" words in the book made the book "dirty," Judge Horn said, "The author of 'Howl' has used those words because he believed that his portrayal required them. . . . Life is not encased in one formula whereby everyone acts the same or conforms to a particular pattern. Would there be any freedom of the press or speech if one must reduce his vocabulary to vapid, innocuous euphemism? An author should be real in treating

his subject and be allowed to express his thoughts and ideas in his own words."

Judge Horn warned of the dangers of governmental censorship. "The best method of censorship is by the people as self-guardians of public opinion"—"an open invitation," commented the *Chronicle*, "to the public not to buy 'Howl' if they don't want to read its controversial passages."

"Howl" has been in legal difficulties in San Francisco since March of this year, when U.S. Customs officials there seized 520 copies of the book which Mr. Ferlinghetti was importing from England for publication here. Subsequently, Mr. Ferlinghetti had an edition printed in the U.S.—an edition removed from Customs jurisdiction. San Francisco Police purchased copies of this edition in June and arrested Mr. Ferlinghetti and Shigeyoshi Murao, a clerk at the bookstore. If convicted, they faced maximum sentences of six months in jail and a fine of \$500.

In an important preliminary ruling in this case, Judge Horn dismissed charges against Mr. Murao on the grounds that there was no evidence to prove, as required by California law, that he *intended* to "willfully and lewdly" sell an obscene publication; the prosecution, Judge Horn said, had not shown that the clerk knew the contents of the book, and no obscene content was revealed by the cover. Only Mr. Ferlinghetti, as publisher of "Howl," was held legally responsible since he knew the contents of the book. On the same principle, simultaneous charges brought against Mr. Ferlinghetti for selling *The Miscellaneous Man*, a literary quarterly published in Berkeley, were dropped.

Judge Horn's decision was hailed by American Civil Liberties Union attorney J.W. Ehrlich, who headed Mr. Ferlinghetti's legal defense. "Every book that was ever worthwhile was condemned somewhere by someone," he told the *Chronicle*. Assistant District Attorney Raph McIntosh, understandably less elated, told the paper, "It's just another case as far as the District Attorney's office is concerned."

Mr. Ferlinghetti's reaction, as reported

by the *Chronicle*, was practical, if not voluble. "When he had done shaking congratulatory hands with all the North Beach bards in the courtroom, he hurried back to his store without a word and stacked his windows with copies of the book—price, 75 cents; in print, 10,000 copies."

### *Franchise Plan Launched By British Book Centre*

The British Book Centre, Inc., New York, importing publisher, wholesaler and retailer of British books, has launched a franchise plan in which over 100 bookstores and bookstore branches are already taking part, a plan "designed to enable booksellers to promote British books on a profit-guaranteed basis." John P. Dessauer, general manager of the British Book Centre, reports that the franchise plan was developed after careful consultation with leading dealers and that a strong advertising campaign will back it.

Features of the plan include the following: Participating dealers receive a full trade discount of 40% on all their orders, from single-copy orders on up, including titles that have to be imported specially. Participants are listed free in all the Centre's national advertising, and the Centre will pay half the cost of local ads announcing that the dealer has joined the plan; mats for this purpose are available. To obtain a franchise, a bookseller places an initial order for 50 or more assorted books selected from the more than 1000 titles which the Centre distributes. All books are billed at the full trade discount and are sold on a fully returnable basis. In addition, the bookseller agrees to accept automatic shipment of two copies of one outstanding British title every month. These books are also fully returnable. They are chosen "for their superior merit and salability" by the Centre in consultation with several leading American booksellers, a group varying according to the books considered.

Among other benefits provided by the plan, the Centre "will also assume all the

work and guarantee satisfaction in obtaining books or answers on inquiries for the franchise dealer's customers. The dealer is able to accept special orders for any British book and is assured, by forwarding the request to the Centre, of receiving prompt service or reply, thus satisfying his customer with a minimum amount of effort or expense on his part. This service includes the procurement of out-of-print and rare material, which is located through the Centre's famous Search Service in London. Orders for British books for which American publishing rights have been announced are automatically forwarded by the Centre to the U.S. publisher."

Every franchise dealer gets an attractive Lucite plastic point-of-sale display sign in red and gray on white, size 13x5 inches, bearing the British Book Centre crest and the words "Headquarters for British Books" and "Franchise."

Early in November the Centre will run full-page-plus-one-column ads in the *New York Times Book Review* and *Saturday Review* to announce that leading booksellers from coast to coast are its franchised dealers. Each dealer will be named, with copy urging readers to go to these shops for British books or information about in-print or out-of-print British books. Also, a selection of British books for Christmas giving will be promoted in the ads as being in stock, with others, at the franchised store.

In announcing the plan, Mr. Dessauer says "recent market research shows a growing popularity in the U.S. for British books," and cites the large U.S. readership of leading British magazines, attendance at British films and the fact that more than a million Americans travel to Britain every year.

Participants in the plan include leading bookstore chains, college stores, major independent bookstores, well-known personal bookshops and some of the important department store book departments.

The plan is the first major move reported by the Centre since Mr. Dessauer's appointment as general manager was announced during the summer (*PW*, August 19).