

Who's obscene? / by Mary Ware Dennett.

Contributors

Dennett, Mary Ware, 1872-1947.

Publication/Creation

New York : Vanguard, [1930], ©1930.

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**WHO'S
OBSCENE**



MARY WARE DENNETT

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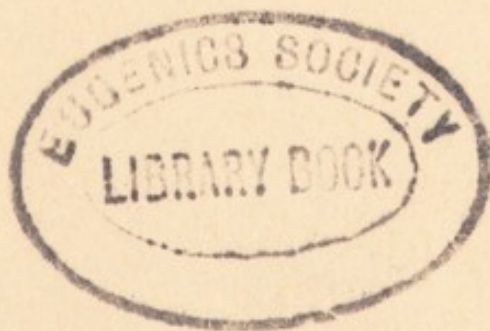
To my dear friend

Marie C. Stopes

from

Mary Ware Bennett

March
1930



WHO'S OBSCENE?

NATHAN H. HARRIS

THE SEVENTH OF SEPTEMBER

WHO'S OBSCENE?



New York

THE VANGUARD PRESS



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WHO'S OBSCENE?

By

MARY WARE DENNETT

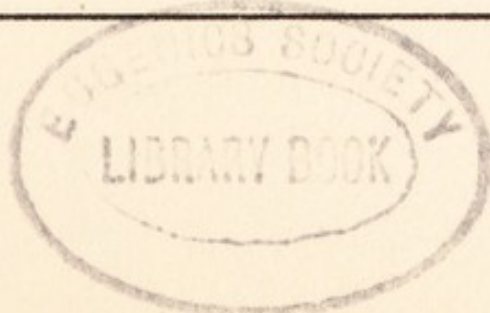
Author of

THE SEX SIDE OF LIFE



New York

THE VANGUARD PRESS



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My heartiest thanks go to Morris L. Ernst, Newman Levy and Alexander Lindey, whose generosity and disinterestedness in conducting my case without any fees for legal service can never be forgotten; and whose many-sided aid has been invaluable, both in the conduct of the case and in the preparation of this book.

M.W.D.

FOREWORD

IN THE year of our Lord 1929 a strange spectacle was to be observed in the hallowed Borough of Brooklyn of the City of New York. All the powers of two important departments of the Federal Government were concentrated upon forcing the stigma of obscenity upon a genial, civilized woman, who many years before had written for her own children a paper summarizing, plainly and without sentimental vagaries, the fundamental facts of sex. The circulation of this paper, in pamphlet form, had caused her arrest, and this woman was hailed triumphantly to court and there convicted of circulating obscene literature.

The case was then appealed to the three judges sitting in the Circuit Court of Appeals. The score at that time was 60 to 0. The Post Office officials, the District Attorneys, the members of the Grand Jury, the twelve good men and true who heard the testimony at the trial, three lower court Judges, had all cast their influences against Mrs. Dennett and the pamphlet.

And then as against these sixty arose Judges Hand, Swan and Chase, who in unequivocal terms not only released the pamphlet from the clutches of the criminal law but went out of their way to praise the document—lauding its sincerity and commenting on its truthfulness.

The score of sixty to three offers further evidence that obscenity is merely a subjective matter. To the pure all things are pure and to the impure . . . And to vice hunters, in the Post Office, at the Custom House,

at the offices of the Watch and Ward Society, and the New York Society for the Suppression of Vice—reading for smut hours on end, all of life must inevitably appear filthy. It is high time that we examined into the activities of these busybodies who are so fearsome of free trade in ideas.

The full history of the case, the devious machinations of federal agents and the fetid motives behind the trial are here told for the first time by Mrs. Dennett herself. But in scope the book is far broader; it surveys critically the powers that have been granted to the Post Office Department, reviews the history of other cases in which these powers have been invoked, and demonstrates that the unlimited authority vested, by custom if not by law, in a single bureau and in a single individual, offers a dangerous and sinister threat to American liberties.

MORRIS L. ERNST

PREFACE

THIS book has an object. It is offered to thoughtful Americans as a possible aid and convenience in forming an opinion as to whether they want to live any longer under the tyranny of Post Office censorship.

"Tell it just as you have told it to us," said the publishers, when they proposed the book. Although the subject is not presented as a lawyer or an historian would present it, every effort has been made to give a documented authentic account of the events described, so that it may be, so far as it goes, a reliable, albeit an unconventional, handbook, which may serve some useful purpose toward the solution of one of our government's most serious problems.

Post Office censorship does not directly imperil many citizens—for relatively few people have their writings declared "unmailable" as "indecent," and fewer still are indicted, convicted and sentenced as I happen to have been. But indirectly, the Post Office censorship affects millions of citizens. It deprives them of their constitutionally guaranteed right to free communication and access to knowledge; and the possibilities of its untrammelled power are almost limitless. Within the memory of the present generation, it has been used to suppress not only pornography but expressions of opinion on political and social problems—all under the blanket term of "obscenity."

The strangest part of this process is that nowhere, least of all among the government officials who hold this amazing individual power, nor yet in the law which

gives them their power, can be found a specific definition of obscenity. Yet obscenity is a crime. And Post Office officials have the power to accuse anyone of criminal obscenity, and to bar such a person's writings from the mails. In so doing they are responsible to no one. It is an unrestricted power. Actually the power is centralized in one person, the Solicitor of the Post Office. His decrees may also be signed by the Postmaster General, as a matter of form, but it is the Solicitor who has the power and the responsibility.

It is for the people of the United States to decide whether they want such a situation to continue.

M. W. D.

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INTRODUCTION

IN THE old-fashioned granite Federal Post Office Building in Washington is the office of the Solicitor of the Post Office Department. The Solicitor has charge of the legal side of the Department's work—all matters of postal law being referred to him. He also is the censor-in-chief: and it is this function which renders him one of the most extraordinary officials in the whole country, for there is no other individual power comparable to his, unless it be the power of the President in war-time.

That he does not use all his power all of the time is but chance. The law gives him the authority to ban from the mails the writings of anyone he may choose, on his sole responsibility. His official word can pronounce anyone criminally obscene by declaring that person's writing or publication unmailable under the obscenity law. The Solicitor is under no obligation to state what words or phrases in the banned writing or publication are criminal, nor to define what constitutes criminal obscenity. The victim has no redress, other than to request the Solicitor to change his mind, or to ask a Federal Judge to issue an injunction delaying the ban, while the Judge reviews the Post Office decision. The Judge is under no obligation either to grant the injunction or to review the decision. Both precedent and what is called "public policy" are against interfering with the discretionary powers of the Post Office officials, so that what may appear like opportunity for appeal is practically of no avail.

If the victim of this criminal charge by the Post

Office acquiesces and withdraws his banned material from the mail, he is thus penalized—that is, one of his rights as a citizen is taken away—by a one-man decision without due process of law. If the banned material is a publication, its chief means of circulation and sale are ended, a loss inflicted by a tyrannical power from which there is no certainty of appeal. If the victim does not acquiesce, but continues to mail the banned material, he may at any time be indicted and be faced with the possibility of conviction in a federal court, for no other reason than that the Solicitor declares his product indecent while he himself believes it to be decent. Here are two opposing opinions; the difference between them is that the Solicitor can call upon the whole coercive power of the United States government to support his dictum, and can force the victim into all the burden and expense of a court trial and damage both his reputation and his business, while the victim has no coercive power to call upon to back up his own opinion—the opinions of other citizens who agree with him not counting in the least—nor can he bring suit against the government for defamation of character or interference with his business.

Even if this sword of Damocles in the shape of an indictment, with all its attendant losses and expenses, does not fall upon the victim, he is penalized to a certain extent anyhow, because no banned article can be advertised or reviewed without rendering the magazine or paper in which such advertisement or review appears, liable also to suppression by the Solicitor's dictum. He is therefore deprived of his best and most normal means of reaching the public.

Ever since 1873 the Post Office Solicitor has been vested with this un-American power. Later in the book it will be shown how this strange event came to pass,

and various instances of how the power has been used will be cited. But at this point it is well to read the statute which started the system. It is the so-called Comstock obscenity law, which formed a mile-stone in the history of American law and social sanctions. The boresome repetitions and the revolting undefinitive adjectives are worth wading through, because they reveal so much that is food for thought in this decade.

SEC. 334. (Criminal Code, Section 211, amended.) Mailing Obscene matter.—

Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any

post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. The term "indecent" within the intendment of this section shall include matter of a character tending to incite arson, murder, or assassination. (R.S. Sec. 3893; July 12, 1876, c. 186, Sec. 1, 19 Stat. 90; Sept. 26, 1888, c. 1039, Sec. 2, 25 Stat. 496; May 27, 1908, c. 206, 35 Stat. 416; Mar. 4, 1909, c. 321, Sec. 211, 35 Stat. 1129; Mar. 4, 1911, c. 241, Sec. 2, 36 Stat. 1339.)

It was under this statute that my pamphlet, *The Sex Side of Life*, was declared unmailable in 1922, and under which I was indicted, convicted and sentenced in 1929. Nor is the importance of this problem diminished by the fact that the United States Circuit Court of Appeals reversed my conviction. Its decision in this case is so important that it is printed in full below.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA

Plaintiff-Appellee,

—against—

MARY W. DENNETT

Defendant-Appellant

Before: SWAN, AUGUSTUS N. HAND and CHASE

Circuit Judges:

Appeal from the District Court of the United States
for the Eastern District of New York.

Mary W. Dennett was convicted of mailing obscene

matter in contravention of Section 211 of the United States Criminal Code. Reversed.

The statute under which the defendant was convicted reads as follows:

Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted or intended for preventing conception or producing abortion, or for any indecent or immoral use . . . is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

The defendant is the mother of two boys. When they had reached the respective ages of eleven and fourteen she concluded that she ought to teach them about the sex side of life. After examining about sixty publications on the subject and forming the opinion that they were inadequate and unsatisfactory she wrote the pamphlet entitled *Sex Side of Life*, for the mailing of which she was afterwards indicted.

The defendant allowed some of her friends, both parents and young people, to read the manuscript which she had written for her own children and it finally came to the notice of the owner of the *Medical Review of Reviews*, who asked if he might read it and afterwards publish it. About a year afterwards she published the

article herself at twenty-five cents a copy when sold singly, and at lower prices when ordered in quantities. Twenty-five thousand of the pamphlets seem to have been distributed in this way.

At the trial, the defendant sought to prove the cost of publication in order to show that there could have been no motive of gain on her part. She also offered to prove that she had received orders from the Union Theological Seminary, Young Men's Christian Association, the Young Women's Christian Association, the Public Health Departments of the various States and from no less than four hundred welfare and religious organizations, as well as from clergymen, college professors and doctors and that the pamphlet was in use in the Public Schools at Bronxville, New York. The foregoing offers were rejected on the ground that the defendant's motive in distributing the pamphlet was irrelevant and that the only issues were whether she caused the pamphlet to be mailed and whether it was obscene.

The pamphlet begins with a so-called "Introduction for Elders" which sets forth the general views of the writer and is as follows:

In reading several dozen books on sex matters for the young with a view to selecting the best for my own children, I found none that I was willing to put into their hands, without first guarding them against what I considered very misleading and harmful impressions, which they would otherwise be sure to acquire in reading them. That is the excuse for this article.

It is far more specific than most sex information written for young people. I believe we owe it to children to be specific if we talk about the subject at all.

From a careful observation of youthful curiosity and a very vivid recollection of my own childhood, I have

tried to explain frankly the points about which there is the greatest inquiry. These points are not frankly or clearly explained in most sex literature. They are avoided, partly from embarrassment, but more, apparently, because those who have undertaken to instruct the children are not really clear in their own minds as to the proper status of the sex relation.

I found that from the physiological point of view, the question was handled with limitations and reservations. From the point of natural science it was often handled with sentimentality, the child being led from a semi-esthetic study of the reproduction of flowers and animals to the acceptance of a similar idea for human beings. From the moral point of view it was handled least satisfactorily of all, the child being given a jumble of conflicting ideas, with no means of correlating them—fear of venereal disease, one's duty to suppress "animal passion," the sacredness of marriage, and so forth. And from the emotional point of view, the subject was not handled at all.

This one omission seems to me to be the key to the whole situation, and it is the basis of the radical departure I have made from the precedents in most sex literature for children.

Concerning all four points of view just mentioned, there are certain departures from the traditional method that have seemed to me worth making.

On the physiological side I have given, as far as possible, the proper terminology for the sex organs and functions. Children have had to read the expurgated literature which has been specifically prepared for them in poetic or colloquial terms, and then are needlessly mystified when they hear things called by their real names.

On the side of natural science, I have emphasized our unlikeness to the plants and animals rather than our likeness, for while the points we have in common with the lower orders make an interesting section in our

general education, it is knowing about the vital points in which we differ that helps us to solve the sexual problems of maturity; and the child needs that knowledge precisely as he needs knowledge of everything which will fortify him for wise decisions when he is grown.

On the moral side, I have tried to avoid confusion and dogmatism in the following ways; by eliminating fear of venereal disease as an appeal for strictly limited sex relations, stating candidly that venereal disease is becoming curable; by barring out all mention of "brute" or "animal" passion, terms frequently used in pleas for chastity and self-control, as such talk is an aspersion on the brutes and has done children much harm in giving them the impression that there is an essential baseness in the sex relation; by inviting the inference that marriage is sacred by virtue of its being a reflection of human ideality rather than because it is a legalized institution.

Unquestionably the stress which most writers have laid upon the beauty of nature's plans for perpetuating the plant and animal species, and the effort to have the child carry over into human life some sense of that beauty has come from a most commendable instinct to protect the child from the natural shock of the revelation of so much that is unesthetic and revolting in human sex life. The nearness of the sex organs to the excretory organs, the pain and messiness of childbirth are elements which certainly need some compensating antidote to prevent their making too disagreeable and disproportionate an impress on the child's mind.

The results are doubtless good as far as they go, but they do not go nearly far enough. What else is there to call upon to help out? Why, the one thing which has been persistently neglected by practically all the sex writers—the emotional side of sex experience. Parents and teachers have been afraid of it and distrustful of it. In not a single one of all the books for young people that I have thus far read has there been the frank and

unashamed declaration that the climax of sex emotion is an unsurpassed joy, something which rightly belongs to every normal human being, a joy to be proudly and serenely experienced. Instead there has been all too evident an inference that sex emotion is a thing to be ashamed of, that yielding to it is indulgence which must be curbed as much as possible, that all thought and understanding of it must be rigorously postponed, at any rate till after marriage.

We give to young folks, in their general education, as much as they can grasp of science and ethics and art, and yet in their sex education, which rightly has to do with all of these, we have said, "Give them only the bare physiological facts, lest they be prematurely stimulated." Others of us, realizing that the bare physiological facts are shocking to many a sensitive child, and must somehow be softened with something pleasant, have said, "Give them the facts, yes, but see to it that they are so related to the wonders of evolution and the beauties of the natural world that the shock is minimized." But none of us has yet dared to say, "Yes, give them the facts, give them the nature study, too, but also give them some conception of sex life as a vivifying joy, as a vital art, as a thing to be studied and developed with reverence for its big meaning, with understanding of its farreaching reactions, psychologically and spiritually, with temperant restraint, good taste and the highest idealism." We have contented ourselves by assuming that marriage makes sex relations respectable. We have not yet said that it is only beautiful sex relations that can make marriage lovely.

Young people are just as capable of being guided and inspired in their thought about sex emotion as in their taste and ideals in literature and ethics, and just as they imperatively need to have their general taste and ideals cultivated as a preparation for mature life, so do they need to have some understanding of the marvellous place which sex emotion has in life.

Only such an understanding can be counted on to give them the self-control that is born of knowledge, not fear, the reverence that will prevent premature or trivial connections, the good taste and finesse that will make their sex life when they reach maturity a vitalizing success.

After reading the foregoing introduction comes the part devoted to sex instruction entitled "An Explanation for Young People." The author proceeds to explain sex life in detail both physiologically and emotionally. It describes the sex organs and their operation and the way children are begotten and born. It negatives the idea that the sex impulse is in itself a base passion and treats it as normal and its satisfaction as a great and justifiable joy when accompanied by love between two human beings. It warns against perversion, venereal disease and prostitution and argues for continence and healthy mindedness and against promiscuous sex relations.

The pamphlet in discussing the emotional side of the human sex relations says:

It means that a man and a woman feel that they *belong* to each other in a way that they belong to no one else; it makes them wonderfully happy to be together; they find they want to live together, work together, play together, and to have children together, that is, to marry each other; and their dream is to be happy together all their lives—the idea of sex relations between people who do not love each other, who do not feel any sense of belonging to each other, will always be revolting to highly developed sensitive people.

People's lives grow finer and their characters better, if they have sex relations only with those they love. And those who make the wretched mistake of yielding to the sex impulse alone when there is no love to go

with it, usually live to despise themselves for their weakness and their bad taste. They are always ashamed of doing it, and they try to keep it secret from their families and those they respect. You can be sure that whatever people are ashamed to do is something that can never bring them real happiness. It is true that one's sex relations are the most personal and private matters in the world, and they belong just to us and to no one else, but while we may be shy and reserved about them, *we are not ashamed.*

When two people really love each other, they don't care who knows it. They are proud of their happiness. But no man is ever proud of his connection with a prostitute and no prostitute is ever proud of her business.

Sex relations belong to love, and love is never a *business*. Love is the nicest thing in the world, but it can't be bought. And the sex side of it is the biggest and most important side of it, so it is the one side of us that we must be absolutely sure to keep in good order and perfect health, if we are going to be happy ourselves or make anyone else happy.

The government proved that the pamphlet was mailed to Mrs. C. A. Miles, Grottoes, Virginia.

Upon the foregoing record, of which we have given a summary, the trial judge charged the jury that the motive of the defendant in mailing the pamphlet was immaterial, that it was for them to determine whether it was obscene, lewd, or lascivious within the meaning of the statute and that the test was "whether its language has a tendency to deprave and corrupt the morals of those whose minds are open to such things and into whose hands it may fall; arousing and implanting in such minds lewd and obscene thoughts or desires."

The court also charged that "even if the matter sought to be shown in the pamphlet complained of were

true, that fact would be immaterial, if the statements of such facts were calculated to deprave the morals of the readers by inciting sexual desires and libidinous thoughts."

The jury returned a verdict of guilty upon which the defendant was sentenced to pay a fine of \$300 and from the judgment of conviction she has taken this appeal.

Greenbaum Wolff & Ernst, attorneys for appellant, Morris L. Ernst, Newman Levy and Alexander Lindey, Counsel.

Howard W. Ameli, United States Attorney; Herbert H. Kellogg, James E. Wilkinson, Emanuel Bublick, Assistant United States Attorneys, of counsel, for the United States, Appellee.

AUGUSTUS N. HAND, *Circuit Judge*:

It is doubtless true that the personal motive of the defendant in distributing her pamphlet could have no bearing on the question whether she violated the law. Her own belief that a really obscene pamphlet would pay the price for its obscenity by means of intrinsic merits would leave her as much as ever under the ban of the statute. *Regine v. Hicklin*, L.R. 3 Q.B. 360; *United States v. Dennett*, Fed. Case No. 14,571; *Rosen v. United States*, 161 U. S. at p. 41.

It was perhaps proper to exclude the evidence offered by the defendant as to the persons to whom the pamphlet was sold for the reason that such evidence, if relevant at all, was part of the government's proof. In other words, a publication might be distributed among doctors or nurses or adults in cases where the distribution among small children could not be justified. The fact that the latter might obtain it accidentally or surreptitiously as they might see some medical books

which would not be desirable for them to read would hardly be sufficient to bar a publication otherwise proper. Here the pamphlet appears to have been mailed to a married woman. The tract may fairly be said to be calculated to aid parents in the instruction of their children in sex matters. As the record stands, it is a reasonable inference that the pamphlet was to be given to children at the discretion of adults and to be distributed through agencies that had the real welfare of the adolescent in view. There is no reason to suppose that it was to be broadcast among children who would have no capacity to understand its general significance. Even the court in *Regina v. Hicklin*, L.R. 3 Q.B. at p. 367, which laid down a more strict rule than the New York Court of Appeals was inclined to adopt in *People v. Eastman*, 188 N. Y. 478, said that "the circumstances of the publication" may determine whether the statute has been violated.

But the important consideration in this case is not the correctness of the rulings of the trial judge as to the admissibility of evidence, but the meaning and scope of those words of the statute which prohibit the mailing of an "*obscene, lewd or lascivious pamphlet*." It was for the trial court to determine whether the pamphlet could reasonably be thought to be of such a character before submitting any question of the violation of the statute to the jury. *Knowles v. United States*, 170 Fed. 409; *Magon v. United States*, 248 Fed. 201. And the test most frequently laid down seems to have been whether it would tend to deprave the morals of those into whose hands the publication might fall by suggesting lewd thoughts and exciting sensual desires. *Dunlopp v. United States*, 165 U. S. at p. 501; *Rosen v. United States*, 161 U. S. 29.

It may be assumed that any article dealing with the

sex side of life and explaining the functions of the sex organs is capable in some circumstances of arousing lust. The sex impulses are present in every one and without doubt cause much of the weal and woe of human kind. But it can hardly be said that because of the risk of arousing sex impulses there should be no instruction of the young in sex matters and that the risk of imparting instruction outweighs the disadvantages of leaving them to grope about in mystery and morbid curiosity and of requiring them to secure such information, as they may be able to obtain, from ill-informed and often foul-minded companions, rather than from intelligent and high-minded sources. It may be argued that suggestion plays a large part in such matters and that on the whole the less sex questions are dwelt upon the better. But it by no means follows that such a desideratum is attained by leaving adolescents in a state of inevitable curiosity, satisfied only by the casual gossip of ignorant playmates.

The old theory that information about sex matters should be left to chance has greatly changed and, while there is still a difference of opinion as to just the kind of instruction which ought to be given, it is commonly thought in these days that much was lacking in the old mystery and reticence. This is evident from the current literature on the subject, particularly such pamphlets as *Sex Education* issued by the Treasury Department United States Public Health Service in 1927.

The statute we have to construe was never thought to bar from the mails everything which *might* stimulate sex impulses. If so, much chaste poetry and fiction, as well as many useful medical works would be under the ban. Like everything else this law must be construed reasonably with a view to the general objects aimed at.

While there can be no doubt about its constitutionality, it must not be assumed to have been designed to interfere with serious instruction regarding sex matters unless the terms in which the information is conveyed are clearly indecent.

We have been referred to no decision where a truthful exposition of the sex side of life evidently calculated for instruction and for the explanation of relevant facts has been held to be obscene. In *Dysart v. United States*, 272 U. S. 655, it was decided that the advertisement of a lying-in retreat to enable unmarried women to conceal their missteps, even though written in a coarse and vulgar style, did not fall within prohibition of the statute and was not "obscene" within the meaning of the law.

The defendant's discussion of the phenomena of sex is written with sincerity of feeling and with an idealization of the marriage relation and sex emotion. We think it tends to rationalize and dignify such emotions rather than to arouse lust. While it may be thought by some that portions of the tract go into unnecessary details that would better have been omitted, it may be fairly answered that the curiosity of many adolescents would not be satisfied without full explanation and that no more than that is really given. It also may reasonably be thought that accurate information, rather than mystery and curiosity, is better in the long run and is less likely to occasion lascivious thoughts than ignorance and anxiety. Perhaps instruction other than that which the defendant suggests would be better. That is a matter as to which there is bound to be a wide difference of opinion but, irrespective of this, we hold that an accurate exposition of the relevant facts of the sex side of life in decent language and in manifestly serious and disinterested spirit cannot ordinarily be regarded as

obscene. Any incidental tendency to arouse sex impulses which such a pamphlet may perhaps have, is apart from and subordinate to its main effect. The tendency can only exist in so far as it is inherent in any sex instruction and it would seem to be outweighed by the elimination of ignorance, curiosity and morbid fear. The direct aim and the net result is to promote understanding and self-control.

No case was made for submission to the jury and the judgment must therefore be reversed.

The plan of this book is to give a full description of my own case as a recent extreme instance of Post Office censorship which has roused public interest, and to cite other previous instances which are significant both as to the curious contradictory interpretations of obscenity, and as to the use of obscenity prosecutions for ulterior motive. American history is well nigh incredible in these phases. A book of this sort cannot be comprehensively encyclopaedic, but it can, I hope, give a sufficient glimpse into the mass of striking facts, so as to enable the readers to draw some useful conclusions.

In regard to my own case, I shall try to answer the questions which are mostly asked: "How could such a thing happen in this day?" "Who's at the bottom of this thing?" "What does it mean?"

The account will include some bits of evidence of the sort not usually introduced into courts—matters of psychological import, which cannot be ignored in any present-day effort to make law and the administration of law begin to have some proper relation to the modern scientific handling of sex education.

There will also be included the testimony for the defense which the Judge ruled out as irrelevant. It is

this suppression of testimony which has roused the public to a realization that there is something radically wrong with the rules of evidence and the adherence to court precedents, not to mention the law under which a prosecution of this sort is possible. It is further astounding to people in general to realize that when the case goes to the Circuit Court of Appeals, none of the suppressed testimony can be brought out. Nothing goes to the higher court except what appears in the record of the lower court, and there is nothing to indicate the suppressed testimony except the fact that there were ninety exceptions taken by the counsel for the defense.

The final question of course is, "What is to be done about it all?" It would seem as if the time were at hand when upstanding citizens will put their heads together and frame a rational demand for the renovation of the laws so that no one can any longer be made a victim of the legally authorized tyranny of the Post Office officials.

The solution of the whole problem of the social control of indecency is doubtless quite far away, as it hinges not upon law primarily, but upon education which begins in infancy and which can be counted upon to produce minds in which concepts of indecency will find no lodgement. But this one matter of Post Office censorship is a question by itself, concrete and clearly visible. I trust that the suggestions at the close of the book may serve as an aid in working out the proper remedial measures.

PART I
"THE SEX SIDE OF LIFE" CASE

I

THE REASON FOR THE PAMPHLET

THE NEEDS of my two young sons caused the writing of the pamphlet, *The Sex Side of Life—An Explanation for Young People*. It was in 1915, when one of the boys was fourteen and the other ten years old. Like most modern mothers of fair intelligence, I had tried to give adequate answers to all their questions from the time of their earliest curiosity as to where babies came from, how they get into this world, the father's and the mother's part and so forth. I tried also to anticipate their curiosity enough to give them assurance that there was always an explanation waiting for them whenever they wanted to know more.

While both questions and answers were on the whole normal and comfortable, with the advent of the age of puberty, I felt that this verbal instruction should be supplemented by something which they could read by themselves, which would give them a sort of review of what they knew up to date, and which would at the same time help them to meet the new situation into which they were growing, when they would begin to be girl-conscious, and when they would have not only a boy's increasing curiosity about biological mysteries, but would experience also the physical and emotional stirring which sexual development brings to the "teens" age.

Two factors accentuated my determination to find for them something published that would meet the rising

whom letter writing came hard, there was no response, on paper. But when he arrived home, I was not left in doubt many minutes, though I did not mention the subject myself. After first greetings he betook himself to the shower-bath to tidy up after a transcontinental journey. Above the roar of the water I heard him call. A tousled head was stuck out of the door, and with a most perceiving smile he said, "Hi, mother that paper you sent me was all right." "Did it fill the bill?" I asked. "It *sure did*," he remarked and disappeared into his bath. That remark spoke volumes, and I would far rather have had those few words from him than all the thousand-dollar prizes in the world, or the approval of any sex-hygiene jurors, no matter how academically distinguished.

From that time the manuscript was loaned frequently as friends who had children reaching the adolescent period heard of it. More than one copy had to be made for this informal circulation. The sheets became dog-eared from much use. The owner and publisher of the *Medical Review of Reviews* heard of it, and asked to see it—because of his interest in the subject of sex education. After reading it he wanted to show it to the editor, Dr. Victor Robinson. The result was that the paper was brought out in the issue of February, 1918, and Dr. Robinson wrote for it a commendatory foreword, in which he expressed his enthusiastic hope that the article would be "reprinted in pamphlet form and distributed by thousands." Shortly afterwards, it was reprinted in *The Modern School*, a small magazine whose readers were educators of the progressive sort. Both appearances brought forth many favorable comments, and within a year the article was published in pamphlet form, in accord with the recommendation of the *Medical Review of Reviews*. (The editor's fore-

word and the text of the pamphlet are given later in the Court record.)

CIRCULATION UNDISTURBED FOR FOUR YEARS

The first editions of the pamphlet were small, but as the demand increased, reprints were made five thousand at a time. The circulation grew simply because one person commended it to another. It had none of the "promotion" which publications ordinarily have. I had very pressing work on my hands, and the circulation of this pamphlet was a by-the-by matter. I was glad to have it do what good it could, and as the proof of its usefulness increased I was naturally interested in having it reach as many people as might find it helpful, though I did not want it to have an artificially stimulated circulation.

It never had any advertising, with the single exception of a tiny notice in the *Survey* in 1920. Nor did circularizing play any part in developing the circulation, except on one occasion when notices were sent to the directors of a few of the summer camps for children.

Neither was the circulation promoted to any extent by reviews. So far as I know, it has been discussed by critics not more than half a dozen times, until recently when the court procedure gave it abnormal attention. Spontaneous letters of endorsement and appreciation kept coming with more and more frequency, and presently organization leaders began to recommend the pamphlet to members, and it came to be listed in bibliographies. The circulation grew steadily and soundly.

At intervals during these first few years my sons both re-read the pamphlet whenever they liked. It was usually when some event or conversation with other boys reminded them of points on which their minds were

not yet quite clear. Each time they read it, they seemed to get more understanding and satisfaction. There was nothing momentous about their use of the pamphlet. It simply filled a need in natural fashion. I recall that the younger boy on re-reading it when he was about fifteen, said, "Mother, this thing is good, not so much because it tells a fellow anything absolutely new that he never heard of before, but because of the *way* it is told. It helps you to forget nasty terms and tells the facts the way you like to remember them." The boys gave the pamphlet to their friends, just as I gave it to my friends who had children and were perplexed about getting them well informed. When the college age came, the pamphlet was passed around considerably among class-mates.

There was one group of eager readers that has always interested me particularly—namely the Post Office clerks. As the demand for the pamphlet grew, I found that more and more envelopes reached the people to whom they were addressed empty, or else they never arrived at all. (The pamphlets were sent in the unsealed clasp envelopes which are ordinarily used for literature of this sort.) I did not keep account of the number which thus had to be replaced, but it was surprisingly large. I was patient at first about the losses, for if the Post Office clerks were so hungry for knowledge that they were willing to pilfer it, they must have needed it rather badly. However, as their hunger seemed insatiable and their numbers seemed endless, I presently resorted to mailing the pamphlet in sealed envelopes.

THE POST OFFICE BAN

Out of the clear sky, with no premonitory hint, on September 2, 1922, after the pamphlet had been in

published circulation for four and a half years, it was declared unmailable as obscenity.

The official notification read as follows:

UNITED STATES POST OFFICE
NEW YORK, N. Y.

September 2, 1922.

My dear Madam:

According to advice from the Solicitor for the Post Office Department, the pamphlet entitled *The Sex Side of Life—An Explanation for Young People*, by Mary Ware Dennett is unmailable under Section 211 of the Penal Code. As copies of this pamphlet bearing your name as sender have been found in the mails the decision is communicated for your information and guidance.

Sincerely yours,

E. M. MORGAN

Postmaster

Enclosed was a copy of Title 18, Section 334 of the United States Code (Section 211 of the United States Penal Code, the so-called Comstock obscenity law). It is given in full on pages xix-xx. This notification came at a time when I had more pressing work than I could possibly attend to, and I literally had no time to give to the situation which this ban produced. Besides, there appeared to be nothing effective that could be done. I recalled Senator Borah's derisive laughter, when I had previously discussed the postal obscenity laws with him, and he had called the Post Office censorship power the most lawless power in the country, in that it curtailed the rights of a citizen and gave him no reliable right of appeal from the decision. It was in January of this same year that Senator Borah had taken a vigorous part in opposing a proposed extension of postal censorship

power, on the ground that it was bad enough to have laws already on the statute books which conferred this tyrannical privilege on the Post Office, but that it would be worse still to let the power be increased. The proposition was to make gambling information unmailable. It was aimed especially at news about betting tips regarding horse racing. The bill had passed the House and was referred to the Senate Judiciary Committee, where it died. The reports of the Hearings on this bill contain interesting food for thought on the whole matter of controlling anti-social activities by suppressing the fundamental right of communication. (Later reference will be made to this discussion, in Part III.) Senator Borah made it clear that he was not upholding gambling but was against allowing the Post Office to cripple the press in the effort to curb the gambling. He said, "I have had experience for some time with appealing from the Postmaster General with reference to his decision to exclude certain matters from the mails. There is nobody to appeal to, except by a second hearing by the Postmaster General. . . . That is the vice of the bureaucratic system of government. There is no appeal from his decision that is effective at all."

So, for the time being, I laid my own disgust beside Senator Borah's, and attended to the other matters which had claim to all my immediate attention. Efforts to have the ban lifted will be described further on.

WHAT CAUSED IT?

I cannot undertake to present positive proof of the cause of the ban by the Post Office. But I will describe a series of events which offers what seems like strong circumstantial evidence that the suppression was an act of retaliation due to official resentment of my work in

another direction, rather than to the contents of the pamphlet.

It is a long story, but significant in many ways.

In the summer of 1919, as Director of the Voluntary Parenthood League, I went to Washington, to begin a quiet survey of Congress with a view to obtaining a sponsor for the bill which was the first aim of the League—namely, to “remove the words ‘preventing conception’ from the federal obscenity laws.” It was the first time the birth control question had been taken to Congress. It was a difficult and delicate task.

The preliminary work was conducted without newspaper publicity for two and a half years, during which time many members of both Senate and House were interviewed. Progress was made, slowly but surely. Many members approved the bill, but that was very different from being willing to introduce it. Embarrassment was stronger than public conscience. Congress obviously represented family limitation, as proved by the autobiographical sketches in the Congressional Directory. Like most sophisticated Americans, the members evidently had obtained information on the subject, regardless of law or legal “decency”; and quite as obviously, in view of the existence of their families, the majority of them were neither sterile nor ascetic. Yet member after member decided that it would be better were someone else to introduce the bill by which *all* citizens might have legal and decent access to the forbidden knowledge. Fourteen Senators, all of whom believed in the bill, declined to introduce it, and one who had promised—in writing—to sponsor the bill, proved faithless to his word.*

* A full account of this work in Congress and the final introduction of the Cummins-Vaile Bill and the hearings before the Judiciary Committee is given in my book “Birth Control Laws—Shall We Keep Them, Change Them, or Abolish Them?”

At this point in our efforts to revise obscenity legislation a new possibility entered. It was brought to the fore by the publicly announced opinions of Will Hays, who was then the new Postmaster General. In authorized statements published by the papers several times during 1921, he put himself squarely on record as opposed to the general idea of Post Office censorship. The following excerpts from *The New York Times* state his policy.

(Editorial, April 29, 1921.) "Postmaster General Hays told several thousand members of the American Newspaper Association in the Waldorf-Astoria how his department will deal with the publishers. No censorship of the press will be attempted. "There are two things in connection with our relation which I would state and re-emphasize. First: it is no part of the primary business of the Post Office Department to act as censor of the press. This should not and will not be."

(May 26, 1921) "An important ruling in regard to the censorship of the press by the Post Office Department was made today, by Postmaster General Will Hays in granting the application of *The Liberator* for admission to the second class mails." The *Times* article continues, quoting Mr. Hays: "To entitle matter to the second class mailing privilege, it must be published for the dissemination of information of a public character, or devoted to literature, the sciences, arts or some special industry.

"It has been suggested that it was the intent of Congress in the passage of this provision that the privilege of the second class rate should only go to publications disseminating information of public benefit.

"There is a vast difference between what is "information of a public character" and what is "information of a public benefit." Much of the news in any daily might be barred if public benefit were essential. It is

easy to decide what is and what is not "information of a public character." *The arbitrary power to decide what is and what is not a public benefit was never intended to be lodged in the Postmaster General. It shall not be assumed.'*" (Italics mine.)

(August 15, 1921) "Postmaster General Hays to-day addressed a statement to newspaper publishers and editors of the United States. . . . 'I want again to call attention to the publishers to the fact that I am not and will not allow myself to be made a censor of the press. . . . There is, however, placed upon me by certain statutes, responsibilities in this connection that must be upheld *so long as the law remains what it is.*'" (Italics mine.)

(December 9, 1921) "In his first annual report to the President. . . . Postmaster General Hays said: 'Our method of safeguarding the public welfare, while at the same time maintaining the freedom of the press, has been through a long period of stable civil liberty *better for the public welfare and personal security of citizens, than to establish a bureaucratic censorship which in its nature, becomes a matter of individual opinion, prejudice or caprice.*'" (Italics mine.)

This policy of the Postmaster General opened a possible opportunity of procedure along the line of least resistance. Congress would find it far easier to revise the obscenity laws by recommendation of the Postmaster General on the grounds of restoring constitutional freedom of communication, than to render itself conspicuous by plucking out the contraceptive section from all the rest of the "obscenities," in response to the pressure of the birth control movement. Those were days when prudish sensitivity regarding a public stand on birth control was considerably more acute than it is today, although this was only eight short years ago.

The Voluntary Parenthood League decided to put the matter up to the Postmaster General.

Shortly after Mr. Hays had placed himself on record, I had interviews with four of the Federal Post Office officials, including Mr. Hays himself, and three of these conversations seemed to have significance, in view of later events. During all the six years of work on this legislative question, careful notes were made following each interview. In quoting from my note-books, as I am about to do, it seems well to bear in mind that sex is peculiarly a thing by itself, although a universal human endowment, and that there is no predicting a man's reaction to sex problems from knowledge of how he meets other problems. Congressional interviews offered striking evidence of this phenomenon. Men who were liberal and progressive on questions in general were often found to have an attitude on this question that was amazingly shut-minded, obsessed or even vulgar. And on the contrary, men who were lined up with some of the less creditable elements in political and social life were often found to have a common-sense, dignified attitude regarding this question. It will thus be understood that in quoting from the records of the interviews, I am reporting merely one phase of life as then revealed, and that it cannot be assumed to be representative of a man's attitude toward life in general.

The first of these four interviews in August, 1921, was with Dr. Hubert Work, then First Assistant Postmaster General. I had letters of introduction from Dr. Charles Bacon of Chicago, a member of the National Council of the Voluntary Parenthood League, and from Dr. Frederick Green, Secretary of the Health Council of the American Medical Association. Dr. Work was cordial on their account, but instantly hostile on the subject of the interview. My notes read as follows:

"I began by saying, 'I assume your recognition of the merit of controlled parenthood as distinguished from haphazard parenthood.' He said no, that he had fixed ideas which could be stated in one sentence, namely, 'sterilize all boys and girls who are unfit to become parents, and then let nature take its course unhindered.' I reminded him that his individual opinion was exceptional for these days, but that it might not prevent his seeing that Section 211 of the Penal Code needed reconstruction, that it contained three unrelated matters, all lumped under obscenity—viz.: pornographic literature, abortion and the control of conception. Told him we wished to see the good work begun by Mr. Hays in house-cleaning the Post Office Department, carried on to include revising this section—recognizing in this statute the need for applying Hays' already announced principle that it was not innately the function of the Post Office to censor knowledge or opinion—that prohibiting knowledge on contraception *was* censorship, therefore inconsistent with the new administration policy—that we would urge him to recommend to Congress the removal of those words—also that we suggested a new section providing that contraceptive information must bear medical endorsement—that abortion must be taken care of separately, recognizing the difference between criminal and therapeutic abortion, and that pornographic material be legally defined by statute, so it would be comparable to other crimes covered by the penal code, such as arson, theft, etc.

"He announced that he was opposed to the whole subject and that it was useless to discuss it, that he had previously seen some of our literature. 'I gave it the once-over and forgot it.' I inquired if he felt satisfied with Section 211 of the Penal Code as it now stood. He confessed he wasn't familiar with it. He said he didn't

need to know anything more about it, that what we wanted was to 'instruct everybody how to have illicit intercourse without the danger of pregnancy.' I presented the customary arguments in favor of achieving morals by education instead of by unenforced and unenforcable laws, and invited him to have some faith in the ultimate decency of average humans instead of assuming that they were all essentially promiscuous. He looked a bit ashamed but didn't admit it.

"Said I ought to see Glover, the Third Assistant Postmaster General—that interpretation of the laws etc. came in his department. I asked him to consider our main points, as a Post Office official having a responsibility to the public. Asked if he would read our literature. He said no, he hadn't time, and didn't care to take time. Said he was glad I had come, because of the two doctors who had sent me, 'and because of your own personality.' To which latter remark I showed resentment, reminding him that my errand was on behalf of millions of suffering people, and was not personal."

Afterwards I wrote asking him to confirm one or two points in our conversation as I wished my notes to be accurate. He replied somewhat apologetically, saying that as he had spoken rather "facetiously" he did not wish to be taken seriously. The thought of being quoted evidently disturbed him. (I had similar experiences with other Senators who talked rashly, and then semi-apologized lest their remarks be recorded to their embarrassment.)

The second interview was with Third Assistant Postmaster General Glover, whose attitude proved to be "reasonable and receptive. Admitted that Section 211 was unenforced and unenforcable—but said if complaints were made people would be prosecuted. He said

it was not his function to suggest legislation, that I had better see Hays and the Solicitor, Judge John H. Edwards. Glover said that if Hays asked him whether the law was effective he would honestly tell him it wasn't. He asked if I had seen Dr. Work and what his opinion was. I answered that he seemed quite mediaeval and benighted, and a slow smile of appreciation swept over his face—no comment, except to recommend me again to see Hays, he being the only one who could go to the Judiciary Committee and urge legislation."

The above interview had no later significance except as it shows what led me to see the Solicitor of the Post Office.

PSYCHOLOGICAL BACKGROUND

It was the next day that I went to the office of Solicitor Edwards. I was met by Horace J. Donnelly, who was then Assistant Solicitor. He is now the Solicitor at the head of the department. Mr. Donnelly took my card in to Judge Edwards, leaving me seated in the outer office. It happened that the door to the inner office was left ajar, and through the wide crack left by the half-opened heavy door, I was exactly in line of vision with what went on inside. It was an unforgettable scene. Judge Edwards and a man who appeared to be a secretary were seated at a big table or desk. When Donnelly handed the Judge my card, giving my position as Director of the Voluntary Parenthood League, a glance went with it that arrested my attention. What happened then was purely pantomime to me, as I could not hear a word that was said. I was glad I couldn't. The three men handed the card around snickering and haw-hawing as they swapped comments. The expression of face which goes with smutty jokes, once seen, is always recognizable. It needed no words to reveal the character

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of the remarks they made. They seemed in no haste to end the little episode. Presently Donnelly came out—the leering smile still visible—and explained that the Judge was “too occupied” to see me. Donnelly offered to take his place, an offer that I was not interested in accepting. But he was quite urgent, and dropped the remark that Judge Edwards was a new appointee and didn’t yet know much about Post Office legislation, whereas he, Donnelly, had been long in the office, and knew more than anyone else there. He professed extended knowledge of Post Office law, and implied that the Solicitor was more or less of a figurehead, who merely signed on the dotted line, while Donnelly furnished the brains and had the real responsibility. I decided to tap a little of this knowledge, so inquired—I am now quoting from my notes—“what he thought of lumping three unrelated matters in Section 211 (obscenity, abortion and contraception), whereupon he showed that he had no idea what I meant, and that he never made any such analysis of the statute. It rather seemed news to him also that obscenity had never been specifically defined by any statutes. He did, however, show interest in our point of view and in our recommendations for the renovation of the Post Office laws. I had mentioned Theodore Schroeder’s book, *Obscenity and Constitutional Law*. He inquired how he might get a copy. I replied that it was not for sale but had been privately printed. He was persistent, and asked if I knew how a copy could be obtained. I didn’t say. He introduced the subject of the suppression of Marie Stope’s book, *Married Love*, and inquired with an undisguised salacious smile if I knew the book and liked it and thought it ought to be circulated. His manner was decidedly repulsive, but his expression sobered perceptibly when I answered that I wished every married

man in the United States were obliged to read the book—that it would educate them in ways in which many of them were sadly deficient—that life would be considerably cleaner, sweeter, more decent and lovely if people were brought up in harmony with Dr. Stope's ideals. This remark seemed to stir his own sense of decency into activity, and the conversation was considerably more productive after that.

“In discussing the enforcement of the Obscenity statute, I asked why if the officials were not working to change the law, they didn't try to enforce it? He made some effort to pretend that they did, but I soon discovered that he knew perfectly well that Margaret Sanger's *Family Limitation* and other things of the sort were constantly circulated without interference. I suggested that if the laws were worth keeping they were worth enforcing, and that if the Solicitor had no idea of enforcing them, he ought to approve the effort to have them changed. He said he was glad of the opportunity to go over the question and that he would report all I had said to the Solicitor and read the literature with care.”

At the close of this talk I was conscious of Donnelly's antagonism, nor did I blame him for that. It was quite human. It seemed probable that it was the first time he had ever met a woman engaged in such a task as asking Congress to renovate laws which deal with sex. He apparently assumed at first that I must be getting some salacious stimulation from the work, and he acted accordingly. But when he sensed the fact that he had blundered, he naturally felt disturbed, and it was easier to feel resentful at me than at himself—which is understandable enough. While he mended his manners as the talk proceeded, I came away feeling that he retained the animosity. Subsequent events perhaps served as

reminders and accelerators of the prejudice, of which more later.

INTERVIEW WITH POSTMASTER GENERAL WILL HAYS

The interview with Will Hays was on August 13, 1921. I quote from my note-book.

"Hays lives up to the newspaper description as a cordial, able, open-minded, progressive politician. I had no sooner stated an outline of our suggestion to him that he make it a part of his Post Office reorganization to restate the obscenity statute, than he welcomed the opportunity most heartily. Said I had come at exactly the right time, because he had just about arrived at the conclusion that he must 'go to Congress and get all the sections remodelled which had any bearing on the censorship question.'

"He said our part of it was exceedingly important, that he was glad to have the subject opened, that he wanted all possible data on it, that he would be ever so much obliged if we would provide him with all the arguments, with models of good literature on the control of conception, such as is used abroad, and which ought to be used here.

"He expressed positive and cordial approval of all the chief practical arguments in favor of the change of the laws now; was very responsive to the government's obligation in regard to the unemployed; admitted that it was terribly unfair to the out-of-work wage earner to try to keep away from him the knowledge by which he could control the size of his family. He was much pleased with the phrase 'spacing babies'—said it was sound common sense, perfectly sane and wise.

"He knew I had talked with Dr. Work. I told him frankly that Dr. Work's attitude was benighted, but

that I knew he would change, as many people do when they see the light. I gathered the impression that Dr. Work's opinion would not hold him back, because he repeated again his earnest wish to have all the material in hand which we could give him. Said he wanted to do the right thing, and he knew the time was ripe.

"He mentioned the recent suppression of a book, a new edition of which had recently been advertised by *The Nation* and other magazines, and said that the publishers had taken advantage of his supposedly lenient attitude and that under the law he was obliged to discipline the magazines that carried that ad, because it was just as much an infringement of the law to advertise a suppressed book as to mail it.* I knew the book was *Married Love*. He hadn't read it. I told him about Dr. Stopes coming (to speak for our League in October) and what I had told the Assistant Solicitor about the book, in all of which he showed keen interest. And when I told him about Dr. Stopes' *Wise Parenthood* and how it had gone through five editions in England, and that America should have just such books, he asked me to get him a copy. I told him I would, but that I should have to break the law in sending it to him. (Sec. 211, Penal Code.) That startled him and he said, 'No, no, I don't want to break the law. Send it by express.' 'I can't,' I said, 'for that breaks Section 245.' 'Well,' he said, 'send it by messenger.' 'All right, I will'."

And presently the little book was brought to him personally by a friend in Washington, but how the book got from England to Washington shall remain a mystery. It is sufficient to say that certain United States

* *The Survey* and *Current Opinion* were declared unmailable and the editions held up by the Post Office because they published reviews of this book.

officials in the Customs House and Post Office Department were faithless to their jobs. The book was legally pure as it crossed the ocean under English law, legally obscene as it entered this country under the tariff law, also legally obscene as it was carried from New York to Washington either by mail or express, whichever way it was, but it became legally pure once more, when it was finally in the possession of the Postmaster General himself.

Mr. Hays never carried out his plan for asking Congress to revise the postal obscenity statutes. His service as Postmaster General was brief, because of his decision to accept the business position offered by the moving picture industry. He retired on March 4th, 1922. Despite receiving much evidence of the interest of important and representative citizens in his plan, he took no steps to execute it. Toward the end of his term he explained that it was too late for him to make any recommendations to Congress, that he ought not to embarrass his successor, and so forth. As his successor was Dr. Hubert Work, Mr. Hays perhaps felt that recommendations might be futile anyhow.

POSTMASTER GENERAL HUBERT WORK STARTS TO ENFORCE THE OBSCENITY LAWS

Dr. Work took office on March 5, 1922. On March 9, he sent out the following "Department Bulletin" to be placarded in every post office in the country.

"It Is a Criminal Offense

*To send or receive obscene or indecent matter by mail
or express*

The forbidden matter includes anything printed or written, or any indecent pictures, or any directions or drugs or articles for the prevention of conception, etc.

The offense is punishable by a *Five Thousand Dollar Fine* or *Five Years in the Penitentiary* or *Both*.

Ignorance of the law is no excuse.

For more detailed information on this subject read Section 480 and 1708 of the Postal Laws and Regulations, which may be consulted at any Post Office."

In the following July, the Voluntary Parenthood League began publishing a little newspaper to give pertinent facts about the struggle to get the obscenity laws amended, so far as they concerned birth control. It was called *The Birth Control Herald*, and I was its editor. The first issue contained the following editorial article.

How Dr. Work Works

*The New Postmaster General Tackles the Enforcement
of the Obscenity Laws*

(After quoting Dr. Work's bulletin which had appeared in all post offices, the article proceeds.)

"If Dr. Work intends to enforce the laws, it does him credit.

"But suppose he undertakes to prosecute all infringements? The relatively low birth-rate in well-to-do families indicates wholesale breaking of this law. How is he going to enforce it? Will he trail these several million respectable, influential parents till it is discovered how they learned the science of family limitation?

"There are about twenty-five million families in this country and, roughly speaking, ten million of these are the well-to-do—those above the income tax exemption. Suppose a tenth of these can be convicted of having secured by mail or express the contraceptive information on which their own family limitation is based. The authorities would hardly imprison a whole million. It would mean 'standing room only' in the jails. An alter-

native would be to fine them. One million law breakers, fined \$5,000 each, would provide Uncle Sam with a handy five billion in these days, when the national debt stands at about eight billion. But like the jail idea this might be a bit impracticable! What alternative is there then? The million malefactors might be *acquitted*—but that would make the officers of the law look silly. So there it is, a large problem staring at the new Postmaster General. How will he meet it?

“Dr. Work’s Bulletin says, ‘Ignorance of the law is no excuse.’ Similarly also, difficulty of enforcement is no excuse for *him*. So long as the law stands he and the Department of Justice must carry it out, or else be unfaithful and inefficient public servants.

“Possibly Dr. Work might welcome a practical suggestion, namely, that he promptly request Congress to change this futile law which has encumbered the statute books since Anthony Comstock got it passed in 1873. Any law that can’t be generally enforced should be repealed.

“How about the families below the income tax exemption? There are over ten million of these also—and they are the ones against whom this law works successfully. Their ignorance and poverty prevent their securing the knowledge which the well-to-do know how to get in spite of the law.

“This bulletin of Dr. Work’s may well serve as a reminder to the ten million families, that common fair play for the ten million families who are *not* well-to-do demands that Congress shall change these laws at once. Perhaps also this bulletin will rub it into the minds of the self-respecting parents that the knowledge by which they space their own babies and regulate their own family birth-rate is legally classed as ‘obscene and indecent.’ How much longer do decent people care to submit to this governmental insult?

“Several of the very best doctors who have done years of research work on methods for controlling con-

ception, are ready *now* to write books. One of the foremost publishing firms of America, with offices in London also, stands ready to bring out an American edition of the excellent book on the control of conception, by a famous British scientist—a book which has gone through five editions in England, and is the generally accepted text-book on the subject. The law prevents.

"It is time for Americans to do something besides *talk*. It is time to help *end the need for the birth control movement*, by demanding that Congress change the laws. The Voluntary Parenthood League is hard at work on this job."

Naturally this congratulation on the new Postmaster's policy as to enforcing the laws could hardly be expected to create pleasure in the Department headquarters. And if the desire to retaliate had not already taken shape after the publication of this editorial, there was to come another event which very likely acted as the last impulse in the growth of official irritation. At any rate here is a further chapter of the story, for the reader's perusal and own conclusions.

CIRCUMSTANTIAL EVIDENCE PILES UP

Less than a month after Dr. Work had sent out the Post Office bulletins warning citizens that "it is a criminal offense to send or receive obscene or indecent matter by mail," I began a correspondence with Solicitor Edwards and Assistant Solicitor Donnelly in regard to the methods of enforcing the law when alleged infringements were in first class sealed mail. The correspondence strung out over four months, because the answers to my questions were so unexplicit. Persistence brought a final reply in which the Solicitor explained that he was "not in a position" to give the requested facts. The

whole correspondence and some comment was later printed in the *Birth Control Herald* as follows.

WHAT THE POST OFFICE KNOWS ABOUT ENFORCING ITS
OWN LAWS AND WHAT IT DOESN'T KNOW

*The V. P. L. Asks Questions and the Solicitor General,
Judge Edwards, Regrets That He "Is Not in a
Position to Answer"*

The following correspondence tells a surprising story.

April 4, 1922.

Will you kindly give me definite information as to whether government officials may open private mail in executing their obligation to enforce the statutes which penalize the circulation of contraceptive knowledge? And one further point, how does it happen that so many books by medical scientists giving specific contraceptive instruction are now allowed to circulate by mail or express?

Yours very truly,

MARY WARE DENNETT

Director

April 6, 1922.

Dear Madam:

I am in receipt of your letter of the 4th instant, in which you ask whether government officials may open private mail in executing their obligation to enforce the statutes which penalize the circulation of contraceptive knowledge.

In reply you are advised that sealed letters in the mails can only be seized and opened by due process of law.

This Department is not advised of books giving specific contraceptive instructions sent in violation of Section 211 of the Penal Code.

Respectfully yours,

H. J. DONNELLY

Acting Solicitor

April 7, 1922.

Dear Sir:

This is in answer to your note of April 6th, in which you reply to my previous quotations. May I trouble you for a somewhat detailed answer in regard to the right of the government officials to open sealed letters in connection with the obligation to enforce Section 211 of the Federal Penal Code? Will you please say what is "due process of law" in this connection?

Appreciating your courtesy in the matter,

Very truly yours,

MARY WARE DENNETT

Director

April 20, 1922.

Dear Madam:

In reply to your letter of the 7th instant, with respect to the question of seizing matter mailed in violation of law, I beg to invite attention to the provisions contained in the Act of Congress approved June 15, 1917 (40 Stat. 288).

Yours truly,

JOHN H. EDWARDS

Solicitor

May 25, 1922.

Dear Sir:

This is further inquiry in regard to your reply of April 20th, stating that 40 Stat. 228 gave the information requested in my previous inquiry, namely, as to what statutes empower the government to investigate first class sealed mail matter for infringements of Section 211 of the Federal Penal Code.

We have had this section to which you refer looked up in the law library and find that the sections have to do primarily with espionage and efforts in behalf of foreign governments. There seems to be nothing which is a specific answer to my previous inquiry. I should

very much appreciate from your office a more detailed reply.

Yours truly,
MARY WARE DENNETT
Director

June 3, 1922.

My dear Madam:

In reply to your communication of the 28th ultimo, I beg to suggest that upon a close examination of the law cited in my previous letter you will find that the applicable provisions are general in scope and not limited in the manner you suggest.

Sincerely yours,
JOHN H. EDWARDS
Solicitor

June 6, 1922.

Dear Sir:

I should like an answer to one further question in regard to the laws under which the government authorities may open sealed mail matter in detecting infringements of Section 211 of the Penal Code. In answer to my previous inquiries you have quoted the laws bearing on this question as 40 Stat. 228. I find from the law library here in New York that this statute became a law on June 15th, 1917, and what I wish to know is what laws were operative in this matter previous to June 15th, 1917. Section 211 of the Penal Code was passed by Congress in 1873, and during those forty-four years there must surely have been some laws provided for the enforcement of Section 211. I should like to know exactly what those laws were.

Sincerely yours,
MARY WARE DENNETT
Director

Acknowledging a note on another matter, the V.P.L. Director again wrote to Mr. Donnelly on July 12th in part as follows:—

Your note does not touch upon the other requests in my letter of July 6th, namely, in regard to the laws operative from 1873 to 1917 in regard to the detection of infringement of Section 211 of the Penal Code.

Very likely you are having the matter looked up and did not have the data ready at the time of dictating your note of the eleventh. But I would be greatly obliged for as prompt a reply as you can make it convenient to send.

Very truly yours,
MARY WARE DENNETT
Director

August 2, 1922.

Dear Sir:

I have not yet received a reply from your office as to the question in my letter of July 6th. It is of significant importance to know under what statutes the government was operating from 1873 to 1917 in prosecuting infringements of Section 211 of the Penal Code which were contained in first class sealed mail matter.

I assume that your office is headquarters for information of this sort. If I am mistaken will you kindly acquaint me with what other government sources for this information there may be. I shall appreciate a prompt reply.

Yours very truly,
MARY WARE DENNETT
Director

August 3, 1922.

My dear Mrs. Dennett:

In reply to your letter of the 2nd instant, I beg to suggest that the United States Attorneys throughout

the country are charged with the duty of prosecuting infringements of Section 211 of the Penal Code and I regret that I am not in a position to advise you just how such officials proceeded in any particular cases since the year 1873.

Respectfully yours,

JOHN H. EDWARDS

Solicitor

"The Solicitor of the Post Office is the highest legal authority of the Department. The Postmaster General, Dr. Hubert Work, has issued a special bulletin calling public attention to Section 211 of the Penal Code, warning people that it is a criminal offense to send or receive 'obscene or indecent matter,' which includes contraceptive information, by mail or express. Yet his department is unable (or unwilling) to tell how the department can prosecute infringements. 'Due process of law' sounds impressive, but what *is* it? If the Solicitor himself doesn't know, is the public to assume that talk of enforcing the law is all bluff, especially as hundreds of thousands of people have received and are constantly receiving contraceptive information by mail?

"*The Birth Control Herald* suggests that the U. S. Post Office prosecuting machinery should get itself in good working order, or else ask Congress to quit holding it responsible for carrying out a law with 100 percent efficient legal machinery. Contraceptive knowledge is a cat that has not only gotten 'out of the bag,' but it has something nearer nine million than nine lives. The legal bag might just as well be discarded now as later."

In the same issue of the *Birth Control Herald* was an article on the suppression of the pamphlet, which read in part as follows: "The obscenity hunters have distinguished themselves once more. This time the target

is a little pamphlet by Mary Ware Dennett. If its name were given it might cause this issue of the *Herald* to be confiscated by the Post Office, judging by the previous experience of the *Survey*, *Current Opinion* and the *Birth Control Review* when they innocently reviewed a book which the Post Office officials had declared 'unmailable.' So all that can be said is that the article is for young people and it clearly explains certain things that young people want to know and need to know. . . . It has been used by social workers, in schools, courts, charity organizations, nurses' training schools, hospitals and women's clubs, has been ordered by government departments, boards of health, university libraries, maternity centers, and so forth. It has been used as textbook by the Federation for Child Study and has been used as a subscription premium by the *Medical Herald*.

"Why did the Post Office wait from 1918 to 1922 before it suppressed this pamphlet? Is there any connection between this act and the story on page four? (as to the above correspondence with the Solicitor)."

And now in 1929, the same question may well be asked. There is no *proven* connection. Nor did the Solicitor ever give any reason for the suppression, other than his personal opinion that the pamphlet contained criminal indecency. But the sequence of the events recorded above seems to indicate pretty strong circumstantial evidence. The ban on the pamphlet followed almost immediately upon the close of the correspondence with the Solicitor in which he had admitted his own ignorance of the laws under which his department operated. His last note was dated August 3, and the notice that the pamphlet had been declared criminal obscenity was dated September 2.

SYSTEM TO BLAME, NOT THE OFFICIALS

The above happenings have been chronicled not for the purpose of inducing disparagement of these Post Office officials as individuals, but in order that American citizens may have opportunity to see exactly what it may mean in other instances in the future to retain laws which endow individual officials with power to decide that anyone they dislike has infringed the criminal obscenity law. The temptation to use unrestrained power irresponsibly is great at any time, and is doubly so under the spur of hurt official pride, irritation due to shame, or prejudice against any particular individual, whom it may be a satisfaction to "get back at" indirectly. And when to this danger is added the consideration that this power of postal suppression is particularly applicable to matters pertaining to sex, the menace is increased manyfold; for there is no subject in the world which is more potent to induce irrational and distorted reactions than sex.

The factor of probable personal resentment in my case represents nothing unusual in the way of reactions. It is merely human. A salacious or cheaply facetious attitude toward sex is very common, but, even so, few men could feel unruffled at finding themselves in a position where the attitude of another person made them ashamed. Dislike of that person is almost inevitable. Likewise, it is a natural reaction for these officials, when brought face to face with evidence that their knowledge of the laws seems not to be all they claimed, and that their efforts at enforcement were neither faithful nor efficient, to resort to the handiest means available for hitting back at the person who has uncovered the uncomfortable facts. The power to declare my booklet unmailable was conveniently at

hand when needed to relieve a probable emotional pressure, so why not "use the gifts the gods (the government) provide"?

I don't blame the officials for their natural irritation if that was the cause of the ban. But I do blame the system which permits putting the power of the criminal law behind personal opinions or prejudices.

As to the smutty little episode witnessed unwittingly through the door left ajar, it might just as well have been enacted by any three other men out of millions as by the particular three who then happened to be the government's choice for service in the Solicitor's office. The notion that sex is more or less a nasty sort of joke is, alas, extremely common, as it has been hopelessly ingrained in the mental and emotional fibre of innumerable people since early childhood. But what is pertinent is the fact that censorship power and law-enforcing responsibilities are vested in individuals whose slant on sex is of this sort. It potentially inflicts on the whole country an attitude that is false to every ideal of sound education and decent living. The history of censorship shows that the smutty mind is apt also to be the censoring type of mind. And yet the ostensible theory of censorship is that it represents clean idealism. Here is a vicious circle. Can the genius of American citizenship find any way out other than to take away the censorship power?

ATTEMPT TO HAVE THE BAN LIFTED

The demand for the pamphlet steadily increased after the ban, but not because of it, for there was no publicity on the Post Office decree. Orders for single copies were sent out in sealed envelopes under first-class postage. Quantity orders were shipped for the most

part by express. At this point it may be well to say a few words as to why the circulation of the pamphlet was not stopped by the ban. Obscenity differs from all other "crimes" in that it is not legally defined. It is whatever any legally empowered officials choose to think it may be, and the variations and contradictions of judgment at different times and places make one of the most absurd chapters in the history of the human race. As I knew that this pamphlet did not reflect any obscene thoughts from my own mind, but could be deemed obscene only because of what was read into it by minds in which sex dirt had previously lodged, I of course would not allow the Post Office decision to affect my actions. I quietly continued to send the pamphlet to all who ordered it, and each year it was more and more gratifying to find that it was helpful to just the sort of people I would most like to have it reach. It did occur to me now and then that the Post Office might send me a decoy order, à la Comstock of old, but as time went on I assumed that the Washington officials had extracted all the satisfaction they had craved out of declaring it unmailable, and that they were not interested in inducing a prosecution, or make any further trouble.

So by the spring of 1925 it seemed a reasonable assumption that the ban might then be lifted, especially as the wide-spread and significant endorsement had reached proportions sufficiently large to assure the Post Office officials that no mistake would be made if their decision were revoked. Accordingly, a number of those who had used and spontaneously commended the pamphlet were notified of the situation and opportunity was given to them to join in a request to the Postmaster General that the ban be removed. The response was enthusiastic, and a goodly number of people signed a

note to the Postmaster General which read as follows, many adding further comment by way of emphasis.

Dear Sir:

I urgently request that the decision be reversed by which *The Sex Side of Life* by Mary Ware Dennett was declared unmailable.

This booklet is approved by high-minded discriminating people all over the country. I am sure that the Post Office decision does not reflect public opinion, in this instance.

Yours truly,

With the collection of opinions in hand I sent the following letter to the Postmaster General.

May 26, 1925.

Dear Sir:

By order of the Solicitor of the Post Office Department on September 2, 1922, the pamphlet entitled *The Sex Side of Life—An Explanation For Young People* was declared unmailable, under the so-called "obscenity" statute, Section 211 of the Federal Criminal Code.

As the author of the pamphlet, I herewith present to you the joint requests of many representative and well known citizens, that the suppression order be revoked.

The pamphlet was first published in 1918 in the *Medical Review of Reviews* (circulation 14,000). It was then reprinted in *The Modern School*, a magazine read by high-grade educators. It was subsequently published in several succeeding editions as a pamphlet.

During the entire period, the demand for this article steadily increased, not only from the United States but from abroad. It has been used in schools and colleges and all manner of public welfare organizations, and by many thousands of responsible parents, as well as by the young people for whom it was specially written.

The extent to which it has always received enthusiastic unsolicited endorsement from physicians, clergymen, teachers and social workers would seem to amply warrant the Post Office in a reversal of the decision.

Appended are a few of the characteristic instances of endorsement by singularly fine people; and enclosed is a packet of separately signed requests from citizens whose attainments are noteworthy, and whose characters are unimpeachable.

I shall appreciate as early a reply as may be feasible.

Yours truly,

MARY WARE DENNETT

The names of those who signed the special request to the Postmaster-General are given in Appendix No. 1, and many of the opinions which were appended to my letter to him were later printed in the leaflet *Representative Opinions* and therefore, to avoid repetition, will not be quoted here.

The reply came not from the Postmaster General but from the Solicitor, who was then Edgar M. Blessing. (His name invites comment, but I will resist the temptation.) It is noteworthy that it is the Solicitor who takes the responsibility of the maintenance of the ban, and not the Postmaster General. His note reads as follows:

June 3, 1925.

Dear Madam:

I beg to acknowledge the receipt of your letter of the 26th ultimo, which has been handed me by the Postmaster General, transmitting a copy of your pamphlet entitled *The Sex Side of Life*, which was declared un-mailable under date of April 29, 1922.

I have also noted the many requests which accompanied your communication that the ruling of this Department be reconsidered.

Accordingly, I have caused a re-examination to be made of this brochure and find same to contain matter which is forbidden admission to the mails by Section 211 of the United States Penal Code, copy of which is enclosed herewith for your information.

Very truly yours,

EDGAR M. BLESSING

Solicitor

The further correspondence which ensued tells its own story.

To Solicitor Blessing:

June 9, 1925.

Dear Sir:

I have received your note of the third, saying that you find in my pamphlet, *The Sex Side of Life*, matter which is forbidden admission to the mails by Section 211 of the United States Penal Code.

I note that the only *specific* prohibitions in this section are in regard to the circulation of information or means for producing abortion or preventing conception. My pamphlet contains neither sort of information. The application of all other prohibitions must be determined then by the official interpretation of the words, "obscene," "lewd," "lascivious," "filthy," "indecent," "immoral" or "vile."

Presumably my pamphlet is forbidden because some of these words are considered applicable to certain terms, phrases or paragraphs in it. I therefore request a specific statement, quoting explicitly and completely all portions of the pamphlet which, in your opinion, are properly to be forbidden under this statute; also which of the above mentioned words apply to each quotation from the pamphlet, if there is more than one portion which you deem rightly forbidden.

Yours very truly,

MARY WARE DENNETT

June 13, 1925.

My dear Madam:

I duly received your letter of the 9th instant, concerning your pamphlet, *The Sex Side of Life*, but regret that this office cannot undertake to go into the matter by letter in the way you suggest.

Very truly yours,

EDGAR M. BLESSING

Solicitor

To Solicitor Blessing:

June 20, 1925.

Dear Sir:

I have just received your note of the thirteenth, in which you say that your office cannot undertake to comply with my request for a specific statement as to what part or parts of my pamphlet, *The Sex Side of Life*, are pronounced an infringement of Section 211 of the United States Penal Code.

A Cincinnati reader of the pamphlet informs me that in recent correspondence with her regarding the suppression, you state that the pamphlet is found "unquestionably" to contain "indecent matter," but that you give no statement as to what parts are "indecent," or as to what constitutes indecency in the Post Office rulings.

Presumably the aim of Section 211 is to render the power of the law salutary in protecting the public from indecency. But this statute does not specifically define indecency, and, if I am correctly informed, no other statute does so. The efficacy of the law on this subject, therefore, depends wholly upon official interpretation and precedent. These, it is found, vary greatly. What is indecent in the view of some judges, officials and readers is wholesome in the view of others. The Bible, for instance, contains many items which are indecent from certain view-points, yet it has never been declared unmailable.

In justice to the aim of the law, to yourself as a competent official, to the public whose protection against indecency is your legal obligation, and to my rights as a citizen whose acts you have declared criminal, are you not in duty bound to make a definite statement as to what parts of the pamphlet constitute the crime?

Surely you would not wish the public to infer that you deem the pamphlet wholly indecent, from cover to cover. Whatever your view-point, it is most unlikely that you would consider the following excerpts from it indecent:

(On page 1, the quotation from the Editor of the *Medical Review of Reviews*, in which the article was first published.)

"We are tolerably familiar with the Anglo-American writings on sexology, but we know nothing that equals Mrs. Dennett's brochure. Physicians and social workers are frequently asked, 'What shall I say to my growing child?' Mary Ware Dennett in her rational sex primer at last furnishes a satisfactory answer."

(On page 5, in the introduction for elders.) "Young people are just as capable of being guided and inspired in their thought about sex emotion as in their taste and ideals about literature and ethics, and just as they imperatively need to have their general taste and ideals cultivated as a preparation for mature life, so do they need some understanding of the marvellous place which sex emotion has in life. Only such an understanding can be counted on to give them the self-control that is born of knowledge, not fear, the reverence that will prevent premature or trivial connections, the good taste and finesse that will make their sex life when they reach maturity a vitalizing success."

(On page 15.) "Don't ever let anyone drag you into nasty talk or thought about sex. It is not a nasty

subject. It should mean everything that is highest and best and happiest in human life."

(On page 16.) "No man is ever proud of his connection with a prostitute, and no prostitute is ever proud of her business. Sex relations belong to love, and love is never a business. Love is the nicest thing in the world, but it can't be bought. And the sex side is the biggest and most important side of it, so it is the one side of us that we must be absolutely sure to keep in good order and perfect health, if we are going to be happy ourselves or make anyone else happy."

Because indecency stands alone as a crime which is undefined in law, unlike all other crimes, such as libel, arson, theft, murder, etc., and is subject to the individual decision of an official in each instance, is it not the more necessary that the official should be specific in his expression of opinion on which the application of the law is determined? As his sole opinion thus becomes in effect the law, regardless of the opinion of thousands of citizens who do not share his view, is he not under peculiar obligation to cite the words which he declares criminal? If he uses the power conferred upon him by the law to convict any author he chooses of criminality if he circulates certain of his writings, does not the responsibility of having that unique and unqualified power carry with it the most compelling sort of moral obligation to explain precisely at what points that power is exerted?

So far as I know, you are the only individual in the country who considers anything in this pamphlet indecent. Against your single opinion there stand thousands to the contrary. A representative list of some of these people, with their comments on the pamphlet, has been submitted to you. If your single opinion is to outweigh theirs, must you not at least let them and me have opportunity to know on what you base your wil-

lingness to utilize the power of the law to enforce your individual view? If conceivably you are right, and they are all wrong, should they not have the chance to know the grounds on which you make so extraordinary a decision? How else can you render the use of the law salutary in this instance?

I assume your conscientiousness as a public official, so I respectfully renew my request for a specific statement as to what part or parts of the pamphlet are considered an infringement of the law. I make this request as a responsible citizen, deeply interested in sound education, salutary laws, and the just enforcement of all laws.

Yours truly,
MARY WARE DENNETT

June 25, 1925.

Dear Madam:

Your letter of the 20th instant has been received.

The ruling that the pamphlet entitled *The Sex Side of Life—An Explanation For Young People* was nonmailable was made by the Department in 1922, and a recent review of the matter by me convinces me that no error was made in the ruling.

Should you desire to enter into a full discussion of this matter I shall be pleased to grant you an interview at any time you find it convenient to call.

Very truly yours,
EDGAR M. BLESSING
Solicitor

To Solicitor Blessing:

June 29, 1925.

Dear Sir:

I have your note of the 25th, saying that you have reviewed the ruling which declared my pamphlet *The Sex Side of Life* unmailable, and are convinced that no error was made in the same.

But in response to my second request (of June 20) for a specific statement as to what part or parts of the pamphlet are declared an infringement of the law, you only suggest that I call at your office, if I "desire to enter into a full discussion of this matter." An informal discussion would in no way serve instead of an official written statement, though doubtless it would be interesting in addition to it. A written official statement is what I first requested, and I now request it again, on the ground that any citizen who is notified that he is a law-breaker has a right to a definite statement in writing from the official who declares his act criminal, as to just what constitutes the crime.

The pamphlet contains about 5000 words, not all of which can possibly be deemed an infringement of the law. A criminal offense which lies somewhere among 5000 words unknown to the author, and perceived only by the official who is empowered to interpret and apply the law, should, in justice both to the author and to the official, be specifically located and defined.

To propose that a citizen travel to Washington for an informal conversation in lieu of such a written official statement, is to handle this kind of offense against law as no other legal offense is handled.

I therefore again present my request to you for a full written statement, giving every word in the pamphlet which you declare to be an infringement of Section 211 of the United States Penal Code.

Yours truly,

MARY WARE DENNETT

To Solicitor Blessing:

July 20, 1925.

Dear Sir:

I have received, as yet, no reply to my letter of June 29. I am writing to inquire whether on second thought it may be your intention to comply with my repeated request for a written statement giving in full the words

in my pamphlet, *The Sex Side of Life*, which you declare to be an infringement of Section 211 of the U. S. Penal Code, or if you have concluded to abide by your decision as given in your note of June 13, in which you said that your "office cannot undertake to go into the matter by letter."

I am not now urging any further reasons for your complying with my request. My previous letters have covered the points sufficiently, I think. I merely wish to know whether or not a statement is to be made.

Should you still deem it right and proper to decline to state what constitutes the crime in the pamphlet, I should like a definite statement from you that such is your final decision.

I shall appreciate as prompt a reply as you can find it convenient to make.

Yours very truly,

MARY WARE DENNETT

July 22, 1925.

Dear Madam:

Replying to your letter of the 20th instant, I beg to state that you are correct in assuming that this office is compelled to abide by the statement made to you in my letter of the 13th ultimo.

Very truly yours,

EDGAR M. BLESSING

Solicitor

Officials who are a law unto themselves never err. Neither do they explain. They don't have to—being responsible to nobody. Comment is not needed. The one point worth pondering over is as to whether Americans like this sort of a situation, and if not, what is to be done about it?

THE INDICTMENT

The mail which brought many New Year's greetings for 1929 brought also the following ironic message.

Office of the
UNITED STATES ATTORNEY
For The
Eastern District of New York
Post Office Building
Brooklyn, N. Y.

UNITED STATES OF AMERICA

vs.

MARY W. DENNETT

INDICTMENT

Folder number 12-229

Mailed January 2, 1929

PLEASE TAKE NOTICE that the above case will be called in the United States District Court for the Eastern District of New York, Washington and Johnson Streets, in the Borough of Brooklyn, on the 7th day of January, 1929, at 10:30 o'clock in the forenoon, Room 224, at which time the defendant herein will be required to plead to an indictment heretofore filed, for an alleged violation of the United States Criminal Code.

If defendant fails to attend, a warrant will be issued for her arrest.

WILLIAM A. DEGROOT
U. S. Attorney

To: Mary W. Dennett, 81 Singer St., Astoria, Long Island.

To:
Bondsman.

As charges of obscenity can descend upon almost anybody in the country, it may be of interest to average citizens who are no more versed than I was in the manners and customs pertaining to indictments, to learn how these things are done. It will be noted that the above announcement explains nothing. I was simply told that I had been indicted "for an alleged violation of the United States Criminal Code," and must appear in Court five days from then. I took the notice directly to the attorney, Morris L. Ernst, as I had read his book *To the Pure*, and had had other occasion to realize that he was not only remarkably versed in the history of obscenity and the law, but that his interest was socially constructive as well as legally analytical. We had previously discussed possible methods of achieving some improvement in the laws regarding obscenity.

Mr. Ernst at once sent over to Brooklyn for a copy of the indictment and found from the assistant prosecuting attorney, James E. Wilkinson, that the indictment was in regard to *The Sex Side of Life*, although the indictment itself does not say so. It merely says that I had mailed a "pamphlet, booklet and certain printed matter" which were "obscene, lewd, lascivious, filthy, vile and indecent and unfit to be set forth in this instrument and to be spread before this Honorable Court." The indictment also claims that in mailing the pamphlet I "*knew* said envelope to contain matter which" was all the kinds of dirt just enumerated. Government officials are permitted by law to decide what is dirty and to hale people into court on their own unsubstantiated opinion, but how can they presume to state that their victims *know* that they agree with them as to what is dirt? How can they? But they do.

Here is the indictment in full.

*District Court of the United States of America
Eastern District of New York.*

As a Stated Term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid on the 6th day of December, in the year of our Lord one thousand nine hundred and twenty-eight, and continued by adjournment to and including the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-eight.

EASTERN DISTRICT OF NEW YORK:ss

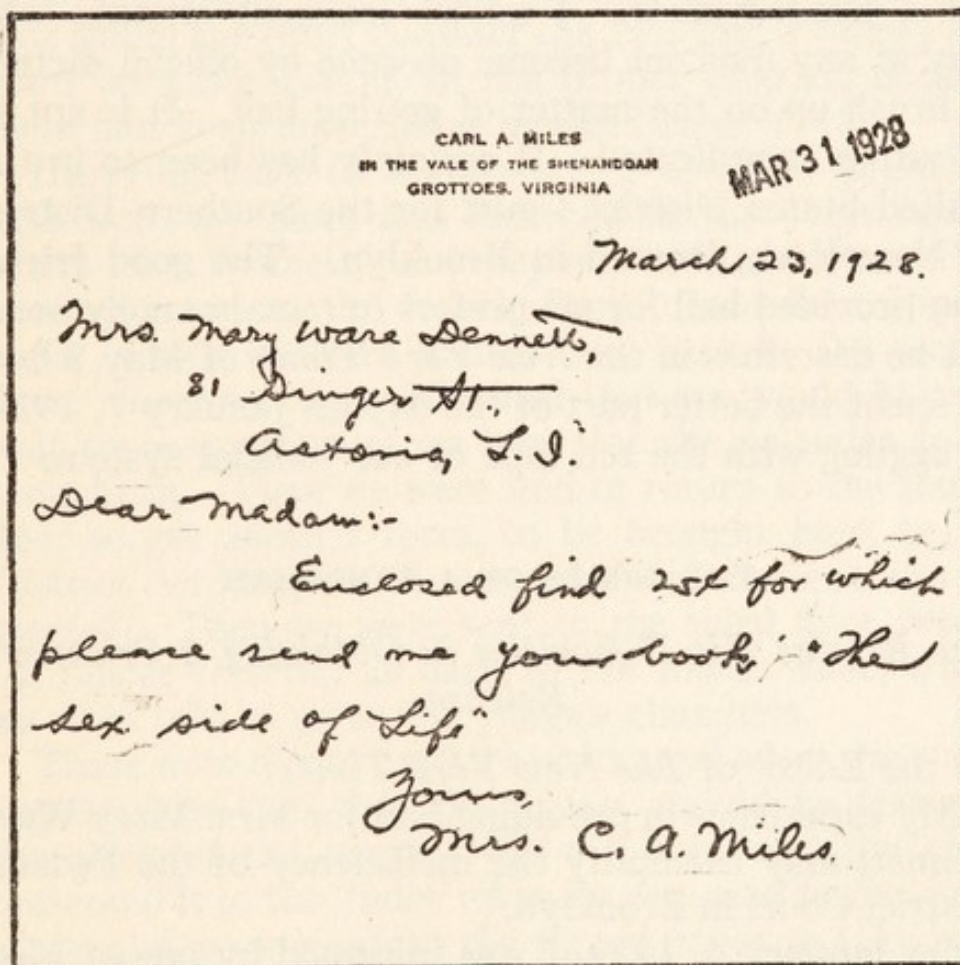
The Grand Jurors of the United States of America, within and for the district aforesaid, on their oaths present that MARY W. DENNETT hereinafter called the defendant, to wit: on or about the 2nd day of April, 1928, in the Borough of Queens, County of Queens, City, State and Eastern District of New York and within the jurisdiction of this court, did then and there unlawfully, wilfully and knowingly deposit, and cause to be deposited, in a Post Office Box, maintained by the United States Government, in the Borough of Queens, County of Queens, City, State and Eastern District of New York, for mailing and delivery, certain non-mailable matter, to wit: a pamphlet, booklet and certain printed matter enclosed in an envelope, which said pamphlet, booklet and certain printed matter were obscene, lewd, lascivious, filthy, vile and indecent, and unfit to be set forth in this instrument and to be spread upon the records of this Honorable Court, and which said envelope containing said pamphlet, booklet and certain printed matter as aforesaid, was then and there addressed to "Mrs. C. A. Miles, in the Vale of Shenandoah, Grottoes, Va." and which she, the said MARY W. DENNETT, at the time of such mailing, knew said envelope to contain said pamphlet, booklet and certain printed matter, which were obscene, lewd, lascivious,

and filthy, vile and indecent, against peace and dignity of the United States and contrary to the form of the statute in such case made and provided, and especially contrary to Title 18, United States Code, Section 334.

Framing indictments which state that the offending language is too bad to quote in the document, seems to be a governmental method of requesting a jury to convict. Comstock used to boast of never having lost a case under Judge Benedict, who was accustomed to permit this sort of indictment.

THE DECOY

Consulting my files, I found the note reproduced below, similar to thousands of others I had received.



Later investigations brought out the fact that this Mrs. Miles is a fictitious character, concocted by a Postal Inspector as a decoy. There is such a place as Grottoes, Virginia, but there is no Mrs. Miles. The inspector has admitted it. The government even went to the length of having this little letterhead printed to serve its snooping purpose. More facts regarding this phase of the story will be told later.

THE MATTER OF BAIL

The next step was to obtain bail. Mr. Ernst learned from Wilkinson that the amount that the court would probably fix would be \$2,500. If that amount seems high, it must be borne in mind that obscenity is a crime, not a misdemeanor. I advise innocent citizens who may at any moment become obscene by official dictum to brush up on the matter of getting bail. It is apt to be rather complicated. It certainly has been so in the United States District Court for the Southern District of New York, located in Brooklyn. The good friend who provided bail for me prefers to remain anonymous, but he describes in the *New York Times* of May 8 how he spent the better part of the day on January 7, 1929, struggling with the red tape of our judicial system.

THE TRIALS OF A BONDSMAN

One Relates His Difficulties in Obtaining a Prisoner's Release.

To the Editor of *The New York Times*:

My experience in providing bail for Mrs. Mary Ware Dennett may exemplify the inefficiency of the Federal District Court in Brooklyn.

On January 6, 1929, I was informed by one of Mrs.

Dennett's sons that she had been summoned to court the next morning charged with mailing obscene matter in the form of her pamphlet on sex instruction. Having known the pamphlet for ten years, and believing it to contain valuable information on the subject of sex. I agreed to furnish bail, and appeared at the Post Office Building at 10:10 the following morning as directed. The Judge arrived at 10:40 and the case was reached at noon.

My personal bond was rejected, although I had with me the deed and tax receipts of my house worth many times the amount of the bail, the reason given being that property in Manhattan was in a different district from Brooklyn, and, therefore, could not be accepted. In other words, a Federal Court sitting in one portion of New York City would not accept as security free and clear real estate in another portion of the same city. Nor would the court consider the fact that I owned 300 acres on Long Island, in the proper district, because there had been no transfer by deed since 1718.

Hurrying back to Manhattan, I obtained \$2,500 in cash from my bank and returned to the court house, where Mrs. Dennett's attorney was waiting for me. We were directed to the fourth floor to obtain a slip of paper, which we were told to take back to the second floor, where we were informed that we would have to wait three-quarters of an hour for the calendar to be brought in. Then we were told to return to the fourth floor to get another form, to be brought back to the District Attorney on the second floor, where it was inspected. Then we were sent to the third floor, where the officer referred us back to the fourth floor, where we were told to go to the Judge's chambers.

These were closed until 2 o'clock, and when the Judge appeared he said that the papers should be taken to the clerk of the court. We did this, and the clerk presented it to the Judge when he returned to the court room, and we were given the signed paper to take back

to the fourth floor, where Mrs. Dennett was detained.

There we were told to take the paper back to the second floor to obtain another signature, but when we arrived there the proper official had left, and we were informed that nothing further could be done. However, the attorney persuaded the Assistant District Attorney to provide a substitute signature, armed with which we went to another office, where the \$2,500 in cash was accepted. No receipt was given, and I was informed that \$25 would be deducted when the bail was returned.

We were given a note to a woman on the fourth floor, who said that we could not get Mrs. Dennett out until we obtained another approval on the second floor. The elevator had stopped running by this time, though it was only 2:10 P.M., and the court house was almost deserted. Walking up again to the fourth floor I swore to my signature and was sent back again to the second floor to get another order, which I took back to the fourth floor and was then permitted to leave with Mrs. Dennett.

Several times during these proceedings a suggestion was made that I employ a professional bondsman; but as the charge was \$75, and as I would have had to make myself liable just as if I were on the bond myself, I rejected the proposal.

To a layman it seems strange that the government should set so many obstacles in the way of releasing prisoners, as if it preferred to keep them in jail unnecessarily.

BONDSMAN

REAL DIRT

While the attorney and the bondsman were thus endeavoring to bring the bail chapter to a close, I too was having some eye-opening experience. Being "obscene" is a great education in governmental processes.

The seventh of January was Monday, and on all Mondays the federal courts are jammed with the week-end collection of liquor cases. I appeared punctually at the scheduled time, ten-thirty, with the attorney and the bondsman. We waited for about two hours before my case was called. Meanwhile the stream of bootleggers and liquor suspects flowed before Judge Moscovitz, to have bail and dates for trial determined. Those who were held for bail arrangements were seated *pro tem* in the jurors' seats. By the time I came along, after duly saying "not guilty" and hearing the bail announced as \$2,500, all twelve seats were occupied. I felt myself being poked along by the hand of a U. S. Marshall, who seemed accustomed to shoving people without ceremony. It was an uncomfortable feeling. Suddenly I heard his rough voice saying to the liquor folks in the jurors' seats, "Hey, some of youse get up and give dis lady a seat." Not being interested in sex discrimination, I protested that I didn't want to take anyone's seat, but there seemed no alternative, so when one man slunk out of a seat, I, rather than make a scene, slunk in.

Presently a marshall beckoned to me. I supposed that the bail papers had been attended to, and that I could go home. But no, the proceedings were merely begun. The marshall murmured something I did not understand, but I walked along and upstairs with him and the attorney and the bondsman. In a moment, I found myself behind a closed door, and the attorney and the bondsman were shut out. I was given into the charge of another person, whose exact title I never learned—jailor will do. He said "This way" and showed me through two rooms into a third which had an aisle through the middle, on one side of which were prison bars reaching from floor to ceiling, and on the

other side of which was a low wooden rail. The space behind the iron bars was filled with men, more than could find seats on the benches. Evidently, because I was a woman, I was put behind the wooden rail instead of the iron bars—again a curious sex discrimination. After a while one more woman appeared, a liquor raid case, and she was placed beside me.

The room was high but small. The windows were shut tight, and the air was foul. I waited and waited, not having any idea why I was obliged to do so. The jailor kept unlocking and locking the iron door that led into the caged section as he put more people in, or let them out when they had managed to obtain bail. The bonding company runners were doing a lively business, but many of the people held there had no money with which to pay the exorbitant charges demanded by the bonding companies. The woman beside me said her bail was \$400 and they wanted \$20 for providing it. She hadn't a cent. It was long past luncheon time. Those who had money got the attendants to go out and buy sandwiches for them. Those who had no money went hungry. They were told by the loud-voiced jailor that if they didn't get bail by three o'clock they would go to prison. The air grew worse. Someone urged that a window be opened. An elderly clerk complied with the request as if it were something abnormal. Soon he felt a "draft" and went back to the airless plan. The only water available was from a tank, below which was one muddy-looking glass tumbler, used by all and sundry. The adjoining toilet facilities were unspeakably horrid—no sex discrimination there—and conditions of ancient dirt were so bad that a description of them would be, in the language of the indictment, "unfit to be spread on the records of the Honorable Court." The irony of being held on

the charge of being "filthy," in a place that was positively nasty, soaked into my consciousness as the minutes dragged by. The bad air began to tell; I felt myself getting lethargic, when suddenly a loud voice shouted "Dennett," and over the railing came a paper bag at me, via the busy jailor. It was some chicken sandwiches which the attorney and bondsman had stopped to get for me in the midst of their goings and comings about the bail. One bite was all I needed to stop the gone feeling. The surroundings did not invite an appetite. The woman beside me had been jailed since Saturday night without food, so I gave the sandwiches to her. It made me ache to leave her to fate, when my own release came, in the middle of the afternoon.

With the bail an actuality at last and the trial date set for a week ahead, the fifteenth of January, I went home, feeling as if the day's experience had somehow been a bad dream.

MOTION TO QUASH THE INDICTMENT

The traditional "law's delays" began, and the end is not yet. The many postponements for nearly four months, with one exception, were all made to suit the convenience of the Judges and the Prosecution, and not the defendant or her counsel. The first delay was when the Prosecution asked for more time to prepare. As Mr. Wilkinson put it, "This woman has had eleven years in which to find friends for the pamphlet, while I have had only a few weeks to find opponents." Up to the time of the sentence and appeal, I had to make thirteen long trips to the Court in Brooklyn, and on only four of those occasions did anything happen ex-

cept waiting to hear the case called and postponed. It wasted a good half day each time.

Mr. Ernst's first move was to give notice that he would file a motion that the indictment be quashed by the Judge "on the ground that the said indictment fails to state facts sufficient to constitute a crime." An admirable brief in support of this motion was duly filed. The first arguments on the motion to quash were heard on January 21, having been postponed from the fifteenth and sixteenth. Previous to the hearing on the motion before Judge Moscovitz, a very important stipulation was made by Mr. Ernst and agreed to by Prosecutor Wilkinson.

PROSECUTOR AND DEFENSE COUNSEL EXCHANGE ADVANTAGES

It will be remembered that the indictment did not mention the pamphlet by name, but said that the envelope sent to Mrs. Carl A. Miles contained a "pamphlet, booklet, and certain printed matter" which were "obscene, lewd," etc. The "certain printed matter" was a leaflet of *Representative Opinions* endorsing the pamphlet, which it was customary to enclose when the pamphlet went to new readers. (This leaflet is given on pages 135 ff.) Mr. Ernst obtained from the prosecutor a written stipulation that this leaflet of opinions on the pamphlet *was* the "certain printed matter" referred to by the indictment, as one of the things which was "unfit to be spread upon the records of the Honorable Court." This stipulation should be borne in mind, as it plays a significant part later in the trial. At this same time Mr. Ernst agreed that the defense would admit the mailing of the envelope to the Mrs. Miles in Virginia, so as to save the Prosecution from wasting time and money to

bring the woman to New York to testify. This agreement was rather in the nature of an exchange of advantages,—the “Representative Opinions” were to be named in the indictment and the Miles woman was not to be called to the witness stand. Later it will be shown how the Government tried to vary the effect of the stipulation regarding the leaflet of opinions.

ARGUMENTS ON THE MOTION TO QUASH

There were two sets of arguments made on the motion to quash the indictment, one on January 21st, the other on January 28th. This duplication of procedure was due to the fact that Judge Moscovitz re-arranged his plans for conducting the case. The following excerpts are from the court stenographer's records.

MR. ERNST: If your Honor please, on this motion there is before you the pamphlet entitled *The Sex Side of Life*, and an enclosure with it, entitled *Representative Opinions*. These opinions are from thirty-eight persons throughout the country, not only stating their opinion of the pamphlet itself, but giving evidence as to the kind of distribution and the use of the pamphlet.

He quoted from several.

Mr. Ernst then described how the pamphlet came to be written, and quoted the foreword by the editor of the *Medical Review of Reviews*. The Judge inquired how large the circulation had been in pamphlet form and was told about 30,000 copies. Mr. Ernst continued:

“I call to your attention that we are past the days when it is necessary to argue that sex education is necessary. The Federal Government has distributed

innumerable pamphlets urging sex education along this line. I trust that your Honor will take especial notice of these pamphlets issued by another branch of the Federal Government, many of which are as frank in detail, and as specific as to terms, as this pamphlet before you. It is only by general education, according to the suggestions of the Federal Government, that the prevalent idea of the uncleanness of sex can be overcome.

"Now assuming that some type of sex education is necessary, we come to the next point, as to whether we should be content with half truths . . . or whether half the truth and concealment isn't in itself obscenity. The pictures of the human body in schools with the genital organs removed, create a secrecy which, according to the leading educators of the land, has a more degrading influence on the young than a clear, simple scientific statement of sexual information such as is contained in this pamphlet.

"Above all else the pamphlet is one of sincerity and integrity. There are no dirty words in it. There is nothing in the pamphlet that will create a dirty giggle or a blush. It is sincere and simple and straight-forward. Those are ingredients that do not accompany pornography, obscenity, lewdness and lasciviousness.

"We are past the period in our education of a natural silence and a taboo on the subject of sex. This pamphlet lifts the veil and does not rend it. From the list of the recommendations you can find out the method of distribution. To condemn the pamphlet is to condemn the Y.M.C.A., the churches, the Union Theological Seminary and other institutions of that type throughout the country, which have been the distributors and proponents of the pamphlet."

Mr. Ernst then compared this indictment to others in legal history, showing that there was excellent pre-

cedent for the dismissal of the case. He showed that even in a case where gross sexual details involved in a revolting murder case had been printed in a newspaper, the indictment had been quashed, as in the case of *U. S. vs. Journal* (197 Federal Reporter, 415, page 2). The court held that while the description was "neither beneficial nor elevating, it did not violate the prohibition of the obscenity statute.

Next he took up the question of the definitions or tests of obscenity, showing how the classic test has been carried over from English court precedent, with all its vague and purely speculative interpretations, as to "whether or not the publication would have the tendency to deprave or corrupt those whose minds are open to such immoral things." This test, as usually cited, adds the further foggy phrase, "and into whose hands the publication might fall." He emphasized the fact that recent court decisions in this country had indicated dissatisfaction with this old formula and had insisted that the inducing of "lecherous desires or impure sexual thoughts" must be shown if a publication was to be deemed obscene. Mr. Ernst said:

"There is nothing in this pamphlet that can be deemed to be lecherous or impure. True enough, it deals with sex, but obviously the statute did not mean to imply that all literature dealing with sex would be banned just because some filthy-minded person comes to the conclusion that he procures an impure stimulation from the material. As Judge Hand held in the *Kernerly* case, 'If the time is not yet when men think innocent that which is honestly germane to a pure subject, however little it may mince words, still I scarcely think that they would all forbid that which might corrupt the most corruptible'."

Mr. Ernst continued:

"The test of obscenity is a constantly changing test. Back in 1881 the works of Zola, Swinburne and Whitman were suppressed by the courts. These works are now distributed legally through the mails in every part of the world. In other words, our morals change, and if the District Attorney points out cases dating back to 1879 and 1881, it is very obvious that we are living in a different era.

"In the next place there is no case that we know of similar to this, where the facts are presented clearly from an educational point of view, for distribution to children for the spread of decent intelligence. The old cases which have held the material obscene relate to such things as in the Rosen case in the Supreme Court, to pictures of nude women covered by lamp black, with instructions that the lamp black can be taken off by the use of a piece of bread.

"This is a case which is clearly a matter of the spreading of decent information for the youth of the land. To condemn it is to condemn every organization of intelligence in the country that has used it; and to throttle the distribution of intelligent information on the subject is to drive the children back into the gutter."

Judge Moscovitz inquired what ages the pamphlet was intended to cover—what had the author in mind? Mr. Ernst replied that the author had in mind at the time she wrote it her two children, whose ages at that time were fourteen and ten. The judge then wanted to know how general the distribution had been, if there had been any limitation. Mr. Ernst answered that various welfare organizations had ordered the pamphlet in quantity for circulation among members or had recommended it to members. He indicated no limitation, for there has been none. The circulation of the

pamphlet has increased simply on the spontaneous recommendation of its friends.

But the Judge was obviously worried about age limits and chaperonage. He continued his questions:

THE COURT: Is it your position that a child of ten years should read this pamphlet?

MR. ERNST: I can only state, as a father of a girl of ten, that she happens to be in a position where we can read her this entire pamphlet. Moreover, assuming that it were new for a child of eight, who had just learned her letters, obviously our literature for the rest of the adolescent field must not be kept down to the level of the baby. Adults and adolescents have some rights also, and if we are going to say that the only information that can be spread is such as can be offered to a child of seven, we are by the same token starving the entire rest of the population.

THE COURT: About what proportions were individuals and what proportions were institutions and organizations?

MR. ERNST: Mrs. Dennett will have to explain that.

MRS. DENNETT: I could not give an accurate answer without consulting my books. There have been thousands of letters received in the course of years, and it would be only guesswork to undertake to say. For instance, the Union Theological Seminary book store has ordered something like 600 copies, as I recall it, but just how that proportion would be in regard to orders from individuals, I could not say without a good deal of arithmetic, which I would be glad to give you if it is pertinent.

THE COURT: Have you any institutions where the children are, say, under fourteen?

MR. ERNST: I dare say the Y.M.C.A.s deal with children under fourteen. The National Council orders it, the locals order it, the *Presbyterian Magazine* rec-

ognizes its use; the Child Study Association publishes a pamphlet containing references to various books and articles dealing with the education of children, in which they endorse this very article by Mary Ware Dennett. It has been endorsed by *Children, the Magazine for Parents*.

THE COURT: In your opinion is it a pamphlet you would have around your home?

MR. ERNST: I certainly would. Your Honor knows that children get this information somewhere or other, and it is far preferable to have them get the material in an intelligent, clean way, than to pick it up from somebody whispering a dirty four-letter Anglo-Saxon word, and then have the child snoop around to a dictionary and find out what it means.

Mr. Ernst's closing words were:

"If this pamphlet is obscene then life itself is obscene."

THE PROSECUTOR LEADS TOWARD THE SEWER

MR. WILKINSON: If the court pleases, my adversary stated that he did not want the youth of the country to get the information from the gutter. I would hate to see the youth of our nation not only descend to the gutter, but to go beneath the gutter and into the sewer, where this pamphlet directly leads them. Sex instruction is one thing and perverted sex instruction is another.

This book indicates that marriage is not a necessary part of sex relations, that masturbation is not harmful to the young, and a description of the sexual act itself, couched in such language that would be injurious to the immature mind.

Here is the language: "For centuries this habit has been considered wrong and dangerous, but recently many of the best scientists have concluded that the

chief harm has come from the worry caused by doing it, when one believed it to be wrong. This worry has often been so great that real illness, both of mind and body has resulted. There is no occasion for worry unless the habit is carried to excess."

THE COURT: Is that a fact?

MR. WILKINSON: It is not.

Here we have the phenomenon of a Prosecuting Attorney flatly contradicting the opinion of many of the best scientists, without a single quaver.

But he at least had the courage of his ignorance, and he proceeded:

MR. WILKINSON: If we are going to instruct girls and boys of fourteen or fifteen years of age upon sex in a book that does not contain one word about self-control—and in the entire booklet there is not one word about self-control.

This was the first of several instances where the Prosecuting Attorney made the statement that there was no word about self-control in the whole booklet. And it may be well at this point to show that he was untruthful. Here are several passages from the pamphlet which mention and strongly imply self-control.

(From the Introduction to Elders.) "We give to young folks, in their general education, as much as they can grasp of science and ethics and art, and yet in their sex education, which rightly has to do with all of these, we have said, 'Give them only the bare physiological facts, lest they be prematurely stimulated.' Others of us, realizing that the bare physiological facts are shocking to many a sensitive child, and must somehow be

softened with something pleasant, have said, 'Give them the facts, yes, but see to it that they are so related to the wonders of evolution and the beauties of the natural world that the shock is minimized.' But none of us has yet dared to say, 'Yes, give them the facts, give them the nature study too, but also give them some conception of sex life as a vivifying joy, as a vital art, as a thing to be studied and developed with reverence for its big meaning, with understanding of its far-reaching reactions, psychologically and spiritually, with *temperant restraint*, good taste and highest idealism'." (Restraint is impossible without self-control.)

"Young people are just as capable of being guided and inspired in their thought about sex emotion as in their taste and ideals in literature and ethics, and just as they imperatively need to have their general taste and ideals cultivated as a preparation for mature life, so do they need to have some understanding of the marvellous place which sex emotion has in life. Only such an understanding can be counted on to give them the *self-control* that is born of knowledge not fear, the reverence that will prevent premature or trivial connections, the good taste and finesse that will make their sex life when they reach maturity a vitalizing success."

(From the main part of the pamphlet.) "Our bodies . . . are more than machines. . . . They are the homes of our souls and our feelings, and that makes all the difference in the world in the way we act, and it makes what we have to learn, not limited to science only, but it has to include more difficult and complicated things like psychology and morality." (Morality is impossible without self-control.)

"Remember that strong feelings are immensely valuable to us. All we have to do is to steer them in the right direction and keep them well-balanced and proportioned." (Steering requires self-control.)

"Remember always that your whole sex machinery is more easily put out of order than any other part of your

body, and it must be treated with great care and respect all along. It is not fair to ourselves or to each other to do a single thing that will make us either weak or unnatural. Remember that your sex organs have a very powerful, even if invisible, effect upon your whole being, and up to the time when you are really old enough to love someone to whom you want actually to belong, you must let your sex machinery grow strong and ready for its good happy work when the right time comes." (A whole paragraph about self-control!)

MR. WILKINSON: Here is what it says about marriage—this is to the elders: "Why, the one thing which has been persistently neglected by practically all the sex writers—the emotional side of sex experience. Parents and teachers have been afraid of it or distrustful of it. In almost none of the books for young people that I have thus far read has there been the frank, unashamed declaration that the climax of sex emotion is an unsurpassed joy, something which rightly belongs to every normal human being, a joy to be proudly and serenely experienced. Instead there has been all too evident an inference that sex emotion is a thing to be ashamed of, that yielding to it is indulgence that must be curbed as much as possible, that all thought and understanding of it must be rigorously postponed, at any rate till after marriage."

And this again, on page 19, she concludes, "When people really love each other, they don't care who knows it."

Mr. Wilkinson failed to state that the last sentence he quoted was from the discussion of prostitution, and that what immediately followed was this: "They are proud of their happiness. But no man is ever proud of his connection with a prostitute and no prostitute is ever proud of her business."

THE COURT: Is there anything in this article that would tend to create the impression that the author was against marriage?

MR. WILKINSON: No. Take page 4; follow the thing through for a minute, Judge.

And then he read the same parts straight through again, but was careful not to give the context showing that the first quotation was part of a discussion not of marriage, as he implied, but of how most sex education for young people includes instruction in physiology, plant and animal comparisons, and morals, but omits the fourth and very important element of emotion; and that the second quotation was part of the paragraph contrasting true love with prostitution instead of being, as he insinuated, a brazen announcement of free love. To this second distorted quoting of my words Wilkinson added the following:

(MR. WILKINSON continuing): Of course, when people are married the world knows it. What is the idea, except to show that sex is something that is to be indulged in whenever you feel like it? Is this a book, for instance, that your Honor and I would distribute to the young ladies who were sitting in those chairs to the right of the courtroom this morning. (A visiting girl's school observing the workings of judicial machinery. They were discreetly herded out before Wilkinson began his remarks.) Would you or I as a father feel that their parents would compliment you or I, and thank you for handing over copies of this pamphlet to them? (This sentence is not a typographical error, but is Mr. Wilkinson's own English.)

Just think, when a Grand Jury in session convened, turns around and says, "United States Attorney, must that go on the record?" that it was so lewd and obscene and lascivious that they excluded it from the indict-

ment. That is how it appealed to the man who walks the street who comprises our Grand Juries.

I refer to the case of the United States against Smith, (reported in 45 Federal) that the test is not whether the language is obscene in itself. It might be in the most flowery language, but could the article raise in the minds of the young, lewd, lascivious and libidinous thoughts? And I would not like to leave a girl of sixteen and boy of sixteen years of age together in a house alone if they read the first page of this book. Would it raise that thought?

Now if your Honor please, whether a publication is obscene or not, under the proper instructions from the Court, is a question for a jury and not for the Court. And there is a whole line of cases which have uniformly held that—I have one, two, three, four—the very case that he mentions (meaning Mr. Ernst), United States against Journal Company, held that it was a question of fact for the jury to determine, whether or not it was obscene or not, under the proper instructions of the court.

There is not one word of self-control, with the act of sexual relations described with a rhythmic movement, as she describes the act, if that would not raise in the mind of a fifteen- or sixteen-year-old girl a desire, what is it? (Again the reader is reminded that these words are not typographical errors, but Wilkinson's language as set down by the Court stenographer.)

Now, if your Honor please, under the authorities, I submit this is a question of fact for trial by jury . . . and upon the question of law I say this, that the Grand Jury considered this too lewd and obscene to set forth in the indictment.

Would you leave this pamphlet upon the parlor table of your home? No. (In a very loud voice.)

Mr. Wilkinson's third claim in his charge that the pamphlet was obscene and a violation of the law, was

that it stated that progress was being made by the medical profession in the cure and prevention of venereal disease. Judge Moscovitz asked Wilkinson if that were not a true statement, and Wilkinson replied that even if it were true it was not safe to say so in a pamphlet for the young. He felt that young people should retain all their fears in order to keep themselves straight.

The Judge adjourned the case till the following week, on Monday, January 28.

PROSECUTOR RECITES IN OPEN COURT EVERYTHING THAT
WAS TOO OBSCENE TO BE WRITTEN IN THE INDICTMENT

Most obscenity cases all through history have been remarkable exhibits of inconsistency and absurdity. But perhaps there has been no more absurd an instance than is contained in the Prosecutor's arguments in this case. The indictment says that the pamphlet contains parts which are too "lewd, obscene, and filthy" to be set forth in the instrument and spread upon the records of the Honorable Court. But Wilkinson, before he concluded, proceeded to quote all those parts in open court, whereupon they automatically became part of the court record, and the "Honorable Court" was willy-nilly being subjected to the contamination, from which the fastidious Grand Jury would have protected it.

And what were these unspeakably obscene sentences? Naturally, the prosecutor would hunt for the very worst ones he could find as proof that they were utterly beyond the pale of decency. But all he could discover were these three points: (1) that "doctors are making progress in their study of these [venereal] diseases, and they are finding out how to control and cure them, just as they have in the case of tuberculosis," (2) that the modern scientific view of masturbation is obscene, for

no other reason than that Wilkinson said it was; and (3) that there is pleasure in sex union, which he admits may be true but insists that it is wicked and dangerous, i.e., obscene, to let children even suspect it.

If the reader does not perceive that these three points constitute filth, it must be, according to the prosecution's view, that he does not know obscenity when he sees it.

JUDGE MOSCOWITZ ASKS EXPERTS TO HELP HIM DECIDE

Following the first hearing on the motion to quash the indictment, Judge Moscowitz called the two opposing attorneys in consultation and talked things over with them informally. *The outcome was a most unusual decision for a United States Judge. He felt unwilling to take the responsibility* of deciding on the motion, solely on his own opinion, and so he proposed to hold an open hearing to which both sides of the case would invite representatives whose views, endorsements and criticisms would be given, as an aid to the Judge in reaching a fair conclusion. The Judge also asked to see the collection of characteristic orders and letters which had been taken from my files as indicative of the use to which the pamphlet had been put during its eleven years of circulation. He took the whole bulging folder to read at his leisure. The date set for this new hearing was January 24th. It was later postponed to the 28th.

When the day came, the court room was crowded with an exceedingly interested audience, for by that time the case had roused a wide-spread interest. Some twenty witnesses of distinction and importance were ready to testify for the defense. They included Prof. John Dewey of Columbia University, Dr. Robert L.

Dickinson, Secretary of the Committee on Maternal Health and authority on sex physiology and education, Dr. Ira Wile, physician and psychologist and former member of the New York City Board of Education, Dr. Goodwin F. Watson, former instructor in religious education at Union Theological Seminary, now on the faculty of Teachers' College of Columbia University, member of the National Council of the Y.M.C.A., Prof. Harrison Elliott of Union Theological Seminary, and Chairman of Boy's Work Committee of National Y.M.C.A., Rabbi Stephen S. Wise, Mrs. Cecile Pilpel, on Board of Directors of Child Study Association, Dr. B. S. Winchester, Executive Secretary of the Federal Council of Churches of Christ in America, Mr. Jess Perlman, Director of the Associated Guidance Bureau of New York City, Edward J. Allen, Director of the Seth Low Junior College of Columbia University in Brooklyn, George J. Hecht, Publisher of *Children, the Magazine for Parents*, Dr. William H. Cary, medical specialist in gynaecology and the causes of sterility, Rev. Eliot White of Grace Church, New York City, Dr. Willard W. Beatty, Superintendent of Schools of Bronxville, N. Y., Dr. and Mrs. Shepard Krech, on the Board of the New York Maternity Center Association, Albert R. Klemer, former Boy's Work Secretary in the Brooklyn Y.M.C.A., Dr. Edward Rumely, former head of the Interlaken School for Boys, George E. Worthington, of the Committee of Fourteen, New York City.

At the eleventh hour Mr. Ernst learned that Judge Moscovitz had decided not to hear any of the witnesses who had come to testify at his own request. It was too late then to notify all the people, so they came but were not heard. The explanation of this awkward situation which was made in the court room is here given in the Judge's own words, as recorded by the Court

stenographer. "I think instead of calling any experts, you gentlemen (meaning the attorneys) may permit these experts to prepare any statement that they desire and submit to the court, rather than having them take the witness-stand, because if I should decide to let the jury pass upon it, it would be more desirable as there would be less publicity than there would be otherwise. To permit the witnesses to take the stand would bring publicity that might affect the minds of the jurymen." The Judge decided that twelve letters or statements would be allowed to each side.

Evidently Judge Moscovitz did not want to send away at once so many busy people who had come from long distances to do service in court, so the two opposing attorneys were asked to argue again on the matter of quashing the indictment. Mr. Ernst and Mr. Wilkinson covered many of the same points as in their previous arguments, but in more detail. The chief difference in the two occasions was that this time more people actually heard with their own ears the extraordinary things which Wilkinson said, and wondered if they were in an Alice-in-Wonderland situation. And they also heard the forthright, vigorous, well-informed presentation of Mr. Ernst, and had occasion once again to realize that he is not only a very able attorney, but that his concern about the censorship problem is disinterested, constructive and on a high plane.

There was one other feature which differentiated this occasion from the previous one. Judge Moscovitz had invited three Brooklyn clergymen to share the bench with him. So seated beside him were Monsignor John L. Bedford, Roman Catholic, of the Church of the Nativity; Dr. George P. Atwater, Rector of Grace Protestant Episcopal Church, and Rabbi Louis E. Gross of Union Temple. They listened with solemnity.

Judge Moscovitz asked that the twelve letters on each side of the case be given to him by February 4th. He also set a contingent date for the trial on February 18th. If in the meantime he should decide to quash the indictment, there would of course be no need for a trial.

In providing the twelve letters for the defense, Mr. Ernst was faced with the problem of selecting from a large number of people who had long endorsed the pamphlet or who were eager to do so, a representative twelve whose opinions would indicate to the Judge that this pamphlet was in accord with sound public sentiment. The prosecution on the other hand seemed to have difficulty in finding twelve opponents. But by dint of subpoenas and requests for adverse opinions, Wilkinson produced for Judge Moscovitz eleven letters, instead of the requested twelve. Mr. Ernst gave the Judge a "baker's dozen," for good measure.

The letters are given as follows:

LETTERS SUBMITTED TO JUDGE MOSCOWITZ ON BEHALF
OF THE DEFENDANT

Statement by the Counsel for the Defense.

Attached herewith are letters of endorsement of Mary Ware Dennett's pamphlet submitted as part of the record upon the motion to quash the indictment. The Court's attention is called to the following facts:

1. The opinions submitted come from leaders in practically every field of social contact in the community—medical men, teachers of theology, a Rabbi, a public official, educators, doctors, etc.

2. The letters contain more than opinion—evidence in that many of them indicate actual experience with the

pamphlet in question. (See particularly Y.M.C.A., Teachers College, Seth Low Junior College, Union Theological Seminary letters.)

3. The letters indicate the position of the pamphlet in question in relation to similar material now in use by educational, religious or governmental organizations.

4. In every instance the letters go further than a mere statement that the pamphlet is not obscene. In every case there is testimony that the pamphlet is of affirmative benefit to the community.

5. Attention is called to the fact that the pamphlet must not be tested by the effect on the most corruptible, for surely there is no single word in all literature which fails to create some subjective objection in the minds of those who are searching for objections.

6. In the face of these opinions and the reading of the pamphlet, no jury would find the pamphlet obscene beyond a reasonable doubt. A verdict of conviction would have to be set aside as against the weight of evidence and in consequence the indictment should be quashed.

From Goodwin F. Watson, of Teacher's College, Columbia University.

January 31, 1929.

Honored Sir:

Five years ago, as Instructor in Religious Education at Union Theological Seminary, I offered a course in *Work with Young People*. Surveying available materials for sex education, Mrs. Dennett's pamphlet, *The Sex Side of Life*, was chosen by the class as most useful to place in the hands of young people. Since then I have recommended it to other classes at Union, and have used it in religious conferences of ministers, parents, and Y.M.C.A. secretaries which I have served because of my opportunities as an ordained minister in

the Methodist Episcopal Church (Wisconsin Conference), and as Director of Research for the National Council of the Young Men's Christian Association. In all of those discussions, reaching several hundred adults, some of whom were at the time using the pamphlet with their own children and with their Sunday School or Association groups, no severe criticisms were offered. I am under the impression that the book was, without exception, accepted as true in fact, beautiful in spirit, and entirely helpful. Such minor criticisms as I remember concerned a possible over-stress on sentimentality, thought by some to be repellent to older boys.

I have been active, within the past year, as a member of a committee planning national curriculum materials for the Epworth League, the young people's society of the Methodist Church. We were authorized by the General Conference of the Methodist Church to prepare a booklet for sex education for young people of high school age. Mrs. Dennett's pamphlet was read by all of the members of the Committee, including Dr. Blaine Kirkpatrick, General Secretary of the Department of Young People's Work for the Methodist Church, Dr. W. E. J. Gratz, Editor of the *Epworth Herald*, their national paper, several other ministers and national staff members, and was found so wholesome and useful that the project of preparing a new book was laid aside. Instead, I was asked to prepare a guide to books on sex education which will be published by them this spring. A copy of this announcement accompanies this letter.

Since 1925 my work has been in the department of educational psychology at Teachers College. My special field for research and teaching is the psychology of character. Obviously, a critical survey of the existing literature in the light of established facts has been a part of my work. Class Committees concerned with sex education have uniformly recommended Mrs. Dennett's pamphlet. I am attaching annotated biblio-

graphies prepared for class use. These have been given to approximately six hundred graduate students, made up of superintendents of schools, deans of men, deans of women, vocational counsellors, high school principals, religious workers, supervisors in elementary schools, etc. Again I may report my impression that there has been no quarrel with the facts or impressions created by the pamphlet. Certainly the suggestion of "obscenity" has never been raised.

May I, because of my special field of character psychology contribute directly to three points which I understand to be at issue? They concern (1) the treatment of masturbation, (2) effects of such literature upon young children, (3) emphasis upon self-control.

The older teaching on masturbation was based on the "post hoc ergo propter hoc" fallacy. True, inmates of asylums are sometimes excessive masturbators because they lack any sense of control and have few other interests. On the other hand, the experience is normal with both boys and girls, proportions in the best studies running well over two-thirds of the college population. I have myself known a young man chosen some years ago as most physically fit among Princeton freshman who had masturbated with no apparent sense of shame almost every day since he was thirteen. Another young man, almost equally excessive in his habits, is a fine stalwart young man, leading his class in college, graduating at 16, now holder of several graduate degrees and showing great professional promise. In counselling with young men I have met many fellows discouraged, sure that their will power had been undermined, the keen edge of their thinking dulled, their right to respect from others forfeited by their practice of masturbation. The fruits of worry and shame, induced by false warnings, are bitter. Relieved of worry, the matter no longer oppressing them at every turn, they became more normal in social contacts and more temperate in sex habits. Therefore, I welcome the modern tendency,

found in all of the authoritative literature and not alone in Mrs. Dennett's pamphlet, to minimize this matter.

The effects of such reading upon young children seems to me likely to be exaggerated. Young children are curious but seldom passionate in their sex reactions. This is why it is often recommended, always in my courses, that sex education should precede rather than follow, the development of the actual situation. Children are usually able to take a calm view of facts such as are presented in *The Sex Side of Life*. I should hope that at age ten, the booklet would offer little that is new to my own boy and my little girl.

I sympathize heartily with the prosecuting attorney and his associates in his concern for a self-control that is far from license. There is, however, notable authority for an opinion that exhortations to chastity and self-restraint are poor techniques for such education. I might mention George A. Coe, *A Social Theory of Religious Education* (1917), and John Dewey, *Human Nature and Conduct* (1922) and an article by Avis Carlson in *Harper's Magazine*, January, 1927, entitled *Wanted, a Substitute for Righteousness*, as contributions to this educational point of view. The real controls of conduct are seen to be in habits of intelligent response, in awareness of all significant consequences, and in a sense of fitness, beauty, and idealism. Personally I should have been glad to see in *The Sex Side of Life* greater attention to the family, as, potentially, a very rich, beautiful and satisfying institution. That is not, however, at issue. My point is that there is competent and worthy opinion to support Mrs. Dennett's attempt to build desirable character through enlightenment and love for the beautiful.

In view of such widespread acceptance and appreciation I cannot but feel that to take the time of the Federal Courts for further consideration of the charge of "obscenity" is ridiculous. Free criticism of the pamphlet by those who object to it is, of course, desirable.

Those who dislike it should be encouraged in pulpit, school, and press, to present what may be more constructive efforts. Yet the pamphlet cannot be considered in the same category with the vulgar material intentionally salacious and suggestive, widely available in modern newspapers, magazines, novels, and the like. I believe that increased appreciation of the sanity and dignity of our courts will follow a ready dispatch of such interference with a really helpful document.

Respectfully yours,

GOODWIN WATSON

Assistant Professor of Education

Enclosed with the above letter was a statement prepared for the Epworth League—"Suggestions For Further Study,"—containing the following paragraph:

"Among the books for young people themselves one outstanding contribution is a little pamphlet by Mary Ware Dennett entitled *The Sex Side of Life*. It is as frank as any clean-minded young person would desire. It uses the best scientific terms. It is written with a wholesome and beautiful appreciation of the place sex should have in life. It was published first, some ten years ago, in the *Medical Review of Reviews*, having been written by an enlightened mother for her daughter (children). It costs but twenty-five cents."

There were also four Annotated Bibliographies Mimeographed for Distribution (showing how the pamphlet is listed).

I. *Bibliography from Report of Committee on Sex Education, Religious Education Course, Union Theological Seminary, 1924.* (Listed first) Dennett, Mary Ware. *Sex Side of Life*. A frank, intelligent, helpful exposition of sex knowledge, suitable for young people 16 and older. This is probably the best material available to put into the hands of young people.

II. *Bibliography from Report of Committee on Sex*

Education, Union Theological Seminary, Course in Religious Education. March, 1925. For Parents and Teachers. (8 books listed.) For Adolescents. (3 books listed, the first of which was) Sex Side of Life, Mary Ware Dennett. The best there is.

III. *List Prepared by Committee of Teachers' College, Spring, 1926. The Committee was constituted to study "Sex Education for Girls in a Church Center."* (Listed first. For Girls 16 and over. Dennett, Mary Ware. *Sex Side of Life*. A frank, intelligent, helpful exposition of sex knowledge; probably the best material available to put in the hands of young people.

IV. *List Prepared for Discussions of Young People, from New York Settlement Houses, January, 1928. Suggested Readings for the Intensive Social Education Forum. Topic: Sex Education for Children and Young People. (Listed first.) Dennett, Mary Ware. The Sex Side of Life. 16 page pamphlet published by Mrs. Dennett at 81 Singer St., Astoria, L. I. The best and simplest treatment for early adolescents. Frank, intelligent and beautifully written.*

From Stephen S. Wise, Rabbi of the Free Synagogue, New York City.

January 28, 1929.

My dear Judge Moscowitz:

I had hoped it might be possible for me to have the pleasure of discussing with you in informal session the matter of a pamphlet which is before you for judgment: *The Sex Side of Life*, by Mary Ware Dennett. I have read the pamphlet twice with utmost care and I cannot understand why a charge should be brought against the writer on the ground that this pamphlet is obscene.

I cannot help feeling that the attorneys for the defense are justified in saying "It is a clean, serious, scientific document of great social value." I can only say that I should be entirely willing to put it in the hand

of an adolescent child or grandchild of my own. I wish that children might learn about the sex side of life from a source as clean and wholesome as this is, as compared with what are, alas, the much less clean and unwholesome sources from which most children derive their sex information. I cannot find anything obscene therein.

I deeply regret that action should have been brought against Mrs. Dennett. I have read many items, pamphlets and books, dealing with the same theme and do not know of any one of them that is better or cleaner than *The Sex Side of Life*.

I am,

Faithfully yours,

STEPHEN S. WISE

From Mrs. Cecile Pilpel of the Child Study Association of America.

January 31, 1929.

Dear Sir:

The Child Study Association of America organizes and directs about one hundred and fifty parent study groups throughout the country. As Director of Study Groups, and also as an individual group leader, I am constantly in touch with hundreds of mothers who are actively concerned with the training of their children. Sex education occupies an important place in this training.

I can say that I am thoroughly familiar with the literature on sex, both for parents and children. On the basis of long experience, it is my opinion that Mary Ware Dennett's pamphlet, *The Sex Side of Life*, is absolutely sound according to our present scientific knowledge. I have found it to be of great help both for the enlightenment of parents and adolescents.

The common misconceptions about masturbation have caused untold anguish and suffering to both parents and growing boys and girls. Mary Ware Dennett's pamphlet has been most helpful in giving public-

ity to the opinions which scientists now generally accept in regard to the matter.

In his concern for the depleted ranks of American manhood through birth control, "when the clarion call of war shall sound," United States Attorney James H. Wilkinson apparently overlooked the fact that thousands of our young people are incapacitated through venereal infection. Surely this would indicate a need for the wider circulation of the best knowledge which we have at present, both of preventive and remedial measures.

Intelligent children early begin to question the reasons for the great discrepancies in sizes of families. The treatment of this subject in Mary Ware Dennett's pamphlet merely takes account of this and meets it honestly.

Children who are fortunate enough to come to their parents with questions relating to sex would profit at a later period by discussing this pamphlet with their parents. Those not so fortunate would surely profit by having the pamphlet substituted for the unscientific, undesirable, and frequently harmful information which they pick up from many undesirable sources.

Sincerely yours,

CECILE PILPEL
Director, Study Groups

From Albert R. Klemer of The National Council of the Young Men's Christian Association of the United States of America.

January 29, 1929.

Dear Sir:

For nearly nine years, I was the Metropolitan Boys' Work Secretary of the Young Men's Christian Association in Brooklyn and Queens. I had occasion to deal with many adolescents as well as parents around the problems of sex education. Therefore, it became my duty to study the literature in this field thoroughly. I

found that of the available literature Mrs. Dennett's pamphlet was among the best. It answers the fundamental questions concerning sex life in a wholesome, frank and unbiased way. Its information has been checked against the findings of both medical science and psychology and found to be correct.

I have been glad to recommend the pamphlet for reading and study to many adolescents and parents and so far as I know the result has always been a useful and wholesome one. In my judgment, its wide distribution would help to build clean and right attitudes toward matters of sex, and to stop the distribution of the pamphlet by court order would deal a blow to the whole cause of clean and wholesome sex education.

Very truly yours,

ALBERT R. KLEMER

From B. S. Winchester, Executive Secretary of the Commission on Christian Education of the Federal Council of the Churches of Christ in America.

My dear Mr. Ernst:

May I say that I am secretary of the Commission on Christian Education of the Federal Council of the Churches of Christ in America. Our governing body has taken no action with reference to this particular pamphlet, but has on several occasions taken positive action favoring a vigorous program of education in social hygiene. As secretary of the Commission on Christian Education, I am personally in charge of a program in cooperation with the American Social Hygiene Association and with my colleagues from the staff of the Federal Council.

I have carefully reread the pamphlet referred to, having had opportunity some time ago for studying it. I did not then, and I do not now, see any reason why it should be stigmatized as obscene nor regarded as a pernicious influence.

I submitted the pamphlet to my wife and, without informing her of the suit, asked her opinion of it. She read it carefully and said she thought it a very fine statement; in fact, she had never seen a more satisfactory one. She seemed surprised that it had been the occasion of this attack. I had asked her to read it having in mind our four daughters and young son.

My personal feeling is that in view of the pernicious influences which are constantly at work in the community through certain newspapers, movies and other agencies, it is a little less than criminal for high-minded people to be silent and to refrain from disseminating in a quiet way scientific information, and particularly inconsistent for the Government to discriminate against such efforts by attacks upon scientific people.

Very sincerely yours,

B. S. WINCHESTER

From Katherine Bement Davis, head of the Bureau of Social Hygiene and former Commissioner of Corrections, New York City.

My dear Mr. Ernst:

The editorial in the last number of the *Woman's Journal* concerning Mrs. Dennett's pamphlet expresses exactly what I feel about it. (Copy enclosed.) If this pamphlet is to be denied the use of the mails and be stamped as obscene, what are parents and others to do who wish to give correct and timely instruction in the matter of sex?

For the last dozen years there has been a very decided growth in the feeling that such information should be given, and that primarily the parents were the ones to do it, and next to them the teachers; but as a result of many years' experience I have found that a very large proportion of these two groups, never having been instructed themselves, are at a loss for words and methods.

Mrs. Dennett's book presents this matter without sentimentality. I know of no better pamphlet of its kind. If this is banned it will undoubtedly result in the banning of all other pamphlets in its class. What is then to become of sex education? Are we going to let our children gain their knowledge through surreptitious and often truly obscene sources, which information moreover is generally incorrect?

In my experience I have never known any boy or girl or young person to be mentally or physically injured by the truth, properly presented. I have known cases where the effect was very serious of having learned of these things from the wrong sources or never to have learned them at all.

I do most sincerely hope that this case of Mrs. Dennett's will be decided in such a way that we may go on improving upon and extending our methods in this very important matter of the sex education of children and young people.

Very sincerely yours,
KATHERINE BEMENT DAVIS

Editorial from "The Woman's Journal."

February, 1929.

Is information about sex necessarily "obscene"? If the recent indictment of Mrs. Mary Ware Dennett for circulation through the mails of her pamphlet, *The Sex Side of Life*, is upheld, it will force the conclusion that this is the official view.

This pamphlet was originally published as an article in a medical magazine, which enthusiastically suggested its distribution in pamphlet form. For about ten years it has been in circulation—through colleges, theological schools, Y. M. C. A.'s, and Y. W. C. A.'s. It has been endorsed by social workers, by educators, parents, publishers of note. All of a sudden, on the complaint of a person of unknown identity, it has been labeled "ob-

scene, lewd, lascivious and filthy, vile and indecent."

The pamphlet is simple, direct, explicit, with scientifically precise names. Written for young people in their teens, with an introduction to their elders confronting the question, "What shall we tell our children?"—it offers clear instruction with a remarkable wholesomeness and sanity, without sentimentality and on a high moral plane. If this is "obscene," then what *are* elders to give young people when they demand facts? It will be a great pity if parents and teachers are deprived of this means of solving a difficult problem.

From Dr. Robert L. Dickinson, Secretary of the Committee on Maternal Health

Clinical Prof. of Obstetrics and Gynecology, Long Island College Hospital; Senior Gynecologist-Obstetrician, Brooklyn Hospital; Ex-Pres. of American Gynecological Society; Member of Public Relation, pre-marital examination, birth control, sterility, venereal disease, Medical Advisor to Chief of Staff; Researches published on masturbation, pre-marital examination, birth control, sterility, venereal disease, prostitution, and average sex life.

February 1, 1929.

My dear Judge Moscowitz:

For gauging the need of the Dennett pamphlet and the effect of this type of teaching, I have had rather exceptional opportunities. I may qualify as one with an inveterate family-doctor point of view, notwithstanding forty-six years devoted chiefly to obstetrics and diseases peculiar to women; as one who has systematically given instruction prior to marriage and has been honored as father confessor to thousands of women; and as giving, these five years past, his full time without salary to medical investigation of neglected sex problems, with a staff, under a program endorsed by conspicuous medical organizations.

I qualify as one happily married, with two of our three daughters living and also happily married, and as several times a grandfather. Also as a Bible student

and long-time church officer. Furthermore, as having visited fourteen countries to interview investigators and teachers of sex matters—a study facilitated by familiarity with the literature and with three languages.

The Dennett pamphlet, as a statement of facts, is substantially correct. As a method of presentation, it is desirable and most timely. Its brevity and simplicity commend it. I found nothing filthy or obscene. With the clean-minded young girl undesirable suggestions do not register, while the sophisticated are already misinformed.

In regard to auto-erotism, my conclusions are based on analysis of the records of over two thousand cases. One of my studies was published as a chapter of the large volume on Medical Gynecology of Howard A. Kelly, then Professor at Johns Hopkins, and in this I have said: "The physical results . . . in all but extreme cases . . . are surprisingly small. Neurasthenia is probably coincidence, rather than consequence. . . . Protracted masturbation not associated with sexual images tends to apathy or aversion toward the sex-act, but the contrary is true where there is longing for normal gratification. . . . The tortures and the shame react on the general health." (I should have added that no small part of this reaction is due to harmful teaching.) My analyses are in general agreement with those of Dr. Katherine B. Davis, who in 1000 anonymous answers from unmarried college graduates found two-thirds had been given to self-relief at some time, that a third persisted, often from ten to thirty years, and that it is among the *healthier* groups that the practice tends to continue. From my study it appears that, just as menstruation is a normal and necessary preparation for child-bearing, so local feeling exploding once or twice a month in virgins is a normal and necessary preparation for that rhythm of desire for the husband which fosters conception, and the absence of which conduces to maladjustments, infidelity and divorce.

My own experience in hundreds of instances is that a description of sexual intercourse such as this pamphlet contains often puts an end to the disturbed wonderings of the adolescent or the grown woman in a way that is entirely comparable to the setting at rest of the mind of the child by a simple explanation of the carrying of a baby brother within the mother's body. I have no more grateful patients than those whose fears have been removed by statements such as this pamphlet contains. I have been familiar with it since its original publication in a medical journal eleven years ago and have been glad to have it on my list of recommended reading matter.

If Mrs. Dennett's statement that venereal disease is being controlled is corrupting, then the pamphlets of the Public Health Service, National and State, are corrupting.

A verdict against the pamphlet would block teaching of doctors and medical students, in medical textbooks and journals, as well as a large part of the printed information on sex matters found essential by lay educators.

Respectfully yours,

ROBT. L. DICKINSON

Dr. Dickinson submitted also by way of post-script a note on masturbation, to offset the ignorant claims made by the prosecution.

February 8, 1929.

My dear Judge Moscovitz:

Appended is a list of modern authorities, medical, psychological and educational, who have published statements on the subject of masturbation, the general tenor of which are reflected in Mrs. Dennett's brief reference to the matter in the pamphlet *The Sex Side of Life*. So far as I have been able to find out no one of equivalent position of learning or experience has published evidence of weight to the contrary in modern

times, nor have I heard such statements expressed verbally.

The statements of a contrary view still hark back to the writings of Tissot, a physician of the period of the French Revolution, who published (1770) a book called *L'Onanisme—dissertation sur les maladies produites par la masturbation*," also the picturesque threat of Lallemand of 1813 including spinal paralysis and insanity. Symptoms were then seen as causes.

The best summary of the literature is still that of Ellis.

I could cite our abstracts from the Roman Catholic textbooks on moral theology and pastoral medicine and my interviews with the high authorities in Italy. Prof. Scremin of Padua, for instance, leads the movement in the clerical press to free masturbation from penance as a normal experience, always provided it is under control.

Sincerely yours,

ROBT. L. DICKINSON

Auto-Erotism

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FOREL, AUGUST, M.D. Professor of Psychiatry and

Director of Insane Asylum, Zurich, Switzerland. *The Sexual Question*, 1906, p. 229.

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HEALY, WILLIAM, M.D. Physician, Psychologist, Director Judge Baker Foundation, Boston. *The Individual Delinquent*.

JONES, ERNEST, M.D. Director of the London clinic for psycho-analysis. President of the British Psycho-Analytical Society, and of the Institute of Psycho-Analysis. *Auto-Erotic Phenomena in Adolescence*, Hoeber, 1919.

JELLIFFE, S. E., M.D. Editor with W. A. White, Nervous and Mental monograph series. Editor *Psycho-analytic Review*. With W. A. White author *Modern Treatment of Nervous and Mental Diseases and Diseases of the Nervous System*.

KRONFELD. Berlin. Author of article in *Handwörterbuch der Sexual Wissenschaften* (Marcuse), 1926, p. 530.

LOEWENFELD. *Sexualleben und Nervenleiden*, 1891.

MEAGHER, JOHN F. W., M.D. Neurologist, St. Mary's Hospital, Brooklyn. *A Study of Masturbation*, Wood, 1924, pp. 62, 29.

BIGELOW, MAURICE, Ph.D. Professor of Biology and Director of the School of Practical Arts. Teachers College, Columbia University, *Sex Education*, 1918, p. 138.

HERBERT, SOLOMON, M.D. Psychotherapist (England). (Asst. Medical Officer, Consumption Hospital, Manchester, 1915.) *Sex and Life*, 231, 232.

BRILL, ABRAHAM A., M.D. Psychiatrist. Sometime Chief of Psychiatric Clinic, Columbia University and Adjunct Professor, New York Post Graduate Medical School. Authorized Translator, Freud, *Masturbation*, 1915, p. 8.

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From Edward J. Allen, Director, and five associates of the Seth Low Junior College of Columbia University, Brooklyn, N. Y.

February 2, 1929.

My dear Mr. Ernst:

The pamphlet *The Sex Side of Life* was first called to my attention through the office of the Philosophy of Education Department of Teachers College, Columbia University. It was represented to me as the best article of its kind and after I had carefully read the pamphlet I thoroughly agreed with that sentiment. Indeed, it appeared to me to be so desirable from both

moral and educational points of view that I obtained several copies. The supply was quickly depleted and a second and larger order was made.

From early childhood I received information on this subject first from older boys with their usual line of filth and later through my parents who with the best of intentions attempted to instruct me by reading books and articles on what the young man should know. This literature which by many is considered moral seems to me to be exceedingly immoral, because such literature generally does not state the pertinent facts and the result is that the child must resort to unclean sources to obtain it.

I have read many pamphlets sent to me by the United States Public Health Service and have been struck with the fact that they approach this problem in a similar fashion to that utilized by Mrs. Mary Ware Dennett. In many cases statements are almost identical. However, Mrs. Dennett's pamphlet leaves nothing to stimulate the imagination but states in a clear, forceful and healthy fashion information which every boy and girl should have at an early age. They should be fully informed before the age of ten, otherwise they will obtain their knowledge from most undesirable sources.

If this pamphlet was banned our immoral vice crusaders might just as well seek to ban the literature disseminated by our Public Health Services and Medical Societies. The result of such action would certainly retard progress in this field and assist in perpetuation of our present over-emphasis of sex, abnormal sex practices, the double standard of morals and do much to increase rather than diminish prostitution.

A charge has been made that this pamphlet is obscene particularly because of its statements pertaining to masturbation or self-abuse. This habit has vexed the thought of man for centuries. Mrs. Dennett's carefully worded statements on this serious problem are thoroughly scientific and are emphatically to be commended.

If we desire healthy and mentally sound individuals we should give them the truth on this subject and not the thought of past ages. To refer them to the remote past is to make the assumption that anything is good because it is old.

In the absence of such pamphlets as Mrs. Dennett's, our Public Health Services, and the literature of medical societies, the young would in the majority of cases have no other sources of information excepting those that are contaminated. Criticism has been levelled against her for saying that as doctors learn more "people are more generally beginning to understand how to have babies only when they want them and can afford them." This is erroneously called race suicide by those who have little or no understanding of the fundamental aspects of our economic relationships. Obviously the natural resources of the world are limited and the amount of goods and services which are produced in any given time are also limited. An increase in the population unless accompanied by a proportionate increase in the production of goods and services reduces the general standard of living. The Bureau of Census reports clearly indicate that those who receive the lowest incomes have the most children and also the highest infant mortality rate. Without a conscious control of the arrival of children society is therefore responsible for the death of countless children with all the suffering that this entails. To oppose this knowledge is to fight against an increase in productive efficiency, the raising of standards of living and national efficiency in times of stress. It is clear that conscious control of births aids a government in time of war rather than the reverse. In any event, Mrs. Dennett's statement is in no way obscene and in making this statement she is merely exercising her rights as a citizen.

The pamphlet by Mrs. Dennett is clearly a fruitful field for vice hunters and self-appointed moral crusaders who have strong preconceptions and emotional

reactions but very little breadth or understanding based upon a careful observation of present realities.

The Sex Side of Life written by Mary Ware Dennett is a plainly written, straight-forward statement of the psychological, comparative, moral and emotional aspect of sex relations among human beings. The material is presented in a wholesome and dignified tone, and there is nothing in the pamphlet that ought to offend or shock anyone who wants to be advised on the elementary facts of sex life.

I feel that the information that Mrs. Dennett has so concisely and delicately brought together in her pamphlet is vital to the education of youth. It is the kind of information that every parent should have access to instead of so much vague, sentimental and tawdry literature that is being circulated. I believe that the best way to know the truth about such vital matters as sex is to face the truth frankly. The teaching of sex hygiene is too important in the lives of our young people to be the subject of mincing and evasive explanation. If such information is not properly learned in the home through such a frank presentation as I find in this pamphlet, then it will be learned from other sources, both vulgar and inaccurate. That in our modern complex urban life is certainly not desirable.

The pamphlet is particularly desirable for the instruction of our young people because it does not play upon their fears but attempts to eliminate fear and to develop a desirable and socially approved freedom through knowledge of the truth.

Mrs. Dennett's sin seems to be one of frankness. She has dared to call a spade a spade, and without ceremony she has wiped aside many of the myths about sex life that for years have reigned among us. She has insisted that the child should get the facts in the home circle rather than in the pool room or behind the barn, or perhaps at the night club. She takes the position that it is more dignified for parents when their children come

to them with questions of a personal nature to give them fact rather than fiction. In taking this position she is educationally on sound ground. I see no reason why the truth in any other field should be eagerly sought, while in matters relating to sex the truth should be banned as vulgar.

Very sincerely,

EDWARD J. ALLEN

Collaborated with and approved by:

E. E. SCHATTSCHEIDER

Instructor in Government

Seth Low Junior College of Columbia University

HERBERT ELFTMAN

Lecturer in Zoölogy

Seth Low Junior College of Columbia University

NELS ANDERSON

Instructor in Sociology

Seth Low Junior College of Columbia University

M. T. BRUNETH

Instructor in French

Seth Low Junior College of Columbia University

HARMON L. MUDD

Assistant to the Director

University Extension, Columbia Univ.

From Dr. Edward L. Keyes, President of the American Social Hygiene Association.

February 4, 1929.

Your Honor:

I have been asked by the Committee on Maternal Health to express to you my formal opinion concerning *The Sex Side of Life* by M. W. Dennett.

The following items may be criticized:

1. The author's intention.
2. The author's style and language—her expression.
3. The author's facts.
4. The author's advice.

I shall consider all of these as they presumably in-

fluence the immature mind and might be accused of being filthy or obscene.

Introduction for Elders, exhibits a mind from which the intention of obscenity must surely be absent. The exposition is strikingly original, clear and stimulating to interest of an entirely healthy sort.

I have read, as part of my job, a great many pamphlets on sex and I can assure you, Sir, that the style of this pamphlet has no relation whatever to the pruriency which is accepted in our best fiction and drama and, moreover, that this style compares in restraint and decency very favorably with other examples in its own class of literature.

Many persons would unquestionably object both to the language and the diagrams. They might specifically object to the anatomical language, to which one must devoutly answer, "I wish I had been taught those scientific names in youth instead of the names I learned, for these always bore about them an aroma of obscenity from which I have been unable to dissociate them.

As a physician I can certify to the accuracy of the anatomical drawings and the very unusual intelligibility of the physiological explanations. It certainly is excellent that children should have their perfectly normal curiosity on the subject of the anatomy and physiology of sex satisfied in so straightforward a manner. No normal child is incurious about any of the facts described. If their curiosity is not satisfied in some such way as this, it will be satisfied behind the barn.

As to the advice given, exception will be taken by many to the contraception advice—I, myself, do not approve of the expressions in the last sentence of par. I, p. 22, for I think that one's public advice must always be an absolute prohibition of masturbation. If a patient comes to me with this habit fixed upon him, I am far more likely to laugh at him for his unnecessary sheep-like fears than to give him a moral lecture. But when speaking to one who presumably has not acquired the

habit or in whom it is not fixed, one should absolutely prohibit; hence I should exclude the clause "unless the feeling, etc. . . ."

I assume that no one would regard this pamphlet as pornography for adults. I have tried it on two children and they have declared it illuminating, inspiring, not filthy, not obscene. Of course this pamphlet could be employed for obscene purposes among children, but it could not replace the Bible in that role.

The author of this pamphlet has endeavored to set the emotional scene as decently as possible. Perhaps the only fundamental question at stake is whether information on the subject of sex need be given at all, or, if at all, whether it need be given in pamphlet form.

Let me confess that though for fifteen years I have been an official in societies one of whose chief object was the spreading of information on sex, I have never been able to break down the barrier of reticence on this subject between myself and my children until they were so old that it did not matter. But I have made use of pamphlets such as this and they have thanked me for them. Hence I must believe that the pamphlet has its place to satisfy a normal and legitimate curiosity and to place the child's thoughts on sex in the realm of beauty and not in that of smut.

As President of the American Social Hygiene Association, I fear the effect of an adverse decision by you, Sir, might unleash the heresy-hounds upon my track and occasion the suppression of similar documents published by the American Social Hygiene Association and which for many years have been accepted with joy by representatives of all the religious denominations of this country.

I should blush to mention the well-known fact that suppression does not suppress unless it expresses the will of the community. We of the American Social Hygiene Association have found these many years past that it is the will of the community to accept such docu-

ments as this. It is your place and not mine to consider what the effect of your decision might be, not alone upon this pamphlet and its author, but far more upon the respect for the workings of Justice which is felt by such citizens as

Your most obedient,

EDWARD L. KEYES, M.D.

*From Professors Harrison Elliot and Arthur J. Swift,
of Union Theological Seminary, New York.*

February 2, 1929.

Sir:

We are members of the faculty of Union Theological Seminary and directors of the departments responsible for religious education. Sex education is definitely a part of our responsibility. Consequently, it has been our business to become acquainted with the literature in this field and to examine critically various methods of sex education with the effects thereof. Our experience covers teaching and counselling students who are preparing for the Christian ministry and for other forms of religious leadership; attention to methods of sex education in the Sunday School classes, clubs, young people's societies, and parents' groups in connection with which our students are at work and over which we have supervision; and relation for many years to student conferences, young people's groups, in the churches, Y.M.C.A. and Y.W.C.A. adolescent activities, parents' groups, and training conferences of Y.M.C.A. and Y.W.C.A. secretaries, in various parts of the nation. We testify, therefore, not on theory of what might happen, but from first-hand experience and study.

We wish to say that it seems to us absolutely essential to a fine and healthy sex adjustment on the part of adolescents, that the sort of information given in the *Sex Side of Life* shall be made available to them and to their parents and teachers. For this purpose, we have used and recommended this booklet widely, because we

consider it to be the best brief summary of this information available. We have known only good, and not harm, to result from its use. To be the most useful, such sex information must be scientifically presented, with the sort of definiteness which satisfies curiosity instead of being sexually suggestive because of its indefiniteness. It must be frank and honest, if it is to win the confidence of youth and of their parents. It must not be negative in its use of the appeal to fear, but must be positive in its recognition of the beauty and of the sacredness of sex life in marriage, so that it becomes an inspiration to the finest idealism to those who read it. Considering its brief compass, *The Sex Side of Life* seems to us to meet these essentials.

It is true that if parents were able and ready to take the responsibility, it might be best for them to satisfy the sex curiosity of their children as it is manifested from three or four years of age up to and including adolescence. But we must deal with the situation as it is. In our experience, the majority of parents do not give this information because they have neither the training nor the ability to meet this obligation and opportunity. This being the fact, this booklet more admirably meets the need than any with which we are acquainted. Adolescents, and indeed pre-adolescents, do seek to satisfy their curiosity; and if the information is not made available through chaste sources with idealistic associations, they secure warped and distorted versions from the whispered talk of their playmates or from older persons who are morally irresponsible. The most successful way to meet the present situation is in our judgment to make available for wide distribution a booklet such as Mrs. Dennett's *The Sex Side of Life*.

The fear that such a booklet may corrupt morals by getting into the hands of persons younger than adolescents is in our experience unfounded. We do not find that a sober and sane description of this sort, using scientific terms throughout, does harm to children of

any age who are capable of comprehending its meaning. Indeed it is the growing judgment of those giving attention to sex education that information on the main facts of sex should be given before adolescence, before sex becomes more acutely a factor in life. Certainly the playmates and irresponsible adults, who secretly pass on corrupting information, do not wait until later adolescence to do so. If we are to prevent their evil influences, we must forearm our youth with full and frank information, so their curiosity is already satisfied. The individuals who face the experience of adolescence most successfully are those to whom such information as is in Mrs. Dennett's booklet has been given by word of mouth or through reading.

The appeal to fear is not a successful method of sex education. The use of fear in dealing with masturbation in our judgment always results unfavorably. In clinical case after clinical case which has come under our attention, the use of fear had augmented the difficulty. In the great majority of cases, the release of the nervous strain of fear, which comes about through securing sex information such as is given in Mrs. Dennett's booklet and through the positive and healthy attitude toward sex which it engenders, definitely reduces the desire for the practice of masturbation and usually in a reasonable time eliminates it all together. Even in the past, fear of venereal disease and of pregnancy has not been a successful deterrent of irregular sex relations. Whatever one may believe as to the wisdom of giving prophylactic or contraceptive information, it is an acknowledged fact that such information is already widespread. Consequently appeals to fear are even less effective with the present generation than in the past. The only possible way to meet the situation is to build up the positive controls which come from a full recognition on the part of young people that they are most seriously endangering the only form of sex relationship, individually and socially satisfying; viz., monogamous

marriage, by the misuse of sex before marriage. This is the whole spirit and influence of Mrs. Dennett's pamphlet.

Yours respectfully,

HARRISON ELLIOT

*Professor of Practical Theology, and
Director, Department of Religious Education*

ARTHUR L. SWIFT, JR.

*Associate Professor of Applied Christianity
and Director of Field Work*

From John Dewey, Professor of Philosophy in Columbia University.

My dear Mr. Ernst:

I have read the pamphlet of Mrs. Mary Ware Dennett and it seems to me almost incredible that objection should be made to it.

Speaking from an educational point of view—including being a father in helping to bring up a large family of children (seven in all) as well as a teacher—the document is admirable. Instead of being suppressed its distribution to parents and to youth should be encouraged. It is the secrecy and nasty conditions under which sex information is obtained—or used to be—that creates the idea that there is anything obscene in the pamphlet. Instead of being indecent I should have been glad to have my own children receive such information as a protection against indecency. If such a pamphlet as this prepared under scientific auspices cannot be distributed without legal interference, the latter is equivalent in my judgment to putting a large premium on real indecency and obscenity of thought and action.

I am sorry that a minor accident prevented my attending the first meeting but assure that I shall be pleased to aid in the defense of this pamphlet.

Sincerely yours,

JOHN DEWEY

From Dr. Smith Ely Jelliffe, Neurologist, New York City.

February 6, 1929.

Honorable Judge Moscowitz:

Briefly stated, I am a neurologist, psychiatrist and student of the humanities now 62 years of age and practising medicine for 40 years and observing human behavior in all classes and conditions of men here in the United States and Europe. I have been married twice, have had five children and now grandchildren. I have lived in mental hospitals, in epileptic hospitals, among the feeble-minded and been here and there among the low and the high, in families, in communities, in societies, in court rooms, prisons, dives and palaces, keeping my eyes and ears open and always interested in my fellow man.

My opinion has been asked concerning the pamphlet mentioned. I have read it anew, having read it some years ago, several times. I have read similar pamphlets, books, magazines, etc., on related subjects for the past 45 years. As managing editor of a monthly journal of nervous and mental diseases I receive frequently printed matter dealing with the sex instinct, without the urge of which there would never have been any continuance of life. Without a knowledge and understanding of the intricate and subtle expressions of this instinct there can be no comprehension of the behavior of the human being biologically or sociologically.

I am prepared to say from this wide viewpoint that this said pamphlet is wholesome and sound. I find nothing filthy or obscene in it. I believe that it has been and will be of great service to young men and young women.

Every child goes through a period of great interest in his own genital organs when very young. This interest passes into a latent phase in most children, to reappear at puberty. Some form of genital or displaced sexual interest is found in every boy or girl at puberty. The

displaced interest is usually put at the service of civilization and culture. It nearly always is accompanied by some actual genital excitement, which often is relieved by manual or other forms of discharge.

Masturbation, as quite definitely practiced, is not a cause of any disorder save neurasthenic fatigue.

Some of the mentally ill, some epileptics and some feeble-minded are frequent and even shameless masturbators. They frequently are huddled together in overcrowded institutions with nothing to do. The masturbation is a result of their disease and not a cause. I have studied in great detail thousands of cases. I have never seen one in which masturbation was not a result rather than a cause of mental disorder. In crowded institutions I have seen a great deal of masturbation, especially on rainy days and Sundays and holidays when the patients have no useful occupation for their hands or minds. It is these conditions that have led to the short sighted and very archaic idea that masturbation has caused the disease. Masturbation is only one of the expressions of the sex instinct. It does not govern the instinct, it only obeys it.

In my opinion young men and young women would not be one whit influenced by this pamphlet to loosen their learned standards of sexual morality. Sexual moral standards are much more stable than to be influenced by the sound, wholesome and honest statements in this pamphlet.

All of the cases of unhealthy sexual morality that I have studied for 40 years, intensively and extensively, have been acquired through *example* long before the child can read such pamphlets. Their sexual immorality is due more to bad teaching, deceit, hypocrisy and unworthy examples on the part of parents and close relations who themselves have not been able to profit by the reading of such pamphlets and books. A celebrated French philosopher has said—"There is no vice half so bad as the means we take to conceal it."

We open boils; we expose sewers to the sunlight. Moral boils need enlightenment and knowledge. Hidden by suppression of right knowledge they fester and make a social canker. A veritable underworld of deceit comes from suppression of healthy, honest, open discussion of the sexual problems of childhood. Suppression of honest, straightforward statement of the greatest moving force in nature, the sexual instinct, leads to disease, physical, mental and social.

The history of mankind for 60 centuries shows that unwise and unenlightened suppression of man's instinctive cravings have led to the most disastrous results and have had to be repealed with every new one or two or three generations.

The crimes committed under the guise of liberty are known to be many, but those resulting from suppression are countless.

Respectfully,
SMITH ELY JELLIFFE

From Dr. Louis I. Harris, Ex-Commissioner of Health of New York City.

Dear Mr. Ernst:

I do not know Mary Wary Dennett, but I have been familiar with the pamphlet published by her for several years. It impressed me as one of the sanest, sincerest, and most useful monographs of its kind that I have met in my connection with venereal disease control and public health education.

Any attempt to write on sex hygiene, be it ever so sane, creates a reaction in certain sincere but nervous individuals in the community who are fearful that such pamphlets will suggest thoughts and practices that are obscene. As a public health worker for more than a generation, I have yet to see a pamphlet on sex hygiene that has not been opposed by some individuals on the theory that it may provoke thoughts and ideas that will

be harmful to certain individuals in the community. Thomas Hardy, the famous English novelist, said of novels in general that "probably a novel was never written by the purest-minded author for which there could not be found some moral invalid or other whom it was capable of harming."

I have read Mrs. Dennett's pamphlet to a number of parents and to educators, and I have yet to meet with a single one who has aught but praise for the sound and helpful character of her presentation of the subject of the sex side of life.

I have made inquiries this week and found that girls between the ages of fourteen and seventeen years have been required, as a part of their college work, to read and study some of the following works:

L. S. Hollingsworth's *Psychology of Adolescence*,
Dunlap's *Social Psychology*,
Paul Popenoe's *Modern Marriage*, and
Thos. W. Galloway's *Sex Factors in Human Life*.

If the time permitted, I could list more works that are a part of the regular curriculum in some of the foremost colleges in this country. These books discuss most intimately matters in relation to sex life which are not even hinted at in Mrs. Dennett's monograph. Although they go into ever so many intimate details of sexual life and sex relations, they are regarded by teachers and pupils alike as having exercised a very valuable influence, substituting precise knowledge for the misinformation and perversions of truth that are clandestinely retailed when scientific and accurate sources of information are lacking.

Mrs. Dennett's pamphlet contains one paragraph which, without mentioning chastity, is a most excellent plea for it because it is predicated on sound sense and logic.

As a public health worker and physician, I have seen

a great deal of nervous and mental disorders that have wrecked the lives of young men and young women who entered upon the marriage relation with a lack of knowledge, and, therefore, failed to appreciate the significance, the ethical propriety and the "normalcy" of the sex relation. In that section of the monograph in which Mrs. Dennett describes coitus, together with other sections of the pamphlet, she has woven a pattern of thought that should help young folks very definitely to adjust themselves to the marriage relation so that they may not suffer mental or nervous reactions due to maladjustment and lack of instruction. Mrs. Dennett's warning that sex relations outside of wedlock are very frequently followed by venereal disease, and her statements about masturbation, are in accord with modern medical study, and sound teaching.

Very sincerely yours,

LOUIS I. HARRIS

LETTERS SUBMITTED TO JUDGE MOSCOWITZ
ON BEHALF OF THE PROSECUTION

From Rev. John Roach Straton, Pastor of the Calvary Baptist Church, New York City.

February 2, 1929.

My dear Judge Moscowitz:

I responded to the subpoena sent me by the United States District Attorney D. A. Wilkinson, in connection with the above case, and as requested now give you an opinion on Mrs. Dennett's pamphlet *The Sex Side of Life*, and as a matter of religious and patriotic duty, I submit the following observations:

Whether the writer was prompted by commercialism and the deliberate purpose of stating her thoughts in such a way as to stir up a sensational discussion and thereby enormously enlarge sales, or whether there was an honest but misguided desire to do a service to the

human race, is open to question. In my judgment this book in its practical effect upon children and young people could not be otherwise than *utterly ruinous*. Frankly I believe, because of my observations as a Christian minister, that if this pamphlet should really be put into the hands of all the young people in America, as the expressed purpose is, it would go far toward debauching certainly the weaker elements of the rising generation.

Therefore I feel that *the book is a positive and deadly public menace* and not only ought to be suppressed but those connected with its preparation and circulation, outside of the medical and scientific fields, ought to be punished to the full extent of the law, as a rebuke to such teaching and as an example to all people that America will not longer tolerate tampering with the very foundations of a pure, healthy and happy social system.

My reasons for these conclusions are as follows:

1. This pamphlet is a supreme illustration of the folly and ruin of our modern tendency to glorify a false and harmful "freedom." It is a part of the widely prevalent but very superficial philosophy of our times that translates liberty into license. The pamphlet is founded upon the erroneous assumption that children and young people cannot learn from the accumulated wisdom of age-long experience, observation, and the study of biography and history, both sacred and secular. The modern evolutionary idea that a child is like a flower that will unfold of itself and therefore should be let alone to follow its own wish and will, is contrary not only to the teachings of the Bible but to all the experience of the past.

2. Flowing out of the wide acceptance of this vain and foolish philosophy, which has begotten lies even in the educational and religious realm, we are given the sad spectacle of teachers and some modernistic preachers openly proclaiming the idea that the Ten Command-

ments should be junked as an outworn code belonging to an obsolete society, that there are no established standards outside of the judgment and conscience of each individual—which is nothing short of anarchy—and therefore that our young people ought to be left “free” to read the unspeakable filth that now ladens our newsstands and many of our bookstore shelves, especially if it is labelled “artistic” or “scientific.”

3. This pamphlet of Mrs. Dennett, and this entire modern school of thought, utterly ignore the plain Bible teachings which have been the real foundation stones of our American principles of monogamy and monotheism. It is significant that there is not a single quotation in this pamphlet from the Bible, and not a reference either direct or indirect, to the principles of the Bible or the teachings of Judaism or Christian, whether Catholic or Protestant.

4. This pamphlet sneers at marriage as “sacred,” and plainly intimates that sexual indulgence need not be postponed “till after marriage.” The pamphlet evidently seeks, in most subtle and seductive ways, to stir sexual emotion at the very time that it piques the curiosity of the young concerning these things, and it describes the sex act in such fashion as to encourage rather than restrain indulgence, even among the very young.

5. The pamphlet goes to the astonishing extent of palliating if not encouraging masturbation or self-abuse, and that in connection with the bland assurance that “many of the best scientists have concluded that there is no special harm in it, and there is no occasion to worry unless the habit is carried to excess!” This author can get no further in her effort to guide youth than to say weakly that “young people are not to yield to the impulse of self-abuse *unless the feeling is overwhelming!*” This teaching, added to the other false teaching that there need not longer be fear of the ruinous results from venereal diseases, is, I say, sufficient to undermine not only the moral integrity but the health

of the human race, if it is permitted to go forward unchallenged and unrebuked, and if the youth of today should really follow such deadly and diabolical error.

6. This pamphlet is calculated to completely destroy the innocence and the modesty of any children and young people who may suffer the misfortune of having it fall into their hands.

There are many things that children and young people do not need to know until they are led into such knowledge gently and through the wisdom of parents and by the direct guidance of the Spirit of God. He surely can be depended upon to take care of these vital and sacred interests connected with the propagation of the human race upon this planet. God has put a veil over the mystery of human life, has promised His guidance and help in the keeping of moral law, and such gross and brutal tearing asunder of the veil is sacrilege.

Today the "sophisticated," "up to date," "modern" young people, trained in the school to which this pamphlet belongs, know more at 16 than their grandmothers knew at 60, yet who can say that the past generations of American women have not been both happy and strong. In the very preservation of the Jewish race we have a tribute to the virtue and wisdom, in the past of its womanhood, for example, who were trained in the precepts and principles of the Bible, not in the sordid methods of today.

7. The pictures in this pamphlet might have a place in a technical work for use of mature students, but in the setting of this pamphlet they are vulgar and vile.

Surely there ought to be left to our children some of the innocence of man's first Eden, something ought to be left to the imagination. Relationship between the sexes is wholesome and happy only when founded upon the true moral and spiritual ideals that function in obedience to the revealed will of our Heavenly Father.

8. It is worthy of remark that this exploitation of sex matters, this breaking down of standards of modesty

and reserve, has come just at the time when there is every opportunity for indulgence in forbidden things—the unchaperoned dance, midnight joy rides, stage lewdness, vice and crime portrayed by the moving pictures, with the inevitable ending of each romance, a hugging match and a kissing bee!

All of these things taken in conjunction with such teachings as that in *The Sex Side of Life* actually constitute a public menace. Results were shown during the World War, in paid advertisements designed to warn the public and signed by such men as Dr. Rupert Blue, Surgeon General of the U. S. Public Health Service, and Dr. Royal S. Copeland, then Commissioner of Health of New York City. These advertisements set forth the fact that in New York City “270,000 men who registered in the first draft and who were not called were suffering from these diseases”—that is, venereal diseases, coming from irregular sex relations. These announcements from the health authorities further stated: “Conditions indicate that the vitality of the nation is imperilled.” Then the announcement told us the appalling truth that “More than 60 per cent of men are infected with this deadly disease.”

When it is remembered that scientific authorities have discovered that 95 per cent of the blindness of children, 60 per cent of the more serious operations performed upon women, and 75 per cent of childless marriages, to say nothing of more horrible things that strike at the foundation of life, are directly traceable to these wrong relationships, surely the most strenuous action should be taken against a pamphlet that promotes such evils.

No stream can rise higher than its source and no race can be greater than its womanhood. The greatest danger to our country is the breaking down of the sanctity of the marriage vow, the consequent increase of the divorce evil and sex relationships that result in disease. It is a fundamental truth of history that every great civilization of the past has decayed first and fastest precisely

at this point. When Roman society had reached the place where the Roman woman had to be described by their poet Juvenal, as—

“Lewd, petulant, and reeling-ripe with wine,”

the foundations were really gone and it was inevitable that the Goths and Vandals should finally come over the wall, and the whole vast social and economic structure crash in wreck and ruin.

The danger signals are already out in our age and such hurtful printed matter as this *Sex Side of Life* is one of the biggest of the signs. The courts of our country could not do a better service than to pronounce a stern judgment upon the offenders that will be a warning and example to others.

10. One of the saddest and most menacing sides to this situation is the fact that such a pamphlet could receive praise from misguided Y.M.C.A. secretaries and even some preachers! Surely human vanity and folly could not go farther than that!

Hoping these somewhat random and disconnected notes may be of service to you, and with great good wishes for you personally and in your official capacity, I am

Yours very sincerely,

JOHN ROACH STRATON

From George B. Murphy, Chaplain of St. John's Long Island City Hospital, New York.

January 31, 1929.

Your Honor:

I have been asked by United States District Attorney James E. Wilkinson to give my reasons for opposing the distribution of the pamphlet *The Sex Side of Life* by Mary Ware Dennett through the mails. I oppose it on the ground

1. It is lewd within the meaning of the law.
2. It is wrong to give such instruction as the pamphlet contains to youths generally. If such instruction is to be given it must be given individually. Moreover, individual instruction must take note of such important factors as time, place, subject, instructor, the consent of parents, religious guidance, and due respect for the laws and welfare of the State.
3. It is wrong to give such instruction without laying a foundation for its proper reception and exercise.
4. It is wrong to give such instruction without furnishing such ethical, moral and religious safeguards as will control it.
5. The pamphlet is subversive of the welfare of the State in that it states substantially that love gives the right to exercise the sexual act. Entirely apart from religion this is denied by our marriage laws. It is marriage that gives the mutual and only right to exercise the sexual act. Marriage begets the family. The State is a collection of families.
6. The doctrine of the pamphlet is equivalent to free love.
7. The pamphlet preaches birth control.
8. The pamphlet violates the right and authority of parents, which right and authority in matters of education is primary.
9. The pamphlet denies the right and authority of the State in the matter of education as provided by our laws.
10. No safeguard is set up for the proper distribution of the pamphlet, if it has any merit. Thus it defeats its own end. To its reading must be attracted the viciously curious who will exercise the doctrine to their own and others' destruction.
11. I oppose moreover the secrecy with which the pamphlet is printed and distributed. Secrecy of this kind and in this matter suggests shame and guilt.
12. I oppose its distribution further on the ground of motive. If the subject is good and necessary there

are proper agencies to teach it. Benefactors rarely seek and are seldom paid for what they do.

13. Knowledge is not power. As Chaplain of the Queens County Jail I have to do with the repeater in crime. Knowledge of crime leads to crime and to crime again. Knowledge does not correct the drunkard, the thief or even the murderer. Only the will can do that. We must educate the will to habits of self-control. Of this education all-important, the pamphlet says nothing.

With best wishes, I remain

Sincerely yours,

GEORGE B. MURPHY

From James M. Kieran, President of Hunter College of the City of New York.

January 25, 1929.

Dear Judge Moscovitz:

I understand you would like to have my opinion of *The Sex Side of Life*, by Mary Ware Dennett.

Without at all entering into the motives of the author, but judging solely by the contents of the pamphlet, my opinion is that it would be dangerous to the morals of the young to have it get into their possession.

Very truly yours,

JAMES M. KIERAN

From Dr. G. A. Smith, Supt., and Dr. R. G. Wearne, Clinical Director of Central Islip State Hospital for the Insane, New York.

February 1, 1929.

Dear Judge Moscovitz:

In discussing the pamphlet *The Sex Side of Life* by Mary Ware Dennett, it seems best to call your attention to its imperfections and dangers, as well as to point out how they may be avoided. The development of the sexual side of personality will be stressed and the consequences of improper guidance illustrated.

To begin with, printing a pamphlet of this nature with

such a title, treating sexual intercourse in such a bold way to be sold cheaply, is a serious matter because of the large number which may be circulated. There is considerable likelihood of these pamphlets reaching much younger children than even the author intended. Moreover, it is as unreasonable for anyone without special training to attempt to write such literature as it would be for a physician to try to construct a bridge across the Hudson River.

Characterizing sexual organs as "wonderful," mentioning the "peculiar thrill or glow" experienced in these organs by lovers, describing the "rhythmic movement" of the penis in the vagina, the "rhythmic contraction or throbbing" of the muscles of the vagina during intercourse, "closeness of the man and woman" at this time, and the following "sensation of peaceful happiness" is unnecessary glorification of the sexual act.

The sexual instinct has been present since the birth of the race and present day indications reveal no diminution of its strength. The object of pamphlets of this nature should be to give information about sex without stimulating desire. The natural conclusion after reading this pamphlet, is, if there is so much pleasure in it why not try it? It is characteristic of youth to explore new things. As a corollary to this the encouragement toward immorality is manifest, and the pamphlet arouses a sexual desire which society forbids practicing.

To quote Dr. W. F. Robie's book on *Rational Sex Ethics*, "Effort should be made to safeguard the child from evil instruction and blighting example even in the early years when he is not well prepared to resist the impulse to follow all tendencies or to profit much by proper teaching. To such as cannot be kept from questionable or bad associates, early *graduated* instruction should be given as each case seems to warrant. Questions may be answered but many things cannot be taught safely at first. Here, as in other educational work, I believe that less dogmatism and more reason

should enter as the child progresses in understanding, and the complete course in sexual instruction should not be completed until just before or immediately after marriage."

Later in his book Dr. Robie states. "More attention ought to be paid to the early safeguarding of children during their tender years, from the evil leaven which leavens the whole lump. It is necessary to infuse into the child and adolescent mind, an emotional backfire against the ever present sexual instinct." *

The following account of the development of sex in the individual is taken from *Three Contributions to the Theory of Sex* by Dr. Sigmund Freud of Vienna. In the child up to the age of 3, impulses which correspond to later sexual stimuli, center in the so-called erogenous zones—the most important of which are the mouth and anus. "The sexual aim of the infantile impulse consists in the production of gratification through the proper excitement of this or that selected zone." At the age of 5 normally the child loses interest in these erogenous zones and then comes the so-called latency period lasting about two years, when the child's sexual interests of all kinds are inactive. This is followed by the "Transformation of Puberty" when the sexual interest gradually begins to center about the genitals. However, if there has occurred an over-fondness or over-activity of these zones, or an emotional shock such as might be

* The writers of this letter were unaware that Dr. Robie had long been on record as approving the pamphlet, and that it was under his advice that the first revision was made relating to masturbation. In his book *Sex and Life*, page 208, he wrote as follows: "*The Sex Side of Life* seems at present the very best thing designed to give a clear understanding of the sex life in succinct form, combining a proper recognition of natural instinct with perfect refinement and lofty ideal, that I have ever seen from the pen of physician or layman. Especially is this valuable for younger children who are not yet capable of understanding books which are meant for young adults or married people."

Probably also they would not have quoted Dr. Robie against a suppressed pamphlet if they had known that nearly all of Dr. Robie's own books have fallen under the ban of either the Post Office or of local censors. M. W. D.

caused by a too plainly written pamphlet like the one under discussion, transfer of the interest to the genital organs may be impaired or not occur. This is a frequent cause of the later development of sexual perversions of the mouth, anus, etc.

The following case taken from Dr. Healy's book entitled *Mental Conflicts and Misconduct*, is one of many which illustrates the danger of children learning too young the details of sexual intercourse:

Tom S. when 8 years old first learned about sexual intercourse. He said, "It bothered me some; I would not study; I had something else on my mind; I think of it all the time I am in school; I want these things out of my mind."

The type of personality known as introvert is particularly susceptible to injury by reading such a pamphlet. Individuals of this kind seldom discuss their conflicts with others. They usually have few friends, are seclusive, their minds dwell upon sexual matters, sexual imagination becomes overstimulated, and they fail to handle the marriage problem in a natural way. There is a gradual growing inward with the result that a mental breakdown occurs. Patients of this type are frequently admitted to a hospital for mental disease and the prognosis is unfavorable.

Parents being in close contact with their children and having their confidence are the best ones to give sex information as occasions for it arise. We recall at the age of 8 when in school the book *Know Thyself*. This book had pictures of a skeleton showing the location of the heart, lungs and intestines, as well as the sexual organs. Pupils were taught in a general way what this skeleton was, the function of the heart, lungs and circulation. The sexual organs were considered as organs of excretion, and the difference between male and female, was simply the difference between a boy and a girl. Aside from this, however, no instruction was given relative to the function of these

organs. By the time menses appear, mothers should have instructed their daughters as to sexual matters, including intercourse, but avoiding emphasis on its ecstasies. Similarly, fathers should impart sexual knowledge to their sons. In cases of unusual development a physician should be consulted, and instruction of this nature should not be given by a layman.

In this pamphlet the subject of masturbation is discussed in a very unscientific manner. Although masturbation is discouraged, in effect she states it may be practiced if the feeling for it becomes overwhelming. There is no mention of physical causes for masturbation, which every physician knows to exist.

Dr. Max Huhner, connected with Mt. Sinai Hospital, in his treatise on the *Disorders of the Sexual Function in the Male and Female* states, "Very frequently we find intertriginous processes, common especially about the vulva. Often too the irritation is caused by worms. The pleasurable relief from the itching which is at first the result of scratching or rubbing the vulva and pressing the thighs together, soon engenders a habit which is persisted in on account of the voluptuous sensation produced thereby." There are other conditions, such as irritating vaginal discharges, diabetes, etc., which lead to masturbation.

Dr. M. Raynor, Medical Director of Bloomingdale Hospital and Clinical Professor of Psychiatry of Columbia University, says, "An overdetermined fixation for a parent (this is, an abnormally strong love) from which the individual is unable to free himself, is often responsible for masturbation."

Therefore, we can readily appreciate the folly of tolerating masturbation even as a last resort, without first advising the individual to be examined by a physician to ascertain whether there is an underlying cause for it. A pamphlet countenancing masturbation, and particularly so when addressed to the young people, will do a vast amount of harm.

G. A. SMITH, M.D.; R. D. WEARNE, M.D.

From Canon William Sheafe Chase, Rector of Christ Church, Brooklyn, N. Y.

February 8, 1929.

Honored and dear Sir:

In addressing the court as *amicus curiae*, I write as a former high school principal in Bristol, R. I., as Chaplain of St. Paul's School for boys in Garden City, L. I., and as Rector for twenty-three years of Christ Church, Bedford Ave., Brooklyn. I write as a married man. The second time I married I had been a widower for 17 years. I have a son aged 41 years, and a daughter aged 13.

I write as one who strongly believes in the importance of sex education of the young, in the earlier years, i.e., before ten years of age, before the sex powers have begun to develop, and when such information can be imparted with the least danger of stimulating sex desires. Such information however, should not be imparted publicly or in classes, but privately by parents, intimate friends or physicians properly qualified for the delicate task, and by a person who understands the temperament of the child who is being instructed and who can convey a sense of the sacredness of the sex relations.

I had hoped that some booklet might be prepared which parents might safely put in the hands of their children, and when I had read in this pamphlet which is before the Court, what the Editor of the *Medical Review of Reviews* wrote about it and what the authoress says in the first of "Instruction of Elders," I said to a friend, "I believe I am going to approve of it, if its use is safeguarded."

But when I read these words in the Introduction I felt differently: "In almost none of the books for young people that I have thus far read has there been the frank, unashamed declaration that the climax of sex emotion is an unsurpassed joy, something which rightly belongs to every normal human being, a joy to be

proudly and serenely experienced. Instead there has been all too evident an inference that sex emotion is a thing to be ashamed of, that yielding to it is indulgence which must be curbed as much as possible, that all thought and understanding of it must be rigorously postponed at any rate till after marriage."

I then saw that the authoress had departed from the truth in two respects, either from a wrong motive or from exaggeration due to an abnormal emphasis upon the sex side of life. Her claim that the climax of sex emotion is an unsurpassed joy, ignores the higher emotions of the mental and moral life, due to unselfish achievement and victory of the higher over the lower life. But it is a misleading statement even if she had limited it by saying it was an unsurpassed physical joy, for the woman's joy of nursing her babe surpasses the mere sexual joy, if the testimony of many mothers is to be believed. God has so made us that the proper moderate use of all our physical, mental and moral faculties gives us joy. Mrs. Dennett's too great emphasis upon the joys of the sex side of life is the principal thing in her pamphlet which more than offsets the good things which are in her booklet. She tempts children to experiment and improperly experience the sex joys.

Furthermore the statement that parents generally believe that all thought and understanding of it must be vigorously postponed at any rate till after marriage is untrue. Most parents want to impart the needed instruction but do not know how to give it. They fear that if they do it wrongly they may do more harm than good. Why does Mrs. Dennett misrepresent the real situation?

When I noticed these two misleading statements I began to fear that I should find the pamphlet hypocritical, pretending to help the young but in reality attempting to satisfy the curiosity of the young for a commercial motive without sufficient care for the consequences upon the young or elders who might read it.

A careful reading of the pamphlet should satisfy any person with mature mind and with careful judgment who has not forgotten his youthful feelings, that the booklet belongs to the class of literature which the law of the United States forbids to be sent through the mail.

1st: This is true, although it claims to be written for the help and moral instruction of the young, because it describes the sexual act in such details and with such emphasis upon the physical pleasure represented as always accompanying it, as to tend to incite, and actually to incite lustful desires, especially among the young, for whose benefit the pamphlet says it is published. (See page 9 in the last paragraph.) It places the physical joy of self-indulgence far above that of motherhood and heroic self sacrifice, the joys of which far exceed those of selfish indulgence holy and beautiful as it really is.

What possible reason can there be for the following two sentences except to sell the pamphlet or to induce girls to secure the experience described on page 9 as follows:

Can the court see no danger when the foregoing is followed on page 10 by this: "*At present unfortunately it is against the law to give people information how to manage their sex relation so that no baby will be created unless the father and mother are ready and glad to have it happen.*"

Is it unfortunate that boys and girls of fifteen do not have the above information? Why is there no hint of the harm that comes to women who lustfully allow their sex organs to be thus abnormally excited without the renewal processes which child birth brings women?

2nd: The pamphlet should be considered non-mailable because it nowhere holds up the ideals of chastity as worthy of attainment, and nowhere describes the benefits of self-control in accordance with the ideals of our government, our civilization, or the natural intui-

tion of modesty inherent in those brought up in the homes of spiritually-minded people. Instead, it discredits them as out-worn and as proved to be irrational by recent science.

It justifies them by the post-war morality of recent years, widespread through the enormous fortunes made by circulating salacious literature whose chief characteristic is the sex appeal. The pamphlet encourages self-indulgence, even though law and the convictions of our civilization be violated, instead of self-control without which our American institutions will crumble to decay.

3rd: The pamphlet is unscientific in the statement concerning Masturbation, or self-abuse. Does this not clearly encourage Masturbation and discourage such self-control as will strengthen one's mental, moral and spiritual powers?

The pamphlet minimizes the inherent punishments which inevitably follow sex iniquity, by stating with some measure of truth that recent discoveries have enabled physicians to cure some cases of venereal disease, but without stating the full truth, and especially by emphasizing that science will soon be able to remove all fear of venereal diseases.

The pamphlet breaks down the protection of natural sexual virtue, not only by attempting to remove all fear of sexual lawlessness, but by failing to mention that childlessness, nervous and physical diseases, restlessness and mental distress are some of the consequences sure to come to those who follow the so-called birth control ideals and sexual intercourse outside of marriage taught and implied in this pamphlet.

I find in the pamphlet no denial of the sex lie which is commonly broadcasted that no man can keep his health unless he either has sexual intercourse or is guilty of sex-abuse. The wrong teaching which encourages self-abuse is largely that materialistic and individualistic philosophy which claims that some means of mechani-

cal relief from the accumulation of semen or for relief of the woman is a part of nature's plan because nature is reduced to its lowest terms rather than elevated to its highest terms.

4th: When the pamphlet refers to love and falling in love, it clearly refers merely to lust, something which demands selfish satisfaction at no matter what hardship, pain, or suffering it may bring upon others. It nowhere refers to the sex impulse as the divinely implanted longing for motherhood and fatherhood, not merely for selfish physical enjoyment but for the establishment of the family with children. It does not point out that real love is unselfish, and that not falling in lust, but rising in love is the only true basis of marriage or sexual intercourse.

It fails to make plain that sex passion needs to be educated and controlled by the higher altruistic family and social instincts of the full orb'd human nature before it becomes a basis of true marriage or the beauties of sanctified sexual intercourse.

This booklet says that this kind of love which is purely selfish, and actually only lust, if felt by both boy and girl justifies fornication, without any consideration of the possible conception of a child, without any reference to the welfare of society or to the institution of family life, or to the obligations of monogamy upon which, after many centuries of social evolution our civilization has been founded.

5th: The pamphlet errs vitally and fatally in its attempt to give constructive instruction to the young upon the sex powers because it gives the lower interpretation only and omits entirely the higher interpretation. They were not given merely for momentary happiness but for the development of individual character and social progress.

The Introduction leads one to expect sex life will be treated with "the highest idealism." On the contrary it reduces sex life to its lowest most materialistic terms.

I am not asking that any extreme point of view of the sex life should be set forth for instance, claiming that the sex functions shall never be used except for the express intention of propagation, but I do claim that if the pamphlet is to be trusted as helpful to the young that it should be clearly stated as a fact that the sex powers were chiefly given to propagate and that the sex instincts should be chiefly thought of as a God given longing for fatherhood and motherhood, and that to think of them chiefly as means of private, selfish happiness is to rob them not only of their true function but of their highest joy.

6th: The names of Henry L. Mencken and Havelock Ellis which are used in sponsoring the pamphlet should be sufficient to warn the court that this pamphlet represents a type of thought, that in the name of social science and human advance, advocates so-called birth control, free sex indulgence and a return to the morals of paganism, long since discarded, but recently introduced in Russia, where marriage ties are weakened, where the family life has been undermined, and where parents are freed from responsibility for the training of their children, by providing that all children, illegitimate or legitimate, shall be cared for and trained by the state.

You will find also the names of some comparatively few persons, physicians, clergymen and educators, who commend the pamphlet because it seems to them the best pamphlet of the sort they have found, and because they have used it, having felt the very great need of such instruction as the pamphlet in the introduction promises to give but actually does not give. It will be learned on investigation, I think, that all who approve of this pamphlet believe in so-called "Birth Control." They argue that the court should permit the use of this booklet until something better has been produced. This is fallacious, for the court has no right to approve this pamphlet if, in the opinion of the court, it has a tend-

ency to incite lustful desires, but if it realizes there is reason for a difference of opinion it must refer it to the petit jury. Such a decision by the court will not delay the production of a better pamphlet but will hasten its publication.

7th: The attorney for the defense in the book *To the Pure* of which he is the co-author, indicates the only thing which he is willing to admit is actually obscene. In the chapter *Pornography and the Child* he says nothing should be forbidden as obscene except pictures of the sexual act, and that only to persons under 18. We contend that the objectionable passage (regarding sex union) is so vivid in its verbal picturization of the sexual act as to come within what the defendant attorney in his book condemns as obscene.

8th: The attorney for the defense urged the protection of the pamphlet by the constitutional provisions in the 1st Amendment to the U. S. Constitution. As a lawyer he realizes that there is a difference between liberty and abuse of freedom. Realizing that this pamphlet violates the freedom of the press as interpreted by the courts of the United States, the attorney for the defendant urged this court to be influenced by what he called the change of sentiment in recent years and cited as evidence of this change of sentiment the weakening of the law against obscenity in the State of New York.

It is true that obscene books and pamphlets may be sold in the State of New York, which the Federal law considers obscene, but this weakening of the New York law was not accomplished through enactment by the legislature, but through a decision of one of the appellate divisions of the Supreme Court which has never been carried to the Court of Appeals. This decision provides that no book can be legally condemned as obscene or forbidden by the statute unless it would incite lust or libidinous desires. We claim that this

pamphlet is illegal in New York even under this over-strict interpretation of the Appellate Division.

Post-war morals have indeed lowered public ethical standards. Page 272 of *To the Pure* says: "We have been informed that the Ladies Auxiliary of a church in Emporia, Kansas rented out copies of the *President's Daughter* at 25 cents a week to help pay for a new chapel." But the Courts are instituted to protect the public from such senseless superficial violations of public decency. A new and better day has already begun to dawn. This court will not allow the urban standards of Chicago, Philadelphia or New York to influence it, rather than the higher morality of our whole country.

I respectfully submit to the court that for the reasons mentioned in this letter, and for the reasons presented by distinguished attorneys representing the office of the United States District Attorney of the Eastern District, that there is at least some question of fact whether the pamphlet is non-mailable, and therefore that it should be referred by the court to the petit jury for their determination.

Respectfully submitted,

WM. SHEAFE CHASE

P.S. The decision which in 1920 weakened our law against obscenity was the case of *People v. Brainard*, 192 A.D. 816.

February 10, 1929.

Dear Judge Moscowitz:

I submitted my brief and the pamphlet *Sex Side of Life* to the physician, whom in my opinion, is the best qualified man in the United States to pass upon the question at issue before the court.

Dr. Howard Atwood Kelly of Baltimore holds a position almost unique in his profession. With academic, professional and honorary degrees from the Universities

of Pennsylvania, Washington and Lee and Edinburg, his rank as a scholar is clearly recognized. Finally his published works, listed in *Who's Who*, have caused him to be reckoned the most eminent of all authorities in his own field. He was for 20 years professor in Johns Hopkins University of gynecology, and obstetrics, and is now Professor Emeritus of that institution, perhaps the leading graduate student University of our country. He gave his approval of the position taken in my brief, and sent me his opinion in the form of a letter to accompany my brief.

Respectfully yours,

WM. SHEAFE CHASE

From Dr. Howard Kelly, Professor Emeritus of Gynecology in Johns Hopkins University.

Dear Mr. Chase:

The booklet is with one exception the most prurient statement that has come to my notice. I am astounded that anyone should have dared to bring so obscene a piece of literature to an eighth printing in a land which has any laws at all to protect its young manhood and womanhood from unutterable defilement, and that its author has so far escaped incarceration. Language could not be used more calculated to excite illegitimate, unrestrainable passions than the nasty minutiae upon which Mary Dennett lingers with such obvious unction. If it is permissible to place such pornographic literature in the hands of our girls and our boys, it is inevitable that boys and girls will read and discuss these topics together; the speedy outcome of such an intimacy is obvious. If this is the right and best way to convey the information Mrs. Dennett deems necessary for our youth in their teens before they have begun to learn the real lessons of life and its vital need of self-mastery and control, then let the words purity, decency, chastity, and continence be expunged from our language. Her

views are those applauded by all the male and female bawds.

This is not the time for me to state what information is right and when and by whom it should be given and just what is the best way of imparting it, but it is an opportunity in the name of all we call decency, of every social propriety, to protest as forcibly and as vigorously as possible against any such debauchery of our young people as this woman attempts, both wholesale and retail. If such literature as this is allowed to circulate and if those who seek thus to poison the springs of purity in our youth are unmolested, the moral life of our country will rot out in a single generation and sink to a standard as low as that of Central and South America and the Latin countries of Europe and the unspeakable debaucheries of the African jungle.

The purpose of this pernicious publication appears in the author's lament over the restraint of law which prevents her instructing the young in the methods of sexual commerce without risk of conception. This omission is doubtless rectified by letter or word of mouth whenever it is safe.

The imagination of adolescents stimulated by such literature will not be long in finding ways for the body to give expression to its desires, with the accompanying breakdown of the whole moral nature, the corruption of our girlhood, the abandonment of the marriage bond, and the consequent national deterioration.

The highest ideals of personal and national life are clearly not attainable either in polygamy or promiscuity but in the devotion of one man to one woman. If the implications of this pamphlet prevail, faithfulness on each side will become a rare virtue. Also, if sex relation is the supreme aim inculcated from childhood to age, the man at least, ill-brooking the restraints and recurring periods of continence in married life necessitated often by illness or by absence, will hold lightly the mutual vows of chastity.

Contrary to her notion of masturbation, the busy doctor is a constant witness to the exceedingly evil effects of masturbation on the nervous system and the depression and inferiority complex often caused by the lack of self-control, as well as of utterly irreparable ravages of syphilis and gonorrhea—two frightful diseases which grow commoner yearly. Our psychiatric clinics and our insane asylums are vocal in their protests against this kind of "morality."

Further, her contention is absolutely false that as a general proposition, women discover any such extreme gratification in their sex relations; many women are and remain utterly indifferent, and their participation is but a matter of complaisance.

Following our recent soul-racking experiences in the great war, our nation is obviously at a crossroad: One way leads upwards, building up the family unit by the difficult path of self-control, high ideals, and a pure Christian faith. The other way has a road-house, inviting down into the corruption of the pit, plotting the contamination of youth, with its Mary Dennetts holding out to the vacillating boy and girl illicit pleasures which rob the marriage bed of its sanctity and shortly become but apples of Sodom corrupting the whole life.

HOWARD A. KELLY, M.D.

From John S. Sumner, Secretary of the New York Society for the Suppression of Vice.

January 29, 1929.

Dear Sir:

Having been subpoenaed as a witness on behalf of the government, I beg to advise you that I have been Executive Secretary of this Society since September, 1915, having been with the Society as Associate Secretary, for two years prior to that time. The purpose of the Society set forth in the special act of the Legislature whereby it was created in 1873, is to enforce laws of

the State of New York and of the United States against the manufacture, sale and circulation of obscene books, pictures and other related things. In the course of this work during the past fifteen years, I have been a complaining witness in hundreds of cases under Section 1141 of the Penal Law of the State of New York and several cases under Section 211 U. S. C. C.

I have read the pamphlet entitled *The Sex Side of Life*, by Mary Ware Dennett, which I understand, is intended for the use of children from ten years of age and up.

There seems to me, no necessity whatever for the plates representing male and female sexual organs. We have found from long experience that pictures representing the human body or vital parts thereof frequently arouses indecent thoughts in the minds of many persons, as indicated by the frequency with which indecently marked advertising posters, and cards are encountered on the platforms and in the cars of transit companies. We have seen this occur in connection with pictures of the most innocent type, displaying the human form. We have seen outline figures of the human form taken from a newspaper indecently marked and deposited in the entry of a girls' institution. It may be said that such things are done by abnormal or subnormal people but their frequency is such that it is evident that there are a great many people of this type. Such plates might be used to instruct persons about to marry if they desire instruction in detail on the physical formation of outer and inner sex organs, but it is not necessary information and is probably sought by very few persons.

I believe that the pamphlet is demoralizing and misleading as to the discussion of the matter of masturbation, particularly in view of the fact that it is intended to be placed in the hands of immature persons, each one of whom is to constitute himself or herself judge as to the matter of excess and also as to the matter of necessity. This places upon a child matters of judg-

ment and determination far beyond its powers and in addition, gives what pretends to be authoritative information of which a wrong-minded child might readily take advantage, to his or her harm.

The description of sexual intercourse is much too detailed, vivid and alluring for inclusion in any such generally circulated publication. One of the definitions laid down by the courts of this state as to obscene printed matter is that which would tend to arouse lustful and lecherous desire. Aside from the fact that the language of this pamphlet is respectable as opposed to some publications in which vulgarity prevails, I do not think that I have seen this act described in a manner more nearly within the definition of the courts than in this pamphlet. The method of setting forth the act certainly constitutes a temptation to young people to whose attention it might come and in pamphlet form indiscriminately circulated, it is quite probable that the pamphlet would be handled by boys and girls together, arousing in their minds simultaneously the thought of experimentation along the lines set forth on this particular page.

In my opinion this phase of such education should be transmitted to children in barest outline, leaving to the period of later years and preferably immediately preceding marriage, the details and sensations attaching to intimate association in marriage.

Respectfully,

JOHN S. SUMNER

From J. D. Dillingham, Principal of the Newton High School, Elmhurst, Borough of Queens, New York City.

February 4, 1929.

Dear Sir:

In compliance with the request of Assistant U. S. District Attorney Wilkinson, I am submitting for your

consideration my opinion on Mary Ware Dennett's pamphlet, *The Sex Side of Life*.

The sub-title of this pamphlet claims to be *An Explanation for Young People*, and I object seriously to the suggestive, lurid and alluring way in which she sets forth the emotional side of sex experiences. She minimizes the moral and physical consequences of self-abuse and venereal diseases, and fails to properly stress and inculcate the duty of self-control and the disastrous consequences that might result from lack of same.

In these days, when family discipline is weakened and respect for law and its enforcement is at a low ebb, the effect of such a pamphlet upon the prurient-minded and uncontrolled youth of the day, I feel, would be very dangerous.

Respectfully submitted,

J. D. DILLINGHAM

*From Mrs. H. E. Hendrickson, Probation Officer,
Laurelton, L. I., N. Y.*

February 9, 1929.

My dear Mr. Wilkinson:

After carefully reading the contents of the pamphlet, *The Sex Side of Life*, it is my firm belief it would be a serious mistake to have it fall into the hands of girls and boys of tender years.

Hiding behind the screen of a textbook upon certain organs of the body, matters have been printed of obscene nature, the act of sex intercourse is invited to experience the overrated sensation that is promised therein.

Bearing on the matter of masturbation, while it is not advised, one need not fear ill effects in moderation, would surely lead to over-indulgence.

Cases brought before the Courts have shown the harmfulness of such publications. Recently a sex pamphlet fell into the hands of a young girl who had always been intensely fond of babies and after reading the

manner of their inception decided she wanted one of her own and asked the butcher boy to make this possible. When the pregnancy was learned she was found most innocent in her belief that she had done no wrong.

Another case brought before the Court of Special Sessions a girl of eleven years who had accused a certain man of attacking her and explained so vividly the entire of coition that the Judges were certain of the man's guilt until the examining Dr. reported the girl a virgin. The girl was further questioned and finally admitted that her accusation was false and her entire story was based upon a sex publication that had fallen into her hands fully describing the acts set forth in her accusations.

It is therefore my belief that the circulation of this pamphlet will greatly endanger the minds and bodies of our girls and boys and pray that such publications be prohibited.

Sincerely yours,

MRS. H. E. HENDRICKSON

From William Lathrop Love, M.D., New York State Senator.

February 10, 1929.

Dear Sir:

I have been requested to read Mrs. Dennett's pamphlet and to give my opinion. A good portion of it can be found in any textbook of anatomy and physiology. A brief portion under the guise of *Sex Instruction to the Young* is a brazen defense of masturbation—and prolific of great untold harm to the adolescent or impressionable mind. There is also a recital of intimate experiences that give the impression that they were anticipated for a great many years and when finally realized made such an impression on her that she doesn't hesitate in telling the world.

WILLIAM LATHROP LOVE

From J. DeLeon Sullivan, Superintendent of the Queensboro Society for the Prevention of Cruelty to Children, Inc., N. Y.

Honorable Sir:

In response to your recent request for my opinion on *The Sex Side of Life*, kindly permit me to say:

It is my firm opinion that such knowledge of sex matters as are essential to the proper training of children should be imported with great care, and tact by parents, immediate relatives, family physician, or proper guardian and the child should be taught the vital necessity of sex restraint during youth.

The objections I find to the above pamphlet are as follows: *The Introduction for elders* can scarcely be construed as a warning to the child against sex abuse, and its apparent purpose is to beguile the elders into permitting the children to retain possession of this pamphlet. The elders possibly little realizing that in so doing they are accepting for their children a Communistic doctrine which is foreign to our form of government. The further objection found in connection with this pamphlet is in the fact that there is no timely word of warning, or admonition to the child against self abuse, and to the contrary it conveys the thought, and even refers to the practice as harmless. This to say the least creates an impulse for thoughtless acts, and harmful deeds on the part of children.

The thought also occurs that this pamphlet can in no wise be considered a Medical essay or treatise, and therefore leaves the purpose vague.

The writer therefore voices disapproval of the continued circulation of this, or any form of pamphlet or printed matter which might prove harmful to the youth of our country.

J. DELEON SULLIVAN

*Superintendent, late U. S. Narcotic Bureau.
U. S. Naval Intelligence Bureau Investigator
of Propaganda Methods in U. S.*

JUDGE MOSCOWITZ ELIMINATED

The Judge had received what he asked for—twenty-four letters indicating public opinion; and far more than he asked too, for many people wrote to him after it was known that he wished to estimate public opinion. But day after day passed and still he made no decision. His own personal problem had become serious, by reason of the charges brought against him concerning receiverships in bankruptcy cases. The publicity on the charges had begun, led by the *New York World*, on January 26 and 27, just preceding the date which he had set for the open hearing, January 28, when he had asked witnesses to appear to aid him in making his decision. Three times the Judge postponed his decision and the trial date was moved ahead accordingly.

Finally Judge Moscowitz notified the press that he would not sit on any new cases in court until the government investigations were concluded.

Presently, after much consideration and some conference with the Judge, Mr. Ernst decided to withdraw the motion to quash the indictment, and to substitute for it a demurrer, which would automatically bring the case before some other Judge. But before taking this action it was agreed by stipulation with the Judge and the Prosecution that all the twenty-four specially permitted letters which Judge Moscowitz had received for and against the case should be made part of the Court record. This would allow their going to the next Judge as evidence when he should hear the arguments on the demurrer; otherwise they could not come before him at all. Written stipulations were drawn up to this effect, and duly signed on March 13. The stipulations are of marked importance, because of later developments.

JUDGE CAMPBELL AND THE DEMURRER

It was Judge Marcus B. Campbell who, on March 18, heard both attorneys argue on the demurrer. The arguments were substantially the same as those previously made on the motion to quash, but briefer. Wilkinson added one more touch of poor taste by describing the author of the pamphlet as "lifting the window and sticking her head out and beckoning in the neighbors' children" to corrupt them. And he selected one of the opposition letters to Judge Moscovitz to present to Judge Campbell—the only one which contained matter which was slurring to the author instead of to the pamphlet itself. He read that letter with unction.

The Judge deferred his decision on the demurrer, but stated that he would not in any event sit when the case was tried. He said that if he should decide in favor of the demurrer, the prosecution would not want him to sit on the case, and if he should deny the demurrer, he assumed that the defense would not care to argue the case before him. He named a new trial date for April 9.

On April 5, Judge Campbell notified Mr. Ernst that he was going to decide against the demurrer. He also announced that he would not read a single one of the letters to Judge Moscovitz, which by signed stipulation had been made a part of the court record for the very purpose of bringing them before the judge to whom the demurrer would be presented. Judge Campbell claimed that Judge Moscovitz had no right to allow the stipulation which made the letters a part of the record, and that he would not recognize them as such. It would seem as if Judges, to a considerable extent, were a law unto themselves.

Postponements seemed to be the one predictable element in this case. Conditions were very confused owing

to the fact that Judge Moscovitz had temporarily retired from the bench, pending the Congressional investigations. The calendar was congested, and there were not enough visiting judges available from other districts to take care of all the cases. For one week no jury sat because there was no judge to preside. My case was put over to April 23rd. Even so, I had to go over to the Court on the ninth, and waste still another half day, just to hear the clerk say "Postponed till April 23rd." Each time the case was called and deferred I had to be present, or have the bail forfeited.

TRIAL AT LAST, UNDER JUDGE WARREN BURROWS

On April 23rd, the case actually came to trial. Judge Burrows came from New London, Connecticut, to serve during the Moscovitz hiatus. Like Judge Campbell, he had none of the benefit of the information which had been presented to Judge Moscovitz. And, as appeared at the very end of the trial, neither was he informed by the Prosecution that there was any history to the case prior to the indictment in January. He had evidently not even scanned the indictment with care, for that would have given him at least the inference that there had been previous government action in banning the pamphlet. But not only was he oblivious to this point, but during the trial he ruled out the evidence by which the fact would have been revealed.

The method by which the jurors were selected and eliminated bids fair to be long remembered. It has served for many a jocose press observation ever since. Wilkinson's first sifting process was to inquiry whether "any of you gentlemen have read the papers about the case and have formed an opinion." The twelve men shook their heads vaguely. Then "Have any of you

ever read anything by Havelock Ellis or H. L. Mencken?" Two admitted that they had "a little." They were immediately dismissed. (This may be worth remembering as an additional excuse for men who are seeking to be excused from jury duty. It is at least not a hackneyed reason.) Heywood Broun suggested in his column in the *New York Telegram* that "Have you ever read *anything*" would have been quite a pertinent inquiry. Mr. Ernst limited his challenges to inquiring if any of the twelve men belonged to vice-hunting societies, and he eliminated one man who was found to be a personal friend of Wilkinson. All but one were middle-aged or elderly, and were married and had families.

WILKINSON AND THE STIPULATION AS TO
"REPRESENTATIVE OPINIONS"

Prosecutor Wilkinson opened the case by presenting the Government Exhibits: No. 1, the envelope addressed to Mrs. Carl A. Miles, Grottoes, in the Vale of the Shenandoah, Va., and bearing the return address of M. W. Dennett, 81 Singer St., Astoria, L. I., New York; No. 2, the pamphlet entitled *The Sex Side of Life*; No. 3, the leaflet *Representative Opinions*, the two latter being the contents of the envelope. What followed is reported from the Court record.

MR. WILKINSON: The Government will simply offer the first two exhibits and I have no objection to the defendant offering the third exhibit for herself, that is the one marked Exhibit 3.

MR. ERNST: If the Court please, I object to the introduction of only part of the material that was in the envelope. We have stipulation between ourselves and the District Attorney as follows.

Mr. Ernst then read the stipulation providing that the leaflet *Representative Opinions* "shall be attached to and made part of the said indictment as though the said pamphlet and enclosure were set out in full therein."

MR. WILKINSON: If your Honor please, I have no objection to the introduction of this as a defendant's exhibit, but I will not be bound by its contents, that is what purports to be opinions on the pamphlet, during cross examination. Counsel has agreed that no expert testimony can be called on either side. If I produced it I am bound by its contents. I have no objection to its going before the jury and to its being offered as an exhibit on behalf of the defendant, but I will not be bound by offering it myself. I am not trying to keep it away from the jury, but let it come from the defendant as an exhibit.

MR. ERNST: If the woman [Mrs. Miles] were here today and put on the stand she would testify to having received the envelope containing the two enclosures, and in that manner they would both be before the Court and the jury; and it was only on that basis that we made the stipulation that we would concede the mailing of the envelope with the pamphlet inside.

MR. WILKINSON: I do not object to its being before the jury: but I am only offering, as I say, the part of the mailable matter in evidence which I consider proper to offer, and the defendant, if she wants to, can offer the other.

MR. ERNST: If it were all printed as one pamphlet, the District Attorney could not take the position of introducing part of it as evidence. And I object to the introduction of part of what was in the envelope, and not the rest.

THE COURT: Under the stipulation it is agreed that this shall be part of the indictment, and as part of the indictment, it is bound to go to the jury. As to who introduces it, that is practically immaterial; it is im-

material who gets it before the jury. The jury will give such weight to it as it deserves. Inasmuch as it is part of the indictment, let it be introduced together.

These words of the Judge are significant to bear in mind till the reader comes later to his charge to the jury, in which he directed the jury to pay no attention to the *Representative Opinions*.

The Prosecutor announced that the Government would rest its case simply on the pamphlet itself, without introducing any witnesses. So he proceeded to read aloud to the jury the entire pamphlet, and as his hand had been forced, he had to read aloud also, the *Representative Opinions* (see below). The latter he rattled through as fast and as monotonously as possible. And in reading the pamphlet he adopted the same droning low tone, except in those portions which he considered most "filthy." These he delivered in a louder emotional tone, pausing to let the matter sink into the minds of the jury.

The text of the leaflet and the pamphlet follow:

REPRESENTATIVE OPINIONS

on

THE SEX SIDE OF LIFE

By MARY WARE DENNETT

Havelock Ellis, whom critics call "the most civilized English man living today." "I most certainly think the article should be reprinted in pamphlet form . . . for a wide circle of readers young and old. You have said a great deal in small space and brought out clearly important points that are too often ignored."

HENRY L. MENCKEN, Editor of *The American Mercury*. "It is very short, but there is more sound sense and decent thinking in it than in all the disgusting treatises recommended to adolescents by Y.M.C.A. secretaries." *

FELIX GRENDON, on the faculty of the College of the City of New York. "It is splendid. I wish five million copies of the article could be distributed so that no adolescent need be without one."

MRS. CHARLES ZUEBLIN, Hostess of the International Students' Union in Geneva, Switzerland. "My husband and I considered this book so valuable that we learned from it ourselves, and were thankful to have it to put into the hands of our daughter."

DR. WALTER SCHILLING, of Stanford University Hospital, San Francisco. "I have yet to see a finer presentation. It is a remarkable piece of work. The most straight-forward presentation of facts it has been my privilege to read."

REV. RALPH P. BRIDGMAN, Principal of the School of Religion of Union Theological Seminary. "We have found it most useful in the Union School of Religion with young people from university homes in this neighborhood."

FREDERICK HARRIS, of the Publication Department of the International Committee of the Young Men's Christian Association. "I am immensely pleased with it."

KENDALL BANNING, Editor of *Popular Radio*. "I have always believed that the fundamental fault in our attitude toward sex was two-fold: first, a lack of knowledge about it; second, a lack of idealism based on those facts. I am glad you have struck such straight blows

* At the time Mr. Mencken wrote this he was unaware that many Y. M. C. A. secretaries approve the pamphlet quite as much as he does. M. W. D.

to dispel both of these obstacles to a sane and wholesome understanding of human love and human life—which after all are almost synonymous.”

DR. HILBERT F. DAY, Cambridge, Mass. “I have many young patients to whom I would like to give a copy.”

LAURA B. GARRETT, New York. “As a lecturer and teacher I have found this pamphlet of much value. Numbers of parents are glad to have such a thing as this for their adolescent children.”

DR. A. L. GOLDWATER, New York. “I have personally distributed 100 copies to the adolescents in the families under my professional care. I consider it of great value.”

WILLIAM J. FIELDING, Author of *Sanity in Sex*. “There is no more helpful and constructive presentation of the sexual question in concise form, than *The Sex Side of Life*.”

DR. EVANGELINE W. YOUNG, Instructor in Social Hygiene in Simmons College, Boston. “I am using the book to offset the half-truth and untruths which are being given to young people in place of wholesome instruction.”

HENRY M. BUSCH, Department of Field Work of Union Theological Seminary. “One of the most useful publications in the field of sex education.”

DR. KATE W. BALDWIN, Philadelphia. “The simplest, sweetest, most direct treatment of the subject I have ever read.”

REV. C. E. CRAIK, JR. “At St. Thomas’s Mission, Louisville, I received many sincere thanks from parents for having given them copies of this treatise, and they agreed without exception to its excellence and used it with their growing boys and girls.”

MARY MOWBRAY CLARKE, Proprietor of the Sunwise

Turn Bookshop, New York. "Nothing else is quite so sensible and useful in this field."

REV. THOMAS ELIOT CALVERT, Church Mission of Healing, New York. "This pamphlet tends to develop a healthy individual instead of a morbid one, and to rid the mind of struggles and complexes which are the causes of disease."

MRS. A. E. MAY HEWLETT, President of the Saskatchewan Home Makers' Club, Canada. "The only clean statement of sex matters for young people I have ever found. We want thousands of copies right here in Saskatchewan to help our young people grow up clean."

DR. BERTHA F. JOHNSON, Granville Summit, Pa. "I have been employed by the New Jersey State Board of Health, the Federal Children's Bureau, the Virginia State Home for Delinquent Girls, and the New Haven, Conn., Orphan Asylum, as a Child Hygiene and Child Welfare Expert, and I know that such information as is given in this booklet is greatly needed. I have recommended it to many mothers and teachers as the best thing I know of to give young people a clean and decent knowledge of the subject."

FRANK KIENDL, Lawyer, Brooklyn. Teacher of boys' groups in the Y.M.C.A. "Such literature is a social necessity."

DR. LOUIS RENE KAUFMAN, New York. "In my opinion, the pamphlet fully fills a real need in the matter of sex education . . . a scientific document of great practical value."

ROBERT A. LESHER, New York. "The most delicate and instructive of all the literature on the subject that has passed through my hands."

MABEL LEE, Prof. of Physical Education, University of Nebraska. "Presents the subject in just the right way."

DR. WILFRED LAY, Author of *Man's Unconscious Conflict*, etc. "This pamphlet could in my mind have no effect but a wholesome and moral one on any person of either sex, any age."

PROF. C. H. LANDER, George Peabody College for Teachers, Nashville. "By far the best and sanest treatment of the subject for young people I have ever seen."

CHARLES E. MINER, Executive Secretary of the Missouri Social Hygiene Association. "Honest, useful little book . . . wholesomely written, scientifically accurate and very sane."

WILMA K. MCFARLAND, Editor of *The Portal*, a Sunday School Publication of the Methodist Episcopal Church. "The best and most wholesome treatment of the subject for young folks I have ever seen anywhere."

MARIAN G. POTTER, Superintendent of Nurses, St. Lawrence State Hospital, Ogdensburg, N. Y. "It is among the books and pamphlets for reference for my Maternity Hygiene classes. Every student reads it."

DR. W. F. ROBIE, Author of *Rational Sex Ethics*, etc. "I know that this book has been of great use to young people. It is particularly fitted to help those whose parents do not understand fully or who are too self-conscious to explain to their children the facts of life."

REV. ROBERT J. RAIBLE, Salem, Mass. "The best thing I have seen so far."

MRS. A. I. STEPHENS, of the Chicago Woman's Club. "Frankly and beautifully explains the sex side of life."

WALTER M. SMITH, Librarian, University of Wisconsin. "Handles a delicate subject in an excellent way."

MRS. SARAH H. B. SMITH, Chairman of the School Board, Claremont, Cal. "As the mother of eight young people, I believe that such a sane, frank treatment as Mrs. Dennett's is the best means of preparing our young folk for meeting the conditions today."

AUSTIN B. SMITH, Librarian of Kansas State College. "One of the best presentations of the subject for the use of parents and adolescents."

HARRY E. WOLF, Secretary of Boys' Work of Y.M.C.A. "I have used this pamphlet in my work with boys and consider it the sanest pamphlet on the matter I have ever had."

GOODWIN F. WATSON, Instructor in Religious Education at Union Theological Seminary. "For two years classes in adolescence at Union Theological Seminary have found it the most valuable book available to place in the hands of young people. It is truthful, wholesome and combines frankness and idealism in the most refreshing fashion. In a number of conferences with professional boys' workers, especially in the Y.M.C.A. the book has been studied, and endorsed by the men as of more use than any other publication."

HOPE WASHBURN, of the Child Guidance Clinic, Duluth, Minn. "The cleanest, most intelligent and inspiring presentation of sex knowledge that can be given to children and all those concerned in teaching children . . . a difficult service done skilfully."

THE SEX SIDE OF LIFE

An Explanation for Young People

BY

MARY WARE DENNETT

The Sex Side of Life First Appeared in the Medical Review of Reviews for February, 1918. The following is quoted from the Editor's Foreword.

We have come across so much rubbish on this subject that we drifted into the conclusion that an honest sex

essay for young folks would not be produced by this generation.

Recently there came to this desk a manuscript bearing the title *The Sex Side of Life* and the sub-title *An Explanation for Young People*, written by Mary Ware Dennett. No editor ever confesses that he reads an article with prejudice, but we will admit that we expected this MS would be "returned with thanks." It was reasonable to suppose that a laywoman would not succeed where physicians had failed. Even after we had read the introduction we were not convinced, for we have met several books whose texts do not fulfill the promises made by the preface. But after reading a few pages of the essay itself, we realized we were listening to the music of a different drummer. Instead of the familiar notes of fear and pretense, we were surprised to hear the clarion call of truth.

Mary Ware Dennett's *Sex Side of Life* is "on the level." In the pages of the *Medical Review of Reviews*, her essay will reach only the profession, but we sincerely hope that this splendid contribution will be reprinted in pamphlet form and distributed by thousands to the general public. We are tolerably familiar with Anglo-American writings on sexology, but we know nothing that equals Mrs. Dennett's brochure. Physicians and social workers are frequently asked: "What shall I say to my growing child?" Mary Ware Dennett, in her rational sex primer, at last furnishes a satisfactory answer.

V. R.

THE SEX SIDE OF LIFE

INTRODUCTION FOR ELDERS

In reading several dozen books on sex matters for the young with a view to selecting the best for my own

children, I found none that I was willing to put into their hands, without first guarding them against what I considered very misleading and harmful impressions, which they would otherwise be sure to acquire in reading them. That is the excuse for this article.

It is far more specific than most sex information written for young people. I believe we owe it to children to be specific if we talk about the subject at all.

From a careful observation of youthful curiosity and a very vivid recollection of my own childhood, I have tried to explain frankly the points about which there is the greatest inquiry. These points are *not* frankly or clearly explained in most sex literature. They are avoided, partly from embarrassment, but more, apparently, because those who have undertaken to instruct the children are not really clear in their own minds as to the proper status of the sex relation.

I found that from the physiological point of view, the question was handled with limitations and reservations. From the point of natural science it was often handled with sentimentality, the child being led from a semi-esthetic study of the reproduction of flowers and animals to the acceptance of a similar idea for human beings. From the moral point of view it was handled least satisfactorily of all, the child being given a jumble of conflicting ideas, with no means of correlating them—fear of venereal disease, one's duty to suppress "animal passion," the sacredness of marriage, and so forth. And from the emotional point of view, the subject was not handled at all.

This one omission seems to me to be the key to the whole situation, and it is the basis of the radical departure I have made from the precedents in most sex literature for children.

Concerning all four points of view just mentioned,

there are certain departures from the traditional method that have seemed to me worth making.

On the physiological side I have given, as far as possible, the proper terminology for the sex organs and functions. Children have had to read the expurgated literature which has been specially prepared for them in poetic or colloquial terms, and then are needlessly mystified when they hear things called by their real names.

On the side of natural science, I have emphasized our unlikeness to the plants and animals rather than our likeness, for while the points we have in common with the lower orders make an interesting section in our general education, it is knowing about the vital points in which we differ that helps us to solve the sexual problems of maturity; and the child needs that knowledge precisely as he needs knowledge of everything which will fortify him for wise decisions when he is grown.

On the moral side, I have tried to avoid confusion and dogmatism in the following ways: by eliminating fear of venereal disease as an appeal for strictly limited sex relations, stating candidly that venereal disease *is* becoming curable; by barring out all mention of "brute" or "animal" passion, terms frequently used in pleas for chastity and self control, as such talk is an aspersion on the brutes and has done children much harm in giving them the impression that there is an essential baseness in the sex relation; by inviting the inference that marriage is "sacred" by virtue of its being a reflection of human ideality rather than because it is a legalized institution.

Unquestionably the stress which most writers have laid upon the beauty of nature's plans for perpetuating the plant and animal species, and the effort to have the child carry over into human life some sense of that

beauty has come from a most commendable instinct to protect the child from the natural shock of the revelation of so much that is unesthetic and revolting in human sex life. The nearness of the sex organs to the excretory organs, the pain and messiness of childbirth are elements which certainly need some compensating antidote to prevent their making too disagreeable and disproportionate an impress on the child's mind.

The results are doubtless good as far as they go, but they do not go nearly far enough. What else is there to call upon to help out? Why, the one thing which has been persistently neglected by practically all the sex writers—the emotional side of sex experience. Parents and teachers have been afraid of it and distrustful of it. In not a single one of all the books for young people that I have thus far read has there been the frank, unashamed declaration that the climax of sex emotion is an unsurpassed joy, something which rightly belongs to every normal human being, a joy to be proudly and serenely experienced. Instead there has been all too evident an inference that sex emotion is a thing to be ashamed of, that yielding to it is indulgence which must be curbed as much as possible, that all thought and understanding of it must be rigorously postponed, at any rate till after marriage.

We give to young folks, in their general education, as much as they can grasp of science and ethics and art, and yet in their sex education, which rightly has to do with all of these, we have said, "Give them only the bare physiological facts, lest they be prematurely stimulated." Others of us, realizing that the bare physiological facts are shocking to many a sensitive child, and must somehow be softened with something pleasant, have said, "Give them the facts, yes, but see to it that they are so related to the wonders of evolution and the

beauties of the natural world that the shock is minimized." But none of us has yet dared to say, "Yes, give them the facts, give them the nature study, too, but also give them some conception of sex life as a vivifying joy, as a vital art, as a thing to be studied and developed with reverence for its big meaning, with understanding of its far-reaching reactions, psychologically and spiritually, with temperant restraint, good taste and the highest idealism." We have contented ourselves by assuming that marriage makes sex relations respectable. We have not yet said that it is only beautiful sex relations that can make marriage lovely.

Young people are just as capable of being guided and inspired in their thought about sex emotion as in their taste and ideals in literature and ethics, and just as they imperatively need to have their general taste and ideals cultivated as a preparation for mature life, so do they need to have some understanding of the marvellous place which sex emotion has in life.

Only such an understanding can be counted on to give them the self control that is born of knowledge, not fear, the reverence that will prevent premature or trivial connections, the good taste and finesse that will make their sex life when they reach maturity a vitalizing success.

AN EXPLANATION FOR YOUNG PEOPLE

When boys and girls get into their "teens," a side of them begins to wake up which has been asleep or only partly developed ever since they were born, that is, the sex side of them. It is the most wonderful and interesting part of growing up. This waking is partly of the mind, partly of the body and partly of the feelings or emotions.

You can't help wanting to understand all about it,

but somehow you find yourself a little embarrassed in asking all the questions that come into your mind, and often you don't feel quite like talking about it freely, even to your father and mother. Sometimes it is easier to talk with your best friends, because they are your own age, and are beginning to have these new feelings too.

But remember that young people don't know nearly so much about it as older people do, and that the older ones really want to help you with their experience and advice; and yet, they, like you, often feel rather embarrassed themselves and don't know how to go about it. I suppose it is because it is all so very personal and still remains somewhat mysterious, in spite of all that people know about it.

If our bodies were just like machines, then we could learn about them and manage them quite scientifically as we do automobiles, but they are not like that. They are more than machines that have to be supplied with fuel (food) and kept clean and oiled (by bathing, exercise and sleep). They are the homes of our souls and our feelings, and that makes all the difference in the world in the way we act, and it makes what we have to learn, not limited to science only, but it has to include more difficult and complicated things like psychology and morality.

Maybe I can't make this article help you, but I remember so well what I wanted to know and how I felt when I was young that I am now going to try. And I will tell you to start out with that there is a great deal that nobody knows yet, in spite of the fact that the human race has been struggling thousands of years to learn.

Life itself is still a mystery, especially human life. Human life, in many respects, is like plant and animal

life, but in many ways it is entirely different, and the ways in which it is different are almost more important for us to think about than the ways in which it is similar. In all life, except in the very lowest forms, new life is created by the coming together, in a very close and special way, of the male and female elements. You have studied at school about the plants and you probably have observed certain of the animals, so you know something about what this means if you do not understand it thoroughly.

But what you want to know most of all is just how it is with human beings. You want to know just what this coming together is, how it is done, how it starts the new life, the baby, and how the baby is born. You want to understand the wonderful sex organs, that are different in men and women, what each part is for and how it works.

If you feel very curious and excited and shy about it, don't let yourself be a bit worried or ashamed. Your feelings are quite natural, and most everybody else has felt just the same way at your age. Remember that strong feelings are immensely valuable to us. All we need to do is to steer them in the right direction and keep them well-balanced and proportioned.

Now in order to understand something of why this subject stirs us so, we must notice in what ways we human beings are *different* from the plants and animals. About the lowest form of life is the amoeba. It looks like a little lump of jelly, and it produces its young by merely separating itself in two. One part drifts off from the other part and each becomes a separate live being. There is no male and no female and they didn't *know* they were doing it. In the plants a higher stage of development is reached: there is the male and the female and they join together, not by coming to each

other, or because they *know* they belong together, but quite unconsciously, with the aid of the bees and other insects and the wind, the male part is carried to the female part—they mix, and at once the seed of a new plant begins to grow.

Then come to the animals. In all higher forms of animal life, the male creature *comes* to the female creature and himself places within her body the germ which, when it meets the egg which is waiting for it, immediately makes a new life begin to grow. But the animals come together without *knowing why*. They do it from instinct only, and they do it in what is called the mating season, which is usually in the spring. The mating season happens once a year among most of the higher animals, like birds and wild cattle, but to some animals it comes several times a year like the rabbits, for instance. You doubtless know already that the more highly developed the animal, the longer it takes the young one to grow before it is born, and the longer the period when it is helpless to provide its own food and care.

Now we come to human beings, and see how different they are! They have no regular mating season, and while there is a certain amount of instinct in men and women which tends to bring them together, the sex impulse among highly developed people is far more the result of their feeling of love for each other than mere animal instinct alone. Many of the animals make no choice at all in their mating. Any near-by female will do for the male. But among some of the higher animals the male has a special instinct for a certain female, and the female will not tolerate any but a certain male. Most of the animals have different mates every season, though there are a few kinds where the male and female, once having mated, remain mates for years,

sometimes even for life. But it is *only human beings* whose mating is what we call "falling in love," and that is an experience far beyond anything that the animals know.

It means that a man and a woman feel that they *belong* to each other in a way that they belong to no one else; it makes them wonderfully happy to be together; they find they want to live together, work together, play together, and to have children together, that is, to marry each other; and their dream is to be happy together all their lives. Sometimes the dream does not come true, and there is much failure and unhappiness, but just the same people go right on trying to make it a success, because it is what they care most for.

The sex attraction is the strongest feeling that human beings know, and unlike the animals, it is far more than a mere sensation of the body. It takes in the emotions and the mind and the soul, and that is why our happiness is so dependent upon it.

When a man and a woman fall in love so that they really belong to each other, the physical side of the relation is this: both of them feel at intervals a peculiar thrill or glow, particularly in the sexual organs, and it naturally culminates after they have gone to bed at night. The man's special sex organ or penis, becomes enlarged and stiffened, instead of soft and limp as ordinarily, and thus it easily enters the passage in the woman's body called the vagina or birth-canal, which leads to the uterus or womb, which as perhaps you already know is the sac in which the egg or embryo grows into a baby. The penis and the vagina are about the same size, as Nature intended them to fit each other. By a rhythmic movement of the penis in and out, the sex act reaches an exciting climax or orgasm, when

there is for the woman a peculiarly satisfying contraction of the muscles of the passage and for the man, the expulsion of the semen, the liquid which contains the germs of life. This is followed by a sensation of peaceful happiness and sleepy relaxation. It is the very greatest physical pleasure to be had in all human experience, and it helps very much to increase all other kinds of pleasure also. It is at this time that married people not only are closest to each other physically, but they feel closer to each other in every other way too. It is then most of all that they feel *sure* they belong to each other.

The sex act is called by various names, such as coitus, coition, copulation, cohabitation, sex-intercourse, the sex-embrace, etc. But all these terms refer to the same thing. The first coitus is apt to be somewhat painful for the woman, as there is usually a thin membrane, called the hymen, partly closing the vagina which has to be broken through, but all women do not have it and it varies in size and thickness with different people.

Without the sex act, no babies could be created, for it is by this means only that the semen which contains the male part of the germ of life can meet the ovum or the female part of the germ of life. When the two parts come together in the woman's body under just the right conditions, a baby begins to grow—at first so tiny that it could hardly be seen without a microscope, and finally, after nine months' growth in the uterus or womb of the mother till it weighs about seven or eight pounds, it is born, a live human being. The birth process is called *labor*, and it is indeed labor, for it usually means much pain and struggle for the mother, although the baby's journey from the uterus to the world is only a few inches. It takes anywhere from an hour to two days for a baby to be born. Doctors are learning more

and more how to lessen the pain, and by the end of another generation it ought to be possible for childbirth to be practically painless for most women. By that time people will more generally understand how to have babies *only* when they want them and can afford them. At present, unfortunately, it is against the law to give people information as to how to manage their sex relations so that no baby will be created unless the father and mother are ready and glad to have it happen.

Now you must understand something about this intricate sexual machinery. Plate 1 shows the woman's organs and Plate 2 the man's. Both these illustrations are sections, as if the body were cut in two vertically.

Sometimes it seems very distasteful to us that the sex or generative organs should be placed so near to what we might call our "sewerage system." We do not like to have to connect in our thought anything so sweet and nice as a baby or so happy and precious as the sex-embrace with the waste of our bodies, which we want to be rid of with as little thought as possible, as it is disagreeable at best, and we wonder why we were created this way. But we have to remember that the sex organs are very delicate and they are probably placed where they can best be protected from injury. It would be hard to think of any other part of the body that would be safer than just this place. At any rate there they are, and our duty is to understand them as best we can, and take mighty good care of them as our most wonderful possession.

Looking at Plate 1, you will see that the woman's body provides the egg or ovum. These grow, many thousands of them, in two small sacs called ovaries, and every little while (usually every four weeks, but not always) an ovum ripens and passes out from the ovary through the fallopian tube (there are two of

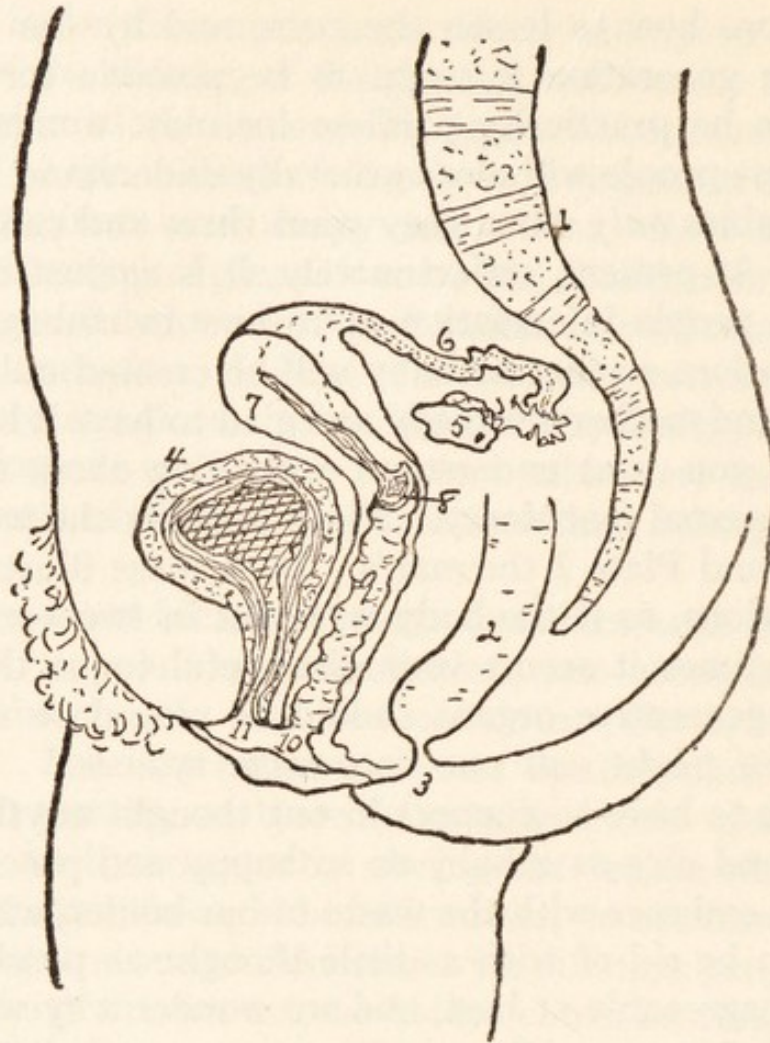


PLATE ONE

1. Backbone.
2. Rectum, which carries away the solid matter from the bowels.
3. Anus, the opening of the rectum.
4. Bladder, which holds the waste water or urine.
5. Ovary, in which grows the ovum or egg.
6. Fallopian tube, which carries the ovum to the uterus.
7. Uterus or Womb, in which the egg or ovum grows into a baby.
8. Mouth of the Uterus, through which the semen has to go to meet the ovum.
9. Vagina or Birth Canal, into which the penis fits during the sex act.
10. Entrance to the Vagina.
11. Entrance to the Urethra, which carries away the water or urine.

these, one leading from each ovary) into the uterus or womb, a process which takes several days. Here it may be met by the male life element, and if so, it becomes fertilized and remains in the uterus to grow into a baby. This is called fertilization, fecundation, impregnation or conception. But if the egg is not fertilized, it passes from the uterus through the vagina and out of the body. The ovaries take turns in developing the ovum.

Every twenty-eight days or so a woman, from the time she is about thirteen or fourteen till she is about fifty, has a slight flow of blood from the uterus, which is called menstruation. The reasons for this are not wholly understood, but it is supposed there is an extra supply of blood provided periodically for the growth of a baby, but when there is no baby starting to grow, the blood is not needed so it flows away (about once in four weeks). Often the unfertilized ovum is carried away with it, but the two things do not necessarily happen at the same time. Menstruation lasts from three to five days and young girls sometimes have pain then and feel languid and "unwell." If so they should be quieter than usual and avoid cold baths and getting their feet wet. But menstruation is not an illness, and a girl in perfect health finds it only a slight inconvenience.

The ovaries not only produce the egg, but they also produce a secretion that is absorbed by the blood and which is most necessary in the development of a girl into a woman. It has an almost magical effect in adding the specially womanly qualities to the body and character.

Looking at Plate 2, you will see the man's sex machinery. The testicles are to a man what the ovaries are to a woman. They are two sacs held in a bag of

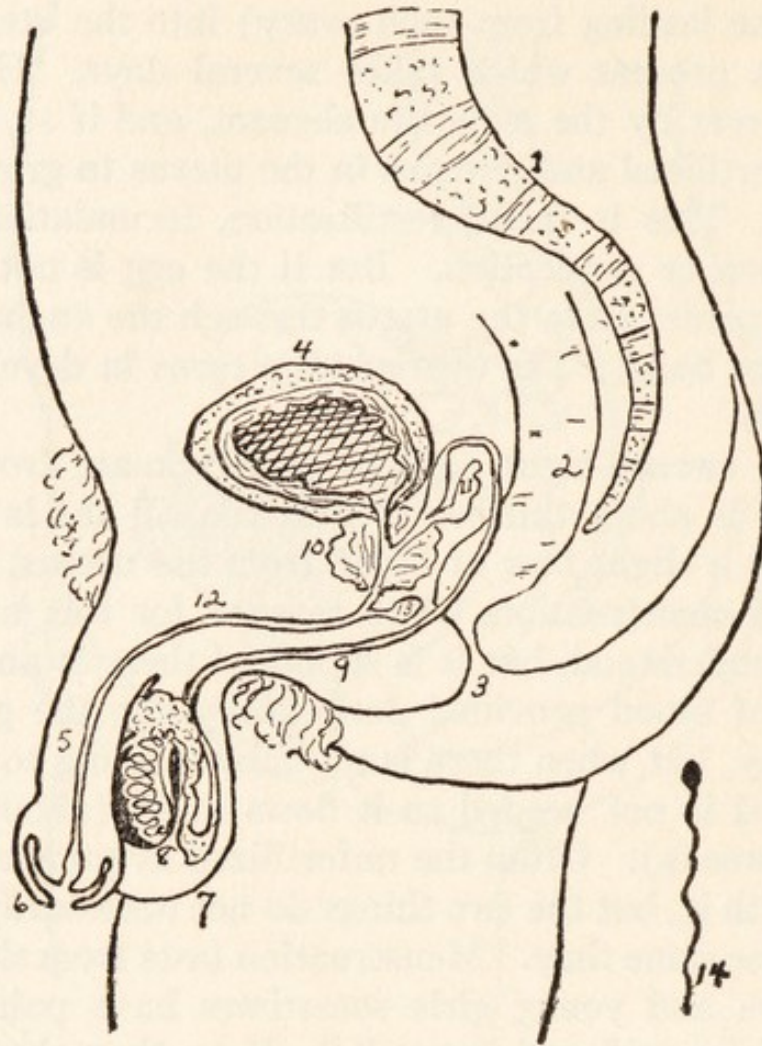


PLATE TWO

1. Backbone.
 2. Rectum, which carries away the solid waste matter from the bowels.
 3. Anus, the opening of the rectum.
 4. Bladder, which holds the waste water or urine.
 5. Penis, which fits into the vagina, during the sex act.
 6. Prepuce, or fore-skin.
 7. Scrotum, the bag which holds the testicles.
 8. Testicles, in which grow the spermatozoa, or germs of life.
 9. Vas Deferens, which carries the spermatozoa to the urethra.
 10. Prostate Gland.
 11. Seminal Vesicle.
- Both 10 and 11 secrete liquids that make part of the semen, and which nourish the spermatozoa.
12. Urethra which carries the spermatozoa, also the urine.
 13. Cowper's Gland, which secretes a liquid which makes the urethra alkaline.
 14. One of the spermatozoa, or germs of life, much magnified.

rather thin loose skin called the scrotum, and it is here that the sperm (spermatozoa) or germ of life grows. Just how no one really knows. The spermatozoa are very tiny and the testicles hold many thousands of them. Under the microscope they show a sort of head and tail like a pollywog. They are very much alive and move by a rapid wiggling of the tail part.

Leading from each testicle is a tube called the vas deferens, through which the sperm goes at the time of the sex act on its way out to meet the ovum in the woman's body. On the way it is joined by two other liquids, one secreted by the seminal vesicles (of which there are two) and the other by the prostate gland. These three liquids together form the semen, which at the times of sexual excitement is forced out through the penis into the vagina of the woman.

You will notice that the woman has separate tubes for the urine (waste water) and the sex function, but the man uses the same tube for both: that is, in the woman the bladder which holds the urine is emptied by a separate tube, the urethra, while in the man the urethra not only empties the bladder, but it also carries the semen.

The use of the seminal vesicles and the prostate gland is to supply a means of nourishment for the spermatozoa until they reach the ovum, which may not be for several days after the semen is expelled into the vagina.

Then there are two small glands called Cowper's glands, which make the passage in the penis alkaline, as the spermatozoa can only remain alive in an alkaline secretion and the urine is acid, so always just before the penis forces out the semen, the secretion from Cowper's glands goes ahead to protect the sperm from being destroyed by any remaining traces of the acid urine.

At the end of the penis is a fold or cap of skin, the

prepuce, which the doctor often removes for the sake of the boy's health, a process called circumcision, and it is a great relief to boys whose prepuce or foreskin is too tight as to make difficulty in keeping clean. All Jewish babies are regularly circumcised, a custom dating way back to Bible times.

There is a constant internal secretion from the testicles of a man just as from the ovaries of a woman, and it has the same beneficial effect on the whole being. It makes a boy what we call manly or virile. The value of the internal secretions of the sex organs in both boys and girls is so great that for that reason, if for no other, the whole sex machinery must be kept in perfect health.

Boys have a certain discomfort to bear which is difficult for them just as menstruation is difficult for girls. But by knowing the meaning of things and by taking care of themselves, they need not be seriously troubled by it. Every once in a while as they are growing up, but before they are old enough to really fall in love and marry and have children, boys feel a sort of stirring of the sex organs—sometimes so much so that it makes them quite uneasy and anxious for relief. The thing to do is to keep as calm as possible and keep very busy and very healthy. Then the discomfort will not be too great, and nature will usually bring relief by letting the accumulated semen pass off during sleep. This is called a seminal emission, and is perfectly harmless. Sometimes a vivid sexual dream comes with it, but that too will do no harm, unless a boy lets his mind dwell on it till the excitement grows unnatural. This emission may happen every two weeks or so, but it is not a regular thing. Boys are sometimes alarmed and fear their sex machinery is out of order, but it is a perfectly natural thing, and only means that the organs are

relieving themselves of the extra secretions that are not needed till the time comes for the real sex relation.

Boys and girls sometimes get the habit of handling their sex organs so as to get them excited. This is called masturbation or self-abuse. It is also called autoerotism. Such handling can be made to result in a climax something like that of the natural sex act. For generations this habit has been considered wrong and dangerous, but recently many of the best scientists have concluded that the chief harm has come from the worry caused by doing it, when one believed it to be wrong. This worry has often been so great that real illness, both of the mind and body has resulted. There is no occasion for worry unless the habit is carried to excess. But remember that until you are mature, the sex secretions are specially needed within your body, and if you use them wastefully before you are grown, you are depriving your body of what it needs. So do not stimulate your sex organs into action *intentionally*. And do not yield to the impulse to handle the sex organs in order to relieve the pressure which may occasionally feel overwhelming, unless you find that nature does not bring you relief during sleep.

Remember always that your whole sex machinery is more easily put out of order than any other part of your body, and it must be treated with great care and respect all along. It is not fair to ourselves or to each other to do a single thing that will make us either weak or unnatural. Remember that your sex organs have a very powerful, even if invisible, effect upon your whole being, and up to the time that you are really old enough to love some one to whom you want to actually belong, you must *let your sex machinery* grow strong and ready for its good, happy work when the right time comes. The sex organs during your youth do not need

frequent exercise in the same sense that your muscles do. They are active all the time with their internal secretions which strengthen both you and them.

Don't ever let any one drag you into nasty talk or thought about sex. It is *not* a nasty subject. It should mean everything that is highest and best and happiest in human life, but it can be easily perverted and ruined and made the cause of horrible suffering of both mind and body.

There are two very terrible sexual diseases—syphilis and gonorrhea. They are both frightfully infectious and very difficult to cure. These diseases are usually acquired by sex contact with a diseased person, but they can also be gotten by using public drinking cups, towels, water-closets, or in any way by which an infected moist article can come in contact with one's skin. The worst thing about these diseases is that they are such invisible enemies. After the outside appearance of the disease is gone, they often go reaching farther and farther into the body, making awful results that hang on for years. Men who get diseased frequently give the infection to their wives, often causing them to be so ill that surgical operations are necessary, by which their sex organs are so crippled that they can never be mothers; and, worst of all, innocent unborn babies are infected and come into the world sick or deformed or blind.

Men often get these dreadful diseases by having sex relations with women who are called prostitutes or "bad women," that is, they are women who are not in love with any one, but who make money by selling their sex relations to men who pay for them. Many prostitutes become diseased, and there is, as yet, no way for either them or the men who visit them to be positively safe from infection. But the doctors are making prog-

ress in their study of these diseases, and they are finding out how to control and cure them, just as they have in the case of tuberculosis.

But even if presently these venereal diseases, as they are called, can be entirely cured and prevented, prostitution will still remain a thing to hate. For the idea of sex relations between people who do not love each other, who do not feel any sense of belonging to each other, will always be revolting to highly developed, sensitive people.

People's lives grow finer and their characters better, if they have sex relations only with those they love. And those who make the wretched mistake of yielding to the sex impulse alone when there is no love to go with it, usually live to despise themselves for their weakness and their bad taste. They are always ashamed of doing it, and they try to keep it secret from their families and those they respect. You can be sure that whatever people are ashamed to do is something that can never bring them real happiness. It is true that one's sex relations are the most personal and private matters in the world, and they belong just to us and to no one else, but while we may be shy and reserved about them, *we are not ashamed*.

When two people really love each other, they don't care who knows it. They are proud of their happiness. But no man is ever proud of his connection with a prostitute and no prostitute is ever proud of her business.

Sex relations belong to love, and love is never a *business*. Love is the nicest thing in the world, but it can't be bought. And the sex side of it is the biggest and most important side of it, so it is the one side of us that we must be absolutely sure to keep in good order

and perfect health, if we are going to be happy ourselves or make any one else happy.*

FINAL PLEA TO HAVE INDICTMENT DISMISSED

Mr. Ernst made one last valiant effort to have the Judge dismiss the indictment, "on the ground that the statute under which the indictment is brought is unconstitutional under the first Amendment of the Constitution; on the further ground that the Government has failed to establish facts sufficient to constitute the crime charged; and on the further ground of insufficiency of proof."

This was his concluding statement:

"In order to let this case go to the jury, the Court has to hold, in effect, that the organizations which are using those pamphlets, have actually been corrupting the community. In other words, if the test of sexual obscenity of a writing is to corrupt those into whose hands it may come, then the Y.M.C.A.s and the Union Theological Seminaries which will testify that for years they have been using the pamphlet, are corrupting elements."

Wilkinson reiterated his argument that "the question of obscenity is one of fact for determination by a trial jury, who will decide as to whether the pamphlet does or does not contain matter that is apt to raise lewd and libidinous thoughts in the minds of the young and immature and into whose hands it may come."

Judge Burrows said "Motion denied." The trial proceeded.

* The pamphlet as here given is not the present edition, but the one against which the indictment was brought. Subsequent editions have been somewhat enlarged by additional new diagrams drawn by Dr. Dickinson, and by slight revisions to bring the physiological facts into complete accord with the most recent and best medical authorities.

COURT TECHNIQUE IN SUPPRESSING EVIDENCE

In addressing the jury Mr. Ernst outlined what would be his procedure. Beside the defendant, he would call to the witness stand the following persons:

Mrs. Larkin, National Committee for Mental Hygiene.

Myrtle Le Compte, Teacher's College, Columbia University.

Mrs. Cecile Pilpel, Child Study Association of America.

Mrs. Clara Savage Littledale, Managing Editor of *Children—the Magazine for Parents*.

William A. Jenny, Young Men's Secretary, Prospect Park, Brooklyn, Y.M.C.A.

Bascom Johnson, Legal Director, American Social Hygiene Association.

Dr. Max Exner, Educational Division, American Social Hygiene Association.

Abel J. Gregg, National Council of the Y.M.C.A.

Edward J. Allen, Director of Seth Low Junior College of Columbia University, Brooklyn.

Dr. Robert L. Dickinson, Secretary of the Committee on Maternal Health.

Jess Perlman, Director of the Associated Guidance Bureau.

W. H. Dewar, Executive Secretary of the Prospect Park Branch, Y.M.C.A.

Prof. Harrison Elliott, Union Theological Seminary.

Prof. Goodwin F. Watson, Teachers College, Columbia University.

Mr. Ernst said: "These witnesses will come before you to prove the manner of distribution of this pamphlet, so as to remove entirely from your minds the

possibility that it was surreptitiously sold, that it was sneaked out from under the counter of a soda water or stationery store; that it has been openly dealt in and exhibited and circulated by churches, educational and charitable organizations for a period of over ten years. That will be our case, in addition to re-reading part of the pamphlet, and our summation to show you that if people are looking for dirt they can find it anywhere, and if anyone is looking for honest sex instruction, he can find it in this pamphlet."

Mr. Abel J. Gregg, Secretary of the Boys Work Section of the National Council of the Y.M.C.A. was then called to the witness stand. He testified that he had been in his present position for ten years, and before that was Secretary for the Kansas Y.M.C.A.

MR. ERNST: Will you tell the jury and the Court the basis of your circulation of Mrs. Dennett's pamphlet, how many hundreds of copies you have ordered in behalf of the Y.M.C.A. for the boys' groups and other organizations affiliated therewith?

MR. WILKINSON: Objected to as incompetent, irrelevant and immaterial, not within the issue of the indictment. Will your Honor hear argument on my motion and meanwhile exclude the jury?

The Judge inquired if it would take any scope. Wilkinson said it would, so the Judge excused the jury. They all filed out.

MR. WILKINSON: If the Court please, counsel on behalf of the defendant has cited cases that are not in perfect accord with the law on the question. Opinion testimony is not permissible on either side as to whether or not the pamphlet is one that should be considered obscene or not. I submit that if we were permitted to

offset counsel's contention and to put experts on the stand, we would have a trial here that would be prolonged for two or three weeks on the question of obscenity. The jury are the sole and exclusive judges of its obscenity under the law; and to permit the calling here of 12 or 14 witnesses to say, as representatives of different institutions, that they have distributed this pamphlet, would be an indirect manner of getting opinion testimony before the jury, which it is not allowed to introduce under all authorities. I have no objection to Mrs. Dennett taking the stand and telling her story, but to call this great galaxy of witnesses here is entirely out of the question and the issues under the indictment. If counsel wishes to have read into the record the names of these other witnesses that he would call and with similar questions and have the same objection made and noted by the Court, he can do it and then have his exception. I am strenuously opposed, however, to any line of examination like this, it being entirely illegal to introduce evidence that can have no tendency in the minds of the jury but to confuse them as against the Government's case, and against which the Government can have no redress in the way of rebuttal evidence, for certainly we are precluded under the authorities from introducing any opinion evidence on the question of the obscenity of the pamphlet.

MR. ERNST: If your Honor please, the question of distribution goes to the very essence of the crime. The basic principle is, will the pamphlet corrupt those into whose hands it is likely to come, and we want to prove into whose hands it actually *did* come. The law is well sustained on that point. We have evidence here as to the distribution of probably 25,000 of the 30,000 copies that have been put in circulation. In other words, these agencies were the distributors. They saw to it that the young people got this pamphlet; and therefore it is of the essence of the crime for the Prosecution to prove that it is likely to corrupt those

into whose hands it is to come. We can show by this evidence the persons into whose hands this pamphlet did come. It seems to me that it is clearly admissible in evidence, because if this pamphlet had been distributed surreptitiously in a stealthy fashion, the District Attorney could have introduced such facts in evidence, and does introduce such facts in evidence in other cases of like character.

The Judge asked if the counsel for the defense could produce cases as precedent. He did so. A three-cornered discussion ensued between the Judge and the two attorneys in which the Burton and Harmon cases were cited. The Judge pored over the citations which were laid before him.

In the midst of this discussion on the admissibility of testimony on the method and character of the distribution of the pamphlet, Mr. Wilkinson interjected this bit:

WILKINSON: I might say further that the motives of the defendant are immaterial. Here is a woman, if your Honor please, publishing this pamphlet initially for her own children. All right. As soon as that happened, she fulfilled her life's purpose; but for her to call in the neighbor's children, others from round the neighborhood, to tell them about it, that is different.

Later in the trial he repeated his hypothesis about calling in the neighbor's children, but garnished it according to his own imaginings: then he had it that "she opened the kitchen window and stuck her head out, and beckoned to the neighbors' children," and he crooked his forefinger descriptively. He fought by every possible means to keep the jury from hearing directly from representative people how the pamphlet was actually circulated.

JUDGE BURROWS SAYS "DUMPED"

The Judge continued to put queries, to ponder and to think out loud. It looked as if logic, precedent and prejudice were all struggling for supremacy in his mind. Which won may be gathered from the Court report.

THE COURT: Do you claim simply because 25,000 have gone to the Y.M.C.A.'s and other organizations that necessarily it cannot fall into anybody's hands except those that would not be influenced by anything in it?

MR. ERNST: I do not say that. But I do say that it is part of the crime that it might corrupt those into whose hands it is likely to fall.

THE COURT: Are you prepared to say that all those people into whose hands they were delivered by the Y.M.C.A.'s and other organizations were people who would not be likely to be corrupted?

MR. ERNST: No, because the burden of proof of anything like that would be on the Government.

THE COURT: You are taking the position here affirmatively.

MR. ERNST: And I am adding this as a circumstance—distribution.

THE COURT: That would have a tendency to show what other organizations felt of it and by thinking about it would simply be what their opinions would be on it. (This sounds confused, but it is given exactly as found in the court stenographer's report.) The question that we are to decide here is what that particular pamphlet says. I do not see how anyone else can decide it except the jury. Did I understand you to say that 25,000 of them were dumped into the Y.M.C.A.?

MR. ERNST: No, I did not say that, your Honor.

The Judge said hastily:

THE COURT: Well, they were *sent* to them.

MR. ERNST: Yes, and I will submit that it is our right that the jury have that knowledge; that the Y.M.C.A.'s used them in their classes, that the Public School system has in part used this pamphlet and I think the jury has a right to have those facts before it.

The Judge continued to pore over the precedents on his desk. Finally reading from the text of the Harmon case (page 418) he quoted:

THE COURT: "Asserted violations of this statute, like other criminal statutes, must be left to the final arbiter under our system of Government, the courts. The jury, the legal triers of fact under the constitution, is to pass upon the question of fact. Under our institutions of Government, the panel of twelve are assumed to be the best and truest exponents of the public judgment of the common sense. Their election and constitution proceed from the theory that they most nearly represent the average intelligence, the common experience and sense of the vicinage."

Under that theory it seems to me that it is the intent of the law, and it is the law, that the only question before the Court at this time is whether or not that pamphlet which was mailed, is obscene, lewd and lascivious under the statute. The question of distribution does not seem to me a matter for the jury, and I think under the case of Harmon vs. the United States it is peculiarly for the province of the jury to determine that question, and therefore the objection is sustained.

Mr. Ernst took exception. The jury were brought in again. Then Wilkinson said, "I would like to have the ruling of the Court in the presence of the jury, and the sustaining of the objection by me." The Judge explained to the jury what the ruling had been. Mr.

Ernst requested that it be included in the record that he was ready to call and put the same question to the other witnesses, and he gave the list as named previously in his opening statement to the jury. There was some quibbling as to the wording of the questions which would have been put to the witnesses if they had been allowed to take the stand. To make it definite, Mr. Gregg was recalled to the stand, and the original question was put to him, so far as it had been allowed by the court. Mr. Ernst then completed his questioning of Mr. Gregg as follows:

MR. ERNST: Did you use this pamphlet by Mary Ware Dennett, in connection with classes conducted by the Y.M.C.A.?

MR. WILKINSON: That is objected to as being incompetent, irrelevant and immaterial and not within the issues joined in the indictment.

THE COURT: The objection is sustained.

MR. ERNST: Exception.

Did you recommend this pamphlet at various meetings of parents?

MR. WILKINSON: That is objected to as being incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

MR. ERNST: Exception.

Did you recommend this pamphlet at various meetings of boys' clubs and adolescents?

MR. WILKINSON: I object to that as being incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

MR. ERNST: Exception.

Do you know of your own knowledge whether or not the Y.M.C.A. local branches have used this pamphlet in classes for parents and adolescents?

MR. WILKINSON: That is objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection sustained.

MR. ERNST: Exception. (Witness excused.)

I would like to have it noted on the record that the same questions would be asked all those other witnesses whose names I gave for the record.

MR. WILKINSON: And that I would make the same objection.

THE COURT: And I the same ruling.

MR. ERNST: And I the same exception.

To the people gathered in the court room, this ruling out of all the witnesses for the defense seemed almost incredible. They hardly believed their ears. It startled them into a new realization of how laws and court rulings can be made to thwart common sense and fair play. But still more amazement followed.

THE DEFENDANT ON THE WITNESS STAND

Like Mr. Gregg, with uplifted hand, I swore "to tell the truth, the whole truth and nothing but the truth." But I had about as much luck trying to keep that promise as Mr. Gregg had. After answering the usual questions as to residence, occupation and so forth, Mr. Ernst asked me to "explain to the jury the circumstances under which the pamphlet had been written." Wilkinson objected, with the customary formula, adding that "The motive of the witness has no element in the case." The Court overruled this objection and asked me to proceed, saying "you must eliminate motive from the answer."

THE WITNESS: I will try and you must tell me if perhaps I overstep. When my children reached the age when they needed something beside what had been taught to them by their parents, I hunted for something

to give them to read. After reading some sixty or so of the existing publications and finding them deficient and unsatisfactory in certain ways, I wrote for them what seemed to me to be the version or explanation they ought to have at that time. The manuscript ——

MR. WILKINSON: I move that that answer be stricken out.

THE COURT: Motion denied.

THE WITNESS (continuing): The manuscript of this little explanation was loaned incidentally to my friends who have children, to parents and to young people themselves. It was loaned till it was tattered.

MR. WILKINSON: I move that that answer be stricken out as not responsive.

The Court ruled that it be stricken out. Mr. Ernst took exception.

MR. ERNST: What happened next in connection with the circumstances of publication?

THE WITNESS: The owner of the *Medical Review of Reviews* heard of the manuscript and asked that he might read it.

MR. WILKINSON: That is objected to. It is going into hearsay.

The Court ruled that the last part of the reply be stricken out.

MR. ERNST: However you sent the manuscript to the *Medical Review of Reviews*.

THE WITNESS: At the request of the owner, yes.

MR. ERNST: And it was published in the *Medical Review of Reviews*?

THE WITNESS: Yes.

MR. ERNST: When?

THE WITNESS: In February, 1918.

MR. ERNST: And how long after that did you publish the pamphlet?

THE WITNESS: Within a year, I think.

MR. ERNST: And about how many of the pamphlets have you sold since it was first printed in 1919?

Wilkinson objected. The Court sustained him.

MR. ERNST: At what price were the pamphlets sold? Objection, which the Court sustained.

MR. ERNST: At what price did you sell the pamphlet which is now before the Court?

THE WITNESS: At 25 cents a copy when sold singly, and 15 cents when ordered in quantity.

MR. ERNST: If the Court please, I want to produce evidence to show that there is no profit motive, which may be in the minds of the jury.

MR. WILKINSON: Motive has nothing to do with it.

THE COURT: I think it immaterial. Objection sustained.

MR. ERNST: What was the distribution of the *Medical Review of Reviews* in 1919 when they printed this article?

Wilkinson objected, and the Court sustained it.

MR. ERNST: Has this article been printed elsewhere in any magazine?

Same objection and ruling.

MR. ERNST: Do you recall to whom you distributed this pamphlet?

MR. WILKINSON (shouting): Yes or no.

THE WITNESS: Yes, not in detail of course.

MR. ERNST: You still have in your possession the orders received from various churches, organizations, both charitable and educational, is that right?

Wilkinson objected.

MR. ERNST (continuing): I understand the District Attorney before said that he would have no objection to Mrs. Dennett testifying as to methods of distribution,

but that he objected to the organization representatives testifying that they used it.

MR. WILKINSON: I have no objection to putting on the record that she has distributed 25,000 copies if she wants to do it, but it is immaterial as to how or where. The only question is did she mail this one and is it obscene?

THE COURT: The objection is sustained.

To the following ten questions put to me by Mr. Ernst, Wilkinson objected, and the Court sustained the objections. To the first few I answered "yes," promptly before Wilkinson made his objection, and he then requested that I wait till he objected. He asked that my answers be stricken out. They were.

Did you send at the request of the Union Theological Seminary one or more copies of this pamphlet to them?

Did you receive orders from the Young Women's Christian Association?

Did you receive orders from the Public Health Departments of various states?

Did you receive orders from no less than 400 welfare or religious organizations?

Have you received over a period of the last ten years orders for this pamphlet from members of the clergy?

Have you received orders from great numbers of doctors all over the United States?

Have you received orders from Judges and Congressmen?

Do you know of your own knowledge whether or not this pamphlet is in use in the Public School System of Bronxville, N. Y.?

Do you know of your own knowledge whether or not the pamphlet is in use in the libraries of the United States.

During these questions, I was holding in my hands, a representative list of organizations and individuals who had ordered, used or endorsed the pamphlet. I was ready to read it if permitted to do so.

MR. ERNST: Did you receive, and have you in your possession the originals of the letters from which excerpts were printed and marked in evidence here as *Representative Opinions*?

Wilkinson objected.

MR. ERNST (continuing): I state at this time that the reason for that is to show that they are not frauds.

THE COURT: I do not understand that it was introduced as anything more than a document that was with the non-mailable matter, and for that only, that it was in the mail. I do not understand that it was for anything else.

MR. ERNST: It is before the jury, and I merely want the witness to testify whether or not these statements that she has been accused of sending out were genuine statements or whether she made them up. I don't want any doubt in the juror's minds.

THE COURT: As I remember, there is no such accusation. The pamphlet itself and these testimonials which accompanied the pamphlet that was mailed, were to be recognized as part of the indictment and on that ground I admitted them; and it was as I recall understood between counsel that I should instruct the jury that they were not to be regarded as testimonials.

MR. ERNST: I have no such understanding, your Honor.

MR. WILKINSON: My understanding coincides with the Court. We have not attacked the authenticity of any of these statements. (Note his previous statement in which he spoke of "what *purports* to be opinions about the pamphlet.") These endorsements are not before the jury. They are incapable of cross-examina-

tion, and therefore are not proper testimony. We are not accusing the defendant of sending out forgeries at all and the introduction of such testimony as that is highly irrelevant.

THE COURT: As I stated before, gentlemen, these are admitted as papers which accompanied the pamphlet and they were admitted for that purpose only. Now to allow the originals of these to go in, wherein they express, and are bound to express an opinion, is to place opinion testimony before the jury which is not admissible. Therefore it is excluded.

So, once more, the stipulation regarding the *Representative Opinions* was made a scrap of paper. The reader will note that the indictment made no distinction between the leaflet and the pamphlet. Both were "obscene," "filthy," etc., etc.

MR. WILKINSON CROSS-EXAMINES THE DEFENDANT

MR. WILKINSON: You explained you wrote for young people, Mrs. Dennett. You stated that Government's exhibit 2 in evidence was for adolescents—of what age?

A. No age stipulated. Adolescents in the ordinary sense.

Q. Well what would you say, in what sense?

A. In the ordinary sense.

Q. Mrs. Dennett, what would you say as to the early age you would want these to fall in their hands, I mean the youngest?

A. I should not be averse to *any* children reading it but it is written for adolescents.

Q. Of what age?

A. I would adhere to the dictionary definition of adolescents.

Q. But I am asking you.

A. I don't put my definition ahead of the dictionary.

MR. WILKINSON: That's all.

MR. ERNST: The District Attorney wants to know for what children this pamphlet might be of benefit, and I ask you does it not depend upon the circumstances and children? A. Certainly. Q. As children vary as to their growth and adolescence? A. Decidedly.

Q. The boys for whom you wrote this in the first instance were how old? A. It was given to them when one was fourteen, the other eleven, and gauged according to their needs at the time.

Q. And you have given it to other children at what ages? A. Various ages, from 12 to 25.

Q. At what ages to your own knowledge do the Y.M.C.A.'s and other organizations use this pamphlet?

MR. WILKINSON: Objected to as incompetent, irrelevant and immaterial.

MR. ERNST: The District Attorney himself, if the Court please, opened the door as to what ages.

THE COURT: The only thing that I recall was what ages she considered adolescent. The objection is sustained.

MR. WILKINSON: You received a card in the mail and you simply sent these on to Mrs. Miles, is that it?

A. I suppose so.

Q. You did not know who Mrs. Miles was?

A. No.

Q. Or what use she would make of the pamphlet when she received it?

A. No.

MR. ERNST: I renew my request that you put into evidence the other persons to whom she mailed it, and the circumstances.

THE COURT: Upon what ground?

MR. ERNST: On the ground that the District Attorney has been interested in the fact that Mrs. Dennett did not know who Mrs. Miles was, or what use she would make of the pamphlet.

THE COURT: That is the one pamphlet that is alleged in the indictment. On cross-examination he asked if she sent it and how much was paid. He asked if she did not receive 25 cents through the mail and she said I suppose so. I do not think that opens the door to the question as to whom she has sent them generally. As I recall the question, it was restricted to the person mentioned in the indictment. Your request is denied.

COURT BARS OUT TESTIMONY ON SIMILAR SEX LITERATURE PUBLISHED BY THE UNITED STATES

MR. ERNST: I would now like to introduce into evidence the following pamphlets printed and distributed, most of them freely and without charge. *Today's World Problem in Disease Prevention* issued by the United States Public Health Service, Treasury Department, Washington, D. C.

MR. WILKINSON: It is objected to as being incompetent, irrelevant and immaterial, not within the issues.

THE COURT: Objection sustained.

MR. ERNST: I offer in evidence *The Problem of Sex Education in the Schools* issued by the New York State Department of Health, Albany, N. Y., and reprinted by permission from the pamphlet of the Treasury Department, United States Public Health Service. Same objection and ruling.

Mr. Ernst then offered in evidence the following analogous publications, and in each instance, Wilkinson objected and the Judge sustained the objection.

Sex Education: Symposium for Educators issued by the Treasury Department, United States Public Health Service.

Healthy Manhood, a pamphlet distributed by the New York State Department of Health, co-

operating with the United States Health Service.
Syphilis, Gonorrhoea and Chancroid—Healthy Mothers and Babies.

Man-Power, reprinted with permission from a pamphlet issued by the United States Public Health Service, by direction of the Surgeon General.

Sex and Youth by Sherwood Eddy, published by Doubleday, Doran & Co., Inc.

The Effectiveness of Certain Social Hygiene Literature by Paul Strong Acilles, Ph.D. Published by the American Social Hygiene Association, by agreement with the United States Public Health Service.

MR. ERNST: I have offered them on the ground that they are in part identical —

MR. WILKINSON: I object to any speeches as to what they are identical with. There is a difference between literature generally disseminated by a profit making organization, and literature that is disseminated by the United States Government itself.

Mr. Ernst then introduced into evidence, so that it would be before the jury, the stipulation by which the leaflet *Representative Opinions* was admitted to be the "certain printed matter" included in the indictment.

Then once again Mr. Ernst moved for a dismissal on the ground that the indictment was unconstitutional, that the Government had failed to set forth facts sufficient to constitute a crime, and on the further ground resulting from exceptions taken during the course of the trial regarding the admission of evidence. He had, of course, announced his exception to each instance where the Court had sustained the Prosecutor's objections. There were 90 exceptions.

The Judge said "Your motion is denied." Then

speaking to the jury, the Judge said "the motion which has been made, and my denial of it, is not to be regarded by you in any sense as having any particular bearing on the case, so far as you are concerned. It is not to weigh for the accused or against her."

"PURE AND SIMPLE SMUT," ACCORDING TO WILKINSON

With all evidence barred out, the two attorneys proceeded to make their respective summations of the case to the jury. Mr. Ernst made a dignified, logical, impressive appeal to reason and common sense. The court room was very still while he spoke. It was not so much an appeal to the jurymen to bring in a favorable verdict in this particular case, though it was amply insistent in that direction, as it was to inspire them to pay attention to the fact that scientific sex education has no relation to dirty-mindedness, and that to use an outworn law to penalize competent, present-day educators would be a disgrace to any American court. He made a fine effort to release the jurors from whatever left-over sense of sex indecency they may have had from unfortunate concepts acquired in childhood, and to induce in them a mature, clean mental attitude.

Mr. Wilkinson reiterated his previous dissertations, and gesticulating with fervor, invited the jury to read into the pamphlet all the vice and danger which he claimed he saw in it. He made once more his repeated assertions that the pamphlet contained nothing about self-control or ideality, though he had himself been required to read aloud to the jury the many passages which contradicted his claims. He wound up, leaning far over the rail of the jury box, and waving the crumpled blue pamphlet in his hand, declared that it was "pure and simple smut" and that if he could "stand

between the children of the country and this woman who was trying to lead them not only into the gutter, but below the gutter into the sewer" he would feel that he had accomplished something.

JUDGE BURROWS' CHARGE TO THE JURY

The charge to the jury fills eighteen pages of the minutes by the court stenographer. Much of it seems vague and circuitous. It is hoped that the following excerpts will give the reader a fair idea of its main points.

Every accused person is presumed in law to be innocent of crime until his guilt is established by evidence. This presumption attends him throughout the trial, and his triers must indulge in it until it is overcome by such evidence as establishes his guilt.

By presumption of innocence is meant that arrest counts for nothing, or the fact that the accused has been indicted, or the fact that the accused is here on trial before you. It is important therefore that you clearly understand the extent of the Government's burden and the degree of proof necessary to overcome this presumption of innocence, and to warrant a conviction for crime.

The Judge read to the jury Section 334 of the Criminal Code under which the indictment was drawn.

Under this statute, the word obscene means that which is offensive to chastity and modesty; the word lewd means having a tendency to excite lustful thoughts. The word lascivious is synonymous with lewd. The word filthy means foul and unclean.

The Judge then read the indictment to the jury, in full.

Now then the test: by what rule of law are you going to determine whether or not this pamphlet is unmailable as obscene, lewd, or lascivious, within the meaning of the statute? The true test is whether its language has a tendency to deprave and corrupt the morals of those whose minds are open to such things and into whose hands it may fall; arousing and implanting in such minds lewd and obscene thoughts and desires.

Whether or not this pamphlet is obscene within the provisions of this statute, should be determined upon considering the entire pamphlet. It is your duty to pick out such passages as have been presented to you through the counsel for the Government, and determine whether or not these particular passages are in violation of the statute. And in so doing it is your duty to consider the whole pamphlet, taking the language before particular passages and the language after particular passages, in order to determine whether or not the pamphlet does contain language which is a violation of this statute.

I charge you that the motive of the defendant in writing the pamphlet or distributing it has no bearing on your consideration. Her motive may have been of the best or the worst. That is not material. It is for you to determine, in the light of your experience, your reasoning and your judgment as to whether or not in your minds there is a violation of the statute.

Now in this envelope in which the pamphlet was enclosed were certain testimonials, if I may so term them, although I do not recall whether that term has been used in connection with them before or not, but you know what I mean. (The *Representative Opinions*.) Those testimonials were admitted, gentlemen, as documents which were included in the pamphlet. You are not to judge those testimonials as though you had absolute facts as to the truth of the pamphlet. They are not there for that purpose, because you can readily see that they are simply some things which purport to be

the statements of certain persons. Whether they were actually written by those persons or not we don't know, and it is not material to this issue; because even though we had the original statements of the writers, gentlemen, they would not be admissible, because they would only be in the form of letters and the only way we could get in testimony before you, according to our rule of conducting a trial is either by deposition or by having the persons on the stand for the purpose of examining the truth. So I warn you against giving these testimonials any credence.

You should not be swayed or influenced by any sympathy or prejudice for or against the accused, or for or against the Government, and you should not be influenced for or against the accused on account of her sex because, regardless of sex, we are all equal before the law.

Now there have been very few witnesses in this case. The only witnesses the Government has had are the few exhibits which you will have before you. The principal witness on the part of the accused was Mrs. Dennett herself. There was another witness put on, I don't exactly recall what the testimony was, but it is your duty to remember the testimony of the other witness and to weigh his testimony, whatever it may have been.

(Mr. Gregg was allowed to testify only to his name, address and occupation.)

As to witnesses you should regard them by their conduct and demeanor while testifying, as well as their testimony. You should apply such other tests as may occur to you from your knowledge of human nature and human conduct. It is proper for the jury to consider whether the statement of a witness is in harmony with well-known truths or whether it has the unmistakable brand of untruth.

I shall read to you the law as laid down in a leading case on this subject which will state the situation as to your duties better than I could.

Laws of this character are made for society in the aggregate, and not in particular, so while there may be individuals and societies of men and women of peculiar notions and idiosyncracies whose moral sense would neither be depraved nor offended by the publication under consideration, yet the exceptional sensibility, or want of sensibility, of such cannot be allowed as a standard by which its obscenity or indecency is to be tested. Rather is the test, what is the judgment of the aggregate sense of the community reached by it? What is its probable reasonable effect on the sense of decency, purity and chastity of society extending to the family, made up of men and women, boys and girls, the family which is the common nursery of mankind, the foundation rock upon which the state reposes. Who is to deem, who is to judge, whether a given publication impinges upon the general sense of decency? Shall every postmaster have the power to deem the matter injurious to public morals? Shall one postmaster deem a thing injurious and another harmless and shall the freedom of the press be at the mercy of an indifferent lot of postmasters exercising no responsible discretion? In answer to this, I charge you, gentlemen, that under our statutes the jury, the legally constituted triers of the fact, is to pass upon the question of the fact. You twelve men are assumed to be the best and truest exponents of the public judgment of the common sense. Their selection proceeds upon the theory that they most nearly represent the average intelligence, the common experience and sense of the vicinage.

That, gentlemen, I think states the situation more clearly than I can. It is up to you to use your judgment based upon reason and experience, because you are the men who have been selected to try this case, and have been taken from all walks of life as representative men.

Now some requests have been made to me to charge, and I will charge you as to some. I charge you on the defendant's third request, that the jury should not consider the peculiar sensibilities of particular individuals. The aggregate sense of the community is the test, and the jury must bear in mind that the statute is highly penal and that it must be strictly construed in the defendant's favor. I also charge you that the charts or diagrams which you find in the pamphlet are not indecent in themselves as a matter of law.

The jury may consider that the pamphlet contains special instructions for parents and that literature for parents must not necessarily be written down to the level of children.

I charge you that the detailed description of the sexual organs and their functions is not in itself indecent, and the discussion of masturbation is not in itself indecent, and the discussion of venereal disease is not in itself indecent. Yet I will instruct you that it is a matter of how the subject is presented as to whether or not it is a violation of the statute.

The Government has requested that I charge you, which I do, that even if the matter sought to be shown in the pamphlet were true, that fact would be immaterial, if the statements of such facts were calculated to deprave the morals of the readers by exciting sexual desires and libidinous thoughts.

Now gentlemen, I think I have covered about everything that occurs to me. The only thing I can say in

sending you out is that it is within the four corners of this pamphlet that you are going to decide whether or not the statute has been violated.

Mr. Ernst filed exceptions to that part of the charge in regard to motive being immaterial, the part about the testimonials, and to the parts of the requests he had made on which the Judge did not charge.

"GUILTY"

The Jury was out forty-five minutes. Filing back at 5:30 in the afternoon, they were hardly seated when the Court asked "Gentlemen of the Jury, have you arrived at a verdict?" The foreman half rose from his seat, clutching his overcoat and hat in his lap, and said in a muffled tone, "We find the defendant guilty."

Mr. Ernst at once moved to set aside the verdict, and requested a new trial and an arrest of judgment. He asked to be heard on his reasons for so doing, or to submit a brief, "as your Honor sees fit." To which the Judge responded, "I am more or less convinced in my own mind now. Of course I may be moved by your argument, Mr. Ernst." The following Thursday, April 25, was set to hear arguments, and the defendant was released in "custody of counsel."

Newspaper interviews with Wilkinson quoted him as predicting that the sentence would not in any event be imprisonment, but would be a fine instead. He implied that it would be a slight one, and not the maximum of \$5,000, as the Government would be satisfied with a moral victory.

Public protest against any verdict of guilty was instantaneous. The press became very articulate, in editorials, news articles and letters to the editors. It

was assumed by many persons that the Judge would feel under obligation to set aside the verdict, as clearly unrepresentative of public opinion—which is supposed to be the basic test in obscenity cases. Letters and telegrams poured in upon Judge Burrows, urging him to set aside the verdict.

HEARING ON MOTION TO SET ASIDE THE VERDICT

There was therefore intense interest evinced by the public in the hearing on April 25th. Both attorneys put forward their best efforts. Mr. Ernst spoke first, and made a masterly review not only of the points in the case but of the precedents for setting aside verdicts.

In opening he said: "I trust the jurors themselves are in this room. (Some of them were.) I realize the position of a judge when called upon to set aside a verdict. This, sir, is no light charge. This woman is being stamped as a felon, which means her loss of citizenship, and deprives her of her right to travel under a passport of this Government. The question of jail does not concern you or me at this time. But I know this woman and am able to declare now that she asks no mercy from the great United States Government, and she will not pay any fine nor will she permit anyone to pay it for her. (My decision on this point had been made the preceding day.)

"As you well know, hundreds of verdicts are set aside. In a case that went to the United States Supreme Court, the Jury convicted, was reversed on appeal; then the case came up again, and there were had three trials and still the Courts and the Judges would never allow the verdict to stand because it was improper.

"This case, it seems to me, must be approached in the mood laid down by Judge Hand, when he said in the U. S. vs. Kennerly (209 Fed. Rep. 119).

'I question whether in the end men will regard that as obscene which is honestly relevant to the adequate expression of innocent ideas, and whether they will not believe that truth and beauty are too precious to society at large to be mutilated in the interest of those most likely to pervert them to base uses. Indeed it seems hardly likely that we are even today so lukewarm in our interest in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child's library in the interest of a salacious few.'

"I call to your attention that there is no case in the entire annals of American jurisprudence that is like this one. The cases relied on by the Government are in every instance different; they each one show presumed motive which either appears in the evidence itself or in the opinion of the Court, no matter what the Court said about motive not being an element." Ten cases were then cited in proof.

"If you will read through all the cases—and it has been my task to read them in the last year in connection with the study that I have made of the subject—I do not believe you will find a single case of a pamphlet or a book ever having been accepted by a community for ten years—and that indicates whether or not it will offend the decent element in the community—then being attacked, and the suppression sustained in the courts."

He protested against the ruling by which the leaflet *Representative Opinions* had been denied consideration by the jury, despite the stipulation which certified that it was part of the indicted material, "which may well have led them to believe that there is doubt as to the authenticity of those testimonials. We had in this court room a representative of the Union Theological

Seminary who would have testified to the authenticity of the testimonial that was mailed to the Government spy in Grottoes, Virginia. I ask you to re-read your charge to the jury which may have led to the inference that they were falsified and not even honest."

In this connection it is well to bear in mind that the Prosecution had this leaflet of opinions in hand for four months—from the end of December to the end of April—which was ample time in which to discover whether the endorsements were spurious, but no step was taken to find out.

Mr. Ernst pointed out how the Court had ruled out evidence regarding the method of circulation of the pamphlet, contrary to the many citable cases in which the Government had brought in evidence as to surreptitious methods of sale and sale to children of pornographic literature.

"Other judges have been compelled out of a sense of decency and respect for law, and after an analysis of opinions, to over-ride juries when they are mistaken.

"When men sit in the jury box and are asked to look for pornography, they will find it. Any one who is looking for dirt will find dirt. And I can not fail to call this to your attention. I appreciate throughout the trial your sincerity of purpose, but I venture to make this statement, that your own initial reaction to this pamphlet got so deep into your own sub-consciousness that when the evidence was introduced on the stand by the Y. M. C. A., you mentioned the word 'dumped,' 'dumped the pamphlets onto the Y. M. C. A.' It is not a serious thing, but I do not know how important it was to the jury."

THE COURT: Pardon me, I don't think the jury was present.

MR. WILKINSON: They were not present.

MR. ERNST: All right. Psychologists say there is no such thing as an unintentional slip. Sub-conscious conditions get the better of us on every slip, and the mere fact that at that stage of the proceeding you used a word like "dumped," leads me to ask you to particularly realize that this is a much more serious question than a mere conviction of a criminal. This is not a mere question of a person going to jail. This is a question involving the education of the children of the land. It involves hundreds of decent organizations. On that basis, sir, I ask you as a generous jurist to take it under further consideration and allow us another week or two weeks to put into your hands a brief supplementing this argument which is being made hurriedly today, after spending a full day in another trial in court yesterday, and being unprepared for any such verdict.

This is the most important case, your Honor, that I have ever had any connection with in my lifetime. To me it is the most serious case that I know of in this jurisdiction. It harks back into history to the days of Copernicus in 1528, when people were just as convinced that they would be corrupted if they learned that the earth was round; it harks back more closely to the Dayton trial in Tennessee, where again it was thought that the community would be corrupted by the possible thought that there was something to the Darwinian theory.

This case is important from three angles. One that this precious woman sitting here should not be stamped as a felon, because she disseminated information identical with that disseminated by the Government, and because she had done it at the request of doctors, and for the benefit of the best elements in the community for ten years. But it is important beyond that, because on this case will be predicated further prosecutions, and it is on behalf of this cause that I ask you to find as a mat-

ter of law, and as a matter of proof that the pamphlet is not against the morals of the community, that it has been accepted by the decent elements as a matter of fact. And because of the rulings of your Honor during the course of the trial and the unfair and improper charge as to testimonials and on the grave grounds that the case is of real importance, I ask you sir, to take this decision under advisement, and allow me further opportunity to submit a brief.

WILKINSON KEEPS OUT ALL EXPERT TESTIMONY FOR THE
DEFENSE, BUT READS INTO THE RECORD EXPERT TESTI-
MONY FOR THE PROSECUTION

The Prosecuting Attorney made a rambling, disconnected reply to Mr. Ernst's arguments, touching on previously presented points. But he wound up with two new things. One was the statement that "In answer to an editorial which appeared this morning as to who was behind this prosecution originally, I will say this first attracted the attention of a Branch of the Daughters of the American Revolution which I think has a standing of equal importance to those organizations and societies which my friend here has referred to and quoted. (Of which more later.)

"In addition to that it has had the condemnation of the Queensboro Society for the Prevention of Cruelty to Children. I have a letter here from Mr. Sullivan who was the Intelligence Investigator of Propaganda Methods in the United States of America, and here is what he says on the subject."

Wilkinson then proceeded to read the Sullivan letter into the record, and followed it with reading also several others of the letters written for or to Judge Moscovitz at the request of the Prosecution. (Those from Mrs. H. E. Hendrickson, the probation officer; Drs.

Smith and Wearne of the Central Islip Hospital for the Insane.) and he mentioned having letters from the President of Hunter College and from Dr. Howard Kelly. (These letters are all given on pages 102-129.)

Having achieved this coup, Wilkinson closed his remarks as follows—literally transcribed.

MR. WILKINSON: Now I don't see any reason why we should prolong this agony and have this submission of briefs. Your Honor can determine the motion now by denying it.

I don't know what the idea is about this matter of companionate marriage and new thought. The Government is here to enforce the law as it exists, and the law and the facts are against this woman. This talk about her losing her citizenship—true she loses her right to vote, but not her citizenship. I therefore submit, if your Honor please, that the verdict of the jury should not be disturbed.

THE COURT: In regard to your request for a continuance to allow you to submit briefs, during the trial and since the case was tried I have given it considerable thought. I have reviewed the leading cases cited by Mr. Ernst and Mr. Wilkinson. Nothing new has been presented in the argument this morning that was not presented before either in argument on the admissibility of testimony or in argument to the jury.

I believe I conducted the case according to the established principle of law in regard to cases of this character.

I believe the jury are the ones who test the sentiment of the community. I believe they reached the right conclusion.

I decline to set aside the verdict, and the motion is therefore denied.

The Court adjourned the case for four days, till April 29th, when the sentence would be imposed.

THE JURORS

The day after the verdict some of the papers published stories to the effect that the jury had at first stood eight to four in favor of conviction, that two had been argued over, when a court attendant came into the jury room and gave warning that if they did not hurry and bring in their verdict they would have to be kept there for a "court supper," whereupon the two remaining jurors fell into line, and the verdict was brought in. Also some of the jurors were interviewed, and were reported to have said that they felt that the Judge had practically directed a conviction, by his charge and by withholding all testimony from the jury. One juror was quoted as having said that the pamphlet would not have corrupted him when he was a child, but that he wouldn't let any of his children read it now; when asked why it would not have corrupted him, he said it was because he knew all about sex anyhow. This same juror was reported as saying that the jury "didn't believe Mrs. Dennett meant any harm." "Yet you were willing to brand her a criminal, place her in jeopardy of a five year jail term and a fine of \$5,000 and take away her right to vote?" the reporter inquired. "No, no," he protested, so the account goes, "we didn't brand her a criminal. We merely decided it was criminal to send the pamphlet through the mails."

Because of these newspaper stories, Mr. Ernst on the 29th requested the judge to conduct an inquiry in regard to the jury, saying, "I believe the Court's sworn duty is as great as mine in behalf of this defendant, to find out if the statements carried in the press are correct, because if so, as I see the law, it would warrant a new trial, and I so move at this time."

Against the motion Wilkinson argued saying, "I have

seen the statements in the press, in which it was said that your Honor practically charged a verdict of guilty. The paper carrying your photograph saw fit to remove it in the later editions. I talked with the bailiff who had charge of the jury, from the time they were turned into the jury room until they were released; they were not communicated with in any way by the bailiff. Individual members of the jury have approached me on this trial and have again not only expressed their sense of the guilt of this defendant, but have tendered their congratulations for the prosecution. There is no reason why any inquiry should be made into the subject matter; and such as I have made in my office convinces me that the newspaper stories are made of whole cloth. I submit that the application of counsel be denied."

THE COURT: The motion is denied.

MR. ERNST: I take exception to your Honor's ruling.

THE SENTENCE

MR. ERNST: Mrs. Dennett herself would like to make a statement.

MRS. DENNETT: I would invite the attention of the Court and the American citizens to the fact that during the eleven years that this pamphlet has been published and in circulation, no adverse criticism has come to me based upon anything remotely connected with obscenity. The total number of adverse criticisms which I have received by letter has been less than a dozen in eleven years, and all those criticisms were purely of an academic character.

Not one of them remotely impinged upon vulgarity.

Thousands of representative, decent, intelligent citizens have endorsed this pamphlet steadily and increasingly for eleven years. Hundreds, and I think thou-

sands, subsequent to the indictment have endorsed it also.

In all the press editorials that I have seen—and they are very numerous—not a single one has been adverse to the pamphlet or to the defendant. Surely the press of the country and these thousands of representative citizens are not all of them corrupt.

I would call attention to the fact that the pamphlet is legally sold and has been for many years and is still being sold in every state in the Union, in bookshops and in various ways. The maintenance of a verdict of this sort in view of the facts, seems to me, to put it mildly, inconsistent.

THE COURT: Is it true that some branch of the Government placed a ban on this pamphlet in 1922?

MR. ERNST: An official of the Post Office objected to the pamphlet. In my opinion this woman had a perfect right to say she intended to proceed with the sale of the pamphlet—just what I would do to any bureaucrat in Washington; also that she asked him to point out what he objected to in it, and he refused.

MR. WILKINSON: If your Honor please, it is the duty of the Postmaster to supervise matter sent through the mail and the defendant had full opportunity for complying with the request of the Post Office Department at that time, to have avoided this. She has more or less invited this indictment, and it is needless to say that although many endorsed the pamphlet, as many more opposed it (a statement of which he offered no proof). And I move judgment of the Court now and ask that sentence be imposed.

THE COURT: It did not come to my attention until yesterday afternoon, and I verified it this morning, that the ban was placed on this by the proper Government department. I simply mention that because I had supposed during the trial that there had been no objection on the part of the Government to its being sent through the mail. Now whether the defendant wants to test this

matter or not, it seems to me that there is a large element of defiance against the order. That was in 1922, and apparently it has been published and sent through the mail ever since. I understood during the trial that it had not been distributed through the newsstands but simply had been sent to the Y.M.C.A.'s and other organizations.

The Judge had evidently misunderstood me when I spoke of the sale of the pamphlet in bookstores, and thought I said "bookstands." Mr. Ernst set him straight on this point, and emphasized the fact that the pamphlet had been largely sold through the bookstores of organizations, and that the demand from these organizations was what caused the repeated printings of the booklet. It is significant to note here that the Judge during the trial had said that the method of distribution was immaterial, while at this point he revealed his own feeling that it was material.

THE COURT: But for the last seven years it has been in defiance of the ban.

MR. ERNST: But there has been nothing surreptitious about it.

MRS. DENNETT: The quantity orders have all been filled by express, not mailed.

MR. ERNST: One more thing I would like to say before sentence is imposed. During the Civil War abolitionist literature was sent through the mails to the South and there were Post Office bans placed on that literature. The analogy is complete. The mere ban of a bureaucrat in Washington is no token or indication of obscenity.

THE COURT: Regardless of that, she was on full notice that it was not approved by the Department.

MR. ERNST: Yes, sir, from 1922 to 1929. If your Honor will look at the complete record he will find an animus that explains it.

But Judge Burrows did not pause a moment to even consider whether he should investigate this factor in the case which he himself had brought up as significant and important, but he proceeded at once.

THE COURT: The sentence of the Court is that the defendant shall pay a fine of \$300.

The case was at once appealed. Subsequently the bail was reduced from \$2,500 to \$1,000. Mr. Ernst requested that it be made the same amount as the fine, instead of being held at a punitive figure, but his request was refused.

THE DEFENDANT REFUSES TO PAY ANY FINE

In answer to newspaper inquiries as to my attitude regarding the trial and the payment of the fine, I made the following statement.

I shall not pay any fine, no matter how small, either now or later, nor shall I allow anyone to do it for me.

If the few government officials who are responsible for this prosecution wish to use the power which the law gives them to penalize me for the work I have done on behalf of the young people of the country, then they must stand the shame of making it a prison sentence, not a fine.

It is the government which is disgraced, not I.

In refusing to pay a fine, I am making the only practical protest against the verdict. If I could effectively refuse to go to jail, I should certainly do that too. But the government is, physically, stronger than I. It can force me into prison if it so chooses to use its might. But it can not force me to pay a fine.

In common with thousands of other citizens, I should like to be able to respect the laws of my country and the administration of the laws: and I am sad that the

original initiation and the conduct of this prosecution so largely prevent that. I am deeply concerned for the young folks of the United States. Our public school system and our officials insist upon pledges of respect and loyalty toward our government. I wish the insistence were as keen for making and executing laws which the young folks could thoroughly respect.

The day is surely coming when American citizens and their Congress will realize that the laws which give to Post Office officials the power to penalize anyone they see fit to select as their victim, are totally at variance with justice and wisdom, and the principles on which our government was founded.

Those who will not or can not pay fines are imprisoned one day for each dollar of the fine imposed. If the maximum fine of \$5,000 had been imposed, it would probably have meant five years in jail, that being the maximum prison sentence of the statute. By imposing a fine of \$300 it can be assumed perhaps that in the opinion of Judge Burrows, I was about 6% obscene and criminal. One wonders how apt he might be at computing the exact percentages of indecent criminality in other citizens, either under indictment or otherwise, and how he could ascertain just when one stepped over the dividing line between obscenity and purity, and became, let us say, one half of one percent indecent, and therefore indictable.

TRUTH ABOUT THE CAUSE OF THE INDICTMENT BEGINS TO LEAK OUT—WILKINSON CHANGES HIS STORY

On April 26 the Brooklyn Standard Union published an interview with Mr. Wilkinson from which the following is quoted:

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In discussing the case after the court had refused to set aside the verdict yesterday, Mr. Wilkinson said that the prosecution was sponsored by the National Society of the Daughters of the American Revolution and the Queens Society for the Prevention of Cruelty to Children.

Today the *Standard Union* received a telegram from Mrs. Lowell Fletcher Hobart, (President of the D.A.R.) which follows: "The National Society Daughters of the American Revolution has taken no action whatever regarding Dennett literature."

A little later Mr. John de Leon Sullivan (Superintendent of the Queens Society for the Prevention of Cruelty to Children) denied that his society had fostered the prosecution. "Mr. Wilkinson sent a copy of the pamphlet to us and asked our opinion of it," he said. "We strongly objected to it, and told him that, but anything we had to do with the case was after it was in the District Attorney's hands. We started nothing."

In the face of the denials, Mr. Wilkinson amended his statement regarding the D.A.R. and said that the case originated with C. E. Dunbar, a Post Office inspector attached to the Washington office.

"A woman of Washington, who is a member of the D.A.R.," he said, "found a copy of the pamphlet in her daughter's hands. She met the Post Office inspector later and discussed the pamphlet with him and asked that something be done about it. Mr. Dunbar then caused the pamphlet to be mailed to a woman in Grotoes, Va., and started the prosecution."

The *New York Telegram* on May 26th, published the following, in an article entitled, *U. S. Used False Name to Trap Mrs. Dennett*.

C. E. Dunbar, a Post Office inspector attached to the headquarters staff (Washington) admitted today:

"Mrs. Miles is a fictitious character. I ordered one of the pamphlets from Mrs. Dennett, using that name, and when it reached Grottoes, it was forwarded to me here."

Dunbar said he had been ordered last spring to interview an official of the Daughters of the American Revolution who had complained against the pamphlet, *The Sex Side of Life—An Explanation for Young People*. After this he ordered one of the pamphlets. "Had Mrs. Dennett denied mailing the pamphlet, I would have taken the stand and told the story, but she admitted mailing it and such action was not necessary," Dunbar said.

It is noteworthy that the D. A. R. official whom Dunbar was "ordered to interview" and who was said to have complained of the pamphlet, was not called as the chief witness for the prosecution at the trial. No letter from her was secured for Judge Moscovitz, nor read into the record at the trial. Not even her name and address were given. She remains a mystery. Is she, perhaps, as mythical as Mrs. Miles?

In other words, was the prosecution initiated from the Washington office of the Solicitor of the Post Office, who ordered Dunbar to "get" the author of *The Sex Side of Life*? It seems at least a tenable assumption that the maintenance of the ban on the pamphlet might have become an uncomfortable embarrassment to the Solicitor, and that in order to get rid of the situation, it was found easier to induce an indictment of the author, thus throwing the responsibility on to the court, than to swallow official pride and admit that an error had been made in 1922 when the pamphlet was banned. The odium and burden of rectifying the error are thus borne by the author instead of by those who did the blundering—a convenient, if not a just arrangement.

PUBLIC OPINION AND SUPPORT

The extent to which opinion on *The Sex Side of Life* pamphlet has been enthusiastically favorable has always been a surprise to its author, and naturally it has been a satisfaction to realize that the booklet has been of service to many people. But that element of the situation is relatively unimportant compared to the significant consensus of public opinion on the question of the *suppression* of the pamphlet. For that interest indicates a wide-spread realization that there is something wrong with our laws and our courts, if dignified, truthful sex education is suppressible. With the public aroused to the seriousness of the situation, it is reasonable to hope that genuine reform will not long be delayed.

Up to the present writing, out of the large mass of newspaper clippings which have come from all over the country, not a single editorial has yet been found which condones the suppression. In fact, the extreme contrary is true. This, of course, should not be construed as implying a unanimous agreement on the value or desirability of the pamphlet itself; but it does imply that the time has come when citizens protest vigorously against legal machinery which permits the stifling of sex education. It is well known that editorial trumpetings rarely sound far in advance of public opinion, so the fact that editors have spoken on this matter in no uncertain terms can rightly be assumed to reflect what the court calls the judgment and standards of "the vicinage." Editorials crystallize rather than create public opinion.

The three following editorials are similar in tone and import to many others, of which a representative selection is given in Appendix No. 3.

Here R.C.'s & reactionaries contrive
against public opinion

PARENTS FACE THE CENSOR

An Editorial Message

(June, 1929)

BY CLARA SAVAGE LITTLEDALE

Managing Editor, CHILDREN, the Parents' Magazine

We have frequently recommended to you, our readers, a pamphlet entitled, *The Sex Side of Life—An Explanation for Young People*, by Mary Ware Dennett. We did so because in our opinion it is one of the finest, most straightforward, most complete statements concerning this side of life that has ever been written.

We still recommend this pamphlet to you. But it can no longer be sent through the mails. On April 24th a jury in the Federal Court, Brooklyn, N. Y., pronounced it "obscene" and Mrs. Dennett faced the alternative of going to jail or paying a fine.

The editors of this magazine were not alone when they expressed their enthusiastic appreciation of *The Sex Side of Life*. They were in good company. Thousands of copies of it had been put into the hands of adolescent boys by the Y.M.C.A. It had been distributed by the Y.W.C.A., the Child Study Association of America, the Union Theological Seminary, by church groups, social and child welfare organizations and other kindred agencies, as well as by men and women of outstanding reputation in this country and abroad. This is eloquent testimony to the fact that those who stand highest in educational, religious, and welfare work found Mrs. Dennett's pamphlet of great value to youth.

But seated there in the court room with a grown son on either side—those sons for whom, as boys of eleven and fourteen, she had written *The Sex Side of Life*—Mrs. Dennett heard the foreman of the jury give the verdict "Guilty." Guilty of what? Of trying to the best of her ability to tell boys and girls who are beginning to grow up not merely the physical facts concern-

ing sex, particularly as expressed in the marriage relation, but to show them the deeply spiritual and esthetic values of this relation, to make clear to them the goodness, beauty and joy that are concomitants of this side of life when rightly understood and rightly lived.

But this pamphlet of Mrs. Dennett's is not the only book or pamphlet which states the facts concerning the sex side of life. There are many others. How will the verdict in Mrs. Dennett's case affect them? How will it affect this whole question of the sex instruction of our children? If this verdict becomes a precedent, other pamphlets and books on sex education may likewise be barred from the mails. And yet wholesome knowledge in this field was never more needed! The question, then, which we would raise here above all others is this: How far shall censorship be allowed to go? Shall you as parents be able to decide for yourselves what information, what point of view, regarding the sex side of life you will give your sons and daughters? Or shall a censor decide this for you?

DETROIT FREE PRESS

Friday, April 26, 1929

A MEDIEVAL VERDICT

A gray-haired mother has been convicted in a Federal Court in New York of sending "obscene matter" through the mails. The specific charge against her was that she had mailed to a woman in a small town in Virginia, at the latter's request, a copy of a paper she had written fourteen years ago for the guidance of her own adolescent sons. This "lewd and lascivious" document was published by the *Medical Review of Reviews* and 25,000 copies of it have been distributed by the Y.M.C.A. *The Sex Side of Life* deals with a subject

which publications circulated freely by various departments of the Federal and State Governments treat with frankness. They would seem to be as guilty, if guilt there be, as Mrs. Mary Ware Dennett; but she must take the rap. The maximum penalty for the offense of which she has been convicted is a fine of \$10,000 and five years in the penitentiary.

The atrociousness of this conviction is less surprising than the fact that an intelligent and earnest mother can be exposed to such a sentence for no greater a crime than attempting to give boys and girls the benefit of mature experience on the most important subject in life. The mentality of those responsible for the prosecution of Mrs. Dennett is that of the first fifteen centuries of the Christian era, when childbirth was regarded as the result of a carnal sin to be expiated in accordance with Genesis III, 16. As a consequence of this superstition the rate of infant and maternal mortality during those centuries rose to a point unknown to the ancient civilized world. The medical profession has vastly reduced that rate and ameliorated the Genetic injunction; but neither the doctors nor enlightened laymen have been able to break down the barriers that keep from youth the truth about marriage and parenthood. The process of racial reproduction is still regarded as a divine mystery, which it is impertinence on the part of man to penetrate, although there is no more mystery about bringing a child into the world than there is about bringing a calf into the world, a process that children on the farms know all about before they reach the age of puberty.

The persecutors of Mrs. Dennett would be better employed if they devoted their talents to ridding the newsstands of pornographic literature that excites without instructing; and left the sex education of youth to intelligent and courageous parents.

NEW YORK HERALD TRIBUNE

Wednesday, May 8, 1929

IRRELEVANCY

Mrs. Dennett has reminded an audience at the Civic Club that neither her own fate nor that of her pamphlet is a matter of consequence; that "what is of importance is what the American public does with a situation of this sort." Mrs. Dennett is right; she can justly claim that hers is a test case of national moment, and the fact that it is so is largely due to the dignity and clear-mindedness with which Mrs. Dennett has herself regarded the whole matter.

The comparatively simple issue here raised has been obscured by the interjection of a good deal of muddled thinking that is actually quite irrelevant. Mrs. Dennett herself now disposes of one of the most muddled of these irrelevancies. Some who have realized the impossibility of seriously arguing that her pamphlet is "obscene" have approved its suppression on the ground that it might be unwisely "forced" on school children. "It would be folly," Mrs. Dennett now declares, "to put it as a regular item in the school curriculum at present. I am heartily opposed to full sex education in the schools because we haven't a corps of teachers adequately prepared to give such instruction."

Mrs. Dennett has not attempted to force her pamphlet on any one; even if she had done so it would have been a question in pedagogy rather than criminal law, but the whole question of the wisdom or unwisdom of sex education is not at issue here. Mrs. Dennett has removed that question from the discussion, which now returns to the central point—how are we to avoid seeing the laws against obscenity used to suppress, for one or another reason, that which the overwhelming weight of opinion does not actually think to be obscene, and which, therefore, is not obscene?

Resolutions of protest were passed by various civic and welfare organizations, such as The Woman's City Club of New York, the New York League of Women Voters, the Connecticut League of Women Voters, the New York League for Mutual Aid, the Civic Club of New York, the Birth Control League of Massachusetts, the Pennsylvania Federation of Birth Control Leagues and the Southeastern Pennsylvania Birth Control League, the Republican Woman's Club of New Jersey. The students of the Universities of California and Minnesota, of Stamford University and of Barnard College expressed themselves in petitions and editorials in the student papers. It is quite evident that the young people did not look with gratitude upon the efforts of the government to protect them from knowledge of sex truth.

Immediately after the sentence, a National Defense Committee was organized, the American Civil Liberties Union acting as a starting committee, and offering the use of its headquarters and staff to help in the formation of the National Defense Committee. The aim of the Committee is to support the appeal of the case, to the Supreme Court if necessary, and to acquaint the public with the salient facts and thus crystallize protest into effective remedial action, so that cases of this sort may not occur again. Mr. Ernst is giving his legal services in his disinterested wish to contribute toward the revision of legal procedure regarding obscenity, so the expenses of the case are less than they otherwise would be. The full committee, probably of one hundred members, will be nationally representative. The temporary body consists of:

ROY W. HOWARD, newspaper proprietor, temporary chairman; CORLISS LAMONT, Asst. Professor of Phil-

osophy, Columbia University, treasurer; EDWARD J. ALLEN, director of Seth Low, Jr. College, Columbia University; HELEN ARTHUR, theatrical producer; JOSEPHINE DASKAM BACON, author; ALICE C. BOUGHTON, statistician, research expert; JOHN MCENTEE BOWMAN, business man.

DR. LOUISE STEVENS BRYANT, executive secretary, Committee on Maternal Health; REV. HENRY SLOANE COFFIN, President, Union Theological Seminary; MARC CONNOLLY, dramatic author; DR. KATHERINE BEMENT DAVIS, child welfare authority; REV. H. PAUL DOUGLASS, research director, Institute of Social and Religious Research; DR. ROBERT L. DICKINSON, secretary, Committee on Maternal Health; RUTH DRAPER, diseuse.

HARRISON H. ELLIOTT, professor, Union Theological Seminary; MRS. MARSHALL FIELD; MARGARET FLENIKEN, National Board, Y.W.C.A.; ABEL J. GREGG, National Council, Y.M.C.A.; DR. LOUIS I. HARRIS, former Health Commissioner of New York; PROF. ETHEL PUFFER HOWES, director of Smith College Institute for the Coordination of Women's Interests; RUPERT HUGHES, author.

FANNIE HURST, author; BASCOM JOHNSON, director, Division of Legal and Protective Measures, American Social Hygiene Association; EDITH P. MITCHELL, executive secretary, Westchester County Children's Association; GEORGE HAVEN PUTNUM, publisher; MRS. JACOB RIIS, President of the Jacob Riis Settlement; WILLIAM E. SPEERS, National Council of the Y.M.C.A.; HENRY W. THURSTON, Department of Child Welfare, N. Y. School of Social Work; GOODWIN WATSON, Professor, Teachers College, Columbia University; RABBI STEPHEN S. WISE, Free Synagogue.

The National Defense Committee held a mass meeting at the Town Hall in New York City on May 22, with Dr. Edward L. Keyes, President of the American Social Hygiene Association presiding. The subject

was "Sex Education—Freedom or Censorship?" The Speakers, beside Mr. Ernst and Mrs. Dennett were: Josephine Daskam Bacon, author; Dr. Louis I. Harris, Ex-Commissioner of Health; William Hodson, Executive Director of the Welfare Council of New York City; Dorothy Kenyon, practicing lawyer; Prof. William P. Montague of Columbia University; Abel J. Gregg of the National Y.M.C.A.; Rev. C. E. Wilcox of the Federated Council of Churches in America; Mrs. James Lees Laidlaw and Dr. Edith Hale Swift of the American Social Hygiene Association; and Olive Van Horne of the Y.W.C.A. Dr. Robert L. Dickinson presented a resolution which was carried by the meeting, recommending the formation of a permanent body to study the question of sex education, its freedom and control, and to plan the needed alteration of state and federal laws which now menace education.

One outcome of a meeting held at the Civic Club on May 6th was the formation of a Special Woman's Committee to bring before Congress the need for amending the present laws regarding post office censorship. The Committee consists of Ruth Hale, Helen Todd, Margaret Flenniken, Helen Pickenback, Katherine Sinclair, Susan Brandeis.

Various meetings and debates have been held by different sorts of organizations, to discuss the influence of the pamphlet or to protest against the conviction. Sermons and several radio debates have figured in the general expression of public interest.

It looks as if the American public now wanted fair play and an open road for sex education.

PART II

OTHER CASES OF POST OFFICE SUPPRESSION

PART II
OTHER CASES OF POST-ORAL SUPPRESSION

II

FREEDOM INSISTED UPON BY THE FOUNDERS OF THE REPUBLIC

THE United States started out to have no interference with the means of communication by which ideas or opinions are circulated. That was a vital part of the principles on which the government was founded. The first amendment of the Constitution said that "Congress shall make no law . . . abridging the freedom of speech or of the press." This was an unqualified statement. The fathers who framed the Bill of Rights and the Constitution must many a time since have turned in their graves over the way this first amendment has been made a mere piece of paper.

The Post Office was of course the greatest means of communication. It was only natural in the course of time that groups which were imbued with the feeling that certain ideas or opinions were intolerable or dangerous, should be tempted to make the Post Office a means for suppressing the circulation of those ideas. Washington, Jefferson and Hamilton all anticipated this temptation, and put themselves on record against it. They differed about many things, but on this they were a unit—that the Post Office should remain always a free means of communication. Washington went so far in his anxiety to have the Post Office free from control over the contents of the mail which it transported, that he proposed having the service rendered absolutely without charge to the citizens—no postage fees at all.

While his proposition was never carried out, it does indicate a keen anxiety for the principle of untrammelled communication.

ANTI-SLAVERY MAIL UNCONSTITUTIONALLY HELD UP
AND DESTROYED: OBSCENITY PRECEDENTS
ESTABLISHED

The temptation to control communication became so strong that in 1835 when anti-slavery sentiment was beginning to be violent, the breaking down of the safeguarding amendment of the Constitution began; and it was the President of the United States who proposed it. Andrew Jackson in his annual message to Congress recommended a bill prohibiting "under severe penalties, the circulation in the Southern States through the mail of incendiary publications intended to incite slaves to insurrection" (*Civil Liberty in the United States* by Leon Whipple: The Vanguard Press). Such a bill was introduced into Congress, but defeated by the opposition of Henry Clay and Daniel Webster; and Congress even passed a law forbidding postmasters to detain any mail matter, with the intent to prevent the arrival or delivery. However, both before and after this law was passed, various postmasters did connive to hold up abolitionist mail or to destroy it. Some was burned, some just side-tracked. Moreover, several states passed laws which sanctioned interference with the mails, and the first amendment to the constitution was frequently flouted by these means just as long as the slavery question remained an issue.

During the Civil War the abuses were so flagrant that Congress instituted an investigation of the Postmaster General, but it amounted to nothing. Postmaster General Blair excused himself on the ground

that the circumstances were such as demanded "extreme vigilance to preserve the integrity of the Union" and that he had acted "solely by consideration of the public good." In exonerating himself he had not only used the war as an excuse for post office tyranny, but, without any excuse, added a very significant description of his policy, which was a forerunner of the postal obscenity laws that were to come, and of the centralization of the censorship in the hands of the Federal Post Office. This is what he said: "I have at different times excluded from the mails obscene and scandalous printed matter on exhibition of its immorality. This power should not devolve on the 28,000 postmasters, but be reserved for the Postmaster General."

Coming events cast their shadows before them. The first amendment to the Constitution was fading fast, and the evolution of post office censorship was on its way.

THE FEDERAL OBSCENITY LAWS APPEAR

By 1865 the United States had passed its first federal law permitting the control of obscenity through the mails. Further action was taken in 1872, but it was not until 1873 that the country became saddled with the now notorious federal "Comstock law" (as given on pages xix-xx). It was then that the first amendment to the Constitution not only became a piece of paper, but was practically thrown into the waste-basket besides. Since then there has been no certainty of freedom in the transmission of opinion or fact through the mails, but merely sufference under the authority of the federal Post Office officials; for almost anything at all may be deemed obscene if they care to make it so, and this has been especially true since the obscenity law was amended to provide that "the term 'indecent' shall in-

clude matter *tending* to arson, murder or assassination." The word "tending" gives almost limitless leeway in interpretation.

Anthony Comstock's passionate activity in suppressing what he considered obscene was coincident with a great surge of suppressive fervor in England. England has never had any obscenity laws affecting the mails, but it has had general obscenity laws since the latter half of the nineteenth century—and it had sporadic prosecutions for obscenity previous to that. In 1868 in England came the famous obscenity decision by Lord Cockburn, which ever since has been the model test for obscenity among Anglo-Saxons on both sides of the Atlantic, and which is today being used by American courts, whenever it is found convenient. This test is "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall." It is this test, coupled with the fact that no law contains any specific definition of obscenity, that has made the execution of obscenity laws such an uproarious farce for over half a century.

DON'T BLAME COMSTOCK

Comstock has been denounced and laughed at, as was natural enough. His life was an extraordinary instance of devoted, ignorant fanaticism. Apparently, what love and creative activity and constructive operations are to normal people, suppressing "vice" was to him. The more tons of smutty post-cards he destroyed, the more his soul rejoiced. The more writers he haled into court and got convicted the more he felt his own righteousness expanding. He worked long and hard at his

chosen task, not because it paid him well, for it never did, but for love of the Lord, as he saw it. He saw life luridly; bad words everlastingly excited him, as his diaries clearly reveal. He never got over the "kick" from the pursuit of smut—it remained a life-long stimulation to him. He tried his hand at suppressing fraud and gambling, but was rather out of his element; he gravitated back to indecency, and he died in harness, so to speak. His life has been written by various people—his minister friend, Trumbull, his enemy, D. M. Bennett, and recently—with kindly humor and even pathos—by Heywood Broun and Margaret Leech. To the modern psycho-pathologist he is a simple case; though to his own generation, he was a mixture of a social savior and a ridiculous nuisance.

But when it comes to dealing with the laws which he wished on to the United States with his ill-judged love, why pick on poor old Comstock? He is dead in the first place, and, in the second place, he couldn't help acting as he did. He gave us the laws, to be sure, with the careless aid of Congress, but it is we who retain them. It was he who foisted upon us that sprawling, wordy, vague, obscenity statute, which no one can interpret wisely nor enforce justly; but it is we who let it remain on the books. It was he who developed the scheme of putting censorship and penalizing power into the hands of the Post Office; but it is we who let it continue. The citizens of the United States can endure this relic of the 1870's just as long as they like; but they need not do so a bit longer than they choose. After all, they elect Congress, and it is Congress which makes and unmakes the nation's laws.

The way Comstock and Congress rushed through this legislation in the closing hours of the short session of Congress in 1873 forms one of the most astounding

chapters in the history of American laws. It was probably about as quick and as heedless a piece of work as our law-makers ever did. The bill was introduced on February 11, and was passed by both Senate and House without discussion of its provisions on the floor, without any roll call in either house, without any official report from the Committee on Post Offices and Post Roads to which it was referred; but by "unanimous consent" and "suspension of the rules" it was jammed through, just in time to be the last bill of the session signed by President Grant on March 3rd. This was done despite the warnings of a few cautious members who urged that time be taken to consider "lest it lead us," as Senator Conking put it, "to do something which, when we come to see it in print, will not be the thing we would have done if we had understood it and been more deliberate about it." The only speech made in favor of the bill was a "leave to print speech," read into the Congressional record, *after* the bill had been passed. And thus a new tyranny became the law of the land, just because no one had the wit at the right time to make Congress and the public realize that traffic in smut can be put out of business by means other than crippling the fundamental right of communication, or giving individual officials the power to control the use of the mails.

A full account of Comstock's remarkable energy in the accomplishment of this feat, and of the equally remarkable supineness of Congress, may be found either in the Heywood Broun and Margaret Leech biography of Comstock, or in my book *Birth Control Laws*.^{*} It is sufficient for the present purpose to give the foregoing outline of how carelessness and fanaticism combined to

^{*} *Anthony Comstock* by Heywood Broun and Margaret Leech, published by Albert and Charles Boni. *Birth Control Laws* by Mary Ware Dennett, published by Frederick H. Hitchcock.

give us the strange obscenity laws which have uncomfortably distinguished the United States for all these years.

PETITION TO REPEAL THE COMSTOCK LAW

Immediately upon the passage of the obscenity law in March 1873, Comstock obtained what was probably for him the proudest possession he ever had—his commission as Special Agent of the Post Office, and the badge that went with it. There was at first no salary attached to the job, and he was particularly proud of that; but there was power, and he loved power far more than he did mere cash. (Later the government deemed it wiser that he should be paid for his work.) Prosecutions came thick and fast for the next two or three decades, and Anthony Comstock was about the busiest man in the country. He had many exciting adventures capturing his quarry. He wrote decoy letters, impersonated women and sexually depraved men, and resorted to various subterfuges to "get" his sinners into the dragnet. The whole business was evidently a compensatory emotional outlet which was vastly satisfying to him. Comstock was not personally responsible for the many prosecutions all over the country during this period, but he certainly did speed up suppression.

There was some effort made to have Comstock's blundering obscenity statute repealed or amended. But it has always been easier to enact laws than to repeal or revise them, and none of the efforts have yet been successful. The first effort came three years after the passage of the statute. An enormous petition, with 70,000 signatures as estimated by Comstock himself, was presented to Congress. The work of gathering the signatures was started by the National Liberal League and meetings were held in many cities to crystallize in-

terest. Finally a hearing on the petition was rather grudgingly given by Congress. According to Comstock, the press of the country was with the petitioners. This may not have been wholly true, but it is significant that Comstock said it was, even though allowance must be made for his instinctive wish to be able to boast that he had triumphed over almost insuperable opposition. At any rate, the opposition roused him to his utmost endeavor, and he won by the same simple process that he had used to prepare the way for the rushing of his bill through Congress—namely, to present once more his horrifying exhibit of smutty post-cards and literature on sex perversions, and frighten the Congressional Committee into feeling that if the law were changed our children would be bombarded with such literature, and the government left completely helpless. The Committee decided against any change in the law.

The wording of the petition of the National Liberal League is worth remembering for the bearing which it may have on present day public opinion. The following is part of Section 4 of the petition:

Your petitioners are convinced:

That mental, moral and physical health and safety are better secured and preserved by virtue resting upon liberty and knowledge, than upon ignorance enforced by governmental supervision.

That even error may be safely let free, where truth is free to combat it. That the greatest danger to a republic is the insidious repression of the liberties of the people.

That wherever publications, pictures, articles, acts or exhibitions directly tending to produce crime or pauperism are wantonly exposed to the public, or obtruded upon the individual, the several states and territories provide, or may be safely left to provide, suitable remedies.

Beside being an intrusion upon fundamental rights, the National Liberal League pointed out another basic error in the obscenity law—its indefiniteness. At its convention in 1876, the League passed a resolution of protest “against all laws which by reason of indefiniteness or ambiguity shall permit the prosecution and punishment of honest and conscientious men for presenting to the public what they deem essential to public welfare, . . . and that we demand that all laws against obscenity and indecency shall be so clear and explicit that none but actual offenders against principles of purity shall be liable to suffer therefrom.”

And we find that these early liberals were not the only ones to protest against the indefiniteness of the obscenity statutes. In 1906 the National Purity League put itself on record by declaring that “the indefinite character of the law renders it impossible for anyone to know whether he is acting within or violating the law.”

HOW THE FEDERAL OBSCENITY LAW WORKS

Pointing out the inconsistencies of obscenity decisions has always been a popular indoor sport for intellectuals. And surely the facts would be utterly comic, were they not in so many instances close to tragedy also. Lives and health and purses have many times been ruined by the prosecutions which these laws have induced, so that the laughter has often had to be mixed with tears.

No discussion of obscenity ever goes far without inspiring some reference to the Bible, which contains enough material to keep a born vice hunter on the jump for a long time. Indeed, the Bible has figured in several obscenity cases as a thing of guilt. George Francis

Train in 1872 published some quotations from the Bible, wholly accurate quotations too, which landed him in court. The Judge practically directed a verdict of guilty, but to avoid damning the Bible, it was decided instead to pronounce Train insane. The latter, however, was a clever and vigorous culprit, and he obtained release on a writ of habeas corpus, was adjudged sane and discharged. Then there was the case of John B. Wise of Clay Center, Kansas, who circulated a collection of Bible quotations, without comment, and he was found guilty and fined.

For conflicting court decisions on obscenity, probably no case in American history is more absurd than that of Ezra Heywood in connection with his essay entitled, *Cupid's Yokes*, which discussed "Some Moral and Physiological Phases of Love and Marriage." Current opinion would probably consider this essay quite dull and harmless, but to Comstock and the courts of a generation ago it was all kinds of things. Here is the record of *Cupid's Yokes* with its five different court decisions, as described by Theodore A. Schroeder in his book *Obscene Literature and Constitutional Law*.

Here then we have two convictions, one jury disagreement and consequent dismissal, one instruction to acquit because the book was not obscene, and one pardon upon the same ground (President Hayes pardoned Heywood from his prison term of two years) and one abandonment of prosecution. There was never any dispute about the contents or meaning of the book. The uncertainty is therefore wholly within the law.

No man on earth can tell, even now, whether it is a crime to send *Cupid's Yokes* through the mail. If any one claims to know whether the law condemns this book, I ask him to point to a statutory test that is decisive.

JUDGES EXPLAIN WHAT OBSCENITY IS OR MAY BE

The reader who wants to survey the whole field of obscenity inconsistencies and befuddlements can get a fine vantage point by scanning Theodore Schroeder's *Obscene Literature and Constitutional Law*, especially the chapter on "Varieties of Criteria of Guilt," and *To the Pure* by Morris Ernst and William Seagle—the chapters on "Toward a Test of Obscenity" and "Changing Fashions in Obscenity." Both books present a bewildering collection of opinions and court decisions, showing how obscenity has meant different things to different people in different places and times, and even to different people in the same places and times, and to the same people at different places and times. The famous old conclusion "There ain't no such animal" seems inevitable.

For the purposes of this book a few samples from the rich collections by Schroeder, Ernst and Seagle will suffice. Here, then, are some of the definitions and explanations offered by various Judges in different obscenity cases. One judge refers to the obscenity statute in the following terms:

The elasticity of the language used by Congress, necessarily so general in its description of the offense. (*U. S. vs. Davis*, 28 *Fed. Rep.* 327)

Another says:

Whether act or language is obscene depends upon circumstances. (*U. S. vs. Smith*, 45 *Fed. Rep.* 447)

"But," as Mr. Schroeder observes, "the circumstances are not defined by law."

Now note how judges launch juries upon an uncharted legal sea:

The views that different persons might entertain of the tendency and effect of such publications are so various that these questions ought to be submitted to a jury.

(U. S. vs. Clarke Fed. Rep. 502)

Speaking to the jury one judge said that the case

. . . is one which addresses itself largely to your good judgment, common-sense, and knowledge of human nature and the weakness of human nature.

(U. S. vs. Clarke, 38 Fed. Rep. 734)

Now what are obscene, lewd, lascivious, indecent publications is largely a question of your conscience and your opinion.

(Dunlop vs. U. S. 165 U. S. 500)

It is wholly unimportant what may have occurred elsewhere in the consideration of this question. (*U. S. vs. Sherman*), because there is no common standard of judgment binding upon all Federal Courts.

Obscenity is determined by the common sense and feeling of mankind, and not the skill of the learned.

(Commonwealth vs. Landis, 8 Phila. 453)

Nor by the statutes nor even the judge-made tests.

"The word obscene cannot be said to be a technical term of the law, and is not susceptible of exact definition in its juridical uses."

Now, then, does any one, with the above quoted judicial assistance, feel sure he knows obscenity when he

sees it? Or if he feels quite sure in a given instance, can he be sure that his neighbor will agree with him, or that he will even agree with himself a year or two from now?

LAW OR FACT?

Most judges insist that obscenity is a matter of fact, not of law, and that facts must be decided by the jury. For instance, the judge who said the pictures "should be exhibited to the jury for them to determine *as a matter of fact*, in the exercise of their good sense and judgment whether or not they were obscene or indecent.

(*People vs. Muller*, 32 Hun. 211)

On the other hand here is a judge who held the exactly opposite opinion.

Whether obscene or not is a *question of law*, and not of fact: that question is for the court to determine, and not for the jury.

(*McNair vs. People* 89, 111, 441)

ARE COMPARISONS ADMISSIBLE?

In the *Sex Side of Life* case, the Court would not permit the counsel for the defense to show to the jury similar publications issued by the Government itself, for comparison as to possible obscenity. Here are two conflicting precedents cited in Mr. Schroeder's book from charges to the jury.

(To the jury.) You are not sent here to try other books nor to compare this book with other books, and you heard the Court rule out all other books.

(*U. S. vs. Bennett*, Fed. Case 14571, page 1105)

So far as your experience goes, the effect that Shakespeare's writings, or any other author's writings, have had in the world, notwithstanding certain passages that they contain, you have the right to resort to that experience in determining what will be the probable effect of the publication involved in this case, *provided you think such comparison will be of service, and will aid you in reaching a correct conclusion.*

(U. S. vs. Clarke, 38 Fed. Rep. 735)

DOES THE EFFECT ON THE RECIPIENT MATTER?

In the *Sex Side of Life* case, the Prosecutor and the Judge insisted that the sole issue was the tendency to corrupt the sort of reader the pamphlet was likely to reach, but precedent would have permitted the position that such a consideration was immaterial. Here are two exactly opposite judicial opinions on that point.

The inquiry as to the tendency of the letter must be narrowed to the liability to corrupt the addressee.

(U. S. vs. Woblensky, 118 Fed. Rep. 496)

(U. S. vs. Moore, 129 Fed. Rep. 163)

(Edwards vs. State, 85 So. W. Rep. 797)

Without regard to the character of the person to whom they are directed.

(U. S. vs. Cheeseman, 19 Fed. Rep. 498)

IS THE INTENT OF THE AUTHOR MATERIAL?

Here are three judges who say yes.

I have but little patience with those self-constituted guardians and censors of the public morals

who are always on the alert to find something to be shocked at, who explore the wide domain of art, science and literature to find something immodest, and who attribute impurity where none was intended.

(*U. S. vs. Harman*, 28 *Fed. Rep.* 829-9)

The question of the violation of the statute rests upon the import and assumed motive.

(*U. S. vs. Woblensky*, 118 *Fed. Rep.* 496)

The intention of the defendant who used the language, and the purpose for which he used it . . . constitute the offense.

(*Dillard vs. State* 41 *Ga.* 280-281)

But again here are three judges who say no.

The criminal character of the publication is not affected or qualified by there being some ulterior object in view of a different and honest character.

(*Regina vs. Hicklin* L. R. 3, 2 B, 360)

The object with which the book is written is not material, nor is the motive which leads the defendant to mail the book material. . . . His motive may have been ever so pure, if the book he mailed is obscene, he is guilty.

(*U. S. vs. Bennet*, *Fed. Rep.* Case 14571 p. 1102)

Where the writings are of an obscene, lewd or lascivious character the fact that they were sent in the real or supposed interests of science, philosophy or morality is immaterial.

(Charge quoted in *U. S. vs. Slenker*, 32 *Fed. Rep.* 691)

Perhaps Judge Burrows had this precedent in mind when he sustained the Prosecutor in objecting to all

testimony as to the aims of the author, and when he made his charge to the jury in the *Sex Side of Life* case.

WHO MUST BE SHOCKED? AND IS IT WORDS OR IDEAS
THAT ARE SHOCKING?

Judges have hunted in vain for tests of obscenity, but they are still as vague as a mist when it comes to specific standards; as indicated by the three following efforts to arrive at a conclusion:

"Offensive to delicacy" was held to be sufficient reason for deciding on obscenity.

(*U. S. vs. Britton*, 17 *Fed. Rep.* 733)

Shocks the ordinary and common sense as an indecency. (*U. S. vs. Davis*, 38 *Fed. Rep.* 328)

Tendency to vitiate the public taste.

(*Montrose vs. State*, 72 *Ga.* 226)

But another judge wars against too great a sense of delicacy.

The Court must not allow a hyper-critical judgment to take advantage of the elasticity of the language used by Congress . . . by bringing within the act words and thought that are only rude, impolite or not in good taste.

(*U. S. vs. Davis* 38 *Fed. Rep.* 327)

Mr. Schroeder observes, "Wherein must the obscenity be? Here then it is held that the words sent though the mail must be obscene. Other cases say that the words need not be obscene; it is enough that the idea be obscene; it being enough if these convey only to the most prurient imagination a mere suggestion of

obscurity. And again it is decided that it can not be that every suggestion of lascivious ideas is prohibited." The Judge in the case of U. S. vs. Larkin and Adams said (Wash. March 11, 1902, from official Stenog. Rep.):

It can not be that every writing or publication which in any way suggests thought of the relation of the sexes is obscene, lewd and lascivious. That would place upon the court a vast burden of separating the little matter that is mailable from the grand mass and majority of literature which would be nonmailable.

I wish I might have seen the facial expression of the judge who uttered that pleasantry!

THE OBSCENITY GUESSING GAME

The frolicsome but still serious journey of Mr. Ernst and Mr. Seagle through the obscenity jungle in *To the Pure* is similarly amazing and amusing. They weave through one pathless tangle to another, but are never able to discover the slightest sign of a road that leads anywhere, except right back again to where they started.

In their book they give this bewildering collection of judicial pronouncements, to make us laugh and despair:

The lack of *esprit de corps* among the police magistrates and the disagreement of the lower and higher courts has brought it about that a book is obscene on a Monday when one magistrate has issued a summons, not obscene on a Wednesday when another magistrate refuses to hold the accused for trial, and obscene again on a Friday, when, despite both magistrates, the Grand Jury decides to indict. This was the state of affairs

when the publishers of *A Young Girl's Diary* and *Casanova's Homecoming* were indicted by a Grand Jury after the books were declared to be not obscene in the Magistrates Court!

A charge against *The Rise and Fall of Susan Lennox* was dismissed one year after it ran as a serial, and sustained the next year when it appeared in book form. *Madeleine* was an "obscene, lewd, lascivious, filthy, indecent and disgusting" book in January, 1920, when the publisher was convicted, and a pure, moral and uplifting book in July of the very same year when the Appellate Division reversed the conviction. *Jurgen* was an obscene book in January, 1920, when the indictment was issued, and a work of art in October, 1922, when the charge was dismissed; *Replenishing Jessica* was an obscene book in July, 1925, but ceased to be so before July, 1928, when the jury refused to convict.

At the present writing, *An American Tragedy* by Dreiser is "obscene" in Boston and cannot be sold there, but it can be mailed anywhere in the country; whereas *Rasputin* cannot be mailed anywhere in the country, but can be sold everywhere, even in Boston. In regard to the Dreiser book which Boston exiles, as Mr. Ernst neatly puts it: "Under the sheltering aegis of the postage stamp which bears the face of one of the Fathers, the obscene books return in triumph."

THE MEANING OF "LEWD, LASCIVIOUS, INDECENT, OBSCENE"

To the Pure has some illuminating paragraphs on that array of disagreeable adjectives which garnishes the Comstock law, and which become so mysteriously elusive in court procedures. The book describes the problem of discovering their meaning this way:

Normally a judge will not resort to a dictionary for legal terms in a criminal statute. Webster is only the last resort. When the Comstock laws were adopted however, they used the words "Lewd, lascivious, indecent" and "obscene." The judges were at once driven into the mysteries of tautology. Did these words describe a single crime or four separate crimes? The question actually arose when one of the adjectives was inadvertently omitted from an indictment. Learned counsel argued that the words from the statute were not interchangeable, and that if a book was described as "lewd, lascivious and obscene," omitting "indecent," it was not criminal. There were decisions both ways.

The judges struggled to give each word in the statute a special signification. When one is at a loss as to the meaning of a word, the natural procedure is to take down the dictionary. The judges did so, explaining that the law used no words which an ordinary man could not look up for himself. The early obscenity decisions are filled with blocks of dictionary definitions:

Lewd: Characterized by lust or *lasciviousness* or given to licentiousness; libidinous; unchaste; as lewd actions or persons.

Lascivious: Having or denoting wanton desires; lustful; *lewd*; as a lascivious person; lascivious feelings or words. Tending to produce sensual pictures, as lascivious pictures or books.

Indecent: Offensive to common propriety or adjudged to be subversive to morality; offending against modesty or delicacy; unfit to be seen or heard; immodest; gross; *obscene*.

Obscene: Offensive to chastity, delicacy or decency; expressing or presenting to the mind or view something that decency, delicacy and purity forbid to be exposed; offensive to morals; *indecent*; impure.

The multiplication of adjectives is often a sign of uneasiness.

OBSCENITY LAWS A HANDY TOOL FOR OTHER PURPOSES

Owing to its very indefiniteness, the obscenity law is a menace to justice in more ways than one. It is not only guaranteed to produce conflicting decisions, because no one knows what obscenity really is, or surely recognizes it when he sees it, but it also can be used and has often been used to suppress people whose work or writings are deemed undesirable in other ways, and to "get" those against whom certain people had grudges. In other words, the obscenity law is a useful club for trying to cripple the spread of unwelcome social or political ideas, and it is exceedingly handy for "frame-up" purposes.

History tells its own story on this point. A few well known instances will now be cited, by which the reader can get an idea as to whether he would, from this point of view, approve the maintainance of such laws, even granted that it might be possible to define obscenity *specifically* and to guarantee that all suppressions should be applied only to such "dirt" as came within that legal definition (both of which provisos seem practically impossible of achievement).

Leon Whipple in his *Story of Civil Liberty in the United States* reviews the obscenity prosecutions over a period of years, and says:

We may note that in most of these cases the alleged offenders were radical or free thinkers, or more generally social and religious idealists, some of whom instead of painting the beauties of sex, believed it a very sinful and morbid thing. They were often opposed to licentiousness inside of marriage, and they sometimes achieved a sane conception of evolutionary eugenics. They were not scientific and were frequently foolish, but they were not corrupters of public morals, nor in-

deed did their publications contain anything that could rightly be called intentionally corrupting. They were pioneers and suffered the penalties.

Comstock's righteous indignation was specially roused by the writings of those whose theology he did not consider sufficiently orthodox, so when he could find in such writings a sex passage that gave him an "obscenity" handle, his pursuit of the villain became doubly acute and his satisfaction over success in prosecution was all the greater. **In** some instances, also, there was yet another incentive to prosecution, namely, that certain ones among those selected for persecution and prosecution had published criticisms of him and his work; this quite naturally added fuel to the flame of his ambition to suppress those particular people. That was a human reaction to an irritating situation, and Comstock must not be specially condemned for yielding to it; the real trouble is not with the agents who induce prosecutions under a vague law which permits them to pounce upon almost anyone they choose, but with the law itself which makes possible the procedure.

THE FAMOUS HEYWOOD AND BENNETT CASES

Two such instances are vividly described in the Broun-Leech life of Comstock (the chapter entitled "Fires of the Inquisition"). These were the cases of Ezra Heywood and D. M. Bennett. Both men were prolific writers on various topics, and they themselves in their own books and pamphlets have given full descriptions of their own battles with Comstock and the laws. Gleaning from all these sources, it seems quite evident that these two men were persecuted because of their unconventional ideas in general, rather than for obscenity, *per se*.

Ezra Heywood was a citizen of small means who lived in Princeton, Massachusetts, where he was always respected by his neighbors, albeit he held views that were not shared by many of them. As a very young man, he had aspired to the ministry in the Congregational Church. But the influence of Theodore Parker diverted him from this phase of orthodoxy, and as he grew older the tag of "free-thinker" was pinned on him. His critics used it with scorn, but apparently he looked upon it as an evidence of intellectual self-respect. Abolition appealed deeply to him and in that movement he was active and articulate. He and his wife were ardent believers in woman suffrage and temperance. He later became a Socialist. Analogous to his attitude on free thinking was his attitude on "free love"—that is, that love to be self-respecting must be free and spontaneous rather than given merely because of the existence of a marriage ceremony. So, all told, he was well calculated to inspire Comstock's wrath. Then, added to this catalogue of sins, he had long expressed opposition to the existence of the Comstock law, which he called "the National Gag Law." Since his college days he had been devoted to the principle of free press and free speech; his graduation theme at Brown University was on Milton's famous pronouncement on *The Liberty of Unlicensed Printing*. Heywood repeatedly demanded the repeal of the Comstock law, and his criticism of Comstock's activity was by no means soothing to that crusader. Hence there was plenty of animus for the repeated arrests to which Heywood was subjected; and it was always the obscenity statutes which were utilized to capture him, just as it was *Cupid's Yokes* that was made the chief target in these prosecutions.

Comstock never forgave President Hayes for pardoning Heywood before the completion of the latter's two-

year jail sentence. He felt grievously check-mated, and expressed it this way: "The Pres. pardons this man on the petition of Infidels and liberals, free lovers and Smutt dealers, in the face of a solemn protest signed by the officers of our Soc." (Comstock's use of English, abbreviations and capitals was always interesting.) Heywood's own poise was also maddening to Comstock. He describes Heywood's appearance as he presided at the meeting of his "free-love organization" in Boston just before Anthony achieved the spectacular arrest. He tells how Mrs. Heywood, who was one of the speakers, made an "offensive tirade against common decency," and how "occasionally she referred to 'that Comstock,' " and how "her husband presided with great self-complacency. You would have thought he was the champion of some majestic cause instead of a mob of free-lusters." Comstock was probably unaware of the extent to which his own dirt-seeing faculty was used to work off his other prejudices and his personal resentments, but evidently it was a faculty which was marvellously developed, for he wrote thus of the people present at that meeting. "I looked over the audience of about 250 men and boys. I could see lust in every face."

The case of D. M. Bennett was closely related to that of Heywood, by reason of the fact that one of Bennett's several arrests was because he had mailed copies of Heywood's *Cupid's Yokes*, in protest against the jailing of its author. Bennett was for many years the editor of a freedom-pursuing paper, *The Truth Seeker*, and after Heywood was jailed, Bennett announced in *The Truth Seeker* that although he was not wholly in agreement with the ideas in *Cupid's Yokes*, he would gladly fill orders for it by mail. This was indeed practical protest against post office censorship.

Many of the readers of *The Truth Seeker* ordered the book. One of them signed himself G. Brackett and, as the Broun-Leech book tells, "this Brackett professed himself a poor but earnest admirer of Bennett's teachings. He ordered several tracts including 'a copy of that Heywood book you advertise, Cupid's something or other, you know what I mean. I send three and a half dollars, and if that ain't enough I will send the balance when I get the books. Wish I had three hundred times the amount, but I hain't.' " Brackett was one of Comstock's aliases, and the arrest of Bennett followed. (The decoy letters of the seventies seem more picturesque than those of the present day. Compare Brackett's enthusiasm with the businesslike brevity of the mythical Mrs. Miles whose letter is given on page 47.)

Bennett was a publisher as well as an editor and a writer on various reform topics and, like Heywood, he had repeatedly put himself on record as opposed to the Comstock Law and to Comstock's work. Indeed he wrote a sizeable pamphlet entitled *Anthony Comstock, His Career of Cruelty and Crime*, in which he stated his belief that "Comstock's enmity (for Bennett) was based on his unorthodox religious views, the obscenity statute serving as a mere pretext." His first arrest seems to bear this out, for it was because of his heretical pamphlet, *An Open Letter to Jesus Christ*. Bennett also sent out something like 15,000 circulars addressed to "Publishers, Booksellers, Editors, Importers, Druggists, Artists, Physicians and Lovers of Liberty and Justice in the United States" enclosing a petition to Congress urging the repeal of the Comstock law. So Comstock had a triple incentive to suppress him—his alleged obscenity, his dangerous religious notions, and his industrious opposition to the obscenity statute.

Bennett's trial in 1879 in the U. S. Circuit Court under Judge Charles L. Benedict, for mailing *Cupid's Yokes*, furnishes an almost perfect precedent for the trial of the *Sex Side of Life* case, just fifty years later. The old Comstock law has not been changed, so why should the court procedure be changed? If the reader will compare, point by point, up to the sentencing, the procedure under Judge Burrows with the Bennett trial under Judge Benedict, as quoted below from the Broun-Leech account, it will be noted that the two trials were almost identical, except as to date.

Expert testimony as to the character of Heywood's pamphlet was, as usual in obscenity cases, not permitted. The defense was not allowed to show by the evidence of the author what his intentions were in writing *Cupid's Yokes*. Judge Benedict also ruled against admitting evidence regarding the authors consulted in writing the pamphlet, the classification of the work by book-dealers, the appearance of similar material in books never disturbed by the vice-hunters, or the length of time the pamphlet had been on the market without being molested. The defense was not allowed to show that the pamphlet had been, as obscene works are not, sold at a uniformly low price—fifteen cents. The court ruled that the general scope of the book was not in the issue; and the gentlemen of the jury were instructed to take the definition of obscenity—that is, anything having a tendency to suggest impure and libidinous thought to the young and inexperienced—from the court. Bennett was convicted and sentenced to thirteen months' imprisonment at hard labor.

As to the sentence, the parallel fails, but otherwise it seems to be letter perfect.

Bennett would probably have been pardoned by President Hayes who had only a short time before par-

doned Heywood, but Comstock put on extra steam and prevented that by means of one of his most reprehensible acts. President Hayes was a devout church-goer, and his wife an ardent Methodist, so Comstock trained his guns accordingly. He got many clergymen to write to the President urging that Bennett be kept in jail. He inspired Sunday School children to sign a long petition to Mrs. Hayes to the same effect. The President began to be affected. But he was worried, also, because U. S. Attorney General Devens had given his opinion that the pamphlet was not obscene. Then Comstock "descended upon Washington armed with a bundle of indiscreet letters which the old publisher, married for some twenty years, had written to a woman. He got the presidential ear, and Hayes hesitated no longer. The petitions of the liberals were denied and Bennett was sent (from the Ludlow Street jail) to the penitentiary in Albany." He served the entire term despite his failing health. No doubt Comstock would have felt virtuously indignant if anyone had accused him of using the methods of the village gossip in place of honest and pertinent testimony. But when distorted fervor is coupled with legal power, ordinary standards of relevancy and self-respect are almost sure to be neglected.

OTHER INSTANCES OF ULTERIOR MOTIVE IN OBSCENITY PROSECUTIONS

Various kinds of social reform propaganda have had the obscenity statutes applied to them in the effort to suppress or discredit their influence. Socialist papers have been held up and editors prosecuted; for instance, Fred Warren, editor of *The Appeal to Reason*, was twice indicted, in one instance being pardoned by President Taft who was convinced that the prosecution had

been "actuated by antagonism to his Socialist activities." Again Hobart Croomer, editor of a Socialist paper in Oklahoma, was jailed for six months on the charge that he had published obscenity, the matter in question being an advertisement describing a forthcoming issue as the "Free Love Edition of the *Social Democrat*," in which it was to be shown that women were human beings, not merely child-bearing creatures, and friers of "steak and onions." Whipple's book adds that "there was nothing about free love in the paper, but the U. S. Circuit Court refused to change the decision," the indictment being based merely upon the advance advertisement, and not on the article which it announced.

Lecturers and writers on philosophic anarchism have repeatedly been arrested upon obscenity charges, and it was due to the recommendations of President Roosevelt that the obscenity law was amended to include the ruling that the term "indecent" within the intendment of this section shall include matter of a character tending to incite arson, murder or assassination." Who can decide where *tendencies* begin and end?

On occasion, the editors of anti-Catholic publications have been indicted, but the reason for it was traced to the resentment of Catholic leaders who were able to induce the Post Office to lend the use of the obscenity laws to the purpose of curbing the activities of their critics.

The ease with which the Post Office can allow the obscenity laws to be invoked against anyone toward whom some individuals harbor an antagonism was shown in 1906 when Bernarr McFadden was sentenced to two years of hard labor in the penitentiary and a fine of \$2,000 for a series of articles in his *Physical Culture Magazine* entitled "Growing to Manhood in Civilized Society." McFadden claimed that some unknown per-

son had complained to the Post Office about the articles, but that he had not received a single adverse criticism from any other of his readers, and that the officials in the Post Office Department admitted that no other complaints had been received by them. Yet on this one person's accusation of guilt, the editor was heavily penalized, and the verdict was upheld on appeal.

It seems pertinent to inquire why, if the aim of the postal obscenity statutes is simply to rid the country of commercialized smut, as is often claimed, the laws are stretched so far beyond their alleged purpose, and made to cover an attempt to harass those who are voicing their various convictions as to how this may be made a better world to live in. Can it be that Americans will much longer be willing to put up with laws that can readily be made to serve so un-American a purpose as the suppression of the free expression of opinion? Are Americans afraid of ideas?

THE CASE OF CARLO TRESCA

The outstanding case in recent years, and probably the most important case on record, in which the obscenity statutes have been utilized for an ulterior motive, is that of Carlo Tresca. The story of his prosecution is here given as published by the American Civil Liberties Union.

The prosecution of Carlo Tresca under the federal statute which prohibits dissemination of birth control information through the mails, is significant for several reasons.

First, the prosecution was brought directly at the instance of the Italian ambassador as proved by the correspondence in the files of the State and Post Office departments. Although Tresca was indicted and tried

on a purely technical offense, his real offense was his militant opposition to the Fascist dictatorship.

Second, he was sentenced to a year and a day, which is the only prison sentence ever imposed on anyone under federal law for disseminating birth control information. Even under state laws no such prison sentence has ever been imposed for imparting such information. The maximum sentence has been six months and the average less than a month.

Third, the Department of Justice and President Coolidge took note of the source of the prosecution and the excessive sentence imposed, and cut the year and a day to four months. Tresca was convicted of a technical offense as editor of his paper without having ever been party to it and after having complied with the post office department's instructions to delete the advertisement before mailing the paper.

Here are the plain facts in brief:

Carlo Tresca, an Italian citizen, has been a resident of the United States for twenty years, with his home and headquarters chiefly in New York City. He has been engaged most of that time as the editor of a weekly radical labor paper *Il Martello* (*The Hammer*) and as a strike organizer and leader.

Since the Fascist dictatorship came into power in Italy, the paper has devoted a large part of its space to attacking that dictatorship. It has succeeded in getting a considerable number of copies weekly into Italy where it has caused Fascist officials much concern. Prince Caetani, the recent Italian Ambassador, returning from Italy in July, 1923, said in a speech at a public dinner at the Waldorf-Astoria that "a certain paper in the United States was embarrassing the Fascist government and should be suppressed." Immediately thereafter the attention of the federal officials to *Il Martello* began and did not let up until two months after Tresca's indictment.

Correspondence followed between the Post Office and Justice departments, and Tresca eventually was arrested, indicted, sentenced and defeated on an appeal. The Washington correspondent of the *New York World* got access to the files of letters in the department and verified this statement by inspection of them.

Assistant District Attorney Mattuck stated in court at the time of sentence that the case was brought at the instance of the Italian Ambassador and for that reason he asked the imposition of a severe sentence. He furthermore stated to the court that if Tresca would agree to leave the country he would not ask for a prison sentence at all. Tresca of course refused the offer. Mr. Mattuck explained his position to a *New York World* representative by saying, "I made him the offer because he has been a thorn in the side of organized government for years. He would be a good riddance."

This establishes clearly the origin of the case, its motive and the easy compliance of United States officials in three different departments with the wishes of the Italian Ambassador. Officials in the State, Post Office and Justice departments were all implicated in this effort to "get" Tresca.

The efforts to "get" him follow:

First, the July 21, 1923, issue of the paper was held up in the mails without warning and without specific charges. This was just after the Ambassador's speech at the Waldorf-Astoria. On August 10th Tresca was arrested for an article then three months old, entitled "Down With the Monarchy." He was held by the United States Commissioner on this charge under bail, but the charge was dropped when the grand jury indicted him later for advertising an Italian book entitled *L'Arte di Non Fare I Figli* (*The Art of Not Making Children*). On August 18th the Post Office inspectors ordered him to delete from his paper the announcement of a raffle, although two other papers carried the same notice unmolested. The September 8th issue was

held up for the two-line advertisement of the book on birth control, which the Post Office authorities ordered Tresca to delete. Every copy was withdrawn and the advertisement deleted by black pencil. They were then accepted for mailing by the Post Office authorities. Despite this fact, Tresca was indicted on October 30th for that offense. It is significant that the Department of Justice had managed to place an agent in Tresca's office as one of his employees, and that it was he who furnished the information about the mailing of various books on birth control which constituted most of the counts in the indictment. It is also significant to note that the same advertisement of the same book on birth control appeared in other Italian newspapers without interference or prosecution, and that similar advertisements of books giving birth control information appeared in English-language papers. It is therefore obvious that Post Office authorities were looking for a technical offense through which to stop Tresca's activities.

The government's attention to *Il Martello* did not cease even with the indictment. On October 27th it was held up because it printed an account of how the Fascisti had forced an Italian woman to swallow an immense dose of castor oil. Most American newspapers printed the same story, but were not molested. On November 10th it was held up because it printed a letter from a reader predicting that Mussolini would come to the same end as Rienzi; other papers had made the same prediction without challenge, including a Hearst editorial, without any interference by the government.

The federal grand jury indicted Tresca on eight counts, all under Section 211 of the United States criminal code, commonly known as the obscenity statute, which makes the dissemination of birth control information "obscene." The first count of the indictment charged him with having mailed an indecent book en-

titled *Le Perturbazioni Sessuali* (*Sexual Perturbation*). The second and third counts alleged the mailing of a book entitled *L'Arte di Non Fare I Figli* (*The Art of How Not to Create Children*), a treatise on birth control. The fifth, sixth and seventh counts alleged the mailing of that book to other persons.

The eighth count of the indictment was the only one upon which Tresca was convicted. This charged the deposit in the mails of an issue of the newspaper *Il Martello*, of which Tresca was the owner and editor, containing an advertisement which read as follows:

DOTTORESSA CECCHI—"NEO-MALTUSIANISMO
PRACTICO L'ARTE DI NON FARE I FIGLI"

This was simply an advertisement of the book mentioned in the fourth, fifth, sixth and seventh counts.

The undisputed testimony as to the eighth count of the indictment on which Tresca was convicted was that the advertisement was given to a man named Vella for insertion in *Il Martello*, when Tresca was out of the city on his vacation. Tresca therefore had no knowledge of the advertisement, nor had he ever seen or read the book advertised. As editor and publisher of the paper, however, he was responsible for everything that went into it and therefore was technically guilty, although the Post Office had accepted the issue for mailing after the advertisement had been deleted.

Much prejudicial matter was injected into the trial by the district attorney who went into Tresca's labor record and radical views. This undoubtedly had a strong adverse influence on the jury. Tresca was sentenced to a year and a day on December 8, 1923, in the United State District Court at New York. The conviction was appealed to the United States Circuit Court of Appeals and affirmed on November 9, 1924, on the narrow legal question as to whether Tresca had "knowingly" participated in advertising the forbidden book.

Tresca was represented throughout the case by Harold A. Content, former United States District Attorney at New York.

Tresca started serving sentence on January 6, 1925, in Atlanta Federal Prison. Efforts were made at once to secure a commutation of his sentence, the American Civil Liberties Union preparing a petition for commutation. The President on February 16th commuted the sentence to four months. Tresca served the four months, being released on May 7th, 1925.

Strong editorials appeared in leading newspapers, indicating that American public opinion would not support such crass perversion of law as this case represented.

Tresca cases do not occur every day, but that they can occur at all, and that the functions of federal laws and the federal officials can be made to serve as the tool of individuals and organizations for the accomplishment of their own purposes, is food for serious American thought. Many citizens have no sympathy with the political and social aims for which Carlo Tresca stands but, even so, can anyone afford to be indifferent to the possibilities inherent in laws like these obscenity statutes and the postal power which lies back of them? Should we permit unjust and irresponsible legal procedure, just because, at present, our particular ox does not happen to be gored?

How near are we to the realization that our own ultimate safety and freedom in the expression of our own opinion lies in the famous statement of principle by Voltaire: "I wholly disapprove what you say and I will defend with my life your right to say it."

Before leaving consideration of the Tresca Case, it occurs to me that the refusal of the Post Office Solicitor in the spring of 1925 to rescind the ban on *The Sex*

Side of Life pamphlet may possibly have had some connection with the fact that I had published the damaging facts in regard to the case in *The Birth Control Herald* of which I was then editor, and that when Tresca was sent to jail, I had written the following editorial:

"For an obviously ulterior purpose, the old Comstock law has been utilized to send Carlo Tresca to the Atlanta penitentiary. The injustice of the case has created wide interest, and there is reason to believe that the many protests received by the Attorney General will result in his release. There are hundreds of thousands, probably millions, of people who break this tottering piece of legislation, but they are not prosecuted. Its use as a tool for political persecution is something the United States authorities can hardly be proud of."

PART III
SHALL THE POST OFFICE CENSORSHIP
POWER CONTINUE?

III

INTRODUCTION

PRESUMABLY no one in the United States, not even the most determined conservative, would, in his sober senses, say that the old Comstock law, "as is," can be deemed a thoroughly good law. He might admit that it needed some revision. But what, and how far? That is the question. Granted that the old statute needs at least some tinkering—of what shall it consist? Shall it be repaired as in the ancient instance of the knife which needed a new blade, and was then found to need a new handle—or what?

In Part II of this book it has been shown how this law was hastily jumbled together and jammed through Congress at the very end of a session, without discussion or even understanding by many of the members. But Congress and the country have had fifty-six years in which to "repent at leisure," and now what is the chief sinner—the public—going to do about it?

There is not likely to be any unanimous answer at once, for our citizenry is made up of too many kinds of folks, with too varying backgrounds and psychologies, to make it possible for them to react similarly to any problem that has sex as an element in it.

IS IT CONSTITUTIONAL?

On one hand, there is the kind of citizen who has long ago decided against all governmental censorship, and

who believes that the first amendment of the Constitution, providing that "Congress shall make no laws abridging freedom of speech or of the press," means literally what it says, and that therefore the whole Comstock statute is unconstitutional. His answer would be simple and direct: "Repeal the statute."

On the other hand there is another type of citizen who persuades himself that the first amendment may be interpreted to allow for certain necessary qualifications, for the safety and welfare of the public, and that the suppression of the circulation of indecent matter is one of these qualifications, and that if the amendment is not *now* so interpreted, it *ought to be*, and that therefore the Comstock statute is rather good, even if not one hundred per cent perfect—the idea being that it is at least better than having no safeguards at all against "the deluge of smut that would pour through the mails" if there were no federal Comstock law.

This deluge of smut is the picture that has always been held before the minds of Congress and the public whenever there has been any suggestion made for altering the censorship statutes. But as a matter of fact, the public has more protective strings to its bow than control of the mails, if it really wants to shut off the circulation of pornographic matter. There is the possibility of prohibiting the *production* of pornographic matter, by means of the existing state obscenity laws, or by the exercise of the general "police power" in the states in the same way that "public nuisances" of various sorts are suppressed. And it is at least conceivable that there could be federal legislation to prohibit "the manufacture and sale" of pornographic material, under the powers granted to Congress by Section 8 of Article I of the Constitution, which says: "The Congress shall have the power to lay and collect taxes . . . to pay the

debts and *provide for the common defense and general welfare* of the United States."

I mention these possibilities not because they appeal to my judgment as sound solutions of the indecent literature problem, for they do not, but merely to indicate that the United States Government is not limited to Post Office censorship, or to the control of other public means of transportation, if it wishes to suppress pornographic matter.

At any rate, if we are going to permit any sort of governmental control, it seems vastly more efficient to shut off the supply of pornography at its source, rather than to wait until it has begun circulating through the mails and the express companies, and then try to stop it. This is speaking only from the point of view of efficacious control; but aside from that, of course, the chief reason for keeping the problem apart from the Post Office and all public carriers, is that any control by censor of the people's means of communication is an infringement of fundamental rights and a menace to their liberties.

Theodore Schroeder in *Obscene Literature and Constitutional Law* gives some clear reasoning on this matter of the constitutionality of the Post Office censorship. He reminds the reader that Congress has no powers except those that are delegated to it by the people, via the Constitution. It can legislate only in those directions which the Constitution prescribes. The Constitution gives Congress the power to "establish post offices and post roads," but "the power here under discussion is not vested in Congress at all and the present laws creating a postal censorship over mail matter are unconstitutional."

It has never been claimed that the power of Congress and the Post Office to control the mails by protecting them from dangerous things like explosives or perish-

able things that would damage other mail matter, is unconstitutional; such provision comes clearly within the scope of the business of providing "Post Offices and Post Roads." To maintain the postal system in good physical condition for the carrying on of its business is simply a matter of governmental efficiency: but obviously no mail matter is *physically* endangered because a letter or parcel contains written or printed matter which some censor declares indecent. And no censorship of mail matter can by any stretch of interpretation be implied in the power to control matter which endangers other mail or the government employees who handle the mail.

SENATORS BORAH AND STANLEY HELP DEFEAT
EXTENSION OF CENSORSHIP IN 1923

This is no mere theoretical question as to the unconstitutionality of the post office censorship. What gives the question vitality is that this censorship power is today a danger to the liberty of the whole country. If a Washington bureaucrat can decide what can go through the mails, he can thereby decide what you and everybody else in the country may read and may not read. That he does not extensively interfere with the mails is but chance. That he might do so in any direction he chooses at any time, constitutes the danger and the wrong.

A few years ago (in 1921-22) an effort was made to have Congress extend the explicit post-office censorship to include gambling information, especially horse racing betting tips, as mentioned previously in this book. The bill which was introduced with this object in view was worded so that no written or printed information as to wagers "upon the outcome of any contest of speed or

skill" was mailable. Many of the leading newspaper editors of the country hastened to Washington to protest at the hearings before the Senate Judiciary Committee; and there they lined up with Senator Borah and Senator Stanley against many professional reformers. As usual, the reformers were so bent upon curbing what they considered sin that they paid scant attention to the fact that the method proposed for curbing the sin was one which struck another blow at one of the people's basic rights.

Both Senator Borah and Senator Stanley made it clear that they had no interest in betting or in race-track gambling, but they were keen to see to it that no more reform programs were put through at the expense of the people's liberties. Borah spoke of the rapidly increasing tendency to establish government bureaucracies in Washington, and showed how the Post Office bureaucrats were the most dangerous of them all. He denounced the growing governmental bureaucracy as "this leprous disease which is fastening itself on the whole body politic." And Senator Stanley spoke in the same vein:

"Mr. Chairman, that is the worst vice, the worst phase of the legislative itch with which the country is infected, for the Federal and sumptuary regulation of all the activities of the people, moral, intellectual and industrial. It is gaining. One bad law breeds a million."

SEN. BORAH: Well, Mr. Stanley, you do not have to make any argument to me that we have no power to establish a censorship.

SEN. STANLEY: Buckle says that all civilization for five hundred years consisted in repealing laws. I wish Buckle were eligible for a seat in the Senate now.

Mr. Chairman, the greatest influence for good—and

it may be the greatest power for evil—is the power of the press. There is no free government without it. There is no free thought without it. I commend to your attention just a little paragraph from that great defense of free institutions, with one possible exception, the greatest in the English tongue: "Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do ingloriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple: who ever knew Truth put to the worse in a free and open encounter?"

Excellent arguments were presented by several of the newspaper editors and managers, notably by W. T. Wiley of the *Cincinnati Inquirer*, and Robert R. McCormick of the *Chicago Tribune*, emphasizing not only the faults in this particular proposed extension of post office power, but the fundamental flaw in the whole idea of postal censorship. Mr. Wiley well said that "Congress can no more legislate morality into the individual than it can legislate immorality out, and that this contention is axiomatic is borne out by all history."

The habit of the reform zealot whose faith is in repression rather than in enlightened liberty has ever been to assume that those whose first loyalty is for liberty, are all in league with the devil. Comstock always contended that his critics were animated by a zest for filth; and he was so morally certain of his premise that he convinced himself that all the talk about freedom and idealism was just so much wicked camouflage to cover up their evil machinations. He seemed never to have the smallest capacity to realize that reform is of two widely different sorts, one which is based on the gospel of "sh" and "don't," and one which is based on faith in the self-lifting power of human aspiration. The present day Comstockians, while less lurid than "The Old Man,"

still seem to have his habit of mind to a considerable extent: for instance, Canon William Sheafe Chase, the Christian minister who is in a state of chronic fear (on behalf of others) about the dangers of truth, has felt called upon to reprove publicly various clergymen and other citizens for supporting "a criminal" (the author of *The Sex Side of Life* pamphlet.) Very likely differences as to the philosophy of education do really seem to him like differences of opinion in regard to crime. At any rate, his faith is so largely focussed on the suppressive method that he concentrates his energy on the maintainance of that method. He is an inveterate attendant upon legislative hearings on bills involving any phase of the people's liberties and chronically argues in favor of suppression.

IS THERE ANY APPEAL FROM A POST OFFICE BAN?

Leon Whipple says, in *The Story of Civil Liberty in the United States*, that "There is no hearing or appeal" from a post office order excluding any matter from the mail. And again he speaks of "the refusal of the courts to review a Postmaster General's exclusion order on the general ground that an executive must enjoy discretionary power."

In *To the Pure*, the authors say that "He (the Postmaster General) need not appeal to the verdict of a jury to support him in his private prejudices. It is in his discretion simply to exclude matter from the mails without prosecution, and this is, indeed, the usual procedure. In such cases it is extremely difficult to secure review of his action."

In the Senate Hearing on the proposed extension of the Post Office ban to include information about betting tips, Canon Chase and Senator Borah had considerable

argument on this point. Senator Borah's statement that there is no appeal has been previously quoted. Canon Chase inquired if a person whose writings had been excluded from the mails might not appeal to a Federal District Judge and secure an injunction against the Post Office, and if the injunction were denied, appeal to the higher courts. There seemed to be some uncertainty on this point, but Borah again stated his belief that there was no appeal "that is effective at all."

In fact, Senator Borah had introduced an amendment to the anti-sedition bill then pending, which specifically provided for an appeal to a Judge from a decision of the Postmaster General. He said it "would help some." But he went on to say emphatically, "I am utterly opposed to some man here in Washington saying in his discretion what should be done. The basis of a free government is to have a law that applies equally to all people, and not leave the power of the law to somebody's discretion. This should continue to be a government providing for appeal, also failed of approval."

Canon Chase suggested that an amendment such as had been proposed for the sedition bill might be added to the bill regarding the exclusion of betting tips. But the whole betting-tip exclusion bill was killed in committee. Evidently the Senators who opposed the bill felt that no minor concessions in the way of hypothetical appeal, were enough to offset the main error in this type of legislation. (The sedition bill, with its amendment providing for appeal, also failed to receive the approval of Congress.)

Even if there were today any effective method of appeal from the dicta of the federal post-office censorship, the question would still remain whether the citizens of the country want any such power vested in any single individual.

THE ONE MAN TYRANNY

Theoretically, the opinion of more than one official is involved in the banning of any matter from the mail, but practically the power is vested primarily in one man. A local postmaster or a postal inspector or an individual citizen may voice a complaint against a particular piece of mail matter, but the complaints are sent to the Solicitor in Washington. His assistants spend their days reading for smut, and their findings are all turned over to the Solicitor. It is he and he alone who authorizes the exclusion from the mails. (See the notice banning *The Sex Side of Life* on page 9. It was sent "on advice of the Solicitor.") And in matters of mail exclusion the "advice" of the Solicitor becomes law. There seems to be indication that occasionally the Postmaster General is consulted, and as head of the whole Post Office Department, he is nominally responsible for anything which the department does, but as the Solicitor is the official to whom all matters of law are referred, it is he who decides on all questions of exclusion from the mails. And in his decisions he has the power of the Penal Code behind him, for a copy of the obscenity statute is sent with each notice to every citizen whose matter has been declared "unmailable under the law."

It would be hard to deny that this one-man power is an instance of sheer tyranny. Do the people want it then? Has it any place in a country which is founded upon the principles of self-government? On this point, it is well to remember that the Postmaster General and the Solicitor are appointed, not elected officers. So the people have no direct choice in the selection of their post office tyrant.

An official who is empowered to enforce his individual

opinions upon others whose deeds he can declare an infringement of the criminal law, inevitably develops an official pride of power and opinion which seldom if ever permits him to admit having made an error in his decisions. If he is responsible to no one in making his decision, and the victim of the decision has no practicable redress, and if the official is secure in his office by virtue of his appointment, he is in a position well calculated to encourage high-handed acts.

Then, too, there is the factor of official *esprit de corps*. This is especially evident among appointees. They have a tendency to hang together in their policies, especially if they belong to the same political party. It would be difficult for one Solicitor to rescind the decisions of his predecessor, or for a Postmaster General to nullify the decisions of the Solicitor who is part of his own administration, when they belong to the same party and are fed from the same "pork barrel." This more than ever means that the citizen stands little chance when he politely requests or indignantly demands that the ban on his mail matter be removed. The Post Office Officials may go through the motions of "reviewing the case," as they stated that they did in the instance of *The Sex Side of Life* pamphlet, but what good does it do? Bureaucracy does not have to heed the protests of citizens.

Another point to bear in mind is that the banning of any writing or publication may well mean not only actual loss of income to the author or publisher, but damage to his reputation as well. The right of a citizen to safeguard his reputation is so vital that several states have in their constitutions the declaration that men have a natural right to acquire, possess and protect their reputations. For a post office official to have the legal right to declare that any citizen has written or pub-

lished obscenities, is a very serious assault upon reputation. And there is no redress. If another citizen makes libellous statements he can be sued, but one cannot sue the Post Office Solicitor for libel. He is perfectly safe from all legal attack. He is empowered by virtue of the unconstitutional obscenity law, to defy yet another provision of the Constitution beside the amendment on freedom of speech and of the press, namely the Fifth Amendment which provides that "No person shall be . . . deprived of life liberty or property, without due process of law." A post office ban in most instances is a deprivation of property, in that it cripples the circulation of literature; and it most obviously is a deprivation of liberty. The citizen is deprived of his liberty to use the mails of his country in freedom, and if he continues to do so, contrary to the dictum of the Post Office, he may find himself still further deprived of his liberty to the extent of being fined \$5,000 or jailed for five years.

BUT SUPPOSE WE HAD AN EDUCATED, BENEVOLENT, WISE
AND JUST POST OFFICE TYRANT?

Suppose the Post Office Solicitor happened once in a political blue moon, to be a man of education, in the progressive sense, and also a man of wisdom in the conduct of his office, a man with a large and reliable sense of justice, who would never use his power except to suppress such plainly *dirty* dirt that the majority of citizens would surely agree with him that it was mighty bad—what then? Would that be a satisfactory solution of the problem? Let us see.

In the first place, there would be no sure way of getting such a man into office. There is nothing certain about political appointments. If the ideal tyrant were found for one presidential administration, he might be

summarily dumped for a successor in the next administration who would be everything undesirable. Then suppose he were really a wise man—he would find that there wasn't much suppressing to do. Is there any office-holder so wise that he will willingly empty his office of work, and have to say in his annual report that there isn't much that needs doing in his line? Then if he were a man of sound modern education, he would realize that suppressing obscenity doesn't abolish obscenity, that it merely puts some of the indications of it out of ordinary sight. He would know that suppression is not cure. Doctors are coming to know that in regard to disease, and educators are coming to know it in regard to the rearing of children. The child that is reared on mere commands to "stop that" is not an educated child or a moral child; he may be brow-beaten but he is not good. And finally, and slowly, some men in political life are also beginning to realize that governmental suppression of expression is no more sound for the public than is parental and school suppression sound for children. If the government were to undertake to regulate the circulation of educational literature so that instruction would reach all children at the right ages and under suitable circumstances, it would have to utilize means other than the obscenity laws. It is an unwarrantable assumption that the same book could be wholesomely useful for a sixteen-year-old reader, and criminally filthy for an eight-year-old reader. It might be over the head of the eight-year-old child, but it would not create or stimulate filthy notions, if they did not previously exist in the child's mind.

Our educated solicitor would find it a forlorn hope to try to make the Post Office Department serviceable to education with no other tool to work with than the

criminal law. So, our wise tyrant would really have to resign. It would be about the only effective thing he could do as Post Office censor.

POST OFFICE SUPPRESSION DOES NOT SUPPRESS ANYHOW

While the Post Office is the chief means of communication in the country, it is not the only one, so that barring obscenity from the mails does not stop the circulation of obscenity. It can and does cripple its circulation, but it comes nowhere near to stopping it. In the first place, banned material can be sent by first class sealed mail, which is supposed to be inviolate. It cannot be opened except by means of a search warrant. The only other way the government can detect banned literature in sealed mail is to resort to the decoy letter of unsavory reputation in the history of the execution of the obscenity statutes. This it has done repeatedly, but it is a system hardly calculated to appeal to the respect of the average citizen.

Beside the main obscenity statute which applies to the mails, there are two other federal statutes which control the circulation of alleged obscenities. One is Section 245 of the Criminal Code, which prohibits bringing into the United States or sending by express or any public carrier any of the obscene things listed in Section 334 (which deals with the mails). The other is the Tariff Act of 1922, Section 305, which prohibits the importation of any of the obscene things listed in Section 334. But in neither of these statutes is there any provision which gives the sort of power which the Post Office has. The express companies are public carriers and are under governmental regulation, but they are not a part of the government system, and therefore there is no government official who can say on his own

responsibility that certain matter is non-expressable. If indictments are brought under the statute controlling the expressing of obscene matter, they are treated just as indictments under any other criminal law. The Tariff Act differs from the other statutes regarding obscenity, because it provides for holding and destroying the obscenities which are discovered in the customs house, but does not otherwise penalize the importer. The penalty under the express act is the same as under the statute regarding the mails.

Even by the combination of the mail and the express and the tariff acts, the circulation of publications declared to be obscene cannot fully be suppressed. It is seldom that any one publication falls under the application of all these statutes, but occasionally the authorities seem to try to tie up some one particular book absolutely tight. *Married Love* by Dr. Marie Stopes is one of these. It is now in its eighteenth edition in England, but it is unmailable anywhere in the United States, and is unimportable under the Tariff Act, and is unsalable under the New York State obscenity law. Yet the book does come into the United States steadily, and has done so ever since the first suppression. It will be ever thus with regard to books which the people really want. Suppression laws are like sieves when public opinion is not back of them.

One of the humors of the obscenity law situation is that the customs house officers sometimes refuse entry to books which have long been in circulation unhindered throughout the country—Voltaire's *Candide* being a recent instance—and similarly the Post Office will ban a book which it is perfectly legal to import. Perhaps the only thing lacking in the collection of federal obscenity statutes is a new one providing that once a month, let us say, the officials of the different depart-

ments should get together on what is suppressible, so that they will all sing the same tune as to indecency.

RESPECT FOR LAW

Respect for law is one part of an abiding requirement for civilized life; the other part is the obligation to see to it that we have laws which can be respected. Respecting any laws which happen to be upon the statute books, whether by public demand and the best general wisdom, or by the persistent activity of selfish special interests, is a thoughtless procedure. It may have the outward aspect of patriotism, but it will hardly stand analysis as such. Routine irresponsible flag waving will always be a poor substitute for thoughtful, courageous insistence upon making the country's laws and administration of laws a thing to be proud of. It is much easier to rail at injustice and poke fun at the quandries which are foisted upon public officials by the foolish laws they are called upon to administer, and to consider judges wrong-headed and juries preposterous, than it is to take hold and help work out a reasonable change in the system by which the legal fiascos and absurdities will be minimized to the vanishing point.

The censorship laws are bad laws not because every once in a while they are the means of shocking people when some particularly outrageous instance of their application bobs up; but because they are based upon an innate fallacy in law and in education, and are a diseased excrescence upon the body of sound American principles.

At this point I enjoy quoting a bit of wisdom from the pen of Rev. Edward Mahowald, Editor of a Roman Catholic charity organization magazine (*Messenger of the Homeless Orphan*, May, 1929) who says in an edi-

torial entitled "Evil News": "Scandals fill many columns of the daily press, and crimes are delineated with much expenditure of space and torrid English. The fare which some journals offer to their readers irritates at sight the man of good taste and sound judgment. How the printing of moral filth can be justified he fails to see. A crusading ire rises in his soul against the evil of print.

"Perhaps the liberty of the press, priceless possession of a free nation, must needs lead to winking at some license. *A censorship strong enough to wipe out the wicked might gather momentum in its course to destroy a deal of good.*" (italics mine)

LEGISLATIVE PATCH-WORK AND PALLIATIVES OR BASIC RENOVATION?

We can tinker with the obscenity laws, shearing off their worst flaws and adding some permissive bit of privilege here and there, or we can completely wipe them off the legislative slate. Which ought it to be?

The most frequently suggested improvement of the laws is that they be made to carry a concrete definition of pornography, and that they limit their prohibitions to pornography only, and cease to deal with the elusive subject of obscenity. One of the best presentations of the arguments in favor of this plan was made by the attorney, James F. Morton, some years ago and was recently summarized in a letter to the *New York Herald-Tribune* (May 19, 1929), the main part of which is as follows:

Sound criminal law defines specifically the concrete facts which constitute the felony. The present so-called anti-obscenity laws, both state and Federal, are so utterly false to true legal theory that it remains

astounding that their repeal or radical change has not long ago been demanded by a people jealous of their fundamental rights.

It is a simple historical fact that the sole argument which caused the enactment of this legislation was a description of the flood of loathsome pornographic literature which unscrupulous dealers were thrusting into the hands of children, whose immature minds needed protection. No other reason was given why such laws should be passed. Common sanity then demands that the sponsors for these laws be held to their own argument and required to accept precisely the type of law which will meet what they themselves put forth as the real evil, in place of the loosely worded statutes which have been used in a large measure to suppress literature not pornographic at all.

Some years ago in a law magazine, I pointed out the obvious remedy, which is to substitute for the atrocious provisions under which a Mrs. Dennett can be convicted for helpful and constructive education, a clear-cut law simply prohibiting the public display of pornographic literature and selling, lending, giving or exhibiting it to minors. The law needs further merely to state the concrete things which make a writing or picture pornographic. It will accomplish everything which Comstock and his successors have professed as their aim and avoid the unbearable evils of the present law.

In *To the Pure* this plan is discussed also, and the authors suggest a statute dealing with pornography, as a "basis for considering whether any legislation can provide a way out."

SEC. 1: Pornography is any matter or thing exhibiting or visually representing persons or animals performing the sexual act, whether normal or abnormal.

SEC. 2: It shall be criminal for anyone other than a teacher in the course of his employment, or a doctor in

the regular practice of his profession, or a parent (of the child in question) to exhibit, sell, rent or offer for exhibition, sale or rent, any such pornographic material to any person under the age of eighteen.

The arguments advanced in favor of such a statute are, in the main, as follows. It "at least has the asset of clarity. For this purpose we have limited the banned material to pictures, statues and other visual representations. Obviously, these are more easily defined than the more subjective images derived from words in books. If this narrow definition cannot stand up under obvious tests, then a broader one including books surely will not."

It would prevent "the continued nullification of the present law under which material which creates "sexual thoughts' or 'libidinous desires' circulates freely though illegally."

The statute is aimed to protect children, the assumption being that adults can take care of themselves.

Then the authors themselves survey the difficulties involved, and they raise doubts as to whether any such statute could really serve the purposes for which it was drafted.

"Should the age be eighteen? Why not twenty-one? If fixed at any age will not the boy or girl attaining that age grasp eagerly for the tabooed adult material? Will not the law accentuate the quest for the obscene? . . . Will not the child of eighteen years and one day zealously exhibit the filth to his junior of a day or a week or a year? If the statute is limited to pictures or other visual forms of a sex act, will it not be circumvented by the sale of nude figures in equally exciting postures, though not actually within the definition? If the law were made broader so as to prevent all portrayals of nudes, would museum paintings and statuary be pro-

scribed? Would not representations of partially clothed humans be so arranged as to appear equally pornographic? If any such law were enacted, no matter how defined, would not the very bar created thereby raise the price and increase the profit and develop the sales of the tabooed materials?

"At its best any law will only make the distribution of pornography difficult and correspondingly attractive. While a minor's pornography law would satisfy many of those who are still exercised over the effects of obscenity on adolescence, we have faith that education through the school and the home, will prove the enduring solution. To be sure the method is slow, but its benefits are lasting. It is easier to form the plastic child mind in the habits of decency than to rely upon censorship legislation.

"Education, not law, is the solution."

FEDERAL OR STATE LAWS OR NEITHER?

Before coming to what seems to me to be the final and only certain solution of the problem, there is something to be said on the question of retaining state obscenity laws, even if it may be granted that so far as federal law is concerned there should be no statutes which nullify the constitutional right of free communication.

True, the state laws can control the production of articles which may be deemed indecent, and so choke off the supply at its source, rather than in process of transportation. That would not be quite the same kind of interference with the fundamental right of free communication, as if the federal public carriers were used as the means of suppression. It would prevent manufacture instead of circulation, production rather

than distribution. But it would nevertheless be interference with the people's right to have access to information; in other words, it would in reality be an infringement of the people's right to free communication. How can that conclusion be avoided? And would that be what is really wanted? May it not be, as Leon Whipple says, "more important that the people communicate freely among themselves than that certain uncommon offenses against public morals be punished?"

Then there is another point in this connection: does not the very existence of obscenity prohibitions, whether state or federal, tend to keep in existence the public sense of indecency about sex; to put mystery and therefore allure around forbidden things relating to sex; to drive the traffic in pornographic material underground where it festers more than if it comes out in the air; to perpetuate distrust in the power of the people to be self-cleansing as to their ideas and tendencies?

The trend of this questioning, of course, is toward the abolition of all obscenity censorship. True, but what of it? Is there really any need to feel that if the country throws away its obscenity statutes it will necessarily go to the dogs forthwith, or be without means to curb the revolting activities of those who express their own perverted likings, or pander to the same qualities in others, either for the wretched pleasure they get out of it, or for the profits of this dirty traffic? I should say there was no such need. For there are two remedial procedures which have not yet been tried out on a scale or for a period of time sufficiently extended to afford opportunity for fair appraisal of their effectiveness.

One of these is the power of public scorn for people who are willing to make money selling sex dirt, the other, the power of dynamic education. Healthy, vigorous denunciation in the newspapers and through

all the natural channels for the expression of opinion such as welfare organizations, would make it mighty hard for these traffickers to continue to do business. Until we have tried the efficacy of applying a degree of social condemnation and ostracism to those who would, for gain, try to debauch young people and sully their concepts of sex, we cannot say that such a method would be useless. Public contempt for this sort of commercial filth would have the same sanitary effect in public housekeeping that sunshine and fresh air and hygienic energy have in private housekeeping.

Not that it would be an easy or a very short road to travel, for it might not be. But it would at least be procedure based upon courage and not upon fear, and it would be moving constructively toward the day when general education and fine taste will wipe out the demand for indecent sex stimulation.

There is a very practical point to bear in mind in connection with efforts as to legislation, and that is, the enormous amount of work involved in obtaining any legislative changes whatever. In time and money and labor it costs about as much to amend laws as it does to repeal them. And if what we really want is to get rid of the old laws altogether, to wipe the slate clean of the whole ineffective effort to bottle up obscenity, and put our trust in the power of "pitiless publicity" and education, then we should do it forthwith, and not waste time and precious human struggle on futile legislative tinkering, on the assumption that while we ourselves may be ready to abolish the statutory pretenses at quashing obscenity, others may not be. The compromise that is so often made with the hypothetical unreadiness of others to move ahead, forms one of the most disheartening factors in social progress. Is it not more straight-forward, as well as more effective, to

demand what we actually want rather than what we think we can get? Many a time the world moves faster than we think it is going to, so why deliberately choose a position at the tail of the procession?

THE REAL HOPE

Laws can forbid and can provide punishment, and they can safeguard the people's rights to the extent of penalizing intrusion upon those rights; but the service of laws is negative, not creative. It is only education that can be creative. And the feeling of indecency about sex, which is all that obscenity is, can be overcome only by education. Education, then, is the real hope. Education is not here used as necessarily synonymous with the public school system. For in the matter of sex education, I should say that we are still a long way off from wisdom if we depend on the public schools to do the main work in sex education. We shall first have to educate a corps of teachers—beginning with their babyhood—who will be adequate instructors. We have a minority of the right kind now, but nowhere near a majority. And that is not their fault, either. They simply belong with the general mass of people who, despite some intellectual training and advantages, are still in the grasp of an almost innate sense of fear and shame about sex. That one fact alone renders them unfit to teach children about sex. Children are wonderfully absorptive. They learn more harm than many of us dream by the very atmosphere of a person who has a "nice Nellie" attitude about sex. If I had to choose between subjecting a child to "gutter" instruction and the "nice Nellie" variety, I should certainly take the "gutter" sort. For the grossness of that kind would often induce a wholesome feeling of revulsion that would make the child turn naturally to something

more lovely; but the very refinement of the language which clothes the shame of the "nice Nellie" is misleading, and the damage it does is subtle and insidious.

Suppression has no more rightful place in sex education than it has in law, and for the same reasons. Just as the laws do not really suppress, so in education to omit or distort truths or to present closed doors to a child behind which he can look only at his moral peril, is not a constructive process, indeed it is exactly the opposite. A child who is reared on the prohibitive, inhibitive plan, and who absorbs from earliest babyhood the sense of sex shame which its parents have, may grow up to be a perfectly "moral" citizen. He may never overstep a single one of the sex conventions; he may turn his eyes away from every visual sex temptation, and virtuously close his ears to every smutty tale; he may be a devoted churchman, but he can still be an obscene person, because he would have an obscene mind. Sex will always scare and shame him, even though he experiences lawful marriage and parenthood. Obscenity is not in words or things or pictures or plays, but is in people's minds. It is a mental concept, and an emotional attitude. Theodore Schroeder says: "Pornographic interest is healthy curiosity grown morbid." It does no real good to suppress the mere evidences of pornographic interest. The only cure for pornography is to cure the morbid interest. Suppression never achieves it, any more than dark clothes are soil-proof. They simply do not show the dirt.

SMUT-PROOF CHILDREN

Confidence for the future, when sex will be understood and revered on a basis of knowledge, not of mystery, and when good taste in sex attitudes and sex

conduct will be a vital power, not a mere external convention, lies in the possibility of rearing smut-proof children. Can it be done? Yes, it not only can be done, but it is being done right now. Indeed, there have always been at least some people who have almost miraculously been immune from the impact of shameful sex concepts, and who have managed to grow up without that fear which has produced the fanatical, inquisitorial, persecuting type of social reformer. They are blessed indeed. More such people can be reared, if parents care enough about doing it, and if they begin early enough. And when those children are mature, the land they live in will need no such anachronism as obscenity laws.

Heywood Broun in his chapter in the biography of Anthony Comstock makes a very meaningful observation on this possibility of rearing smut-proof children. "The boy who shudders at the approach of smut is in greater danger than the one who can say 'I've heard that one, it isn't funny any more.'"

In other words, when we dare to bring out into the cleansing sunshine the whole pitiful stock in trade of the commercial professionals and the bewitched amateurs in pornography, we shall dare to believe that we and our children are not the only ones who can view the mean little show simply with the feeling that it is too bad for people to have so poor a notion of joy. If we need something quite practical to give us courage to believe that smut cannot really hurt us, we have only to remember that there never yet has been a professional suppressor from Comstock down, who admitted that the stuff he had to wade through in his day's work did *him* any harm. It is always some hypothetical young person who must be plucked from the danger of an obscene hell.

At about the time I wrote my little pamphlet *The Sex Side of Life* I read *The Harbor* by Ernest Poole. It stirred many people beside me. I will leave with the reader one bit of the unforgettable, though incidental, sex education which was in it.

It will be recalled that the story began with the life of a little boy who was brought up in Brooklyn. He was fascinated with the docks and spent many hours and days exploring along the water front. On one adventurous day circumstances brought him one terrifying glimpse of the sordid doings in a room where the grossest sort of sailor-man's prostitute was drunkenly making ready for her horrid business. The picture robbed him of his sleep that night, and stayed long with him.

The boy's mother was near and dear to him, though their relationship was not that of a "mother fixation." He always remembered how frequently his mother said "Fine." . . . "This heaven on earth of my mother's was made up of all that was 'fine' in humanity past and present. 'Fine, fine' she would say of some kind deed, some plan for bettering life, some book she was reading. . . . My mother sooner or later seemed to find out all I did or felt. . . . It was not until two years after that drunken woman disaster that I suddenly told my mother about it. I remember that she did not chide. Instead, she caught the chance to draw out of me all I had learned from the harbor. I talked to her long that night, but she said little in reply. I can remember, though, how she came to me a few days later and placed a 'book for young men' in my hands.

"'You are only twelve,' she said. 'It's a pity. But after what you have seen, my son, it is better that you should know.'

"She did this twenty years ago. It was far in ad-

vance of what most parents did then, or are doing even now for their children. And it threw a flood of light into the darkest place in my mind, swept away endless forebodings, secret broodings over what until then had seemed to me the ugliest, the dirtiest, and the most frightening thing I had found in life.

" 'When you meet anything ugly or bad,' she told me, 'I don't want you to turn away at once, I want you to face it and see what it is. *Understand it and then leave it, and then it won't follow you in the dark.*' "

And so, I would say that it is finally not fear, but our faith in the capacity for fineness—our own and other people's—that can be counted upon to see us through, gloriously.

APPENDICES

APPENDIX NO. 1

SIGNERS OF THE SPECIAL REQUEST TO THE POSTMASTER GENERAL TO REMOVE THE BAN ON "THE SEX SIDE OF LIFE"

MRS. MILDRED ADLER, Braddock, Pa.—W. H. BURGER, Secretary of New York State Executive Committee of Y. M. C. A.—HENRY M. BUSCH, Union Theological Seminary, Assistant Director of Field Work.—DR. C. W. BUTMAN, Hebron, Indiana.—REV. E. HERBERT BROYLES, Upper Darby, Pa.—MISS MARY A. BROWNELL, Ass't Director of National Organization for Public Health Nursing.—MRS. SONIA JOSEPH BRONSON, New York City.—EDWIN S. BICE, Longmont, Colorado, of Bice and Van Zant, Engineers.—BERTHA A. BENNETT, Director of Physical Education, Washington University, St. Louis.—MARGARET E. HAUKE, Assistant Director of Physical Education, Washington University.—MRS. LEWIS D. BEMENT, Deerfield, Mass.—DR. KATE W. BALDWIN.—KENDALL BANNING, Editor of *Popular Radio Magazine*, New York.—MRS. CAROLINE LEXOW BABCOCK, Nyack, N. Y.—REV. C. E. CRAIK, Assistant Pastor, Grace Church, Orange, N. J.—ELIZABETH ELLSWORTH COOK, New York City.—MRS. JAMES S. CRAIK, Birmingham, Alabama.—MR. MAURICE COLE, Sheffield, England.—GRACE ISABEL COLBRON, New Canaan, Conn.—ALBERT B. CLAY, Scranton, Pa., District Manager of New England Mutual Life Insurance Co.—MRS. MARY MOWBRAY CLARKE, Proprietor of Sunwise Turn Book Shop, New York City.—REV. THOMAS ELIOT CALVERT, Church Mission of Healing, New York City.—EDWARD H. DICKINSON, Union Theological Seminary, New York City.—REV. ALEXANDER D. DODD, Minister of the Federated Church, Bloomfield, Conn.—MARIE G. DENECKE, Buffalo, N. Y.—MARY DENE, Buffalo, N. Y., college student.—DR. HILBERT F. DAY, Cambridge, Mass.—ARTHUR W. DAVIDSON, Chevy Chase, Md., Attorney.—MRS. SARAH P. EVARTS, Judge Baker Foundation, Boston.—HARRY K. EBY, Zanesville, Ohio, Muskingum College, Dep't of Psychology and Sociological Research.—WILLIAM FLOYD, Editor of *The Arbitrator*, New York City.—WILLIAM J. FIELDING, Newark, N. J., Author of *Sanity in Sex* etc.—HON. WOODBRIDGE N. FERRIS, U. S. Senator from Michigan.—ETHEL R. FEINMAN, Head of Emanu-El Sisterhood, San Francisco.—REV. FREDERICK B. GRUEL, Brookline, Mass.—FLORENCE GARVIN, Wilmington, Delaware, Daughter of Ex-Governor of Rhode Island.—DR. A. L. GOLDWATER, New York City.—LAURA B. GARRETT, New York City, Teacher and lecturer.—EDMUND A. GARRETT, New York City, of the Bartlett Press.—MRS. MYRA P. GALLERT, Beverly Hills, Cal.—MANLEY D. HAMRICK, Birmingham, Ala.—ELIZABETH C. HAYS,

Chief Social Worker, Child Guidance Clinic, St. Paul, Minn.—MRS. A. E. MAY HEWLETT, Pres. of Saskatchewan Home-makers Club, Cannington Manor, Saskatchewan, Canada.—MRS. MARGARET HELBURN, (Mrs. Willard) Cambridge, Mass.—VIRGINIA T. HYDE (Mrs. Maxwell) New York City.—DR. BERTHA F. JOHNSON, Granville Summit, Pa.—MRS. MYRTLE F. KUHLMAYER, San Francisco.—DR. ANTOINETTE F. KONIKOW, Boston, Mass.—H. J. KAYLER, Windber, Pa.—FRANK KIENDL, Attorney, Brooklyn, N. Y., Teacher of boys in Y. M. C. A.—DR. LOUIS RENE KAUFMAN, New York City.—MRS. C. F. KALER, Chicago.—MRS. GENEVRA LOHMAN, Pawhuska, Oklahoma, Agent for University Extension Work in Agriculture and Home Economics.—ROBERT A. LESHER, New York City.—MRS. GRACE LEITCH, Ass't. Probation Officer, Los Angeles.—MABEL LEE, Professor of Physical Education, University of Nebraska, Lincoln, Neb.—J. W. LEECH, Attorney, Ebensburg, Pa.—DR. WILFRED LAY, Flushing, L. I., N. Y., Author of *Man's Unconscious Conflict*, etc.—C. H. LANDER, George Peabody College for Teachers, Nashville, Tenn.—JAMES V. LATIMER, Missionary, Shanghai, China.—DR. G. E. MEYERS, Medical Director of Compton Sanitarium, Compton, Cal.—MRS. PEARL S. MORELAND, Boulder, Colorado.—CHARLES E. MINER, Executive Secretary of the Missouri Social Hygiene Association.—REV. H. S. MACKENZIE, Congregational Church, Prescott, Arizona.—LILA McNUTT, Psychiatric Social Worker, University of Minnesota, Minneapolis.—WILMA K. MCFARLAND, Editor of *The Portal*, one of the Sunday School publications of the Methodist Episcopal Church.—MARY EDNA MCCHRISTIE, Referee in Court of Domestic Relations, Cincinnati.—MRS. P. L. DEPUY, Fredonia, Kansas.—MRS. EDWARD L. PRESCOTT, West Roxbury, Mass.—PROF. AND MRS. JAMES S. PRAY, Harvard University.—MISS G. MARION POTTER, Superintendent of Nurses, St. Lawrence State Hospital, Ogdensburg, N. Y.—PROF. JESSIE PHELPS, Michigan State Normal College, Ypsilanti, Mich.—DOROTHY PECK, Scranton, Pa.—DR. MARTIN PECK, Chief of Out Patient Dep't., Psychopathic Hospital, Boston.—MRS. ALICE PARK, Palo Alto, Cal.—DR. KENNETH R. PARMENTER, Colorado Springs, Colorado.—MRS. RHODA RYPINS, San Francisco, Former Director of Research of Women's Co-operative Alliance, Minneapolis.—MARGARET M. RUSSELL, Dean of Girls, High School, Colorado Springs, Col.—DR. W. F. ROBIE, Baldwinville, Mass., Author of *Rational Sex Ethics* etc.—LAYAH RIGGS, Former Social worker at Denison House, Boston.—REV. ROBERT J. RAIBLE, Second Church, Salem, Mass.—ALICE SWACKHAMER, Public Health Nurse, Oneonta, N. Y.—R. M. STEVENSON, Los Angeles, Cal.—FRANK STEPHENS, Arden, Delaware.—MRS. A. I. STEPHENS, Evanston, Ill., Active in Chicago Woman's Club.—MRS. EDWARD STEIN, New York City.—MRS. JAMES N. SPEERS, JR., Montclair, N. J.—WALTER M. SMITH, Librarian of Wisconsin University.—MRS. SARAH H. B. SMITH, Chairman of School Board, Claremont, Cal.—MEANENA V. SMITH, Minneapolis.—MRS. DWIGHT L. SMITH, Chicago.—C. V. SMITH, Haddonfield, N. J.—AUSTIN B. SMITH, Librarian of Kansas State College, Manhattan, Kans.—BLANCHE E. SHAFFER, Dean of Home Economics, North Carolina College for Women.—DR. BERTHA SELIGE, Pres. of Good Health Club, Miami, Florida.—DR. WALTER SCHILLING, Stanford University Hospital, San

Francisco.—MRS. JAMES N. SCHALLENBERGER, Cleveland, Ohio, Member of Republican State Committee. DR. JEANETTE THROCKMORTON, Des Moines, Iowa.—DR. MARIANNA TAYLOR, Boston.—HARRY E. WOLF, Hagerstown, Md.—MRS. GRAFTON L. WILSON, Cambridge, Mass.—MISS B. M. WILLIAMS, Buffalo, N. Y.—LEONARD WICKENDON, Flushing, L. I., N. Y.—MRS. EDWARD CLARK WHITING, Cambridge, Mass.—REV. AND MRS. ELIOT WHITE, Grace Church, New York City.—DR. THEODORA WHEELER, Rochester, Minn.—HILDA WAGNER, Milwaukee.—GOODWIN P. WATSON, Instructor in Religious Education, Union Theological Seminary, New York City.—HOPE WASHBURN, Assistant in Child Guidance Clinic, Duluth, Minn.—MRS. HERBERT N. WALTER, New York City.—MAUDE L. WARNER, A.B., D.O., Cincinnati.—EDWIN C. WALKER, New York City.—MRS. JOSEPH J. WALKER, Dobbs Ferry, N. Y.—MRS. R. H. WILLIAMS, Terryville, Conn.—DR. EVANGELINE W. YOUNG, Instructor in Social Hygiene, School of Public Health Nursing, Simmon's College, Boston.—LOUISE ZABRISKIE, R. N., Assistant Field Director of Maternity Center, New York.—CARL ZIGROSSER, Mamaroneck, N. Y., Editor of *The Modern School*.—MRS. CHARLES ZUEBLIN, International Students' Union, Geneva, Switzerland.

APPENDIX NO. 2

SUPPRESSED TESTIMONY IN THE "SEX SIDE OF LIFE" TRIAL

The following representative selections from the organizations and individuals ordering, using, or endorsing the pamphlet, indicate the character of its circulation.

The National Council of the Young Men's Christian Association; Association Press Book Shop of the National Council of the Y. M. C. A., (These two "Y" centers have ordered repeatedly by the 100. One order for 600 copies immediately followed the indictment); The Canadian Y. M. C. A.; State and city "Y" branches in Illinois, Oklahoma, Virginia, Maine, Arkansas, Wisconsin, Kansas, Michigan, Connecticut, California, Colorado, Iowa, Maryland, Massachusetts, Missouri, New York, New Hampshire, New Jersey, Ohio, Texas, Washington and Hawaii; Y. M. C. A. camps and branches in colleges; The Young Women's Christian Association in various states, notably in Illinois, where many hundreds have been ordered by Mrs. W. W. Charters for her classes of girls.

Welfare organizations such as: The Maternity Center Association of New York City; National Organization for Public Health Nursing, New York; Infant Welfare Society of Minneapolis; Family Welfare Society, Ithaca, N. Y.; Family Society of Philadelphia; The Family Society, New York City; Women's Co-operative Alliance, Minneapolis; Bureau of Social Welfare, Charleston, S. C.; Associated Guidance Bureau, New York City; Child Guidance Clinics of Minneapolis, St. Paul and Los Angeles; Child Study Association of America (lists the pamphlet in its recommend bibliography); All-Philadelphia Child Guidance Clinic; Parents' Council of Philadelphia; Connie Maxwell Orphanage, Greenwood, S. C.; New Hampshire Children's Aid and Protective Society; New England Home for Little Wanderers; The Habit Clinics, Boston; Juvenile Aid Society, Philadelphia; Wayne County Clinic for Child Study, Detroit; Federation Settlement, New York City; Children's Memorial Clinic, Richmond, Va.; Juvenile Court of Cook County, Chicago; Jewish Orphan's Home, Los Angeles; Children's Home, Elmira, N. Y.; University of Minnesota Institute of Child Welfare; Pennsylvania School of Social and Health Work, Philadelphia; Traveller's Aid Society, Los Angeles; Tuberculosis Association, Portland, Oregon; Council of Social Agencies, Cincinnati.

Hospitals and clinics such as: Boston Psychopathic Clinic (Out Patient Dep't. under Dr. Martin Peck); St. Christopher's Hospital for Children, Phila.; Neurological Clinic, Mass. General Hospital, Boston; Psychopathic Hospital, Winnepeg, Canada, (Dr. Musgrove); St. Lawrence Hospital, Ogdensburg, N. Y.; St. Elizabeth's Hospital, Washington, D. C.

Educators and educational institutions such as: American Association of University Women, Washington, D. C., (orders pamphlet by the hundred and lists it in its bibliographies); University of Iowa, Division of Child Study and Parent Education; California State Dep't. of Education, Division of Parent Education, Los Angeles; University of Minnesota, Minneapolis, through several departments; Beloit College, Beloit, Wisconsin; Groton School, Groton, Mass; Winnetka Board of Education, Winnetka, Ill.; Sidney Lanier Camp, Eliot, Maine; Camp Wyanoke, Wolfboro, N. H.; Mt. Holyoke College, South Hadley, Mass.; Franklin High School, Los Angeles; Missouri College of Agriculture, Extension Service, Columbia, Mo.; New York University, School of Education, New York City; Duke University, Durham, North Carolina; University of Michigan, Ann Arbor, Mich.; High School, Pasadena, Cal.; Wellesley College Library, Wellesley, Mass.; Benjamin Franklin School, Lakewood, Ohio; Registrar of Women, Harvard University; Russell Sage College (Director of Physical Education); University of Toledo, Ohio. (Prof. C. J. Bushnell and A. W. Trettien use it in quantity in the Courses in Sociology); Cleveland School of Education, Cleveland, Ohio; Swarthmore College, Swarthmore, Pa.; Bronxville Public Schools (Willard W. Beatty, Superintendent); The Shipley School, Bryn Mawr, Pa.; Ohio State University, Columbus, Ohio; Seth Low Junior College, Columbia University, Brooklyn, N. Y.; Colegio Bautista Howard, Pueblo, New Mexico; Miss Wood's Kindergarten and Primary Training School, Minneapolis (has ordered many hundreds); Emory University, Georgia; Parson's College, Fairfield, Iowa; Voorhis School for Boys, San Dimas, California; Hood College, Frederick, Md.; State Normal College, Kent, Ohio; Department of Education, St. Paul, Minn.; Oberlin College, Oberlin, Ohio; University of Oklahoma, Extension Work (Ginevra Lohman); Prof. Norman E. Himes, Simmon's College, Boston; Public Library, Cleveland (uses many copies); American Social Hygiene Association, New York City; National Committee for Mental Hygiene, New York City; Illinois Social Hygiene League, Chicago; Society for Mental Hygiene, Waterbury, Conn.

State and public health departments and public officials such as: The United States Public Health Service, Washington, D. C.; Various members of Congress; Minnesota Department of Health, Division of Venereal Disease; Cumberland County Public Health Association, Cumberland Mills, Me.; Department of Health, San Fernando, California; Public Health Center, Oakland, California; Public Welfare Commission, Manila, P. I.; State Board of Health, Columbia, S. C.; Lafayette County Farm Bureau, Higginsville, Mo.; Cass County Farm Bureau, Harrisonville, Mo.

Physicians, such as: Dr. Walter Schilling, Stanford University Medical School, San Francisco; Dr. John H. Taylor, Boston; Dr. Austen Fox Riggs, Stockbridge, Mass. (neurologist); Dr. Josephine Jackson,

Pasadena, Cal. (author of *Outwitting Our Nerves*); Dr. Evangeline W. Young, Boston (uses it by the 100 among students and patients; Dr. Marianna Taylor, Boston; Dr. G. E. Meyers, Los Angeles, Cal.; Dr. Theodora Wheeler, Rochester, Minn.; Dr. Louis René Kaufman, New York City; Dr. Bertha F. Johnson, Granyille Summit, Pa.; Dr. Kate W. Baldwin, Philadelphia; Dr. Nadina R. Kavinoky, Los Angeles; Dr. Harry Wallace Gauchat, Canton, Ohio; Dr. R. T. Devereux, Swarthmore, Pa.; Dr. Leonard Blumgart, New York City; Dr. Sylvia Allen, Charleston, S. C.; Dr. T. R. Buttrick, Detroit; Dr. Antoinette Konikow, Boston; Dr. L. D. Rogers, Chicago; Dr. T. R. Robie, White Plains, N. Y.; Dr. James J. Walker, Chicago.

Church organizations and clergymen such as: The Union Theological Seminary (orders repeatedly received from many members of the faculty. The student's book shop has sold thousands); The Fellowship for a Christian Social Order, New York City; United Church Publishing House, Toronto, Canada; Church Recreation Service, Chicago; The Religious Book Shop, Concord, N. H.; Girls' Friendly Society of America, New York; Emanu-El Sisterhood, San Francisco; Church Home for Children, Los Angeles; Young People's Service League, Diocese of North Carolina; School of Religious Education, Boston University; Church Mission of Help, Utica, N. Y.; Anderson Presbyterian Church, Phila.; Bethel Evangelical Church, Detroit, Mich.; *The Presbyterian Magazine*, New York City; Church of Christ, Dartmouth College, (Roy Chamberlain, pastor), Hanover, N. H.; First Baptist Church, Oneonta, N. Y.; Mt. Hollywood Congregational Church, Los Angeles; First Presbyterian Church, Wyandotte, Mich.; Rev. Milton Hess, Pelham, N. Y.; Rev. George M. Stockdale, Yonkers, N. Y.

APPENDIX NO. 3

REPRESENTATIVE EDITORIALS ON THE "SEX SIDE OF LIFE" CASE

THE NEW YORK TELEGRAM, April 24, 1929

It was her (Mrs. Dennett's) misfortune that she wrote a piece so true and beautiful that the medical professions, the Y. M. C. A., schools, seminaries, broadcast it.

Not one of the many representatives of church, social, medical and other organizations present was permitted, however, to testify to the healthy virtues of Mrs. Dennett's little book.

Judge Burrows, in fact, assumed a frowning and at times partisan manner in rejecting the proffered testimony.

Five years prison and fine of \$10,000!

Surely the higher court will cure the inquisitorial injustice of such a verdict by prompt reversal.

NEW YORK HERALD TRIBUNE, April 25, 1929

When James E. Wilkinson, Assistant United States Attorney, told a Brooklyn jury on Tuesday that Mrs. Mary Ware Dennett's pamphlet, *The Sex Side of Life*, was "pure and simple smut," he implied, by his own logic, that every parent is smutty, that sex is smutty, that the system by which the race is perpetuated is smutty. That, it seems to us, is smutty logic; it is the attitude of mind which has created fear and shame about sex, which brings children up in the dark, unnecessarily uninformed and hence, often, morbidly curious.

SAN FRANCISCO NEWS, April 30, 1929

This miscarriage of justice has aroused citizens everywhere to the menace of an archaic and unscientific attitude toward sex education. If the attitude of the Brooklyn judge and jury is representative of the federal government's attitude, then this law can be invoked successfully against practically all literature on the subject.

We do not believe that the enlightened American public will stand for such suppression. We do not believe that educators, social workers, physicians and parents will let the government and courts—much less the so-called societies for prevention of "vice"—keep them from their duty of providing intelligent sex education for the young.

NEW YORK TIMES, April 25, 1929

A jury's verdict that a pamphlet which has been in circulation for ten years, with the approval of parents, teachers and physicians,

conveying knowledge about sex, is "obscene," shows once more in what a confused and unsatisfactory condition is the law covering such cases.

JUDGE, May 20, 1929

Seldom have intelligent, conservative people revolted so spontaneously against a court decision as they have against the conviction of Mrs. Mary Ware Dennett.

THE INTERNATIONAL JOURNAL OF RELIGIOUS EDUCATION

June, 1929

Many leaders of youth throughout the country were stunned recently when they read in the morning paper that Mrs. Dennett, the author of a pamphlet on sex education entitled *The Sex Side of Life*, had been found guilty by a jury of sending obscene matter through the mails, and faced a possible heavy fine or jail sentence. They were stunned because they knew the pamphlet, had seen it used effectively with groups of wholesome boys and girls, and were aware that Mrs. Dennett, a clean-minded and gracious grandmother, had written the pamphlet in the first place for her own two boys. Some perhaps were shocked to recall that they had sent it by mail themselves!

Editorials and articles have appeared in many other leading magazines and newspapers among which are the following:

The Literary Digest
The Survey
The New Republic
Woman's Journal
The Christian Leader
The World Tomorrow
Unity
Washington (D. C.) News
Chicago Herald-Examiner
Philadelphia Inquirer
Hastings (Neb.) Tribune
New Haven (Conn.) Times-Union
Staunton (Va.) News Leader
Cleveland (Ohio) News
Dubuque (Iowa) Herald-Times
Hattiesburg (Miss.) American
Keene (N. H.) Sentinel
Torrington (Conn.) Register
Columbus (Neb.) Telegram
Passaic (N. J.) News
Portsmouth (Va.) Star
Augusta (Ga.) Herald
Superior (Wis.) Telegram
Bucyrus (Ohio) Forum
Passaic (N. J.) Herald
Auburn (N. Y.) Advertiser
Hamilton (Ohio) News
Lynchburg (Va.) Advance

Sioux City (Iowa) Tribune
Wheeling (W. Va.) Register
Stamford (Conn.) Advocate
Hickory (N. C.) Record
Meriden (Miss.) Star
Zanesville (Ohio) Recorder
Clinton (Mass.) Union
Coshocton (Ohio) Tribune
North Tonawanda (N. Y.) News
Old Orchard (Maine) News
The Pathfinder



