

✓
The Prosecution of
MARY WARE DENNETT
for "Obscenity"

- ☞ After distributing her pamphlet "The Sex Side of Life" for 10 years, Mrs. Dennett was brought to trial by Post Office officials and convicted in the Federal Court at Brooklyn for sending "obscene matter"—her pamphlet—through the mails. She was sentenced to pay \$300 fine or serve 300 days in jail.
 - ☞ Mrs. Dennett's pamphlet, written first for her own growing boys, is endorsed by educators, clergymen and doctors and is used in schools and colleges.
 - ☞ The conviction has been appealed to the Circuit Court of Appeals, and will be taken, if necessary, to the Supreme Court to determine whether frank sex education is "obscene."
 - ☞ A special national committee has been formed by the Civil Liberties Union to carry up the appeal.
 - ☞ If you will join the fight on such censorship and repression, fill out and send in the coupon on the last page.
-

AMERICAN CIVIL LIBERTIES UNION
100 FIFTH AVENUE
NEW YORK CITY

The Prosecution of Mary Ware Dennett for "Obscenity"

Who Determines Obscenity?

A FEDERAL STATUTE passed in 1873 on the urging of Anthony Comstock, makes it a crime to send any "obscene, lewd, or lascivious matter" through the U. S. mails. Determination of what is obscene rests in the first instance with the legal adviser to the Post Office Department — the Solicitor. If he declares a book or pamphlet obscene, postmasters are notified not to accept it for mailing and when detected in the mails it is returned to the sender or destroyed.

The Post Office Department may stop there. Or it may request a U. S. District Attorney to bring a prosecution against the person sending it. If a person so prosecuted is acquitted and the book or pamphlet found not to be obscene, the Post Office Department may still stand by its ruling and refuse to carry it in the mails. The only relief in such cases is a suit in court to enjoin the Department from refusing to carry it.

The Post Office Department's authority in law does not rest upon any general censorship powers. Its rests only on the discretion given it by Congress to decide what the mails may carry. Keep the mails pure, said Congress. A book or pamphlet declared obscene by the Post Office may still be sent freely by express or sold in book stores. But it may be attacked through a prosecution under state laws against obscene literature. If that is done and a conviction results, the offending book or pamphlet may be seized and destroyed and its further sale or shipment becomes a crime in the state where the conviction was obtained, but not elsewhere.

Thus we have the amusing situation of seeing books declared obscene by the Post Office Department and refused transportation in the mails which go freely by express, or which may be declared to be not obscene by a jury in a criminal court. Contrary-wise we have books declared obscene by a jury in court which the Post Office allows freely to pass through the mails. And besides this conflict of views on obscenity, the Customs authorities under an old law preventing the importation of obscene books may guess again on one side or the other. Even further, the Bureau of Copyrights at Wash-

ington is forbidden by law to copyright a book it holds to be obscene. But it has never yet refused a copyright on that ground!

Such is the system in this country of controlling the sale and distribution of obscene literature. Nobody raises the issue when it is confined to obviously smutty matter. Only when it reaches out to serious works on art and science is it challenged. There are those who oppose the discretion given the Post Office Department by Congress, preferring to see the determination of obscenity left entirely to the courts, not to a single lawyer at Washington.

The Prosecution of Mrs. Dennett

This system of censorship and control is challenged dramatically in the prosecution of Mrs. Mary Ware Dennett of Brooklyn for sending through the mails her little twenty-four page pamphlet "The Sex Side of Life". Mrs. Dennett wrote it in 1915, first as a plain statement of the facts of sex for her two adolescent boys.

The publisher of the *Medical Review of Reviews* saw the manuscript and offered to publish it. It appeared in full in the issue of February 1918 with the editor's commendation and expressed hope that it would be reprinted in pamphlet form. It was. Mrs. Dennett was well known in her public activities for birth control and her pamphlet attracted attention. It served its purpose so well that it went into seven editions. Over 35,000 copies were sold during the last ten years to teachers, social workers, ministers, Y.M. and Y.W.C.A. secretaries, doctors and parents. It has been used in public schools and colleges, in clubs and classes for young people. It has received warm endorsement from leaders in the teaching and medical professions.

But not from the Post Office Department. As early as 1922 the Department ruled that it was obscene, and prohibited its distribution by mail. But Mrs. Dennett went on mailing it in sealed envelopes, which the Department could not legally examine. Then in 1929 after some complaint was said to have been made by a member or members of the Daughters of the American Revolution, the Department rigged up a decoy to order a pamphlet from Mrs. Dennett. It invented a fictitious woman, had stationery printed with her name and sent for a

pamphlet. Its receipt was the evidence that the Department wanted.

An indictment was sought and secured in December 1928 in the Federal District Court which sits in Brooklyn. Mrs. Dennett's home in Astoria, from which the pamphlet was mailed, is in that district. The case came on for hearing before Federal Judge Moscowitz in January on motion to quash the indictment. The judge was troubled. He was unwilling to decide himself whether the pamphlet was obscene, and resorted to an extraordinary proceeding. He called in to sit with him on the bench when arguments were made three clergymen—a Catholic priest, a Jewish rabbi and a Protestant minister. His stated object in doing so was "to aid the conscience of the court on the matter". The court room was crowded with doctors, teachers and clergymen, many of them ready to testify to the merits of the pamphlet. And the professional vice crusaders were there, too.

Judge Moscowitz took the issue under advisement. What the reverend gentlemen decided was not disclosed. But Judge Moscowitz decided that further oral proceedings would only contribute to what he regarded as unfortunate publicity. He dropped the plan to hear expert testimony, and ordered all testimonials and criticism submitted in writing—twelve on each side. After deliberating over the case alone—apparently without benefit of clergy — he declined to quash the indictment.

The case came on for trial before a jury in April, 1929 with Judge Warren B. Burrows sitting. The prosecution was handled by assistant United States District Attorney James E. Wilkinson, the defense by Morris L. Ernst of New York, who volunteered his services to Mrs. Dennett. Mr. Ernst's efforts to introduce testimony showing the motive in writing the pamphlet, its wide endorsement by educators and doctors, and its similarity to publications of the U. S. Public Health Service were all blocked by the judge. Only the pamphlet itself was put before the jury.

The pamphlet is a brief little work of only 24 pages. It contains a foreword by the editor of the *Medical Review of Reviews* and a three page introduction for elders. This introduction characterizes the pamphlet completely. Mrs. Dennett says:

“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’, and 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 precedents in most sex literature for children.”

The “Explanation for Young People” deals with reproduction in the animal and plant world, and gives the physiology of sex organs (with charts) and of the sex relation. It treats the problems of self-abuse and venereal disease. It is clear, simple, clean. Yet the District Attorney characterized it as

“pure and simple smut”. He added “If I can stand between this woman and the children of the land, I will have accomplished something”.

The jury took forty minutes to bring in a verdict of guilty. The judge in sentencing Mrs. Dennett to a fine of \$300 said:

“It did not come to my attention until yesterday afternoon, and I verified it this morning, that the ban was placed upon 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 it 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 mails ever since.”

Mrs. Dennett announced at once that she would appeal and that in no event would she pay the fine or allow it to be paid for her, preferring to go to jail instead as an example of the folly of censorship.

The case, which goes to the Circuit Court of Appeals at New York, will not be heard until the fall of 1929. If the decision there is adverse, it will be carried to the United States Supreme Court. The grounds for the appeal are:

1. That the pamphlet is not in fact obscene as a matter of law, and the court, therefore, should have dismissed the indictment or directed a verdict of acquittal.
2. The district judge erred in refusing to permit testimony as to the distribution of the pamphlet and its use.
3. The “obscenity” law under which the indictment was brought is unconstitutional in violating freedom of the press, and in not making the offense specific.

The Defense Committee

Immediately upon news of the conviction a defense committee was formed to appeal the case. The American Civil Liberties Union organized it, contributing its facilities for the work. Morris Ernst and his associates volunteered to do the legal work without fee.

The committee, known as the MARY WARE DENNETT DEFENSE COMMITTEE, is composed of leaders in educational, religious and medical work. It is intended to enlist about one hundred members on the committee. The present members are:

ROY W. HOWARD, newspaper proprietor, temporary chairman; CORLISS LAMONT, Asst. Professor of Philosophy, 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 FLENNIKEN, 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 Co-ordination of Women's Interests; RUPERT HUGHES, author.

FANNIE HURST, author; BASCOM JOHNSON, director, Division of Legal and Protective Measures, American Social Hygiene Association; EDITH J. 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.

Public Opinion

Newspaper comment all over the country has been highly critical of the prosecution. Very little has been said for the government's case. Unsolicited letters have come in by the score from persons who have used Mrs. Dennett's pamphlet with their children, and from teachers and social workers.

The case has aroused a committee of women to protest against the censorship exercised by the Post Office Department under authority of Congress. It proposes to introduce a bill taking away from the Department those powers. Mrs. Dennett's pamphlet has been printed again in a new edition to meet the demands for it and is being distributed through book-stores and by express.

The importance of the case in court far exceeds the issue of the pamphlet itself. It involves the whole method of determining obscenity, the rules of evidence in trials, and the constitutionality of the law under which the Post Office Department operates its censorship. The consequences of the decision will not only affect the distribution of Mrs. Dennett's pamphlet but other frank literature on sex education. And they may reach out to curtailing the powers of the Post Office Department to determine what is obscene.

A book describing the entire case and the issues which it raises is in the course of preparation by Mrs. Dennett herself and will be published during the summer by the Vanguard Press, 100 Fifth Avenue, New York City, at a price of \$2.00. Those who care to order copies in advance may do so through the American Civil Liberties Union.

Funds for the expenses of printing the record, for organizing the defense and for lawyers' expenses are needed. Contributions should be sent to Corliss Lamont, Treasurer, Room 1403, 100 Fifth Avenue, New York City.

MARY WARE DENNETT DEFENSE COMMITTEE

Room 1403, 100 Fifth Avenue, New York City

1. I enclose \$..... to aid in the appeal of Mrs. Mary Ware Dennett.

2. Please put me down for copies of the book by Mrs. Dennett for which I enclose \$..... (at \$2.00 a copy).

Signed.....

Address.....

City..... *State*.....