

Chapter Eighteen

LEAN HUNGER AND GREEN THIRST

*"All that we know who he in gaol
Is that the wall is strong,
And that each day is like a year,
A year whose days are long"*

OSCAR WILDE



LOOKING back upon this period fraught with emotional distress, I have no regrets. But, looking ahead, I am grateful that there looms no necessity for repeating those passionate, dangerous, and menacing days.

Out of the raid four separate cases resulted. Ethel was charged with violating Section 1142 of the Penal Code, designed to prevent dissemination of contraceptive information, Fania with having sold an allegedly indecent book entitled *What Every Girl Should Know*, I, first, with having conducted a clinic in violation of the same Section 1142, second, with violating Section 1530 by maintaining a public nuisance.

I claimed that Section 1142 which forbade contraceptive information to, for, and by anyone was unconstitutional, because no state was permitted to interfere with a citizen's right to life or liberty, and such denial was certainly interference. Experience had shown it did the case no good merely to defend such a stand in a lower court, it must be carried to a higher tribunal, and only a lawyer versed in whereases and whatsoever and inasmuchases could accomplish this. But I was still hopeful of finding one who was able to see that the importance of birth control could not be properly emphasized if we bowed too deeply before the slow and ponderous majesty of the law.

The attorney who offered himself, J. J. Goldstein, had a back-

ground which made him more sympathetic than other lawyers, even the most liberal. He was one of those young Jewish men of promise who had been guided through adolescence by Mary Simkhovitch, founder of Greenwich House, and Lillian Wald, founder of the Henry Street Settlement. The seeds of social service had been planted in him, his legal training only temporarily slowed down their growth.

J J had placed himself in a difficult position for a youthful Tammany Democrat, some day to be a magistrate, he might have been forgiven more easily had he received a larger fee. Though he had to be convinced that we declined to have anything to do with political wire-pulling, he fought for us valiantly.

November 20th we pleaded not guilty and trial was set for November 27th. J J endeavored to have the three of us tried simultaneously, but the Court of Special Sessions would have none of it. Then he asked for a jury trial, which could be granted at the discretion of the Supreme Court, application was denied. An appeal to the Appellate Division was dismissed, writs of habeas corpus were dismissed, another appeal to the Appellate Division was dismissed, adjournments pending appeal were urged but not granted. Indeed I was being swiftly educated in the technicalities of criminal law.

I felt like a victim who passed into the courtroom, was made to bow before the judge, and did not know what it was all about. Every gesture had its special significance, which must not be left out if appeals were to be possible. We had to make many more appearances than would otherwise have been necessary, everything had to be correctly on the record.

Evening after evening J J rehearsed the arguments he was going to present and directed me to respond to questioning. I did not understand the technicalities and begged to be allowed to tell the story in my own way, fearful lest the heartaches of the mothers be lost in the labyrinthine maze of judicial verbiage. But he maintained if the case were to be appealed to a higher court, it had to be conducted according to certain formalities.

"Why should it have to be in legal language?" I demanded. "I'm a simple citizen, born in a democratic country. A court should also listen to my plea expressed in plain language for the common people. I'm sure I can make them understand and arouse their compassion."

He reiterated that I could not address a court as though I were trying to instil my views in an individual "You can't talk to them that way You'll have to let me talk"

"But that's the way I talk and I'm the accused"

I fully expected that if I were permitted to set forth my human version of the Brownsville tragedies, no appeal would be required But J J knew the courts and had no such hopes He was still doubtful of any success before the lower tribunal, and was still unable to see my point, counting chiefly on technicalities to win the case

J J had formally objected to having our trial set during the November session because Justice McInerney was due to preside that month, and at previous trials he had expressed biased opinions This objection was overruled

The strictly legal method having failed, I resorted to my own and wrote Justice McInerney an open letter

As an American pledged to the principles and spirit in which this Republic was founded, as a judge obligated by oath to fair and impartial judgment, do you in your deepest conscience consider yourself qualified to try my case?

In those birth control cases at which you have presided, you have shown to all thinking men and women an unflinching prejudice and exposed a mind steeped in the bigotry and intolerance of the Inquisition

To come before you implies conviction

Judge McInerney "made application to the District Attorney to be taken off this case"

Trial was marked for January 4, 1917, but the first case, that of Ethel, was reached so late in the afternoon it had to be postponed Four days afterwards, in spite of our attempts to be tried together, she appeared alone She freely admitted she had described birth control methods but denied the District Attorney's accusation that our ten-cent registration fee made it a "money making" affair This and other sensational charges, such as "the clinic was intended to do away with the Jews" were often inserted in the records for reporters to pick up, make good stories of them, and in consequence influence newspaper readers against us They were great stumbling blocks

Our most important witness, Dr Morris H Kahn, physician in

Bloomingdale's Department Store who also maintained a private clinic where he gave out birth control information, was ready to testify, but his evidence was ruled out as "irrelevant, incompetent, and immaterial" To be sure the charge against Ethel was as a lay person, nevertheless, it was extraordinary that we could get no hearing for a doctor J J was allowed only fifteen minutes to present his argument on the unconstitutionality of Section 1142, and the presiding Judge decided that the court was bound to hold it constitutional on precedent, regardless of argument

Ethel was found guilty

In the two weeks before sentence was to be pronounced we debated what she and I should do Perhaps it could be stayed, which would settle everything, but we each had to be prepared for either a short term of imprisonment or a long one In case of the former, submission was the wiser course, because the public would not consider it of sufficient moment to bestir itself, in the latter event, a hunger strike seemed indicated, but, again, only if sufficient attention could be called to it

The New York *World* had the most liberal policy of all the leading morning dailies, and therefore appeared to offer the best likelihood of being favorably disposed I approached one of its editors and asked whether he would print our entire story if I were to give him a scoop and guarantee accuracy He agreed, and assigned us a special reporter

Ethel was sentenced January 22nd to thirty days in the Workhouse on Blackwell's Island in the East River In spite of our discussion over this possibility, she was utterly shocked, and exclaimed, "I'm going to go on that hunger strike"

After spending the night in the Tombs, she was returned the next morning to the Federal District Court of Brooklyn on a writ of habeas corpus as a means of suspending sentence pending appeal Daylight had brought no change in her determination to continue with the hunger strike "I haven't had anything to eat yet," she declared, and, remembering the tale that one hunger striker had received nourishment in her cups of water, she added, "and, if they send me back, I shan't drink anything either"

Neither J J nor I considered such a short sentence worth break-

ing your life for Furthermore, the cause did not mean to Ethel what it did to me "Think this over very carefully," I reminded her "A hunger strike is not necessary, and if you once start you'll have to keep it up" She insisted that she was ready to die if need be, she had made her will and arranged for the disposition of her two children—the hunger strike was to go on The writ was refused and she was remanded to the Workhouse On her way there she told the women with whom she shared the patrol wagon the salient facts of birth control

When Commissioner of Correction Burdette G Lewis was asked to comment on Ethel's decision he scoffed "Others have threatened hunger strikes It means nothing" At first no food at all was brought her, but after the publicity began the authorities were in despair to make her eat This was a case they did not know how to handle, they were mentally unprepared for prisoners who were guilty of performing a legal wrong in order to win a legal right

Ethel had gone one hundred and three hours without eating when Commissioner Lewis established a precedent in American prison annals by ordering her forcibly fed, the first woman to be so treated in this country He stated optimistically to the press how simple the process was, consisting of merely rolling her in a blanket so she could not struggle, and then having milk, eggs, and a stimulant forced into her stomach through a rubber tube He stressed how healthy she continued to be, how little opposition she offered, how foolish the whole thing appeared to him anyhow, he was going to charge her for the expense incurred in calling in an expert to feed her

As soon as I heard my sister was "passive under the feeding" I became desperately anxious about her, nothing but complete loss of strength could have lessened her resistance

After one interview Commissioner Lewis had barred all reporters and given out a statement of his own "I have not much patience with Mrs Byrne's efforts to get advertising for her cause, and I won't help such a campaign along by issuing bulletins"

But bulletins were being issued, nevertheless—and printed

From prearranged sources I was receiving messages and notes each evening, and reports on Ethel's pulse and temperature Thus I learned her vision was becoming affected and her heart was begin-

ning to miss beats, due to lack of liquids "Going without water was pretty bad," she said herself "At night the woman whose duty it was to go up and down the corridors to give the prisoners a drink if they wanted it stopped right by my cell and cried, 'Water! Water!' till it seemed as if I could not stand it And on the other side of me was the sound of the river through the window"

Nobody was allowed to visit Ethel but J J, who, as her lawyer, could not well be refused But reporters have their own mysterious ways of getting what they want The *World* man succeeded in reaching her It was not on the whole a successful interview, because she did not know who he was, but it did have one important result—it confirmed at first hand our statements as to the seriousness of her condition

In the midst of my anxiety over Ethel, my own trial opened January 29th in the same bare, smoky, upstairs Brooklyn court in which she had appeared Justices John J Freschi, Italian, Moses Hermann, Jewish, and George J O'Keefe, Irish, sat on the bench Judge Freschi, a rather young man, presided, and on him we pinned our hopes We did not expect anything of old Judge Herrmann except that, because he was Jewish, he might be broad-minded As to Judge O'Keefe we had no illusions

No less than thirty of the mothers of Brownsville had been subpoenaed by the prosecution, but about fifty arrived—some equipped with fruit, bread, pacifiers, and extra diapers, others distressed at having had to spend carfare, timid at the thought of being in court, hungry because no kosher food could be obtained near by Nevertheless, all smiled and nodded at me reassuringly

Formerly, a few women of wealth but of liberal tendencies had been actively concerned in the movement, but now some who were prominent socially were coming to believe on principle that birth control should not be denied to the masses The subject was in the process of ceasing to be tagged as radical and revolutionary, and becoming admittedly humanitarian

In this room, side by side with the ones to be helped, sat new helpers Among them was Mrs Amos Pinchot, Chairman of the Women's Committee of One Hundred, formed to lend support to the defense Her reddish hair betrayed a temper quick and easily aroused in the

cause of justice Aristocratic of bearing, autocratic by position, she was one to command and be obeyed, and was easily a leading personality in the philanthropic smart set of New York Among her valuable services was the bringing into the fold of the mothers and aunts of the present active Junior Leaguers

Mrs Lewis L. Delafield's limousine stood in front of the doors at almost every trial and it meant a great deal to the defendants to have the wife of one of the most eminent members of the New York bar in the courtroom By her very demeanor and looks—white-haired, a fragile countenance—you knew she could touch nothing that was not fine, and that she had the spiritual courage to stand by her ideas and ideals in both her public and private life Always she opened her home and her heart and her arms to those she loved

Fania was called first She was a girl with a pale and delicate face, and was too worried to bear the strain She should not be punished for co-operating, and I told J J to notify the court that she was not well, though I strictly forbade him to say anything about my health Her trial was brief, narrowing itself down to whether *What Every Girl Should Know* was to be classed as indecent A few days later she was found guilty and sentenced to fifty dollars' fine, a decision which was eventually reversed on appeal

It surprised me that in my trial the prosecution should be carried on so vehemently, because the prosecutor had little to prove To me there seemed to be no argument at all, the last thing in my mind was to deny having given birth control advice Certainly I had violated the letter of the law, but that was what I was opposing

I grew more and more puzzled by the stilted language, the circumlocutions, the respect for precedent These legal battles, fought in a curiously unreal world, intensified my defiance to the breaking point I longed for a discussion in the open on merit and in simple, honest terms

I thought I might have my wish when Judge Freschi, holding up a cervical cap which the prosecuting attorney had put in evidence, said, "Who can prove this is a violation, the law states that contraception is permitted for the prevention of disease May it not be used for medical reasons?"

This question raised my hopes high. At last the law might be interpreted according to the definition I so desired, ill health resulting from pregnancy caused by lack of its use might be construed as disease.

Then one by one the Brownsville mothers were called to the stand to answer the District Attorney "Have you ever seen Mrs. Sanger before?"

"Yess Yess, I know Mrs. Sanger."

"Where did you see her?"

"At the cleenic."

"Why did you go there?"

"To have her stop the babies."

The witness bowed sweet acknowledgment to me until she was peremptorily commanded to address the court.

"Did you get this information?"

"Yess Yess, dank you, I got it. It wass gut, too."

"Enough," the District Attorney barked, and called another.

Time after time they gave answers that were like nails to seal my doom, yet each thought she was assisting me.

J. J. saw how their testimony could be turned to our advantage.

He asked, "How many miscarriages have you had? How much sickness in your family? How much does your husband earn? The answers were seven, eight, nine dollars a week."

At last one woman more miserable and more poverty-stricken than the rest was summoned. "How many children have you?"

"Eight and three that didn't live."

"What does your husband earn?"

"Ten dollars a week—ven he vorks."

Judge Freschi finally exclaimed, "I can't stand this any longer," and the court adjourned over the week-end.

J. J. was jubilant, because he said there was nothing for him to do, the court was arguing his case for him.

I myself was feeling a little conscience-smitten. A mass meeting of sympathizers had been organized by the Committee of One Hundred for that evening in Carnegie Hall, and I went straight there from the courtroom. I had a speech ready in which I said we were

being persecuted, not prosecuted, that the judges were no better than witch-burners. It was unfortunate, but copies had already been released to the press and the wording could not be changed.

Helen Todd, the Chairman, a grand person who had been trained under Jane Addams, had given the mothers of Brownsville places of honor on the platform to let everybody see what kind of women we were fighting for. She asked for twenty volunteers to follow the example of the English suffragettes who had gone on hunger strikes en masse, but no women whose names registered socially in the public mind were willing thus to join in protesting against the law, only working girls came forward.

Three days later Jessie Ashley and I took the train for Albany with Mrs. Pinchot, who was a close friend of Governor Charles S. Whitman, to ask him to appoint a commission to investigate birth control and make a report to the State Legislature. The Governor, who was fair and intelligent, quite distinctly representing a class of liberal politicians, received us cordially.

Ethel and her hunger strike had been front-page news for ten days, in the subway, on street corners, everywhere people gathered, she was being discussed. In Washington and Albany congressmen and legislators were sending out for the latest details. Governor Whitman naturally asked about her, and we seized the opportunity to try to impress on him the outrageousness of making her suffer for so just a cause. He said directly her incarceration was a disgrace to the State. He was entirely out of sympathy with the courts and judges, and offered a pardon conditional upon her ceasing to disseminate birth control information.

But I had not come to ask that favor.

"My sister wouldn't take a pardon," I replied, much to the distress of Mrs. Pinchot. However, I accepted gratefully his letter to the warden at Blackwell's Island authorizing me to see her.

The next morning I appeared again before the court. During the three-day interim the effect of the mothers' testimony had evidently been effaced from the judges' minds, and they were infuriated by my Carnegie Hall denunciation. But far more detrimental to my hope of a new interpretation was the prosecution's introduction of a Federal agent who had once confiscated a copy of *Family Limitation* in which

was the picture of this same cervical cap, he read aloud my advice to women to use it as a means of preventing conception. Not even the most friendly judge could get away from the fact that I had intended a far broader definition than any permitted by the existing law.

The prosecution argued further that the constitutionality of Section 1142 could not be challenged, because the exception for physicians in Section 1145 already guaranteed "liberty" to citizens. And, since I was not a physician and consequently did not come under the exception, the court must, in any event, find me guilty. This they did.

The day had been so full that I was not able to avail myself of Governor Whitman's permit to visit Ethel until evening, when Mr and Mrs Pinchot took me in their car to the Workhouse. I remember how cold it was, the trip on the ferry seemed to go on forever. But when we finally arrived, at the name of Pinchot, the friend of the Governor, doors swung open, officialdom turned polite and courteous and salaamed us on our way.

The Pinchots remained below while I was sent up to Ethel's cell, where she was lying on her iron cot, dressed in readiness for her release. Her appearance shocked and horrified me. She had grown thin and emaciated, her eyes were sunken and her tongue swollen, high red spots stood out on her cheeks. She could not see me even across the narrow cell, knowing me only by my voice. Hers was muffled as she whispered me to come nearer, her mind confused. "Liberty," she kept repeating, "I want my liberty."

Her life was all that mattered to me now. I had to eat humble pie, and said to the matron I was going to telegraph Governor Whitman that she was too ill to accept the conditions of the pardon for herself, but I would promise on her behalf. I was told that he had already signed the pardon, was on his way to New York, and to wait downstairs, please.

After about half an hour we were informed Mrs Byrne was coming down. I went along the hallway to meet her. She was being held up by two attendants, the matron following with wraps. Her head was rolling from side to side, and I could see from the pallor of her face, especially from the pinched look of her nose and mouth, that she was losing consciousness. I protested to the matron, but orders

had been given and were being obeyed, Commissioner Lewis wanted the newspaper pictures to show her coming out on her feet

Running back to the room where the Pinchots were sitting, I exclaimed, "She's fainting!" Then Mrs Pinchot clapped her hands imperiously and directed the attendants to lay Ethel down immediately and bring a stretcher. A command from her worked like magic. She wrapped her own fur coat around the pathetic figure and, as soon as Ethel felt the softness and warmth, she knew she was safe. We carried her over to my apartment to begin the protracted period of recuperation. Only after a year's convalescence was she able to take up a normal life again.

Being the real instigator, I had every reason to expect a longer term than Ethel. Logically, her hunger strike had served its purpose, that form of strategy was closed. But personally I decided that, if I should receive a year, I should do the same. On the other hand, if I were given three months or less, I could study and make use of my time. J J had heard on reliable authority that if I were to change my plea to guilty, I could have a suspended sentence. To his mind freedom alone meant victory, and he urged me to accept it if it were offered.

This, it developed, was the intention of the court when on Monday I was called back for sentence. Having Ethel off the front page had brought a sigh of relief of almost national scope. But all the publicity had had its effect on public opinion, and doubtless influenced the judges also to a certain extent. Since they could not agree to change the interpretation of the law, they had been obliged to find me guilty, but they did not really want to inflict punishment.

They were, however, extremely suspicious of our assertion that we were going to carry the case higher. Jessie Ashley, Ida Rauh, and Bolton Hall had all been let off with fines on the understanding they proposed to appeal, and then they had not done so. Courts were beginning to assume this was just a trick of birth control advocates, not meant in good faith.

I sat listening to what seemed an interminable discussion between J J and Judge Freschi over whether the appeal were going to be prosecuted in a quick and orderly fashion, until I was nearly lulled to sleep. Suddenly my attention was caught by hearing J J declare that I would "promise not to violate the law."

My mind clicked. It was not in my program to bargain for freedom. J. J., knowing full well I would make no such promise, had planted himself in front of me so the court could not see my belligerent face. He was trying to act as a buffer and, at the same time, for fear of what I might say, to avoid having me summoned to the stand. I tried to peer around him, but he shifted from side to side, obscuring my view. I tugged on his coat like a badly brought up child, but he took no notice. Finally one of the judges interposed, "Your client wishes to speak to you, counselor." I could be ignored no longer, and was called "Margaret Sanger, stand up."

History is written in retrospect, but contemporary documents must be consulted, therefore I have gone to the official records for the facts. After all, one courtroom is much like another, and the attitude of one justice not so dissimilar from that of another. I was combating a mass ideology, and the judges who were its spokesmen merged into a single voice, all saying, "Be good and we'll let you off." This is what I heard.

You have been in court during the time that your counsel made the statement that pending the prosecution of appeal neither you nor those affiliated with you in this so called movement will violate the law, that is the promise your counsel makes for you. Now, the Court is considering extreme clemency in your case. Possibly you know what extreme clemency means. Now, do you personally make that promise?

THE DEFENDANT Pending the appeal.

THE COURT If Mrs. Sanger will state publicly and openly that she will be a law-abiding citizen without any qualifications whatsoever, this Court is prepared to exercise the highest degree of leniency.

THE DEFENDANT I'd like to have it understood by the gentlemen of the Court that the offer of leniency is very kind and I appreciate it very much. It is with me not a question of personal imprisonment or personal disadvantage. I am today and always have been more concerned with changing the law regardless of what I have to undergo to have it done.

THE COURT Then I take it that you are indifferent about this matter entirely.

THE DEFENDANT No, I am not indifferent. I am indifferent as to the personal consequences to myself, but I am not indifferent to the cause and the influence which can be attained for the cause.

THE COURT Since you are of that mind, am I to infer that you in-

tend to go on in this matter, violating the law, irrespective of the consequences?

THE DEFENDANT I haven't said that I said I am perfectly willing not to violate Section 1142—pending the appeal

JUSTICE HERRMANN The appeal has nothing to do with it Either you do or you don't

THE COURT (to Mr Goldstein) What is the use of beating around the bush? You have communicated to me in my chambers the physical condition of your client, and you told me that this woman would respect the law This law was not made by us We are simply here to judge the case We harbor no feeling against Mrs Sanger We have nothing to do with her beliefs, except in so far as she carries those beliefs into practice and violates the law But in view of your statement that you intend to prosecute this appeal and make a test case out of this and in view of the fact that we are to regard her as a first offender, surely we want to temper justice with mercy and that's all we are trying to do And we ask her, openly and above board, "Will you publicly declare that you will respect the law and not violate it?" and then we get an answer with a qualification Now, what can the prisoner at the bar for sentence expect? I don't know that a prisoner under such circumstances is entitled to very much consideration after all "

THE COURT (to the Defendant) We don't want you to do impossible things, Mrs Sanger, only the reasonable thing and that is to comply with this law as long as it remains the law It is the law for you, it is the law for me, it is the law for all of us until it is changed, and you know what means and avenues are open to you to have it changed, and they are lawful ways You may prosecute these methods, and no one can find fault with you If you succeed in changing the law, well and good If you fail, then you have to bow in submission to the majority rule

THE DEFENDANT It is just the chance, the opportunity to test it

THE COURT Very good You have had your day in court, you advocated a cause, you were brought to the bar, you wanted to be tried here, you were judged, you didn't go on the stand and commit perjury in any sense, you took the facts and accepted them as true, and you are ready for judgment, even the worst Now, we are prepared, however, under all the circumstances of this case, to be extremely lenient with you if you will tell us that you will respect this law and not violate it again

THE DEFENDANT I have given you my answer

THE COURT We don't want any qualifications We are not concerned with the appeal

MR GOLDSTEIN Just one other statement, your Honor, one final

statement on my part Your Honor did well say that you didn't want anything unreasonable With all due deference to your Honor, to ask a person what her frame of mind will be with so many exigencies in future, that is, if the commission did nothing or the Legislature did nothing—

THE COURT All we are concerned about is this statute, and as long as it remains the law will this woman promise here and now unqualifiedly to respect it and obey it? Now, it is yes or no What is your answer, Mrs Sanger? Is it yes or no?

THE DEFENDENT I can't respect the law as it stands today

THE COURT Margaret Sanger, there is evidence that you established and maintained a birth control clinic where you kept for sale and exhibition to various women articles which purported to be for the prevention of conception, and that there you made a determined effort to disseminate birth control information and advice You have challenged the constitutionality of the law under consideration and the jurisdiction of this Court When this is done in an orderly way no one can find fault It is your right as a citizen Refusal to obey the law becomes an open defiance of the rule of the majority While the law is in its present form, defiance provokes anything but reasonable consideration The judgment of the Court is that you be confined to the Workhouse for the period of thirty days

A single cry, "Shame!" was followed by a sharp rap of the gavel, and silence fell