

ARROGANCE IN POWER

IT WAS long after midnight before I left the Night Court after the Town Hall arrest. While we kept repeating to the reporters that Monsignor Dineen had issued orders to the Police captain to stop the meeting, they could not believe it and would not take our statement for it without proof. They were all inclined to make out a story of the stupidity of the police and to let it go at that. But a *Times* reporter telephoned to the Cathedral to verify the statement made by Dineen, and that changed the headlines and increased public indignation everywhere. Even among Catholics themselves there was condemnation of such tactics. Many of our Catholic supporters came personally to see me to say that the Church had made a great blunder.

It was almost impossible to sleep, and when, long after four o'clock, I did fall into a slumber it was only to find myself still carrying that same infant up a steep and sliding mountain.

As soon as our cases had been dismissed by Magistrate Corrigan the following day, I decided to hold another meeting

at the earliest possible date I was bound and determined, to the last ounce of my strength, to challenge the right of the hierarchy of the Roman Catholic Church to suppress the rights of American citizens in the freedom of an open discussion. From all over the nation came indignant protests from citizens in all walks of life. The time for action had come. The backs of the citizenry were up and we would not be silenced.

Town Hall could not be had for several weeks. Managers of other halls and theatres were reluctant to get into the battle by renting us a place, but by good fortune I was able to rent the Park Theatre for Friday evening, November 18, a week later. When that evening came, thousands of men and women crowded about the place, unable to enter. Inside, before a packed house, the subject which should have been discussed at Town Hall—Birth Control Is It Moral—was openly and freely and *decently* discussed by the same people who were to have discussed it at Town Hall. Free speech had its way here under police protection, for our request for police protection against interruption had been granted.

Amidst the crowd outside in Columbus Circle, the Paulist fathers of the Catholic Church were busy giving vent to their views on birth control and distributing pamphlets. We want liberty for our enemy as well as for ourselves. Reason finally must dictate our actions.

Meantime, protests and indignation would not die down. Thinking people began to see the brazen hand of an ecclesiastical order in an attempt to usurp the power of the state. Here in the twentieth century in a nation founded on religious freedom was the first open sign of an encroaching fifteenth century medievalism. Neither Archbishop Hayes nor his secretary, Monsignor Joseph P. Dineen, denied that it was at their direction that Police Captain Thomas Donohue, without warrant or official procedure, had stopped the meeting at Town Hall and arrested the speakers.

The cheap excuse of 'protecting children' was too thin for public consumption. No children were in the audience, and, had there been children there, the discussions would have in

no way shocked the most sensitive hearing. This platitudinous, solicitous concern about children's morals was seen to be a screen behind which the Catholic hierarchy was trying to hide from an outraged, critical, and righteously indignant public.

In my first statement to the press I had made our position clear. My idea of calling the public together was in the belief that this subject could be discussed at the Town Hall with as much dignity and delicacy as it was discussed the last two days at the Hotel Plaza. We were in no way violating the law. I consider my arrest a violation of the first principle of liberty for which America stands, and I shall take this case to the highest courts, if necessary, to preclude the possibility of its ever happening again.

The agitation began to center itself about the Police Department and Commissioner Enright. A demand was made for a public investigation of the cause behind the arrest. Robert McC. Marsh, the attorney for our committee, issued a statement signed by leading citizens in the community demanding that an investigation into the suppression of the meeting by the police be held. Commissioner Enright was said to be out of the city, and Chief Inspector William J. Lahey was given the order for a hearing.

Letters and telegrams from citizens in all parts of the country urged me to institute action in the courts for false arrest, especially against Commissioner Enright and Captain Donohue. The American Civil Liberties Union urged such action, and offered to donate legal services in my behalf. A request by Mr. Albert de Silver of that organization for an investigation was also sent to the Police Commissioner, and accordingly Inspector Lahey announced on November 16th that such an investigation would be held.

Captain Donohue tried to shield the Archbishop from blame, as did the Police Commissioner, by issuing a personal statement that there was no question in the mind of the police regarding interference with any citizen's right to free speech. He declared it was not the question of birth control.

What was it then?'

It is the question of Mrs Sanger ' Captain Donohue testified before Inspector Lahey that he had been captain in the precinct in which the Amboy Street Clinic was located in 1916, and that he was present at the hearing and heard the police woman, Mrs Whitehurst, testify that articles of contraception had been exhibited in that clinic. Consequently, he was justified in closing a meeting of two thousand intelligent, educated and socially minded citizens without a warrant, without official orders, but simply at the command of the secretary of the Archbishop!

None of these excuses, none of these feeble explanations was acceptable to the people, constantly urging the officials to dig out the truth and face it.

The police hearing was set for Tuesday, November 22, at 10 a m in the office of Inspector William J Lahey, at Police Headquarters. It took place in the usual camouflaged manner. All the time of busy citizens summoned to the hearing was taken up to determine whether children were in the Town Hall audience or not. Inspector Lahey conducted the hearing and questioned, not the police who stopped the meeting, not Captain Donohue, not Monsignor Dineen nor Archbishop Hayes, but his questions were directed to the innocent citizens who had joined in the indignant protest against the outrage. The citizens of New York who demanded that laws and constitutions be obeyed were made the victims of his Star Chamber proceeding.

The investigation was postponed for further evidence until December 2, when another secret hearing was held. At this time Inspector Lahey was assisted by Assistant Corporation Counsel Martin Dolphin, who sat beside Mr Lahey coaching him as to questions to ask. When I was called to testify before Lahey, who sat at the head of a long table on my right, Dolphin sat exactly opposite the witness chair. His large head, his dull, heavy features with full, hanging lips, and coarse mouth and jaws, loomed before me. His eyes were fixed straight on my face as if he intended to hypnotize me.

and influence by sheer terror what I was to say. His head was so still, his features and eyes so set, his expression so immobile that I felt a sinister animus. I refused to look his way, but turned my head toward Lahey and continued to address my remarks to him. I did not know this man's (Dolphin's) name at the time, and at first he gave the impression that he was a priest, but later examination of his dress proved this impression was wrong.

The occasion was used as a means of asking questions irrelevant and out of order, but framed to embarrass and confuse the witnesses. It was a brutal effort at persecution. I was the first witness called to testify. The questions asked of me had nothing to do with the Town Hall meeting, they were directed against the Brownsville Clinic and my arrest at that time. Every attempt was made to trip me in replies and to discredit and confuse the issue. I was amused at the tactics used by Lahey to embarrass me when he asked something about the arrest made, and I denied emphatically the truth of a certain statement.

Do you mean to say, Mrs. Sanger, that this statement of the police officer as written into the records of your arrest in Brownsville was untrue?

I do, I replied.

Do you say then that the woman who testified to that statement lied?

I do.

At that reply Mr. Lahey lifted an official finger to an attendant behind him. The door from an anteroom opened, and a woman in smart street costume stood dramatically before us.

Mrs. Sanger, said Mr. Lahey, do you recognize this woman?

Yes, she is the woman who made the arrest in Brownsville, I replied.

Do you say that if she made the statement referred to in the police records she lied?

She most certainly lied, I said calmly. The woman was then dismissed. This was perhaps the first time in all my life

that I had ever told a human being, face to face, that she lied
It was an interesting experience This was a quaint procedure of inflicting upon the innocent the third degree!

After I had been spiritually battered about in the chamber of abuse and insult for nearly an hour, in which every effort to degrade, to insult, and accuse by inference was made in order to break down my conviction, courage and morale, I felt physically bruised, as though parts of my body had been beaten black and blue

Mrs Juliet Rublee was then called to the chair to testify Mrs Rublee had been one of the most prominent and active women in social circles, and had brought many distinguished professional and literary men and women into the movement More than to any other single individual credit is due to her for making the idea of birth control acceptable in professional and conservative circles Mrs Rublee had opened her home time and again to meetings for the cause She had replied to Archbishop Hayes statement in the press Consequently the assistant corporation counsel, Martin Dolphin, kept his inquisitorial and vicious eyes constantly upon her His malicious countenance, his pale, expressionless face like a death mask, stood out of his black frock in such contrast that this figure, together with the atmosphere created by the brutal crudeness of the questioners, seemed to exude the satanic, sulphurous ectoplasm of the inferno

Dolphin now took charge of the questioning Do you know Mrs Sanger? How long? Did you ever read the law, Section 1142? To this Mrs Rublee (a lawyer's wife) replied that she had read it

When? was the retort

Yesterday, with Mr Marsh, she replied

Did you ever read it before? asked Dolphin

Yes, about five years ago, with Mrs Sanger'

Arrest that woman! shouted the inquisitor to a patrolman, T J Murphy, who stepped up to Mrs Rublee and placed her under arrest The room was now tense with an unknown ter

ror This unexpected, false, unwarranted arrest of a gentle, tender and sensitive woman electrified us all with horror

For a few seconds, which seemed longer, there was a dead silence which was broken by the prompt action of our counsel, Mr Marsh, who arose and asked, Who makes the charge against Mrs Rublee?

Dead silence! no reply while Dolphin, Murphy and Lahey whispered together over papers Finally, when Mr Marsh repeated his question, Murphy replied, I do Mr Marsh then turned to Dolphin, who was instructing Murphy and whom we had heard order the arrest, and said, My brother of the bar, will you give me your name?

No reply from Dolphin The sinister secrecy of his personality was appalling Mr Marsh continued, At least it is a courtesy between attorneys to know by name those with whom we are dealing

I am merely a bystander, said Dolphin

'Then, Mr Bystander, insisted Mr Marsh, will you be specific and say what is the charge this woman is arrested upon?

Dolphin, now becoming enraged, shouted out in a threatening voice to Mr Marsh, Say, do you want to get into this? If you do now is the time to say so

Doubtless Mr Marsh knew more of the possibility of that menacing tone than I did I stood in silent amazement at such high handed power in the hands of a bystander without a name I was disappointed that Mr Marsh did not accept his challenge to get into this I longed with every heart beat in me to hear our counsel reply, Yes, Mr Bystander, if defending an innocent woman under the constitution of the United States of America is getting into this, *then I want to get into it!*

Mr Marsh did not make this reply, though he held his own dignity and that of his clients marvelously throughout His upright, principled bearing severed him from fraternizing with our persecutors, and he was a marked man, as the next hearing proved

Mrs Rublee was arraigned before Magistrate Hatting in the Elizabeth Street Court. Papers had not been drawn, and not until 4 o'clock in the afternoon were we able to find out why she had been arrested. It was another case of dismissal. As soon as the Magistrate heard the testimony, which was that Mrs Rublee had testified that she had *read* the law, he dismissed the case after ten minutes hearing. Even a magistrate knew it was no crime to read the law, though an assistant corporation counsel used this as an excuse to bully and frighten women in retaliation for their having sought an investigation of illegal arrests. Mrs Rublee at once retained the services of Mr Paul D Cravath to take whatever action seemed necessary against the Police Department for false arrest.

Mayor Hylan was now requested to make a full, immediate and public investigation not only of the Town Hall meeting outrage, but of Mrs Rublee's arrest. Ten prominent men, distinguished for their public spirit in the city addressed a letter to the mayor. They were Paul D Cravath, Lewis L Delafield, Charles C Burlingham, Samuel H Ordway, Pierre Jay, Paul M Warburg, Charles Strauss, Montgomery Hare, Henry Morgenthau and Herbert L Satterlee. The signed letter read as follows:

You doubtless are already acquainted with the fact that on the evening of November 13, police of the 26th Precinct, acting, we understand, under the direct command of Captain Thomas Donohue, forcibly closed a public meeting which had gathered at the Town Hall, 121 West Forty third Street, for an oral discussion of a question of public policy and of morals.

We are advised that without any warrant or legal authority justifying his action, Captain Donohue arrested two ladies, and in spite of their protests caused them to be taken to the police station, and thence to the magistrate's court where they were discharged.

A second offense was even more flagrant. It occurred on December 2, in the unjustifiable and inexcusable arrest

of Mrs Juliet Barrett Rublee, after she had testified as a witness before Inspector Lahey in an inquiry into the action of the Police Department in connection with the Town Hall meeting Mrs Rublee was arrested by Patrolman Thomas Murphy by the direction, we are informed, of Assistant Corporation Counsel Martin Dolphin, who was present as Inspector Lahey's adviser

The arrest of Mrs Rublee was so completely without justification or excuse that the Assistant District Attorney acknowledged in open court having no evidence to support a charge of any kind, and Magistrate Hattung promptly released Mrs Rublee

The action of the Police Department above referred to constitutes such a wilful violation of the right of free speech as to cause grave alarm to the citizens of New York, who have a right to know why such outrages have taken place, what motives and influences are behind them and whether any conspiracy exists in the Police Department to deny the right of free speech and the equal protection of the law to citizens of New York This obviously is a matter of the gravest concern

We, therefore, ask an immediate and full investigation of the action of the Police Department in the premises, to be followed, if the evidence warrants, by such disciplinary measures against the officials found to be guilty as will discourage similar offenses hereafter'

The mayor referred the matter to Commissioner of Accounts David F Hirschfield for investigation and report Mr Hirschfield stated that he had been given a free hand and directed to be thorough in an effort to establish the motives behind the police action and to prove there was no conspiracy on the part of the police to restrict freedom of speech

The press both in its news and editorial columns kept up a rapid fire attack on the clumsiness of the Police Department and the abuse of their power The *Evening World* in an editorial exclaimed

'The effort to muzzle the birth control propagandists is as stupid an attempt at obstruction as ever helped a minority movement

It is a puzzle how anyone can imagine that police abuses, star-chamber sessions, inquisitorial investigations, false arrests, farcical persecutions, dummy complaints and quick releases when the proceedings come out into open court, will suppress the birth control advocates

The stupidity of the Town Hall proceedings was bad enough, the result of this interference was that the meeting at Park Theater was so well advertised that crowds were turned away

Even this lesson was lost Acting through the clumsy machinations of the police, the same opposing influence undertook to revive the Inquisition

The score today is all in favor of the birth control advocates—not because of the excellence of their case, but because of the sheer stupidity of the opposition What will be the next move?

Commissioner Hirschfield's first hearing was set for January 24 The free hand given to the commissioner was used to throw dust into the eyes of the public, in diverting the inquiry into a discussion of the merits of birth control instead of dealing with the outrages of the police The records of that hearing show an attempt at facetious remarks bordering on silliness The reference to old, bald headed men at the Town Hall meeting, the inference that Emma Goldman had been deported for speaking on birth control, the confusion of abortion with birth control all indicated the lack of knowledge the commissioner had on the subject,—and consequently his tactics in acting the buffoon

The public, fortunately, was not to be confused by this trick of New York's clownish commissioner The cheap chicanery of this latest farce was exposed and when Hirschfield felt his tricks were detected, he banged his gavel on the table interrupting witnesses, shrieked that he had been insulted

and in a temper and a huff refused to continue the investigation with our attorney, Mr Marsh

A second hearing was called for February 2 Mr Cravath and Mr Emory R Buckner took up the defense in Mr Marsh's place Again a further postponement, to February 17 At this third hearing Capt Donohue, Thomas Murphy, Inspector Lahey, and both District Attorneys Gibbs and Wilson were placed on the stand All evidence brought out from examining these witnesses proved conclusively and unmistakably that all three women arrested, Mrs Rublee, Mary Winsor and myself, were innocent of any crime and that our arrests were unwarrantable, also that there was no legal justification for breaking up the Town Hall meeting Assistant Corporation Counsel Dolphin was not present and could not be found, nor did he deign to respond to the legal summons all officials had received to attend the hearing!

The *New Republic* called the whole proceeding useless highhandedness, and said What redress has the victim of such false arrest? Very little A suit for damages would not come up for trial for a year or more No sense of decency seems to restrain the police from arbitrary arrests, and the law as it stands is too feeble to act as a deterrent Obviously, one remedy is legislation providing swifter justice and a greater penalty for false arrest Here is a matter which is well worth investigating by the New York Bar Association Thus we had the matter in a nutshell Our attorneys had given facts to the commissioner to show that certain police officers and an assistant corporation counsel had with animosity and vindictiveness violated the civic rights of citizens and illegally caused their arrest From the Mayor down, city officials were literally thumbing the nose at its taxpayers, and the hierarchy at St Patrick's Cathedral were smugly complacent, knowing that though somewhat dulled, the tools of a city government were still in their hands

The fight for the right to discuss the subject of birth control was an issue totally different from that of its practice The right of citizens to decently discuss this question was

to be fought for by the people themselves. It involved principles of democracy, liberty and education. It was no longer my lone fight. It was now a battle of a republic against the machinations of the hierarchy of the Roman Catholic Church. By this time I had already set sail for Japan, leaving the cause of free speech and assembly in the courts to stifle and choke with legal verbiage and technicalities.