

## [United States v. Dennett \(1930\)](#) <sup>[1]</sup>

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In the 1930 US federal court case *United States v. Dennett*, Mary Coffin Ware Dennett was cleared of all charges of violating the anti-obscenity Comstock Act, a charge she had incurred by distributing her sex education pamphlet called "The Sex Side of Life: An Explanation for Young People." The United States Postal Service charged Dennett under the Comstock Act, which prohibited the distribution of sex-related materials through the mail. The US Second Circuit Court of Appeals in New York City, New York, ruled that material needed to be considered in context and could not be considered obscene if it was not intended to sexually arouse an individual. The court's ruling in the appeals case of *United States v. Dennett* questioned the merits of the Hicklin test, used by courts to determine whether an item had an obscene component or intent, and contributed to the dissolution of the Comstock Act, thus legalizing access to materials about [contraception](#) <sup>[2]</sup> and reproductive health.

During the nineteenth and early twentieth centuries, US laws at the federal and at the state levels restricted the distribution of obscene materials. However, those laws did not provide a precise definition of the term obscene, often defined as something offensive, particularly in a sexual manner. Due to the lack of legal definition, anything perceived to be offensive could be labeled obscene. In 1865, the US government in Washington, D.C., passed a law banning the distribution of obscene literature and images through the US Postal Service. However, US Postal Inspector from New York City [Anthony Comstock](#) <sup>[3]</sup> lobbied US Congress for a stricter law that would prohibit the circulation of any items deemed obscene, not just literature and images. He argued that the government should give the postmaster the power to open an individual's mail, search its contents for obscene materials, and refuse to mail the package if it contained prohibited items. In 1873, US Congress passed the Act of the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, popularly called the Comstock Act. The Act granted post office administrators the ability to open mail and determine whether the contents could be classified as obscene. Under the Comstock Act, distributing materials related to sex education, contraceptives, and [abortion](#) <sup>[4]</sup> was illegal.

In addition to the Comstock Act, US judges used the Hicklin test to determine whether or not individuals charged under the Comstock Act had violated the Act. In the 1868 UK court case *Regina v. Hicklin*, the judge had ruled that something could be characterized as obscene even if only a small section of the material contained obscene language. In addition, if a small part of the material was obscene, the intent of the creator could also be judged as obscene. That legal precedent was called the Hicklin test. Judges in the US used the Hicklin test to evaluate whether material was obscene or not.

Despite the obscenity laws in the US, many individuals tried to distribute materials that could be considered obscene, such as sex education materials. In 1915, while living in New York City, Dennett wrote "The Sex Side of Life," a sex education essay that she later published as a pamphlet. Dennett said that she decided to write her sex education essay after reading existing literature about sex and finding them to be biased and untruthful. Dennett's essay gained popularity, and in 1918 the *Medical Review of Reviews* published a copy in their magazine. Later that year, the essay was published in pamphlet form and requests for its circulation increased. Dennett reported that many of her pamphlets were not delivered. She originally mailed her pamphlets in unsealed envelopes, but she started sending her mail in sealed envelopes after determining that her mail was being opened and removed by the US Postal Service.

In 1922, Dennett received a notification from the US Post Office that her pamphlet was considered obscene under the Comstock Act and could no longer be mailed. Dennett ignored the ban and continued to send copies of her pamphlet in sealed envelopes. Dennett also exchanged letters with the legal advisor of the post office, called a solicitor, about lifting the ban on her pamphlet. When she asked him to either reverse the original ban or send her a written statement describing why her pamphlet was considered obscene, the solicitor replied that the ruling would not be reversed and that a written statement would not be sent. Instead, in January 1929, Dennett received a notice that she was being criminally charged with violating the Comstock Act. The notice stated that Dennett had sent obscene materials to a woman named C. A. Miles. Dennett argued in many of her later works that the US Postal Service created Miles as a decoy to prompt Dennett to send her pamphlet so that they could charge her.

After receiving the notice for violating the Comstock Act, Dennett appeared before Grover M. Moscowitz, a judge for the Eastern District of New York in Brooklyn, New York, to set bail and a court date. Dennett was arrested and placed in jail for a few hours until a friend paid the \$2,500 bail. Dennett's court date underwent several postponements before she appeared in court alongside her lawyer, Morris Ernst, for the first hearing on 21 January 1929. The presiding judge was Moscowitz. Dennett's lawyer argued that the indictment should be suspended because it did not specify why Dennett's pamphlet, "The Sex Side of Life," was obscene. James E. Wilkinson, the lawyer representing the US, read Dennett's pamphlet in court as his argument. According to historian John Craig, Wilkinson emphasized the more descriptive sections of Dennett's pamphlet by raising his voice as he read them. The judge requested that both Ernst and Wilkinson submit twelve letters each from experts explaining whether they thought Dennett's pamphlet was obscene or not. However, Moscowitz was forced to step down from the case due to an increase in workload and could not continue as the judge in Dennett's case.

After several more postponements, Dennett began trial on 23 April 1929 in front of twelve jurors and judge Warren B. Burrows in the Eastern District court in Brooklyn. Wilkinson once again read Dennett's pamphlet out loud in front of the jury. Dennett's lawyer argued that the indictment violated the First Amendment of the US Constitution, which grants citizens freedom of speech, and that there was no proof that Dennett's pamphlet was obscene. Wilkinson countered, claiming that it was the jury's duty to determine whether the pamphlet was obscene or not. While Ernst provided multiple witnesses, only Dennett was questioned by both Ernst and Wilkinson in front of the jury. Six days later, Burrows fined Dennett \$300 for violating the Comstock Act. Dennett refused to pay the fine and appealed the court's decision.

On 15 January 1930, Dennett appeared in the United States Circuit Court of Appeals for the Second Circuit in New York City with her lawyer, Ernst. He argued that suppressing Dennett's pamphlet hindered sex education and violated the First Amendment, which protects an individual's freedom of speech. The appeals court judges were Thomas Swan, Harrie Chase, and Augustus Hand. Wilkinson, representing the US, used two previous cases to support his argument. In the first case, *Ex parte Jackson* (1878), the US Supreme Court in Washington, D.C., had ruled that the First Amendment did not apply to the postal services, meaning that mail could be censored. In the second case, *United States v. Bennett* (1879), the Southern District court of New York ruled that the Hicklin test, derived from the British 1868 case *Regina v. Hicklin*, could be used to classify a material as obscene in the US. That test stipulated that an entire work could be called obscene even if only one part was offensive.

The appeals court reversed the lower court's ruling of *United States v. Dennett* on 3 March 1930, with the decision written by Hand. He supported the constitutionality of the Comstock Act but opposed the Hicklin test, ruling that an entire work needed to be reviewed in order to determine whether or not it was obscene. He claimed that a work needed to be considered as a whole, and as such, Dennett's pamphlet was not obscene because it described sex in relation to marriage and emotion. Hand stated that sex education could not be ignored just because of the sensitivity of the topic. He said that Dennett wrote her pamphlet in

a rational and dignified manner with the intent to educate and not to arouse.

Hand's decision in *United States v. Dennett* set a precedent for future obscenity laws related to accessing both sex education and [birth control](#)<sup>[5]</sup>. *United States v. Dennett* reversed the precedent set in *United States v. Bennett* (1879), that the Hicklin test determined whether a work was obscene or not. The ruling emphasized that the intent of the work as a whole must be considered. In addition, *United States v. Dennett* weakened support for postal censorship and prompted courts to further scrutinize an item's potential to be called obscene.

While the Comstock Act's constitutionality was not contested in *United States v. Dennett*, the case was one of several that led to the eventual dissolution of the law, which had illegalized the distribution of sex education and [birth control](#)<sup>[5]</sup> materials through the US Postal Service. The 1930 *Youngs Rubber* case, the 1933 *Davis v. United States* case, the 1936 *United States v. One Package of Japanese Pessaries*, along with *Dennett's* case, all contributed to dissolution of the Comstock Act.

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## Subject

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## Topic

[Legal](#)<sup>[31]</sup>

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