

# “Pro Bono Publico” The Eastview Birth Control Trial

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It is only recently that Canadian social historians have examined the change in attitude towards artificial birth control in this country.<sup>1</sup> Particularly neglected has been the 1936 trial of Dorothea Palmer. A former social worker and birth control activist, Palmer was, at the time of her arrest, running an Ottawa bookstore. Few contemporary authorities initially paid much attention to the case. The *Toronto Star*, a paper noted for sensational stories, relegated the story to page twenty-seven.<sup>2</sup> The charge itself was not all that unusual although most cases usually—as in *Rex F. Graham*, (1935)—involved the operation of vending machines.<sup>3</sup> The Palmer case was different because of the locale, the circumstances surrounding the arrest, and the groups both pro and con which had an interest in the outcome.

It was clearly a situation in which those individuals, predominantly middle class businessmen and professionals, involved in the birth control movement decided to confront the Roman Catholic Church. Despite denials of premeditation by the principals, Eastview, a predominantly French-Canadian suburb of Ottawa, was the perfect locale for such a confrontation. Eastview was hard hit by the Depression and to be

“on relief” was “normal” for the people who lived there. The mostly Roman Catholic families were large. This meant that each time a breadwinner became unemployed, the welfare rolls were increased by significant numbers. The point of the confrontation was to test the validity of two seemingly contradictory clauses in the Criminal code. Section 207 forbade the advertisement and distribution of birth control devices. Birth control advocates, however, believed that a further section of the Code, which declared persons distributing birth control devices to be acting, “pro bono publico” (for the public good), not guilty of an offence, could be used in areas such as Eastview.

In the trial, the birth control advocates won a significant victory for their cause and for those women who wished to utilize contraception. Dorothea Palmer was deemed to have been acting, “pro bono-publico,” in counselling women to use birth control. Although the law court in which the trial was held was not capable of providing a binding legal precedent, the decision had the effect of causing police officers who considered laying charges under the relevant sections of the Code to have second thoughts. For those disseminating information and distribut-

ing devices there was a substantial increase in freedom of action despite the absence, until 1969, of amending legislation. It meant, in fact, that even without legislation, birth control devices were far more readily accessible. R.M. Mastner, a physician who advocated birth control noted the significance of the Eastview case:

It was to be another evolution trial. Like Dayln, Tennessee in 1925, Eastview, Ontario—a small provincial community with ways of its own, found itself suddenly invaded. If the hills of the Bible Belt had drawn thousands to see the battle of fundamentalism, fought out in an almost too appropriate setting, the trial of a young social worker for the dissemination of birth control information in a stronghold of Roman Catholicism seemed equally symbolic...something of far greater weight than the fate of the young woman under arrest was about to be decided.<sup>4</sup>

It was the hope of the birth control forces not only to establish, at least, a quasi-legality for their position, but to do so in a setting in which the arch-enemy of birth control, the French-speaking, Roman Catholic church, could also be dealt a blow.

The prime motivator behind the confrontation remained in obscurity throughout the early days of the trial. He was Alvin Ratz Kaufman, a Kitchener industrialist and one of the pioneers of the Canadian birth control movement.<sup>5</sup> After consulting noted North American practitioners such as Margaret Sanger, Kaufman, in 1930, founded the Parents Informaion Bureau (PIB) which operated out of his plant offices at 410 King Street West, Kitchener. Both the Bureau and the consultation were the result of the industrialist's decision to provide aid to workers he was forced to lay off in the early 1930's. Kaufman observed "the workers had no money to buy food; there was no welfare support and no other employment available." There were also too

many mouths to feed. When Kaufman asked his company nurse, Anna Weber, about this, she told him, "Some mothers were more or less mentally deficient and poor housekeepers." Weber was asked to suggest sterilization to the fathers to prevent more births. The surprise and embarrassment Kaufman felt when many welcomed the suggestion was soon replaced by enthusiasm as he decided "here was a field in which I could accomplish much lasting good."<sup>6</sup> Kaufman's attitudes were also based to some extent on his notion of what could happen if the working class became too large. He warned, "We must choose between birth control and revolution. We are raising too large a percentage of the dependent class."<sup>7</sup> He also observed, "many of these people are not willing to work but I do not criticize them harshly for their lack of ambition when they are the offspring of people no better off than themselves."<sup>8</sup> Kaufman's views were not unusual among members of his class. Birth control, argued Kaufman, was necessary to retain the fabric of society. To Clarence J. Gamble, an American birth control advocate, he wrote "you know as well as I do that if we breed from the bottom instead of the top we are courting disaster."<sup>9</sup>

These sentiments, coupled with the immediate layoff problem caused Kaufman to act. He obtained contraceptive devices for distribution to his employees and began to explore the most efficient method of distribution. Attempts were made in Toronto and Windsor to copy the Margaret Sanger clinics.<sup>10</sup> Similar services, most notably in Elizabeth Bagshaw's clinic in Hamilton, were proven effective. Kaufman, however, was convinced there had to be an even more effective method of disseminating information. He believed that those who would benefit most from birth control were not likely to make the trip to the clinic. Lack of motivation was one reason. Others would not come because they did not have the proper attire. Some were scared of doctors and nurses or could not leave home because they already had too many children and

no one to care for them in their absence.<sup>11</sup> The solution, then, was to bring the information to people in their homes. The Parent's Information Bureau was established to set up a program of home visits. Bureau workers, wherever possible local residents, were hired at a dollar and a half a visit to call upon local women and explain to them the use of such devices as pessaries, condoms and spermicide jellies. Initial samples of the products were given free of charge by the worker. A registration card was filled out and mailed to the Kitchener office. Those who registered were able to order replacement supplies by mail. Registration was limited to married women. Despite insinuations to the contrary at the trial, the devices distributed were not sold at market prices but at cost. Product sales did not benefit the Kaufman Rubber Company because the condoms and diaphragms were not manufactured at the Kitchener plant but were purchased from other companies for resale by the Parents Information Bureau.<sup>12</sup>

Dorothea Palmer's arrest in September, 1936 came as she made home visits. Palmer was, however, not simply another employee. During her work in Britain she had become famous for her admonition to English soldiers, "If you can't change your tactics, at least use prophylactics." When approached by Bureau workers, reluctant to make home visits in Eastview because of the religious and ethnic composition of the town, Palmer volunteered to make the calls. She was, by her own estimate, a valuable and enthusiastic Bureau supporter. At the time of her arrest Dorothea Palmer declared:

Mr. Kaufman's representative complimented me on the good work I was doing in many of his letters which I am glad I kept as I expected trouble sooner or later. I may get a few months in prison for it. In view of the desperate conditions I have seen in the homes I have visited, I would most certainly do the same thing again the moment I was liberated.<sup>13</sup>

Although denials were made that a confrontation with the Catholic Church had been sought, it was unusual that Palmer would make an appointment to return to a house she had already visited, a violation of normal procedure. Whether or not a confrontation was being sought, A.R. Kaufman clearly believed local church authorities were responsible for the arrest. The religious composition of the community dictated that the largest percentage of needy mothers visited were Catholic. According to Kaufman, "The priests apparently became considerably incensed and have complained at various times to the Chief of Police. The result was that the nurse was watched and finally was met by a policeman when she finally left a Catholic home."<sup>14</sup> Initially, two charges under Section 207 were laid, one for distributing contraceptives, the other relating to advertisement. After some consideration, it was decided by Crown Prosecutor, Raoul Mercier, that only the latter charge would be dealt with.

The defence counsel hired by A.R. Kaufman was Francis Wegenast. A Brampton lawyer, Wegenast was more noted for his practice in Toronto business circles than in circumstances such as these. It is not entirely clear why Wegenast was chosen or why he took the case. He had done considerable work for the Kaufman company and it may have been a personal favour. Some statements made after the trial, however, indicate that Wegenast was quite familiar with and supportive of Kaufman's work, and took up the challenge in the belief that this could be an important case because it dealt with a charge laid under pressure from the Catholic Church. In a post-trial address at an Orange Lodge, Wegenast claimed that Mercier had been seeking just such a situation for over two months. As a lawyer and birth control advocate, Wegenast realized that a conviction would be a major setback to the movement. Although an unusual choice, in the long run he turned out to be an excellent ally of the birth control movement.

Wegenast was pleased that the trial was to be by magistrate which meant that he had to persuade only one learned individual of his case. He was also pleased that the Magistrate appointed to hear the case which opened October 31, 1936 was Lester B. Clayton, a Protestant, with reputed liberal views regarding morality.<sup>15</sup> As prosecutor, Mercier spoke first at the trial. The opening statement outlined the charges but dealt also, at length, with the anticipated arguments by the defence that Palmer had been arrested under pressure from the local Catholic authorities. As a public representative, he could not allow his religion to interfere with his official activities. His task was "to perform my duties as I see them and stick to the facts according to the lawyers' law—not that of the Bishop of Rome but that of his Majesty and with the consent of the Parliament of Canada."<sup>16</sup>

Wegenast's tactic was more elaborate than might have been anticipated. He chose not only to argue that birth control was of public benefit but to provide a bevy of expert witnesses from all walks of life to make the case for him. This strategy reflected the expressed wishes of A.R. Kaufman who believed that acquittal had to be on the basis of contraception being "*pro bono publico*," not a legal technicality, for it to result in any substantial gains for the birth control movement. Wegenast and A.W. Beament, an Ottawa lawyer hired to assist him, indicated their desire to call an unspecified number of expert witnesses. Their belief was that witnesses could be called in such an order that the cumulative effect would be the plausible argument in favour of birth control.<sup>17</sup> Curiously, Mercier did not respond in kind. He was, therefore, limited to five expert witnesses for the prosecution. The result was a tedious, extremely long trial in which the testimony of the defence experts overwhelmingly dominated, and in which Wegenast's cross-examination techniques made the prosecution witnesses appear unsure and unconvincing in their testimony.<sup>18</sup>

The first defence witnesses were the 21 women with whom Palmer had dealt. Wegenast hoped to establish that unwanted pregnancies had caused the women both emotional and physical problems and that the families had suffered economically because there were too many children. While some had little to say, others seemed to substantiate Wegenast's claims in dramatic and poignant ways. One woman told of seven years of almost constant pregnancies which had included an abortion and four infant deaths. Others testified that they could not afford to live on the money their husbands were able to provide. All were asked if they were good Catholics and whether they believed they had a right to planned pregnancies. All answered the first question affirmatively and only two of twenty-one answered no to the second. Mercier, in his turn, fared badly with the women. His one minor gain was in proving that Dorothea Palmer had approached the women and not vice-versa but as the trial progressed this did not prove to be a point which substantially weakened the defence.

The appearance of Joseph De Haitre, a Catholic obstetrician from Montreal, allowed Wegenast to make substantial inroads into the prosecution argument. De Haitre was proven to be unfamiliar with many of the contraceptive devices although he condemned them. Under Wegenast's examination, De Haitre admitted that his opposition to birth control was based on religious beliefs but that as a physician he was forced to agree that there were certain instances in which contraception should be prescribed. Wegenast refuted De Haitre's moral objections by citing works by a number of Catholics, including a 1930 Papal Encyclical, *Casti Conubi*, which he claimed implicitly approved birth control. When De Haitre replied that the rhythm method was the only contraception approved, Wegenast asked if abortion or death in childbirth were alternatives. De Haitre was forced to admit that he would approve of contraception in cases in which childbirth would endanger the life of the mother. Although it can-

not be denied that De Haitre was an unfortunate choice as a prosecution witness, Wegenast had skilfully used his manipulative talents to make substantial gains at De Haitre's expense. He had admitted that his expertise was clouded by his religious sentiments. He also had admitted that despite his beliefs there were instances in which he would approve of birth control and that not all Catholics were agreed on the evils of birth control.

Wegenast could certainly not have been disappointed that the next witness called by Mercier was Anna Weber, the Kaufman plant nurse. Despite considerable efforts by the prosecutor to discredit Bureau practices, Weber remained adamant in her contention that PIB methods were the best available and that their practitioners were just as capable as physicians of dispensing information. Mercier attempted through Weber to prove that the testimony of the women was unreliable. He asked why many of them had listed abortions on their registration cards but had denied this to be the case in court. Weber's reply had the opposite effect to what Mercier wished when she replied that the women had obviously lied in court fearing the reaction of local Catholic authorities. A.R. Kaufman who followed Weber was a considerably less spectacular witness than might have been expected. He, however, did aid the defence case by categorically denying Mercier's suggestion that dissension might occur in a marriage if the wife were discovered to be using contraceptives surreptitiously.

Mercier did not fare a great deal better with a number of Protestant clergymen who followed Weber and Kaufman to the stand. Ernest Simms of the Salvation Army defended contraception on the basis of observations made during twenty years of social work. Mercier tried to have Simms admit that Palmer had erred in consulting only the women but Simms rejected this saying that if women had to bear the children theirs should be the ultimate decision.

Claris Edwin Silcox was the next witness. A United Church minister, Silcox was General Secretary of the Social Service Council of Canada. He was also a renowned expert on human sexuality and interdenominational differences. Silcox noted fifteen different gains society could make if birth control devices were more readily available, citing as the most important of these a reduction in the incidence of marriage breakup. The practices of the Parent's Information Bureau were praised by Silcox under Mercier's cross-examination as a necessary social function. As for moral objections, Silcox reiterated the argument that he had made in a 1934 book, *Catholics, Jews and Protestants*, that there were none. In the case of Catholics he referred to *Casti Connubi* which Wegenast had already introduced and other Catholic sources. When Mercier tried to argue that birth control would lead to a reduction in population Silcox retorted that people could have just as many children but that with birth control they could have them when they wanted them.

Silcox's arguments were reiterated, in turn, by University of Toronto political economist, Hubert Kemp and more clergymen who followed him. Kemp statistically reinforced defence claims that Eastview would benefit economically from birth control. Alfred Ziedman, a Presbyterian clergyman and social worker, was next. Ziedman repeated Silcox's arguments. He also agreed with Simms that the woman should make the ultimate decision regarding contraception. The witness who followed, Canon Summerhayes, an Anglican, agreed claiming that a moral right was involved which decreed, in effect, that a woman had an obligation to provide her husband with conjugal rights but also had the right to defend herself against unwanted pregnancy. To deny women knowledge about contraception was characterized as unscientific and immoral.

More technical testimony came from William A. Scott, a Toronto General Hospital gynaecologist. Scott denied that Bureau methods involved

complications such as cancer, sterility or even simple irritation. In contrast, he said, overly frequent pregnancies could produce serious disorders such as pelvic infections. Many of these same arguments were advanced by Margaret Brott, the physician at Kaufman's Toronto clinic. Inadvertently, Brott also provided Mercier with an opportunity to advance a particular line of argument. Mercier asked if contraception led to promiscuity. Brott replied that it did not but only because lack of anxiety led to greater satisfaction and therefore a less frequent need for intercourse. Inexplicably, the Crown did not take the opportunity provided.

The medical evidence was interspersed with still more evidence from clergy. Rabbi Samuel Sacks, the Reverend John Coburn, and Canon G.C. Hepburn reiterated the testimony which had already been given regarding the social desirability of birth control. At this point, Mercier seems to have realized that PIB activities *per se*, could not be proven undesirable so he changed tactics hoping to have clergymen agree that Palmer should not have visited Roman Catholic families. When asked, Hepburn rejected this argument as did Lloyd Essex, a Baptist minister.

The last three witnesses for the defence provided further technical expertise. Dr. George Chisholm offered psychiatric evidence regarding birth control. He cited the marriage problems which resulted from inadequate sexual relations. He also claimed natural methods to be less reliable than the Bureau methods. They were also less satisfying and therefore responsible for a number of emotional disorders. Mercier argued that guilt over the use of unnatural birth control would cause the same problems but Chisholm disagreed. Gladys Brandt who worked at the Toronto clinic testified that their clientele was mainly poor women and that the demand for help was so great that she often worked until midnight. Alice Hawkins, the final defence witness, ran her own clinic in Hamilton. She was called to show that the Bureau's activities were

not inconsistent with societal standards. The defence then chose to rest; the onus was definitely on the Crown to prove its case. Once again, however, the skill of Wegenast tended to discredit prosecution witnesses.

Leon Gerin Lajoie, a professor of gynaecological medicine at the University of Montreal, testified that despite what defence witnesses had said, the methods recommended could indeed lead to medical problems and to discomfort. He also expressed a belief that Bureau workers did not have the necessary training to offer contraceptive advice. Despite strenuous objections from Mercier, Wegenast discredited the witness as he had with De Haitre. He was able to show that Lajoie's opposition to birth control was on moral and not medical grounds although he had been called as a medical expert.

A similar tactic was used on Ernest Couture, a McGill University obstetrician whom the prosecution hoped would counteract Chisholm's argument regarding damage to the marital relationship caused by fear of pregnancy. Couture testified that any interference in the sex act by artificial means was both physiologically and psychologically damaging. Wegenast, in cross examination got Couture to admit that he was not a birth control expert. He also got him to admit that he and other Catholic doctors would give priority to the health of the mother over that of an unborn child and that spacing of children was of value to both parent and child. Wegenast challenged Couture to cite examples of physical damage caused by contraceptive devices but he could not. Couture also admitted that economics justified contraception and he had no objection to the method of information dissemination used by the Bureau.

With the medical witnesses not only discredited but supporting the defence case in varying degrees, Mercier's only hope was to show that opposition to contraception was not exclusively Roman Catholic but dispersed throughout the

community. Richard Cargill, an Anglican gynaecologist, testified that medical examinations were necessary before intravaginal devices could be prescribed. While this partly refuted defence testimony, Wegenast's skill again came into play. Cargill was forced to admit that in certain cases birth control was necessary; children should be spaced two years apart; the ultimate decision should belong to the woman and under less than ideal economic conditions, it was better not to have children.

Canon Arthur Whalley, the final Crown witness, testified that in his view, based on the words of the marriage ceremony which urged couples to be "fruitful and multiply," and portions of *The Book of Common Prayer*, the Church of England could not countenance birth control. Wegenast perhaps performed what was his most effective dissection upon Whalley's testimony. Whalley was forced to admit that he was no expert on birth control and that abstinence was not a reasonable solution. Wegenast then read from the works of Saint Augustine and the *Proceedings* of the Lambeth Conference to show that not all theological authorities agreed that contraception was undesirable.

In the summation, Wegenast was once again able to outclass Mercier. He had enlisted two young men to visit Ottawa area pharmacies where they had obtained, with little difficulty, the very devices which had inspired the trial. Wegenast argued that Eastview did not have a different morality from other centres and that charges had only been laid because of pressure from French, Roman Catholic authorities. While Wegenast did not go to the lengths he was prepared to go, which included the introduction of statistics on French-Canadian participation in World War I, he did portray the arrest as an attempt to impose French-Canadian values on the rest of Canada. "If so," he asked, "where is the line to be drawn, geographically or between family and family? My submission is the line, if any, is at the Ottawa River." Mercier was left with

only one response which ironically seemed to substantiate Wegenast's case. The prosecutor argued that Palmer had been arrested "because she knew or ought to have known that these people in Eastview stood in such a special relationship to the Bishop of Rome that the knowledge of the use of contraceptives ought to be kept from them."

As hoped, Magistrate Clayton, who in the absence of a jury had the ultimate decision, agreed with the defence. He cited in particular the economic situation in Eastview as proof that Palmer's work was in the public interest. The rich could afford contraception but it was denied the poor who needed it most. Since such knowledge would lead to peace of mind for the poor, it would also be of common benefit to society. It was also "an opportunity for the courts to keep abreast of the social developments of the community." Clayton also maintained that his case was an opportunity to disprove charges "that the law is rigid and at times obsolete."

The defence was ecstatic. Not only had Palmer been acquitted but one advocate thought the case so clear cut that the prosecution would not even attempt an appeal.<sup>19</sup> This optimism was soon destroyed when Paul Leduc, a Crown Attorney, possibly inspired by letters in the French language press, indicated he would fight the case. A typical letter suggested that Clayton had made his decision simply because he did not want to appear prudish. Defence lawyers were so angered by this particular letter that they considered having the author charged with contempt of court.<sup>20</sup> There is, however, no evidence this was ever done. Leduc's appeal was dismissed without any evidence on behalf of the defence. Clayton, it was ruled, had made no error in law.<sup>21</sup>

Dorothea Palmer did not, as one might expect, reap the benefits of her own victory. Almost immediately a rift developed with A.R. Kaufman who first forbade her to talk to reporters and eventually fired her. There is no definite reason

why this should have occurred, but a credit report on Dorothea Palmer filed shortly after the trial, mentioned involvement as a co-respondent in a divorce case and some doubt was expressed as to her marital status at the time. Shortly after the report was prepared she wrote to Wegenast thanking him for his efforts on her behalf and expressing a desire to visit Toronto "but since Kaufman kicked me out, I'll have to economize and stay on the job here."<sup>22</sup>

According to a statement made in 1978, Palmer claimed to have entered seclusion in order to protect her husband's family and to provide for her own safety. His family was prominent in the Ottawa area and did not appreciate the notoriety associated with the birth control trial. In the weeks following the trial, Palmer was subjected to verbal and physical abuse, including an attempted rape in which the attacker made pointed references to her role as a birth control advocate. Under the name of Dorothea Ferguson, "the Marie Stopes of Canada" became a reclusive bookstore owner who refused to discuss the trial. She ended her self-imposed exile by appearing at the opening of a birth control museum at the Toronto plant of the Ortho Pharmaceutical Company.<sup>23</sup>

For A.R. Kaufman, the aftermath of the trial was certainly much pleasanter. Kaufman won a significant legal battle over *Le Droit*, the French-language newspaper owned by the Oblate fathers. The newspaper was predictably one of the great opponents of the PIB and one of the editorials written during the trial caused Kaufman's lawyers to threaten a libel suit. They relented only when *Le Droit* agreed to a retraction and the publication of an editorial authored by Kaufman.<sup>24</sup> The Kitchener industrialist continued to work actively for the acceptance of birth control. Work was expanded into areas such as Japan and Korea in co-operation with the United Church of Canada. At home, the Parent's Information Bureau continued to operate as an agency for the dissemination of birth control

information and as a means of spreading Kaufman's ideas on various social issues. In 1976, Planned Parenthood of Toronto honoured A.R. Kaufman as a pioneer in the Canadian birth control movement. Significantly, A.R. Kaufman's obituaries mention his business activities and his involvement with other charitable groups, most notably the YMCA, but pays an overwhelming amount of attention to his birth control activities.<sup>25</sup>

The sequel to the trial was a change in the Canadian attitude towards birth control. Dorothea Palmer said at the time of her arrest: "A woman should be the master of her own body. She should be the one to say if she wants to become a mother."<sup>26</sup> The trial marked a significant milestone toward the goal she envisioned. Although the decision did not establish a legal precedent (and as at least one editorial writer noted, a different magistrate might have come to an opposite decision on the same body of evidence), after the trial charges were laid much more infrequently under the applicable sections of the Criminal Code. *The Journal of Contraception* concluded that the case was of "widespread significance and will take a place among the important historical trials of its type."<sup>27</sup>

Within the Roman Catholic Church, there was an immediate intensification of anti-birth control sentiment. This was not tempered by the pro-contraception side's publicly stated view that the trial marked a victory over Catholicism. A.R. Kaufman commented, "I guess the Quebec priests will not dominate much longer" and E.J. Howick of the University of Toronto predicted that the decision would "get these Catholics to see how untenable their position is."<sup>28</sup> Such statements provoked a backlash. The *Catholic Record*, the London diocesan paper, claimed that the birth control advocates and their allies, most notably Toronto's *Evening Telegram* had purposely confused the issue.<sup>29</sup> The *Catholic Register* of Toronto was much more vehement. Editor Henry Somerville, a spokesman on Catho-



lic social views, attacked Kaufman, the Bureau and the United Church for their respective roles in the birth control movement. Kaufman was described as "the blatant rubber manufacturer." The Bureau material, it was claimed "omits the very stench of the pit." The stated desire to lower the Canadian birth rate was described as "the surest sign of decadence" and contraception as "a low dirty trick not far removed from infanticide." National Security was invoked for "women, who are cowards afraid of motherhood, will make men who are cowards afraid of battle." The editorial concluded, "Canada's hopes of survival and growth apart from Central European and Oriental immigration rests with those who are of Catholic faith and morality."<sup>30</sup> Other Catholic publications and priests' homilies echoed this point of view. A widely distributed pamphlet explaining the Catholic case against birth control was authored by a Jesuit theologian, Father Daniel Lord. In it he argued, "The end, however noble, does not justify the means."<sup>31</sup>

Such tactics were met head on by birth control forces. One tactic was to write persuasive letters to physicians known to oppose birth control. A typical letter [sent to Le Haitre] said "I do hope they [Catholics] will change in the course of time...I cannot understand how your churches will permit sterilizations as a form of punishment but will not permit sterilization to prevent the birth of an idiot child." The Bureau also began a concerted information campaign aimed specifically at Catholic physicians.<sup>32</sup>

In the end, it was the birth control advocates who were victorious. Not only did the attitude of the public at large change but by the 1960's, with the advent of oral contraceptives, a spirited debate ensued within the Canadian Catholic community over birth control. Theologians, some of them Canadian, argued that the decision regarding contraception was a personal matter. Gregory Baum, for example, has argued, "If they [Catholics] have formed deep convictions of the

morality of birth control, they may dissent from the official position and follow their own tested conscience."<sup>33</sup> In the wake of the Second Vatican Council, there was a dramatic increase in the number of Catholics utilizing contraception. There was also a gradual lessening of formal opposition among the Canadian hierarchy culminating with the 1966 statement of the Canadian Conference of Catholic Bishops agreeing that the dissemination of birth control information should be removed from the Criminal Code.<sup>34</sup> Three years later, in line with measured public opinion, the Code was altered. To suggest there was a direct link between either of these decisions and the Palmer trial would be to greatly stretch the point. The trial was, however, unquestionably the first in a series of events which led ultimately to drastic change in public attitudes which was eventually reflected in government behavior.

#### NOTES

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1. See, for example, Angus McLaren. "Birth Control and Abortion in Canada, 1870-1920," *Canadian Historical Review*, Vol. 49 (September 1978), 319-341 also published in S.E.D. Short ed., *Medicine In Canadian Society; Historical Perspectives* (Montreal, 1981), pp. 285-315; Angus McLaren, "What Has This to Do with Working Class Women?" *Birth Control and the Canadian Left, 1900-1939*; *Histoire Sociale/Social History*, Vol. 14 (November 1981), 435-455; James Reed, "The Parents Information Bureau," *From Private Vice to Public Virtue: the Birth Control Movement and American Society Since 1830* (New York, 1978), pp. 218-222.
2. *Toronto Daily Star*, 16 September, 1936.
3. University of Waterloo, Doris Lewis Rare Book Room, Dorothea Palmer Papers, Box I, File 5. This file contains notes of the trial. It should be noted that these papers were donated and made public by A.R. Kaufman, not Miss Palmer.
4. E.M. Mastner, "The Trial of Dorothea Palmer." There is a copy of Palmer Papers, Box 2, File 17.
5. For a short biographical sketch, see H. Munro, "The Eccentric World of Alvin Ratz Kaufman," *Executive* (April, 1963), 33-35; Reed, pp. 218-222.
6. Parent's Information Bureau (hereafter PIB), *Progress of Birth Control in Canada: An Address Delivered by A.R. Kaufman to the Class on Contemporary Religion, Waterloo Lutheran University, December 2, 1964* (Kitchener, 1964), p. i; Reed, pp. 218-222.

7. *PIB Report on Family Activities and the Parent's Information Bureau* (Kitchener, n.d.), p. 1; A.R. Kaufman, "The Parent's Information Bureau of Canada," *Journal of Contraception* (March 1958), pp. 54-55.
8. Francis J. Countway Library of Medicine, Clarence J. Gamble Papers, A.R. Kaufman to H.L. Mencken, 10 August, 1957. These papers are used with the permission of the Countway Library and the literary executors of the Gamble Papers.
9. *Ibid.*, A.R. Kaufman to C.J. Gamble, 21 July, 1937.
10. *Ibid.*, Kaufman to Gamble, 12 July 1934; The Hamilton clinic is discussed in J. Stoffman, "The First Lady of Birth control," *Weekend Magazine* (1 October, 1977), 8-9. There are many studies of Margaret Sanger's work. Among them are, E. Douglas, *Margaret Sanger: Pioneer of the Future* (New York, 1970); L. Lader, *The Margaret Sanger Story* (Westport, 1955).
11. Gamble Papers, Kaufman to Gamble, 21 July, 1937; Kaufman to F.T. Cook, 9 September, 1937.
12. *PIB A.R. Kaufman's Experience and Observations on Doing Social Work* (Kitchener, 1976), pp. 1-4.
13. *Toronto Star*, (30 November, 1978); *Globe and Mail*, (30 November, 1978); Palmer Papers, Box 1, File 5, Voluntary Statement of Dorothea Palmer At the Time of Her Arrest, 26 September 1936.
14. Library of Congress, Margaret Sanger Papers, A.R. Kaufman to M. Sanger, 26 October, 1936.
15. Stephen B. Connors, "Rex V. Palmer," Bachelor of Arts thesis, Wilfrid Laurier University, 1979, pp. 12-15.
16. Quoted in Bill Stephenson, "The Great Birth Control Trial," *Maclean's Magazine* (November, 1957); *PIB The Birth Control Trial* (Kitchener, n.d.), *passim*; Palmer Papers, Box I, File 5D.
17. Palmer Papers, Box I, File 6, F.W. Wegenast to A. Beaumont, 30 September 1936. See also Gerald J. Stortz, "Of Tactics and Prophylactics," *Canadian Lawyer* (March, 1982), pp. 2-5.
18. Palmer Papers, Box 2, File 18, Trial Transcript. There was an additional defence witness, John W. Bruce, a labour leader from Toronto whose testimony is not analyzed here simply because it is repetitive of other witnesses. See Public Archives of Canada, D. Montgomery, *Transcript of Interviews with J.W. Bruce*, (Toronto, n.d.), for an account of his labour activities. In Bruce's papers, housed in the Metropolitan Toronto Central Reference Library, the only reference to the trial is a copy of a magazine article.
19. *Ibid.*, Box I, File 6, F. Bright to F.W. Wegenast, 14 April 1957.
20. *Ibid.*, Box I, File 6, A.R. Kaufman to F.W. Wegenast, 26 April, 1937; C. Dubuc to Kaufman, 24 April, 1937.
21. *The Birth Control Trial*, p. 21.
22. Palmer Papers, Box I, File I, A.R. Kaufman to D. Palmer, 2 June 1957. Box 5, File 46, Dun and Bradstreet Report re: F.G. Ferguson; Box 5, File 45; G.W. Ord and F.W. Wegenast, 26 June 1937; Box 5, File 46, D. Palmer to F.W. Wegenast, 26 June, 1937.
23. *Toronto Star*, 30 November, 1978; *Globe and Mail*, 30 November 1978.
24. Palmer Papers, Box 6, File 33. A.R. Kaufman to F.W. Wegenast, 15 January, 1937; Kaufman to Wegenast, 18 January, 1937; Wegenast to G. Brandt, 23 February, 1937.
25. See *PIB Progress of Birth Control in Canada* (Kitchener, n.d.); *PIB Report on Family Planning Activities and the Parent's Information Bureau* (Kitchener, n.d.); *PIB A.R. Kaufman's Experience and Observations on Doing Social Work* (Kitchener, n.d.); *Globe and Mail*, 27 October, 1976; *Kitchener Waterloo Record*, 27 October, 1976; *Toronto Star*, 27 October, 1976.
26. Stephenson, p. 22.
27. "Pro Bono Publico," *Journal of Contraception* (April, 1937), as cited in *PIB Birth Control Trial* (Kitchener, 1937), p. 22.
28. Palmer Papers, Box 4, File 3, A.R. Kaufman to F.W. Wegenast, 20 February, 1937; Box 6, File 46, E.J. Howick to Wegenast, 25 March, 1937.
29. *Catholic Record*, 27 March, 1937.
30. *Catholic Register*, 3 November, 1938; On Somerville, see J.R.M. Beck, "Henry Somerville and the Development of Catholic Social Thought in Canada; Somerville's Role in the Archdiocese of Toronto 1915-1943," Ph.D. thesis, McMaster University, 1973.
31. Daniel J. Lord, S.J. *What Birth Control is Doing to the United States* (n.p., n.d.), p.32.
32. Palmer Papers, Box 4, File 34. W.L. Hutton to J.E. Le Haitre, 16 July 1937.
33. G. Baum, "The Right to Dissent," in D. Callahan ed., *The Catholic Case for Contraception* (London, 1967), pp. 71-77; See also N. St. John-Stevas, *The Agonizing Choice; Birth Control; Religion and the Law* (London, 1971), pp. 193-194; In contrast see Pope Paul II, *Humanae Vitae* (Rome, 1968), or any of the recent statements by Pope John Paul II.
34. St. John-Stevas, pp. 193-194.