

The following legal opinions were obtained :

i. From Hon. Clarence S. Darrow, formerly Assistant Corporation Counsel of Chicago :

MY DEAR DR. LEWIS :

I have read your paper delivered before the American Medical Association and have considered the question whether the publishers of a medical periodical could be convicted of circulating obscene literature in case they published this paper. The United States statutes govern the circulation of obscene literature and are meant to provide for cases where publishers, or purviewors, publish and sell literature which is supposed to appeal directly to the passions of the reader for the purpose of making money out of these feelings. Of course, the statute is broad and must be construed with reference to a particular case. There is probably not a medical work of consequence and certainly no piece of literature worth the reading, but what verbatim extracts could be made, published and sold in

such a way as to meet the condemnation of the jury and the court under our statutes governing obscene literature. On the other hand, it must not be thought that the statutes are meant to provide that any literature relative to the sexual organs, or to what is popularly known as the baser passions, is obscene literature. If so, of course, it would be no longer possible to give medical students and others the specific treatment for venereal diseases and such instructions as have generally been considered necessary regarding the creation of children, their birth and the ordinary relations that tend to the preservation of the species. In short, there is but one test, and that is the obvious intent with which such literature is published and circulated. A paper which is written in good faith to be read before a body of physicians for the purpose of presenting views, which the author sincerely believes are for the best interests of the health, life and morals of the community, is not a paper upon which such author can be convicted for the circulation of obscene literature; and if such paper is published in good faith by a medical journal, and circulated amongst physicians and surgeons as a paper from a man of standing in his profession, given for the obvious purpose of teaching important and necessary truths, whether the statements may be true or false, scientific or unscientific, then no publisher can be convicted for circulating such magazine or article.

I would desire further to add that any physician who did not have the courage to deliver such a paper before an association of scientific men, when he believed it was for the purpose of making people better and happier, and who hesitated for fear that some law might be construed to send him to jail, would not be worthy of the profession to which he belongs. And any publisher who pretends to circulate literature designed to benefit

and instruct physicians, who would fear to give out a paper written in good faith, for a good purpose, by a man of standing and ability because of some criminal statute, is not fit to publish a scientific journal.

If the law of the United States will send a doctor to jail for teaching in good faith to the profession what he believes to be the truth, or punish the publisher of a medical journal for circulating literature which comes from a reputable and learned man upon a vital question, and written in the attitude of a teacher, whether such teaching is true or not, then the best work the doctor can do, or that the publisher can do for his profession, or for mankind, is to go to jail in obedience to the law.

I believe there is no danger in any civilized or semi-civilized community that could possibly come to any doctor or publisher who in good faith writes and circulates such literature.

Very truly yours,

C. S. DARROW.