

Sex and Charles Malchow, MD

Teaching about sex led to a prison term

BY RYAN T. HURT, MD, AND PAUL NELSON

In 1903, Charles Malchow, MD, professor of proctology at the Hamline University medical college, (and, at the time, a bachelor), published these words:

“Every medical man ... knows that there is nothing in this world so conducive to ecstasy, mental tranquility, personal amiability, and family unity as a properly performed sexual act; while at the same time there is nothing quite so provocative of irritability, discord, dissatisfaction and disgust, as improper, unwilling, and inharmonious sexual congress.”

This *Northwestern Lancet* article bore an unwieldy title, “Unrealized Sexual Sense and Development the Great Cause of Domestic Infelicity and Nervousness in Women.” Though we can see this only in retrospect, the article kicked off a project that Malchow had probably been working on for years: To advance the cause of human happiness (and especially women’s happiness) by teaching the truth about sex.

This article was probably a trial balloon: “Can I get away with this?” (This was, after all, 1903 in St. Paul—Victorian times in a provincial city.) He did get away with it, or seemed to: The article produced no negative reaction that can be found today. The bigger project was a book, a compilation of the then-current understanding of human heterosexual arousal, performance and satisfaction, written (though he denied this later) for a general audience.

With his partner and publisher Olly Burton, he produced, in 1904, the great work of his life and career—a book, *The Sexual Life*, 306 pages of matter-of-fact prose on a breathtaking range of intimate topics: male desire, female desire, youthful experimentation, contraception, abortion. Chapter titles included “Sexual Passion,” “Hygienic Sexual Relations,” “Copulation and Propagation” and on and on. Whew!



FROM THE COLLECTION OF RYAN T. HURT, MD

Burton procured a list of 90,000 physicians, lawyers, bankers and pastors and prepared a 20-page advertising summary to be sent around the country. They had a business plan. Just to be sure, they inquired of the federal postal inspectors whether this might violate any law. They got an ambiguous response and charged ahead; 25,000 pamphlets went out in the mail.

Their trial, in federal court before Judge William Lochren, began in early October 1904. They had been indicted under what was known as the Comstock Act, a federal statute making a felony the transmission of obscenity through the mails. The Comstock Act, enacted in 1873, had been used extensively in the East, especially New York City, where Anthony Comstock himself (though not a lawyer), had run the show. His New York Society for the Prevention of Vice acted as an agent of the federal government in hounding and prosecuting purveyors of filth (including art schools and museums) wherever Comstock could find them. The Comstock Act had occasionally been used in Minnesota, too, but Burton and Malchow probably

did not know about those obscure cases, which mostly involved obscene letters and newspaper ads for abortifacients. A few fringe-dwelling men went to prison.

U.S. Attorney Charles Houpt planned a boring prosecution. He called only two witnesses, postal officials, who described the mailings and entered a copy of *The Sexual Life* into evidence. The material would, Houpt presumed, speak for itself. But he misjudged the judge. Lochren, a Civil War hero and—at least in public—a militant prude, demanded that Malchow’s obscenities be put affirmatively on the record. Houpt had to read the naughty bits aloud. He read 12 sections; three consisted of advice, sometimes explicit, on how to better perform intercourse. We can only imagine—it is worth imagining—raised eyebrows and suppressed chuckles among the 12 men of the jury as Houpt read such lines as “the friction occasioned by the undulations and the to-and-fro motion” and this verse borrowed from Shakespeare’s poem, “Venus and Adonis”:

*I’ll be a park, and thou shalt be my deer;
Feed where thou wilt, on mountain or in dale,
Graze on my lips; and if those hills be dry,
Stray lower, where the pleasant fountains lie.*

Burton and Malchow’s lawyer, V.F. Brown, tried to mount a defense that the book needed to be judged not by individual passages but by its overall purposes and likely effects. Judge Lochren shut this down. In a telling exchange, when Brown tried to get into evidence that sexual ignorance was “quite general,” Lochren cut him off with, “It is to be hoped that it is.”

The Comstock Act did not define obscenity (though it did explicitly forbid any mention of contraception), but Judge Lochren was up to the task. He instructed the jury that “obscene” meant “likely to raise in the young and immature, libidi-

nous thoughts,” thereby making children’s sensibilities the crucial legal measure. “The word ‘obscene,’” he continued, “[has] reference to sexual relations of persons, not other kinds of filth.” Under the circumstances, the jurors did not have much choice. They duly and quickly convicted Malchow and Burton and Judge Lochren sentenced them to two years in prison.

Readers may be shouting at the page, “What about the First Amendment?” The answer is simple: There was no such thing as a First Amendment defense to obscenity charges in 1906. We take for granted today that people can write and publish what they want, but that is a relatively recent development. The Comstock Act was challenged on First Amendment grounds in 1957, 50 years after *United States v. Burton and Malchow*; the case went to the Supreme Court and the challengers lost, by a vote of 7 to 2, yes, in the famously liberal Warren Court. The Supreme Court adopted the interpretation we know today only in 1973.

How had Charles Malchow maneuvered himself from the faculty office to the prison cell? The tale is an unlikely one. He’d grown up a working-class kid in Northeast Minneapolis, the son of German immigrants. He left school as a teenager after his father died; he had to help support his disabled mother. At age 27, he began medical studies at the Minneapolis College of Physicians and Surgeons, and in three years graduated first in his class.

He set up a medical practice in Shakopee, but small-town practice wasn’t for him. Twice in the next three years he left for advanced medical study in London, Vienna and Berlin. In Europe he encountered the works, then new and mind-blowing, of the Englishman Havelock Ellis. Ellis published the first of his (now unreadable) six-volume treatise, *Studies in the Psychology of Sex*, in 1897.

Ellis was interested mostly in sexual deviance from the norm. (That 1897 first volume, now known as Volume Two, was titled *Sexual Inversion*, that is, homosexuality.) Malchow was interested in something with a better chance at popu-

larity—conventional marital sex and its contribution to human happiness.

Once back in Minnesota, Malchow set up a practice in downtown Minneapolis, joined the faculty of Hamline University College of Physicians and Surgeons (his alma mater had merged with Hamline) and courted another native of northeast Minneapolis, Lydia Gluek of the Gluek Brewery family. They married in 1904, the same year the book came out. They were good-looking, they were prosperous and he, at least, was ambitious. His ambition brought them both down.

Malchow and Burton appealed their convictions, to no avail, although Judge Lochren reduced their sentence from two years to one. They reported to Stillwater Prison (there were no federal prisons in those days) in June 1906. Meanwhile, their allies and supporters appealed to President Theodore Roosevelt for a pardon. Roosevelt was a man of the world, familiar with the fleshpots of Gotham (he had been New York City police commissioner), had six children and, presumably, wished marital happiness for both his wives (his first died young). Was there a chance he might see the value of Malchow’s project, or have mercy? There was not.

President Roosevelt was no less a prude, at least in his public life, than Judge Lochren. He considered the great Russian novelist Leo Tolstoy “a sexual and moral pervert.” Although Roosevelt received pleas for mercy from Mayor William Henry Eustis of Minneapolis, Minnesota Governor John A. Johnson and Minnesota U.S. senators Moses Clapp and Knute Nelson, he did not budge. In a letter to Senator Nelson, he wrote, “It is a hideous and loathsome book. I would as soon see poison circulated in the household,” as a copy of *The Sexual Life*. There would be no clemency.

With credit for good time, Malchow (and Burton, too) served nine months in prison. Malchow and his publisher were felons, but the book sold and sold and sold, 100,000 copies in various editions, although Malchow apparently had nothing to do with any of them after the second. (The book can still be found easily on-

line.) Prosecution and prison time did not ruin Malchow, although they cost him his position at Hamline. He returned to the practice of medicine and the house near Lake of the Isles, but not for long. In 1913, he and Lydia moved to Santa Monica, California. Malchow never practiced medicine in California and died there in 1917 at age 53 from complications of diabetes. Lydia lived in California the rest of her life (she died in 1943) and never remarried. The Malchows had no children.

When Alfred Kinsey, ScD, published *Sexual Behavior in the Human Male* in 1948, he lamented on the first page that “human sexual behavior represents one of the least explored segments of biology, psychology, and sociology.” Malchow could have written that sentence 44 years earlier. In 1953, after publication of *Sexual Behavior in the Human Female* (which cited Malchow six times), Kinsey appeared on the cover of *Time* magazine, a reliable sign of mainstream acceptance. Kinsey, although he could only have guessed at this when he began, chose the right decade for his work; by the 1940s, American prudery had receded just enough.

Charles Malchow (maybe married women confided in him, we don’t know) had identified a problem, ignorance about sex, that brought people unnecessary episodes (or lifetimes) of frustration. With *The Sexual Life*, he aimed to add to the sum of marital pleasure and family happiness for millions. But he made a big mistake: he did it 50 years too early. Being ahead of one’s time is sometimes rewarded, sometimes punished. ■■

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