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COURT OF GENERAL SESSIONS,

Part IV.

----- -x	:	
THE PEOPLE,	:	Before
	:	
vs.	:	HON. JOHN W. GOFF, R.,
	:	
MARY GRAHAM, alias MARY HARTMAN.	:	and a Jury.
----- -x	:	

Indictment filed January 4, 1906.

Indicted for Manslaughter in the First Degree.

New York, October 29, 1906.

A p p e a r a n c e s .

For the People,

ASSISTANT DISTRICT ATTORNEY ARTHUR C. TRAIN and
AMOS PINCHOT.

For the Defendant,

MR. SAUL J. DICKHEISER.

Peter P. McLoughlin,
Official Stenographer.

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MR. PINCHOT opened the case on behalf of the People as follows:

May it please the Court, Mr. Foreman, and Gentlemen of the Jury:

On the 5th day of January, 1906, an indictment was filed against Mary Graham, alias Mary Hartman, this defendant, for manslaughter in the first degree.

The alleged killing took place on the 18th day of November, 1905, at 250 West 39th street, Borough of Manhattan.

The deceased, Margaret Donnelly, was a young Irish girl, 21 years old, who lived in Newark, and worked in a jewelry factory on the corner of Washington and Crawford streets.

In the summer or early autumn of 1905, Margaret Donnelly, becoming pregnant, read an advertisement in the World, and went to this defendant. She took with her a friend, Mrs. Dixon, who will be a witness in this case and who you will see here today in Court. Together, they went to the place of business of this defendant, No. 250 West 39th street.

Now, the deceased testified in a dying declaration, that the defendant here on two occasions had

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inserted into her womb a rubber tube called a bougie, and from the effects of this operation, we will show that the deceased died.

She went to Mrs. Hartman first on the 18th day of November, taking Mrs. Dixon with her. She went again on Tuesday November 22nd, and this same operation was gone through with. She almost immediately became ill. She was taken to the City Hospital at Newark, where she was attended by Dr. Williams and Dr. McKenzie, the Essex County physicians, and she died there on the 28th of November, that was the day when she was received. Almost immediately it was found that Margaret Donnelly was in a dangerous condition, and it was decided at once to operate and an operation was performed. The operation was not successful in saving the patient's life. Another operation was almost at once performed, and she died on the 28th. It was found at the autopsy that these two tubes or bougies had been placed through the womb up into the abdominal cavity and were lodged there. That, of course, resulted in death.

A bougie is a tube about as big as that (illustrating), somewhat smaller than a lead pencil. Of course, the presence of these two tubes of rubber

in the abdominal cavity caused septic poisoning, and the result came very quickly.

Now, gentlemen, this is a very peculiar case. All of these abortion cases or manslaughter cases at times are peculiar cases. They are extremely difficult to prove, and one reason, of course, is the same reason that all manslaughter and murder cases are hard to prove is that the principal witness in the case is never here. She is dead. The People have tried in this case, and it is necessary in cases of this kind to secure an exceptionally intelligent jury because there will be presented to you a good deal of technical evidence, medical evidence, and it is a difficult case to follow. We ask you to follow it as carefully as possible.

Now in regard to this particular crime which this defendant, as we allege, has committed, I may say that she was a professional abortionist; she was a professional operator, she was not a skillful operator, and the operations which she performed on this poor Irish girl were bungling and brutal to the last degree.

Another word in regard to this particular class of crime. It may be said by the learned counsel for

the defense that inasmuch as the deceased in this case did a wrongful act in going to Mary Hartman to procure an abortion, that the need for justice is not so great as in other classes of cases; but that is not true. Our law is meant to protect not only the wise and the righteous, but also the foolish and the guilty. You must remember, for instance, if one of you gentlemen of the jury should meet me on the street, and for some reason or other, good or bad, should strike me, the law would protect you from me if I were to draw a bowie knife and plunge it into your heart, although you had committed a crime in striking me, I would have no right to do that. Now whatever the wrong of this poor Irish girl who was killed by this abortion may have been, it is not for you here to judge. Whatever physical or mental stress she was under when she went to this woman, it is not for us to pass upon. It is only for us to pass upon the guilt or innocence of this defendant. Margaret Donnelly paid for her wrong whatever it was. She paid twice. She paid this defendant ten dollars, and she paid for it also with the life of herself and her child. The State has the right to the life of

every citizen.

Now, the object of all these laws, as you know, and as I said, is to protect not only the strong, the wise and the good, but other classes, all classes of people, who are subject to temptation or to criminal impulses. The law is to stand by their side and arrest the criminal impulse and arrest their arm in striking.

In this case Mr. Train and I are the servants of the People and your servants, and we intend to give this matter our best consideration, our fairest consideration, and whatever you want us to explain anything, or help you in any way, please speak out. We are here together to determine exactly what happened and to get at the truth of this matter, and you are here to pass upon the facts in this case.

MR. DICKHEISER: I move to dismiss the indictment upon the ground that the Court of General Session has not jurisdiction to try this case under the charge specified in the indictment. It charged the commission of a crime outside of the County of New York, and that even if the crime of abortion was committed in the County of New York, the crime of manslaughter in the first degree was not committed wholly within the County of New York, partly within the County of

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New York.

I move to dismiss the indictment for lack of jurisdiction.

THE COURT: Motion denied.

Exception.

MR. DICKHEISER: At this time, I will ask the Court to compel the prosecution, in view of the statement made at the opening of the case by the District Attorney, to elect upon which count in the indictment he will proceed. There are four counts.

THE COURT: I decline to grant that motion.

Exception.

WILLIAM H. MCKENZIE, M.D., a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Doctor, are you a regularly licensed practicing physician and surgeon? A I am.

Q You reside where? A In Newark, New Jersey.

Q How long have you practiced in Newark? A Fourteen

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years.

Q Are you the County Physician, or were you the County Physician for Essex County in New Jersey? A I was and I am still.

Q You are still? A Yes, sir.

Q For how long have you been County Physician?

A very nearly four years.

Q Does that correspond to any office in New York county?

MR. DICKHEISER: I object to the question.

MR. TRAIN: I will withdraw it. I would like to know as a matter of general information what a county physician is.

BY MR. TRAIN:

Q Are you in any way connected with the Coroner's office over there? A The Coroner can only act---

MR. DICKHEISER: I object to this as immaterial.

THE COURT: Objection sustained.

Q How long have you been a practicing physician?

A 14 years.

Q Now, on the 28th of November, 1905, did you perform an autopsy on the body of a woman? A I did.

Q Who was present at that, please? A Dr. Pollus, Dr. Rauschenbach and Dr. Williams.

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Q You mentioned three doctors. Who else was present?

A One of the County Detectives, Mr. Dudker.

Q Anybody else? A I think that is all.

Q Was Mrs. Dixon there? A At the autopsy?

Q Yes. A No, sir.

Q Now, prior to the autopsy had this body been pointed out to you by any person? A Margaret Donnelly?

Q Yes. A Yes, sir.

Q Who by? A The Housephysicians and surgeons in the hospital.

Q At any time did you see Mrs. Dixon? A I saw Mrs. Dixon when I saw saw Margaret Donnelly.

Q When did you first see the woman known as Margaret Donnelly?

MR. DICKHEISER: I object to that as immaterial, irrelevant and improperly framed.

MR. TRAIN: It is on the question of identification.

Objection overruled. Exception.

Q (Repeated). A On the morning of the 28th of November.

Q Was she alive? A She was alive.

Q Now, where was she then? A She was in the City Hospital.

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Q What part of the City Hospital? A In the Woman's Ward, the annex to the Woman's Ward.

Q What time of day was it? A About ten o'clock in the morning.

Q Did you attend her? A I did not.

Q Were you present while anybody else attended her?

A No, sir.

Q Now, who pointed out this woman in the City Hospital to you as Margaret Donnelly? A Why, I don't know how to answer that question.

Q You said you saw Mrs. Dixon at the same time you saw Margaret Donnelly? A Mrs. Dixon was in the room. This woman was in this room and I went there to see her, and that was the room pointed out to me to go, that I was directed to. I went in there to see Margaret Donnelly.

Q Did you go into this ward? A Yes, sir.

Q In which Mrs. Dixon was? A Yes, sir.

Q Into the room where Mrs. Dixon was? A Yes, sir.

Q Now, was there any other patient there? A No, sir.

Q Just one patient? A Yes, sir; Margaret Donnelly.

Q Mrs. Dixon was in this room? A Yes, sir; and the nurse.

Q Did you examine the patient? A I did.

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Q Now, later on you performed an autopsy upon that patient's body, did you not? A Yes, sir.

Q It is that autopsy upon that patient's body to which I now direct your attention. You see it is necessary in order to identify the person. Where was the autopsy performed? A In the autopsy room at the City Hospital.

Q In the same place? A Yes, sir.

Q On what day? A The same day, the 28th of November.

Q What time was it? A Four to four thirty in the afternoon.

Q Now, will you describe the body to the jury so that there cannot be any question as to the identity of it. What did she look like. Do you remember what was her weight or height? A She was a rather slim woman; she was a young woman; she was the same woman that I had seen in the morning upstairs.

Q About what age? A She was about 20.

Q What did you find as the result of your autopsy?
A I found that the surgeons had performed an operation on her the day before or night before.

Q Were you present at that operation? A I was not, but there was an incision in the abdominal wall where they had operated, and then on opening up the abdomen, I found that the woman was suffering from septic peritonitis.

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The abdomen was full of pus. I also in the abdomen these bougies.

THE COURT: These articles. Strike out the word "bougies."

Q These articles? A Yes, sir.

Q Now, will you describe them, Doctor? A Yes, sir.

MR. DICKHEISER: I object, at this time, if your Honor please, to the introduction of further evidence on this ground, for the reason that the District Attorney has failed to show that the body upon which the autopsy was performed was the body of the person mentioned in this indictment.

THE COURT: That resolves itself into a question of the order of proof. Inasmuch as there must be some discretion used in that line, the Court will exercise that discretion and permit the evidence. If it should appear subsequently in the case that the prosecution failed to establish the identity of the body described by this witness as the body of the person named in the indictment, of course, that would be to your advantage. For the present, overrule the objection.

Exception.

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Q Will you describe the articles? A These are bougies.

Q Don't characterize them.

BY THE COURT:

Q Doctor, describe them by their length, by their diameter, circumference, by the material they are made of, whether flexible or inflexible, and after you answer to that question, the District Attorney no doubt will ask you to give the medical name of those articles. First describe the articles just as if they had no name, and then the District Attorney will by proper questions ask you as to their names?

A These are woven materials covered with a rubber material, as you see they are, one of them is about three eighths of an inch in diameter, and the other three-sixteenths, the other about an eighth of an inch in diameter.

Q How long are they? A Well, they are about nine and eleven inches, I should judge.

Q Flexible or inflexible? A Partially flexible.

BY MR. TRAIN:

Q Are they hollow? A They are hollow.

Q Is that a tube? A At the end. That one end is closed and rounded; there is no opening at the round end. The end that is used ordinarily for insertion is closed. The other end is open, and into that end a stillette could be introduced in pushing one of these tubes into anything you wanted to push it into.

Q

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Q Now, are those used in the practice of medicine.
Have they a recognized use in the practice of medicine?

A Yes, sir; they have.

Q What is the medical term given to them by the profession? A These are called bougies.

Q What is the use to which they are put as recognized by the profession? A The ordinary use of a bougie is to dilate a stricture in a male.

Q Dilate a stricture in a male person?

A Yes, sir.

Q What other recognized use have they? A That is the principal thing for which they are used.

THE COURT: That is sufficient.

MR. TRAIN: Now, will you mark those for identification. There is no need of marking them. They can be left right here where they are visible. You won't raise any question as to the identify of the instruments.

Q In what part of the body of the deceased, did you find those two articles? A The longer one was in the abdominal cavity, the front part of the abdominal cavity. It had gone through the omentum and was lying otherwise free in the cavity.

Q Had it been inserted into the womb?

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Objected to.

Objection sustained.

Q Was there any part of lying within the womb of the deceased? A No, sir.

Q Was there any perforation in the womb of the deceased?
A Perforations in the posterior wall of the womb.

Q Now, will you describe to the jury those perforations, their character? A They were small perforations which an instrumentlike this could have passed.

Q Now, were either of these two instruments lying within the womb itself? A No, sir.

Q Were they lying outside of the womb? A They were lying outside the womb, inside of the abdominal cavity, they had gone right through the cavity of the womb and were in the---

MR. DICKHEISER: I move to strike that out as being the conclusion of the witness, with no evidence to support it.

THE COURT: Let me understand before I rule on your motion.

BY THE COURT:

Q Do you say that from your examination of the body of this woman that you say that these instruments which you

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hold in your hand--- you found them inside of the cavity of the womb? A No, sir; they were not inside the cavity of the womb.

Q Just describe where you found them? A And the other one I found furtherback in the abdominal cavity. That had gone through a portion of the intestines, perforated that, so that the intestinal contents could escape into the abdominal cavity, making the peritonitis all the more certain.

BY MR. TRAIN:

Q Now, were you able to state, doctor, with reasonable certainty, how these two instruments known as bougies could have passed from outside the body into the place where you found them? A They could only have passed to the place where they were found through these openings in the posterior wall of the womb.

Q In other words, they would have to pass through the womb? A Yes, sir, through the womb, through the wall of the womb to get to the place that they were, because there is no other opening. There was no other opening in the body that these things could enter and be found in that locality.

Q Will you state to the jury how these bougies could have passed through the womb and into the abdominal cavity?

A They would be inserted from the outside, through a woman's

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external vaginals into the womb. Can I state how?

MR. TRAIN: Unless there is an objection.

THE WITNESS: They are used in that case too---

THE COURT: No.

Q First into the external orifice of a woman's genitals, and then what? A Then through the vagina and up through the external opening of the womb, and into the womb; then these were pushed right through the wall of the womb, then the movements of respiration, breathing, must have drawn them up a further distance, so they were finally sucked in there through the opening.

Q When you say they were pushed up, of course you don't know that of your own knowledge? A Well, they would not go there.

Q You can state your conclusion as to what you observed. When you say they were pushed there, we might ask you if you saw them pushed? A I should say then they went there.

Q Now, could an instrument of the character in question be placed at the external orifice of the genitals of a woman and enter this way through the vagina, through the external orifice of the womb, and through the wall of the womb without external pressure being applied, practically go of itself? A Not without external pressure and guidance both.

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Q And guidance both? A Yes, sir.

Q Now, in your opinion-- I have not asked you this question but it is necessary-- in your opinion, what was the cause of death? A The cause of death was septic peritonitis caused by an abortion and these instruments were instrumental in causing that abortion.

Q Now, septic peritonitis is what?

MR. DICKHEISER: I move to strike out the answer of the witness on the ground that there is no evidence to show that the woman was pregnant or that there had been an abortion, and that there is nothing in the case that there was an attempt at an abortion.

Motion denied.

Exception.

Q Tell us what septic peritonitis is in ordinary language? A Ordinarily, it is spoken of as blood poisoning.

Q Caused in this case in your opinion by what?

A Caused either by septic material introduced. There can be three ways that it can be brought about.

Q In your opinion, what was the way here? A In this case it was simply brought about by introducing septic material right into the peritoneal cavity, and these bougies by opening up the intestines and allowing the intestinal

contents to escape into the peritoneal cavity and made septic peritonitis absolutely certain.

Q There was a whole lot of decomposed matter in the abdominal cavity was there? A Yes, sir; that escaped into the abdominal cavity.

Q Decaying blood, decaying tissue and so forth, everything of that sort? A Yes, sir.

Q Now, as I understand your testimony, and I think I am correct, it is that both of these objects passed entirely through the womb of the deceased, and came out on the other side? A Passed right through the wall of the abdomen. The womb was in the lower part of the abdomen, and these things were inserted, and they were pushed right through, so that they went through, and this one was found up here, the end of it up even with the diaphragm.

Q Now, was this woman pregnant, or had she been pregnant? A The womb had that appearance, that she had been pregnant.

Q Can you state, with reasonable certainty, that she had been pregnant? A Yes, sir; because the womb was enlarged, and the internal lining of the womb was full of pussy material, and part of the fragments of the foetus had been removed. Dr. Williams can give you the positive information.

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Q Well, I have got to exhaust your knowledge before I call him. Was any part of the foetus left in the womb?

A No, sir.

Q Was there any evidence that it had been removed. Had the womb been scraped or anything of that sort so far as you could see? A I would not see that from the autopsy.

Q Then your opinion is based on the fact that the womb was dilated? A Yes, sir; was enlarged.

Q Are you able to say how long the woman was pregnant from the size of the womb? A I should judge about three months.

Q Three months? A Yes, sir.

Q What was the condition of the body as a whole-- was the woman well nourished? A She was fairly well nourished.

Q About how old? A About twenty.

Q Healthy? A The other organs were healthy.

Q Now, can you state with reasonable certainty, doctor, whether any person who had had these two instruments in question perforating the womb could possibly have survived? A They could not after the peritonitis had set in to the extent that it had when they operated upon this woman.

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Q How much pus did you find in the abdominal cavity?

A I did not measure it, I should judge about a quart of it there.

Q A quart of pus? A Yes, sir.

Q Supposing these two tubes had been allowed to remain in the abdominal cavity, what would have been the result?

A Just what happened, the woman died.

Q An inevitable consequence? A Yes, sir; an inevitable consequence of that condition.

Q Death would have been the inevitable consequence of having two instruments of that character placed in the abdominal cavity? A It would be.

Q Had you ever talked to Margaret Donnelly in her lifetime? A I had.

Q Now, doctor, I wish you would try and speak a little louder. Where was it that you spoke to her? A In the hospital.

Q. On the occasion that you have previously described?

A Yes, sir; in the morning.

Q When you went to this room? A Yes, sir.

Q Now, I think you said Mrs. Dixon was there and the nurse? A Yes, sir; Mrs. Dixon and the nurse was there.

Q About what time was it you first went into the room?

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A About ten o'clock in the morning.

Q Was she in bed? A Yes, sir.

Q What was her condition at this time? A She was in a very bad condition; she was dying in fact.

Q She was dying? A Yes, sir.

Q Did you remain long in the chamber? A A few minutes.

Q Did you have any conversation with her? A I did.

Q What was the character of it? A I went there to get a statement from her.

Q What is commonly known as an ante mortem statement? A Yes, sir.

Objected to.

Objection sustained.

THE COURT: Strike out the answer.

Q You went there to get a statement? A Yes, sir.
I went there to get a statement.

Q What did you say to her and she to you? A I said to her, "Margaret, do you know that you are"---

MR. PICKHEISER: I renew my objection on the ground urged before, that is the failure on the part of the District Attorney to connect the evidence sought to be introduced with the person specified

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in the indictment. There is no evidence to show that it was the same party.

THE COURT: I appreciate your objection.

MR. PICKHEISER: I think at this time the order of proof should be connected.

Objection overruled.

Exception.

Q In view of the objection just taken, what did you say to Margaret Donnelly when you first came in. Give us all the surrounding circumstances. You say the woman was dying?

A Yes, sir.

THE COURT: Do you propose, Mr. District Attorney, to prove a dying declaration?

MR. TRAIN: Yes, sir. I offer to do so.

THE COURT: I am of opinion that you must show a foundation in the first instance, for a dying declaration. You must show that the person who made the dying declaration is the person mentioned in the indictment.

MR. TRAIN: I will tell your Honor very frankly that unless this declaration is connected, that there will be absolutely no case against the defendant. The person who will connect it is a Mrs. Dixon who is the chief witness in the case and who is on her

way here now from Newark and who may reach the Court room any moment. On the other hand, she may not get here until after recess. Unless it is connected, we would have to abandon the case against the defendant, so that there is nothing that Mr. Pickheiser could lose by permitting it at this time, because unless Mrs. Dixon comes in, we could not ask your Honor to let the case go to the jury, so Mr. Pickheiser cannot place himself in any awkward position by allowing this evidence to go in in this order on my statement.

MR. PICKHEISER: In view of Mr. Train's statement that he promises to connect this declaration with the person mentioned in the indictment, I will withdraw my objection.

THE COURT: Very well.

MR. PICKHEISER: But without waiving any of the rights of the defendant in the premises.

THE COURT: I understand that.

MR. TRAIN: I will stand by my stipulation.

THE COURT: On the statement of counsel for the defendant, this testimony is admitted on condition that the District Attorney will substantiate his prom-

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ise to identify the person claimed to have made the declaration to this witness as the person named in the indictment, and to carry out that promise by the introduction of a witness during the trial of this case, who will testify to such fact, you may go on.

BY MR. TRAIN:

Q Now, Doctor, as to what she was dying of, you say she was in a dying condition? A Yes, sir; she was in a dying condition. She was dying of peritonitis following an abortion.

Q From the cause you have already described?

A Yes, sir; following an abortion.

Q What did you say to her? A I spoke to her gently at first, and then I gradually led up by asking her how she felt and so forth, and I said to her then, "Margaret, do you know that you are dying?" And she said " Isn't there something more that can be done for me?"; I said, "Margaret, they are doing all they can for you, but there is no hope for you, and I would like to have you tell me what you know about your troubles"; then I said to her, "Margaret, I will leave you alone with your friend for a few minutes". Before that I had sent Mrs. Dixon and Mrs. Sutter out of the room while I talked to her. I went out and called them in

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and left them with Margaret Donnelly, and I told them what I had told her, and that I wanted her to realize her position.

THE COURT: Strike that out. Strike out what you said to the nurse and Mrs. Dixon. Don't state what you said to them.

Q How long were you absent?

MR. DICKHEISER: I think I may properly address your Honor at this time to use your discretion here. In this case in view of the fact that the evidence is surely hearsay and while there are exceptions to the rule as to hearsay, that is a dying statement, to be passed upon by your Honor exclusively, I think

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(The following took place in the absence of the jury.)

BY MR. TRAIN:

Q Go on, doctor. You went out of the room. What then occurred? A Then I came back in a few minutes, five, six or seven minutes, after they had a chance to talk to her, and I said, to her, "Margaret, do you know that you are going to die?" And she said, "Yes, I know it." I then said, "Are you willing in the presence of death, will you make a statement to me, will you make a statement to me and tell me all that you know", and she said "Yes." Now, do you want the statement?

MR. DICKHEISER: Well, your Honor, I object to the introduction of the statement.

THE COURT: This is not taken before the jury, this is not admitted in evidence. I am taking it for my own information to pass upon it.

THE WITNESS: (Reading) November 28, 1905.

I went to Mrs. Hartman, 39 West 30th street, New York.

BY THE COURT:

Q In order that it may appear on the record. Are you reading from a paper now? A Yes, sir.

Q Did you write that paper at that time? A "I wrote that at that time, and she made the statement as she answered my

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questions at the bedside and she answered it.

Q On the spot? A Yes, sir, right at her beside, and she signed it there. (Indicating). (Reading) I went to Mrs. Hartman, 39 West 30th street, New York a week ago last Saturday and then Tuesday and then Friday. She put a tube in me. I did not see the tube. I felt it. She, Mrs. Hartman, said she put it in. She said she put a tube in each time I went there. I went there alone. I paid her ten dollars. No one was with me. I went alone. I found out about it in the World. I live in Providence. I am 21 years old. I was staying at 2 Baldwin street, Newark. I boarded there. I say this all knowing I am about to die. Margaret Donnelly." And she ran over on the paper there (indicating).

BY MR. DICKHEISER:

Q When you first saw Margaret Donnelly she said "I don't want to die", did she not? A I don't think she said "I don't want to die"; she said, "Isn't there something more that can be done for me."

Q Don't you remember in the Police Court you said that she said "I don't want to die"? A I don't remember that part of it.

Q She did say to you, she did express herself as concerned about being the beneficiary of further medical treatment? A Yes, sir; she had hopes.

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Q At that time? A Yes, sir.

Q When you spoke with her she had hopes of living?

A Yes, sir.

Q She had not abandoned hope of recovery when you spoke to her? A When I first spoke to her.

MR. TRAIN: The Doctor cannot say that, whether she had hopes of recovery or not.

MR. DICKHEISER: That is what she said.

MR. TRAIN: I move that that question and answer be stricken out as to whether she did have hopes of recovery.

MR. DICKHEISER: Under the rules of the Court decisions, of Appeals, it is ~~not~~ necessary to show the abandonment of total hope, the total abandonment of hope, the absence of hope by words or language or by any surrounding circumstances, by any expression, by any appearance, by any intimation one way or another. Any intimation, no matter what it is, the slightest intimation of the existence of a spark of hope in her breath, under the rules of the Court of Appeals vitiates the admissibility of any dying statement.

THE COURT: I don't think they went to that extent by saying "the slightest".

MR. DICKHEISER: I have authorities on that

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subject.

MR. TRAIN: I say that this doctor cannot say whether she had hope or not.

THE COURT: There is no need of discussing it now.

Q What makes you believe, Doctor,---

MR. TRAIN: Will your Honor, on my motion, strike out the question and answer?

THE COURT: So far as he knew.

MR. DICKHEISER: He said she had hopes of recovery.

MR. TRAIN: I object to that.

BY MR. DICKHEISER:

Q She appeared hopeful to you? A Only to the extent that she said "Is there nothing more that can be done for me". That shows just a grasping of the slightest straw.

Q Didn't she say to you twice "Can nothing be done for me?" A I think only once.

Q Well, are you sure that it was only once, doctor, or do you only think so? A I think only once.

Q Don't you remember in the Police Court this question was put to you and this answer made by you: "Will you state what you said to Margaret Donnelly", and you answered "I told her she was in a dying condition; she had no hopes of living." That is what you said to her, that you had

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no hopes. And she asked if there couldn't be some more hopes for her, and she wanted to know if something more could not be done for her then. "I left Mrs. Dixon and the nurse to talk to her and I went back". Did you testify to that in the Police Court? A I don't know that that is just as I answered it there, because---

Q Did you answer it? A As I answered it, yes, sir, that is part of it, but that was not the time when I took the statement.

THE COURT: I understand.

BY MR. DICKHEISER:

Q Now, Doctor, did you put down on that paper every answer that she gave you? A As far as I could, taking it in longhand right at her bedside. I read it to her afterwards and asked her if that was what she meant to tell me, and she said, "Yes."

Q I asked you whether you put on the paper everything she said to you? A I believe I did, yes, sir.

Q Well, you did not put down on the paper the questions "Can't more be done for me", you did not put that down?

A That was before, that was a different occasion.

Q How long altogether did you speak to this dying woman? A Why, I should think perhaps twenty minutes in all.

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Q Did you in the Police Court say you spoke to her only a few minutes, five minutes, didn't you? A Well, it is hard to tell just how much time it takes to ask a woman these questions and write them down.

MR. TRAIN: I think this is going outside of the preliminary cross examination as to the admissibility of this declaration.

THE COURT: I shall not hear any further. You may go into that in your general cross examination, to test the memory and veracity of the witness, but as to the question of it here whether a proper foundation is laid or not, I think you have gone far enough.

BY MR. DICKHEISER:

Q The girl whom you spoke to did not say that she was resigned to meet her God, did she? A No, sir.

MR. TRAIN: I object to that. It is not necessary that she should have.

Q She did not say that she had given up all hope?

Objected to.

Objection sustained. Exception.

Q Did you ask her anything about her hopes. Did you put the word hopes to her? A In the form of a question? No, sir.

Q Therefore, all your conversation was absent on the

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question of her hopes? A Except the last part of it.

Q I am talking about the word "hopes" irrespective of her belief in death? A (No answer).

MR. DICKHEISER: I wish to call your Honor's attention to the decision in the Court of Appeals to the effect that before a dying statement can be admitted, two things must appear, that the declarant knew she was about to die, and, secondly, independent of impending dissolution, an abandonment of all hope. There must be an absence of all hope.

THE COURT: Where is the decision that speaks of the abandonment of all hope. Give me the decision that says "an abandonment of all hope."

MR. TRAIN: I know of a case where the Appellate Division has sustained a conviction of this sort where the woman said "I hope God will let me live."

BY THE COURT:

Q When you went into the room who spoke first? A I believe I did.

Q What did you say? A I said, "Margaret, do you know you are about to die", and she said, "Yes, I know it." Then I said, "Will you make a statement telling me all you know about this".

Q And then you proceeded to take the statement. Now,

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before, the conversation that you had before that. Will you repeat to me again what you said to her as nearly as you can, word for word? A As nearly as I can, I said, when I went in, after I had talked to her generally for a few seconds, I said, "Margaret, do you know that you are about to die and there is no hope for you?" And she said "Isn't there something that can be done for me, or something more that can be done for me?" And I said, "Margaret, we are doing all we can for you, but there is no hope". And then I---

Q Did she say anything to that? A No; she did not; she was, as any person would be, that was told a thing like that.

Q What did she say. Did she make any expression?

A I don't remember that she did at all. I went out to make the thing light and sent her friends in. That was my object in going out, so that they could prepare her more.

THE COURT: Mr. Train, the point is that so far there is no expression testified to that the deceased person expressed the belief that she was beyond all hope of recovery. That is about the substance of your point?

MR. DICKHEISER: Not that she had a belief, but she expressed no abandonment of hope.

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THE COURT: No, I won't put it in that way.

MR. TRAIN: She did not use the word, as I understand it, except by assent.

THE COURT: The point is whether or not a dying declaration is sufficient unless it was preceded by a statement in substance, not exactly in form, but in substance, which would convey the meaning that the dying person abandoned all hope.

MR. TRAIN: The strongest view of her statement is that when told by the doctor that she was going to die, that when asked if she believed she was about to die, she said "Yes, I know it."

MR. PINCHOT: Just before Dr. McKenzie left the room he informed her twice that there was no hope of recovery and then she makes no answer.

THE COURT: I bear that in mind.

MR. PINCHOT: She makes no answer to that until he comes back, and then his question in a certain way includes the two questions which he had asked her before and said "Now, do you realize what I have already told you."

THE COURT: I appreciate that. I think we have had enough testimony to justify the admission or rejection of this proposed dying declaration.

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MR. DICKHEISER: I ask your Honor to consider
the case of the People against Knickerbocker.

BY THE COURT:

Q How long after the deceased person signed this paper
did the deceased die? A This happened close to ten o'clock
in the morning that I was there, very little after, she
made this statement, and she died about four thirty in the
afternoon.

MR. DICKHEISER: Will your Honor permit me to
ask one or two questions?

BY THE COURT:

Q Before you commenced to write this paper, tell me
again what you said to her, before you commenced to write the
paper? A "Do you know that you are about to die", and she
said "Yes, I know it."

Q Where did you get the paper from? A I brought that
with me, I brought the paper with me.

Q Where did you get the pen and ink? A It was a pen
I had in my pocket.

Q Was anything said from the time she uttered the
words "I know it, yes, I know I am about to die", between
that time, and when you commenced to write, was anything
said by any person? A I think not; I am not certain that
there was anything relative to the matter.

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Q Did you say anything as far as your recollection serves you? A I did not.

Q Did the girl on the bed say anything? A No, sir, not as far as my recollection serves me.

Q I understand you to say that you told her in the preceding conversation, some minutes before, that there was no hope whatever? A That there was no hope.

Q That there was no hope? A Yes, sir.

Q Was that after or before she said "Can't there be something more done for me"? A After she said that. I answered it by saying "We are doing all we can, but there is no hope."

Q Did she say anything then? A I don't think she did; I don't remember that she did.

Q As I understand your testimony, doctor, she uttered the words herself, "Yes, I know I am about to die" before she signed this paper? A Before she signed that, yes, sir.

Q After writing the paper, did you read it over to her? A Yes; after writing it, and before she signed it.

Q Did she say anything after you read it over to her? A Nothing more than that it was all right.

Q I beg pardon. A Nothing more than to the effect that the paper was right.

Q Did she say that? A I said, "Margaret, now I will

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read it to you" or something to this effect, "I will read it to you, "Is this what you want to tell me," or "Is this what you said", and she said "Yes."

BY MR. DICKHEISER:

Q Did you speak about religion to her at all? A Not at all.

Q Did she call for a priest? A I don't know anything about that.

Q Did she ask for a priest? A No, sir, not in my hearing.

THE COURT: I overrule your objection.

Exception.

MR. DICKHEISER: Will your Honor permit me to renew the objection at the end of the case in case I can attack it on the general cross examination?

THE COURT: Yes.

MR. DICKHEISER: Under the ruling only such testimony is admissible as would be relevant if the witness were alive. I ask your Honor to strike out from the antemortem statement those statements which do not pertain to the particular matter matter. For instance "I found out about it in the World." That is the first statement I object to. I move to strike out the expression, "I found out about it in

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the World," as not being binding on the defendant.

MR. TRAIN: All the surrounding circumstances are admissible and it seems to me that that is a part of them. Anything that pertains to the history of the crime is admissible. Now, if this defendant had advertised, and the woman found the advertisement and read it and went to the house by virtue of it, it seems to me that it is part of the history of the case.

THE COURT: I shall grant the motion to strike out "I found out about it in the World."

MR. DICKHEISER: I ask your Honor to strike out the expression "She put a tube in me." "I didn't see it, I felt it." That is a mere conclusion.

Motion denied.

Exception.

MR. DICKHEISER: I move to strike out the expression "I live in Providence. I was staying at 2 Baldwin street. I boarded there."

THE COURT: That is as to her identity. I deny that motion.

Exception.

Now, Mr. District Attorney, you will have to

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commence all over again so the jury may know what took place. It may save the time of the jury if the stenographer were to read it. The witness being on the stand now is simply repeating to the jury what he stated to the Court on the preliminary question of whether or not this paper should be admitted as a dying declaration.

(The jury returned to Court).

(The stenographer read to the jury what took place in their absence from the Court room).

MR. TRAIN: I offer this paper in evidence, the signed declaration of Margaret Donnelly, if your Honor please.

MR. DICKHEISER: The defendant respectfully objects to the admission of the paper in evidence upon the ground that the same is immaterial, irrelevant and incompetent, and specifically upon the ground that the same is not a dying declaration within the meaning of the law, for the reason that there does not appear any evidence that the declarant had abandoned all hope of recovery.

THE COURT: I think that is sufficient. I overrule the objection.

Exception.

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MR. DICKHEISER: I ask your Honor at this time to call to the stand the witnesses mentioned by the witness now on the stand who interviewed the declarant while the witness left the room, to wit, Mrs. Irene Dixon and the nurse Mrs. Sutter, and whatever other doctor was present. I ask your Honor to have them called as witnesses at this time, before the admission of the alleged dying declaration.

THE COURT: The District Attorney is presumed to understand the requirements of his case, and to call all necessary and important witnesses who have knowledge of the circumstances attending the death of this girl. I decline to comply with your request at this time.

MR. DICKHEISER: The defendant excepts on each and every ground.

(Mr. Train then read People's Exhibit 1 to the jury).

CROSS EXAMINATION BY MR. DICKHEISER:

Q Doctor, these bougies that you have described, these tubes which you have described as bougies, are procurable, as far as you know, in a drug store in the city; is that right?

A In most drug stores.

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Q Procurable in most drugstores in the State of New York and in the State of New Jersey? A Yes, sir.

Q Do you know of your own knowledge whether they are procurable by girls and women without question? A Well, of my own knowledge, no.

Q Do you know, in the course of your practice as a physician, whether bougies are obtainable indiscriminately at drug stores ~~by~~ anybody? A I don't know. You mean that women do?

Q These bougies? A I don't know.

Q Is it a common practice, doctor, for a person to go to a drug store and receive these tubes that you have described as bougies without question? A Well, for males, yes.

Q It isn't a very difficult thing to obtain bougies in drug stores ~~ex~~ in New York or in Jersey? A I think not.

Q In fact it is very easy? A I should think so.

Q It does not require the professional person, a doctor or a nurse alone to obtain these, does it? A No, sir.

Q Any person whatever could obtain these without question? A Why, I don't know how to explain that-- get them without question. In some places I believe they can; in other places, I believe they could not.

1926
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Q Is it a matter of common knowledge that bougies are procurable in drug stores without question? A Yes, sir.

Q very easy? A I think so.

Q Now, Doctor, you say that the perforations in the uterine wall were in the posterior part? A Yes, sir.

Q Now, Doctor, will you explain to this jury in as clear and as simple a way as ~~you~~ can, how it is possible for a person to insert a bougie into the vagina and not into the womb or one of the cul de sacs on either side of the vagina? A Well, let me understand your question.

Q Isn't it possible, Doctor, for a person to place a bougie into the vagina and into the abdomen without putting it into the uterus? A By penetrating the vaginal wall?

Q No, can't you put it obliquely through the cul de sac into the abdomen? A Then you have to break the sac or through the walls there.

Q You can't put it in there unless you break some wall? A Or go through some tissue.

Q You can break through some slight tissue, it isn't very hard or heavy tissue, is it? A Why, yes, it is.

Q It is easily put through, isn't it? A No, sir, not particularly easy, no, sir.

Q Doctor, any person who is a professional person would know how to put a bougie into a womb and not mistake the

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womb for a cul de sac; isn't that right? A They ought to know that.

Q It is a matter of ordinary knowledge, isn't it?

A They ought to know enough to put a bougie into the womb and not into a cul de sac, yes, sir.

Q As a matter of ordinary knowledge, nothing difficult about it, any person possessed of ordinary, plain simple knowledge of the uterine cavity of the genital female organ, would know how to put a bougie into the womb instead of into a cul de sac? A If you had the instruments and the bougie to do it with, yes, sir.

Q A bougie is oftentimes used by physicians, Doctor, for the purpose of determining the size of a womb, is that right, as a measurer? A No, sir; I don't think so.

Q Haven't you ever heard of it, Doctor, that a bougie may be used simply to determine the size of the womb?

A We have instruments for that.

Q In the direction of the canal? A No, sir; I would not think that either.

Q Have you ever heard of it being done? A No, sir; I have not.

Q Have you had much gynecological experience? A Considerable.

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Q Have you ever attended a case where the patient put a bougie into the vagina and into a cul de sac as far as you know? A Well, as far as I know, no, sir.

Q Do you know whether a person, a female, could put a bougie into herself, into her vagina, or into the cul de sac by her own act? A Have it end there? Why it would be more liable to do that than to put it into the womb.

Q More liable to put it into a cul de sac than into the womb? A Yes, sir; because the top of the vaginal cavity is dome shaped and the womb hangs down in the center here with a little hole in it. To put it into the womb you have got to strike that hole and the cul de sac is all right around here.

Q It is more likely for a person who is unskillful and not acquainted with the organ-- would be more like to put a bougie into a cul de sac than into the womb? A I just explained that they would be sure to put it right in that line sac there.

Q And a person could walk some considerable time with a bougie, one of these tubes, in the abdominal region, and attend to her ordinary business, is that right?

A No, sir.

Q Isn't it possible for a person, for a female, to have a bougie in the abdominal region near a cul de sac and walk

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around? A Well, what do you mean by near a cul de sac?

Q Can you give the jury some idea in plain English of what a cul de sac is? A Well, a cul de sac is the root of the vagina, that is around the opening into the womb, the neck of the womb; the neck of the womb protrudes into the vaginal cavity, something like this, and then the vagina comes up about that far (illustrating), and this space in between the neck of the womb and the vagina, is known as the cul de sac.

Q Now, if an operator should put a bougie into the vagina which is the outer canal leading into the womb, into the vagina and into the neck of the womb, or into the body of the womb, and pierce the posterior end of the wall of the uterus, wouldn't there be at once a shock received by that patient? A No, sir.

The Court admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until two o'clock.

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around? A Well, what do you mean by near a cul de sac?

Q Can you give the jury some idea in plain English of what a cul de sac is? A Well, a cul de sac is the root of the vagina, that is around the opening into the womb, the neck of the womb; the neck of the womb protrudes into the vaginal cavity, something like this, and then the vagina comes up about that far (illustrating), and this space in between the neck of the womb and the vagina, is known as the cul de sac.

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The Court admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and took a recess until two o'clock.

After Recess.

WILLIAM H. MCKENZIE, a witness for the People,
resumes the stand.

(Question repeated as follows). Now, Doctor, if the operator should put a bougie into the vagina which is the outer canal leading into the womb, into the vagina and into the neck of the womb, or into the body of the womb and pierce the posterior end of the wall of the uterus, wouldn't there be at once a shock received by that patient? A Not necessarily.

Q Do you mean to tell me, Doctor, that if a woman has her womb pierced by an instrument of that sort, the wall of the womb, that she would not be shocked? A It may happen without being shocked at all.

Q Well, is it reasonable to assume that a patient could have her womb pierced by any instrument without receiving a shock? A It is reasonable because it happens.

Q Under the influence of anesthesia? A No, sir.

Q Without chloroform or ether? A Without.

Q How often does it happen, the percentage of cases?

A Why, it is a thing that happens often.

Q Have you ever seen a case of that kind? A Not personally, no, sir.

Q Have you ever heard of a case of that kind? A Yes, sir.

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Q Have you heard of them very often? A No, sir.

Q Very rarely; could a woman have her womb pierced twice and not receive a shock? A If it happened to her once, I do not see why it could not happen a second time.

Q Was it reasonable to assume that a woman could have her womb pierced twice and not receive a shock? A I believe so.

Q What is the general consensus of opinion of the text book writers on that subject? A They all say it can happen.

Q They all say it can happen? A Yes, sir.

Q But as a rule it does happen that shock does follow?

A As a rule?

Q Yes. A Well, why, I think in a majority of cases it does, yes, sir.

Q Isn't it a fact, Doctor, that as a rule shock, collapse and death follow immediately on the penetration of the womb?

A No, sir.

Q In most cases it does follow? A I said no.

Q What do the text book writers say on the subject?

A They don't say that.

Q What do they say? A They say you are liable to have shock; you may have death soon, and you are more apt to have peritonitis develop and the woman will die as this woman did after a number of days.

Q Now, Doctor, these perforations in the womb that you have mentioned, were they large or small ones? A They were small ones.

Q That is without respect to this particular case at bar, the size of the ruptures of the womb could have been produced by a small curet-- the size of the perforations in the womb that you have seen were of such kind as could have been the result of cureting?

MR. TRAIN: The question is not intelligible.

I object to it.

THE COURT: Do you understand it, Doctor?

THE WITNESS: Why, I think I can give him an answer.

Q You understand the question? A I think so.

Q Then answer it? A I think the punctures were too small for a curet to make.

Q Isn't there a small curet? A They don't use a small curet for that kind of work.

Q Well, a small curet could produce a puncture in the womb? A I will admit that.

Q And frequently it has happened that the most skillful physicians as well as the most unskillful operators, perforate a womb during cureting? A But not with a curet as small as that.

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Q Do you know of your own personal knowledge the size of a curet that the operators in the hospitals use d?

A You were asking about one of this size.

Q Could not the rupture have contracted and appear smaller at the time of the autopsy? A A little smaller.

Q So the size of the rupture could have diminished from the time of the beginning of the wound to the time of observation at the autopsy? A It would probably decrease, but not very much from the night before.

Q But still there would be some appreciable diminution in size? A That would be very likely the case.

Q So then it is possible, doctor, that a curet pierced the womb? A I don't think so.

Q Is it possible, do you think? A Not of the size curet that is ordinarily used in such work.

Q Isn't it a very customary thing for surgeons-- for cureting is nothing else than a scraping of the womb-- isn't it oftentimes the fact that for the scraping of the womb the operator uses a very small curet for the purpose of finding out? A I don't think so.

Q Sure? A Because they are afraid of using a small curet.

Q Doesn't it oftentimes happen? A No, sir.

Q Don't some physicians use a small curet after the use of the ordinary curet?

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Objected to.

Objection sustained.

Exception.

Q Doctor, this woman was septic at the time of the autopsy, was that right-- her abdominal regions, you say, were filled with a quart of pus? A Yes, sir.

Q She was suffering from septicemia. Well, I want to ask you this question: Isn't it likely for a patient suffering with septicemia and a septic uterus to have her womb pierced during cureting? A That is the reason they don't use a small curet; they are afraid of that.

Q Irrespective of the small curet, irrespective of the size of the instrument, as an abstract proposition, I am asking you isn't it likely during septic condition of the uterus for a puncture to be caused during a cureting?

Objected to.

Objection sustained.

Exception.

Q Now, doctor, when a woman is septic and she is suffering from a septic condition of the womb, her womb is often flabby; is that right? A That is right.

Q And the condition of the lining of the womb is such that it can be easily punctured; is that right? A That is possible, yes, sir.

MR. TRAIN: Conceded it is possible to puncture a womb easily at any time.

MR. DICKHEISER: Well, not so easily, sometimes it requires more and sometimes less., but where a woman is suffering from septicemia it is a very dangerous thing for a physician to attempt to scrape a womb.

THE WITNESS: For that reason we are more careful.

MR. TRAIN: Is that a question?

MR. DICKHEISER: That is an answer to your statement.

MR. TRAIN: I offered to concede something.

MR. DICKHEISER: I was responding to your statement. I move that the statement and response be stricken out and the jury be told to disregard it.

THE COURT: Yes. Both motions granted.

BY MR. DICKHEISER:

Q Now, doctor, does it not require extraordinary pressure to cause a rupture of the uterus? A Now, I would like to know what you mean by a rupture of the uterus.

Q Well, a perforation, I substitute the word "perforation"? A No, sir.

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Q No. A No, sir.

Q What was that? A No, sir. What do you mean by external pressure?

Q By the pressure on the external end of the instrument inserted in the womb? A Yes, sir, it would require some pressure there, if that is what you mean, I thought that you meant pressure over the abdomen on the outside.

Q I don't mean that, I don't mean pressure on the surface. I mean doesn't it require pressure at the outer end of the probe or sound or curette or even, if you will, a bougie, to cause a perforation of the womb? A I think it would, yes, sir.

Q Now, a bougie is flexible, isn't it? A Well, these are not very flexible.

Q These are ordinary bougies that are obtainable in the market? A Yes, sir.

Q Anywhere? A Yes, sir.

Q They are not as hard or as strong as a curette?

A No, sir.

Q It would require very much more pressure to cause a rupture of the womb with a bougie than with a curette?

A No, sir.

MR. TRAIN: Objected to as immaterial.

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THE COURT: It is answered; I will allow the answer to stand.

Q Did you look to find out if there was any tear of a cul de sac? A Yes, sir.

Q Was there any tear there, the tissue destroyed?

A I could not find any perforation there at all.

Q A perforation or a tear of the tissues of the cul-de-sac could take place and heal up in a few days; isn't that right? A Yes, sir.

Q And if a bougie should be inserted in the cul de sac on the 18th of November, by the 28th whatever tear of the tissue might have taken place could have healed up?

A It is possible that in ten days it would not leave any---

Q Is it really probable in a strong healthy person for tissues immediately to heal? A Well, this woman was septic.

Q She was not septic at once? A Well, she became septic, she evidently became septic very soon.

Q Why do you say she evidently became septic very soon? A Her condition was such-- she had high inflammation there, and there was lots of pus there; and under those conditions you would ^{not} expect the opening to heal up as quickly as it would in other cases.

Q If she was so septic so soon do you think that she could have made these excursions from Jersey to New York so frequently? A Yes, sir.

Q Is it reasonable? A It is not reasonable, but it happens.

Q Wouldn't she have ordinarily attracted the attention of people in the street or in the cars or in the ferries by her weak condition? A If she was able to do it, no, sir.

Q Now, doctor, I want you to tell me very candidly whether you want me to understand that a woman suffering from septicemia, had two bougies in the abdomen, with a double puncture of the womb, suffering from a abortion , could walk around for a period of five days? A I believe this woman did.

Q I am not asking you that question. I move to strike it out.

Motion granted.

Q I am asking you an abstract proposition, irrespective of this particular woman? A I believe it is possible.

Q Is it barely possible? A It isn't very probable, it is possible, though.

Q It isn't very probable? A No, sir.

Q It is not reasonable to believe that a person

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suffering in the manner indicated in the last question could walk around for a period of five days? A It is reasonable because it does happen.

Q Does it happen rarely or often? A Not often.

Q Not often? A No, sir.

Q Was your attention especially directed to the cul de sac when you made the autopsy? A Certainly.

Q Especially? A Yes, sir.

Q Why? A Because these bougies were there, and I wanted to find out where they came from.

Q You wanted to find out where the bougies came from?

A Yes, sir.

Q And in your effort to discover the passage or route of these bougies, you examined the cul de sac? A Yes, sir.

Q Why did you examine the cul de sac? A Because that is the routine practice.

Q What is that? A That would be the routine practice for any one finding anything like that in the abdomen.

Q What was the shape of the uterus, was it bent backwards or forwards? A Well, I think it was bent forwards.

Q If the womb were bent forward, as you state, wouldn't it be a very difficult and strange performance for a bougie to travel up and cause a perforation of the womb? A No, sir.

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Q A very usual trip? A A rather easy trip.

Q Now, doctor, I am asking you this question: From your knowledge of medicine, your reading of the authorities and your experience, are you able to state whether it is a frequent occurrence for women to place bougies in their own persons?

Objected to.

Objection sustained. Exception.

Q Are you able to state, doctor, from your experience and your reading of the authorities and your general knowledge as a physician whether ~~a~~ female patients often use all sorts of instruments on themselves, including hair pins, darning needles and bougies, to effect an abortion?

Objected to.

Objection sustained. Exception.

THE COURT: Now, ask the Doctor, Mr. Dickheiser, ^{he} upon this subject, whether or not [^] could determine or whether he was able to determine at the time whether these bougies could have been inserted by the deceased herself. You may ask him that question. As to the other questions which I have ruled out, they pertain to individual cases. It is impossible for any doctor to testify regarding that, regarding the habits of individuals. Ask him about this particular

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case.

Q Doctor, is there anything in the case from your autopsy which would make it inconsistent with the theory that the deceased inserted either a bougie or any instrument into her own person?

Objected to.

THE COURT: I sustain the objection to that form of question. I suggested a question for you to ask in your own language, whether or not he could determine from the position and condition of the ~~wound~~ wounds that he found that she herself had inserted that in her own body. I am not telling you to ask the question.

MR. DICKHEISER: Will your Honor give me an exception to your last ruling.

BY MR. DICKHEISER:

Q Now, Doctor, are you able to state from your examination of the patient and your autopsy, whether or not the deceased, Margaret Donnelly, could not have placed the bougie into her own person and caused, either directly or indirectly, the wounds, bruises and symptoms which you have described and observed? A I believe that Margaret Donnelly could.

Q Is that your opinion, Doctor? A Yes, sir.

Q Is that your opinion, Doctor, yes or no?

THE COURT: No, I will not confine the witness

to that sort of an answer, to a categorical answer. He can give his opinion.

THE WITNESS: I believe that a woman could insert a bougie that would puncture through the uterus; I do not state that she would use two. I think the mere fact that one was inserted and lost would frighten her so that she would never try to use a second one herself.

Q Now, doctor, it is possible that a woman could have placed one bougie into her womb and thinking that she had lost it placed another in her womb; isn't that right? A If she placed it there herself, she would not be apt to think that she had lost it.

Q Well, she might have? A I don't think so.

Q Is it possible? A I don't think so.

Q It would 't be a very bungling job for an operator to place two or three bougies in the womb for the purpose of producing an abortion; is that right?

Objected to.

MR. DICKHEISER: According to the ante mortem statement, there must have been three put in, because in that ante mortem statement she states that each time she went there she put a bougie in.

Objection sustained.

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Exception.

Q Doctor, can a woman place a bougie into her privates and keep the same in her abdominal region unknown to herself? A Can she do what?

Q A woman put a bougie into her privates, into the abdominal region and know that she is still carrying it? A She might.

Q She might think that she had lost it, but she might in fact have it? A I don't think she would think that she had lost it.

Q She might have it nevertheless? A I say I don't think that she would think that she had lost it.

Q Are you sure about that? A That is my opinion.

Q Now, do you know of any case mentioned in the book, or have you ever heard of a case where a woman was found possessed of a collection of utensils in the abdomen found on autopsy?

Objected to. Objection overruled.

A In the abdominal cavity? I don't know of any, unless it is something from the womb, that has entered through the womb.

Q It may have been even in that condition? A Do you mean in that way, a piece of shell?

Q I am not talking about the manner of its being in-

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serted, but there are cases recorded? A If you mean cases of shells or bullets or such things as that.

Q What about darning needles and hair pins? A Needles have been found; I don't know about hair pins. There have been needles found that have penetrated the womb.

Q You did not treat the deceased yourself, did you?

A I did not, no, sir.

Q Before you spoke to her on the morning of the 28th at ten o'clock or thereabouts, she had not seen you beforehand? A No, sir.

Q You were a stranger to her at that time? A Yes, sir.

Q And, therefore, when you expressed your opinion to her about her condition, you relied upon what had been told to you and more upon your own personal observation? A Largely on what had been told me.

Q But not entirely? A Largely.

Q But not entirely, largely upon what had been told you? A Yes, sir; upon the history of the case.

BY MR. TRAIN:

Q I believe you want to correct your previous statement as to the hour of the day on which the deceased died?

A I do. I made a mistake in that this morning. I stated that the statement was taken a little after ten, and that

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she died at four in the afternoon. She died at 11:30 about, and the autopsy was at four in the afternoon, and that is how I made the mistake.

Q She died at 11:30 the same morning? A About an hour and a half after.

Q Now, in your opinion, doctor, are you able to state with reasonable certainty whether or not the bougie that you found in the abdominal cavity of the deceased was inserted by the woman herself? A I believe not.

Q Can you state what is the ground for that opinion? A Well, because if this woman had inserted one bougie and lost it, she would have probably been so frightened that she would not have touched another one at all.

Q Now, that is the general reason? A Yes, sir, general reason.

Q Is there any other reason, any medical reason?

A No, sir; I don't know of any medical reason.

Q No medical reason? A No, sir.

Q This morning, in answering Mr. Dickheiser, he asked you if it did not very frequently happen that a woman who tried to insert a bougie in herself stuck it into the cul de sac, and you answered that you would not expect to find an operator putting a bougie into the cul de sac, but you would expect that the operator would find the mouth of the

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womb and penetrate the womb? A Yes, sir.

Q Now, is it reasonable to believe that a woman could insert twice successfully-- that is, from the point of view of entering the womb--in the mouth-- two bougies of this character?

Objected to.

Question withdrawn.

Q Now, you examined the cul de sac with some care?

A Yes, sir; I did.

Q Was there any perforation or hole of any sort in it? A No, sir.

Q Was there any evidence that there had been any hole or perforation of any sort which had healed?

A No, sir. None that we could find.

Q Now, how long does it take for a case of peritonitis such as the deceased had, to reach the stage at which it was in her case? A That would be hard to answer, because it is a variable time.

Q Well, answer it the best way that you can? A It would take three or four days, it might be ten days.

Q What would be the minimum time during which peritonitis would develop to the extent to which it had developed in the case concerning which we are speaking? A Two to three days.

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Q Two to three days? A Yes, sir.

Q What would be the ordinary length of time for such a case? A Well, I would be that five or six days would be the ordinary time. You see here it was virulent because the intestine was perforated, and that would make the inflammation so much more intense than the ordinary.

Q Now, take the case, the specific case at bar which you have described to the jury, and which it is unnecessary for you to describe again, are you able to state, or have you an opinion as to the length of time which intervened between the origin of the septicemia and the state in which it was when you performed the autopsy? A I should say from three to five days.

Q From three to five days? A Yes, sir.

Q The minimum ~~xx~~ time you state to be two to three days? A Yes, sir.

Q What would be the maximum time possible in a case of that character? A Well, I would not like or I would not know what to put as the maximum time, for these cases develop so irregularly.

Q Was there any other cause for the peritonitis in this case except the two perforations in the womb which you have described? A And the perforations of the intestine-- no, sir.

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BY MR. DICKHEISER:

Q Could a woman walk home with perforated intestines?

A Yes, sir.

Q Very easily?

MR. TRAIN: I object to whether she could walk easily or not as long as she could do it.

Objection sustained.

Exception.

Q Septicemia may develop in 24 hours? A Yes, sir.

I R E N E D I X O N, called and sworn as a witness for the People, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Mrs. Dixon, where do you live? A 812 Summer avenue, Newark.

Q Are you married? A Yes, sir.

Q What is your husband's business? A Silversmith.

Q Will you turn so that the jury can hear your testimony?

A Yes, sir.

Q He is a silversmith? A Yes, sir.

Q Where does he work? A Batten & Company.

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Q Now, did you know Margaret Donnelly in her lifetime?

A Yes, sir.

Q Where did you first make her acquaintance? A Well, it was a number of years ago; I can't just remember when.

Q Where did you meet her? A In Providence.

Q In Providence? A Yes, sir.

Q That was before you were married? A Yes, sir.

Q You were girls together in Providence? A Yes, sir.

Q And worked together there? A Yes, sir.

Q When you married and went to live in Newark, did you keep up her acquaintance? A Yes, sir.

Q Did you see her until on or about the time that she came to Newark to work in the silversmith factory? A Did I see her during that time?

Q Yes. A Well, up to about a year before.

Q You saw her when you went back to Providence? A No, she did she come to Newark? A No, sir, I went to Providence.

Q When did Margaret Donnelly finally come to Newark? A Well, I have forgotten just when. It was the end of last summer.

Q Where did she go to live? A The first place was Gouverneur street.

Q Where was she living on the 12th of November last?

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A Baldwin street, I think Baldwin street.

Q Did you ever go over to call on her there?

A Yes, sir.

Q Did she come to your house? A Yes, sir.

Q Well, on the 18th of November, did she work in Newark? A Yes, sir.

Q Where did she work? A It was Ruth, Kaiser, a chain shop, a jeweler.

Q In a jewelry shop? A Yes, sir.

Q On the 18th of November, did you go anywhere with her? A Yes, sir; I came over to New York with her.

Q Had you ever been to New York with her before that?

A No, sir-- different times, shopping.

Q Now, tell us how you came to go to New York with her when she went and so forth? A Well, I went up to--- she had a little trouble in New York and I went to go with her up to a woman's house.

Q I know, but in Newark, did she come to your house on the 18th of November? A Yes, sir.

Q Had you known anything about why she wanted to go to New York before that time? A Yes, sir; she told me.

Q She told you? A Yes, sir.

Q Did she ask you to go to New York with her? A Yes, sir.

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Q What was her physical condition at that time, was she well or not? A No, sir.

Q What was her condition? A Well, she wasn't very well at that time; she was in the family way.

Q She was in the family way? A Yes, sir.

Q Was there anything else the matter with her except that? A Not that I know of.

Q Was she able to perform her ordinary duties, was she working in the shop? A Yes, sir; right along.

Q Still working? A Yes, sir.

Q What day was that, do you remember what day of the week it was? A Saturday.

Q A Saturday? A Yes, sir.

Q Now, tell us what time of day it was that she started from Newark, if you remember? A It was in the afternoon, I could not tell just when, in the afternoon.

Q You came over to New York? A Yes, sir.

Q What was the first place you went to, do you remember?
A 39th street.

Q 39th street? A Yes, sir.

Q What number? A 250.

Q 250 West or East? A West.

Q 250 West 39th street? A Yes, sir.

Q Had you ever been there before? A No, sir.

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Q Did you know who lived there? A No, sir.

Q Did anyone ever tell you who lived there? A No, sir.

Q Do you know what time you got there? A Well, I can't just remember, I think it was in the early part of the evening, around probably 6 o'clock, around that, I am not sure.

Q Now, what were those premises, were they a dwelling house? A Yes, sir.

Q Were there signs on the doors? A No, sir.

Q You did not see the signs? A No, sir.

Q Do you remember where you went in the house?

A Yes, sir; I went into a parlor.

Q Where was it, on the first floor or second floor?

A First floor.

Q Do you remember which side of the door it was? A On the left side, I think.

Q You went there more than once, didn't you? A I went there twice.

Q You went there twice? A Yes, sir.

Q We are talking about the first time? A Yes, sir, the first time.

Q This is the 18th of November? A Yes, sir.

Q Who opened the door, do you remember? A Well, a lady.

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Q Do you see that lady anywhere? A No, sir.

Q Do you see the defendant in this case? A Yes, sir.

Q Did you see her there? A She did not open the door.

Q Did you see her there after the door was opened?

A Yes, sir.

Q Just tell us what occurred-- you were admitted?

A Yes, sir, but she went into another room.

Q Who went into another room? A Mrs. Hartman.

Q The defendant? A Yes, sir.

Q She went into another room? A Yes, sir.

Q Was the defendant in the room after you had entered, was she sitting there? A She came in.

Q You walked into this parlor? A Yes, sir.

Q Now, who did you ask for? A Mrs. Hartman.

Q You asked for Mrs. Hartman? A Yes, sir.

Q Did you tell the person who was at the door that you wanted to see Mrs. Hartman? A Yes, sir.

Q What did the person at the door do? A Well, I have forgotten what she said, but she took us into the parlor.

Q You sat down? A Yes, sir.

Q Did she go away? A The woman that opened the door?

Q Yes. A Yes, sir.

Q Did someone else come in? A Yes, sir.

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Q Who was it that came? A Mrs. Hartman.

Q The defendant? A Yes, sir.

Q What did she say? A I don't just remember now, what she said.

Q Did she speak to you or speak to Margaret Donnelly?

A I think she spoke to both of us, if I remember right, I don't remember now.

Q Do you remember what was said by either of them?

A No, sir.

Q Do you remember anything about it? A No, sir, I cannot remember, I don't remember.

Q Now, tell us everything that was done? A I didn't see anything done.

Q Did Mrs. Hartman sit down or stand up? A I don't remember that.

Q Do you remember how long she talked with her? A I don't remember that even.

Q What was the next thing you do remember? A Well, in regards to what?

Q Why, to anything. Just go on and tell us what happened? A She went into another room out of my presence altogether.

Q Who went in? A This lady and Margaret.

Q This defendant and Margaret? A Yes, sir.

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Q They both went into another room? A Yes, sir.

Q You did not go with them? A No, sir.

Q Could you overhear what went on in the other room at all? A No, sir.

Q Was the door shut between the two rooms? A Yes, sir, I think it was.

Q Do you know how long they were gone? A Well, about eight or ten minutes I think.

Q Then they came back? A Yes, sir.

Q Then you both went out? A Yes, sir.

Q Now, did you see any money pass of any sort? A No, sir.

Q You simply went away, did you go back to Newark?

A Yes, sir, went home that evening.

Q That is all that you know about that particular visit?

A Yes, sir, that is all that I can remember of.

Q Now, when was the next time---

THE COURT: Your question was "Is that all that you know of the visit", and the witness's answer was "That is all that I can remember." Now there may be a question between remembrance and knowledge. Just ask the witness.

BY MR. TRAIN:

Q Do you know of anything else that occurred at that

visit? A Well, I don't know just now; I don't know.

Q Well, is it possible that you can remember any of the conversation that passed between you two ladies and the defendant? A No, sir, there was not any conversation passed at all.

Q Wasn't there anything said as to the nature of the visit? A No, sir.

Q Were you introduced? A No, sir.

Q Was this the first visit of Margaret Donnelly to the defendant? A Yes, sir.

Q Was the defendant informed what her name was? A No, sir.

MR. DICKHEISER: I submit that the District Attorney has been asking leading questions all the time and I have not objected to them, but I think it is about time to object.

THE COURT: The District Attorney may proceed.

BY MR. TRAIN:

Q Did anyone ask the defendant her name? A Not that I remember of; I cannot remember now.

Q Did you know the defendant's name on that day?

A Well, we thought it was her name.

Q Did you know her name, Mary Hartman, before that day? A No, sir, only through the papers.

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Q What paper?

Objected to. Objection sustained.

MR. DICKHEISER: May I ask the Court to instruct the jury to disregard the statement?

THE COURT: Yes.

Q What paper do you read A I did not read it, Margaret read it; she told me of it.

MR. DICKHEISER: I move to strike out the last answer as purely hearsay and not binding on the defendant.

THE COURT: Motion granted.

Q Did Margaret Donnelly at any time-- don't state what the contents of the paper was-- but did Margaret Donnelly at any time during her acquaintance with you in Newark, hand you or show you a newspaper?

MR. DICKHEISER: I object to that as immaterial, irrelevant and incompetent, and in no way binding upon the defendant.

Objection sustained.

Q You say you cannot recall whether the defendant was asked her name? A I cannot recall.

Q Can you say what was in this other room at all?

A No, sir, I could not.

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Q What paper?

Objected to. Objection sustained.

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THE COURT: Motion granted.

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Objection sustained.

Q You say you cannot recall whether the defendant was asked her name? A I cannot recall.

Q Can you say what was in this other room at all?

A No, sir, I could not.

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Q What was in this parlor? A Well, I could not remember everything that was in there.

Q Do you recollect anything? A A parlor suit in there.

Q Were there any bottles? A No, sir.

Q Any indications ~~xxx~~ that it was the office of a doctor?

A No, sir.

Q How was the defendant dressed? A I don't remember, I think she had a kimona on.

Q A kimona? A Yes, sir; I think so; something like that.

Q What was the appearance of the person who opened the door; was she white or colored? A White.

Q Did you see any other person there at that time?

A No, sir.

Q Did the person who opened the door return at any time?

A I think she did to let us out.

Q Where was she during whatever conversation there was, between you, the defendant and Margaret Donnelly?

A This other person? I don't know.

Q You don't know? A No, sir.

Q Was she in the room? A No, sir.

Q She wasnot in the room? A No, sir.

Q Do you remember when she came back? A Well, when

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we started to go out.

Q She came back? A Yes, sir.

Q Did you hear anything [↑]said after Margaret Donnelly had come out from the back room with the defendant? A No, sir, I did not.

Q When was the next time you came to New York with Margaret Donnelly? A On the 21st.

Q What time of day was it? A It was in the afternoon, I think.

Q Did Margaret come to your house, do you remember, where you met her? A I have forgotten where I met her.

Q Was it in New York or in Newark? A No, sir, in Newark.

Q What was her condition then? A She was very sick.

Q How did she show this? A Well, she had pains.

Q Where did she complain of pains? A In her stomach.

Q In her stomach? A Yes, sir.

Q Had you seen her between the 18th and the 21st?

A Yes, sir; I saw her.

Q Where had you seen her? A She came up to my house on the following day.

Q She came to your house? A Yes, sir.

Q On the following day, what was her condition? A Well, she was quite sick.

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Q How sick? A She was vomiting.

Q Did she complain of pains? A No, sir; I don't just remember now whether she complained or not.

Q She complained of fever? A Yes, sir; I think she did complain of fever.

Q Complain of pains in her stomach? A Yes, sir.

Q That was on the next day? A Yes, sir.

Q Do you remember whether she worked or not? A No, sir; she did not work.

Q She stopped working after she came to New York the first time? A Yes.

Q Well, did she spend the night at your house, or did she go back to her own house? A She went back.

Q How did she get there? A She walked down.

Q Did you go with her? A No, sir.

Q How many times did-- did she vomit that time she came? A I don't remember.

Q She was pretty sick? A Yes, sir.

Q Now, did you see her the day after that? A Yes, sir.

Q That would have been the 20th? A Yes, sir; I think I saw her every day right along.

Q Did she come to your house or did you go to her house? A I went to her house.

Q How was she that day? A Just about the same, didn't

seem to be any worse.

Q Did she have pains in the stomach? A I don't remember now.

Q Was she lying down? A No, sir, sitting up.

Q On the day that she came over here, the 21st, you say that she complained of pain? A Yes, sir.

Q And that she was very sick, how did that show itself? A Well, she seemed to be in a fever most of the time.

Q Do you remember how you got her over here, you did not take a carriage? A No, sir, we came by train, came over the Pennsylvania, I think.

Q You got to the house of the defendant at what time?
A I think it was the evening of the 21st.

Q Now, on this occasion, did the same person open the door? A I don't remember that.

Q Did you see the defendant there? A No, sir.

Q Who did you see on the second visit? A I don't remember.

Q Do you remember whether you saw the defendant or not on that second visit? A No, sir, I don't think I seen her.

Q What is that? A I don't think I saw her that night.

Q Who did you see? A I don't remember seeing anyone.

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Q Do you remember going? A I remember going.

Q Do you remember anything about what happened after you got there? A No, sir, I don't.

Q Do you remember being let in? A Mrs. Hartman was not home that night.

Q How do you know she was not? A That is what I was told.

Q Did you go in? A Yes, sir.

Q What happened after you got in? A Nothing; came right out again.

Q Came right out again? A Yes, sir.

Q Did not see the defendant that night at all? A No, sir.

Q Then did you go back to Newark? A Yes, sir.

Q Now, just go on and tell us the condition in which Margaret was on the succeeding day. Was she able to come to your house on the 22nd?

Objected to.

A I don't remember now. I worked all the time.

Q Did you see her the next day? A (No answer.)

Q Did you see her the next day? A Yes, sir.

Q What was her condition? A She did not feel so well.

Q She complained of pains? A I think so, yes, sir.

Q Did you see her the day after that? A Thursday, yes, sir.

Q What was her condition then? A Well, she seemed to be getting worse all the time.

Q Did you come to New York with her again? A No, sir.

Q you did not come at all? A No, sir.

Q Do you remember when she was taken to the hospital?

A Yes, sir.

Q When was that? A On the following Monday, I think.

Q Did you go with her? A No, sir.

Q Did you go to the hospital after she got there?

A No, sir, not until the next day.

Q You went to the hospital on the next day? A Yes, sir.

Q Do you remember the day she died, what day she died?

A I think it was on a Tuesday.

Q She had been in the hospital how long? A One day, I think.

Q Now, on the day she died, did you see her in her room at the City Hospital? A Yes, sir.

Q Did you see Dr. MacKenzie there? A Yes, sir.

Q Did you see Dr. Williams there? A Yes, sir.

Q After the second-trip that you made with Margaret Donnelly to New York to the house of the defendant on the occasion that you say the defendant was out, did you go again? A No, sir.

Q Did Margaret Donnelly go again? A I don't remember, I can't remember.

Q You don't know anything about the third visit?

A No, sir.

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Q The woman that you saw lying in bed in the hospital of course was the same woman that you came to New York with?

A Yes, sir.

Q On each of these occasions? A Yes, sir.

Q And was Margaret Donnelly? A Yes, sir.

Q Did you see her body after she was dead? A Yes, sir.

Q Who was present, do you remember; was Dr. MacKenzie there? A No, sir, Dr. Williams.

Q Dr. Williams was there? A Yes, sir.

Q When was it you saw the body of Margaret Donnelly?

A Right after she died.

Q Tuesday? A Yes, sir, the same day.

Q The same day she died? A Yes, sir.

Q Did you see it downstairs in the operating room?

No, sir; the room she died in.

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CROSS EXAMINATION BY MR. DICKHEISER:

Q Mrs. Dickson, will you look around the room again please, and see if you can find somebody in the room who opened the door for you and Margaret Donnelly on the 18th of November of last year?

MR. TRAIN: Let her stand up.

MR. DICKHEISER: I'd rather she try to identify her while she is seated.

MR. TRAIN: Mrs. Schine!

(A woman arises in the court room.)

BY MR. DICKHEISER:

Q Did you ever see that lady before? A I can't remember.

Q Does she appear to be like the woman who opened the door for you on that night? A Well, she does; yes, she does.

Q You will not say that she did not open the door?

A No, I can't swear.

Q Somebody looking like this woman who has stood up, Mrs. Schine, by name, opened the door for you and Margaret Donnelly on the 18th of November of last year? A Yes.

Q At what time? A Well, I can't remember what time exactly.

Q And you both went to the front room of the parlor; is that right? A Yes, sir.

Q And Margaret Donnelly went into an adjoining room with the defendant Mrs. Hartman? A Yes.

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Q You don't know whether it was the next room or not, do you? A No, I couldn't say.

Q That you couldn't say. Now, was there a door or was there some portierres between the room you were in and the room adjoining? A Portierres.

Q Portierres. And after you were shown in the front room by the woman who opened the door for you, the woman who opened the door retired to the rear, is that right? A That is right.

Q Into some other room into the rear of the room you were in, and then Mrs. Hartman appeared and you had some conversation about the weather, which you have testified to in the police court, and after a few minutes Margaret Donnelly returned from one or other of the adjoining rooms into the room where you were sitting and left with you; is that right? A That is right.

Q What was your maiden name, Mrs. Dickson, please?

A Irene Bryant.

Q And your husband's name is Eugene, isn't it? A Dickson.

Q Weren't you married that afternoon? A Bed pardon?

Q Weren't you married that afternoon? A Yes, sir.

Q You got married after you left Mrs. Hartman's house?

A Oh, no, sir.

Q Before or after? A Yes, before.

Q Oh, you got married before you went to Mrs. Hartman's house? A yes, long before.

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Q Well, it was the same day? A Yes, sir.

Q And then you left New Jersey to get married; is that right; you got married in the Little Church Around the Corner?

A Yes.

Q And Rev. Dr. Houghton married you; is that right?

A Yes, sir.

Q And the deceased, Margaret Donnelly, was the witness at your wedding, wasn't she? A Yes.

Q And was she a witness at your wedding the very same day?

A Yes.

Q That you called on Mrs. Hartman? After you left Mrs. Hartman's house, you went back to Newark, New Jersey?

A To Jersey.

Q And the sickness of which you spoke in answer to Mr. Train's questions were mainly vomiting; is that right?

A That is right.

Q She was vomiting very, very much? A Yes.

Q Well, she had some pain in the abdomen too? A Yes.

Q Now, you are not mistaken, Mrs. Dickson, about your testimony that you went to Mrs. Hartman's house with Margaret Donnelly? A No, sir.

Q Sure of that? A Yes.

Q There is no mistake about that? A No.

Q You are sure also that immediately after you left

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Mrs. Hartman's house you went back to Newark, New Jersey?

A Yes.

Q Is that right? A Yes, sir.

Q So that you are sure that night she did not return to Mrs. Hartman's. What time did you first see Margaret Donnelly on the occasion of your first visit to New York on the 18th of November, 1905? What time did you first see her that day? A What time did I first see who?

Q Margaret Donnelly? A I saw her all day.

Q You were all day with her? A All day with her.

Q Now, the second visit that you made with Margaret Donnelly to the house of Mrs. Hartman on West 39th street was on the 21st, of November. What time was it that you called that day, about? A I think it was in the evening.

Q In the evening. Well, was it around eight o'clock or later or before? Fix the time, please, as nearly as you can?

A I don't remember.

Q Well, what time did you leave Newark? A I can't remember that.

Q Well, was it before or after supper time? A I don't know.

Q What is that? A I don't remember.

Q Don't you know whether you had your suppoer before you came over here? A No, I couldn't tell you.

Q Well, was it dark when you left Newark? A Yes, I think so.

Q Do you know whether the stars were in the sky when you left Newark? A I don't know; I didn't notice.

Q Well, you are sure when you came to the house of Mrs. Hartman on the second visit, on the 21st of November of last year, that you didn't go into Mrs. Hartman's rooms; is that right? A On the 21st of November?

Q Yes, on the second trip? A Yes, I think we did.

Q You are sure that you didn't go into her rooms? A We went into her room.

Q Well, did you see Mrs. Hartman on the second trip?

A No.

Q Mrs. Hartman wasn't there? A No.

Q So you didn't see her there? A Didn't see her.

Q Was Margaret Donnelly all the time with you in the rooms on the second trip? A Yes.

Q She didn't leave you for a minute at all? Margaret Donnelly on the 21st of November of last year was with you all the time and she didn't leave you for an instant while in the rooms of Mrs. Hartman; is that right? A Yes.

Q Do you know whether Margaret Donnelly was working on the 21st of November? A No, she was not.

Q She was at home? A Yes.

Q And do you know whether or not Margaret Donnelly came to New York on the 21st of November, on any other occasion than

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the trip with you jointly? A I can't remember.

Q Well, I want to know whether you know whether Margaret Donnelly could have come here without your knowing it on the 21st?

A I don't remember; can't remember; I don't know anything about it.

Q But you did, on the 21st of November?, A On the 21st.

Q In the evening with Margaret Donnelly? A Yes.

Q This girl that you saw in the hospital; and you didn't find Mrs. Hartman in, and how long were you in Mrs. Hartman's rooms on the 21st of November? A Not long.

Q How long? A minute; two minutes? A A few minutes, I guess; a few minutes.

Q Did you wait? A A little while.

Q Now, was Margaret Donnelly religious? A Yes, sir.

A Is she a Catholic? A Yes.

Q And you saw Margaret a few hours before she died, didn't you? A Yes, I was with her when she died.

Q You were present when she died. Did she call for a priest? A No.

Q She didn't call for a priest. And you had been married ten days before that? A Yes.

Q And she was in church with you? A Yes.

Q Do you know whether she was a good Catholic girl, whether she attended confession? A Yes, she was a good Catholic.

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Q Yes; and you know that she went to church regularly?⁸⁸

A Yes.

Q And she didn't ask for a priest before she died?

A Well, she had a priest; before I got there she had a priest.

Q Well, who called for the priest, do you know? A The nurse, I think the nurse of the hospital.

Q There was a priest there? A Yes.

Q Now, do you know whether Margaret Donnelly had taken any medicine before you made your trip with her to New York?

A Well, she told me she took medicine.

MR. TRAIN: Wait a moment.

A (Continuing) But I don't know for sure; didn't see it.

Q Do you know whether she took any medicine after her first trip to New York? A No.

Q You don't know of your own knowledge? A No.

Q Now, returning to the first trip for a moment, on the 18th of November, when Margaret Donnelly returned to the room you were in, she didn't show any pain then? A No.

Q She was able to walk without pain? A (No answer.)

MR. TRAIN: How can this lady say that?

Q Did she walk with you to the cars? A Yes.

Q Did you have to assist her in any way? She walked the same as usual? Apparently? A Yes.

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Q You didn't hear any exclamation of pain, did you, that night? A Can't remember.

Q Did you hear any exclamation of pain that night?
A I can't remember; don't remember.

Q Well, do you remember in the police court, Mrs. Dickson, that I asked you this question, and this answer was made by you: "Q Did you hear any noise or cry or shout or exclamation of pain? A No." Do you remember my asking you that downstairs? A Yes.

Q And do you refresh your recollection now? A yes.

Q Did you hear any noise or cry or shout or exclamation of pain that night? A No, I did not.

HARRY B. WILLIAMS? M D. a witness called
on behalf of the People, being duly sworn, testified
as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Dr. Williams, are you a regularly licensed practicing physician and surgeon? A Yes, sir.

Q And where are you practicing at present? A Newark, New York.

Q I cannot hear you? A Newark, New York.

Q I thought you were in Syracuse? A I was until the

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1st of March last.

Q Until the 1st of March? A January 1st to March 1st.

Q I see. You have been practicing in Newark, and are practicing there now. A Yes. I did practice in Newark, New Jersey, and I am now practicing up-state, in Newark, New York.

Q Oh, I see. Were you attached to the City Hospital in Newark, New Jersey? A I was attached to the City Hospital, staff at Newark, New Jersey, until the 1st of last January.

Q Will you speak so the jury can hear what you have to say? Now, were you on duty there in November of last year? A Yes, I was.

Q Now, in the latter part of November, was there a girl named Margaret Donnelly received at the hospital? A Yes.

Q And did she come under your care? A She did.

Q Do you remember the date she came to the hospital?

A The 27th day of November.

Q On the 27th of November. What was your position at the hospital? A House Surgeon.

Q Did you have to take personal care of every patient that came in and examine them? A I did.

Q Pass on their condition? A Yes.

Q Now, what time of day was she received, do you know?

A About 11 o'clock in the morning.

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Q About eleven? A yes, sir.

Q Do you know how she came there? A In the ambulance.

Q Will you state what her condition was? Tell the Twelfth Juror? A This girl was suffering with fever. She was vomiting and had some abdominal pain.

Q Now, you must speak louder than that? A This girl had fever; she had pain in the abdomen, coughing, and showed symptoms of peritonitis. Her pulse was about 120 and her temperature about 101.

Q Now, were those all her symptoms? A Those were her leading symptoms. She had the appearance of a person ill.

Q Now, at that time how long would you say that she had been in a septic condition? A Well, I couldn't say how long she had been.

Q You couldn't say that? A No.

Q What did you do for her? A Well, we sent her to the ward at first and prepared her for an operation.

Q What sort of an operation? A Removal of the uterine contents, and the curettage.

Q Now, in your opinion, what was she suffering from?
A From the effects of an abortion.

Q Did she tell you anything about her condition?
A She did.

Q What did she tell you?

MR. DICKHEISER: Oh, I object.

THE COURT: Objection sustained.

Q Well, state everything upon which you formed your opinion as to her condition.

MR. DICKHEISER: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

MR. DICKHEISER: Exception.

A She told me--

THE COURT: Do not tell what she told you.

A Well, from her general symptoms I knew that she had peritonitis. Consequently, I looked for a cause.

BY MRQ TRAIN:

Q I can't hear you, doctor? A I say, from her symptoms that I have given, I knew or suspected that she had hernia peritonitis.

Q But you weren't able to tell what was the cause of the peritonitis? A Not at that time, until I had made a further examination.

Q What further examination did you make? A Vaginal examination.

Q What? A A vaginal examination.

Q Tell us what you did and what you found? A Found a bloody discharge which came from the uterus.

Q Did you insert a speculum? A No.

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Q You just found that without making any very careful examination. I mean to say that you could tell that she had a vaginal discharge? A Yes.

Q How long after that did you perform any sort of an operation upon her? A Oh, it was on the same day, not more than an hour after that.

Q And what was the nature of the operation? A A curettage.

Q I can't hear you? A A curettage.

Q How many persons assisted in that operation? A There were two of us.

Q What was the name of the other surgeon? A Dr. Hawks.

Q Is he connected with the hospital? A Yes, he is the attending gynecologist.

Q What was the purpose of the operation? A To remove the contents of the uterus.

Q Was the operation successful? A Yes.

Q Did you remove the contents of the uterus? A We did.

Q Now, at that time were you able to form an opinion as to how long this septic condition had been going on? A No.

Q What time of day was that? A Noon.

Q What? A At noon.

Q At noon of what day? A The 27th.

Q Noon of the 27th? A Yes.

Q And she had been received about an hour before? A Yes.

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Q Did you remove whatever contents there were in the womb?

A We did.

Q What did you find them to be? A Precental tissue and part of a fetus.

Q Were you able to state how old the child was? A Why, it was apparently about the third month.

Q Then, after performing this curettage, what was the patient's condition? A No better.

Q No better? A No.

Q That was at noon? A Yes.

Q Now, did you perform any other operation? A In the evening.

Q Can't you speak a little louder, doctor? A We did, in the evening.

Q In the evening. Now, what hour in the evening?
A About nine o'clock.

Q What was that operation? A Laparotomy; opening the abdomen.

Q Opening of the abdomen, and for the purpose of doing what? A Drainage.

Q Draining what? A Puss.

Q The puss. Now, had you discovered the puss or did you merely infer its presence? A We inferred its presence.

Q From her condition? A From her condition.

Q Was her condition from which you inferred its presence

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that of an advanced state of peritonitis? A Yes.

Q And did you observe that condition at twelve o'clock or immediately when she arrived? A We did.

Q You did when she arrived? A Yes.

Q Now, you opened the abdominal cavity, did you? A We did, yes.

Q And what did you find? A Found free-- puss free in the abdominal cavity.

Q How much puss did you find there? A Well, I couldn't say positively; it was full.

Q Full of puss? A Yes.

Q And did you start to drain it? A Yes.

Q And did you drain it? A Well, I don't know as you understand just what I mean by drainage. We simply cut open the abdomen, to allow the puss to drain. All we did was to make this opening in the abdominal wall, and to put tubes in there, so the puss would drain out.

Q So it would drain out? A Yes, we drained it to the best of our ability.

Q You had no difficulty in inserting the tubes? A No.

Q And in starting the drainage? A No; no difficulty.

Q And you found all this puss there? A Yes.

Q And having started the drainage, I suppose there was nothing to do but to allow the draining to continue.

A Nothing else.

Q Till the patient improved. Now, what was her condition during the night? A It grew rapidly worse.

Q Grew rapidly worse? A Yes, progressively worse.

Q And did she die on the following morning? A She did.

Q What did she die of, doctor? A General septic peritonitis.

Q And were you present at the autopsy? A I was.

Q And did you find this quantity of puss the presence of which you have inferred the day before? A At the autopsy?

Q Yes. A Yes.

Q Now, doctor, when you removed the contents of the womb, are you able to state with reasonable certainty whether or not there were one or two bougies in the womb and extending down through the vagina? A I had no suspicion of it, then.

Q No suspicion then. Now, if there had been two bougies in the womb, could you have performed your operation? A Why, not without removing those bougies.

Q And you found no trace of any such in the womb at all? A No.

Q You were present when the doctor read over the dying declaration to this girl? A Yes.

Q And you saw her sign it, didn't you? You were one of the witnesses? A Yes.

Q The patient that you have referred to was a patient who was described as Margaret Donnelly by Mrs. Dickson,

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wasn't it? A Yes.

Q And it was upon her body that you performed these operations and held the post mortem examination? A Yes.

Q You were present at the autopsy, were you not? A Yes.

Q Present at the finding of these bougies in the abdominal cavity? A Yes.

THE COURT: I do not really understand the witness' answers to your questions, that he could not have performed the operation if these bougies were present.

THE WITNESS: In the womb. Well, I mean by that that we couldn't have removed the uterine contents without first removing these bougies, that they would have been an obstacle in the removing and the scraping of the walls. They would have been in the way, no doubt.

BY MR. TRAIN:

Q Now, in order to make that perfectly clear, you remember the size of those, I mean approximately, don't you? A Oh, yes.

Q Now, assuming that the bottom of this path (indicating) is the mouth of the vagina-- A Yes.

Q How far from the mouth of the vagina would be the top of the uterus? A Oh, about ten inches.

Q About ten inches. Well, then, had these implements still been in the womb and in the vagina, they would have been protruding, would they not? A Why, very likely, though they might have been coiled up in the uterus.

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Q Yes. Now, they would have been protruding unless they had been coiled up? A Yes.

Q Now, if they had been coiled up in the uterus, could you have performed your operation without discovering them?

A No.

MR. TRAIN: Does that answer your question, your Honor?

THE COURT: Not exactly. The testimony so far shows that these bougies were found in the body of the deceased woman. Now,, the doctor here says that he could not have performed his operation if these bougies were present.

MR. TRAIN: In the womb.

THE WITNESS: In the uterus.

MR. TRAIN: And they were not found in the womb.

THE COURT: That is what I wanted to make clear to the jury.

THE WITNESS: And as they were they offered no obstacle.

They were in the abdominal cavity.

BY MR. TRAIN:

Q The operation of curettage is extremely simple, isn't it?

A Yes, it is a simple operation.

Q It is merely cleaning out the contents of the womb?

A Yes.

Q Now, if these bougies which you see here, and you notice their length, had been coiled up in the womb, as I understand it you couldn't have cleaned the womb out? A Oh, no; they

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would have come.

Q They would have come too? A Yes.

Q Yes. In point of fact, they were found in the abdominal cavity? A Yes.

Q Above the womb, outside of the womb entirely? A Outside of the womb entirely.

BY THE COURT:

Q Doctor, could their presence in the abdominal cavity have been discovered by any operation during the life of the deceased woman? A Yes, if her condition not been so extreme when we performed the second operation we would have found them. As it was, we had no chance to explore.

BY MR. TRAIN:

Q She was practically in a dying condition when you performed the second operation? A Yes, and we operated as quickly as we could without any exploration. We have no suspicion of their being bougies in the woman's absomen.

Q You knew that she had the puss, and the thing to do was to get the poison out of her, some way or other? A That was the idea.

Q And you started to drain it out? A Yes.

Q Now, if she had been a healthy woman, you could have made an exploration of the contents and contion of her abdominal cavity? A Yes.

Q But you didn't dare to do that under the circumstances?

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A Didn't dare to do it.

CROSS EXAMINATION BY MR. DICKHEISER:

Q Doctor, you observed the demeanor of your patient, Margaret Donnelly, throughout her illness while under your care; is that right? A Yes.

Q Was her demeanor hopeful? A She was a very courageous patient.

Q She was a very courageous patient? A Yes.

Q Was her demeanor hopeful? A It was until the latter part of her illness, yes.

Q Well, didn't she say to you, doctor, several times, that she didn't want to die? A I remember her saying that.

Q She did say that to you? You didn't try to discourage her? A I did not; certainly not.

Q Did she ask you, "Can nothing more be done for me?" A I heard her ask that when Dr. MacKenzie was taking her statement.

Q You heard that question put? A Yes. I don't know whether she asked it of me or Dr. MacKenzie.

Q Well, didn't she ask you the same question personally? A I can't say whether she referred her remark to me or to Dr. MacKenzie.

Q Do you remember in the police court this question was put to you and you made this answer? "Q Did you hear the

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deceased say, 'Can nothing more be done for me?' A I don't remember that statement referred to. I remember her asking that question of me. Q Of you she asked it? A Yes. That was before Dr. MacKenzie had seen her." Do you remember that? A Well, I may be wrong about that. It is sometime-- it is nearly a year since this thing happened. Perhaps she did; but as I recollect it now she asked that question when Dr. MacKenzie was present.

Q Do you remember being asked this question in the police court, "Q Had she expressed to you any hope of recovery?" and your answer, "Yes, she was very hopeful"? A Yes; yes.

Q And I ask you now, did she express to you any hope of recovery? A Oh, yes.

Q Frequently? A Yes.

Q Do you remember this question, or this answer: "I cannot say that she ever expressed definitely hope of recovery, but her general demeanor and attitude was one of a very hopeful person all the way through her sickness"? A yes.

Q "At least, during the time she was under my observation"? A Yes.

Q Do you remember that? A Yes.

Q She was under your observation while Dr. MacKenzie was taking her statement, wasn't she? A Yes.

Q And therefore, while under your observation at that time, she was hopeful too, wasn't she?

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MR. TRAIN: Wait a moment. I object to the question. It is in the form of an argument, to say that she was therefore hopeful.

MR. DICKHEISER: I consent to strike out the word "therefore".

MR. TRAIN: Now, he is asked whether she was hopeful, and I object to it, if it is put in that form, because it is a conclusion, anyway.

THE COURT: I sustain the objection.

MR. DICKHEISER: Exception.

BY MR. DICKHEISER:

Q Was her demeanor hopeful?

Objected. Objection sustained. Exception.

Q While Dr. MacKenzie was examining her, you watched the patient, Margaret Donnelly, didn't you? A I watched her?

Q Well, you saw her, didn't you? A Yes.

Q You observed her demeanor? A Yes.

Q Was it, in your opinion, less hopeful than while you were treating her?

Objected to. Objection sustained. Exception.

Q Did she appear to you during the taking of the statement by Dr. MacKenzie in your presence as courageous as she appeared to you to be during the time under your observation prior to that time?

MR. TRAIN: I object to that. The question of

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courage does not enter into a dying declaration.

THE COURT: I sustain the objection.

MR. DICKHEISER: Exception.

Q Did you hear Margaret, at the time of the taking of the statement by Dr. MacKenzie, say anything about surrendering hope of recovery? A No.

Q Was she feverish at the time of the taking of the statement? A Oh, yes.

Q What was her fever? A I can't remember; it was high.

Q About what? A High.

Q How high? A 104 or 5, I should say.

Q In your opinion, doctor, do you think a patient with the high fever which you observed in Margaret Donnelly at the time of the taking of the statement, could make one lucidly and clearly?

MR. TRAIN: I object to that. I suppose the question means, was this woman lucid and clear at the time of the making of this statement.

MR. DICKHEISER: In his opinion; yes.

MR. TRAIN: I have no objection to that question at all.

THE WITNESS: She certainly was lucid and clear.

BY MR. DICKHEISER:

Q What is that? A She certainly was lucid and clear.

Q She knew what she was talking about, apparently?

A Yes; yes, indeed.

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Q Now, doctor, when you performed laparotomy, you observed the womb, did you not? A Well, only incidentally.

Q Only incidentally? A Yes.

Q And you had a clear field to observe the womb below the abdomen? A No.

Q Could you see the wall of the womb? A You could see the top of the womb.

Q Were there any perforations there at that time? A I didn't examine it at all.

Q You didn't examine it at all. How many curettes did you use when you performed the autopsy? A I don't remember.

Q You don't remember? A No.

Q (Continuing) How many curettes you did use? A No.

Q Do you remember the sizes of the curettes that you used? A Well, they were large ones, I can remember that; we used large ones.

Q Sir? A I remember that we used large ones.

Q Did you use any small ones at all? A I can't remember that.

Q You can't remember that at all? A I think that we did finish up with a small curette.

Q You think that you did finish up with a small curette? A I think so; that is our usual custom.

Q That is your usual custom, that you do finish up the scraping of the womb by the employment of a small curette?

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A To get into the corners, yes.

Q To get into the corners, to remove everything in the womb? A Yes.

Q Now, doctor, was this patient septic at the time of the curettage? A Yes.

Q And her womb was septic? A No.

Q Were the other parts septic? A Abdomen was septic, the abdominal cavity was very septic.

Q The abdominal cavity was very septic? A Yes.

Q And the wall of the womb was soft and boggy? A No.

Q How was it, hard? A Why, it was practically a normal womb.

Q How far pregnant was she? A About three months.

Q Well, isn't a woman's womb of three month's pregnancy soft and boggy? A It is softer than a non-pregnant womb, of course.

Q Yes? A But it is not boggy.

Q Wasn't the womb partly septic at that time?

A I beg your pardon?

Q Wasn't the womb partly septic at the time of the curettage? A I say there were not any signs of disease in the uterus. It was apparently practically a normal uterus.

Q You found nothing abnormal about the uterus at the time of curetting? A No.

Q Now, as a rule, doctor, the best surgeons may perforate

a uterus during a curettage while the womb is septic? A They are more apt to.

Q They are more apt to perforate the womb while it is septic than when it is not septic? A Yes.

Q And it is a dangerous proceeding to curette a septic womb? A Yes; it has to be done carefully.

Q Doctor, isn't it possible for a small curette to have caused a perforation of the uterine walls? A (To the Court) Now, I would like to ask your Honor if these are not expert questions. I don't think that I am qualified as an expert, certainly not in this case.

MR. TRAIN: You see, I did not call the doctor as an expert. I simply called him to question him about the facts.

THE WITNESS: I am here to testify to the facts, those that I can testify to.

BY THE COURT:

Q Doctor, you are here to testify to facts. You are also here to give your opinion of the manifestations you observed, the causes and effects and conditions? A Yes.

Q If at any time there is any question which you do not feel justified in answering, a hypothetical case, you may so state, but do not venture an opinion which you think you are not fully qualified to form. A Well, I am willing to give my opinion wherever I can.

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Q (Question repeated by Stenographer as follows: Doctor, isn't it possible for a small curette to have caused a perforation of the uterine walls?) A Yes, in my opinion.

Q And this perforation could have been caused on the same side as the bougie was found on? A I don't understand that question.

THE COURT: I think the form of your question is objectionable. I think you have made it too general.

Q I will ask this specific question: Was it possible, doctor, for you-- did you do the curetting yourself or did Dr. Hawks? A I assisted Dr. Hawks.

Q Dr. Hawks did the curetting? A Yes.

Q It was possible for Dr. Hawks to have caused a perforation in the uterine walls with the small curette, was it not? A Yes, that is possible.

Q In this very case.

MR. TRAIN: Now, you have got to ask him his opinion.

Q In your opinion, doctor Hawks could have caused the perforation described by Dr. MacKenzie by a small curette during the curettage?

THE COURT: No, no, ~~not~~ what he could have done.

MR. TRAIN: What he did.

THE COURT: That is not a fair test. You have now crossed the line from the discussing involving his opinion on abstract question in hypothetical cases,

to ask him his knowledge as to actual things which he observed. There is a very clear line of distinction between those two classes of testimony, that class of testimony which the doctor might, from his learning and his experience, be able to express an opinion upon an assumed or hypothetical state of facts, and the other class, that testimony which is the result of his own observations in the particular case involved. There is a very clear distinction between those two cases.

BY THE COURT:

Q Doctor, you understand that line of distinction?

A I think so, your Honor.

BY MR. DICKHEISER:

Q Doctor, immediately after the curettage performed by Dr. Hawks and yourself, the patient grew progressively worse; is that true? A Yes; that is true.

Q And the patient appeared to have received a great shock? A No, I can't say that the patient ever showed any signs of shock while she was under my observation; that is, shock as we understand it.

Q Now, doctor, you were present at the autopsy, weren't you? A Yes.

Q Did you examine the person of the deceased at the autopsy? A I watched the proceedings of the autopsy.

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Q Did you examine closely the person, the private person, the private parts of the deceased? A Yes.

Q Did you observe the extent of the perforation of the womb? A Why, there were two holes in the posterior side of the womb.

Q Were they small holes? A Small holes, yes.

Q Were they large enough for a small sized curette to have passed through?

MR. TRAIN: Curette?

Q Curette? A Well, I can't say; I don't think so.

Q It might have done so? A Well, if it did, they had healed up; they had grown smaller.

Q Yes. Could a pencil have passed through? A No, not when I saw them.

Q Or the point of a pencil? A The point of a pencil would have entered them, yes. The whole pencil would not have gone through them.

Q Would a bougie such as you see before you go through the wall of the womb without pressure from the external end of the bougie? A Why, I can't say. I should think that it might, by the contraction of the uterus.

Q Wouldn't it be more likely for a hard substance to pierce through, than a soft elastic substance? A Certainly.

J O H N F . T I N K E R , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TRAIN:

Q Officer Tinker, are you attached to the Police Force in the City and County of New York? A Yes.

Q Are you a detective sergeant? A Yes.

Q Did you arrest this defendant? A I did.

Q Where? A At 250 West 39th street.

Q In this county? A Yes, sir.

Q What day was it, do you remember? A It was on the 28th of November, as near as I remember.

Q What **time** did you go to her house? A I think it was two o'clock in the afternoon I made the arrest.

Q Did you find her in? A The first time there I didn't find her in. I went in the morning.

Q What time? A Around eleven o'clock.

Q She wasn't there? A She wasn't there.

Q Then you went again at two? A Yes.

Q Found her in then? A Yes.

Q Tell us what conversation you had with her? A I asked her if she remembered--

Q You asked her her name, didn't you? A Yes, I asked her her name.

Q What did she say? A Hartman, and I asked her if she

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remembered having a patient from Newark, New Jersey. I believe that is what I asked her first.

Q Well, what did she say to that? A She said, no, she didn't know anybody from there.

Q Yes? A I asked her if she had any cases of girls, where she had performed operations.

Q Yes? A And she said yes. I asked her her terms. She said they varied, and then I asked her if she knew this girl.

Q What was that you said, you asked her her terms?

A Yes.

Q And then what did you say she said? A She said it was different prices, that the prices varied.

Q Yes? A And I asked her if she knew of this girl from Jersey, Margaret Donnelly, and she said she did not.

Q Yes? A She said she didn't know her patients. I asked her if she kept a record of her patients, and she said she did not.

Q Well, and then did you tell her what you were there for?

A Yes.

Q What did you say? A I told her that I come there to put her under arrest, place her under arrest and bring her to Headquarters.

THE COURT: Now, I direct that all this witness' testimony be stricken out and the jury disregard it, up to this time.

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Q Then, what did she say, if anything, when you told her that you were there to place her under arrest? A Well, she wanted to know for what, and I told her I had a message from the Newark Police Headquarters to place her under arrest, that this girl had died, Margaret Donnelly, and said that this woman had performed an operation on her.

Q Did she say whether she cared to say anything or not about it? A No, she wouldn't say anything. She said she didn't know the person.

Q Well, did she say anything else? A Well, she said she couldn't remember such a person as that.

Q Well, did she say anything about her lawyer? A Yes, I believe she said she wanted to see her lawyer.

Q Did she say who her lawyer was?

THE COURT: That is not necessary, Mr. District Attorney.

Q Now, is that all that she said? A Yes, she wouldn't talk of the--

BY THE COURT (Interposing):

Q Now, stop. Is that all that she said, officer?

A That is all I can remember now.

THE COURT: That is all that he can remember.

(To Stenographer) Strike all of this witness' testimony. The jury will disregard it.

THE PEOPLE REST.

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MR. DICKHEISER: If the Court please, I move to dismiss the indictment in this case, upon the grounds that this Court has no jurisdiction of trial of the indictment, in that the crime was not committed in the County of New York.

THE COURT: I deny the motion.

MR. DICKHEISER: Exception. I further move for a direction of an acquittal, upon the ground that on the evidence presented there is a fair and reasonable doubt as to the guilt of the accused.

THE COURT: I deny the motion.

MR. DICKHEISER: Will your Honor hear me just a moment on that?

THE COURT: No. The question of reasonable doubt is for the jury.

MR. DICKHEISER: Exception. I ask your Honor to advise the jury to acquit, upon the ground that there is a fatal variance between the alleged ante mortem statement and the testimony of the People's witnesses, in that the ante mortem statement set forth--

THE COURT: That is sufficient, Mr. Dickheiser. That is a question of the weight of testimony, and is for the jury. I deny your motion.

MR. DICKHEISER: Exception. I ask your Honor to direct the jury to acquit, upon the ground that the ante

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mortem statement was not received according to law, in that, on the whole evidence presented on the evidence of the People, including the evidence presented before the admission and after the admission of the ante mortem statement, there is evidence that the declarant had hope of recovery.

THE COURT: That question has been passed upon. I deny your motion.

MR. DICKHEISER: Exception.

THE COURT: That is as to the admissibility. I say, it has been passed upon as to the admissibility of the statement before the jury. As to the weight of that statement, it will be wholly a question for the jury to determine.

MR. DICKHEISER: Exception. Shall I proceed with my opening?

THE COURT: Yes.

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DEFENDANT'S COUNSEL OPENING ADDRESS.

MR. DICKHEISER: May it please the Court, and you Mr. Foreman and each of you gentlemen of the jury:

This is a case where jurors must exercise considerable patience. The questions put to the medical witnesses were not put for the purpose of displaying medical knowledge or for the purpose of testing the physicians' knowledge of medicine. They were put for the purpose of showing that the job done was a bum job.

Any person professing knowledge or any understanding whatever of the uterus or the womb, in order to effect an abortion, would not have proceeded in the manner that was apparently done, as appears by the evidence so far presented.

In this case, the defense is a very simple defense. We do not deny, as you can tell by the questions put, that the deceased, the unfortunate girl Margaret Donnelly, called at our house. We do not dispute that. We do not dispute that she was alone privately with the defendant. We admit that she called the first time, but we deny that we performed any operation.

The defendant will take the stand and explain to you what she did, that she simply examined her, and told her that she was in the family way about three or four months; that she found she was then bleeding and that

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she advised her to go to a doctor and see about it.

The second trip that the deceased made was made, as the witness Dickson stated. My client was not home. I will show you by competent, clear evidence that on the 21st of October the deceased never saw the defendant Hartman. That testimony, that proof, is already brought out by the People's own witnesses, and I expect to prove here, when the case is presented for the defendant that fact beyond all doubt.

After the 18th of November, we never saw the unfortunate girl Margaret Donnelly again. She called a second time, but my client, the defendant, was out. She was out at the tailors. The third time she never called, and the defendant never saw her.

I am compelled in this case to perform an unpleasant duty. It is not very pleasant to stamp as false the statement of a dying person. A person who is dead and gone should have his memory undisturbed. And while I appreciate the fact that this poor unfortunate girl paid heavily for the sins she committed, while my sympathy is naturally with her, the fact is that if the evidence shows that she lied when she said she went alone-- and she said that three times-- then she lied on what is supposed to have been her death bed. Three times she said, "I went there alone. No one went there with me. I went

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there alone."

The People's witness shows that statement not to be true. And I expect to prove to you beyond all doubt that the statement of Irene Dickson, that on the second day of the trip the defendant was out, is absolutely true.

We say that in this case, we are unfortunately victims of circumstances. What this girl did after she left our premises, and for ten days afterwards, we do not know. What drug stores she patronized I have no means of determining. If the poor, unfortunate defendant had more money she might have secured better counsel and more detectives to scour the country to ascertain whether Margaret Donnelly went to drug stores to obtain these bougies. I expect to prove to you that bougies are obtainable very, very easily, and I will call a witness to show to you how within a few hours, at six different drug stores, all the bougies you want can be obtained.

Of course, I have no means positively, by direct evidence, of showing that the unfortunate girl worked her own death, but the medical testimony shows so far that it was a clumsy job, and it was such a clumsy job that it is reasonable to assume that she did it herself.

I ask your patience in this case, and I am satisfied that after listening to the case, you will, no matter how

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unpleasant it is, stamp the statement of the dead woman as a falsehood, and perform your duty fearlessly, truthfully, honestly and courageously.

MARY SCHINE, a witness called on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DICKHEISER:

Q Mrs. Schine, you are married? A Yes, sir.

Q Where do you reside now? A 448 West 45th street.

Q In the city of New York, and you reside there with your husband? A Yes.

Q On the 18th of November of last year were you then married? A No, sir.

Q And where were you residing on the 18th of November, of last year? A 250 West 39th street, with Mrs. Graham.

Q And were you home on the 18th of November of last year? A Yes, sir.

Q And did you see Mrs. Dickson, the People's witness who appeared on the stand, at your residence on that night?

A Yes, sir.

Q Did you open the door? A Yes, sir.

Q Explain to the Court and to the jury exactly what you did? A I was sitting in the dining room when the bell rang. I looked out of the dining room door, saw that there were two

ladies standing outside the door of the house. I went in and I pushed the button and went into the front room and opened the door. They asked to see Mrs. Graham. I left them there. They took a seat themselves. I goes outside and tells Mrs. Graham in the kitchen. She went right in, and I stayed in the dining room after she had gone in.

Q You went back to the dining room after-- A I told Mrs. Graham outside; I didn't go in any more, Mrs. Graham went in herself.

Q Where were you sitting? A I sat in the dining room.

Q Well, how long after you left Mrs. Graham and Mrs. Dickson, and another woman with Mrs. Dickson, was it before Mrs. Graham returned to the dining room? A Well, I can't exactly say. It was about fifteen minutes.

Q Will you explain to the jury how many rooms there were, and the situation of the rooms? A The front room came first. Then there came a bedroom, -- well, between the bedroom and the front room were portierres. Then there came another bedroom between the two bedrooms was a door; then the dining room, kitchen and a bathroom.

Q Now, what time was it, about, when Mrs. Dickson called with another woman? A On the 18th of November?

Q Yes; what time, about? A Well, about-- around half past six; not exactly half past six; a little later than that.

Q Now, tell the Court exactly what you did and what you

heard, and what you saw, if anything, when you were in the dining room? A Well, after--

Q After Mrs. Dickson had called with another woman that night? A After, as I told you, I came out and told Mrs. Graham that there was somebody inside wishes to see her, I sat in the dining room. I was reading the evening paper. I didn't go back into the front room any more, because I thought it was not any of my business, and I sat there reading the paper. A little while after, I heard the door, which squeaks, between the two bedrooms shut. I still sat in my chair reading the paper. In a little while after, I heard some words pass, and these are the words what passed: "This woman asked Mrs. Graham how long-- Mrs. Graham asked this woman when she had last menstruated. She said in September. This woman turns around to Mrs. Graham and asked her how long she thought she was in the family way. Mrs. Graham answered her back, and said, "Well, you are between two and three months, and you are flowing, and the best thing for you to do is to go home and to consult a doctor." That is all I heard.

Q And how long after that did Mrs. Dickson and this other woman leave the premises where you were living? A Well, I should judge they were about fifteen minutes altogether in the house.

Q They were altogether in the house about fifteen minutes?

A Yes.

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Q Well, did you ever see any bougies in the house of Mrs. Graham, or Mrs. Hartman? A No, sir; I don't know what they are.

Q Any rubber tubes like those (indicating)? A No, sir; I never did.

Q And you were quite familiar with the premises there, were you not? A Yes, sir; I was there all the time.

Q How long were you there before that day? A How long was I there before that? I came there in September.

Q Did you do the housecleaning in the house? A Yes, sir.

Q And you had access to every drawer and every closet in the rooms? A Yes, sir.

CROSS EXAMINATION BY MR. TRAIN:

Q Now, was you in the room when Mrs. Graham came in?

A When Mrs. Graham--

Q Into the parlor? A No, sir, I wasn't; no, sir, I wasn't.

Q Didn't you see the meeting between the defendant the these two ladies? A No, sir.

Q You opened the door? A I opened the door.

Q And let them in? A I let them in.

Q What did they say to you? A They didn-- they just asked to see Mrs. Graham. I didn't ask them what they

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wanted.

Q Did they ask for Mrs. Graham? A Yes, sir.

Q Didn't ask for Mrs. Hartman? A Well, Mrs. Hartman.

Q Now, which was it? A Mrs. Hartman.

Q They asked for Mrs. Hartman? A Yes.

Q Then they didn't use the words, "Mrs. Graham"?

A No.

Q And they didn't say what they wanted, and you didn't ask them? A No; I didn't ask them.

Q And that is all they said to you and all you said to them?

A That is all I said.

Q And you went out and told Mrs. Hartman that someone wanted to speak to her in the parlor, and then you went into another room and began to read the paper? A I went into the dining room. I didn't go in any more into the front room.

Q You went into the dining room and began to read the paper? A Yes, sir.

Q Now, are you any relation to the defendant? A No, sir.

Q Are you any connection of any sort? A No, sir.

Q Did Mrs. Hartman ask who the patient was or which the patient was? A No, sir.

Q You have not previously told any person that the first thing that Mrs. Hartman asked was, "Which is the patient"?

A No; she didn't say that.

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Q You didn't hear any conversation that occurred in the parlor at all? A No, sir.

Q Now, you say the front room is a parlor? A Yes, sir.

Q Who lived there at these premises? A Me and my child, Mrs. Graham, and a young man.

Q A young man; what young man? A By the name of Mr. Stevens, a boarder.

Q Mr. Stevens? A Yes.

Q How long have you been married, Mrs. Schine? A I have been married about eight months.

Q Eight months? A Yes.

Q And was your husband living with you? A What is that?

Q Was your husband living-- A Oh, I was not married at the time. I stopped with Mrs. Graham.

Q Well, I am asking about the time when you lived with Mrs. Graham. You said your child was there? A That is my child by my first husband.

Q You were married twice? A I am married twice; yes, sir.

Q Now, the first room of that suite was a parlor?
A Yes.

Q And the next room was what? A A bedroom.

Q And the next room was a bedroom? A A bedroom.

Q And the next room? A Was the dining room.

Q And then the kitchen? A A kitchen.

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Q And then a bathroom? A Then a bathroom.

Q Who slept in this first room? A The gentleman.

Q Who? A Mr. Stevens.

Q What is his full name? A Edward; Mr. Edward Stevens.

Q Edward; what is his business? A Policeman.

Q Policeman? A Yes, sir.

Q What precinct is he attached to, do you know?, A Well, I couldn't exactly say.

Q You don't know? A I only know the man since I came to Mrs. Graham.

Q Is he in the court room? A No, sir.

Q Have you seen him at all since you lived with Mrs. Graham?

A Well, I only lived with Mrs. Graham about two months.

Q When did you leave Mrs. Graham? A I left her in december.

Q December, 1905? A Yes, sir.

Q Have you seen Stevens since then? A Only since the trouble is, since I have been a witness; no, I haven't.

Q Well, have you seen him since the trouble, since you have been a witness? A Yes.

Q Now, where have you seen him? A At Mrs. Graham's house.

Q So he is still a boarder at Mrs. Graham's? A Yes.

Q And she is still living at the same place? A No, she

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is not still living at the same place.

Q Please speak a little louder. A She is not still living at the same place.

Q She has moved? A Yes, sir.

Q But Stevens is still boarding with her? A Yes, sir.

Q Now, is she related to Stevens? A No, sir.

Q You don't know what precinct he is attached to?

A No, sir; I don't know about any of their business, any business.

Q Haven't any idea? A No, sir.

Q You are sure he is a policeman? A Yes, sir.

Q And was he a policeman then? A Yes, sir.

Q Now, he occupied the front room, the first bedroom used. who slept in the second bedroom? A Me and Mrs. Graham.

Q you and the defendant? A Yes.

Q And where did your child sleep, in the same room?

A Well, there was a couch in the dining room that she slept on.

Q Who slept on? A My little girl.

Q How old is your little girl. A She is going on six years old.

Q Six? A Six.

Q She slept in the dining room? A Yes.

Q Now, who did the cooking? A Who done the cooking?

Well, I done the cooking.

Q Just a little louder, please? A Well, I done the

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cooking when Mrs. Graham was not at home.

Q Was she out very much? A Well, she was out at confinements a good deal.

Q Oh, yes; and then you did the cooking? A I did the housework and the cooking when she wasn't at home.

Q For two months? A Yes.

Q And during that time Stevens was a boarder? A Yes.

Q And you never, during that, learned where he worked? what his precinct was? A No, because I thought it was not any of my business.

Q You thought it was none of your business? A Yes.

Q You never asked him where his station house was?

A No, sir.

Q Or who his captain was? A No, sir.

Q Now, what was Mrs. Graham's business? A Midwife.

Q She was a midwife? A Yes, sir.

Q And did you know her under the name of Graham or Hartman?

A Graham.

Q When did you become acquainted with her? A Why, I have known her for thirteen years.

Q Were you born in New York? A Yes.

Q And have you known her continuously for thirteen years in New York? A In New York; yes, sir.

Q Has she always been a midwife? A Not since I have known her.

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Q What? A Not since I have known her, always.

Q When did she take up midwifery? A Well, I couldn't exactly say. I know her that long, but I haven't been all the time with her.

Q And are your parents living in New York? A My parents are dead.

Q And is your first husband-- A My first husband is dead.

Q Now, when did he die? A I think it should be around 1902.

Q 1902? A Yes, sir.

Q What was his business? A What was his business?

Q Yes? A He was a plasterer.

Q And where did you live? A Where did I live? I lived uptown.

Q Well, whereabouts? A The last place I lived was in 64th street.

Q What number? A 208.

Q 208, East or West? A West.

Q West 64th? A Yes, sir.

Q Now, prior to your moving down to stay with Mrs. Graham, where did you live? A Staying with Mrs. Graham.

Q Before you went to stay with Mrs. Graham, where did you live? A Before I went to stay with Mrs. Graham, I was staying in 40th street.

Q What number? A Well, now, the number I couldn't

exactly say.

Q How long did you stay there? A Well, I stayed there about two months.

Q Two months. A I worked in a factory.

Q Can't you remember the number? A Well, I couldn't exactly say. It is over a year ago.

Q Well, can you tell us about where it was? A Well, it is between Ninth and Tenth avenue.

Q Is that the nearest you can come to telling where you lived? A That is the nearest I can tell.

Q Can't you recall at all what the number was, or what it was like? Was it on the north side of the street or the south side of the street? A On the south side of the street.

Q Haven't you any idea of the number? A No, sir; I haven't.

Q Well, did you ever know the number of the place?
A Why, certainly I did.

Q Well, was it in the hundreds? A Well, it was in the three hundreds.

Q Was it three hundred and something? A I think it was 344.

Q 344 West 43? A 43rd street.

Q You were there for a couple of months? A Yes, sir.

Q Now,-- I mean you were at Mrs. Graham's for a couple of months? A Yes, sir.

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Q Now, at that time were you engaged in some occupation?

A I was in a factory.

Q What factory? A Bradley's perfume factory on 43rd street.

Q Bradley's on 43rd street? A Yes, sir.

Q Were you still in the factory while you were at Mrs. Graham's? A No, sir; I was out of employment then. The factory was not very busy, and I was laid off, and I happened to meet Mrs. Graham one night and I asked her where she was living. She told me. So I left this woman and went to board with Mrs. Graham.

Q Now, did many people come to see Mrs. Graham? A Well, sometimes there was maybe one a day, maybe none at all, maybe two a day.

Q And did you see what they did? A No, sir.

Q Did she have any bottles around, or anything of that sort? A Nothing as I seen; only vaseline.

Q Did she ever talk about her profession? A No, she never spoke anything about it to me.

Q Now, on this occasion when you say you remember these two ladies coming, was there anything about that that attracted your attention particularly? A No; nothing attracted my attention.

Q Did it particularly impress itself upon your memory that this woman should ask Mrs. Graham how long she had been in the

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family way? A No, because I didn't take particular pains to anything.

Q Well, there was nothing about that particularly to attract your attention? A No.

Q Had you ever heard any other woman come there and talk to Mrs. Graham about being in a family way? A Well, sometimes they would come for an examination, to find out how long they were.

Q What is that? A They would come there to be examined, to find out how long they were in the family way.

Q Yes? A That is all.

Q Well, do you remember ever overhearing a conversation of this sort between any other woman and Mrs. Graham? A No, sir; I didn't-- it didn't bother me any.

Q No. Now, after this lady had gone, did Mrs. Graham say anything about the patient? A No, sir; nothing to me.

Q Didn't mention her to you? A Nothing to me.

Q And you didn't say anything to her? A No, sir.

Q What paper were you reading, may I ask? A The World.

Q Did you ever see one of Mrs. Graham's advertisements in the world?

MR. DICKHEISER: Objected to as irrelevant, incompetent and immaterial.

THE COURT: Objection sustained.

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Q Did Mrs. Graham ever talk to you, or say anything to you, about having advertised in the World?

MR. DICKHEISER: Objected to as irrelevant, incompetent and immaterial.

A No, sir.

THE COURT: Objection sustained.

Q And nothing was said at all about this case? A No, sir.

Q On that occasion? A No, sir.

Q Now, did you let the people in the next time they came?

A Yes, sir.

Q And you recognized them? A Yes, sir.

Q And yourself told them that Mrs. Graham was not at home?

A Yes, sir.

Q And they went away? A yes, sir.

Q Now, of course, you were not there all the time? A Well, most of the time I was there,-- not exactly. Sometimes I used to take a walk out.

Q Yes; and you were not doing anything at this time at all? A No, sir; I wasn't doing anything at that time.

Q Now, was this policeman on night duty or day duty most of the time? A Well, he was on the late tour at that time.

Q On the late tour; so that he was home a good deal of the time? A Yes, sir.

Q Now, when Mrs. Graham was not out on any case, she stayed at home herself, I suppose? A yes, sir.

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Q And she would go to the door herself? A Yes, sir.

Q Do you know where she examined these patients usually?

A In the bedroom next to the dining room.

Q Which bedroom? A Next to the dining room.

Q Next to the dining room; that was the bedroom that you and she slept in? A Yes, sir.

Q Well, did you mention to Mrs. Graham that these two people had called again? A I did when she got home that night from the theatre.

Q What did she say? A She didn't seem to say anything.

Q What did you say to her? A I said, "Those two ladies that were here that Saturday was here to night and asked for you."

Q Now, do you know whether or not they ever called again, or either of them? A I never seen them. They might have called, but I never seen them.

Q You never saw them? A No.

Q Now, how long after that was it that the defendant was arrested? A Well, it was a week from the day that they called the second time, right on that very day.

Q Now, was it on that day that you first remembered this conversation that you overheard in the dining room?

A On what day; the 21st?

Q On the day of her arrest? A I heard-- do I remember the conversation?

Q Was that the first time that you had recalled to your

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mind the fact that you had overheard a conversation between the defendant and her visitor? A When she was arrested, I recalled it.

Q You remembered it when she was arrested? A Yes.

Q But you haven't thought of it since the night that you heard it? A I haven't thought of it, no.

Q No; if it was not any of your business, as you say.

A No, it was not necessary.

Q And you had not charged your memory with it? A No.

Q Well, when the defendant was arrested, then you immediately recalled it, did you? A Yes, sir.

Q That you had overheard a certain conversation? A Yes, sir.

Q And did you tell the defendant that you remembered having heard it? A No, I didn't say anything to her.

Q Didn't say anything to her about it? A When the woman-- the defendant was arrested and I had to go to court, I seen her, and I seen this Mrs. Dickson in court, and I recalled what--

Q Yes, and did you tell the defendant about it? A Yes.

Q You told her then? A Yes.

Q That you remembered this conversation? A Yes.

Q Did she tell you anything about what conversation she had with Mrs. Dickson and her companion? A No, sir.

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Q She never told you a word? A No, sir.

Q When did you first hear from her what her conversation had been with her visitors? A She didn't tell me any time.

Q You never heard from her what had occurred between her and her visitors? A No.

Q You merely told her-- A Yes.

Q --that you did recall having overheard this conversation?
A Yes, these words.

Q Why did you think it was important for you to tell her that? A Why did I think it was?

Q Yes. A Well, I didn't think; I just happened to tell her.

Q Just happened to tell her? A Yes.

RE DIRECT EXAMINATION BY MR. DICKHEISER:

Q Mrs. Schine, you went to work after your husband died, didn't you? A Yes, sir.

Where
Q Were you working? Mention some of the places you were working?

THE COURT: Oh, no; I do not think it is necessary.

MR. DICKHEISER: Well, there was some slight insinuations made.

THE COURT: No, no.

MR. TRAIN: No insinuations of any sort.

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BY MR. DICKHEISER:

Q Now, were you home every night from the 18th of November up to the date of the arrest? A Yes, sir.

Q Of Mrs. Hartman on the 28th? A yes, sir.

Q And do you remember on the 21st of November, the date of the second visit-- A Yes, sir.

Q Whether Mrs. Hartman was home or not? A Yes, sir; I remember.

Q She had gone out? A She was out to the theatre.

Q With whom did she go out? A With this gentleman.

Q She had gone out to the theatre? A Yes.

Q What time did she return that night, the second night?

A Well, about half past eleven or a quarter to twelve.

Q Returned about half past eleven o'clock that night?

A Yes, sir.

Q Did she speak to you about the theatre? A She didn't say. I was in bed at the time. I went to bed early.

Q How do you know what time it was? A Because when I heard the noise at the door, and I got up and opened the door for them.

Q And you had no conversation about the theatre that night?

A I didn't have any conversation about it.

Q But she told you she was going to the theatre that night? A Yes, sir.

Q You are sure of that? A Yes, I am positively sure.

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Q You are sure that you opened the door that night that Mrs. Hartman was out and explained to Mrs. Dickson that Mrs. Hartman wasn't there? A Yes, sir.

Q You didn't recall the conversation you overheard until you saw Mrs. Dickson in the police court? A No, sir.

Q Then I remembered? A When I remembered.

Q But you had known before that, of course, that Mrs. Hartman had been arrested? A Yes, sir.

Q And you didn't know who the party was that the case referred to? A No, sir.

Q And you recalled the conversation-- A That I heard--

Q When you saw Mrs. Dickson in the police court downstairs?

A In the police court; yes, sir.

Q If Margaret Donnelly called on the 24th of November, you didn't see her; is that right? A On the 24th? No, sir.

Q Were you home that night, on the 24th of November?

A The 24th? Yes, I was home.

Q Were you home all night? A Home all night.

Q And did you open the door that night? A The 24th of November? No, sir; I didn't open the door.

Q I mean whether on the 24th of November, you opened the door for anybody that rang the bell? A No, there wasn't anybody there. I don't remember opening the door for anybody.

Q Nobody came on the 24th? A Not as I remember.

Q How is it you remember these different dates, the 18th,

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the 21st and the 24th? A From the 18th to the 21st?

Q How is it you remember these dates? A How is it I remember? Because it was a week from the 21st to the 28th, when Mrs. Graham was arrested, on the 28th I recall, a week, the Tuesday before of her being to the theatre. Then I thought of the Saturday night that this woman had been there first.

RE CROSS EXAMINATION BY MR. TRAIN:

Q You say you never went out in the evening while you were staying with Mrs. Graham? A Not very often.

Q Well, you did then occasionally go out in the evening?

A Yes.

R O S E F R I E D M A N , a witness called on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DICKHEISER:

Q Mrs. Friedman, where do you live? A 247 East 93rd.

Q Are you married? A yes, sir.

Q Live with your husband and children? A Yes, sir.

Q Did you, at my request yesterday go to various drug stores in the City of New York?

Objected to. Objection sustained. Exception.

Q Did you go to various drug stores yesterday? A Yes, sir.

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Q I show you these articles, and ask you where you obtained them, in how many places?

Objected to. Objection sustained. Exception.

MR. DICKHEISER: If your Honor please, I should like to explain the object of the examination of this witness.

THE COURT: I know the object.

Q Did you represent yourself as a physician? A No, sir.

MR. TRAIN: Wait a moment. Do not answer until the Court rules.

Q Or as a nurse, in obtaining these articles that you hold in your hand?

Objected to. Objection sustained. Exception.

Q Did you ask for a bougie?

THE COURT: You will discontinue that line of examination.

MR. DICKHEISER: Exception. I will withdraw the witness.

MARY GRAHAM, the Defendant, being duly sworn and sworn in her own behalf, testified as follows:

DIRECT EXAMINATION BY MR. DICKHEISER:

Q Mrs. Graham, where do you live? A 226 West 37th street.

Q And what is your business or profession? A Midwifery.

Q Are you a registered midwife? A Yes, sir.

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Q Were you registered with the Board of Health of the City of New York? A Yes, sir.

Q When were you registered with the Board of Health of the City of New York? A In May, 1903; I don't know the date.

Q Are you a graduate of any school of midwifery?

MR. TRAIN: Objected to as immaterial, whether she is a graduate or not. Her being a midwife is immaterial, except as a matter of identification.

THE COURT: Objection sustained.

MR. DICKHEISER: Exception. If your Honor please, my theory in this case is--

THE COURT: Yes, I know it.

MR. DICKHEISER: Will your Honor hear me for a moment? I think the District Attorney does not understand the reason I understand this question.

THE COURT: No, put your next question.

Q Did you have any experience in midwifery work or obstetrical work before you were registered with the Board of Health?

Objected to as immaterial; objection sustained.

Exception.

Q Mrs. Graham, your husband is alive? A Yes, sir.

Q Did you use the name Hartman? A Yes, I used the name Hartman.

Q Will you explain to the jury why you used the name

Hartman?

MR. TRAIN: No, I object to that as immaterial.

THE COURT: Objection sustained.

MR. DICKHEISER: Exception.

Q Did you obtain a divorce against your husband?

Objected to as immaterial. Objection sustained.

Exception.

Q Now, Mrs. Graham, do you remember the 18th of November, 1905? A Yes, sir.

Q What night of the week was that? A What night?

Q What day of the week was that? A That was of a Saturday.

Q Were you home that night? A Yes, sir.

Q Did you see Mrs. Dickson that night? A Yes, sir.

Q Was she with anybody else? A Anybody else?

Q Did anybody else come with her that night? A Yes, sir; another young lady.

Q Will you describe her appearance, as far as you can remember it? A She was a thin woman, short.

Q And how old did she appear to be? A She appeared to be to me about twenty-four.

Q Did you have a conversation with Margaret Donnelly that night? A Yes, sir.

Q Where? A In the bedroom.

Q Tell his Honor and the jury exactly what took place on

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the night of the 18th of November, 1905, at your home?

A She came to me that night, the 18th of November, and she asked me would I examine her, she thought she was in the family way. So I had to examine her, and I found her between two and three months; so there was a bloody discharge and I told her that there was a bloody discharge coming.

THE COURT: I cannot hear one word; not one word.

THE WITNESS: This Margaret Donnelly came of a Saturday night, November 18. She asked me to examine her she thought she was in the family way. I found that she was between two and three months, as near as I could find out, and when I examined her, why there was a bloody discharge running. I told her the best thing she could do was to go home. So that was all I had to say to her.

Q How long was she in that room alone with you? A Well, I should say about five minutes.

Q And did you examine Margaret Donnelly? A Yes, sir.

Q How did you examine her? A With my fingers.

Q What did you do before you used your finger? A I washed my hands, put some vaseline on them.

Q And used some vaseline? A Yes.

Q And you put two fingers into her vagina? A Yes, sir.

Q Did you use any other instrument whatever on Margaret Donnelly that night? A No, sir.

Q Did you use a rubber bougie on her? A No, sir.

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Q That night? A No, sir.

Q Did you at any time use a rubber bougie? A No, sir.

Q Did you at any time perform any operation for miscarriage on Margaret Donnelly? A No, sir.

Q Did you ever see Margaret Donnelly again? A No, sir.

Q After that? A No, sir.

Q On the 21st of November, which was the following Tuesday, were you at home that night? A No, sir; I was not.

Q You don't mean that you were away all night, do you?

A No, I was to the theatre that night.

Q What theatre were you in? A I was to-- on Eighth avenue, the Grand Opera on Eighth Avenue and 23rd street.

Q With whom? A With Mr. Stevens.

Q What time did you leave the house? A Well, I should say around seven o'clock.

Q And what time did you return? A Well, about between a quarter past eleven and half past eleven, something like that; didn't notice the time.

Q Were you ever arrested in your life before? A Never arrested.

THE COURT: Question excluded.

CROSS EXAMINATION BY MR. TRAIN:

Q Your profession is that of midwife? A Yes, sir.

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Q Now, you don't take patients at your own home, do you?

A No, sir.

Q And when patients come to your house, and you examine them, it is presumably for the purpose of finding out whether your services will be needed at their homes in the future?

A Yes, sir.

Q Now, what do you charge for an examination? A Well, two and three dollars.

Q Did you charge Margaret Donnelly anything? A I charged her two dollars.

Q Two dollars? A Yes, sir.

Q Did she pay you? A Yes, sir.

Q Where did she pay you? A In the bedroom.

Q In the bedroom. Now, will you tell us everything you said to her? and A Well, I didn't say very much to her. All I said to her was when was the last time she menstruated. She told me in September.

Q Yes? A And she told me she had taken some medicine.

Q Yes? A That she wasn't positive whether she was that way or not. So I asked her to let me examine her. I examined her, and found out, as near as I could tell in my opinion, she was two or three months in the familyway, but there was a discharge, a bloody discharge running from her then. So she asked me what she should do, and I told her the best thing she could do was to go home and to consult with a doctor.

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Q To go to a doctor. Did she say she would like to engage your services as a midwife? A No, sir; she did not.

Q Did you think that was the purpose for which she came to your house? A Well, I don't know for what purpose she came to my house. That is what she told me, to have an examination.

Q But your services as a midwife are these, are they not: when a woman is near her full time, you go and see that she is delivered? A Yes, sir.

Q And people come to your house in order to find out whether they will need your services? A Yes, sir.

Q Now, do you advertise? A I did.

MR. DICKHEISER: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Objection overruled.

MR. DICKHEISER: Exception.

Q You advertise? A Yes, sir.

Q In what papers do you advertise? A In the World.

Q Are you advertising in the World now? A No, sir.

Q When did you advertise in the World? A About nine or ten months ago.

Q For how long? A Sometimes two or three times a week.

Q For how long a period did you advertise two or three times a week? A Well, maybe for about four months.

Q Beginning when? A Well, I couldn't exactly tell you the month.

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Q Do you remember the month you began to advertise?

A No, I do not.

Q Well, it was in the summer, was it? A Yes, sir.

Q And ran through September and November? A Yes, I think it was in the summer.

Q Did you advertise in the morning or evening World?

A In the Morning World.

Q Did you advertise in any other paper? A Not that I remember of.

Q What did you say in your advertisement? A I don't know really how it read now; I forget it.

Q Don't you remember? A No, sir.

Q Haven't you got one of your advertisements? A No, sir. I think it was, "Confinement and --" I really don't know how it read now.

Q You don't remember? A No, sir.

Q Well, you had never seen this Donnelly woman before?

A No, sir; I didn't.

Q She never had written to you? A No, sir; she didn't.

Q And you merely told her to go and see a doctor?

A Yes, sir.

Q Can you imagine why she came back to you the following Tuesday?

Objected to as immaterial. Sustained.

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Q Do you know of any reason why she should come back and see you the following Tuesday if you told her to go and see a doctor?, A I do not.

Q Now, do you remember Mrs. Schine being home that evening? A Yes, sir.

Q You didn't talk to her about this case; didn't say anything to her about it? A No, I didn't.

Q She didn't say anything to you about it? A No.

Q Did you ever tell her anything about the case?

A Only when I was locked up.

Q When you were locked up? A Yes.

Q Then you told her what you had said to this woman and what the woman had said to you? A Yes, sir.

Q Stevens wasn't home that evening? A No.

Q What precinct is he attached to? A The 19th.

Q Was he attached to the 19th then? A No, he was not.

He was attached to the 30th, and they transferred him to the 34th.

Q How long has he been a boarder of yours? A Well, since about September.

Q And have you ever had any other boarder? A Yes.

Q Except Mrs. Schine? A Yes.

Q Who? A My aunt.

Q Your aunt; what is her name? A Mrs. Brady.

Q And you had her since you moved away from this address?

A Yes, I have her now.

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THE DEFENDANT RESTS.

MR. TRAIN: I would like to establish, your Honor, that in point of fact, the address given in the dying declaration, 39 West 30th street, is erroneous; that there is no such house there at all on 30th street, at 39.

THE COURT: Where is the actual address?

MR. DICKHEISER: 250 West 39th street.

MR. TRAIN: I wish to bring that out, but it is conceded by the defendant that there is no such number. That is a fact.

MR. DICKHEISER: Well, I will concede that the number mentioned in the ante mortem is wrong, and that the correct address is 250 West 39th street.

MR. TRAIN: Well, there is no such place as 39 West 30th street.

MR. DICKHEISER: I do not know that.

MR. TRAIN: Well, I state it as a fact.

MR. DICKHEISER: Well, then, I will concede it.

MR. TRAIN: There is no such number.

MR. DICKHEISER: That was an error as to the number of the house, of course we concede she came to our house. We do not deny it.

THE COURT: Is that the case on both sides, gentlemen?

MR. DICKHEISER: The defendant rests.

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MR. TRAIN: The People rest.

THE COURT: I will allow you to go to the jury in this case tomorrow morning, Mr. Dickheiser. I will not detain the jury any longer.

Gentlemen, do not talk about the case, nor form nor express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you.

Adjourned until tomorrow morning at half past 10 o'clock.

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