

**START**

1760

**CASE**

I N D E X.

WITNESSES.	DIR.	CR.	RE-DIR	RE-CR
Adele D. Prieess,	1-	24-	35-	48-
Isabella Goodwin,	36-	50-	58-	59-
"	80-			
Henry C. Jessup,	60-	66-	69-	69-
Jeremiah C. Sullivan,	70-	74-	79-	
Jacob Sobel,	81-	97-	100-	104-
Paulini Papp,	110-	122-	150-	
Emma Towne Barron,	150-	153-	154-	

1760

IN SENATE  
IN SENATE AND THE COURT OF NEW YORK  
PART FIVE.

-----X  
THE PEOPLE OF THE STATE OF NEW YORK  
- against -  
PAULINI PAPP  
-----X

B e f o r e  
HON. WARREN W. FOSTER,  
And a Jury

New York, Monday, October 6th, 1913.

THE DEFENDANT IS INDICTED FOR ABORTION.  
INDICTMENT FILED MARCH 13th, 1913.

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

ROBERT E. MANLEY, Esq., Assistant District Attorney,  
For The People.

MARK GOLDBERG, Esq.,  
For the Defendant.

-----X  
(A Jury is duly impaneled and sworn.)  
-----X

THE PEOPLE'S CASE

(Mr. Manley opens the case to the Jury on behalf of The  
People.)

A B E L E D. P R I E S S, called as a witness on be-  
half of The People, being first duly sworn, testified as fo-

follows:  
DIRECT EXAMINATION BY MR. MANLEY.

Q Your name is Mrs. Adele D. Priess ? A It is.

Q Now, Mrs. Priess, when you are testifying, please talk so loud that all the gentlemen can hear you without straining; talk in about the same tone I am talking in. Are you a Police Matron ? A I am.

Q And as such are you attached to any particular place ?

A I am attached to Special Squad number Two, at Police Headquarters.

Q A little louder than that ? A Special Squad Number Two, Central Office.

Q Who is in command of that Special Squad ? A Lieutenant Daniel Costigan.

Q And you have been a Police Matron for how long ?

A Since May 1st, 1896.

Q And as a member of that Squad, are you assigned to investigations occasionally ? A I am.

Q I suppose that you are acquainted with Mrs. Isabella Goodwin, are you ? A Yes, sir.

Q Is she also attached to that Squad ? A No, she is attached to the Detective Bureau.

Q That is in the same building, I suppose ? A In the same building.

Q Sometime in January, of this year, on or about Thursday, the 23rd of January, did you go to the premises 333 East

Seventy-ninth Street with Mrs. Isabella Goodwin? A I did.

Q Did you go there as the result of any orders received by anybody?

MR. GOLDBERG: Objected to.

Q Just, "Yes", or "no" answer?

THE COURT: Objection sustained. The objection is sound.

Q Before you went to these premises - just answer this, please, "yes", or "no" - did you have any talk with anybody in the Police Department?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: I sustain the objection.

Q What time was it that you went to the premises of the defendant? A Eleven-thirty A. M.

Q Did anybody go with you? A Mrs. Goodwin went with me.

Q Where did you start from when you went to these premises? A Central Office, Police Headquarters.

Q Did you start from any room in which Squad Two is?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: She may answer that question.

MR. GOLDBERG: I take an exception.

A I did. I started from Lieutenant Costigan's office, on the fourth floor.

Q Was Lieutenant Costigan present in that room just

before you and Mrs. Goodwin started?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: That may be answered.

MR. GOLDBERG: I take an exception.

A Yes, he was there.

Q Now, when you and Mrs. Goodwin - I think you said it was eleven-thirty - got to the premises 333 East Seventy-ninth Street, what did you do first? A Mrs. Goodwin rang the Papp bell. The door ticked.

Q When you entered the premises 333 East Seventy-ninth Street, to what floor did you go? A The ground floor.

Q Is that level with the sidewalk street? A About two steps up.

Q Did you see any name upon any door or in any window in the apartment where you went? A Yes; there was the name Paulini Papp, Midwife, in the window, and there was a name Papp on one of the bells.

Q Now, that apartment to which you went is where in that house? Is it on the right, or the left, as you enter? A It is on the right as you enter, east side.

Q On the east side? A East side.

Q Is 333 East Seventy-ninth Street on the north, or the south, side of the street? A North side of the street.

Q When Mrs. Goodwin rang the bell at this apartment, what took place? A The outer door opened.

Q And who came to the door? A The door of the apartment, the front door of the apartment was opened by a woman whom I afterward learned was Elizabeth Bellus.

Q B-e-l-l-u-s? A That, or B-e-l-l-a-s, I think it is; I am not sure.

Q Well, did you go inside? A Mrs. Goodwin asked -

Q You can't state what was asked. Just answer the questions, so there won't be any objection. The question is, did you go inside? A I did.

Q Did Mrs. Goodwin go inside? A She did.

Q Did either you or Mrs. Goodwin say anything to the woman that came to the door? "Yes", or "no"? A Yes, sir.

Q And was it as the result of what was said that you and Mrs. Goodwin went inside? A It was.

Q Now, when you got inside, did either you or Mrs. Goodwin have any talk with Mrs. Bellus? Just answer that "yes", or "no"? A Yes.

Q As the result of that talk with Mrs. Bellus, did Mrs. Bellus do anything? A Yes.

Q What did she do? Don't state what she said, but just what she did?

MR. GOLDBERG: I object to what Mrs. Bellus did as not binding on the defendant.

MR. MANLEY: I am not asking for the conversation.

0917  
CASE # 1760

MR. MANLEY: I am not asking for the conversation.

It is preliminary.

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

Q What did Mrs. Bellus do, if anything? A She went to the back of the apartment. I heard her conversing. Then she returned and said --

Q You can't state what she said. Could you tell how she was conversing? That is, was she conversing face to face with somebody? A It appeared as if she was conversing over a phone.

MR. GOLDBERG: I move to strike that out.

(Stricken out by consent)

Q What happened after Mrs. Bellus came back? A We sat there and waited about half an hour.

Q And what took place after that? A The defendant, Mrs. Papp, entered the room.

Q Is that the first time you had seen this defendant?

A Yes, it is.

Q Now, did any conversation take place between you and the defendant, Papp, and Goodwin, Mrs. Goodwin, and the defendant, Papp, at that time? A Yes, sir.

Q In what language was it? A German.

Q Was it all in German? A Everything but just a few words now and then.

Q Well, the few words now and then were in what language?

A In English.

Q Do you understand German? Can you converse in that language, Mrs. Pries? A I can, yes.

Q Now, did you act as interpreter in that conversation?

A I did.

Q Did you interpret correctly everything that Mrs. Goodwin told you tell Mrs. Papp, the defendant?

MR. GOLDBERG: Objected to, and I move to strike out the answer whether he interpreted correctly.

MR. MANLEY: It is the same as calling a stenographer?

THE COURT: I don't know whether I am justified in receiving that, or not. Did you interpret everything

Q Did you interpret everything that Mrs. Goodwin said and told you to tell this defendant? A I did.

Q You say you understand German? A I do.

Q And you say that interpretation was in the German language? A It was.

Q Are you German yourself? A No.

Q Have you studied German? A No; I learned through having heard it spoken at home.

BY THE COURT:

Q You speak German, do you, Madam? A I do.

BY MR. MANLEY: And you spoke it for a long time? A Yes, sir.

Q Now, could you understand this defendant when you taked German with her? A Yes, I did.

MR. GOLDBERG: Objected to, and I move to strike out the answer.

THE COURT: No, let it stand.

MR. GOLDBERG: I take an exception.

Q. And did she understand what you said to her in German?

MR. GOLDBERG: I object to what someone else understood.

THE COURT: I will sustain the objection.

Q. Was there any difficulty that you and Mrs. Papp had in talking German to each other? A. No, there was none.

Q. Now, tell what you said to the defendant and what Mrs. Goodwin instructed you to say to the defendant? A. I said to the defendant, "My friend is in trouble; she sent -- "

Q. What does that mean? What friend? A. (Indicating Mrs. Goodwin) "She has not had her monthly sickness since December seventh, and she is sick mornings; she vomits mornings; and she is afraid she is in a pregnant condition. My friend is a widow, she works in an office, and her friend is a married man. My friend would like to know if you can help her. Can you give her some medicine?" Mrs. Papp said "No, I cannot give medicine. Medicine will not do it. While it may at times bring on a hemorrhage, it won't help any, but I can do something for your friend." I interpreted that to Mrs. Goodwin, in English.

Q. Now, give the conversation. A. Mrs. Papp continued, saying, "I have been a midwife for twenty three years; I studied

0917760

in Buda Pesth; I can do something for her, but she will have to stay home for six days." Mrs. Papp asked -- Mrs. Papp said "I should like to examine her, to see if she is in a pregnant condition". I repeated that to Mrs. Goodwin. Mrs. Goodwin, said, and I translated it in German, "I can't be examined today; I am too nervous; I can't bear to have any one touch me." Mrs. Papp then inquired "How long did your last monthly sickness last?" Mrs. Goodwin said "Five days." Mrs. Papp said "How soon after that were you with this man?" Mrs. Goodwin said "A few days." Then Mrs. Papp calculated and said "You are probably pregnant five weeks." Mrs. Papp then produced a book, what appeared to be an medical book; it was in a foreign language; it was not in German or English, and showed a picture of a foetus, and said, "This is the way you are now, five weeks". She also showed another picture at three months. Mrs. Goodwin said "Oh, can't you tell me something that I can do now?" Mrs. Papp, in English, said "Get five cents worth of English mustard and take a mustard bath, wrap up warm, go to bed," and in German, she said "Now, if that don't do any good, she can come tomorrow. If the womb is strong, it won't have any effect, but if the womb is weak, it might help her. Before you come up, telephone." Mrs. Papp then gave me a card with her name and telephone number. Do you want the card? I have it in my bag.

Q Go on. A And said to Mrs. Goodwin, "Before you come up, telephone." I translated that to Mrs. Goodwin.

CASE # 1760

Q Is that about the substance of the talk that took place on that day? A Yes, sir.

Q That was Thursday, the twenty third of January?

A Thursday, the twenty third, yes, sir.

Q At that time, did the defendant ask the names of either you or Mrs. Goodwin? A She did not.

Q Did she make any inquiries as to how you came there, as to who sent you there? A No.

Q Did she ask anything along that line that day? A No.

Q You think you have covered about the substance of what took place, do you? A Well, in speaking about medicine, she made a remark.

Q What did she say? A She said "What goes in the mouth has got to come out of the mouth, and what goes in the other way", pointing to her lap, "will have to come out the same way".

Q How did she happen to make that remark? That is, was anything else said which led up to that remark?

MR. GOLDBERG: I object to the form of the question.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

A It was asking for medicine.

Q Tell me what was said as to asking for medicine, and how this other talk came in. A At the time I said, "My friend, wants some medicine; can't you give her some medicine?" Mrs.

001760

...will not do any good. ...  
...without doing any good. What goes in ...  
...will have to come out that way, and what goes in down below will  
...have to come out that way."

Q When she said, "Down below", did she point anywhere?

A She pointed to her lap, and in speaking about the mouth she  
pointed to her mouth.

Q Was any time agreed upon as to your coming back the  
next day, if the medicine did not work? A No, except the  
defendant said "Telephone before you come up. My nurse is al-  
ways here."

Q Did she say who her nurse was? A She spoke of this  
Bellus woman as her nurse, previously.

Q That is the one who had answered the door bell? A Yes,  
sir.

Q Was any one else present in the defendant's house ex-  
cept you, Mrs. Goodwin, the defendant and the Bellus woman?

A I didn't see any one else.

Q Did you & Mrs. Goodwin go away then? A We left then.

Q Did you return to that place the next day? A We did.

Q Before going up the next day, Friday, the twenty  
fourth of January, did either you or Mrs. Goodwin do anything ?

MR. GOLDBERG: That is objected to.

Q Did you telephone?

MR. GOLDBERG: That is objected to.

Papp said "No, medicine will not do any good. It might bring on a hemorrhage without doing any good. What goes in the mouth will have to come out that way, and what goes in down below will have to come out that way."

Q When she said, "Down below", did she point anywhere?

A She pointed to her lap, and in speaking about the mouth she pointed to her mouth.

Q Was any time agreed upon as to your coming back the next day, if the medicine did not work? A No, except the defendant said "Telephone before you come up. My nurse is always here."

Q Did she say who her nurse was? A She spoke of this Bellus woman as her nurse, previously.

Q That is the one who had answered the door bell? A Yes, sir.

Q Was any one else present in the defendant's house except you, Mrs. Goodwin, the defendant and the Bellus woman?

A I didn't see any one else.

Q Did you & Mrs. Goodwin go away then? A We left then.

Q Did you return to that place the next day? A We did.

Q Before going up the next day, Friday, the twenty fourth of January, did either you or Mrs. Goodwin do anything ?

MR. GOLDBERG: That is objected to.

Q Did you telephone?

MR. GOLDBERG: That is objected to.

THE COURT: Answer the question. Objection overruled.

MR. GOLDBERG: I take an exception from

A We telephoned Mrs. Papp, a store corner of Grand and Centre street in which there was a telephone. Mrs. Goodwin called up the number on the card which Mrs. Papp had given her.

Q And did you see Mrs. Goodwin talking on the telephone after calling up that number? A Yes, sir.

Q Right after that, did you and Mrs. Goodwin go anywhere? A We went to headquarters.

MR. GOLDBERG: That is objected to.

THE COURT: Answer it.

MR. GOLDBERG: I take an exception.

Q Did you go anywhere from there? A We went to 333 East Seventy ninth street, arriving there about three thirty in the afternoon.

Q Did either or Mrs. Goodwin take anything along with you?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: Objection is overruled.

MR. GOLDBERG: I take an exception.

A Mrs. Goodwin took twenty five dollars in marked bills, one ten dollar bill and three five dollar bills. I saw her mark them at Police Headquarters.

Q Tell us what took place when you got to the defendant's house? A The door was again opened by Mrs. Bellus.

Q Did anybody else go up there that day except yourself and Mrs. Goodwin? A Yes, sir.

Q Who went along? A Officers Jessup and Sullivan.

Q And where was it the two officers joined you and Mrs. Goodwin before all four of you went up? A At Central Office, squad Number two, Lieutenant Koscigan's office.

Q Did you and Mrs. Goodwin have a talk with the two <sup>Police</sup> officers before you entered the house? "Yes", or "No"?

A Yes, sir.

Q Did you have some signal that you were to give?

MR. GOLDBERG: That is objected to.

MR. MANLEY: Question withdrawn.

Q When you entered the house, who answered the door bell, or opened the door? A The outer door was open from within and Elizabeth Bellus opened the parlor door.

Q In what room did you go first? A The front room.

Q Does that open on the street, with windows on the street?

A That opened on a hall, the hall of the house, the parlor door it is.

Q Did you go into a room that had that had windows that looked out on the street? A Yes, there were two windows.

Q When you got in that room, did you see anybody there?

A We saw Elizabeth Bellus, who stated that Mrs. Papp was at home. Mrs. Papp then entered the room.

Q Where were the two officers at the time that you and

CASE #1760

14  
Mrs. Goodwin went into the house? A They were on the opposite side of the street.

Q Just tell us what conversation took place with the defendant? A Mrs. Goodwin said, in English, "That didn't do any good". Mrs. Papp said, "No good?" I said --

Q In what language did she say that? A That was in English.

Q Whenever it was in English, just tell us so. A Yes, in German, I said "My friend took that bath, and it didn't do her any good." Mrs. Papp said "I thought it would not, because if the womb is strong it won't do any good, but if it is weak, it might do some good, but I can do something for you. You will have to stay home from work six days, and you will have to come back the third day. What I do to-day will not hurt you, but when you go home tonight or tomorrow morning you will have a pain. It won't be a steady pain. It will be a pain that <sup>comes</sup> ~~comes~~ and goes. You will see a light colored blood. You will still have that pain, and you can take a little cognac. After awhile the red blood will show, and when the pain stops come to see me. At any rate, come the third day, and I will clean you out nice," and in English Mrs. Papp said "I fix you nice." In German, "Don't call in any doctor, for I never require a doctor." Mrs. Goodwin said, "How much will you charge?" Mrs. Papp said, "Twenty five dollars." Mrs. Goodwin said-- I translated all this in German.

Q Whatever the defendant said, you translated to Mrs.

Goodwin? A Yes, sir. Mrs. Goodwin said, "I am a working woman and I can't afford to pay that much money." Mrs. Papp said, "You may get some one to do it for ten or fifteen dollars, but because I know how to do it well and right I charge twenty five dollars." Mrs. Goodwin thereupon paid the twenty five dollars in marked bills that I mentioned before.

Q She paid them to whom? A Mrs. Papp. Mrs. Papp asked Mrs. Goodwin her name, and Mrs. Goodwin said, "Annie Lawrence." "Where do you live?" "302 West 114th street, top floor." Mrs. Papp made an entry in an account book she had there. Mrs. Papp then left the room and went to the back of the flat. Elizabeth Bellus came onto the room adjusting a clean white apron.

Q What do you mean by adjusting? A She was tying an a pron on herself. The Bellus woman asked Mrs. Goodwin to get in the back room. Mrs. Goodwin said, "Can my friend come?"

MR. GOLDBERG: Objected to, unless it was in the presence of the defendant.

Q Was Mrs. Papp there and heard that? A No.

MR. MANLEY: I consent that be stricken out.

Q At the time Mrs. Bellus said something to Mrs. Goodwin, where was Mrs. Papp? A In the back part of the flat.

Q Don't state anything that Mrs. Bellus said if the defendant was not there. A I heard Mrs. Bellus say something in a foreign language to Mrs. Papp, and I heard Mrs. Papp answer.

Q Could you understand that language? A No, I could not.

Q It was not German? A It was not German.

Q What happened right after that that talk between them?

A Mrs. Bellus asked us to step back with her. We went through the bed rooms, and entered the dining room. At that time, Mrs. Papp was coming in from a room back of the dining room, carrying a basin in which there was a liquid and some instruments. Mrs. Papp indicated a chair that was between the two rooms, between the bed room and the dining room, and asked me to sit on that chair. She then said to Mrs. Goodwin "Get up on the table." Mrs. Bellus offered to take off Mrs. Goodwin's skirt, and Mrs. Goodwin said, "No, I will keep my skirt on." The Bellus woman assisted Mrs. Goodwin on the table. Mrs. Papp was facing me. Mrs. Goodwin's head was towards me. And the table, a square dining room table, there was a small blanket, like a baby's blanket, covering the table. I saw Mrs. Papp touch Mrs. Goodwin's dress.

Q State the position that Mrs. Goodwin was in on that table? A Her knees were drawn up.

Q How was she lying? A She was lying with her face towards me-- her head towards me.

Q On her back, or seated, or how? A On her back.

Q Flat on her back on the table? A Flat on her back, on the table, with her knees drawn up.

Q That means with the heels drawn in towards the thighs? A I should think with her feet on the table, knees drawn up that way.

CASE # 1760

Q What occurred next? A I saw Mrs. Papp put her hand towards Mrs. Goodwin, and she stood in that position for about three minutes.

Q What can say as to the skirt of Mrs. Goodwin, in what position were they? A Her skirts were not facing me, so I really couldn't tell you exactly how they were.

Q You were right behind Mrs. Goodwin? A Were Mrs. Goodwin's knees higher than her head that time? A Yes, they were.

Q Where did the defendant Papp stand with reference to the private parts of Mrs. Goodwin? A Directly in front.

Q What was it you first saw her do? A I saw her stand before Mrs. Goodwin and move her hands .

Q She moved her hand with reference to what part of the person? A She put her hand towards Mrs. Goodwins privates, but I could not see just what she did. She stood in that position about three minutes, leaning over. She then took an instrument out of the basin.

Q Where was that basin? How close to the table that contained the instrument? A It was on a chair, less than a foot from the table.

Q Go ahead. A She approached Mrs. Goodwin with this instrument, and I heard Mrs. Goodwin say, "What have you got there? What are you doing?" Mrs. Papp said, in English, "I syringe nice." And -- Mrs. Goodwin said, "Oh, I feel sick at my stomach; I feel like vomiting." Mrs. Goodwin sat up, and the Bellus

woman supported her back. I thereupon rushed to the front of the flat, went to the window, put a handkerchief up to my face, wiped my face, when the officers saw me and started to cross over the street, and I opened the parlor door leading to the hall. I then ran back to the dining room. Mrs. Goodwin was standing on the floor, supported by Mrs. Papp and the Bellus woman. Just as I entered the room, the outer bell rang. Mrs. Goodwin broke away, and I saw her holding an instrument in her hand. Mrs. Goodwin held an instrument. Mrs. Papp ran to the table, took the cover off and covered the basin. Mrs. Bellus rushed to the kitchen and then towards the front. Mrs. Papp then took the instruments out of the basin and left the room, as the officers came in the dining room.

Q Who did that? A Mrs. Papp. When she saw the officers after she covered up the basin, she grabbed two instruments.

Q How did she cover up the basin? A With that little blanket that was on the table. As the officers came through the room, Mrs. Papp grabbed the instruments and left the room. I said to the officers, Jessup and Sullivan, "she has got the instruments." They rushed after her, coming back with Mrs. Papp, and officer Jessup had two instruments in his hand.

Q Were those two instruments that the officers got from

the defendant, Papp, two of the instruments which had been in the basin.

Q Go ahead. A I went over to the basin and took out a red rubber article, which I have been told is a catheter.

MR. GOLDBERG: I object to that, and move to strike it out.

THE COURT: Strike it out.

Q You took out a red piece of something? A About a foot long.

Q What did you do with it? A I handed it to Officer Jessup. I noted that the water, the liquid, smelled very strongly of carbolic.

Q Are you acquainted with the odor or carbolic acid?

A Yes, sir.

Q Would you say that the liquid was a solution of carbolic acid? A Yes, sir.

Q That means, I suppose, that the contents of the basin in which the instruments were?

MR. GOLDBERG:- Objected to.

THE COURT: Objection sustained.

Q You testified that there was carbolic acid? Where was it? A. In the basin in which the instruments had been immersed. Officer Jessup said to Mrs. Papp, "Sit on that chair. We are Police Officers. You are under arrest." Mrs. Goodwin said to Officer Jessup "She has got the money."

111  
CASE # 1760

Officer Jessup said to Mrs. Papp, "What did you do with the money?" That was said in English. "Give us that money, or I will have these two matrons search you." Mrs. Papp thereupon took the money, the same bills, out of her dress. I examined the bills and found them to be the same that Mrs.

Goodwin had marked, and had given to Mrs. Papp.

Q Did any conversation take place with the defendant at that time? A Mrs. Papp said "All doctors fix. All mid-wives fix."

Q Did she give any explanation, did the defendant give any explanation of what she was doing or what was going on in the apartment to anybody? at that time? A No, she did not.

Q Have you said everything she said about this charge besides "All doctors fix; all midwives fix". A I have stated all I remember.

Q Did she state to the officers what the instruments were, or anything of that kind? A No.

Q Did she state to the officers what she claimed she was doing with Mrs. Goodwin? A No, she did not.

Q I ask you to take a look at these objects that I have here, and tell me if you have seen them before, or objects that looked just like these (indicating instruments)

MR. GOLDBERG: I object to the form of the question as not binding on the defendant.

THE COURT: That question may be answered.

MR. GOLDBERG: I take an exception.

Q Answer the question. Have you seen these objects, or objects that looked like them? A Yes, sir.

Q Where? A In the apartment of Mrs. Papp, 333 East Seventy ninth street.

Q Now, you have testified that she had an instrument, that the defendant had an instrument in her hand at the time she was standing at or near the private parts of Mrs. Goodwin. Can you tell which of those instruments she had in her hand at that time? A This one (indicating).

(Instrument referred to is marked People's Exhibit Number one, for identification, of this date)

Q How close was the defendant standing in front of Mrs. Goodwin, that is, in front of the private parts of Mrs. Goodwin, at the time she had this instrument, People's Exhibit Number one, for identification, in her hand? A She appears to be standing right up against the table on which Mrs. Goodwin was lying.

Q And did you see how close the defendant put this instrument to Mrs. Goodwin's person? A No, I couldn't see that.

Q You were at that time, in the same position, back of the head of Mrs. Goodwin? A Yes, I saw her take the instrument and approach Mrs. Goodwin.

Q After the Police Officers came in, did you see this same instrument? A Yes, sir.

Q And where was it? A In Mrs. Goodwin's hand.

Q Do you see here on this table any other instrument, or instruments that look just like those you saw in the basin of the defendant? A Yes, sir.

Q Which ones? A They were all taken out of the basin, but these are the two instruments that the officers took from Mrs. Papp. This one I distinctly remember, because it fell down and broke apart(indicating instrument), and this object I took out of the basin myself(indicating instrument).

Q You testified a while ago the defendant first put something over the basin, and then went to it and took something out. Now, which of the objects did the defendant take out of the basin after the officers came in? A These two, (indicating instruments)

Q Those are the two the defendant started with to the bath room? A Yes, sir.

Q And that the officers took from her? A Yes, sir.

Q Either these or instruments that looked like them? A Yes, sir.

Q And you say one dropped and came apart in the centre? A Yes, si r.

MR. MANLEY: I ask these two be marked People's Exhibit Number two for identification.

(Same marked People's Exhibit Numbers two and three, respectively, for identification, of this date)

Q You have already testified that you took this , after the officers came in, from the basin, or something that looked like this object(indicating instrument) A Yes.

MR. MANLEY: I ask to have that marked People's Exhibit Number four for identification.

(Same marked People's Exhibit Number four for identification, of this date)

Q Do you recollect what the condition of People's Exhibit Number four, for identification, this thing here, was at the time you took it out of the basin? Was it stiff, as it is now or more pliable. A It was more pliable than it is now.

Q I call this to your attention. Did you see anything that looked like that(indicating instrument)? A I didn't notice those.

Q Did you see this book(exhibiting note book to witness) A Yes, sir.

Q Or a book that looked like this? A Yes, sir.

Q Whereabouts was that? A On the front room table. The officers took that off the front room table.

Q Did you see any other instruments or anything along that line in the room where this took place which you have told us about, which was one of the rear rooms, besides what you see here? A Not to my recollection.

RECORD

CASE #1760

Q I show you this blanket. Did you see a blanket there that looked like this (exhibiting same to witness)? A Yes, I did. That was covering the table which Mrs. Goodwin was lying on.

MR. MANLEY : I ask that be marked for identification

(Same marked People's Exhibit Number five, for identification, of this date)

MR. MANLEY: That is all /

CROSS EXAMINATION BY MR GOLDBERG:

Q When you were asked before whether there was a sign in the window at 333 East Seventy ninth street, you assumed the attitude as if you were thinking whether there was a sign there. Don't you know whether there was a sign there, or not? A I know there was a sign there.

Q It don't require any particular recalling of it? You know it was there. A I know it was there.  
you have

Q All these facts testified to are fresh in your memory? A They are.

Q Can you tell us what conversations took place between you and Mrs. Papp in English? I want you to detail each conversation that took place in English between you and Mrs. Papp. A The English conversation was not between myself and Mrs. Papp. She was looking at Mrs. Goodwin when she spoke in English. She said "I fix nice", the first day, and she also said -- by the first day, I mean January twenty-

third, and by the second day I mean January twenty fourth. On January twenty third Mrs. Papp said in English, to Mrs. Goodwin, "Get five cents worth of English mustard, and take mustard baths, wrap warm".

Q You are positive about that word "Fix"? A Positive.

Q How many times was that word "Fix" used? A It was used the first day; it was used the second day. After the arrest was made, Mrs. Papp said "All doctors fix; all midwives fix." Mrs. Papp also said , in English, to Mrs. Goodwin, when Mrs. Goodwin asked her "What is that you have got there? meaning the instrument I have identified. Mrs. Papp said "I syringe nice," in English.

Q This conversation "I syringe nice", when did that take place? A When Mrs. Papp was standing before Mrs. Goodwin, when Mrs. Goodwin was on the table, and Mrs. Papp approached Mrs. Goodwin with that large instrument.

Q Is that the exact language "I fix nice"? A "I fix nice, clean."

Q See if you can recall whether that is the exact language Mrs. Papp said to Mrs. Goodwin, "I fix nice, I clean."

A "I fix nice, clean."

Q Positive of that? A Yes, sir.

Q Do you remember testifying in the Police Court, in a proceeding in which Mrs. Papp was the defendant? A Yes, sir.

Q Do you remember being asked that same question?

CASE #1760

A I don't remember whether I was asked that question, or not.

Q See if this will recall it to you. Do you remember being asked by me what, if anything, Mrs. Papp said to Mrs. Goodwin in English at that table, and you said "I syringe". Do you remember testifying to that? A Well, if it is down there, I must have testified to it.

Q So, when you say, she said, "I syringe nice, I clean", which is correct? A "I syringe nice, I clean."

Q So you were in error in the Police Court? A No. Didn't I say "I syringe"?

Q You did not testify just now that the word "syringe" was used at all, A Oh, I did.

MR. MANLEY: I object to that. That is in the testimony.

THE COURT: I think there is no question pending. Go on, please.

Q When was the first time you saw Mrs. Papp? A On January twenty-third, I entered the premises about eleven thirty, and she came about half an hour later.

Q And did you two people have a conversation with her?

A Yes, sir.

Q Was that in English, or in German? A I spoke to her in German.

Q What did she say? A I said "My friend is in trouble. She hasn't had her monthly sickness since December ninth.

She is sick at the stomach mornings, and at times she is afraid she is in a pregnant condition, and she wants you to help her; she wants some medicine."

Q Did you say that to Mrs. Papp in English, or in German? A In German.

Q Will you kindly state to his Honor and the gentlemen of the Jury that conversation, in German? A I said (witness speaks in German)

Q And what did Mrs. Papp say? A Mrs. Papp said (witness speaks in German).

Q In other words, you, in the presence of Mrs. Goodwin and Mrs. Papp, insisted on Mrs. Papp's giving medicine?

A We asked for medicine, yes, sir.

Q How many times had you asked for it? A Twice.

Q And Mrs. Papp said she did not give any medicine. A No.

Q Did Mrs. Goodwin say anything about her being a widow? A I stated to Mrs. Papp, in German, as I went in, when I told Mrs. Papp about my friend being in trouble, I said (witness speaks in German).

Q Did Mrs. --- did you say anything to Mrs. Papp about Mrs. Goodwin being a widow? A I did.

Q And you said to her that you both thought she was in the family way; is that right? A Yes.

Q And that Mrs. Goodwin, while you were talking, walked around the room, holding her stomach and complaining?

9937

CASE #1760

A She didn't walk around the room; she sat still.

Q She sat down all the time? A Yes sir.

Q She made no motions with her hands on her stomach?

A She said "I am sick at my stomach."

Q Did you tell Mrs. Papp that if Mrs. Goodwin gave birth to a child, it would bring ruin on herself and family?

A No.

Q Or words to that effect? A No.

Q What did you say? A I said, "My friend is a widow, and her friend is a married man, can't marry her".

Q How long were you at 333 East Seventy ninth street on the twenty third of January? A I should judge we were there about an hour and a half together. We waited for Mrs. Papp half an hour before she came.

Q And when Mrs. Papp came in, did Mrs. Goodwin say anything to her? A No.

Q You did all the talking? A Yes, sir.

Q Was anything said on that day in English at all by you to Mrs. Papp, or by Mrs. Papp to you? A Mrs. Papp didn't speak English to me at all.

Q So, all the talk that Mrs. Papp had with you was in German? A Was in German. What she said in English was to Mrs. Goodwin.

Q Does Mrs. Goodwin understand German? A She understands a word now and then.

Q Before you were asked how much of a conversation took place in English, and I understood you to say that everything was in German but a few words; is that correct? A Yes, sir.

Q And those few words are the only few words "I fix you, I clean nice." A And about the mustard, and "I syringe".

Q That conversation about the purchasing of the mustard, was that said to you by Mrs. Papp in English? A It was said to Mrs. Goodwin in English, and Mrs. Papp repeated it in German as well to me.

Q In the presence of -- A Of Mrs. Goodwin, and she told Mrs. Goodwin in English.

Q And what did Mrs. Goodwin say in response to that? A Mrs. Goodwin said, "If that don't help me, I will come up tomorrow." I told Mrs. Papp what Mrs. Goodwin had said.

Q And after that did both of you leave? A After Mrs. Papp had given Mrs. Goodwin the card and made arrangements with Mrs. Goodwin to telephone about coming up tomorrow.

Q When did you call the next day? A We entered the premises something around half past three.

Q And who did you see when you got there? A The door was opened by Elizabeth Bellus, and Mrs. Papp entered the room right after that.

Q Was Mrs. Papp home? A Yes, she was home the second day.

Q And what did you say to her as you went into the place? A I said -- I said, "That didn't do any good."

CASE #1760

Q Did you say that in English, or in German? A I said that in German, or Mrs. Goodwin said before that, in English, "No good." Mrs. Papp said (witness speaks in German), and I repeated in German, "It didn't do any good."

Q Did you then insist on Mrs. Papp's giving medicine?

A No.

Q Didn't say anything about medicine on the second visit at all? A No.

Q You are positive of that? A Positive.

Q What did Mrs. Papp say to you in response to the answer, the other didn't do any good? A She again reiterated about the womb, if the womb was strong it would not help, but if the womb was weak that mustard bath might help, but she said, "I can do something for her. She will have to stay home six days, and come here the third day. It won't hurt her today, but perhaps tonight or tomorrow she will have a pain, not a steady pain."

Q This conversation was between you and Mrs. Papp? A Yes, sir.

Q And, apparently, Mrs. Goodwin didn't know what was said?

A No, I repeated that in English slowly to Mrs. Goodwin, and Mrs. Papp nodded her head as I was telling Mrs. Goodwin.

Q So, you wish it understood that everything conversation had between you and Mrs. Papp in German was immediately repeated by you in English to Mrs. Goodwin; is that right?

A Yes, sir.

Q You didn't see Mrs. Papp touch Mrs. Goodwin with any instrument, did you? A No, I was not in a position to see.

Q When Mrs. Goodwin got off the table, Mrs. Papp, you claim, took hold of all the instruments that were in the basin? A No, that is not the way I testified.

Q Didn't you testify that when you came back into the room where Mrs. Goodwin was that you saw Mrs. Papp rushing into another room? A No, that is not what I said.

Q Let us hear what you said? A I said--

Q Question withdrawn. After Mrs. Goodwin got off the table, what did you do? A I was not in the room when she got off the table; she was on the table when I rushed to the front to give the signal.

Q You had already rushed to give the signal while Mrs. Goodwin was still on the table? A While she was on the table, saying, "I feel sick, I feel like vomiting."

Q You don't know what Mrs. Papp did when Mrs. Goodwin was on the table? A No. What I testified is what took place.

Q Will you kindly answer my question.

(Question read by stenographer as follows: "Q You don't know what Mrs. Papp did when Mrs. Goodwin was on the table?")

A Yes, what I testified to.

Q What did she do? A In the first place, she stood in a position one would assume in making an examination.

MR. GOLDBERG: I object to that, if your Honor please, and move to strike it out.

MR. MANLEY: I have no objection to that part being stricken out: "Which is the position wone would assume when making an examination."

Q Did you see Mrs. Papp do anything while Mrs. Goodwin was on the table? A Yes, I saw her stand in front of Mrs. Goodwin.

Q Is that doing anything? A Yes, sir.

Q When you see some one standing in front of a person, is that doing something? A Yes, and putting out her hand.

Q Did the hand you saw going forward go near Mrs. Goodwin? A I saw them go forward as far as I could see.

Q You did not see them touch Mrs. Goodwin? A No, I couldn't see that.

Q And as this was going on, you ran out of the room? A No, when Mrs. Papp took the large instrument and approached Mrs. Goodwin, and Mrs. Goodwin said "What is that?" Mrs. Papp said, "I syringe nice, I clean." Mrs. Goodwin said, "I feel like vomiting", and as she was being supported in a sitting position by Mrs. Bellus, I rushed out of the room.

Q Mrs. Goodwin, when you rushed out of the room, was in a sitting position? A She sat up.

Q And you had not seen Mrs. Papp touch Mrs. Goodwin with any instrument? A No, I was not in a position to see it.

Q Did you, or did you not? A No, I did not.

Q What were you hesitating about? A I was not hesitating.

CASE #1760

Q Why didn't answer it? A I answered it as soon as I could.

Q After you had given the signal that you have testified to, what did you do? A I rushed back to the dining room.

Q And where was Mrs. Papp then? A Mrs. Papp and Elizabeth Bellus were supporting Mrs. Goodwin. Mrs. Goodwin was standing on the floor, and as I entered the room the bell rang. Mrs. Papp broke away, and Mrs. Goodwin broke away. Mrs. Goodwin had the instrument in her hand, and Mrs. Papp ran to the basin, covering the basin with that blanket, or a blanket similar. Mrs. Bellus rushed to the front. Before the Bellus woman could get to the front of the flat the officers were there.

Q Did the officers come in through the parlor door?

A Yes, they did.

Q Did you see Mrs. Bellus take any instruments? A No.

Q When was your attention first attracted, as you claim, to the taking of the instruments <sup>from</sup> ~~at~~ the basin? A As soon as Mrs. Papp took them from the basin.

Q Had you already returned to the room, or were you in the front? A No, I was in the room. The officers did not come in until the bell rang. After she covered the basin with a blanket, the officers were just coming in the second room.

Q How long after the officers had reached the room did you remain in the apartment? A Well, I don't know. Fifteen or twenty minutes. I didn't look at the clock.

CASE #1760

Q Did you see the officers going into any of the drawers of the apartment? A Yes, they took that account book.

MR. GOLDBERG: I didn't ask that. I move to strike that out. Kindly answer my questions, please.

Q You say you saw the officers going over the drawers in the apartment when you were there, and they were there, at the time of the arrest of Mrs. Papp? A They did not go through all the drawers.

Q Did you see them going through any of the drawers?

A Two of them, yes.

Q You say at the first conversation that you told Mrs. Papp that Mrs. Goodwin was already five weeks in the family way? A No, Mrs. Papp told Mrs. Goodwin she must be five weeks.

Q She said that in English? A No, she said it in German.

Q Mrs. Goodwin said that in German to Mrs. Papp? A I don't understand your question.

Q (Question read by the Stenographer) as follows: "Mrs. Goodwin said that in German to Mrs. Papp?" A I stated Mrs. Goodwin did not say she was five weeks. Mrs. Papp said Mrs. Goodwin was five weeks.

Q Who other than Mrs. Papp made that remark? A Mrs. Papp made that remark. No one else.

Q Any one else? A No.

Q Positive of that? A I am positive.

Q Didn't I understand you to testify on direct examination that you told Mrs. Papp at the first conversation that Mrs. Goodwin was sick, had not her monthlies, as you put it, and she was five weeks in the family way? A No, I didn't testify to that.

Q Positive of that? A Positive.

MR. GOLDBERG: That is all.

REDIRECT EXAMINATION BY MR. MANELY:

Q You said something a little while ago about a card that was given to Mrs. Goodwin by the defendant? A Yes, sir.

Q Do you happen to have it with you? A Yes, I have it. It is in my bag.

Q Let me see it. A (Witness produces card).

Q Did you take that card away, or was it Mrs. Goodwin that took it away. A Mrs. Goodwin took that card away, or a similar card.

Q Have you had it since that time? A Mrs. Goodwin had it.

Q You have had it since? A I got it Saturday.

Q Was that card exactly like the card the defendant gave Mrs. Goodwin? A Yes, it is.

(Card marked people's Exhibit Number 6, for identification, of this date)

RE-CROSS EXAMINATION BY MR. GOLDBERG:

Q Mrs. Priess, I want to ask you again, to make sure, was anything said on the second visit, on January twenty fourth,

by you or Mrs. Goodwin insisting that Mrs. Papp give Mrs. Goodwin some medicine to cure her? A There was nothing said on the t wenty fourth about medicine.

Q That only conversation that was had about the giving of medicine was on the twenty third, the first time you saw Mrs. Papp? A Yes, sir.

MR. GOLDBERG: That is all.

-----

I S A B E L L A G O O D W I N, Police Officer, attached to the detective bureau, Manhattan, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your name? A Isabella Goodwin.

Q Are you a member of the Police force of this City?

A I am.

Q And what is your rank in the department? A Acting detective Seargent, first grade.

Q And are you assigned to the detective bureau? A I am.

Q Sometime in January of this year, on or about Wednesday, the twenty second day of January, did you go to the premises of this defendant, 333 East seventy ninth street, City and County of New York? A I did.

Q Had you ever seen the defendant before? A No.

Q Did you go there at the direction of any superior officer? A I did.

CASE #1760

Q Who was that person? A Lieutenant Dan Castigan.

Q MR. GOLDBERG: Objected to, and I move to strike that out.

THE COURT: Objection sustained.

Q When you went there, upon the twenty second of January, Wednesday, did you go there alone, or was there any one with you? A I went alone.

Q When you went to those premises, what part of the premises did you go to? A The ground floor, on the right hand side as you enter.

Q Did you see anything in the window or on the door, any name of any kind? A There was a sign in the window "Pauline Papp, Midwife."

Q And is that the place you were going to when you started, the place of the person named Pauline Papp? A Yes, sir.

Q Now, did you go into the apartment? A Yes, sir.

Q And rang the bell, I suppose? A Yes, sir.

Q Anybody come to the door? A Yes, some young woman.

Q And who was the person that came to the door? A A young woman whom I afterward learned was Elizabeth Bellus.

Q Just answer this question "Yes", or "No"? Did you have any talk with that woman? A Yes, sir.

Q Did you go into the apartment, or just have a talk at the door, the threshold? A I went into the parlor.

Q Did you see the defendant there at that time? A No.

Q Did you receive any information from Mrs. Bellus as to the defendant? Just answer that "Yes", or "No"?

A Yes.

Q Now, as the result of anything, that is, any talk, between you and Mrs. Bellus, did you at any other time return to the apartment of this defendant? A I did.

Q When was it that you next went there? A The twenty third, the following day.

Q The next day; that would be the twenty third, Thursday? A Yes, sir.

Q Did any one accompany you then? A Yes sir.

Q Who was that? A A matron, Adele D. Priess.

Q Do you recall about what time of the day it was you got there? A Around eleven A. M.

Q When you went there, who was the first person you saw in that apartment? A Elizabeth Bellus.

Q Did you afterwards see the defendant Papp there? A I did.

Q How long had you been there before you saw the defendant Papp there? A Possibly half an hour.

Q When she came in, did you have any talk with her, either yourself or through anybody else? A Yes.

Q In what language was the conversation. A Mostly in German.

Q Do you talk German, or understand it yourself? A Very little.

CASE #1760

Q In what language was the conversation? You say  
in German? A Mostly in German.

Q Did you say anything in English which was translated by  
Mrs. Priess to the defendant in German? A Yes, sir.

Q And what did Mrs. Priess do after you said something to  
Mrs. Papp in English? What did Mrs. Priess do? A She  
would translate it.

Q That is, to the defendant? A Yes, sir.

Q After the defendant would say something, what would  
Mrs. Priess then do? A She would tell me to translate it  
in English.

Q Do you recall, upon the first day you went there--  
this is the second day, rather, but the first day you and  
Mrs. Priess went there together? A Yes.

Q Do you recall upon Thursday, the twenty third, if the  
defendant said anything directly to you, in English? A Yes,  
sir.

Q Now, start right in and tell the entire conversation  
that passed between you and this defendant, both in English,  
directly between you and the defendant, and in German, be-  
tween you and the defendant, through Mrs. Priess.

MR. GOLDBERG: January twenty third?

MR. MANLEY: Yes.

A I told Mrs. Priess to tell the defendant that I had not  
had my monthly sickness since the seventh of December, that

I thought I was pregnant, as I was very sick at my stomach, and it was a married man who was the cause of it, and I wanted to know if she would not give me some medicine. Mrs. Priess told this defendant what I had stated, and turned to me--

MR. GOLDBERG: I object to that, unless she knows that of her own knowledge.

BY THE COURT:

Q Do you know anything more than Mrs. Priess talked with the defendant in German? A She talked with the defendant in German.

Q That is all you know about it? A Yes.

BY MR. MANLEY:

Q What was it, after Mrs. Priess talked to the defendant in German, that Mrs. Priess said to you in English? A Mrs. Priess, turning to me, stated that this defendant said she did not care to give any medicine, as she did not think it would have the desired effect.

Q Go ahead. State what you said, and state what Mrs. Priess said to you afterwards, talking to the defendant. A Mrs. Priess said this defendant wanted to know how long I usually had my monthly sickness, and I said five days/She asked me how long after the sickness stopped I had seen this married man, and I said a few days after. Mrs. Priess said this defendant then stated "That would make it about five weeks that I was pregnant."

Q Go ahead. A Turning to me, this defendant said "You can take five cents worth of English mustard, and drink some hot tea, and take a mustard bath, and wrap yourself up warm and go to bed". Mrs. Priess stated this defendant wished to examine me, and I told Mrs. Priess to tell her I was very nervous and didn't care to be examined at that time, that I would try what she had told me to use, and if that didn't do any good I would come back again.

Q Was anything else said with regard to the medicine that you can recollect, as to whether the medicine would do you good or not? A Yes, Mrs. Priess told me the defendant said that if the womb is strong the medicine would not have the desired effect, but if it is weak that it might help.

Q Do you recollect anything else being said at that time, on this visit? A This woman had a book which she showed Mrs. Priess and myself.

Q What was the book? A Some kind of a medical book, with pictures of the foetus in different stages.

Q What did the defendant say about that book, if anything? A She showed us one at five weeks and one at three months.

Q Did you have any conversation about returning at any other time? A I said I would return again.

Q What happened when you said that? A The defendant gave me a card, and told me-- Mrs. Priess said this defendant stated that when we came again we were to telephone before

42  
coming up there.

Q I show you this card (handing card to witness) can you tell whether or not that is the card given to you, or one just like that? A Yes.

MR. MANLEY: I offer it in evidence.

MR. GOLDBERG: No objection.

(Received in evidence and marked People's Exhibit Number six, of this date)

Q Were you at that time in a pregnant condition? A No.

Q On the following day, did you and Mrs. Priess return, that is, Friday, the twenty fourth? A Yes, sir.

Q What did you do, if anything, before you went up there?  
A We telephoned.

Q Do you know who it was you got on the telephone?  
A Elizabeth Bellus.

Q Did you call up the number that is on this card, Leonard, 2964? A Yes, sir.

Q As a result of the talk you had on the telephone, did you and Mrs. Priess go there? A Yes.

Q About what time was it when you got there? A Around three thirty.

Q Before you went there, did you take anything with you?  
A Yes, sir.

Q What was it?

MR. GOLDBERG: That is objected to, if your Honor please.

9110  
CASE 77-1760

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

A Twenty five dollars in marked bills.

Q Had you marked them? A Yes, sir.

Q Did anybody else go into the neighborhood of those premises besides yourself and Mrs. Priess? A Later on the two officers came in.

Q Where were the officers when you and Mrs. Priess entered the premises? A We left them at the corner of Second Avenue and Seventy ninth street.

Q Go ahead and tell what happened when you and Mrs. Priess went into the premises. A When we went in and saw the defendant, I stated to her that the mustard tea had done no good. She said "No good?" And I told Mrs. Priess to tell this defendant that I would like for her to do something for me, and she said, in English, "All right; I fix you". Mrs. Priess told her --

Q Just state what you told Mrs. Priess, and then probably, after that, you heard some conversation which you did not understand, and then tell what Mrs. Priess said in English.

A I told Mrs. Priess to tell the defendant I would like her to do something for me, and asked her how much she would charge. She said she will charge twenty five dollars. I told Mrs. Priess to tell her I was a working woman, and that was too much for me to pay, and Mrs. Priess said this defendant stat-

99  
99  
99  
CASE # 1760

44

ed I could go to some other woman and have it done for ten or fifteen dollars, but they would not do it so thoroughly; that if she did it I would not have to have any doctor, that I would have to stay away from work for six days, and on the third day I will have to return and see her, but I must not, under any circumstances, see any doctor, and I told Mrs. Priess to ask her if it will hurt, and Mrs. Priess said "No." She said "It will not hurt", she said what you will do will not hurt at first, but maybe that night I might have some pain which would come and go, and at first there would be a little light blood, and then some red blood, and after the pains stopped I must come and see her. And Mrs. -- This woman told me to stand up, and Elizabeth Bellus, who was with her---

Q When you say, "This woman", do you mean the defendant?

A The defendant; and Elizabeth Bellus asked me if I wanted to take off my corset. I said "I haven't any corset on, and it is not necessary to remove my skirt, as it is quite loose." Elizabeth Bellus told me to go into another room with her, and this defendant, and this defendant proceeded and walked into another room, which I afterwards found to be a dining room, and I asked her if my friend could come with me?

Q If you had any talk with the Bellus woman not in the presence of the defendant, don't relate it. A Mrs. Bellus called in to this defendant if I could take my friend in with me, and she said "Yes."

46  
Q Did you understand that? A Yes.

Q Was it in English? A No, that was not in English.

THE COURT: (To the Jury) Do not talk about this case, nor permit any one to talk to you about it, nor form nor express any opinion thereon, until it shall be finally submitted to you, Recess until five minutes after two.

(The Court then accordingly took a recess until two five, P. M.)

-----  
A F T E R R E C E S S .

I S A B E L L A G O O D W I N, resumes the stand.

DIRECT EXAMINATION CONTINUED BY MR. MANLEY:

Q Now, as I remember it, just before we adjourned, you got to the point where the defendant had left the room, after the conversation. She had gone, you say, into the back part of the apartment? A Yes, sir.

Q Now, when she went into the back part of her apartment was anybody left in the front part besides yourself and Mrs. Priess? A Elizabeth Bellus.

Q Now, you said something about some conversation taking place between Mrs. Bellus and the defendant, Papp, while they were in the position you have told, one in the front part and one in the back part; is that right? A Yes, sir.

Q Was that in a language you could understand ?

A No.

CASE # 1760

Q After that, did you go anywhere in the apartment?

A Yes.

Q Where did you go? A In the dining room.

Q Did anybody go with you, or shortly after you? A Yes, Mrs. Priess.

Q Tell us what took place in the back part of the apartment. A When we got to the back, Elizabeth Bellus pulled up my skirt and arranged my underclothes, and assisted me onto a square table in the dining room.

Q Who was it that said anything about your getting onto the table? A Mrs. Papp said something in German to Mrs. Bellus, and then Mrs. Bellus said "Get on the table."

Q Go ahead. A And she assisted me on the table, and placed my knees up high, with my feet on the table and my knees spread apart--

Q Go ahead and tell it. Don't be backward about it. A Mrs. Papp took her finger and made an examination.

Q In what position were your clothes at the time when your knees were up and the bottom of your feet on the table? A My clothes were pulled up to my knees, and I had my knees apart.

Q Your knees, I suppose, were higher than your head, as you lay on the table. A Yes.

Q What next happened after you got in that position? A Mrs. Papp took her finger and inserted it into the vagina.

CASE #1760

MR. GOLDBERG: Objected to, unless she saw her do it.

THE WITNESS: I felt it.

MR. GOLDBERG: In the position which she has testified to, it seems almost impossible .

BY THE COURT:

Q Do you know who inserted this finger into your vagina?

A Yes, sir.

Q Who was it? A Mrs. Papp.

Q The defendant? A Yes, sir.

BY MR. MANLEY:

Q Go ahead. A I felt an object, apparently her finger, inserted into the vagina.

MR. GOLDBERG: I object to the imagination.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

Q Go ahead. A I then felt something else.

Q Before that, had you seen Mrs. Papp do anything?

Did she bring anything in there? A She brought in a basin, and I afterwards saw some instruments in the basin.

Q At the time that Mrs. Papp brought in the basin, where were you? A I was --

Q That is, in what position were you? A I was lying on the table, but I was in such a position that I could see her enter from the other room with this basin.

Q Were you flat on your back at that time? A Yes, but

0917

CASE #1760

I could see all sides of the room.

Q Did she come with the basin from another room besides that in which you were? A Yes, sir.

MR. GOLDBERG: Now, this is a very intelligent woman.

I think it is very evident it was a frame up. Let her tell us what room this is.

THE COURT: Yes.

Q Go ahead. A I said "Will it hurt?" Mrs. Papp said, in English, "I syringe nice". I then felt something that felt like a steel instrument against my person, and I was a little nervous, and I jumped off on the floor and grasped Mrs. Papp's hand.

Q When you say your person, what part of your person do you mean? A My privates.

Q Go ahead. A And I grasped Mrs. Papp's hand, and in it she held this instrument that is on the table(indicating).

Q At that time, were your private parts exposed? A Yes, sir.

Q You say you got up and grabbed her hand in which she held something. Now, do you see anything here that the defendant held in her hand when you grabbed it? A Yes, that large instrument(indicating People's Exhibit Number one, for identification)

Q What happened next? A I held her hand, and I said "Oh, I feel faint, I feel faint," and she -- this defendant sent Elizabeth Bellus from the room, and then she returned.

CASE #1760

49  
with a glass of water, to Mrs. Priess had left the room in the meantime, and in a few minutes after two officers came in, and this defendant was rushing towards the back, with the instrument in her hand, and I said to officer Jessup, "Run and get that woman, she has some of those instruments"

Q Did you see from where she got those instruments?

A Yes, she grabbed them out of that basin.

Q The same basin you speak about? A Yes.

Q Go right ahead. A And officer Jessup took the woman, and I told him there was some instruments in the basin, on the bench, and he told this woman to be seated, and I told him that I had paid her twenty-five dollars in marked bills, which was the price that she stated to Mrs. Priess that she charged, and he asked her where the money was, and she said she had it in her breast, and she pulled out the three five dollar bills and a ten dollar bill which I had marked for identification. He told her she was under arrest, and they got a black bag from some part of the premises, and put the rest of the instruments in it and then placed these women under arrest.

Q Did the defendant say anything at the time she was being arrested? A She said, in English, "All midwives fix; all doctors fix".

Q Do you see here the instruments that the officers took from the defendant that she had in her hand and which

she had taken out of the basin? A That rubber tube, an instrument that looks like a pair of scissors, that fell apart in dropping on the floor, and this large instrument (Indicating)

Q She had that in her hand when you grabbed hold of her? A Yes, sir.

Q What did you do with that instrument (Indicating People's Exhibit No. 1 for Identification)? A I held onto it until the officers came in.

Q Did you afterwards take a look at the basin at all? A No, I don't remember having looked at it after, oh, I did, I saw that rubber, yes.

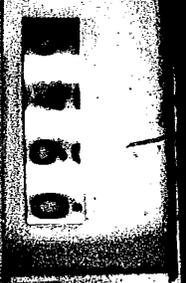
Q Where was the rubber? A That was in the basin, in the water (Indicating People's Exhibit No. 4 for Identification).

Q And you say one of them the defendant had in her hand, and that was the one that came apart? A Yes, sir, and there was another instrument in the water, but I couldn't say which one it was.

MR. MANLEY: She indicates as the one that came apart People's Exhibit No. 2 for Identification. You may examine.

CROSS EXAMINATION BY MR. GOLDBERG:

Q Mrs. Goodwin, at the time of the happening of the story you have just related, on or About January 22nd, or



CASE #1760

25rd, 1913, were you pregnant? A No.

Q You was not? A No, sir.

Q When you appeared at 333 East 79th Street, the home of Mrs. Papp, you wore mourning clothes? A No.

Q Dark clothers? A I may have work dark clothes.

Q Isn't it a fact you wore dark clothes? A Yes, I think I generally do.

Q And the object of that was to create the impression that you were in mourning, wasn't it? A No.

Q Wasn't the object of your wearing dark clothes to create the impression that you were a widow? A No, it was not.

Q You did not tell Mrs. Papp that you were a widow, did you? A Yes.

Q Did you also say to Mrs. Papp that, because you were a widow, you did not want to get any children, and that is the reason you came to her? A I stated I was in trouble, that was why I thought I was pregnant, that is why I was coming to her.

Q You told her you were pregnant, but you did not say you did not want any children; is that right? A Yes, that is right.

Q You asked her, through Mrs. Priess, as I understand, that you wanted her to give you some medicine to relieve you of this pregnancy; is that right? A That is right.

Q And you were quite persistent in your endeavor to get medicine from her? A Persistent to the extent that I requested it of her.

Q How many times did you request her to give you medicine to relieve you of this condition you claimed you were in? A I asked her once, I think.

Q When was that? A The time that I told Mrs. Priess to tell her that I was pregnant, and had not--

Q That was on January 22nd, or January 23rd? A 23rd.

Q Can you recall how many times Mrs. Priess asked her for medicine for you on that day? A I can only recall once.

Q When you returned, on the 24th, didn't you again request medicine, to be relieved? A I did not.

Q Did you on that occasion, or on the first day, offer Mrs. Papp, through Mrs. Priess, ten dollars if she would give you medicine? A I may have. I don't remember.

Q Now, isn't it a fact that you did? A Well, I don't remember.

Q That fact you don't recall? A No; I might have done so, but I don't recall the fact.

Q Now, have you stated every conversation that was said to you or to Mrs. Priess in your presence by Mrs. Papp that was said in English? A All I can remember at the present time.

Q What was that? Will you kindly repeat it, the English conversation from Mrs. Papp to you, or Mrs. Preiss.

MR. MANLEY: Was that on the 23rd?

MR. GOLIBERG: Either on the 23rd or the 24th, or any other time?

A About the English mustard, and taking a bath, and taking hot water, and going to bed.

Q That was in response to the question, wasn't it?

A Yes, sir.

Q About the mustard? A Taking hot tea.

Q What? A Drinking hot tea.

Q That was in response to the one question. Now, what other conversation was had in English by Mrs. Preiss and you? A She asked me my name, I am pretty positive, in English, and where I lived.

Q Was that on January 23rd? A No, that was on the 24th, and I told her Annie Lawrence.

Q What, if anything, in English? A Then, when I asked her if she would hurt, while lying on the table, she said, "I syringe nice, and I make all clean; I fix". She used those expressions in English.

Q Did she use that expression "I fix" when you were on the table? A No, not when I was on the table.

Q You just mentioned it with the other conversation. There is no question in your mind that she said, "I fix you"? A Yes.

CASE #1760

Q No doubt about that? A No.

Q That you are sure about? A Yes, I am sure.

Q When did she first say to you that she would fix, or, "I fix you"? A Before I went out to go on the table.

Q That was before you went on the table? A Yes, sir.

Q And that was in response to what question that was put to her? A If she would do something for me.

Q Do you recall what question was put to Mrs. Papp by Mrs. Priess that prompted her to say, as you claim, "I fix"? A Yes, something about relieving me of the pregnant condition.

Q You don't remember just the exact wording of that?

A Not the words, no.

Q But you do recall distinctly that Mrs. Papp answered, in response to that request in German, in English, "I fix you?"

A Yes, sir.

Q That you are positive of? A Yes, sir.

Q Was that the first time she used that expression, "I fix you?" A That was the first time, yes.

Q That was a few minutes before you went on the table?

A Maybe a few moments before.

Q It was shortly before you went on the table, was the first time she said "I fix you." A Yes, sir.

Q Positive about that? A Yes sir.

Q You did not see Mrs. Papp touch you with any instruments,

CASE #1760

did you? A No.

Q In fact, you couldn't see anything anything Mrs. Papp was doing when you were lying on the table? A Yes, I could see her sitting on a chair.

Q Could you see her doing anything to you? A No.

Q You have testified about your private parts being touched? A Yes, sir.

Q By Mrs. Papp. You didn't see her do that? A No, I didn't see her.

Q You don't know, as a matter of fact, if she touched you with any instruments, as far as you know, except what you felt? A No, only what I felt.

Q Can you tell us out of what drawer the detectives, or the men that came in after they were signaled to, as testified by Mrs. Papp, took this bag out? A I couldn't tell you where that bag came from.

Q You don't know where it came from? A No, I don't.

Q Had you seen it before you got on the table? A No.

Q Had you seen it after you got on the table? A I only saw it--

Q After the arrest was made; is that right? A Yes, just-- Yes, after the arrest was made.

Q Simultaneous with the arrest was the first time you saw the bag? A Yes, sir.

Q How large was the table you say you were on? A It was a small dining room table, possibly half the size of this

CASE #1760

table.

Q After you were on it, did you occupy the entire top surface of the desk or table? A Well, not quite all of it, on account of the position I assumed.

Q When did Mrs. Papp take hold of the instrument you claim she took hold of, do you remember? A After she examined me with her finger, she was standing up at that time, right where I could see her, between my knees, and touching me.

Q Was that before the officers came in, or after? A Before the officers came in. The officers were not in during the the e--

Q You say before the officers came in Mrs. Papp had hold of all the instruments that are now offered in evidence?

A I didn't state that Mrs. Papp had hold of those instruments. I was holding one in my hand myself.

Q Which one were you holding in your hand? A This large instrument here.

Q The speculum? A Yes, sir.

Q Was that before you went on the table, or after?

A No, when I got off the table, the time that Mrs. Papp touched me, and I held her hand, and pulled it out of her hand.

Q That was after you got off the table? A That was after I got off the table.

Q I want to know what instruments did Mrs. Papp have in her hand after you got off the table, outside of the speculum?

CASE #1760

A I couldn't say which she had in her hand.

Q As a matter of fact, she didn't have any? A Yes, she did have instruments.

Q Which one was it? A I don't know, unless it was that one that fall apart.

Q Before you were <sup>put</sup> on the table, Mrs. Goodwin, do you know out of how many drawers Mrs. Papp took these various instruments that you claim were used? A No.

Q Don't know where they came from, do you? A No, I don't know where they came from.

Q You claimed, after officers came in, they had to run after Mrs. Papp . Did they have to go twenty five feet to get her? A No; possibly five feet.

Q Five feet? A Well ---

Q They didn't do much running, did they? A Well, they ran.

Q They ran five feet to get hold of her, in her apartment? A She was about five feet from me, but the officers were further back. They ran further than that, perhaps fifteen.

Q Do you want to change that , and say they did not run five, but fifteen? A I thought you asked how far Mrs. Papp was from me.

Q You didn't understand, when I asked you how far the officers were from Mrs. Papp when they ran after her? You didn't understand that? Is that right? A Yes sir.

0910

CASE #1760

MR. GOLDBERG: That is all.

REDIRECT EXAMINATION BY MR. MANLEY:

Q I have forgotten whether you gave the name and the address which you gave the defendant? A Annie Lawrence, 302 West One hundred and fourteenth street.

Q Did you see the defendant write in any book after you had given her that name and address? A Yes, that looks like the book. I don't know about writing the name. I saw her write something in a book.

Q Was it a book like that (exhibiting book to witness)?  
A Yes, sir.

MR. MANLEY: I ask to have that marked for identification.

(Same marked People's exhibit Number seven, for identification, of this date)

Q In what room, was it, Mrs. Goodwin, that she wrote in a book? A In the room next to the parlor.

Q Did you see what she did with the book after she wrote in it? A I thought she placed it on the desk.

Q Desk where? A In the room next to the parlor.

Q Did the officers take that same book away that day, after the arrest? A Yes.

Q Did you state, do you recollect, the floor on which you lived at that address? A I did. I lived on the top floor.

Q At the time when you felt something against your pri-

0997  
CASE #1760

vate parts, as you say, and grabbed the hand of the defendant, and held on to the hand that had in it People's Exhibit Number one for identification, did she have anything else in her hand? A No, not at that time.

MR. MANLEY: That is all.

CROSS EXAMINATION BY MR. GOLDBERG:

Q Mrs. Goodwin, isn't it a fact that Mrs. Papp told you, through Mrs. Priess, that she did not think you were pregnant?

A She did not.

Q Isn't it a fact she said to you, very likely you got cold, or may have some inflammation there? A Said nothing of the sort.

Q Didn't she also suggest that if you took the mustard and that was so, that it may bring you around, and if not, that an examination would disclose whether or not what she claimed was so? A She did not.

Q Positive about that? A Positive.

Q When did you say you told her you had been unwell, from when? A The third of December.

Q Positive of that? A Positive.

Q You are as equally sure of the third of December as you are of the other statements you claim Mrs. Papp did not make to you; is that right? A To the best of my recollection, it was the third of December.

Q Isn't it a fact you testified in the Police Court it

was the ninth of December? A I may have done so.

Q And if so, you were mistaken then, or mistaken now?

A I was mistaken one time or the other . My memory should have been better then, of course.

MR. GOLDBERG: That is all.

-----

H E N R Y C. J E S S U P, called as a witness on behalf of the People, being first duly sworn, testified as follows

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your name? A Henry C. Jessup.

Q Are you a member of the Police Force of this City?

A I am.

Q To what branch of the service are you attached?

A I am attached to Police Headquarters, Detective Bureau.

Q And particular branch? A Yes, Squad Two, under Lieutenant Costigan.

Q Sometime around the twenty fourth of January, were you assigned by your superior officer , Lieutenant Costigan, to go anywhere with Officer Goodwin? A I was.

Q Where was it you went? A To Premises 333 East Seventy ninth street.

Q Before going there, did you see any money? A I did.

Q What money did you see? A I seen twenty five dollars in bills, three five dollar and one ten dollar bill.

Q Was it marked in your present~~e~~? A It was<sup>not</sup> marked in my

CASE #1760

presence, but I was shown the marks on it.

Q Who had the money when you saw it first? A Lieutenant Costigan.

Q Did you see him give it to anybody? A Yes, he showed it to me, and to Mrs. Goodwin, and he told me Mrs. Goodwin had marked it.

Q Did you, together with Officer Sullivan, of the Second Squad, go with Mrs. Goodwin and Mrs. Priess in the neighborhood of the premises we are talking about? A We did.

Q Did you and the other officer stay outside as the two ladies went in? A We did.

Q Did you afterwards see a signal at the window? A We did.

Q Did you go inside? A Yes, sir.

Q Tell what happened after you got inside? A After we got in the door, Mrs. Goodwin hollered to catch the defendant. The defendant had run to the bath room, this was right off the dining room. I caught the defendant by both arms, and I called Officer Sullivan, who was close by; I said; "Catch her hands Jerry, She has something in her hand ", and Officer Sullivan took the two instruments from her hand.

Q Do you see those instruments here? A Yes, I see them there (indicating People's Exhibit two for identification, and People's Exhibit three for identification)

Q Now, go ahead. A I then sat the defendant down, and made her place her hands in front of her. Mrs. Goodwin told

CASE #1760

me she had paid her twenty five dollars in money. I said to  
the defendant, "I want that money, off you, and if you don't give it  
up of your own free will I will have these two matrons search  
you". She said "I will give you the money," and she put her  
hand in her breast, and pulled out the twenty five dollars,  
which I had previously seen at the office.

Q Have you got that with you? A I have.

Q Let us see it. A (Witness produces )

Q I suppose that has been in the custody of the property  
clerk at Police Headquarters since that time? A It has.

Q And this is the money you got from the defendant in  
the manner indicated? A Yes, sir.

MR. MANLEY: I ask the envelop be marked People's  
Exhibit Number eight, for identification.

MR. GOLDBERG: I object, on the ground there is no  
proof it has been in the hands of the property clerk.

THE COURT: He asks only that it be marked for iden-  
tification:

MR. GOLDBERG: Objection withdrawn.

(Same marked People,s Exhibit Number eight, for identifi-  
cation, of this date)

Q You look at these bills, and your testimony is that  
these are the bills taken from the defendant? A They are.

Q Now, did you see any other instruments in anybody's hands  
at that time? A I did.

Q Who had anything? A Mrs. Goodwin had an instrument in her hand.

Q Do you see anything here that she had in her hands?

A I do.

Q What is it? A This here (indicating people's Exhibit Number one for identification, of this date)

Q Was anything else that you see here handed to you , or did you see it there? A Yes sir.

Q Which is that? A This here (indicating people's Exhibit Number four for identification)

Q Where did you see that first? A That was laying beside the basin -- that was in the basin. There was a basin of water there.

Q Describe where that basin of water was? A It was on a sort of bench or small table.

Q Did you notice whether the basin had any fluid in it? A It did; it had an odor of carbolic from it.

Q You are familiar with the odor of carbolic acid? A Oh, yes.

Q How much liquid did it have in it? How large a basin was it? A It was an ordinary round wash basin.

Q Did you search the apartment? A We did.

Q Did you find any instruments in that apartment? A Yes, sir, that bag was found in the apartment (indicating).

Q In what room was it? A When I went the bag, Mrs. Preiss or Officer Sullivan had it. They told me they found it in the front .

100

CASE #1760

Q Did Officer Sullivan have it? A Yes, sir.

Q What room was that? A In the dining room, where Mrs. Pries said and where I got the instruments off this woman.

Q You have recently looked at the contents of this bag?

A Yes, sir.

Q Can you tell whether everything that it now contains was in the bag at the time? A No, those wires were not, those were found by Officer Sullivan on the top of the ice box.

Q Did you see Officer Sullivan find the wires? A Yes, sir.

Q In what room was the ice box? A In the dining room.

Q The same room the wash basin was in? A Yes, sir.

Q Did you see a table in that same room, where the basin was? A I did.

MR. GOLDBERG: Why not let the Sergeant testify?

Let him tell us what he saw and found there.

Q Counsel wants me to ask you what you found there.

MR. GOLDBERG: No, I want you to examine properly.

THE COURT: I allow lawyers to try their own cases. I never interfere. I seemingly pay no attention, because I want you to try your case in your own way, but, of course, you can't talk one to another without disorder. If there is any dispute, I will decide it. But we cannot have order if you speak one to another and get into wrangles of that sort, however friendly they are.

CASE #1760

And this was done in a perfectly gentlemanly way.

Q Mr. Goldberg has suggested that, instead of asking you if there was a table in there, you tell what you saw. What did you see in that room where the basin was? A There was a table and some cloths laid on the table, spread over it.

Q How far from that table was the ice box upon which you say you saw these things I now hold in my hand? A Probably three or four foot away.

MR. MANLEY: I ask these be marked People's Exhibits Number nine, for identification.

(Same marked People's Exhibit Number nine, for identification, of this date)

Q Now, officer, look at the contents of the bag and tell me, as far as you know, of your own knowledge, where each article was found. A What is in the bag now, so far as I know, was found in the bag. I didn't see them any other way. They were all in the bag.

Q I call your attention <sup>specifically</sup> to this instrument which I take from the bag. Where was that when you saw it first? A I don't know, unless in the bag.

Q Did you afterwards examine the contents of the bag?

A I did.

Q Can you state whether or not that instrument was in the bag when you saw it first? A I think it was; I can't say positively, but I think so.

MR. MANLEY: I ask that be marked for identification People's Exhibit Number ten.

(Same marked People's Exhibit Number ten, for identification, of this date)

Q At the time of the arrest, of the defendant, or during the time you were there, did she state anything in your presence as to this charge at all? A Well, the defendant did say something, but I don't just rec all what it was.

Q Do you recall any conversation she said at all involving this charge? A No, she did not have any conversation with me, but she did have some conversation with officer Sullivan and Mrs. Priess.

MR. MANLEY: You may examine.

CROSS EXAMINATION BY MR. GOLDBERG:

Q You testified , after you reached the premises 33 East Seventh ninth street, on the twenty fourth of January, you had a conversation with Mrs. Papp, is that right? A Well, I don't know as I stated I had a conversation with her. I asked for some money.

Q You spoke to Mrs. Papp? A I did.

Q But you didn't have a conversation ? A No, I merely asked her for money.

Q You simply spoke to her, and did not converse with her? A No, perhaps that is it; that is what I mean.

Q And what do you say you said to her? A I said "You give me that money". Mrs. Goodwin had said she give her the

money.

Q I asked wh at you said to her? A I said to the defendant, "You give me that money that the lady gave you, and if you don't give it to me I will have the two matrons search you." So she said "I will give the money," and she handed me the money.

Q You said you would have these two matrons search her?

A Yes, sir.

Q On direct examination to the District Attorney you didn't say anything about these two matrons, did you? A I believe I did.

Q You think you said "Two matrons"? A I did. I said these two matrons.

Q What was it? A These two matrons.

Q Did you say that in English to Mrs. Papp? A Oh, yes.

Q Do you know whether she understood you? A She did.

Q She did? A Yes, sir /

Q Positive about that? A I am.

Q Did you say anything else to her? A No, that is all I remember.

Q You don't talk German, officer, do you? A No.

Q Do you talk any foreign language? A No, sir.

Q Did you hear Mrs. Papp do any talking at all to any one that was in there while you were there? A Yes she did talk to Mrs. Priess and Officer Sullivan. I don't know what



CASE #1760

the conversation was.

Q I suppose that was in English or German? A No, it was English.

Q Now, see that your memory is so good-- see if you can recall just what she said to Officer Sullivan and Mrs. Priess.

A No, I can't remember it.

Q Just think a little while; maybe you can refresh your memory. A No, I tried to, but they told me what she said, but I didn't remember that, and I wouldn't say it.

Q Out of what drawers did you take any of the articles that are now here upon the desk? A I didn't take them out of any drawer.

Q Did you go over any drawer? A Yes, I looked at some.

Q You went over some drawers in the apartment? A Yes, sir.

Q And didn't take anything out? A Not me.

Q Did Officer Sullivan take anything out of the drawers?

A I don't know whether he did or not.

Q You were not ~~watching~~ <sup>searching</sup> him? A We were both around at the time.

Q But you are positive that you did not take any thing out of the drawers? A I don't know whether he knows that, or not.

Q I say, you are positive you didn't take anything out of the drawers? A Yes, I am.

CASE #1760

Q . But you searched ~~the~~, looking for things ? A Yes, drawers and closets.

Q Searched the whole place? A Yes.

MR. GOLDBERG: That is all.

REDIRECT EXAMINATION BY MR. MANLEY:

Q I suppose you went into all the rooms there, probably?

A Yes, sir.

Q More than one room there, I suppose? A Yes, sir, there is.

MR MANLEY: That is all.

RECROSS EXAMINATION BY MR. GOLDBERG:

Q Officer , you testified that you saw some of the instruments that have been marked for identification on top of the ice box? A Yes, Officer Sullivan picked them up.

Q When you went in the apartment, how close was Mrs. Papp to Mrs. Goodwin? A Mrs. Papp had run away from Mrs. Goodwin, and was turning to go into the toilet, when I caught her, right at the door of the wash room, the bath room.

Q Was there an ice box in the room in which Mrs. Goodwin was in? A There was.

Q Whereabouts was it? A It was over on the side, by the wall, about four foot from this table.

Q And how high was it? A It was one of those about that high(illustrating), probably three or four foot.

Q And these instruments were on top of that table?

A Yes, sir.

Q You testified to seeing a basin? A I did.

Q Was that basin -- how near the table was the basin?

A It was right along side of the table.

Q On the floor? A No, it was not. It was on a sort of, I would call it a small table.

Q Positive it was not on the floor? A It was not on the floor.

MR. GOLDBERG: That is all.

BY MR. MANLEY:

Q At the time you stopped the defendant, when she had those things in her hand, going towards the bath room, how fast was she going? A Just as if she was running away. The defendant was all excited.

MR. MANLEY: That is all.

-----

J E R E M I A H C. S U L L I V A N, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your full name? A Jeremiah C. Sullivan.

Q You are a member of the Police Force of the City of New York? A Yes, sir.

Q And are you in the same department, or were you at that time, with the last officer? A Yes, sir.

Q On the day we are talking about, Friday, the twenty fourth of January, did you go with officer Jessup and officer

CASE #1760

Goodwin and Mrs. Priess to the premises 555 East Seventy ninth street? A Yes, sir.

Q Did you afterwards go in those premises? A No, sir.

Q Did you at any time go in the house of the defendant?

A Only on that one date, January twenty fourth.

Q That was afterwards. Did you go in right away when you got there? A No, sir.

Q What did you do? A We waited about twenty minutes before we entered the place.

Q After you got in the locality, did you sometime that afternoon go into the house of the defendant? A Yes, sir.

Q Tell what you saw. A About three fifty P. M. on the twenty fourth of January, 1913, accompanied by Officer --

Q Come down to going into the house. A When we entered the premises at first, by a door leading from the hall into the apartment of Mrs. Papp, we entered into the parlor, and there we saw; we walked from there into the dining room, in the back, and saw Mrs. Goodwin there and Mrs. Priess and Mrs. Papp. Mrs. Papp, when she saw us, officer Jessup and I, started to walk towards the bath room, and she had some instruments in her hand; so Mrs. Goodwin and Mrs. Priess both said to Officer Jessup and I to go after her, that she had the instruments. Officer Jessup grabbed her by the shoulders and arms, and I took the instruments out of her hand, two instruments I took from her hand.

0970  
CASE #1760

Q Which are they? A These two(indicating People's Exhib- its Numbers two and three, for identification, of this date)

Q Go ahead. A Then we took her from the bath room into the dining room. We led Mrs. Papp from the bath room into the dining room, and Officer Jessup asked her for the money, and she didn't make any attempt to give him the money; so he said he would have her searched by these matrons in case she didn't give it up. Then she took the money from her waist.

Q Did you examine the money, to see what it was?

A Yes, sir.

Q What was it? A One ten dollar bill and three five s, marked money.

Q Did you see any other instruments there in anybody's hands? A Yes, sir., that instrument was in Mrs. Goodwin's hands.

Q Which one? A This one(indicating People's Exhibit Number one for identification)

Q Go ahead. A And this one Mrs. Priess had(indicating People,s Exhibit Number four for identification.)

Q What else did you see there in the room in which any objects were ? A These here we found on the ice box in the dining room(indicating people.s Exhibit Number nine for iden- tification.)

Q In which room was the ice box? A The dining room.

Q What else was in the dining room that you noticed?

Case #1760

73  
A A basin with some water and some kind of fluid. It looked like a fluid.

Q Did you examine the fluid? A I didn't examine it.

Q What other objects did you see besides the ice box and the basin with the fluid in it? A This was on the table of the dining room(indicating People's Exhibit Number five, for identification)

Q That was where? A On the table in the dining room.

Q Did you search the apartment, or assist in any search of the apartment? A Yes, sir.

Q Did you find anything? A I found those things there that we got from the ice box, on top of the ice box .

Q These things here(indicating People,s Exhibit Number nine) A Yes, sir.

Q Did you find anything else? A (No answer. )

Q Did you see this bag? A Yes, sir.

Q Where was that? A In the parlor, on a sort of table.

Q That would be what room with reference to the other room where the table was and the basin? A In the first room we entered from the hall into the parlor.

Q Was that the one nearest the street? A Yes, sir.

Q Did you at that time examine the contents of this bag? when you found it in that room? A I looked into the bag, and I saw some of the articles in there.

Q Take a look at the contents of the bag, and see whether

EX-60

CASE #1760

it contained what is now in it? A I think these are all the articles that were in that bag at that time.

Q A moment ago I took from the bag this (indicating People's Exhibit Number ten). Do you remember seeing that at any place in the apartment? A Yes, sir.

Q Do you remember where that was? A I can't place now exactly where I did see it, but I remember seeing it.

Q Do you recollect whether or not it was in the bag? A I couldn't say.

Q But you saw it in the apartment, but you can't tell where in the apartment you first saw it? A No.

Q Did you have any talk with this defendant as to the accusation against her, or did you hear her say anything as to the charge against her? A She said, "while I was in the room, that all doctors fix -- "All doctors make a fix".

MR. MANLEY: You may examine.  
broken

THE WITNESS: She spoke ~~in~~ English, and that is all I could understand.

CROSS EXAMINATION BY MR. GOLDBERG:

Q Did she say anything else that you could not understand? A Yes.

Q What did she say that you did not understand? A German.

Q You did not understand what she was saying? A Yes, sir.

CASE #1760

78  
Q But you are positive about "I fix", in English?

A Yes, sir, "All doctors fix".

Q Tell us all. A That is all.

Q "All doctors fix", nothing else? A Yes.

Q Positive? A Positive.

Q Do you recall where the basin was when you went into the apartment? A Yes, sir.

Q Where was it, A In the dining room, along side of the table. This is the table, and the basin was there(indicating)

Q On the floor? A On the floor, yes, sir.

Q On the floor, next to the table, was the basin?

A Yes, sir.

Q So, when your brother officer testifies the basin was on a desk or table next to the other table, who is mistaken? You, or he?

MR. MANLEY: I object to the characterisation by one witness of the testimony of another.

THE COURT: Yes, you may get the facts from this witness, but not his opinion.

Q Officer Jessup testified a few moments ago that the basin was on a little table, and not on the floor. Now, who is correct?

MR. MANLEY: I object to the form of the question.

THE COURT: Ask him what the facts are.

Q Which is the fact? Was it on the table, or on the floor? A I saw it on the floor.

74  
Q Sure about that? A Yes.

Q How far did you have to run after your attention was called to Mrs. Papp to get hold of her? A We were walking from the parlor into -- there is a couple of bed rooms there, and a sort of small passageway. Then the dining room, and then the bath room.

Q You don't mean to say that you heard Mrs. Priess or Mrs. Goodwin yell to you while you were in the front parlor that you should get hold of Mrs. Papp? A No, I think--

Q I have reference to after you reached the room where the ice box was? A We were in the dining room.

Q You did not have to run very far? A No.

Q As a matter of fact, you hurried? A Well, we hastened our step.

Q Didn't run? A No.

Q From the position of some of the instruments you claim were on top of the ice box, and a person sitting in front of the table, could they reach these instruments without getting up? A Well, they would have to walk a few steps--

Q That can be answered "Yes", or "No". You testified some of those instruments were found by you on top of an ice box in the kitchen, and I am asking you whether a person sitting in front of the table could reach the top of the ice box for the instruments without getting up? A Oh, they would have to get up.

CASE #1760



purpose by the people were in the apartment at the time the arrest was made? A Yes, sir.

Q And in different parts of the apartment? A Well, ---

Q They were not altogether? A No, they were not altogether. Those two I testified I took from Mrs. Papp in the bath room, and the other one Mrs. Goodwin had in her hand.

Q Can you tell us what conversation or what words you heard uttered by Mrs. Papp to you and Mrs. Priess? A I and Mrs. Priess?

Q No, you have testified to some conversation Mrs. Papp had with you and Mrs. Priess. What was that? A I didn't understand any except she said "The doctors make a fix; all doctors make a fix".

Q And those are the only words you heard her utter in English? A Yes, sir.

Q Did you hear her speak in German? A Yes, sir.

Q That you did not understand? A No.

Q You are positive of "All doctors fix"? And that is all she said? A That is all I remember her saying.

Q Is there anything else that you recall that you don't remember? A No.

Q See if you can't recall if anything else was said besides "All doctors fix"? A That is all I remember.

Q And you are positive that she said in English to you--- that you said in English to her, if she does not give up

CASE #1760

100

79  
the money you will have the matrons search her? A Officer Jessup told her that.

Q And in response to that statement by you in English, she said she would give you the money, and immediately handed it over. A Officer Jessup told her that.

Q You did not say that to her? A No, Officer Jessup .

Q But you were present when it was said? A Yes, sir.

Q And that was said in English? A Yes, sir.

MR. GOLDBERG: That is all.

REDIRECT EXAMINATION BY MR. MANLEY:

Q I suppose you went into all the various rooms of the apartment, did you? A Yes, sir.

Q I don't suppose the defendant was with you all that time when you were in the various rooms, probably? A No.

MR. MANLEY: That is all. I now ask that this bag, together with its present contents, be marked People's Exhibit Number eleven, for identification.

MR. GOLDBERG: I object on the ground there is no evidence introduced up to the present time to show that any of these instruments were used at the time.

THE COURT: Not in evidence, marked for identification.

MR. GOLDBERG: Pardon me. Objection withdrawn.

(Same marked people's Exhibit Number eleven for identification, of this date)

-----

0978  
CASE #1760

I S A B E L L A G O O D W I N, being recalled, on behalf of the people, testified as follows:-

DIRECT EXAMINATION BY MR. MANLEY:

Q I show you people's exhibit No. 8, and ask you to look at it, and see if you have seen that before. Look carefully at each bill? A (After examining same) This ten dollar bill has "I. G" on the margin.

Q My question was, have you ever seen them before?

A Yes, sir.

Q Look at every one of them? A (After examining same) Yes.

Q Now, tell me where you first saw them?

A Lieutenant Costigan gave them to me in police headquarters.

Q Are those the bills you identified this morning that you marked? A Yes, sir.

Q What marks do you see upon those bills I have handed you, which you put on them? A "I. G."-- Isabella Goodwin.

Q Those initials? A Yes, sir.

Q Are those upon each one of these separate bills?

A Upon each bill.

MR. MANLEY: That is all.

-----

979  
160

CASE #1760

J A C O B S O B E L, called as a witness on behalf of the people, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. MANLEY:

Q What is your name? A Jacob Sobel.

Q Where do you live? A 140 West 122nd Street.

Q You are a physician and surgeon, entitled to practice under the laws of the State of New York? A Yes, sir.

Q How long have you been such physician and surgeon?

A I have been a physician and surgeon for eighteen years, and in active practice for sixteen.

Q You are a graduate of a medical college?

A College of Physicians and Surgeons.

Q Where do you practice? A New York City.

Q Do you occupy any official position? A I am Borough Chief of the Division child hygiene of the City of New York.

Q Borough of Manhattan? A Borough of Manhattan.

Q Tell us what that is, Bureau of Child Hygiene?

A Among other functions of that bureau, we have control of the supervision and inspection of mid-wives practicing in the City of New York, and as Borough chief of Manhattan that supervision and control comes directly under my division had

Q How long have you had that position? A I have that position for a little over two years now.

Q And do you also have a general practice of medicine?

A General practice of medicine.

CASE #1760

Q And you have practiced medicine generally since the time you have been admitted to practice? A Sixteen years.

Q And during that practice, have you had, as part of it, obstetrics? A Quite largely.

Q By that, I mean child birth? A Yes, sir.

Q By virtue of your official position, you have had it come to your attention? A I have had it come to my attention by virtue of my practicing medicine.

Q Are you familiar with the rules and regulations governing the practice of mid-wifery in the City of New York promulgated by the Board of Health? A More or less. That is my responsibility.

MR. MANLEY: Now, as I understand it, you said you would raise no question as to my having in my hand not the original rules and regulations governing mid-wifery in the City of New York, but only a copy of it?

MR. GOLDBERG: That is correct.

Q Have you a record of this defendant in your department, Paulini Papp, as a mid-wife? A Yes, sir.

Q Has she been licensed from time to time to practice mid-wifery in this City? A Yes, sir.

Q Do you have her in your records under the same name I have here, Pauline Papp? A No, we had it originally--

MR. GOLDBERG: Objected to.

THE COURT: I will take it subject to the objection and a motion to strike out unless connected.

100-100000

CASE #1760

Q (Question read by stenographer as follows:- Q Do you have her in your records under the same name I have here, Pauline Papp?)"? A Originally we had her under her maiden name, Pauline Papp, but now we have her under the name of her married name, Paulini Papp Priskie.

Q How do you spell it? A The way we have it is P-r-i-s-k-i-e. Of course, I am speaking from memory. I have it here. Some are P-r-i-s-k-i-e, and others are P-r-i-t-s-k- a.

Q I show you this book I have in my hand "Department of Health, Rules and Regulations governing the practice of mid-wifery in the City of New York, 1908"? A Yes sir.

Q Is that the official copy gotten up by your department? A It was the official copy gotten up in 1908.

Q Now, does your department, upon licensing a person to practice mid-wifery, give that person a copy of the rules and regulations? A We do.

MR. GOLDBERG: Objected to as immaterial.

Q Has your department given to this defendant a copy of the rules and regulations governing the practice of mid-wifery?

MR. GOLDBERG: Objected to.

BY THE COURT:

Q Did you give her a copy? A I didn't give her personally, but I have her acknowledgement of the receipt.

84  
BY MR. MANLEY:

Q Have you got anything among your records showing that this defendant received a copy of the rules and regulations? A I have a signature which I presume is Mrs. Papp's; I don't know.

MR. MANLEY: It is, therefore, as I understand it, conceded that what this signature is written under is the truth, is it?

MR. GOLDBERG: It is conceded that that is the signature of the defendant.

MR. MANLEY: Will you concede that she received a copy of the rules and regulations?

MR. GOLDBERG: It is conceded that she did.

MR. MANLEY: As I understand it, it is now conceded that the defendant, on March 15th, 1909, received a copy of the Rules and Regulations of the Board of Health of the City of New York, governing mid-wifery.

Q At the time of the date upon this receipt by the defendant, March 15th, 1909, which one of these books represented the rules of the Board of Health-- the edition of 1910, or 1908 (Showing witness two books) A 1908, as far as I know.

MR. MANLEY: I offer in evidence Rule 16 of the Rules and Regulations governing the practice of mid-wifery in the City of New York as in effect at the time

EX-100  
CASE #1760

of the signing of the receipt in 1908. That relates, if your Honor pleases, to the articles which a mid-wife under the rules and regulations of the department may have in her possession.

MR. GOLDBERG: No objection.

MR. MANLEY: If your Honor will permit me, I would like to read in evidence Rule 16, read it into the record.

"16. She shall take to each case the following equipment: Nail brush. Wooden or bone nail cleaner. Jar of green or soft castile soap. Tube of vaseline. Clinical thermometer. Agate or glass douche reservoir. Two rounded vaginal douche nozzles. Two rectal nozzles, large and small. One soft rubber catheter. Blunt scissors for cutting cord. Either Lysol, Carbolic acid Bichlo. of Mercury tablets. Boric acid powder. One per cent solution of nitrate of silver. Medicine dropper. Narrow tape of soft twine for tying cord. Absorbent cotton (preferably in one-quarter pound packages No other instruments are to be used, owned or possessed by a midwife."

Q Doctor, can you tell us what is meant, medically, by the term, "Induced abortion"?

MR. GOLDBERG: Objected to.

THE COURT: It is preliminary, I take it?

100  
CASE #1760

MR. MANLEY: Yes.

THE COURT: I will take it, subject to a motion to strike out.

MR. GOLIBERG: Excepting this: Assuming the District Attorney does not connect it, and it has no bearing, and your Honor sustains it, all this evidence is before the jury.

THE COURT: I take it that an induced abortion means an abortion that is produced by artificial or unnatural means, as distinguished from a natural abortion, if that term may be correct. That is to say, one that happens without the active agency or any outside interference.

MR. MANLEY: I suppose from the very use of the word "abortion", in the statutes, we may take judicial notice of it.

BY THE COURT:

Q Is my definition, correct, Doctor? A Entirely so, I think.

THE COURT: I take it those words are in such common acceptance in ordinary language as to be understood by the jury and perhaps do not require any definition by experts.

MR. MANLEY: I think, your Honor, we may take judicial notice of the meaning of the word "Abortion" by the statute.

CASE #1760

THE COURT: It seems to me so.

MR. MANLEY: I wanted to do it to clear it up and make it as plain as possible to the Jury, and that being so, Doctor, will you answer the questions?

Q What is meant by "induced abortion", Doctor? A An induced abortion, to my mind, is a condition in which the expulsion of the products of conception take place from the uterus or womb by artificial means, or means other than natural, and which is produced either by the party herself or by outside agencies for purposes of either criminality, if I might use that term, or for medical justification.

BY MR. MANLEY:

Q What ways may be employed for the purpose of bringing on an abortion?

MR. GOLDBERG: I object. My objection is, the District Attorney said at the outset that the question that will attempt to go to the Jury on is an attempt to commit an abortion. If that is so, I can't see the relevancy of any of this testimony.

THE COURT: I don't think the objection is well taken. You may answer.

MR. GOLDBERG: I take an exception.

A Well, by the person herself, maybe mechanical, or thermal, or artificial, in the sense of jumping and running, bowling, and so forth.

Q Tell us what you mean by mechanical ways of bringing

CASE #1760

about an abortion? A Mechanical ways are ways whereby, with the aid of certain instrumentation, instruments of different kinds and sizes are introduced into the womb, for the purpose of breaking up the products of conception.

Q In the beginning, I asked preliminarily so we can more intelligently understand the subsequent questions, will you give us the location of the private parts of the female; that is, the vagina and uterus, their relations one with the other. A I don't know as I can do that absolutely, except to tell you that the womb of a woman is directly about the puvic hair, behind the bladder, and the neck of it can be readily seen and reached through the vagina or lower canal by means of the finger or with specially prepared instruments.

Q That part which is on the exterior of the female is what? A The vulva.

Q That means the mouth? A Not exactly. That is the lips.

Q As you pass through the vulva, which is on the exterior of the female, what is the organ you get into next? A You have the entrance of the vagina, or canal.

Q From that canal, what other organ of the female branches off? A As you enter that canal, then you come in immediate contact with the neck of the womb, or the uterus.

Q The uterus and the womb are the same? A The womb is the common name for the uterus.

FBI

CASE #1760

89  
Q. Does the womb or uterus lie directly over the first organ that you spoke of? A I don't catch you.

Q Does that lie right over the vulva? A No, the vulva is the exterior. It enters into the vagina.

Q Is that right over the vagina? A This is the vagina, let us say (illustrating), and my thumb will be the neck of the womb; the womb is up here; the body of my thumb would be the womb; and the neck would project directly into that (illustrating).

Q So, ordinarily, the mouth of the uterus begins how far in from that canal you call the vagina? A Three or four inches. It varies, of course.

Q I show you People's Exhibit one for identification, and ask you what it is? Have you seen an instrument of that kind before? A It is commonly known as a vaginal speculum.

Q Tell us what a vaginal speculum is? A A vaginal speculum is an instrument which is used to insert into the vagina in order to spread the vaginal canal and prepare the way for local medication or instrumentation, either of the vagina itself, or of parts above and beyond it.

Q Will you tell us how that is inserted? A It is supposed to be closed, and then introduced in the vagina laterally.

Q Yes, introduced into what? A The vagina, and after it is introduced it is opened by various means ; the screw

CASE #1760

100  
100  
100

is turned down; it remains permanent by its own force, I might say, and certain parts are exposed, particularly the neck of the womb, and as you manipulate it you can get other parts of the vaginal canal into view.

Q If that were inserted into the vagina, would that be the vaginal canal (illustrating)? A That would be the vaginal canal.

Q You said that the uterus goes over the top of the vagina. Now, in the normal female-- I suppose it differs in different individuals-- where, with reference to length of those points, would the mouth or oss of the uterus come?

A Right there, at the end of the canal, right up here, and the body would be up here (illustrating).

Q In other words, if this instrument, this speculum, is put into that part of the female, would that clear the way to get at the womb? A Bring it into view, very directly into view.

Q Now, I ask you if, according to the rules and regulations of the board of health of this County, a mid wife entitled to possess that instrument? A

MR. GOLDBERG: I object to that, if your Honor please.

THE COURT: I think I will sustain it.

MR. MANLEY: I have read off a list of the articles she may legitimately possess. I did not read as to a

CASE #1760

speculum.

BY THE COURT:

Q Has this instrument any other name than speculum?

A Not that I know of. A mid wife is not--

MR. GOLDBERG: Objected to. There is no question to be answered.

MR. MANLEY: Do you still press the objection.

MR. GOLDBERG: I certainly do.

BY MR. MANLEY: Are any other articles permitted a midwife to have except those I have read in rule 16? I ask you to take it and look at it? A I am familiar with it. It states very specifically there that no article of any kind except those mentioned in that rule are supposed to be used, owned or possessed by a midwife.

Q I show you People's Exhibit two and three for identification, and I ask you to look at them, and then I ask you if you can tell me if they possess any name in surgery or medicine? A Yes, sir, this is known as a tenaculum(indicating People's Exhibit Number three)forceps, or vocalum forceps.

Q Could that be used in the commission of an induced abortion(indicating People's Exhibit Number ten)?

MR. GOLDBERG: Objected to, on the ground there is no evidence it was used.

MR. MANLEY: This was right near the table. It is part of the evidence of the intent.

9999  
CASE #1760

THE COURT: I think I will sustain the objection.

It was there, and the Jury know it was there.

MR. MANLEY: It seems to me that I might argue to them about your having said that any instrument into the womb may produce an abortion. I want to know specifically about that. It seems to me it would clear it up in their minds. We are not supposed to be physicians and know about those things.

THE COURT: I will adhere to my ruling.

MR. MANLEY: May I call your Honor's attention to the Conrad case? It was also passed on in the Glinn case. At that time he put the woman in the same position that this woman was put in. He had instruments of this kind at hand. He approached the woman with a speculum in his hand. Now, the position in that case at the trial was called, and he testified at great length as to how abortion could be committed and as to the use of every particular instrument found in the possession of the defendant at the time of the alleged attempt. As I remember, Glinn went even further, and started to administer an anaesthetic.

THE COURT: Don't the Jury, as reasonable men, know that an abortion may be committed with almost any outside interference? A pen holder, hairpin, or button hook would produce an abortion uner certain conditions?

THE WITNESS: yes, sir.

1099

CASE #1760

THE COURT: Almost any instrument might be used to commit an abortion, might it?

THE WITNESS: Yes, sir.

THE COURT: Now, it seems to be unnecessary to go any further.

MR. MANLEY: At this time your Honor will remember the testimony is that she was supposed to be pregnant for five weeks. Of course, the contents of the womb differs at different times.

THE COURT: But you claim that this relevant on a state of facts not in evidence. We must rule as to the facts in evidence. I will adhere to my ruling at this time.

Q Can you tell us what would be the ordinary condition of the womb in pregnancy of five weeks, as to the contents ?

A The contents, of course, would not be viable.

BY THE COURT: The child is not quick at that time?

A No, sir.

BY MR. MANLEY:

Q Can you tell us what the size of the ovum -- that means egg? A Yes, sir.

Q (Continuing) what would be the size at five weeks of pregnancy? A I wouldn't want to make a positive statement, but I shouldn't think very much larger than the tip of my thumb nail, or, rather, thumb nail, not the tip of it.

Q What would be the relation of that ovum to the walls of

CASE #1760

94  
the uterus? A It would be fastened by small filaments, little projections which are fastened very much like little sponges to the wall of the womb.

Q Can you state how tight the ovum or egg would be attached to the walls of the womb? A That varies entirely with different women. In some the tenacity is so great, no matter what you do you cannot dislodge it, and in others the slightest provocation on her own part or the part of others causes it to be dislodged.

Q What is Exhibit Number three? A A vulselum forceps.

Q If a speculum were inserted into a woman, as you have indicated, could this instrument, People's Exhibit Number three for identification, be reached into the womb and take hold of the ovum of an age of five weeks?

MR. GOLDBERG: Objected to ; it assumes a state of facts not proven; there is no testimony before the Court that this instrument was used.

MR. MANLEY: What did she have the instrument for? What was her purpose?

THE COURT: I will allow the question.

A It could.

MR. GOLDBERG: I object to the question.

THE COURT: I have already ruled on it, and you did object, and you may have an exception to my ruling.

MR. GOLDBERG: I thought your Honor sustained the objection.

0903  
0903  
0903  
CASE #1760

95  
THE COURT: No, I did not.

MR. GOLDBERG: I take an exception.

Q I show you People's Exhibit Number two for identification, and ask you if that has any name? A Yes, that is a dressing forceps.

Q What is it used for? A It may be used for almost anything connected with surgical or gynecological proceedings, but it is usually used in the practice of midwifery to pack the various parts of the vaginal canal.

Q Couldn't an abortion be induced by the use of that instrument?

MR. GOLDBERG: Object to, on the grounds that no testimony has been shown that that instrument was used.

THE COURT: Objection sustained.

Q Now, I ask you if People's Exhibit Number two and People's Exhibit Number three are permitted by the rules to be in the possession of a midwife? A They are not.

Q They are not in the list in Rule 16? A Nothing but what is in the Rule 16 is permitted to be used, owned or possessed.

Q I ask you what People's Exhibit Number nine is? A These are known as a stilllett.

Q What are they for?

MR. GOLDBERG: That is objected to.

THE COURT: Objection overruled.

95  
095  
CASE #1760

MR. GOLDBERG: I take an exception.

A Their common use is to insert into a silk elastic or a gum elastic catheter, for various uses in obstetrical, gynecological and surgical practices. There is no one special purpose for which it is used.

Q You say those objects may be inserted into a catheter. Tell us what a catheter is.

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

THE COURT: Objection overruled.

MR. GOLDBERG: I take an exception.

A<sup>d</sup> Strictly speaking, a catheter is an instrument made either of glass or gum elastic, used for drawing off the urine, but it may be used for obstetrical purposes.

Q If a catheter is made of rubber, is it usually soft rubber? A Usually of soft rubber. It may be of glass or silk elastic tissue.

Q When this is put inside a catheter, is that for the purpose of stiffening it? A Yes, to give it more directness and force.

Q I show you People's Exhibit Number four, for identification. A That is a silk elastic catheter.

Q I notice, according to the rule, that a midwife may possess, it says, one soft rubber catheter? A Yes, sir.

Q That is not the kind she may possess? A No, that is

CASE #1760

not a soft rubber catheter. A soft rubber catheter you can turn any way you like. This is silk elastic.

Q As I understand it, a midwife, according to the rules, has no right to possess people's exhibit No. 4?

A Correct.

Q When we spoke a while ago about putting one of these wires, people's exhibit No. 9 into a catheter, did you mean putting it in in this fashion (Illustrating)? A Yes sir.

Q Stiffening it up? A Yes, sir.

Q Now, these stillets, are they permitted by the rules for a midwife to possess? A They are not.

Q I show you that instrument, people's exhibit No. 10 for Identification, and ask you what that is? A It is pretty hard to tell what that is, but it looks like a very old fashioned dilator.

Q What do you mean by a dilator? A A dilator is an instrument which opens and expands the parts. This looks like an old fashioned dilator.

Q Does that mean the instrument may be put into a uterus and used in that way? A Yes, sir.

Q According to the rules of the Board of Health, is a mid-wife entitled to have that instrument? A Absolutely not.

MR. MANLEY: That is all.

CROSS EXAMINATION BY MR. BOLDGERG:

Q Doctor, these various instruments that you have

testified to, and say that a midwife is not supposed to have them in her possession, that simply would disqualify her as a mid-wife, wouldn't it? A. Certainly.

Q. Isn't it a fact, Doctor, that the use of a speculum will not bring on an abortion? A. As a rule, the use of a speculum will not bring on an abortion.

Q. Isn't it a fact a speculum can't bring on an abortion? A. I won't go so far as to say that, but it is most unusual, most exceptional, that it should produce it.

Q. I mean, people's exhibit No. 1? A. As I said before--

Q. Very unusual? A. Very unusual.

Q. For a speculum to bring on an abortion? A. Very unusual.

Q. As a general thing, a speculum is usually used to expose those parts, so they can be examined? A. Examined or treated.

Q. Examined or treated? A. Yes, sir.

Q. Bu the use of a speculum, Doctor, can one tell whether there is a pregnancy, especially where one is alleged to have existed for five weeks? A. Not with absolute certainty.

Q. Would it create any impression at all? A. To a trained eye a very grave suspicion.

Q. So that the person examining those parts with the aid

of a speculum could tell whether there was a pregnancy, that was in a condition of five weeks? A Not tell.

Suspect.

Q Suspect? A Yes, sir.

Q Inflammations of those parts are also examined through the aid of a speculum, aren't they? A Not as a rule.

Q I show you people's exhibit No. 4 for Identification. Those can be bought soft and hard, can they, Doctor?

A I didn't say anything about this being hard. This is not a soft rubber catheter.

Q But you said that exhibit a midwife had no right to have in her possession and use? A This kind, yes, because it is not a soft rubber catheter.

Q If it was soft, it would come within the category of rule 16? A Yes, sir.

Q So, if the witnesses who testified in this case testified that when that exhibit was found it was soft, it may be within the rule 16? A Absolutely not.

Q Even if it was soft when bought? A It all depends on what you mean by soft. This is not a soft rubber catheter in the meaning of that rule <sup>and</sup> the ordinary sense of the word. There are relative degrees of softness.

Q Will you distinguish between what is called a soft rubber catheter and that one? A When it is made of this material, even a little bit softer than that, ordinary rub-

ber, so we can tie it almost in a knot, that is what I call a soft rubber catheter.

Q And that instrument never was a soft rubber catheter in your opinion? A No, it is not what I call a soft rubber catheter.

MR.GOLDBERG: That is all.

RE DIRECT EXAMINATION BY MR. MANLEY:

Q Is it easy for a person who is at all skilled to tell concerning a pregnancy at the fifth week of pregnancy?

A Never easy at the fifth week of pregnancy.

Q Is it easy for an expert, like a skilled physician, to tell pregnancy at the fifth week? A Not positively.

Q You said something about a mechanical abortion, that it might be produced by puncturing the contents of the ovum, that is, the contents of the uterus, which is the ovum.

Will you state by what process the contents of the womb are expelled after the egg is punctured, how is that done physically? A I don't remember saying anything about the contents being punctured. Of course, it all depends on the size of the product of conception. If the product of conception is exceedingly small and adherent in the womb, the introduction of such instruments as you have produced here would not necessarily produce an abortion, but if it comes directly in contact with the product of the womb, the little tentacle like portions which adhere to the womb

0990

CASE #1760

are broken up, the nourishment of the fetus ceases, and in the regular course of events the products of conception are expelled.

Q That is, a natural abortion follows by the irritation produced? A Not only the irritation, but the cutting off of the product of conception, cutting off the supply of mother's blood.

Q Then the contents pass off? A Then the contents pass off, naturally, or causes inflammation.

Q Now, we have it in evidence that even a buttonhook or a hairpin might produce it. Now, if any article were pushed up through the vagina into the uterus and comes in contact with the ovum, would it be natural for it come away right away? A It all depends on the tenacity with which that ovum clings to the womb and the directness with which the instrument comes in contact with it.

Q As I understand it, then, something might be inserted into the uterus, and then the contents might come away later on, several days afterwards? A Oh, yes.

Q Would blood attend that, or might it? A Yes, almost always.

Q What would the blood come from?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

CASE #1760

Q What would the blood come from? A From the lining of the womb, the blood vessels in the lining of the womb, which are nourishing the foetus, the products of conception.

Q Is there any danger at that time, after an object has been inserted in the uterus, when the blood begins to come? A There is a certain amount of danger.

Q What is the danger? A Danger of that insertion, or the coming away of the product of conception.

Q Both. A The danger of performing the abortion unless properly manipulated, there is danger of a perforation of the womb and subsequent peritonitis, possibly death, unless anaesthetic precautions are observed. If that does not take place, there is always danger of infection, and then there is danger of hemorrhage, and then, furthermore, danger of subsequent inflammation and suffering on the part of the woman practically for all of her life.

Q Now, you say, unless anaesthetic precautions are observed. What is the necessity of anaesthetic precautions? A To guard against carrying infection into the womb.

Q You mean poison? A Yes, sir.

Q How could infection be produced? A By carrying instruments that have not been thoroughly sterilized into the womb, or by not observing anaesthetic precautions before you introduce the instrument.

CASE #1760

Q That is, preparing instruments as a skilled phys-  
surgeon prepares his instruments? A Yes, sir.

Q What are soft catheters? That is, the soft  
catheter provided for by the rules and which a midwife may  
have legitimately in the practice of midwifery?

A Legitimately it is usually used for catheterizing a  
patient.

Q What does that mean? A Drawing off the urine.

Q Is that the only use it is legitimately put to by  
a midwife? A Yes, or anybody else, practically.

Q I mean when used by a midwife? A Yes, sir.

MR. MANLEY: That is all.

RE CROSS EXAMINATION BY MR. GOLDGERG:

Q From your eighteen years experience, do you know  
of any case where an abortion has resulted from the use of  
a speculum? A Personally, no.

BY MR. MANLEY:

Q As I understand, a speculum is something to be in-  
serted so the private parts may be seen? A That is what  
it is for, or treated.

MR. MANLEY: Now, if your Honor please, we offer  
in evidence People's Exhibit No. 1 for Identification,  
heretofore marked as such, the speculum, also people's  
exhibits 2 and 3 for Identification, which are these two  
instruments found in the hands of the defendant at the

CASE #1760

time of the arrest.

THE COURT: Any objection?

MR. GOLDBERG: Yes, sir.

THE COURT: The identification of the instruments is complete, Mr. Goldberg, I take it, there is no dispute about that, that they were found in the possession of the defendant.

MR. MANLEY: Found in her hand; she was going with them to the bath room.

MR. GOLDBERG: As to the speculum?

THE COURT: As to the others; they were found there. I will receive them.

MR. GOLDBERG: I take an exception.

(Instruments received in evidence, and marked, respectively, People's Exhibits, Nos. 1, 2, and 3, of this date)

MR. MANLEY: I also offer in evidence People's Exhibit No. 4 for Identification.

THE COURT: I will receive it.

MR. GOLDBERG: I take an exception.

(Same received in evidence and marked People's Exhibit No. 4, of this date)

MR. MANLEY: I now offer in evidence People's Exhibit No. 8 for Identification, consisting of the money

(Received in evidence and marked People's Exhibit No. 8, of this date)

1003

CASE #1760

1007

MR. MANLEY: I offer in evidence People's Exhibit No. 9, consisting of the stilllette?

MR. GOLDBERG: Objected to.

THE COURT: We will receive them as part of the res gestae.

MR. GOLDBERG: On the ground there is no evidence to show that any of these instruments were used.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

(Same received in evidence and marked People's Exhibit No. 9, of this date)

MR. MANLEY: I offer in evidence People's Exhibit No. 10.

(Same objection, same ruling; exception)

(Same received in evidence and marked People's Exhibit No. 10, of this date)

MR. MANLEY: I offer in evidence People's Exhibit No. 6 for Identification.

MR. GOLDBERG: No objection.

(Received in evidence and marked People's Exhibit No. 6, of this date)

-----  
THE PEOPLE REST.  
-----

CASE #1760

MR. GOLDBERG: I move to ~~dismiss~~ the indictment, and I ask for the discharge of the defendant, upon the following grounds:-

The defendant is indicted for the crime of abortion. It appears affirmatively and without dispute that the complainant was not pregnant. Section eighty of the Penal Law--

THE COURT: Let me interrupt you. Mr. District Attorney, there has been some suggestion that you will only go to the jury on the question of an attempt.

MR. MANLEY: That is so.

THE COURT: Then it is understood that the grade will be reduced to an attempt to commit abortion?

MR. MANLEY: Yes.

MR. GOLDBERG: Then, my motion is to dismiss the indictment and for the discharge of the defendant, on the ground it is impossible to predicate an indictment for an attempt to commit a crime when the crime itself could not be committed.

THE COURT: Well, we have been all through that in the pocket picking cases; that is so well known. A person may commit a crime even though the crime is possible of commission. That is to say, that they attempt to commit that which they cannot possibly commit, so I will deny your motion.

MR. GOLDBERG: I ask your Honor to hear me, because I distinguish that from the other cases. In the pick pocket case, I am informed that Judge Rosalsky has overruled the contention as set forth and the principal laid down in that case. That case, as a matter of fact, rests upon the statute absolutely. The statute, in section eighty, and I ask your Honor to follow me closely, I don't know whether this question has been raised before or not, but section eighty of the penal law reads as follows:-

"A person who, with intent thereby to procure the mis-carriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, is guilty of the crime of abortion" under two sub-divisions.

"First, prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drugs, or substance", and so forth.

Sub-division two leaves out entirely the question of whether pregnant or not, and says, "uses or causes to be used any instrument."

Sub-division two, read with the first paragraph of section eighty would read this way: "Unless the same is necessary to preserve the life of the woman or of the child with which she is pregnant, uses or causes to be

CASE #1760

used instruments".

In other words, as I take it, by the use of an instrument. In order to be guilty of an attempt to commit an abortion, or commit an abortion itself, the woman must be actually pregnant.

These sub-divisions surely meaning something. They are surely separated for some reason. The words "Whether pregnant or not" has some signification, because, if your Honor will look under section 1050, manslaughter, those sub-divisions don't take place. That crime is provided for in the one paragraph, with the both conditionn prevailing. The manslaughter condition, such as whether by the use of drugs or instruments, but here these subdivisions are separate.

Now, if the statute is to be followed, I take it under the use of instruments there must be a pregnancy. There is a much later case than the pick pocket case, the Jaffa case, if your Honor recalls.

THE COURT: Tried before me. I remember the case. I granted a certificate of doubt, and said it ought to be reversed, and in the fullness of time it was.

MR. GOLDBERG: They raised the question in that case that no one can do something which does not exist. No matter what this woman may have done, she never would have been guilty of the crime of abortion, because the

E 001

CASE #1760

woman never was pregnant. The instruments, it is conceded, which was used could not have performed the crime of abortion.

THE COURT: I shall adhere to my inclination. I shall deny your motion at this time, but there will be opportunity to raise the point again. I will give you an exception.

MR. MANLEY: May I call your Honor's attention to this remark made by the Appellate Division in the Teal case which was tried before your Honor, 133 App. Div. :- "It has always been held that the crime of attempting to commit the crime of abortion may be committed upon a woman who is not pregnant. People against Conran".

THE COURT: I shall deny the motion at the present time.

MR. GOLDBERG: I take an exception.

THE COURT: (To the Jury) Gentlemen, do not talk about this case, nor permit any one to talk to you about it, nor form nor express any opinion thereon, until the case shall finally be submitted to you. Will you take your places in the jury box, gentlemen, to-morrow morning promptly at 10:30?

(The Court then accordingly took a recess until to-morrow, Tuesday, October 7th, 1913, at 10:30 A. M.

-----

CASE #1760

New York, Tuesday, October 7, 1913.

TRIAL CONTINUED.

THE DEFENDANT'S CASE.

(Louis Lustig, of Number 650 Sixth Street, Manhattan, is duly sworn to act as Interpreter)

PAULINI PAPP, the defendant herein, called as a witness in her own behalf, being first duly sworn and examined through the Interpreter, Louis Lustig, testified as follows:

DIRECT EXAMINATION BY MR. GOLDBERG:

Q What is your full name, Mrs. Papp? A Paulina Papp.

Q And where did you reside on the twenty third day of January, of this year? A 33 East Seventh ninth street.

Q And for how long a period of time had you resided there?

A It was two years last September.

Q Where do you now reside? A The same place.

Q On the twenty third and twenty fourth of January, were you a midwife? A Yes, sir.

Q And at that time a liscense issued by the Board of Health to practive midwivery? A Yes, sir.

Q How long are you in this country? A It was six years last May, the seventeenth.

Q And during that time have you always practiced midwivery?

A Yes, sir.

Q Were you practicing midwivery in the country from which

CASE 1760

you came? A Yes, sir, for five years.

Q How long? A Five years.

Q Do you recall, on the twenty third day of January of this year, at your home, in Seventy ninth street, of meeting the two women that testified here yesterday? A I do.

Q Do you remember Mrs. Priess calling to see you on that day-- the lady with the glasses? A I do .

Q And with her was the other lady, Mrs. Goodwin? A Yes.

Q Can you tell us which one of these two spoke to you on that occasion? A The lady with the white waist(indicating Mrs. Priess).

Q Did she do all the talking? A The other lady spoke to her, and she spoke to me in German, but I couldn't understand very well .

Q That is, Mrs. Goodwin spoke to Mrs. Priess, and Mrs. Priess spoke to you? A Yes.

Q Do you speak English? A I do not.

Q Do you understand English? A I don't.

Q Do you speak German? A Very little.

Q What is your Native tongue? A Hungarian.

Q And that is the language that you speak? A Yes.

Q Now, will you tell His Honor and the Jury just what Mrs. Priess , the lady in white, with the white waist, said to you, on the twenty third of january of this year? A The lady in the white waist told me that the other lady, Mrs.

10110

CASE #1760

Goodwin, is her friend, and that they came to see me because her friend was five weeks pregnant, and I asked her how does she know it, and she told me because the lady complains that she has a bad stomach, and that her stomach hurt her, aches her.

Q Did she in that conversation say anything to you about her having any vomiting spells? A She didn't say that. All she said was her abdomen pained her and her stomach ached her.

Q What did you say to her in response to that? A I told her that she can't tell whether she is pregnant or not, and that it is possible that her stomach and the lower part of her body may pain her from something else.

Q At that time, did Mrs. Priess ask her to give any medicine to cure this condition? A She did.

Q What did she say? A She told me she will be very glad to give me ten dollars if I give her some medicine, but I told her that I am not a doctor.

Q Did you say anything else to her relative to the giving of the medicine? A I told her that it is possible that she has got a cold, and I told her to go home and lay down and take a mustard bath and a hot tea.

Q Did you, Mrs. Papp, at that time, suggest an examination of Mrs. Goodwin? A I did not. I didn't have the time, because I had to go away to a birth.

112

CASE #1760

Q How long did this interview take? A About fifteen minutes; not more.

Q Did Mrs. Priess say anything to you about Mrs. Goodwin being a widow and being in fear of giving birth to a child on that account? A She did.

Q And that that would bring disgrace on her family?  
A She did.

Q Then request you, upon the payment of ten dollars, to give Mrs. Goodwin medicine? A She told me she will be very glad to give me ten dollars if I give her some medicine, because it would be a shame on her and her family if she would get a child.

Q Was Mrs. Goodwin dressed in mourning or dark clothes?  
A I think she was dressed in black, and I think she had a black veil, like she has on now.

Q During the talk that you had with Mrs. Priess tell us the actions of Mrs. Goodwin? A She acted just as if she had pain in her belly.

Q Was she during this conversation walking around the room with her hand on her stomach, indicating that she was in pain?

MR. MANLEY: Objected to as leading.

THE COURT: I think it is only a resume of it. I will allow it.

A She was sitting down. Both of them was sitting.

1011

CASE #1760

Q And was she, while in this position, holding her stomach and making these complaints that she spoke of? A Yes, sir.

Q Can you tell us anything else that was said on that interview, on the first day, you met Mrs. Priess and Mrs. Goodwin, on January twenty third? A Nothing else was said, only the same thing over and over.

Q Did you hold any conversation or talk at all to either Mrs. Priess or Mrs. Goodwin on that day? A I can't speak English.

Q Yesterday Mrs. Goodwin on the witness stand testified that you said to them in English that "I will fix you if you don't come around," or words to that effect. Did you say, in English, to Mrs. Goodwin and Mrs. Priess, that you would fix her if she does not come around, or words to that effect? A I did not.

Q When did see both these women again? A Next day.

Q Tell us in your own way what you said to Mrs. Priess, or what Mrs. Priess said to you, on that occasion. A They came in, and Mrs. Priess told me that the tea and the bath didn't do her any good, and I told her that it may be something else troubles her, and that I am willing to examine her, and I told Mrs. Goodwin that I am going to examine her, and Mrs. Goodwin and I walked into another room, and Mrs. Priess came after us, and she came as far as the door, and she asked

1011  
CASE #1760

me whether she may come in, and I said yes, and she came into the room also, and then I told Mrs. Goodwin to lay down on a table, and I examined her with my <sup>two</sup> fingers.

Q Before you went into this room that you speak of, didn't Mrs. Priess ask you again to give medicine to Mrs. Goodwin?

A She did, and I told her that I will not give her any medicine, but I am going to examine her.

Q Now, tell us what took place in the room that you just mentioned you went into? A I have examined her with my two fingers, and I told her that I can't find anything. She was screaming, that she had pains, and I told her it would be advisable to give her a syringe, and I suggested a syringe to her, and she wouldn't stand for it. Then, after I told her I had to examine her more, and I did, and I thought that she might have some other troubles.

Q What other troubles? A I was positive that she was not pregnant, and I thought she had some other inside troubles, or that probably that she was syphilitic, and I had those cases before. I was called a case where a woman told me she was pregnant, and I found syphilis, and I told her I would have to see if .

Q Did you ever believe she was pregnant? A I never for a moment thought th at she is pregnant, because you can't tell after five weeks positively.

Q On what did you base your thoughts that you didn't

1011  
CASE #1760

think she was pregnant? A It is impossible for anybody to find out if anybody is pregnant or not after five weeks.

Q It was testified to yesterday that you had a basin with instruments and other things next to you by the table in the room that Mrs. Goodwin was in, and was lying on that table. Is that so? A It is not so. There was a basin standing there right by the door, and the servant girl of mine, she had some wash, shw was starching wash from that basin, and that is the only basin that was around.

Q But there was no basin in that room in which there were instruments? A No, sir, only in the other room, where the woman was starching clothes.

Q After the two men that came in the roo, the two men that you saw on the witness stand yesterday, what did they do? A They ran into the room, and one of them caught hold of me, and the other one caught hold of my servant and her child. One of the men caught hold of me, and that other caught hold of the servant girl and her child, and then afterwards they went into the bureau drawer and were looking for things in the bureau drawer.

Q And the instruments that you saw yesterday, where were they taken from, some of them, or any of them? A They took them all from one drawer.

Q Do you personally use any of these instruments, Mrs. Papp? A I didn't use all of them. One of them I always

CASE #1760

used by every birth, and some of the instruments I never used.

Q What was the object of having them in the place, your home? A I very often go to births with doctors, and he can't tell in advance what happens, and it always very handy to have them around.

Q And by that you mean you carry these instruments for the use of the doctors in your confinement cases?

A Only in cases where I have to have a physician.

Q Isn't it a fact, Mrs. Papp, that all your work is done in confinement cases? A I go to confinements; I also have some ladies come to my house for massages.

Q What doctors, Mrs. Papp, do you work for, or work under?

MR. MANLEY: I object to that as incompetent, and immaterial.

THE COURT: I think I will sustain the objection. There is no attack made on the regularity of the license of the defendant. There is no criticism as to her efficiency, I take it, as a midwife.

MR. MANLEY: I am trying her for abortion. Nothing else.

MR. GOLDBERG: Except this; your Honor has permitted rule 16 to go in evidence, and the mere possession of those articles not mentioned in rule 16 would simply

RI 01  
CASE # 1760

be a violation of the midwifery law, and nothing to do--

THE COURT: Very well; if it is under that theory you ask the question, I withdraw the ruling.

MR. MANLEY: No charge against any of the doctors she goes with.

THE COURT: No, but you have urged that the possession of these instruments is prima facia evidence of wrongful intent, and I think they have a right to show she assisted certain doctors and had the instruments for that purpose. If that is the purpose, I am bound to allow it.

MR. MANLEY: I withdraw the objection, if that is the purpose.

Q What doctors, if any, do you work with in your confinement cases? A On that day I had been working with Doctor Horn, on East 67th Street between First and Second Avenues.

Q You say that day. You mean on January 24th of this year, the day you were arrested? A Yes, sir; I had been working with her all night that night.

Q Was that a confinement case? A Yes, sir.

Q On that occasion did you have this bag and the tools with you? A Only one of the instruments was with me, and I had the satchel with me.

Q And on your return to your home, it was from this

CASE #1760

place that you speak of that you met these two women at your house?

MR. MANLEY: Now, I would suggest counsel permit the witness to testify, and not lead her.

MR. GOLDBERG: Well, it would not be leading. She does not understand me unless -- well, I will withdraw that.

BY THE COURT:

Q Where did you meet these two women? A In my house.

BY MR. GOLDBERG: And was that on your return from the mid-night confinement that you speak of? A No.

Q Where had you been -- withdrawn. Were you home on the second day, when these two women called to see you?

A I was.

Q Mrs. Papp, on the day that you were arrested, and before you went into the room in which Mrs. Goodwin was put on the table, was there anything said to you by Mrs. Priess about your being paid for your services, and, if so, what was that conversation? A She did.

Q What was that conversation? A She told me she will pay me whatever I want for my services, and I told her all right, and she paid me twenty dollars.

Q Did she say to you at the time, or did you say to her, what your services were going to be for the twenty dollars?

A I did tell her.

1011  
CASE #1760

Q What were the services to be for, or what were the services to consist of? A I am going to examine her, and I am going to tell her what is the trouble with her.

Q And for those services rendered you were going to charge her twenty dollars? A Yes, because the day before that, for hardly anything, she promised me ten dollars, and I thought that she is easy with the money, and for work and hard work I may charge her twenty dollars.

Q Did the officers, after they had placed you under arrest, or before, say anything to you in English or German or any other language? A Only one of them told me I should stand right here and I should not move.

Q Do you understand German very well, Mrs. Papp?

A Very little.

Q The officers testified yesterday that they said to you "If you don't give us back the money you have we will have the matron search you" Was anything like that said to you in any language or by the officers or anybody at that time? A Yes. I didn't understand everything what they said, but I did understand that they asked me for money, and I did give them money.

Q Did they threatened to have you searched by the matrons if you refused to give back the money? A I don't know; I don't remember; but all I know is they said I should return the money, and I did.

CASE #1760

Q Did you hesitate at all in the return of the money?

A I did not hesitate. I gave them the money back at once.

Q Mrs. Papp, have you ever performed an abortion?

A I swear to God that I never did.

Q Have you ever been arrested before, either in this country or in the country that you came from? A I never was in a court room in my life before.

Q Mrs. Papp, did you know that to commit an abortion was a crime? A I knew it, yes, sir; It is a crime in the old country, and I knew that it is a crime here.

Q Did you ever, during the time you have been practicing midwifery, ever give to any of your patients any medicine? A I never did.

Q What other doctors, other than Doctor Horn, do you work for, or have you worked for? A I worked with Doctor Schmidt, on Fifty-third Street between Second and Third Avenues; Doctor Ovary, on East Sixty-eighth Street between First and Second Avenues; Doctor Kovats, I think East Sixty-ninth Street between First and Second Avenues. I can't recall any others now.

Q Mrs. Papp, yesterday it was testified to that after you were put under arrest you said that all Doctors fix. Did you use that expression, or any other like expression at that time? A I told them when they arrested me, in German, that every doctor and every midwife examines if any-

1020

CASE #1760

body calls on them.

Q Did you use the expression -- did you only say that in German? A Yes, sir.

Q Did you use the words, in English, "All Doctors fix", either, "yes", or "no"? A I never used that word in my life. I don't know what it is. I used the words, "untersuchen".

Q And what does that mean, in English? A To examine.

Q You have been in Court, Mrs. Papp, on four or five occasions when this case was on the calendar before yesterday? A Yes, sir.

Q And with you at the time was Mrs. Bellus, on each occasion? A Yes, sir.

Q Where is Mrs. Bellus now? A California.

Q And when did she go there? A In the early part of August.

Q At the time that you were arrested, was she arrested with you? A Yes, sir.

Q And was she taken before the Court at the time you were taken? A Yes, sir.

Q She was discharged, wasn't she? A Yes, sir, next day

MR. GOLDBERG: That is all.

CROSS EXAMINATION BY MR. MANLEY:

Q How long have you been in the United States?

A For the past six years.

1021  
CASE #1760

- Q And you say you can't talk any English? A I can't.
- Q None whatever? A Nothing.
- Q Can't you understand any kind of a sentence in English? A No, I only deal with Hungarians.
- Q Haven't you understood anything at all that I have said thus far in English? A I did not.
- Q Is this your signature here, Paulini Papp?  
(Handing paper to witness)? A Yes, sir.
- Q Is that your handwriting further up? A Yes sir.
- Q Isn't that all in English, that handwriting?  
A Yes, sir.
- Q Every bit of it? A Yes, sir.
- Q Do you mean, then, you can write English but you can't understand a word of it? A I can't write, neither.
- Q Isn't that your handwriting there? I understood you to say it was? A Yes; they held my hand when I wrote this.
- Q Did you write on each place there where there is writing, in ink? A I did write everything here. Where I wrote my name, they did not hold my hand.
- Q You mean, when you say you wrote everything that is written in ink on that page, your hand was held by somebody while you were writing everything; is that it? A Yes sir, and I was told what letters to put down.
- Q When the words "widow" was written in here, in answer

CASE #1760

to the question, "Married, single, or widow", was your hand being held at the time? A He told me what letters to put down.

Q Was your hand being held at that time? A They did.

Q I see here that it is written in response to this question, as follows: It is printed, first; "Give name of every school you have attended, together with the length of time you were in attendance?" Then comes the writing, "Public School in my native town in Hungary for six ye-ars." Now, when you wrote those eleven words, was your hand being held all the time? A No, they simply told me what letters to put down.

Q Can you write the letters, using the English letters, without knowing the words at all that you are writing?

A The letters are the same as in the Hungarian.

Q You did not then, as I understand it, understand a solitary thing you were writing; is that it? A I did not.

Q You have had a liscense given by the Board of Health the last three or four years to practice midwivery; is that so?

A Yes, sir.

Q Your liscense expired, the last liscense, on the second of July of this year, did it not?

MR. GOLDBERG: Objected to as immaterial?

MR. MANLEY: That is preliminary.

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

A Yes, sir.

Q On the twenty ninth of September of this year, you put in another application for a liscense to practice midwivery, didn't you? A No; they came to me.

Q Did you sign another liscense asking to be liscensed for another year to practice midwivery, and did you do that on the twenty ninth of September of this year? A I did.

Q Is that your signature, Paulini Papp(handing paper to witness)? A Yes, sir.

Q Is that the paper that you signed on the twenty ninth of September? A Yes, sir.

Q I see it written here as follows: "Q Have you been arrested on a criminal charge?" That is printed. Then, in ink is written, "No." Did you say so? A No, sir.

Q What is the answer? A I did write in "No."

MR. GOLDBERG: She said something else besides that.

THE WITNESS: Because I thought that this matter came over yet, and I thought it meant a conviction, not an arwe rest.

Q Didn't you know if you told them you had been arrested for a criminal offence, that you could not have gotten any more liscense? A I did not.

Q Did they read this over to you before you signed it? A They did not.

Q So, you didn't know anything that was in it, I suppose, did you? A There was an interpreter there.

CASE #1760

Q Did he interpret to you everything that was on here before you signed it? A There was an interpreter there, and he asked me whether I was ever convicted, and I said "No."

Q Did he use the word "Convicted", or did he use the word "arrest"? A "Convicted."

Q I see it is printed here, "Have you ever been arrested on a criminal charge?" Did he use that word at all-- read that to you?

MR. GOLDBERG: That has been answered, if the Court please.

MR. MANLEY: Well, let us have it again.

A He didn't mention about the arrest, only conviction.

Q Now, you have read these rules, I suppose, these rules of the Department of Health? A Druggist read it to me.

Q In what language did he read them to you? A A Hungarian Druggist read it to me, and translated it to me in Hungarian.

Q They are all down there in German, as well as English, aren't they? A I can't read German.

Q You can't read any German? A No, I can't; I swear to it.

Q How long had you lived in Hungary? A I was born there.

Q You never heard any German spoken there? A Not where I come from. There are plenty of Roumanians there.

Q When this was read to you by the Druggist in Hungarian,

CASE #1760

did he read this rule that we were talking about yesterday, as to what instruments, a midwife might have? A He did.

Q You understood it then, did you? A Yes, he spoke Hungarian to me.

Q Now, let us get down to Thursday, the twenty third of January, of this year. What time was it when those two ladies came in? A It believe it must have been between twelve and one o'clock, or about that time.

Q You were out at that time, and you came in after they got there. Is that it? A Yes, sir.

Q Nearly all the talking was done by Mrs. Priess, whom you described as the lady who has the white waist? A Yes, sir.

Q You understood everything that she said in German that she testified to, didn't you? A Not very well.

Q Are you guessing at everything you testify that she said to you? A I understood what she said, but I can't speak fluently, I can't understand well.

Q But you are positive that what she said today she said to you is what she actually said to you? A Yes, sir.

Q Now, you understood Mrs. Priess to say that the lady who was with her, Mrs. Goodwin, thought she was pregnant; is that right? A Yes, sir.

Q You understood that she wanted you to perform an abortion on her, to get rid of the pregnancy; is that right? A She didn't say anything of that sort.

1028

CASE #1760

Q Didn't she say she was in the family way at all on Thursday, the first day? A She said that; she said she was pregnant five weeks.

Q You knew then, when she told you that, that she wanted you to help her get rid of the pregnancy; is that right?

A I did not.

Q What was it you understood that she wanted? A I told how does she know that the lady is pregnant? That it is impossible to tell .

Q She did not try then to have you give her anything to relieve her of her pregnancy; is that it? A She did ask me for medicine, and she offered me ten dollars.

Q What did she ask you for the medicine for? What was it for? A She said she had awful pains in her stomach and in her belly.

Q Did she want the medicine so she would not be pregnant?

A I don't know what she wanted. I know she asked me for medicine.

Q Didn't you have any idea what she wanted the medicine for? A I did not.

Q Why was it then, she told you she was pregnant, if you did not have any idea what she wanted the medicine for?

A She told me she was pregnant, and I told her it was impossible to tell at this time.

Q But you say she did not want the medicine because she

CASE #1760

was pregnant; is that so? A She did not, she said that her friend was pregnant, and that I should give her medicine.

Q You told her that you could not tell, because the time was so short, it being only five weeks; is that it? A Yes.

Q Did you ask her a lot of questions so you could find out whether or not she was pregnant? A I asked her where she had pains?

Q Did you ask her when she had had her monthly sickness last? A I did.

Q Did she tell you it was about the seventh or the ninth of december? A She did.

Q And then did you ask her how soon afterwards she had been with a man? A I did not.

Q Did you, after you had asked her all those questions, tell her if she was pregnant it was probably about five weeks that she had been pregnant? A She told me that she is pregnant five weeks.

Q You did not figure it yourself at all, then, that it was five weeks, did you? A I did not.

Q Now, when she said that she wanted some medicine because she was pregnant, did you tell her that that was not the way to do it? A I told her that she can't tell that she is pregnant, that she must have a cold, or something else.

Q Did she tell you what I have asked you? A What?

Q (Question read by stenogralher as follows: "Q Now, when

CASE # 1760

she said that she wanted some medicine because she was pregnant, didn't you tell her that that was not the way to do it?" )A

I did not.

Q Did you tell her that you did not give medicine, you didn't think medicine was good? A I did not.

Q Did you tell her sometime it would bring on a hemorrhage without having the desired effect? A I did not.

Q Did you tell her you could do something else for her, that she would have to stay home six days? A I did not.

Q Did she tell you she was too nervous to be examined?

A No.

Q When you said you could not give any medicine, and she asked for the medicine, did you then tell her how much experience you had as a midwife, that you knew your business?

A I did not.

Q Did you tell her, if the womb is strong, that medicine might not have any effect, but if the womb is weak it might have some effect? A I did not.

Q Did you tell her that whatever went in by way of the mouth had to come out by way of the mouth, and whatever went in here, (pointing that way,) had to come out that way? A I did not hold any such conversation.

Q When you then told her to take mustard baths and take hot tea, you did that because she might not be pregnant, and had a cold, is that it? A Yes, sir.

1029  
CASE #1760

Q You did not expect to see her at any time again when she left that day, on Thursday, did you? A No, I did not.

Q Why did you give her your card? A Everybody who comes into my house I have the cards laying on the table, and every one gets a card.

Q You simply gave it to her, and, because you gave everybody a card, is that it? A Yes, sir.

Q Now the next day did some one call you up on the phone, Friday, the last day, the day you were arrested? A Yes, sir.

Q Did you answer the telephone, or was it the servant girl, Bellus? A I don't remember.

Q What time was it when they got there? A I don't know; I don't remember; probably one or two o'clock.

Q The day before that, did you show them the medical book? A I did.

Q Did you show them a picture of something five weeks old, a foetus? A There is no five weeks foetus in the book.

Q Isn't there a foetus of any age in the book? A There are others, and I showed her.

Q Why did you show it? A I told her that if she is pregnant, and I explained with the picture that if the child is that age, that I can tell whether she is pregnant or not.

Q Now, what did they say to you when they came back on the last day, the day you were arrested? A Mrs. Priess told me that the mustard bath and the hot tea didn't do her friend any

CASE #1760

good, and that is why they came back.

Q What did you say? A I told her that I am going to examine her.

Q Why were you going to examine her. A I thought -- She was screaming with pain, and I thought she might have something else.

Q When you intended to examine her, you did not intend to see whether she was pregnant or not; is that it? A Yes, I was going to examine her first with my fingers.

Q (Question read by stenographer as follows:"Q When you intended to examine her, you did not intend to see whether she was pregnant, or not; is that it? ") A No.

Q Why didn't you send her to a doctor, then, if she had these pains?

MR. GOLDBERG: I object to that, if your Honor please.

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

A I thought I would examine her, and if I find nothing that I know of, I am going to tell her to go to a doctor.

Q You are not a doctor yourself, are you? A No.

Q You know that you can't practice medicine, don't you? Not being a doctor? A No, I didn't practice medicine.

Q Now, when they came in that day and told you that the tea and mustard did no good, did you think it did not indicate a cold? A I did not.

CASE #1760

Q When they said that it didn't do any good, did you tell Mrs. Goodwin or Mrs. Pries that you could do something for her?

A I did not.

Q Did you say it would not hurt, but Mrs. Goodwin would have to stay home for six days? A I did not.

Q Did you say she would have to come back after about the end of the third day? A I did not.

Q Did you say she would have some pains, that it would not be a steady pain, but a pain that would come and go?

A I did not.

Q Did you say that some pink blood would come, and then she would have to take some cognac? A I did not.

Q And did you tell her not to have a doctor, but to come in and see you when the blood came? A I never said anything of that sort.

Q The only thing that you intended, was just to put her on the table and see if she had any syphilis or anything of that sort; is that it? A Yes, sir. I thought that she had pains from that.

Q And you were going to charge her twenty five dollars for putting your fingers in and seeing if she had syphilis; is that it? A Well, I thought she was so easy about the money, she offered me ten dollars for hardly anything the first day, that I thought twenty five dollars if I charged her I would get, if I examined her thoroughly, and told her what the trouble was.

B  
E  
O  
I

CASE #1760

Q Your idea was you were not earning it, but you would take all you could get; is that it? A Yes, I thought I will make easy money.

Q Did she object to paying any such large amount of money as that? A Yes, she did; she asked me if I would take less, and I said "No".

Q But when you found out that she was not so easy, and told you she was a working woman, and wanted less, why didn't you take less? A Of course, we do not always make money so easy, and if I can tell her the troubles, I thought I ought to get twenty five dollars.

Q Did you think a doctor would charge her twenty five dollars for telling her where the pain was?

MR. GOLDBERG: That is objected to.

THE COURT: Objection overruled.

MR. GOLDBERG: I take an exception.

A Yes, sir. Why not?

Q Do you mean to tell the Jury you thought a doctor, just merely from looking at a woman, a patient, would charge twenty five dollars? A Well, everybody takes money if they give it.

Q But here she didn't want to give it. She told you she was a working woman, didn't she? A Only once she made that remark, but she immediately took out the money and gave it to me.

1033

CASE #1760

Q When she said she did not want to give so much, didn't you say, "Perhaps you can get somebody to do it for ten or fifteen dollars, but because I know how to do it right I charge that much." A I never said that.

Q Did you ask her her name and where she lived? A No.

Q Did you write it down in your book? A I was going to take it down, but I didn't finish it.

Q Did you write any part of it in your book? A I did.

Q What part did you write in your book? A I really don't remember because she told me English, and I couldn't understand well.

Q But you are positive that you write part of it in your book that she told you? A I did.

Q Is that what you wrote "302 West 114th street, top floor"

A Yes, I did.

Q Did any one hold the pen while you were writing? A No, that is written in Hungarian.

MR. MANLEY: I offer it in evidence. I can't read it, and I can't read Hungarian.

MR. GOLDBERG: If she says she wrote it, I will consent.

(Received in evidence and marked People's Exhibit Number 12, of this date)

Q Now, did this Bellus woman put a clean white apron on just before you put Mrs. Goodwin on the table? A She always

1031

CASE #1760

103

has a white apron on.

Q Did she put on an apron? A She did not. She was ironing clothes.

Q You put Mrs. Goodwin on the table, then, on her back, did you? A Yes, sir.

Q You put your fingers into her vagina; is that so? A Yes, sir.

Q Did you put some vaseline on your fingers first?

A Yes, sir.

Q Did you wash your hands before you put the vaseline on them? A Yes, sir.

Q Did you wash them in an antiseptic solution such as carbolic acid?

MR. GOLDBERG: If your Honor please, I can't see the materiality of it.

MR. MANLEY: I can.

THE COURT: Of course, I have got to allow a considerable degree of latitude. It may go to credibility. I suppose I may allow it.

MR. MANLEY: I don't intend to disclose in the beginning the objects of my cross examination.

THE COURT: It may be answered.

MR. GOLDBERG: I take an exception.

A I washed them with soap.

Q Did you wash them with carbolic acid, or did you use

CASE #1760

carbolic acid? A No, I have no carbolic acid, and I never use it. I only wash myself with soap.

Q When you put your fingers in, what did you find?

A Nothing.

Q You found absolutely nothing at all with your fingers?

A Nothing.

Q You say you then suggested a syringe, but she would not stand for that; is that right? A Yes, sir.

Q I suppose that means a syringe to wash out the vagina; is that so? A Yes, a syringe to move her bowels.

Q That was the object of using the syringe, merely to move her bowels? A Yes, sir.

Q You were going to move the bowels right there on the spot, were you? A Yes, sir, because that often causes pain in the stomach.

Q Do you think you could tell whether she had syphilis or not by moving her bowels? A No, I did not. I had a sort of looking glass which I generally apply to the womb where I can tell if she has any syphilis or not.

Q Did you have your looking glass right there? A When I took that looking glass and was going to apply it there, to look, she jumped off the table, and she caught hold of both my hands, and all the people started running in the room.

Q That is not the question. I asked you if you had the looking glass there? A I did not.

1001  
CASE #1760

Q Where was the looking glass at that time? A It was in the ward-robe drawer.

Q Where was the wardrobe, in what room? A Right next to the table where she was.

Q The same room that you and Mrs. Goodwin were in?

A Yes, sir.

Q When she told you she would not stand for the syringe, did you then tell her you would have to examine her womb?

A I did.

Q Before you put Mrs. Goodwin on the table, then, she did not understand at all that you were going to do anything to relieve her of her pregnancy; is that so?

MR. GOLDBERG: I object to that. How can this witness tell what Mrs. Goodwin was thinking of.

MR. MANLEY: I will withdraw it, and reframe it.

Q Had there been any talk of any kind before you put Mrs. Goodwin on the table that you would fix her as to her pregnancy? A I did not; I didn't speak to her at all, I knew she was not pregnant; I only spoke to the other lady.

Q There had not been any talk between you and Mrs. Goodwin and you and Mrs. Priess that you would put her on the table to see if she was pregnant?

MR. GOLDBERG: Why not separate the questions. There are two questions there.

THE COURT: Let her answer, if she can.

A No, sir.

CASE #1760

Q Now, did you have any instruments in any basin there at all at the time? A No, sir, all these instruments were in a drawer.

Q Did you have this instrument, people's Exhibit one in evidence, being the speculum, in your hand at the time Mrs. Goodwin grabbed hold of you? A No, it was all in a drawer. I had nothing in my hand.

Q Did Mrs. Goodwin get up from the table and grab hold of you? A Yes, sir, she did.

Q What were you going at the time she grabbed hold of you? A Nothing.

Q Where were you standing? How near Mrs. Goodwin, when she grabbed you? A Right alongside of her.

Q Did you have anything in your hands? A Nothing.

Q Was there a solitary one of these instruments in that same room at the time Mrs. Goodwin grabbed you? A It was in the same room, in the drawer.

Q But every one of them was in the drawer? A Yes, sir/

Q Those two instruments were not in the wash basin?(indicating People's Exhibits Numbers ten and three)? A There was no wash basin there.

Q Was this instrument in the wash basin(indicating People's Exhibit Number four?) A No, sir.

Q Were these instruments on top of the ice box(indicating People's Exhibit Number nine) A They were all in a drawer.

B  
E  
C  
O  
IC  
A  
S  
E  
#  
1  
7  
6  
0

Q Did you put anything at all over the wash basin when the officers came in? A There was no wash basin there at all.

Q Did you put anything over a wash basin? "Yes", or "No"?  
A No, sir.

Q Did you start towards the bath room with these two instruments, People's Exhibit Number ten and people's Exhibit Number three, in your hand, when the officers came in? A No.

Q Did you have any idea what the officers were there for and arrested you? A I did not. I swear to it, that I did not.

Q Did you know what you were arrested for? A I don't even know it now.

Q What was it that you said to the officers? A I told them that every doctor and every midwife examined.

Q Why did you tell them that if you didn't know what you were accused of? A I told them because I thought that is the reason that they locked me up, for examining the lady.

Q Did you hear Doctor Sobel testify on the stand yesterday that midwives hqdn't any right to have any of these exhibits that I have just mentioned in evidence? A I did not.

Q Do you know that the rules provide that a midwife can't have those instruments that I have just indicated, in evidence.  
A I do know.

Q What? A I know it.

Q Do you know that rule sixteen says no other instruments except those mentioned in the rule are to be used, owned or possessed by a midwife.

1039  
CASE #1760

MR. GOLDBERG: I object to that, on the ground it is not within the indictment, the charge that this would lead up to if that is so.

THE COURT: This may perhaps go to credibility, so I am bound to receive it.

MR. GOLDBERG: I take an exception.

A I knew that we didn't use any other instruments, but I never knew we didn't possess them.

Q You say you used these instruments to help out the doctors in going round to births; is that right? A No, I did not, because I only bought them then, and I thought I will use them if I need them.

Q I suppose you had not used them at all, you had not taken them anywhere before that day, had you? A No, I never used them before.

Q You had not taken them out to any doctor at any time, I suppose. A No, I only bought it just a few days before that. I got a catalogue from Bloomingdales and I thought I might buy it and have it in the house.

Q You just bought them so you might take them out when you went to births with doctors; is that the idea? A Yes, that I should have it on hand in case the doctor want it.

Q You have been a midwife for four or five years, haven't you? A Eleven years.

Q When was it you first thought it would be a good thing

to buy instruments like that to take with you?

MR. GOLDBERG: Objected to as immaterial.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

A I never thought that until I got those catalogues, those advertisements, and I thought I was permitted to buy them, as long as they sent out the catalogues.

Q Did you think the catalogue came from the Board of Health? A No, I didn't think anything. I simply thought I had it, and I knew I wasn't use it, but I didn't think there was any objection to it I have it in the house.

Q Don't somebody from the Board of Health come around about every month and look at your bag and see what you have got as a midwife?

MR. GOLDBERG: That is objected to.

THE COURT: She may answer.

MR. GOLDBERG: I take an exception.

A Yes sir, once in six months, sometimes once a year.

Q And don't they ask you what instruments you have?

MR. GOLDBERG: I object to that, if your Honor pleases, as not within the issue.

THE COURT: She may answer.

MR. GOLDBERG: I take an exception.

A No, they simply look over the bag, and that is all.

Q Don't they write down in your presence the instruments

101

CASE #1760

they find in your bag?

MR. GOLDBERG: I make the same objection.

THE COURT: The objection is overruled.

MR. GOLDBERG: I take an exception.

A Yes, they do.

THE COURT: You can't finish this case today. How long will it take you to finish?

MR. MANLEY: I think I can finish in about ten minutes. I am almost through with the cross examination.

THE COURT: If you won't take more than five minutes, go ahead.

MR. MANLEY: I think it won't take more than ten, if your Honor will give me that.

THE COURT: Well, I have to make this appointment.

MR. MANLEY: Let me just finish the line I am on, and then we will finish tomorrow.

THE COURT: I have three special juries to draw today.

MR. MANLEY: Suppose I finish the line of cross examination I am now on.

THE COURT: Very well.

Q And don't they ask you if you have the instruments in rule sixteen? A They never asked me that.

Q Are you acquainted with this young man sitting here, Mr. Harry Bradwine, Chief of the Division of Child Hygiene?

1001

CASE #1760

Have you ever seen him before? A I did not.

Q Now, you say those nurses come around and look at your bag once in six months? A Sometimes once a year. During the two years I have lived where I am now they only come once.

Q And you see them write down on a paper what you have in a bag? A Yes, whatever I took out of the bag they write down.

Q What do you think would happen if they saw those things?

MR. GOLDBERG: Objected to as immaterial and not within the indictment.

THE COURT: She may answer.

MR. GOLDBERG: I take an exception.

A I didn't think of anything.

THE COURT: (To the Jury) Gentlemen, do not talk about this case, nor permit anyone to talk to you about it, nor form nor express any opinion thereon until the case shall finally be submitted to you. As I shall attend before the Commissioner of Jurors, to draw a Number of Special juries, three or four, I think, it will probably occupy the entire afternoon. Therefore, you need not attend here until tomorrow morning, at ten thirty o'clock.

(The Court then accordingly took a recess until tomorrow, Wednesday, October 8th, 1913, at ten thirty A. M.)

-----

New York, Wednesday, October 8th, 1913.

TRIAL CONTINUED.

PAULINI PAPP, the defendant, resumes the stand:

CROSS EXAMINATION (Continued) BY MR. MANLEY:

Q And did you buy these various instruments at Bloomingdale's? A Yes, sir.

Q How many days before the day you were arrested did you buy them at Bloomingdale's? A I don't remember.

Q About how many? A I don't know whether it was a year, or two.

Q You mean that you had had them a year? A I don't know whether it is a year or two ago when I bought them.

Q Had you ever taken them out with you when you went out with a doctor? A No, sir.

Q I suppose you understand what an abortion is, do you not? A Yes, sir.

Q You understand what ways may be used to bring one on, do you?

MR. GOLDBERG: Objected to. I don't see that that makes any difference.

THE COURT: Well, it is cross examination and I have to allow a considerable degree of latitude in that direction.

MR. GOLDBERG: What instruments might be used for it. It is immaterial. I take an exception.

(Question is read by stenographer as follows: " You

1048

CASE #1760

understand what ways may be used to bring one on, do you?")

MR. GOLDBERG: I object to the form of the question.

It is rather unintelligible. Bring what on?

MR. MANLEY: See if she understands it.

MR. GOLDBERG: I don't know whether she does or not

MR. MANLEY: Yet her tell, not you?

A I do not.

Q Haven't any idea? A I do not.

Q Never heard how an abortion might be brought on?

A Well, it can be brought about in different ways; from a cold, from a fall, from a strain, and several other things.

Q Any other way? A I don't know any other way.

Q May it be brought on with the use of any instruments like we have here in evidence? A It can't be done.

Q What is that? A It can't be done.

Q It can't be done? Do you know this lady here (Indicating Mrs. Barron)? That is, have you seen her before?

A Yes, sir.

Q Whereabouts have you seen her? A She was to see me about my license.

Q She is an Inspector in the Board of Health, or visiting nurse?

MR. GOLDBERG: I object to this line of cross examination, on the ground that the crime charged is an attempt to commit an abortion, and not to see whether this

EXHIBIT  
CASE #1760

woman has violated any rule or ordinance of the Board of Health as to whether she can't practice midwifery, or has done anything contrary to permit her to renew her license.

THE COURT: She may answer.

MR. GOLDBERG: I take an exception.

A I don't know who she is.

Q Didn't she tell you she was from the Board of Health?

A Last time she was to see me she told me she came from the Board of Health about my license.

Q Now, didn't Mrs. Barron, on the 29th of September, write out here, after asking you questions, this application for a renewal of your license to practice midwifery?

MR. GOLDBERG: I renew my objection on the ground it is incompetent, and immaterial, and not within the issue.

THE COURT: The objection is overruled, it being cross examination.

MR. GOLDBERG: I take an exception.

A Yes, she wrote this, but she spoke English, and I could not understand what it was.

Q Didn't you understand anything she said? A She spoke to a little girl who lives in the same house I do, and she interpreted for me.

Q You understood the little girl who interpreted, didn't you? A Yes, sir, there was a little girl there

10  
CASE #1760

who is in the country two years.

Q I ask you if you understood her? A Yes, sir.

Q Didn't she tell you she had heard you had been arrested charged with abortion, and didn't she ask you if that was true?

MR. GOLDBERG: I object to that, if your Honor pleases.

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

A No, sir.

Q Didn't she read off to you what is printed on this page, "have you ever been arrested on a criminal charge", and didn't you say, "no"? A The way I was told is whether I was convicted.

Q Did the little girl use the word "convicted", and not "arrest"? A "Convicted".

Q You know the difference between "arrested" and "convicted" do you? A I do not.

Q Didn't the little girl say to you, after talking with this lady who stood at the rail, Mrs. Barron, that Mrs. Barron had heard that you had been arrested for doing what you are being tried for now, and she wanted to find out if you had been arrested, and didn't you say "no"? A No sir, never spoke about it.

Q Did you ever talk English with Mrs. Barron? A I did not; I can't speak English.

Q Did you ever talk a single English word with Mrs. Barron? A I can't speak a word. The little girl spoke for me.

Q Does that mean you never talked a single English word with Mrs. Barron? A I did not.

Q You know, don't you, that when certain things appear, when you go out and attend a woman in child birth, that when you see certain things you have to call in a doctor, don't you? A Yes, sir.

Q You know, when you look at a woman during pregnancy-- I don't mean at child birth-- but during pregnancy, and you see certain things, you have to call in a doctor, don't you?

MR. GOLDBERG: That is objected to.

Q (Continuing) According to the rules of the Health Department?

THE COURT: Answer the question.

MR. GOLDBERG: I take an exception.

A Yes, sir.

Q You know, for instance, if you find a contracted pelvis or other deformity, you have to call in a doctor, don't you? A Yes, sir, at once.

Q And you know when there is bleeding from the uterus you must call in a doctor, don't you? A Yes sir.

Q You know when there is swelling of the face and hands you have to do likewise, don't you? A Yes sir.

Q You know when there is excessive vomiting you have

EXHIBIT  
CASE #1760

to do likewise? A Yes, sir.

Q When there is persistent headache, you must also do it; is that so? A Yes, sir.

Q You also know you have to do it when there is any dimness of vision, don't you?

THE INTERPRETER: What is that?

MR. MANLEY: Dimness of vision means where you can't see well?

A Yes, sir.

Q You also know you have to do it where there are any convulsions, don't you? A Yes, sir.

Q Now, when was it that the money was given to you by Mrs. Goodwin? Was it before you went into the room where the table was? A Yes, sir.

MR. MANLEY: That is all.

RE DIRECT EXAMINATION BY MR. GOLDBERG:

Q Mrs. Papp, you know when you don't feel good you have to call in a doctor too, don't you? A Yes, sir.

MR. GOLDBERG: That is all.

-----  
THE DEFENDANT RESTS.

REBUTTAL TESTIMONY.

EMMA TOWNE BARRON, called as witness on behalf of the people, in rebuttal, being first duly sworn, testified as follows:-

## DIRECT EXAMINATION BY MR. MANLEY:

Q What is your name? A Emma Towne Barron.

Q Where do you live? A 19 West One Hundred and Second Street.

Q Mrs. Barron, do you hold some public position in the Borough of Manhattan? A My official title is nurse, department of Health.

Q And are you a graduate nurse? A Yes, sir.

Q A graduate of some school for nurses? A Registered with the Regents in Albany, registered nurse.

Q And how long have you been a registered nurse, Mrs. Barron? A Graduated in 1902, registered with the Regents in Albany 1905.

Q Now, by virtue of your position in the Board of Health, what do you do? A Inspector of midwives.

Q Do you have in your district for inspecting midwives the district which includes the residence of this defendant, 333 East 79th Street? A Yes, sir.

Q Have you gone to the house of this defendant, at 333 East 79th Street? A Yes, sir.

Q Have you gone there more than once? A Yes, sir.

Q Several times? A Several.

Q You have had the district where she lives, the district that includes East 79th Street, for how long?

A March, 1912.

CASE #1760

Q 1912? A Either 1911 or 1912, I have forgotten which.

Q Either 1911 or 1912? A Either 1911 or 1912, I have forgotten which.

Q You have had it for sometime? A Yes, sir.

Q I want to call your attention to that part of the testimony of this defendant which she gave on the stand in which she said she never uttered a solitary English word to you during that time. I ask you if you ever talked English with her?

A Yes, sir.

Q I suppose you are required by the rules of the Board of Health to go there at certain times, for certain purposes?

A Yes, sir.

Q And that accounts for why you went there? A Yes, sir.

Q I show you this paper, purporting to be an application to practice midwifery, dated September 29th, 1913. I ask you if that is in your handwriting, part of the writing there?

A Yes, sir.

Q Now, I show you this paper and ask you why it is you went there on that day?

MR. GOLDBERG: Objected to as immaterial.

MR. MANLEY: I maybe I haven't any right to pursue the examination any further, if it is objected to, I will withdraw it.

THE COURT: You are calling for the operation of the Witness' time, and I don't think there is any warrant for it.

105  
CASE #1760

Q Did you have a reason when you went there on that date?

MR. GOLDBERG: That is objected to.

MR. MANLEY: Co unsel objecting, I won't pursue it further. You may cross examine.

CROSS EXAMINATION BY MR. GOLDBERG:

Q Miss Barron-- A Mrs. Barron.

Q At the time you called to see the defendant as testified just now, did you know she had been arrested for an attempt to commit abortion? A I had heard the gossip among the midwives on the East side that she had been arrested.

Q And you knew that fact? A I didn't know it other than gossip.

Q When you hear a thing, isn't that some evidence that you know it? A It is not facts. Gossips are not facts.

BY THE COURT:

Q You suspected it, did you not? You had heard it, and you had no reason to doubt the rumor, had you? A I had no reasons to either doubt or affirm the rumor.

BY MR. GOLDBERG:

Q At the time of the interview that you had, was there a little girl present? A There was.

Q And did the little girl act as an interpreter? A She did.

Q And you say that you had a suspicion or you suspected that the defendant had been arrested for an attempt to commit an

CASE #1760

184  
abortion? A I had frequently heard among the midwives that that midwife had a reputation of committing abortions.

MR. GOLDBERG: I move to strike out the answer about this gossip.

THE COURT: Yes, strike it out.

Q You said that you heard of her arrest? A Yes.

Q There is no misunderstanding about that, A No, there is no misunderstanding about that.

THE COURT: Now, her reputation is not germane to this inquiry. Therefore, any reference to it will be stricken out at this time.

BY MR. GOLDBERG:

Q Now, Mrs. Barron, notwithstanding what you heard, you permitted the question in the application, "Have you ever been arrested on a criminal charge, " to be submitted to you and filed by you being answered "No"? Is that correct? "Yes", or "No"? A It is, yes.

MR. GOLDBERG: That is all.

REDIRECT EXAMINATION BY MR. MANLEY:

Q Mrs. Barron, as far as you know, the Board of Health had nothing to do with the arrest of this defendant on this charge? A As far as I know.

MR. MANLEY: That is all.

-----  
T E S T I M O N Y C L O S E D.  
-----

CASE #1760

MR. GOLDBERG: Now, if your Honor please, I renew my motion for a dismissal of the indictment and the discharge of the defendant, on the grounds that have already been stated, and also on the ground that, to predicate a charge of an attempt to commit an abortion is assumed that the crime itself could have been committed. The proof appears affirmatively that the complainant was not pregnant at the time that this crime was supposed to have been committed, and I maintain that, in order to be guilty of an attempt to commit a crime, the person must be in a position to commit that crime itself.

The cases hold that, in order to be held for a crime that in no instance can you be held to commit that crime unless if uninterrupted you could commit the crime itself. In other words in order to be charged with attempting to commit a crime, a defendant cannot be held unless, if uninterrupted, he or she could have committed the crime itself.

I also maintain, under Section 80 of the Penal Law, that in order to be charged with the crime of abortion, that the complainant must be pregnant, where the use of instruments is alleged, and that that charge cannot be maintained unless the complainant is pregnant.

The Code reads as follows: "A person, <sup>with intent</sup> thereby to procure the miscarriage of a woman, unless the same is

1057  
CASE #1760

necessary to preserve the life of the woman or of the child with which she is pregnant, prescribes, supplies, or administers to a woman, whether pregnant or not".

In other words, the Statute holds that, whether a woman is pregnant or not, the defendant advised or caused a woman to take any medicine, or prescribed the taking of medicine, whether pregnant or not, she is guilty of the crime of abortion.

It further provides, in subdivisions two, that the use of any instrument, or causing to be used any instrument, the woman, in order to be guilty, or the person, in order to be guilty of this crime, the complainant must be pregnant.

Now, these subdivisions surely stand for something.

THE COURT: What Section did you say?

MR GOLDBERG: Section 80 of the Penal Law. Your Honor will notice the two subdivisions there that speak of two separate and distinct conditions that must exist in order that the crime of abortion --

THE COURT: No, I don't so read it. It reads as follows: "Definition and punishment of abortion. A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman"-- Now, you may disregard entirely the first subdivision--"Uses, or causes to be used, any

1058

CASE #1760

instrument or other means, is guilty of abortion."

MR. GOLDBERG: Now, if your Honor disregards the subdivision one, then the Section will read as follows:--

THE COURT: Now, I understand your contention. I will hear you.

MR. GOLDBERG: Disregarding subdivision one, the punishment and the definition of abortion, it would read like this: "A person, who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, uses or causes to be used any instrument or other means".

In other words, to be guilty of that charge by the use of instruments, the complainant must be pregnant.

Now, where drugs are used, subdivision one specifically provides that it don't make any difference whether the woman is pregnant or not. Now, surely the intent of the Legislature, and if I may be permitted to say that, I have a slight idea as to what the intent of a Legislator might be in the drafting and passing of Legislation of this kind, from my seven years experience, was that the subdividing such as this section prescribes means something. It must have been the intent of the Legislature to make a distinction where medicines were used on a woman, whether she was pregnant or not, or whether an instrument was

1501

CASE #1760

used on a woman where she was not pregnant.

Now, Section 1050, speaking of manslaughter, shows that a distinction of that kind must have been in the minds of the Legislators, because in Section 1050 there is no subdivision, and they specifically prescribe, whether instruments or drugs are used, a person administering them is guilty of the crime of manslaughter.

Surely, there must have been in the minds of the Legislature a distinction between the use of instruments and the using of drugs. Hence the divisions and the subdivisions as appear in Section 80 of the Penal Law.

The Conrad case even goes further and says that even in the use of an instrument that of itself would not be sufficient unless the instrument could bring about an abortion.

THE COURT: This case is very similar to the case of the People against Conrad.

MR. GOLDBERG: Except there was a seven months pregnancy there, and the defendant was a doctor, skilled and trained.

THE COURT: What do you say, Mr. District Attorney?

MR. MANLEY: It is my opinion that there is no merit in the argument of Counsel. I should say, the way your Honor suggested when you read it, a portion of it might read, as it applied to this case, as follows: "A person who, with the intent thereby to procure the miscarriage

E 5 0 1  
CASE #1760

B  
S  
O  
I

of a woman, uses or causes to be used any instrument or other means, is guilty of abortion."

Of course, it says something about pregnancy in the saving clause, "Unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant."

Now, what we are concerned with principally is what the Appellate Division would say. Now, there is the Conrad case and the Glynn case. The facts are almost the same in those cases as here. Glynn was before the Appellate Division after Conrad. They affirmed Glynn without any opinion, on the authority of Conrad.

Now, later on, in the Peale case, the Appellate Division put in a dictum there, which is as follows-- and this is the exact language-- Now, I say this to show the attitude of the Appellate Division upon a close question, and if there is any doubt about this it is time the Appellate Division has told us whether pregnancy is necessary.

In the case of the People against Peale, one thirty three Appellate Division, page 35, it was held: "It has also been held that the crime of attempting to commit the crime of abortion may be committed upon a woman who is not pregnant. People versus Conrad, 102 Appellate Division, 566,; affirmed 182 N. Y/ 529."

CASE #1760

Now, all we can do where there is no case exactly in point, as I understand is the case here, is to argue upon analogy. I cannot see any difference between attempting to commit grand larceny in a pocket which has nothing in it and an attempt to perform an abortion on a womb which has nothing in it:

THE COURT: I have already intimated my ruling. I will deny your motion, Mr. Goldberg.

MR. GOLDBERG: The District Attorney lays great stress on the Conrad case. The Conrad case is a case where there was a pregnancy. The pocket picking case is based on the Statute, what the present law says pocket picking is. My motion is based also on the Penal Law which surely distinguishes between these two sets of crimes, so the argument has not relevancy as far as Section 80 of the Penal Law goes.

THE COURT: But I held precisely what I am holding here in the matter of Hirlo, or some such name as that, as to the possession of a weapon, and that, I think is the clearest case in point. The Court of Appeals held that the crime was made out when one violated the terms of the Statute. Now, the terms of the Statute here forbid a person using any instrument with the intention of producing a miscarriage. Now, did the defendant so use the instrument? That seems to me to be the question.

1059

CASE #1760

151  
MR. GOLDBERG: How could a miscarriage be produced?

THE COURT: We have the Statute here, and we have to determine whether that Statute has been violated. I have given what I have given out for the purpose of enabling you to understand the operation of my mind and the condition of my mind. Now, I will deny your motion.

MR. GOLDBERG: I take an exception.

THE COURT: Now, do you want to sum up your case or submit, gentlemen? What do you say about it?

MR. GOLDBERG: I would like to have a few moments.

THE COURT: How long do you want, Mr. Goldberg?

MR. GOLDBERG: About fifteen minutes.

THE COURT: What do you say, Mr. Manley?

MR. MANLEY: Well, take twenty minutes each side; that is forty minutes; that will bring us to twelve o'clock.

(Mr. Goldberg then summed up the case to the jury on behalf of the defendant)

(Mr. Manley then summed up the case to the jury on behalf of the people).

-----

1069  
CASE #1760

THE COURT'S CHARGE

FOSTER, J.

Gentlemen, the defendant at the bar is charged, not with abortion, but with an attempt to commit the crime of abortion. The District Attorney asks that I submit the charge as an attempt, and not the charge of abortion.

An attempt is an act done with the intention of committing a crime and which act must tend toward the commission of crime and yet fail.

Thus, if, intending to strike you, Mr. Foreman, I lunge at you and strike at you, but fail to hit you, I attempt to strike you, don't I?

Now, it is the same thing in crime. If I intend to commit a crime and do an act tending to effect the commission of the crime, but fail of its accomplishment, I am guilty of an attempt at the crime. Just remember that.

An attempt to commit a crime is of itself a crime, not so severely punished as is the crime itself, but, nevertheless, it is a crime, and is punishable.

The law which defines abortion is very simple indeed. A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary

150

CASE # 1760

to preserve the life of the woman or of a child of which she is pregnant, uses or causes to be used any instrument or other means, is guilty of abortion.

Now, the charge is here that this defendant, with intent thereby to procure the miscarriage of a woman, used, or caused to be used, instruments or other means for that purpose. That is to say, she attempted to procure the abortion of a woman, attempted to use these instruments or means for producing a miscarriage, and that, with that intention, she did an act tending towards the use of the instruments and toward effecting the miscarriage and abortion of a woman.

Whether guilty or not is the question you are called upon to determine. The defendant is presumed to be innocent. It is the duty of The People to prove by competent, legal evidence and beyond any reasonable doubt the defendant's guilt; and if they fail to do that, the defendant is entitled to an acquittal.

This is the first case submitted to you, gentlemen. Therefore, it is proper for me to say to you that you are a part of the Court; that you are the right arm of the Court; you are the triers of fact; you are to determine all questions of fact, and try them fairly between The People on the one hand and the defendant on the other.

CRIMINAL  
CASE #1760

3 100  
You are to convict no one unless beyond any reasonable doubt the defendant's guilt is proved, but if it is proved beyond a reasonable doubt then your duty is equally plain - convict.

Now, that is all there is in the case, gentlemen. It rests with you to decide it. Are there any requests ?

MR. GOLDBERG: Yes. I take an exception to the illustration that your Honor gave.

THE COURT: What illustration ?

MR. GOLDBERG: The illustration of your attempt to strike the Foreman. That act can be committed. The act of abortion here could not have been accomplished.

THE COURT: That was only, gentlemen, to define to you the meaning of the term "attempt" in law; nothing more and nothing less.

MR. GOLDBERG: I also take exception to what your Honor said relative to this crime to cause the miscarriage of a woman, because the crime which is charged against the defendant could not have caused the miscarriage of the complainant, the complainant not being pregnant.

THE COURT: Very well. You may note your objection and exception.

MR. GOLDBERG: I ask your Honor to charge the Jury that where to accomplish a crime an instrument must be used, it must be an instrument suitable to the

100

CASE #1760

completion of the crime.

THE COURT: Yes.

MR. GOLDBERG: And that the acts of the defendant could not, if completed, cause the abortion, according to the testimony offered by the complainant.

THE COURT: Well, the Jury heard the testimony.

MR. GOLDBERG: I ask your Honor to charge the Jury that if they believe there was no intent to commit an abortion they must acquit the defendant.

THE COURT: Yes, certainly. If there was no intention to commit abortion on this woman's part, she is not guilty, gentlemen.

MR. GOLDBERG: I ask your Honor to charge the Jury that the mere finding of instruments in the home of the defendant has absolutely no bearing on the charge of an attempt to commit an abortion.

THE COURT: I can't say that. It does not prove the crime, but it is a circumstance the Jury may consider, and give to it such weight as they think it ought to have.

MR. GOLDBERG: I take an exception to the modification. I ask your Honor to charge that if the Jury believe no abortion could be committed, even if the defendant had not been interfered with, they must acquit the defendant of the crime of an attempt to com-

1961

CASE #1760

mit an abortion.

THE COURT: No, I cannot go so far as that. I think I have covered that fully.

MR. GOLDBERG: Exception. I ask your Honor to charge the Jury, in view of the fact it appears from the evidence of the complainant that she was not pregnant, the defendant, therefore, could not be guilty of the crime of abortion.

THE COURT: I do not understand that, Mr. Goldberg. Read it again.

MR. GOLDBERG: I ask your Honor to charge that, in view of the fact it appears from the evidence the complainant was not pregnant at the time, that the defendant could not be guilty of an attempt to commit the crime, that the consummation of all the acts of the defendant themselves, if committed, could not have been guilty of the crime of abortion.

THE COURT: I have already covered that. I decline to charge, except as I have already charged.

MR. GOLDBERG: I take an exception.

THE COURT: You may retire, gentlemen.

(The Jury then retired, at 11:50 A. M.)

(The Jury return, at 12:25 P. M.)

(The Jury announce that they find the defendant guilty of an attempt to commit the crime of abortion.)

CASE #1760

(The Defendant is duly sworn, and her pedigree taken.)

MR. GOLDBERG: Now, I ask in arrest of judgment and the discharge of the defendant, on all the grounds -

THE COURT: I am quite clear in my own mind that your motion is quite without merit, but I will hear it, of course, and if you wish to submit any memoranda, submit it, but I am quite clear against you.

MR. GOLDBERG: Then, your Honor thinks the division under Section 80 of the Penal Law means nothing ?

THE COURT: I do not think your contention, as a matter of law, has much of merit, but I am perfectly willing to consider it, and give you an opportunity to submit it. I will not dispose of the case today, I will put it over, and you may reserve all your motions.

MR. GOLDBERG: Will your Honor put it over until Friday for sentence ?

THE COURT: For disposition, Friday.

Amos G. Russell,

Official Stenographer.

CASE #1760

1099

COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK  
PART FIVE.

-----X  
 :  
 THE PEOPLE OF THE STATE OF NEW YORK : B e f o r e  
 :  
 - against - : HON. WARREN W. FOSTER,  
 :  
 PAULINI PAPP : J u s t i c e  
 :  
 -----X

New York, Thursday, October 16th, 1913.

THE DEFENDANT IS INDICTED FOR ABORTION.  
INDICTMENT FILED MARCH 13th, 1913.

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

ISIDOR WASSERVOGEL, Esq., and  
ROBERT E. MANLEY, Esq., Assistant Dist. Attorneys,  
For The People.

MARK GOLDBERG, Esq.,  
For the Defendant.

-----  
THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE  
HON. WARREN W. FOSTER, J.

THE CLERK OF THE COURT: Paulini Papp, what have  
you now to say why judgment should not be pronounced  
against you according to law ?

MR. GOLDBERG: If your Honor please, I wanted to make a motion in arrest of judgment, and for the discharge of the defendant, on the ground that no crime has been committed for which the defendant was indicted.

The charge in the indictment is that she committed an abortion. The defendant has been found guilty of an attempt to commit an abortion, and I contend that, in view of the fact that it affirmatively appears that the complainant was not pregnant, that the defendant could not be guilty of an attempt to commit a crime. No matter what she would have done, the crime could not have been committed. In other words, on account of the affirmative fact appearing that the complainant was not pregnant, the defendant could not be guilty of an abortion. Therefore, one cannot be guilty of an attempt to commit a crime if they cannot commit the crime itself.

There is no case that I have been able to find or that the District Attorney has been able to find on the point blank proposition of one being guilty of an attempt to commit an abortion when there is no pregnancy. In fact, in my opinion, the trend of the decisions seem to be to the contrary.

In the case of The People against Teal, it was held that the defendant in that case could not be guilty of subornation of perjury because the testimony given was

CASE #1760

not perjury, and therefore, that being so -

THE COURT: Yes, I recall that case. Twelve Judges held one way and four the other, but the four made the law.

MR. GOLDBERG: It simply puts more emphasis on the proposition I advance, that no man can know that to ~~be~~ be so which is not so in truth and in fact.

Now, in addition to that proposition, on which there seems to be so much difference of opinion, I urge Section Eighty of the Penal Law, which makes a distinction between one prescribing medicine and one using instruments, and it appears clearly, under subdivision one of that Section, that one who prescribes medicine to a person, whether the person is pregnant or not, is guilty of the crime of abortion.

Subdivision two holds that by the use of instruments there must be, according to my interpretation, a pregnancy. Therefore, in this case, where instruments were used, and there is no question about that, and there **was no** pregnancy, that the defendant cannot be guilty of this crime.

I also call to your Honor's attention Section 1050 of the Penal Law, which, instead of making these distinctions in subdivisions, as appear in Section 80, they have grouped together in one sentence the fact that

CASE # 1760

one is guilty of manslaughter whether by the use of drugs or whether by the use of instruments, or no matter what may be used, as set forth in that Section, in one group.

Now, that being set forth in one sentence in Section 1050, and there being a subdivision in Section 80, I contend the Legislature meant a distinction, and if any distinction was meant that is the distinction I now raise and strongly urge.

I will be frank with your Honor. If this defendant had not been indicted for an attempt to commit an abortion, or if the crime had been something else, the attitude of the defendant's Counsel might have been different, but I urge strongly now, as I contended when the arrest was made, that we cannot be guilty of attempting to commit a crime if that crime could not be committed itself, - no more than if a man shot a dead man, and if he had the intent of killing that man, if the man was already dead he cannot be guilty of murder; and I have been informed that the medical people who prosecute all these cases have not been in back of any case of this kind, where there has not been a pregnancy. They believe, as I believe, and I am backed up by authority and by the Penal Law, that an attempt to commit an abortion on a woman who is not pregnant cannot be so in

1010  
CASE #1760

truth, and in fact is no crime, and I urge that in arrest of judgment and the discharge of the defendant.

THE COURT: Do you wish to say anything, Mr. District Attorney?

MR. MANLEY: I think Counsel urged that same argument which he has now advanced at the time of the trial, and I think I replied to it at that time. There is, in fact, no case absolutely the same as the case at bar, so far as I know, relating to an attempt to commit abortion. It seems to me this is a very good time to have the Appellate Division pass upon the subject. Your Honor has often compelled law to be made along these lines, and it is rather hazy as to what constitutes an attempt to commit a crime. Now, here is a good chance for the Appellate Division to give us light on the subject. There is an English case which holds it is a crime to attempt to commit an abortion on a woman who is not pregnant. Previous to that case, it was the law that you could not attempt to commit larceny upon a pocket which contained no property. Afterwards that other decision was handed down by the Court and that overruled the other case. Now, here in New York decisions hold it is possible to convict of attempted larceny upon the person of an unknown woman or where the pocket has no money. Now, where is the

CASE #1760

difference between that and this, in principle?

THE COURT: Well, there have been some very remarkable decisions on that subject, the subject of what was necessary to constitute an attempt. We have the Jaffee case, holding that you can attempt to steal from a pocket containing no property, but you cannot attempt to receive stolen property unless there is stolen property. You have the Teal case, which baffles the ordinary intellect in its sinuosity and technicality, twelve judges disagreeing with four, the four laying down the law. Then you have the case which hold you can attempt to commit larceny by putting your hand in an empty pocket. Now, it seems to me, Mr. District Attorney, that there is reasonable doubt in this case, that there is a nice question of law, and it would be my duty, after imposing sentence, to grant a certificate of reasonable doubt on the question of whether or not the facts prove a crime, whether a crime has been proven beyond reasonable doubt against the defendant, the principal question being whether under the Statute it is necessary that there should be a pregnancy before there can be any attempt to commit an abortion. It seems to me I am bound to hold that in the first instance, and let the Appellate Court determine that principle of law for the guidance of the Courts. But that does not interfere

CASE #1760

with nor prevent the Court in any respect from passing its judgment. It must pass its judgment as a preliminary to the appeal. The motion is denied.

MR. GOLDBERG: I take an exception.

THE COURT: Now, have you gentlemen anything to say before the Court imposes sentence ?

MR. GOLDBERG: I was simply going to add this: In view of the fact the District Attorney seems to think there is a doubt about this -

MR. MANLEY: I don't think there is a doubt. I personally have no doubt. I think that is a good course to pursue; that is all.

THE COURT: It doesn't matter whether you have, personally, or not. Of course, we all have our views. I have to follow mine.

MR. MANLEY: I don't want the Court to think I have any doubt myself.

MR. GOLDBERG: In view of the fact there is a doubt about that, could not the question be raised much easier and probably much better if raised by the District Attorney ?

THE COURT: No, I can't grant a motion in arrest of judgment at this time. My disposition is to impose a reasonable and fair and just sentence, and then to issue to you a certificate of doubt, fixing bail at a

0917181760

reasonable sum. Now, as to bail, Mr. District Attorney, I think I shall fix twenty-five hundred dollars.

MR. MANLEY: That is satisfactory.

THE COURT: You gentlemen may agree and submit to me the proper certificate, reciting the facts as you gentlemen wish them recited.

Paulini Papp, you have been convicted of an attempt to commit an abortion. So far as I know, there are no extraordinary nor unusual circumstances in your case. A skilful officer of the Police called on you and represented herself as pregnant, and you attempted, it is said and proved, to commit an abortion on her, though she was not pregnant.

The question of law is new and novel, and under all the circumstances of the case, as I have intimated, I am disposed to issue a certificate of reasonable doubt, fixing your bail at twenty-five hundred dollars, after the imposition of sentence.

Now, under all the facts and circumstances of the case, considering your age, your offence and all the facts brought to my attention, the Court sentences you to imprisonment in the Penitentiary for one year.

MR. MANLEY: May I call your Honor's attention to this? The Statute says, "imprisonment ~~is~~ not to exceed four years or one year in a County jail." Now,

1011

CASE # 1760

I think the Penitentiary and the County Jail is the same.

THE COURT: You don't raise that point at all?

MR. GOLDBERG: No.

THE COURT: Because you don't want this person sent to State prison.

MR. GOLDBERG: No.

THE COURT: Now, there are some anachronisms in our law. There is one providing for sentence after conviction for receiving stolen property, which seems to mean you can only send to the Penitentiary for six months, and I have sent defendants to the Penitentiary for more than six months. I have said in those cases, "If you want to raise that question, I will send the defendant to State prison", and they have said "No, we accept your Honor's leniency, and accept the sentence."

MR. GOLDBERG: I am willing to go on record as waiving that technicality.

THE COURT: The place of imprisonment I have fixed here because, if the defendant cannot give bail, you want to confer with her, and she will be near by.

MR. MANLEY: Counsel having waived that, I don't think there is any difficulty.

THE COURT: No, and I think, as a matter of law, the sentence is right.

MR. GOLDBERG: May I make this suggestion? The

CR 101  
CASE #1760

bail in the Police Court was a thousand dollars. I was going to ask your Honor if you would not make that bail two thousand dollars.

THE COURT: Any objection?

MR. MANLEY: I have no objection to two thousand.

THE COURT: Very well. Two thousand dollars, by consent.

Amos G. Russell,

Official Stenographer.

I hereby certify that the foregoing is a full and correct transcript of the proceedings had upon the trial of this indictment

Amos G. Russell

1077  
CASE #1760