VOLUME 1

First Count

The 21 Women

Constable Martel

Chief Manion

Miss Palmer

Dr. De Haitre

REX vs. PALMER

Eastview Police Court,

1936

PRESIDING:

His Worship Magistrate L. Clayton.

Raoul Mercier, Esq., Crown Attorney pro tem.

F. W. Wegenast, Esq., K. C., and

A. W. Beament, Esq., K. C. for the defence.

Volume I (of 9 volumes)

Pages i to D-198

John E. Fagan,

Shorthand Reporter,

Apt. 3, 234 Charlotte St.,

Ottawa.

Rideau 2013

REX vs. PALMER

Eastview Police Court

1936

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Rideau 2013.

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Bill of Particulars

REX vs. PALMER

County Court House, Ottawa,

14th October, 1936.

Hearing for argument re Bill of Particulars; present:

His Worship Magistrate L. Clayton.

A. W. Beament, Esq., K. C., for Defence.

Raoul Mercier, Esq., Crown Attorney pro tem.

John E. Fagan sworn as Shorthand Reporter.

Mr. Mercier: You have a copy of the information?

Mr. Beament: I have of the original information.

Mr. Mercier: In order to begin: my learned friend is asking for certain particulars; I may say now, subject to changes we may have after, I intend to have this information amended to read:

> "That Dorothy Palmer of the City of Ottawa within the space of six months last past, to wit, between the 1st day of August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and without lawful justification or excuse:

(a)offer to sell an article to one Mrs. Dorothy Leblance which said article was intended or represented as a means of preventing conception."

The Court: "(a)" is "offer to sell"?

Mr. Mercier: Yes, Your Worship.

The Court: "Did unlawfully"?

Mr. Mercier:

"(a) offer to sell an article to one Mrs. Dorothy Leblance which said article was intended or represented as a means of preventing conception."

And:

"(b) did advertise in the Town of Eastview, County of Carleton, in 1936."

Mr. Beament: Two separate charges?

Mr. Mercier: Yes, in order to prevent the word "or", and I might add we will specify a name in that instance; there is only one known instance. And:

"(b) in the Town of Eastview, County of Carleton, between the first day of August, 1936 and the first day of September, 1936, advertise means, instructions, drugs or articles intended or represented as a means of preventing conception,"

And:

"(c) that the said Dorothy Palmer in the Town of Eastview, between the first day of August, 1936 and the first day of September, 1936, did publish an advertisement of a means of instructions or articles, as a means of preventing conception."

The Court: "(b)" is "did advertise" and "(c)" is "did publish an advertisement"?

Mr. Mercier: Yes.

The Court: And "(d)"?

Mr. Mercier:

> "Did have for disposal means or instructions and articles intended or represented as a means of preventing conception."

All to be headed by "the said Dorothy Palmer".

Mr. Beament: Four charges?

Mr. Mercier: Yes.

The Court: "Did offer to sell" and "did advertise"?

Mr. Mercier: Yes, instead of saying "or".

The Court: It gives a clearer defence.

Mr. Beament: No; what we are charged with, I confess I don't know.

The Court: This, I presume, will make it more clear?

Mr. Mercier: This information was laid by the police officer who laid the charge and it is amended to read a little more clearly than that; after I have gone through with it; and I submit in view of the circumstances, subject to any objection from my learned friend and Your Worship's ruling, to assure the accused of a fair trial. If the accused did not commit this offence or if the accused did not sell any means, subject to the defence, of preventing conception as enumerated in the indictment, she would have no reason to have any further particulars, and if she has sold anything -- there is a case on that in Clark's Criminal Cases, volume 8, page 69.

Mr. Beament: I haven't been furnished with copies of these new offences.

The Court: There is an application for amendment.

Mr. Beament: I am not opposing the amendment; I was warned about it, but I think he has had ample time to prepare a new information, so I need not rely too much on my memory to know what this lady is charged with.

Mr. Mercier: This is the case of Regina vs. Stapleton and others:

> "The defendant is entitled…enable him to get them."

Mr. Beament: I don't know what this is amended to until I receive copies of the charges. My friend will admit I have been after him to give me copies

Mr. Mercier: I understand that.

The Court: Couldn't you have had here today, Mr. Mercier, an amended information ready to enter into the record?

Mr. Mercier: I might possibly have had that, but my learned friend will admit we discussed this informally. The charge is not amended materially.

Mr. Beament: I am not surprised at the amendment but at not having the draft charges prepared.

Mr. Mercier: It is all contained in this publication and advertising.

The Court: Perhaps I don't know what you are asking.

Mr. Mercier: I am not asking for anything; I have read the amended charge.

The Court: You are not asking to have the charge amended?

Mr. Mercier: I will ask that, but I take the opportunity today of telling him what; I will supply copies of the amended charge.

The Court: You are supplying them today?

Mr. Mercier: No, the police laid the charge and they will be there Friday.

The Court: I think the point well taken: before we get to the particulars, we should like to know what the charges will be.

Mr. Beament: Perhaps we will take the charges up seriatim; different considerations may apply.

Mr. Mercier: Changes must be made in upper court.

Mr. Beament: Yes, but we should have new information, re-sworn.

Mr. Mercier: I am telling ---

Mr. Beament: What is the first?

Mr. Mercier:

> "That Dorothy Palmer at the Town of Eastview, County of Carleton, between the first of August, 1936 and the

> first of September, 1936, knowingly and without lawful justification and excuse, offer to sell a means of instructions, articles and means to prevent conception."

Mr. Beament: In the Town of Eastview, over a period of a month, we are told we are accused of offering to sell articles to prevent contraception?

Mr. Mercier: Yes.

Mr. Beament: We deny categorically -- how can I know the defence unless I know what articles were offered for sale; secondly, the time should be more detailed, because if we made an offer to sell, a month is an absurd time; particularize and say the place where the alleged act took place.

Mr. Mercier: I think that is unreasonable. Particulars may be asked to give the accused a fair trial, but are not needed in this case. Now, I have referred to Regina vs. Stapleton and in that it was held:

> "That the Court will not order particulars to be furnished unless he has no knowledge of an over-taxed charge".

Mr. Beament: Where the accused ---

Mr. Mercier: We are alleging serious acts, such as advertising.

Mr. Beament: By "offer for sale"?

Mr. Mercier: That is one particular person.

Mr. Beament: If the Crown knows who, we are entitled to it.

Mr. Mercier: The Crown just learned it.

The Court: It is not in the proposed amended information.

Mr. Mercier: There is only one person; I don't remember the name.

Mr. Beament: My learned friend offers to give the name?

Mr. Mercier: Yes.

Mr. Beament: And That person no doubt will know the date, place and what was offered to sell him or her.

Mr. Mercier: It is not my custom to interview witnesses for the Crown before giving their evidence; if that person does know the date, there might be people there who might not remember the exact date in the month of August and, on the question of advertising ---

Mr. Beament: We will leave that until we come to it.

The Court: Yes; the first charge is:

> "offer to sell certain articles"

and you state in your amended information you will set out the name of the person to whom this alleged sale was offered?

Mr. Mercier: Yes, because that name is available.

The Court: That should be sufficient. "An article for preventing conception"; I don't think that is going to mislead you; you are not alleged to have offered books or groceries, but an article for means of preventing conception. Those are very narrow in their application.

Mr. Mercier: I understand it is up to the Crown to prove these articles can be used for that purpose, but surely my learned friend should not ask me the name of the doctor or his evidence or anybody who can possibly give evidence.

Mr. Beament: I am not asking the names of witnesses but particulars of the offence; I am not trying to find out who the witnesses are except insofar as finding out in detail the offence with which I am charged so I can meet it.

The Court: I think, Mr. Beament, alleging the name of the person to whom the offer to sell was made of these articles during the month of August should give you information upon which to base your defence.

Mr. Beament: On the first charge my learned friend kindly pointed out the case -- it is a decision of the Supreme Court of Canada.

The Court: The Brodie case?

Mr. Beament: If you wish I shall read it.

The Court: Yes.

Mr. Beament: Well, if you have it?

The Court: But maybe some particular thing?

Mr. Beament: It is a judgment of Rinfret only; I read the judgment of the Court and I don't think perhaps it is necessary for me to read the more introductory portions of the judgment and I might, I think, also say this: some of these things I will read are perhaps dicta in relation to this particular case, but they are dicta to the whole Supreme Court of Canada. I don't think all is necessary in relation to the facts in this particular case to be considered. It is in Canada Law Reports, part 5, May 31, 1936, the Buck case:

"The general provisions as to indictments…"

Mr. Mercier: What page?

Mr. Beament: 191 to 196, about the middle of the page, where the statute is quoted:

"…some way or other."

There are two views.

The Court: No, I don't think there is that diversion of views.

Mr. Beament: I am reading this in relation to all the charges.

The Court: But at the moment there is not such a wide divergence.

Mr. Beament: No.

"…" (continued on next page) "…adequate."

Then it is in French, by Justice Bernier.

Mr. Mercier:

"…followed by trial."

Mr. Beament:

"It is not possible…it has now become our duty to decide the section…Section 852…time, place and matter… Section 853".

Section 853 obviously contemplates changes or the section covering the omission of details would be useless.

"…Section 856…no court…objectionable".

The rest has application to the particular wording. At the bottom of page 196 and page 197:

> "…referred to in the charge…each of these sub-sections begins with 'further'. I will say 'the person, place and thing'…fair trial…sub-section 'g'…'d', 'e', 'f' and 'g'…859…" (page 198) "…acts in general…lift it from the general to the particular."

Of course, we are dealing with a case of conspiracy. I think from then on they simply apply those principles.

Mr. Mercier: Except in the last paragraph:

> "I do not want to depart with this appeal…certain generalities…page 200."

They add that also.

Mr. Beament: That is a very strong judgment.

Mr. Mercier: Undoubtedly.

The Court: It clarifies it a great deal.

Mr. Mercier: So far as this case itself is contained, -- the section of the Code alleges a special act in itself; it is not a general act, but a special act of selling certain things.

Mr. Beament: That is no more special than the act of murder.

Mr. Mercier: Oh, yes, it is; it is much more general. As to particulars, I am perfectly satisfied to give any of them within reason but I should not be fettered in my prosecution of the case.

The Court: That is so.

Mr. Mercier: It is quite reasonable if a person offers to sell a certain person, if the Crown alleged this act was general, I don't think I could offer any particulars; there may be thirty, forty or fifty witnesses.

The Court: On the first count, "offering to sell"?

Mr. Mercier: Not in this particular case.

The Court: Let us dispose of this particular one; we have four.

Mr. Mercier: I don't know what my learned friend wants any further; it is an article intended or represented to prevent

conception; I don't suppose my learned friend wants me to produce the article before trial. I submit it is my duty to produce it at the trial and that I prove it can be used for that purpose. There is no doubt of that. If I do not prove that and that it was offered -- I submit we cannot give the whole theory of the Crown on this thing; we must prove certain acts were done contrary to that section and that they were done by the accused.

The Court: My interpretation of that Brodie case is that it is very simple; I may be wrong, but my interpretation of the Brodie case is that on any count on indictment there should be not only allegation of the offence in the words of the Code or proper language equal to the wording of the section of the Code but there should be sufficient in the wording of the indictment to take the charge out of the general and specify the particular act alleged by the offence. Now, in specifying the particular act the Crown doesn't have to go into minute detail as to the specific act alleged.

Mr. Beament: That is right.

The Court: As long as it gives sufficient details so that the defence knows what it is charged with.

Mr. Beament: It is the detail of the act.

The Court: If it is felt the charge doesn't contain sufficient particulars it is for the defence to ask further particulars and for the Court to decide.

Mr. Mercier: Yes, I agree to that; I am not more interested in fettering my learned friend than in fettering my prosecution.

The Court: In this it is proposed the Crown amend it, that the accused between the first day of August, 1936 and the first day of September, 1936, did offer for sale articles for the prevention of conception to a certain person?

Mr. Mercier: Yes.

The Court: I think there is sufficient detail there to base your defence on that particular charge.

Mr. Beament: I am entitled, I think, to particulars of those.

Mr. Mercier: I have shown them to my learned friend.

Mr. Beament: I have seen things taken from the lady; it was outside the date of this offence; the police on a certain date arrested this lady and found certain things which they rightly or wrongly seized; I think wrongly under all the circumstances, and now we are charged with an offence at an earlier date. I don't know what that has to do with it unless it is particulars of another offence.

The Court: Your charge is that between these thirty-one days you are charged with selling?

Mr. Beament: Offering to sell.

The Court: Offering to sell to a certain person. Surely the defence knows whether there was any offering for sale in that period.

Mr. Beament: But that assumes guilt on the part of the accused. If the Crown knows -- it must know what it was -- if we did offer to sell -- what objection can there be to the Crown saying what. The Crown surely is not out to get an unfair prosecution?

Mr. Mercier: I haven't done it in eleven months and I am not going to now. But if laws demand full particulars and the whole evidence, I am not in it and I am not interested, but it is my purpose to be as fair as possible as to what particulars he may be entitled to. I submit there is no imputation this woman is guilty until proved, if she is. We allege she did sell something and this other case, the Stapleton case, it is made very clear there that the -- page 69:

> "The Court will not order particulars to be furnished in the absence of an affidavit he has been over-charged."

Mr. Beament: That is an overt act and there is none here.

The Court: Yes, it is.

Mr. Beament: But in what?

The Court: An article as a means of preventing conception.

Mr. Beament: I can't see it.

Mr. Mercier: If a person attempted to utter a forged document it shouldn't be necessary to say it was a note or cheque and the date.

Mr. Beament: Surely under Brodie that would be clearly a bad indictment.

Mr. Mercier: To so-and-so.

Mr. Beament: That would be a bad indictment, and it is an argument in my favour; I suggest the example my learned friend so gives is an excellent condition in my favour; an indictment of uttering a forged document to Smith on such a date.

The Court: You have the time, place and person.

Mr. Beament: But not the thing.

Mr. Mercier: A certain instrument. In order to do that we say, "intended or representing as a means to prevent conception." Now, I intend to bring certain pamphlets.

Mr. Beament: It was my friend was objecting to giving evidence.

Mr. Mercier: I want to be reasonable.

The Court: Please keep to the first charge; you are talking about pamphlets.

Mr. Mercier: I have seen the instrument which I am endeavouring to prove, that it was offered as an instrument intended to prevent conception.

The Court: You couldn't say article or instrument?

Mr. Mercier: Yes.

The Court: That would be further particulars.

Mr. Mercier: And not being a technician, I don't know if my learned friend brings objection to the word "instrument"?

Mr. Beament: I am trying to get it clear enough to give this lady a fair trial; I don't know any of the evidence, but I think he should be able to tell from entitlement or particulars superimposed on it what it is, but not the whole evidence of the Crown.

Mr. Mercier: On that first one I don't think anything further can be given unless the whole evidence is given; I am willing to take a chance on it. I am willing to accommodate my learned friend as much as I can and as much as I decently can, but I certainly am not going to offer any particulars I am not ordered to except those I am willing to, because I think they are

perfectly fair and give notice enough to the person of what charged and where it was done.

The Court: I think I will hold that the working as proposed will be sufficient for the Court in the indictment to prevent any unfair trial on behalf of the accused, as far as the first count is concerned. Naming the person to whom the offer of sale is alleged to have been made, the place and time, the thing being an article intended to prevent conception.

Mr. Mercier: The second is:

> "That Dorothy Palmer in the Town of Eastview between the first day of August, 1936 and the first day of September, 1936, did advertise means of instructions, medicine, drugs or articles intended or represented as a means of preventing conception."

This is an advertisement.

The Court: What is an advertisement?

Mr. Mercier: We allege she advertised. Add to that, if my learned friend wants:

> "By means of a pamphlet."

Mr. Beament: I am not drawing the Crown's information for him; he promised to have them ready and we could discuss them.

Mr. Mercier: I said we would discuss this in order to save time.

Mr. Beament: There is no basis for discussion; these informations apparently are not ready.

Mr. Mercier: There is no question of particulars. I accommodated Mr. Berger for a time and then my learned friend wasn't ready.

Mr. Beament: Let us clear that up once and for all. The first thing when I came in the Crown Attorney said, "I am going to amend the information." I said, "let me have the amended information" and that hasn't been produced yet and my learned friend thinks I am bludgeoning him, delaying the case.

Mr. Mercier: I am sorry if it is so but we said we would discuss a certain form of indictment.

The Court: It would have been better to have it in writing; you have given it verbally and it can be changed.

Mr. Mercier: It is being taken down and if my learned friend wants to proceed next Wednesday and Thursday, there is plenty of time to get that.

Mr. Beament: It is intricate and an important case and my learned friend has had weeks to amend these informations.

The Court: We have had the second count; then you said, "by means of a pamphlet": do you intend putting that in?

Mr. Mercier: No, I want to know my learned friend's objections; I am perfectly willing to leave it as it is there.

Mr. Mercier: I am willing to also, because it is clearly so bad an indictment, under the Brodie case, it would never stand.

The Court: I can't draw your indictments for you.

Mr. Mercier: I'm not asking Your Worship to.

The Court: All I could say ---

Mr. Beament: Is that as read, -- the second count?

Mr. Mercier: Yes.

Mr. Beament: I would like to have particulars of the person to whom this advertising was done and the means by which the advertising was carried out and times.

Mr. Mercier: To several different persons in the Town of Eastview by means of a pamphlet.

Mr. Beament: I would like the particulars of this pamphlet.

Mr. Mercier: I suppose I would have to give the pamphlet or cite it. There is another means, which would be laying twenty-five or thirty different charges against this woman. Of course, one of the defences on that is common good. I am taking this as a way of explaining my attitude.

The Court: Just a minute, Mr. Mercier: you suggest Miss Palmer did between certain times advertise to several different persons at the Town of Eastview by means of a pamphlet?

Mr. Mercier: Yes.

The Court: There are particulars; I agree with the defence.

Mr. Beament: I am applying for particulars, not to amend the indictment; I am only applying for particulars.

The Court: The application for amendment is being made in open Court Friday.

Mr. Mercier: The indictment will stand as it is; he can ask for certain particulars, but I would undoubtedly have to lay twenty-five or forty charges and then I could be more specific.

Mr. Beament: If it is as read by the Court Reporter, but it would not be more difficult to give particulars now than in forty charges.

Mr. Mercier: If he can prove it to the Court.

The Court: I think there should be particulars as to the mode and manner of advertising.

Mr. Beament: And the person to whom the advertising was done.

The Court: Probably you would have to separate them into multitudinous acts.

Mr. Beament: I don't think so.

The Court: It is a separate act, each advertisement.

Mr. Beament: Yes, it could be a separate offence, just so, if against a newspaper which goes out to a million people, by proving advertising; it takes two or three people to prove publication.

The Court: That is limiting the Crown in its prosecution; they may wish to call in many people. If you specify certain persons the indictment is limited to them.

Mr. Beament: I am not speaking about the indictment.

The Court: Particulars become part of the indictment.

Mr. Beament: I am not arguing with the indictment.

The Court: Shall be read into the record -- section 860 -- the particulars, as though in the indictment.

Mr. Mercier: Then I should have been made to say to whom, where and when; I don't think I should have to enumerate all the witnesses who have seen this pamphlet or seen it published.

The Court: I think that the mode and manner should be sufficient; that is all the particulars I would order as to particulars of advertising -- the mode and manner, which I understand will be to several different persons, by means of a pamphlet.

Mr. Beament: The pamphlet should be specified.

The Court: I don't know how the Crown can specify the pamphlet.

Mr. Mercier: Without reciting it.

Mr. Beament: "Entitled so-and-so." It is so clear that is in contemplation; unfortunately, none of these cases have been reported under this section and there is no legislation in England on it.

The Court: Which doesn't make it easy for the Court.

Mr. Mercier: Or for the Crown.

Mr. Beament: The Crown must specify.

The Court: It is specifically set out in the Code particulars may be ordered as to passages in a book.

Mr. Beament: And because of that it necessarily means particulars may be ordered of passages, it presupposes the identity of the book should be part of the charge.

The Court: But section 869 doesn't state about information for means of preventing conception. 869 refers solely to section "a" of 867.

Mr. Beament: Right.

The Court: This charge, it seems to me, comes under section "c". If it is the same thing, why not specify it?

Mr. Beament: It is covered by two other sub-sections, by "a", further describing any document or words and further describing any person, place or thing referred to, in the indictment. It is 859, "e" and "g". If we went around exposing a pamphlet as suggested it should be easy to describe that pamphlet with sufficient particularity that it can be identified. I don't suggest the wording in full but surely, he can say a pamphlet published by so-and-so, entitled so-and-so, and the pamphlet's first words and last words being so-and-so; something to

identify it. But, under this, he could bring in any document of any kind.

Mr. Mercier: My learned friend doesn't mean that surely it must be a pamphlet as specified; something must be left for argument.

Mr. Beament: I can understand the reluctance of the Crown to let us know what we are charged with.

Mr. Mercier: The Crown is not reluctant to let you know what you are charged with. She is charged with a certain offence, having done such-and-such a thing. Evidence will be produced there of that and that can't be an unfair trial because the accused can deny ever seeing those or ever having done it.

Mr. Beament: There my friend pre-supposes guilt.

Mr. Mercier: I do not pre-suppose guilt. A person is charged with a certain offence.

Mr. Beament: If you are accused of showing these women something you are either innocent or guilty. If guilty, you should know what it is.

The Court: In the case of Rex vs. Stapleton -- I haven't read it -- it is only an excerpt, but the editors of this book take it from the case, and I don't know whether it is clear in this case or not, but it is alleged to hold:

> "In a later case, before the English Court of King's Bench, this doctrine was indirectly confirmed; and, it was held, that, on a special count alleging overt acts, the Court will not order particulars to be furnished, in the absence of an affidavit by the defendant denying knowledge of the acts charges, and of sufficient information to enable him to meet them. 'The general principle,' said Lord Coleridge, 'applies only to this extent, to give such information as is sufficient to enable the defendant fairly to defend himself when in Court; but, on the other hand, not to fetter the prosecutor in the conduct of his case.'"

Now, the Crown alleges to prove overt acts of advertising by means of pamphlets to several individuals in the Town of Eastview, between such-and-such dates, means to prevent conception by means of information contained in the pamphlets.

Mr. Beament: It doesn't allege any overt act.

The Court: Of advertising.

Mr. Mercier: That section of the Code describes ---

The Court: The particulars will be: the pamphlet to certain persons, without describing the persons, the pamphlet as a means of preventing conception.

Mr. Beament: How can you swear it was unless you know the person to whom this pamphlet was supposed to be shown; how can you know unless the particulars are given. I don't know why or how it can be supposed the defence can grope around in the dark to find out what they are charged with and the very breadth of the whole thing makes it increasingly important the defendant should know what she is up against; I haven't the faintest idea how to defend this lady.

Mr. Mercier: She is charged with advertising certain things to prevent conception; surely that in itself is sufficient; advertising to certain people the means.

Mr. Mercier: That I would commit murder in Ottawa in January, 1937, with an axe.

Mr. Mercier: And thereby kill so-and-so.

Mr. Beament: You haven't said that; that is what you should say.

Mr. Mercier: It is not comparable to a charge of murder; this is general and public and if we can't prove it the case is dismissed.

The Court: I think perhaps I would like you, if at all possible, to specify the nature of the pamphlet and that is as far as I will order particulars.

Mr. Mercier: That would be ordering the Crown to make a resume of the pamphlet.

The Court: Can't you specify some short entitlement; has it a title?

Mr. Mercier: Yes, my learned friend has seen it.

The Court: Set out the entitlement of the pamphlet.

Mr. Mercier: I have no objection to letting my learned friend have a copy.

The Court: Not the same thing, but set out: a pamphlet entitled so-and-so as a means of preventing conception, to several persons.

Mr. Mercier: I submit I shouldn't have to go that far, but if Your Worship orders it, I must abide with that decision.

The Court: I will order that.

Mr. Mercier: I want to be especially fair and certainly the accused will get a fair trial to which she is entitled.

The Court: What about the third count?

Mr. Mercier: It is to publish an advertisement.

Mr. Beament: Does the Crown really seriously submit this woman published an advertisement?

Mr. Mercier: Publication and distribution.

Mr. Beament: Isn't that covered by advertising: He says publication and advertising have synonymous meanings.

The Court: Section 207(a):

> "The defendant exposed to public view an obscene book,"

rather than publishing.

Mr. Beament: It is the only place in law publishing has that somewhat technical meaning and I suggest here the word publishing is meant in non-technical sense, or otherwise it would be given as the same meaning as advertising.

The Court: At the bottom of the page itself, Section 861, it expressly declares ---

Mr. Beament: That is blasphemous libel.

The Court:

> "No count for publishing a blasphemous, seditious obscene or defamatory libel, or for selling or exhibiting an obscene book, pamphlet, newspaper or other printed or written matter, shall be deemed

> insufficient on the ground that it does not set out the words thereof."

Selling or publishing obscene books or pamphlets, as though they deem the word publishing in the sense of publishing and exposing is confined to libel.

Mr. Beament: Unless those words are intended to apply to a person who prints books, not a person doing the publishing or advertising. This will be long enough without conflicting it with information which in fact has no foundation of any kind. If you can convict me of the first two charges you will do good.

The Court: There is the question what publishing means.

Mr. Beament: All these counts arise out of the same circumstances and multiply many times and it doesn't get any better.

Mr. Mercier: According to the information I have I could swear out two hundred warrants in Eastview and Ottawa.

The Court: In view of Section 861, that offhand seems to me to limit the application of the word publishing.

Mr. Beament: If you can't convict on advertising you can't convict on publishing.

Mr. Mercier: We will drop that.

The Court: "d"?

Mr. Mercier:

> "Have for sale means or articles intended as a means of preventing conception."

Mr. Beament: The same dates?

Mr. Mercier: Yes. I think it is reasonable and I think the Crown is going far enough; the thing is general; it is a general offence, not a special one. There are a number of offences the Crown alleges were committed. If there were only one offence to the Crown's knowledge, undoubtedly there would be no charge at all.

Mr. Beament: I formally apply for particulars of the articles we are alleged to keep for sale.

Mr. Mercier: What particulars he wants ---

Mr. Beament: Describe them; you say we had certain articles for sale. You say articles generally suitable for ---

Mr. Mercier: Or represented as a means of preventing conception.

The Court: There are many ways of preventing conception.

Mr. Mercier: We will just prove they are means of preventing conception.

Mr. Beament: I want to know what the articles are. You can prevent conception with anything from a spade to a sponge, properly applied.

The Court: I don't think I will order any further particulars.

Mr. Mercier: Your Worship will make up the order and I can have a copy in the morning?

Mr. Beament: The Crown Attorney should furnish me with them sometime tomorrow with the amended information and particulars.

The Court: I don't think there are any particulars in the first count.

Mr. Mercier: "did offer for sale."

The Court: And the name of the person to whom the offer was made. I will order particulars of mode and manner of advertising and entitlement of pamphlet; those are the only particulars I am ordering. I can't very well make that order until the information has been amended. On Friday you will apply for leave to amend in those three counts and then you can ask for particulars.

Mr. Mercier: The fact is, if I am going to amend the informations I might amend them too to include the particulars.

Mr. Beament: If all the particulars within His Worship's order are included.

Mr. Mercier: I want tomorrow to prepare the information containing the three counts and I will show my learned friend a draft copy and if it meets with his approval or there are further suggestions, - I will be amenable.

The Court: If you want to include in your amended information the particulars, I have ordered here today it will save my

preparing an order and having Mr. Beament ask for an order and having it read into the record.

Mr. Mercier: Then we can withdraw this one (the original information) and prepare a new one?

Mr. Beament: Yes.

The Court: And arraign the accused on the other three.

Mr. Mercier: And with notice to my learned friend.

(Adjournment made to 16th October, 1936).

Amended information

REX vs. PALMER

Eastview, 16th October, 1936.

Accused arraigned on amended information; present:

His Worship Magistrate L. Clayton.

Raoul Mercier, Esq., Crown Attorney pro tem.

A. W. Beament, Esq., K. C., for Defence.

John E. Fagan as Shorthand Reporter.

The Court: Mr. Mercier: what is the situation this morning in this case?

Mr. Mercier: We are prepared to withdraw the information before the Court now and have the accused charged under the amended information, with this exception: in paragraph "a" Dorothy Leblanc should be substituted for Dorothy Mousseau. I was informed yesterday that was the name and I am informed this morning he did not give me the correct name, through a mistake.

The Court: What should be the correct name?

Mr. Mercier: Dorothy Leblanc.

The Court: Better arraign the accused on this new information.

Amended information

Chief Manion: (reads amended information):

"Canada)

Province of Ontario,) General Form of

Town of Eastview,) Information on Oath

To Wit:)

The information and complaint of Constable Emile Martel of the Town of Eastview, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace, in and for the Town of Eastview, at the said Town of Eastview, this 15th day of October in the year of our Lord one thousand nine hundred and thirty-six who said that he is informed and verily believes

---

that Dorothy Palmer of the City of Ottawa within the space of six months last past, to wit, between the 1st day August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and without lawful justification or excuse:

(a) offer to sell an article to one Mrs. Dorothy Leblanc which said article was intended or represented as a means of preventing conception.

(b) did advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled: 'Birth Control and some of its simplest methods:' and also 'Le Controle de la natalite et quelques unes de ses methodes les plus simples,' instructions, drugs, medicine or articles intended or represented as a means of preventing conception.

(c) did have for disposal means or instructions represented or intended as a means of preventing conception,

contrary to subsection (c) of section 207 of the Criminal Code of Canada in such case made and provided. (sgd.) E. Martel.

Taken and sworn before me the day and year and at the place above mentioned: (sgd.) R. Manion, J. P., Eastview."

The Court: You wish to proceed with election and plea this morning?

Mr. Beament: I understand we adjourn without plea until Wednesday.

Mr. Mercier: Quite satisfactory.

The Court: And the first information is withdrawn?

Mr. Mercier: Yes, and replaced.

The Court: The first one is withdrawn and this one now stands. If satisfactory, I will set Wednesday morning at ten o'clock in this court room.

Mr. Mercier: Satisfactory.

Arraignment and further particulars

Mr. Beament: I want to formally apply for particulars of the article offered Mrs. Leblanc and particulars of the place where the offer was made. That is with reference to the first sub-portion of the charge and particulars of names and places. Count "b": particulars of the names of persons to whom and places at which the alleged advertising took place. Count "c": particulars of the means or instructions which the accused is said to have had for disposal.

Mr. Mercier: As to the instructions, I may call your Worship's attention: they are contained in particulars already understood and agreed to be given: the title of the pamphlet. I am not prepared to supply any more unless ordered.

Mr. Beament: In respect to "c" it is not given.

Mr. Mercier: The instructions, he said.

Mr. Beament: That is charge "b".

Mr. Mercier: If I understand correctly the meaning of "c" it is:

> "did have for disposal means or instructions represented or intended as a means of preventing conception."

I said, insofar as instructions were concerned, it would stand as in clause "b".

The Court: That you can satisfy that point, Mr. Mercier, by giving particulars of the instructions and if the same as clause "b" then there is no reason why that can't be included in the count. As it stands: "did have for disposal means or instructions" is not particularized. If the same as Count "b", I suppose there is no reason why it cannot be included.

Mr. Mercier: If the instructions are the same under the same section of the Code. It is almost vexatious. The accused should have a fair trial; there is no doubt of that. My learned friend is fully apprised.

Further particulars

Mr. Beament: The purpose of particulars is: (a) knowing what the accused is charged with; and (b) limiting the prosecution.

Mr. Mercier: If someone is accused of selling liquor, we must say to whom?

Mr. Beament: No doubt.

Mr. Mercier: In any case I will supply any particulars you order but not unless ordered by the Court. I am perfectly willing to stand on the charges as they are now; I might say also for the purpose of the record, unless there is an affidavit supplied by the defendant that he has no knowledge of this?

The Court: As regards clause "c" that might be particularized to the extent you mention, Mr. Mercier, and I would order particulars as to means or instructions, to be supplied the

defence. As far as clause “a” and clause “b” are concerned, I think there is sufficient information and particulars in that to enable the accused to prepare a fair defence.

Mr. Mercier: Then I might ask for particulars of the particulars asked by my learned friend?

The Court: No, the accused asks particulars of means or instructions the accused had for disposal.

Mr. Mercier: How am I to know what will satisfy my learned friend as to particulars of particulars?

The Court: You supply the particulars and if not satisfactory to the accused he can apply to me and if I rule, they are satisfactory, that is all. If I rule not satisfactory you can supply more. That is the only particulars, as I said.

Mr. Mercier: By letter?

The Court: Written, to form part of the record and a copy supplied to him.

Mr. Beament: Attached to the information.

The Court: (to accused).

Same bail; appear here Wednesday morning at ten o’clock.

(Hearing adjourned).

The particulars later supplied were as follows:

> “Particulars as to paragraph “c”:
>
> “The ‘means’ therein referred to are the exhibition to certain persons in the Town of Eastview of rubber articles, tubes of jelly and other articles of similar nature which were alleged to be intended or represented as a means of preventing conception.
>
> “The ‘instructions’ therein referred to are the instructions contained in the pamphlet referred to in paragraph ‘b’.”

(page A-1 follows).

REX vs. PALMER

Eastview, 21st October, 1936.

Hearing of evidence on Count "a": present:

His Worship Magistrate L. Clayton.

The accused.

Raoul Mercier, Esq., Crown Attorney pro tem.

F. W. Wegenast, Esq., K. C. and

A. W. Beament, Esq., K. C. for the Defence.

John E. Fagan sworn as Shorthand Reporter.

The Court: Read the charge to the accused:

Chief Mannion: (reads information)

"Canada,)

Province of Ontario,) General Form of

Town of Eastview,) Information on Oath.

To Wit:)

The information and complaint of Constable Emile Martel of the Town of Eastview, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace, in and for the Town of Eastview, at the said Town of Eastview, this 15th day of October in the year of our Lord one thousand nine hundred and thirty-six who said that he is informed and verily believes that Dorothy Palmer of the City of Ottawa within the space of six months last past, to wit, between the 1st day of August, 1936 and the first day of September, A. D. 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and without lawful justification or excuse:

(a) offer to sell an article to one Mrs. Dorothy Leblanc which said article was intended or represented as a means of preventing conception.

Mrs. Dorothy Lebland, Count "a"

(b) did advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled: 'Birth Control and some of its simplest methods:' and also"

Say it in French?

Mr. Mercier: Yes.

"Le Controle de la natalite et quelques unes de ses methodes les plus simples,'"

Chief Mannion:

"instructions, drugs, medicine or articles intended or represented as a means of preventing conception.

(c) did have for disposal means or instructions represented or intended as a means of preventing conception,

contrary to subsection (c) of section 207 of the Criminal Code of Canada in such case made and provided. (sgd.) E. Martel

Taken and sworn before me the day and year and at the place above mentioned. (sgd.) R. Mannion, J. P., Eastview"

The Court: Dorothy Palmer, on this charge you have the option to be forthwith tried by me without the intervention of a Jury, or to remain in custody or under bail, as the Court decides, to be tried in the ordinary way by the Court having criminal jurisdiction. How do you wish to be tried?

Mr. Wegenast: I appear for Miss Palmer, with Mr. Beament. We plead not guilty and elect summary trial by Your Worship.

Mr. Mercier: I appear for the Crown.

(John E. Fagan sworn as Shorthand Reporter).

MRS. DOROTHY LEBLAND, duly sworn, deposed:

To the Court:

Q. Your address?

A. Twenty-two (22) Catherine Street.

Q. Eastview?

A. Yes.

To Mr. Mercier:

Q. Mrs. Lebland, you are a married woman”

A. Yes, sir.

Q. Living in the Town of Eastview?

A. Yes.

Q. Do you know the accused, Miss Dorothy Palmer?

A. I do.

Q. Do you remember when you met Miss Palmer?

A. Sometime in August.

Q. Under what circumstance?

A. She gave me a box.

Q. Miss Palmer did what?

A. She gave me a box of goods.

Q. Where was this; in your home?

A. It was.

Q. How did it come Miss Palmer went to your home?

A. I don’t know.

Q. Miss Palmer came to your home and did you answer the door?

A. I did.

Q. Did any conversation take place when she came into your home?

A. Yes.

Q. What was that conversation?

A. She asked if my husband was working; I said “yes”; she asked if I had a hard time getting along, and asked would I take the article she gave me and I took it from her.

Q. What was that article?

A. To prevent family.

Q. I produce to you this article: do you recollect seeing this before?

A. No.

Q. What sort of article was it you say Miss Palmer gave you?

A. It was in a box.

Q. I produce this box?

A. (No reply).

Mr. Beament: I object: that is clearly leading. I know what my friend has: it was a box taken into his possession a month or so after the date of this offence.

Mr. Mercier: I submit I can produce anything to the witness.

The Court: You have just a box with some articles in it?

Mr. Mercier: Yes; Your Worship; I produce a box to the witness asking if she can identify it.

Mr. Beament: And a box which I know cannot be a box in question: it is a box my learned friend showed me that came into his possession.

The Court: It can be put in as an exhibit.

Mr. Mercier: I don't want to put it in as an exhibit, but to show the articles; if she saw anything like it before.

Mr. Beament: It is leading, like a plan.

The Court: Plans are admissible.

To Mr. Mercier:

Q. Will you describe this box she gave you?

A. A box with a tube in it.

Q. What was in the tube?

A. Three safes.

Q. Have you seen anything like this before?

A. Yes.

Q. It was an article similar to this Miss Palmer showed you?

A. Yes.

Q. An envelope with three of these?

A. Yes.

Q. Was there any question of the price of these?

A. No.

Q. At any time?

A. No, that was given to me.

Mr. Mercier: This will be Exhibit 1-A, an envelope.

The Witness: I only saw her once.

The Court: Chief Mannion may act as clerk of the Court.

To Mr. Mercier:

Q. Is that all you ever received?

A. Yes.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Mrs. Lebland, this is your signature?

A. Yes, it is.

Mr. Wegenast: This is exhibit ---

The Court: What is it?

Mr. Wegenast: It is an application for contraceptives.

The Court: Exhibit 2-A: is there a date on it?

Mr. Beament: There are dates on it.

Mr. Wegenast: On the back, Your Worship: August 4th, 1936.

The Court: You are just putting it in as her signature?

Mr. Wegenast: She identifies her signature and I want to ask some questions about it.

To Mr. Wegenast:

Q. Now, Mrs. Lebland, I see the name of Dr. Gowan here?

A. He is my doctor.

Q. Did you have any conversation with him about this?

A. I did.

Q. And you came to Miss Palmer after a consultation with Dr. Gowan?

A. Yes.

Q. Now, I see here some particulars: will you tell me whether you gave those to Miss Palmer?

A. (No reply).

Q. Your husband is a blacksmith?

A. Yes.

Q. And his income is about $45 per month?

A. Yes.

Q. Your age is 25?

A. Yes.

Q. Your husband's age is 29?

A. Yes.

Q. You have one child living?

A. Yes.

Q. At this time that child was a year and a half old?

A. Yes.

Q. You had one miscarriage?

A. Yes.

Q. Since this child was born?

A. Before the child was born.

Q. Now, I think you are mistaken, Mrs. Lebland; I wish you would just think a minute, whether this article you speak of was given to you by Miss Palmer or whether it wasn't sent you by mail from Kitchener?

A. It was sent to me.

Q. You had a talk with Miss Palmer, when you gave her this application?

A. Yes, I did.

Q. Did you think you were doing anything wrong?

A. No, I didn't.

Q. Do you think so now?

A. No.

Mr. Mercier: I don't know what the thoughts of the witness have to do with this.

Mr. Wegenast: I am cross examining.

Mr. Mercier: Cross examination has a lot of latitude.

The Court: It is a matter of law for the Court to decide.

Mr. Wegenast: I hadn't in mind the legality, Your Worship.

To Mr. Wegenast:

Q. Did you think you were doing anything morally wrong?

A. No.

Q. Do you now?

A. No.

Q. You didn't pay anything for this?

A. No, I didn't.

Q. Did Miss Palmer offer to sell it to you?

A. No, not that article.

Q. Did she offer to sell you any article?

A. I understood when she first came in she told me I could have that article but the other article she was supposed to sell, but it was my mistake.

To the Court: What was that other article?

A. The first one you showed me.

Q. Can you describe it?

A. It is the round thing.

To Mr. Mercier:

Q. This article here?

A. Yes.

To Mr. Wegenast:

Q. You say you misunderstood her?

A. Yes.

Q. She didn't offer to sell you that?

A. No.

The Court: Exhibit 3-A.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. What did you mean when you say you misunderstood?

A. I thought she was going to sell that on account of my husband working, but she was giving it.

Q. How did you understand she was selling it to you?

A. When she came in, she asked if my husband was working and I said "yes," and I thought if my husband was working, I had to pay for it.

Q. Was there any question about the price of this article?

A. No.

Q. How were you supposed to get this article, if you would get it at all?

A. Through my doctor.

To Mr. Wegenast:

Q. She told you as a matter of fact if you wanted that you had to go to your doctor?

A. Yes.

To Mr. Mercier: You stated to my learned friend you had met Miss Palmer once?

A. Yes.

Q. Just one time?

A. Yes.

Q. You stated also you had gone to see your doctor?

A. Yes.

Q. And if I understood correctly you stated you had seen Miss Palmer after seeing your doctor?

A. Miss Palmer came to my home and asked would I see my doctor and the doctor would give her the message.

Q. He would give Miss Palmer the message?

A. Yes.

Q. Did you see her afterwards?

A. No, I didn't.

Q. So when you signed this application and history card had you receive Exhibit No. 1, this envelope?

A. No.

Q. Did you get it from Miss Palmer?

A. I got it first and later on, a couple of weeks after, I got the box.

To Mr. Mercier:

Q. So when Miss Palmer went to visit you, you got nothing?

A. No.

Q. I must have misunderstood you when I understood you to say she gave you this when she went to see you?

A. (No reply).

Q. What conversation took place when you signed this application?

A. (No reply).

Mr. Wegenast: This is new.

Mr. Mercier: No, this document was in; submitted in examination in chief.

The Court: This has reference to a talk.

Mr. Wegenast: If I have my chance.

To Mr. Mercier:

Q. What conversation took place?

A. She asked could I afford to have a family and I said "no", and she said she would give it to me not to have a family.

Q. She asked certain questions?

A. Yes.

Q. And filled in the answers herself?

A. Yes.

Q. After that you signed the document?

A. Yes.

Q. Did you know what you were applying for?

A. Yes.

Q. What?

A. A box with three safes.

Q. That is all you received?

A. Yes.

Q. Had you invited Miss Palmer to go to your place?

A. No.

Q. She just went there as a visitor?

A. Yes.

RE-CROSS EXAMINATION

To Mr. Wegenast:

Q. Just to get the record straight: you got more than these three safes?

A. Yes, I got a tube.

Q. Of contraceptive jelly and nozzle?

A. Yes.

Q. You saw Dr. Gowan?

A. Yes.

Q. Before you saw Miss Palmer?

A. Yes.

The Court: Before she saw Miss Palmer?

Mr. Mercier: I would like to know which is correct.

The Court: I would like to have that point straightened out.

To Mr. Wegenast:

Q. You saw Dr. Gowan before Miss Palmer came to your house?

A. Yes, I saw Dr. Gowan first.

Q. How long after you saw Dr. Gowan was it she came to your house?

A. A couple of weeks.

Q. A couple of weeks later?

A. Yes.

Q. If you saw Miss Palmer, you saw Dr. Gowan again?

A. Yes.

Q. And he was to give a certain message to Miss Palmer?

A. Yes.

Q. All right.

Mr. Wegenast: That is all.

(Witness retired).

Dismissal of Count "a"

Mr. Mercier: Your Worship: I submit we clearly fail on this first count: there is no evidence of offering for sale and I ask that the count be dismissed.

I might say for the purposes of the record it is contrary to the information received by me.

The Court: There is no evidence of any offering for sale produced by the Crown. The first count is dismissed.

Proceed with the second.

Chief Mannion: It has been read.

(page B-1 follows).

MRS. GILBERTE LAFLEUR, duly sworn, deposed:

To the Court:

Q. Do you speak English?

A. A little bit.

Q. What is your full name?

A. Mrs. Gilberte Lafleur.

Q. Is Gilberte your maiden name?

A. Yes.

To Mr. Mercier:

Q. Mrs. Lafleur, you reside in the town of Eastview?

A. Yes.

Q. What is your address?

A. Thirty (30) Catherine.

Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. Sometime in August.

Q. Under what circumstances and how did you meet Miss Palmer?

A. She came to my house as a visitor.

Q. Miss Palmer came to your house as a visitor?

A. Yes.

Q. Had you requested her to go to your house?

A. No.

Q. Sometime during the month of August Miss Palmer went to your residence?

A. Yes.

Q. Was there any conversation when she came in?

A. Yes.

Q. Do you remember what she told you?

A. It was for the birth control, you know; she asked if I got a big family; I said nine, and she asked if it was enough, so I took the parcel; I wanted it myself; she didn't ask me to take the parcel.

Q. You are talking about a box?

A. Yes.

Q. What happened about the box: what did you do: did she show you a box or offer it?

The Court:

"I asked for it."

The Witness:

A. I took it myself; she said "take it," and I took it with my own consent.

To Mr. Mercier:

Q. Miss Palmer offered you a box and you accepted it with your full consent?

A. Yes.

Q. After you talked about birth control?

A. Yes.

Q. What was the conversation about birth control after you got this box?

A. She said if I need some, I could have some for nothing; if people cannot afford to have those, they give them to people who can't afford a big family.

Q. What were the explanations given? You had a conversation with Miss Palmer before this box was offered you and you accepted with your consent. Before this box was offered you, there was some conversation?

A. Yes.

Q. You said Miss Palmer told you these boxes would be given to people who could not afford to have big families?

A. Yes.

Q. Was anything else said?

A. She just showed me how to.

Q. She just showed you how to what?

A. I can't say that in English.

Mr. Wegenast: I am satisfied to have her say it to your Worship in French and have Mr. Mercier repeat it.

The Witness:

A. She showed me how to use it.

To Mr. Mercier:

Q. She showed you how to use what?

A. The tube.

Q. Answer in English the best you can: you needn't be nervous. She showed you how to use what, Mrs. Lafleur?

A. The tube.

Q. I see a box here addressed Mrs. G. E. Lafleur, 30 Catherine, Eastview, Ontario, which I will put in as an exhibit, Your Worship, from 410 King Street West, Kitchener, Ontario, Canada postage nine cents paid, August 19th, No. 877.

The Court: Exhibit 1-B in this count. The exhibits in the previous (first) count will start at 1-A.

To Mr. Mercier:

Q. I show you this box, Mrs. Lafleur: what do you say as to this box?

A. It is my box.

Q. That you received?

A. Yes.

Q. And Miss Palmer showed you how to use what is in this box?

A. It was in the bag; she showed it quick.

Q. What do you mean she showed it quick, just exactly how did she show you?

A. She got a parcel in the bag; she just turned the key.

Q. At the bottom of this tube?

A. Yes, and it was out.

Q. Is that all?

A. Yes.

Q. She showed you how to use it?

A. Yes.

Q. You received also an envelope in this box?

A. Yes.

Q. Was this in your box when you received it?

A. Yes.

Q. It was in the box and known as liquid latex, and together with this you also received a slip that also was in your box, which reads as follows:

> "The following contraceptive supplies will be mailed to properly recommended people, at prices shown, if payment is sent with order to:
>
> Parents' Information Bureau, 410 Kings St. W., Kitchener, Ont., or
>
> Miss A. S. Weber, 410 King St. W., Kitchener, Ont.
>
> 1 – 4-oz. tube of contraceptive jelly, .35 each or 3 for $1.00
>
> 1 – nozzle made to attach to jelly tube - .35 each or 3 for $1.00.
>
> 2 – 4-oz. jelly tubes and 1 nozzle - $1.00.
>
> 1 – highest grade pessary - .50.
>
> Good quality condoms - .25 per dozen.
>
> Condoms will be sold to patients only, and no more than six dozen per year. Send money orders – do not send silver."

That also was in your box?

A. Yes.

Q. Was this in your box also?

A. Yes.

Q. A slip, “Parents Information Bureau…yourself”, to which is attached two copies of Exhibit 2-A.

The Court: Yes.

To Mr. Mercier:

Q. Did you receive any other literature?

A. No.

Q. Have you ever seen these pamphlets before?

A. No.

Q. You have never seen them?

A. No.

Q. Did you pay anything for that?

A. No, not a cent.

Q. Did you know about these things before meeting Miss Palmer?

A. No.

Q. It was as a result of information received from her you used it?

A. Yes.

Q. And you say Miss Palmer told you it was for birth control?

A. Yes.

Q. Was any explanation added to that: did she just tell you it was for birth control?

A. She asked me first if I had a big family and I said nine kids, and we laughed, and I said we get along fine and she asked did I care to take this box.

Q. What did she tell you about that box?

A. It is hard to tell, you know.

Q. Why is it hard to tell: she told you something about that box: you might tell the Court what it was Miss Palmer told you?

A. She told me it was to stop getting kids.

Q. Is your husband working?

A. Yes.

Q. What is his occupation?

A. Pressman.

Q. Where?

A. Mortimers.

Q. Has he steady employment?

A. Yes.

Q. For how long?

A. Thirty (30) years.

Q. What is his average salary?

A. Forty a week.

CROSS EXAMINATION

To Mr. Wegenast:

Q. This was sent by mail?

A. Yes.

Q. Miss Palmer didn't leave it there with you?

A. No.

Q. And you didn't pay anything for it?

A. Not a cent.

Q. Now, is this your signature, Mrs. Lafleur?

A. Yes.

Q. That is your signature?

A. Yes.

Q. I suppose we can mark this?

The Court: Exhibit 2-B.

To Mr. Wegenast:

Q. You have nine children living?

A. Yes.

Q. The last one is not very strong or wasn't when Miss Palmer was there?

A. It is never sick.

Q. It is not as strong as the others?

A. They are all the same.

Q. And you have had four abortions -- abortements -- enforced coucher?

A. Just one.

Q. Just one: it says four here?

A. Just one miscarriage; it is a long time.

The Court: What is the date of that application?

Mr. Wegenast: Eleventh (11th) August, 1936. This is case No. 35781.

To Mr. Wegenast:

Q. You had a talk with a friend about Miss Palmer?

A. Yes.

Q. Who was it?

A. Mrs. Mousseau.

Q. And you know Mrs. Mousseau gave your name to Miss Palmer?

A. No, I gave a card to Mrs. Mousseau.

Q. And who told Miss Palmer about you?

A. I don't know.

Q. Now, we have here, Mrs. Lafleur, that you have been using abortives: I don't know whether I can explain that to you: medicaments pour faire abortements?

A. Oui, oui.

Q. Vous vous en etes servie?

A. Justement.

Q. She admits she uses abortives. It says here the last

baby wasn't strong?

A. It was a big fat baby, nine and a half pounds. They are all strong.

Q. Nine of them?

A. Yes.

Q. Down from the age of 15 to 9 months?

A. Pardon?

Q. One is 15?

A. Sixteen (16).

Q. Down to the baby?

A. Just 11 months.

Q. You had another baby still born; it died at two months?

A. Between the first one.

Q. That makes 10 children altogether?

A. Yes.

Q. Now, you didn't think you were doing anything you shouldn't do?

A. No.

Q. It was not morally wrong?

A. No.

Q. In consulting Miss Palmer?

A. No.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. All your children are healthy?

A. They always have been.

Q. Did you have four abortions, Mrs. Lafleur?

A. Just one.

Q. There are four marked here, also that the last baby is not strong?

A. Oh, no, it is strong.

Q. It is exhibit No. 2-B.

The Court: Is that all for this witness?

Mr. Mercier: Yes, Your Worship.

The Court: Thank you.

(Witness retired).

Exhibit 2-B filed:

"Application and history card.

Name – Mrs. G. Lafleur.

Date – Aug. 11, 1936.

Case No. – 35781, French.

Street – 30 Catherine. City – Eastview. Province – Ont.

Nationality – French. Religion – R. C.

Date of marriage – October 1919.

Husband's occupation – printer.

Income $75 Per month. On relief – no.

Wife's age – 38. Husband's age – 49.

Family physician – Dr. Couture, Laurier Ave., Ottawa.

No. of living children – 9.

Ages of living children – 15 – 14 – 13 – 13 – 11 - 9 months.

No. of dead children – 1.

No. of miscarriages - Give dates -.

Ages of children at death – 2 months.

No. of abortions – 4.

Give dates – 1928 – 1929 – 30.

Health of children – good.

State contraceptives used previously: none.

Date of last menstrual period – July 26, 1936.

Mr. Gilberte Lafleur

Check reasons for) Economics – X.

desiring contraceptive) Physical -

information) Desires proper spacing of children -

) Other reasons -

Physical condition of husband – good.

Physical condition of wife – good.

If pregnant – date of term – not when contacted.

(Typed in red on card): 8-19-36 Lr. To worker re Sterilization. R.G.

Instructions to social workers – Write name and address very plainly in ink on reverse side.

Check contraceptives desired:

Contraceptive jelly and nozzle - V.

OR Pessary and contraceptive jelly -

Application:

I herewith make application for birth control information and supplies and claim that I am entitled to receive same in view of my circumstances.

Please send English, Polish, Ukrainian, French

(sent) booklet (mark language desired).

Referred
by_____

Name Address

Applicant sign here (sgd.) Mrs. G. Lafleur

Social worker sign here (sgd.) Dorothea Palmer.

Family physician sign here - Dr. Couture, R. C., not contacted.

I recommend size ( ) pessary.

The signature of the social worker is not necessary if the application is signed by the family physician.

Mrs. Gilberte Lafleur

The size of the pessary must be ascertained by the family physician. Patient must go to the doctor's office to be fitted if pessary method is desired.

Literature on contraception will be sent to the family physician on his request.

(written in red ink): 8-19-36, J. N. & C. (n), D. B.

Remarks (home conditions, size and type of res., how kept; general observations): Home very clean and children appear well cared for.

This mother was much in need of our help. Has been using abortives. Last baby not strong and I believe because of this reason grateful and appreciated.

Send application to The Parents' Information Bureau,

410 King St. W., Kitchener, or Miss A. S. Weber, 410 King St. W., Kitchener."

CONSTABLE EMILE MARTEL, duly sworn, deposed.

To Mr. Mercier:

Q. Constable, you are a police constable in the employ of the Eastview Police Force?

A. I am.

Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. And you have investigated an alleged breach of Section 207 of the Criminal Code?

A. I did.

Q. Will you tell His Worship the result of any investigation you made?

A. On Wednesday, August 26th, 1936, at the hour of 12:05 p.m. I received a telephone call at the Eastview police station.

Q. As a result of that what did you do?

A. As a result of that I proceeded to the home of a woman, Mrs. Albert Brault.

Mr. Beament: B-r-a-u-l-t.

The Witness:

A. Mrs. Brault, residing at 28 Catherine Street, Eastview. I interviewed Mrs. Brault. After interviewing Mrs. Brault, I proceeded to the home of Mrs. George Lafleur, residing at number 30 Catherine Street, Eastview.

Mr. Mercier:

Q. Is that the last witness?

A. Yes. I interviewed Mrs. Lafleur and as a result of my interview I was handed a box that was shown in evidence.

The Court: Exhibit 1-B.

To Mr. Mercier:

Q. Exhibit 1-B, Mrs. Lafleur's box. You received this box from Mrs. Lafleur – then what did you do?

A. I took it.

To the Court:

Q. Was it containing anything at the time?

A. The same as here.

Q. The same as is there?

A. Small booklet, tube, small envelope.

To Mr. Mercier:

Q. It had the same contents as are there?

A. Yes.

Q. As a result of a conversation with Mrs. Lafleur what did you do?

A. I proceeded next to the home of Mrs. Oscar Grecco, residing at 43 Catherine Street, Eastview.

To Mr. Beament:

Q. How do you spell that name?

A. G-r-e-c-c-0. I interviewed Mrs. Grecco and as a result

of my interview ---

To Mr. Mercier:

Q. You received that box number 3-B?

A. (No reply).

The Court: 3-B.

To Mr. Mercier:

Q. With the contents?

A. The tube and ---

Q. The contents will be identified later?

A. (No reply).

The Court: Exhibit 3-B, addressed to Mrs. O. Grecco, 43 Catherine Street, Eastview.

To Mr. Mercier:

Q. What did you do after that?

A. As the result of the interview with Mrs. Grecco and receiving this box, I proceeded to the home of Mrs. Dagenais, 31 Cedar Street. I received a box from Mrs. Dagenais.

Q. Is that the box there? Never mind -- after leaving there what did you do?

A. I proceeded then to the home of Mrs. A. Alderic Burton (LeBreton).

Mr. Beament: Was the Dagenais box put in?

Mr. Mercier: He cannot find it.

The Witness:

A. Fifty-three (53) St. Charles Street, Eastview. After having an interview with Mrs. Burton, I was handed this box with its contents.

The Court: Is that an exhibit?

Mr. Mercier: Yes. All of them.

The Court: Exhibit 4-B.

The Witness:

A. As a result of this interview with Mrs. Burton I then proceeded ---

Mr. Mercier: Just a minute – I see in this box a pamphlet entitled in French "Le Controle de la Natalite et quelques de ses Methodes les plus Simples". Was that in the box?

A. Yes.

Mr. Mercier: This is an English translation.

Mr. Wegenast: Is it a good translation?

Mr. Mercier: Fair: I will read it for the record, it is entitled, "Birth Control and some of its Simplest Methods". On the inside cover:

> "If further information on Birth Control or Sterilization is desired it can be obtained by writing to the following centres: Parents' Information Bureau,
>
> 410 King Street, Kitchener, Ontario.
>
> Birth Control Clinic,
>
> 12 Dundonald Street, Toronto, Ont.
>
> Parents' Clinic.
>
> 1023 Pelissier Street, Windsor, Ont.
>
> Birth Control Clinic,
>
> 1050 Gilford Street, Vancouver, B.C.
>
> American Birth Control League,
>
> 515 Madison Avenue, New York, N.Y.
>
> Birth Control International Information Centre,
>
> Parliament Mansions, London, S.W.1, England.
>
> **BIRTH CONTROL**
>
> **The Desperate Need for Knowledge.**
>
> At this very moment the appealing and often desperate cry is going up from actually millions of sick and suffering mothers for information that will bring them relief from the intolerable burden of bringing into the world more children than they can care for

properly. Hundreds of thousands of mothers die yearly because of their unfitness for child-bearing. Millions of infants under one year of age die annually because of over-crowding, or malnutrition, due to poverty, or to lack of vitality inherited from weak and overburdened mothers. Such conditions as these ought not to exist.

Every child has the right to be wanted, and to be born into a world of love, and care and sufficiency.

Where the mother's ill-health makes her unfit for further pregnancy, or where financial conditions are such as to make it impossible to feed and clothe and to bring up more children, then it is assuredly right to practice birth control. That a weak and sickly woman, unfit for pregnancy, should have to keep on bearing children, should have to add to her own ill-health, multiplying her labors and increasing her poverty and sorrow, is a positive wrong. Every woman

has a right to be the mistress of her own body and it is for her alone to determine when she shall become a mother. THE KNOWLEDGE OF BIRTH-CONTROL METHODS IS A FUNDAMENTAL RIGHT OF EVERY WOMAN. Without it, she is unable to space her children, which may otherwise come so frequently as to wear her out. For lack of this knowledge tens of thousands of women go down to untimely death, and homes are left desolate and little children motherless.

This booklet tells of several methods from which parents can make their choice. The best of them will be found highly effective if used intelligently AND ALL THE TIME. CARELESSNESS ON A SINGLE OCCASION MAY RESULT IN UNDESIRED PREGANANCY. There is no contraceptive that is fool-proof. Used intelligently, however, some of the methods will come very close to 100 per cent in effectiveness.

DIFFERENT METHODS OF CONTROL

WITHDRAWAL: This is a quite common practice but it is mentioned here only to condemn it. It is

unsatisfactory to both parties, but particularly to the wife, whose climax may be approaching just as her husband withdraws. This may result in a nervous tension that may keep her awake and restless for hours. On the other hand, the wife may be in dread lest her husband should not withdraw quickly enough. Anxiety is present at a moment when there should be absolutely no anxiety. It is a process that is hard on the nerves and health, and frequently fails.

Douching or washing out of the vagina IMMEDIATELY after the intercourse has some value, but it frequently fails. A douche bag holding about two quarts should be supported three feet, but not more, above the nozzle in order to get the right pressure for proper douching. On inserting the nozzle hold the lips of the vagina tight until you feel the water stretching the passage, then release it. Repeat several times. This stretches out any folds in the membrane in the vagina where sperms might be lurking.

For douching use:

(a) Two quarts of warm weak soapy water made with cocoanut oil soap or some other GOOD soap. Or

(b) Two quarts of warm water in which a teaspoonful of powdered Alum has been dissolved. Or

(c) Two quarts of warm water with 2 tablespoonfuls of household vinegar.

DO NOT USE STRONG GERMICIDES LIKE BICHOLORIDE OR MERCURY, CARBOLIC ACID OR LYSOL, EXCEPT ON A DOCTOR'S ORDERS. THEY ARE NOT SAFE FOR GENERAL USE.

SUPPOSITORIES: which contain a spermicide (something that kills the male sperm) and which are introduced into the vagina before intercourse, are a very common form of contraceptive: but should not be used if found irritating.

A formula recommended by Mr. Marie C. Stopes is as follows:

½ lb. Cocoa Butter (best grade)

5 drams Borax

1 dram Salicylic Acid

1 ½ Quinine bi-sulphate

Any competent prescription drug-store could make this, and would charge probably about two dollars. It can, however, be made at home. Mix the last three ingredients together very intimately. Then melt cocoa butter over a slow fire, and stir the mixture into it with a wooden spoon. Stir very thoroughly and, taking it off the fire, keep on stirring until it begins to stiffen. Let it cool in a level compact mass and cut it into thirty pieces. Before intercourse put a piece up the vagina as far as your fingers can reach. IT SHOULD BE THERE FIFTEEN OR TWENTY MINUTES BEFORE INTERCOURSE, so that it may be thoroughly melted. Countless thousands of such suppositories are sold in drug-stores every week. They are fairly effective, but cannot be absolutely relied on. With a young wife who has not had any children they would be more certain than with a mother of several children. A douche after intercourse would, of course, add to their effectiveness.

CONTRACEPTIVE JELLIES: These are obtainable in many drug-stores, where they are sold under a variety of names ostensibly for the treatment of certain disorders of the vaginal passage such as leucorrhea. The jelly comes in tubes with a glass or hard rubber nozzle in a box. A 2 oz. tube costs about $1.00 and has about 20 applications. Most tubes have a key at the end which when turned presses out the jelly.

INSTRUCTIONS FOR USING JELLY: Remove the cap from the nozzle. Screw the nozzle on the tube, and fill the nozzle with jelly. Insert the nozzle <u>three inches</u>, but no more. Then squeeze a <u>level</u> teaspoonful of jelly into the vagina by giving the key on a jelly tube 1 ¼" X 6" barely a ¼ turn. The application should be made within twenty minutes before intercourse. A douche has no value when contraceptive jelly is used, and may wash out the jelly which kills

the male sperms. A douche is occasionally desirable for cleanliness, but when jelly is used a douche should not be taken for at least 12 hours after intercourse. Contraceptive jelly is about 90% effective for mothers who have had only one or two children. The efficiency lessens with increasing number of children, and in such cases, condoms should be used as well as jelly or the mother should be fitted with a pessary.

If pessaries are fitted properly by a physician or competent nurse, they are almost 100% effective, when used as instructed.

CONDOMS: The safest of all contraceptive devices is the condom of French Letter of Safe – a very thin rubber sheath used by the man. Some men object to this method, but where the wife's health, perhaps even her life, may be at stake, no reasonable man will refuse to take advantage of something that is sure and safe.

It is, of course, necessary that each one be perfect. Test by putting water in them, and see if there is any leak when gentle pressure is applied.

Condoms should be rolled up on 2 fingers and then rolled on so 1" is left loose, but without any air in it. Vaseline may be rubbed on the outside of the condom or preferably contraceptive jelly, as Vaseline rots the rubber in time. After intercourse is over, the condom should be dropped in clean water immediately. The condom should be washed carefully later, all Vaseline removed, then dried carefully and powdered on both sides and left flat in a box with some powder. If condom breaks or slips off a douche of 2 quarts of water and 4 tablespoons vinegar should be taken at once, as directed on page 5.

RUBBER CAPS OR PESSARIES: Are intended chiefly for mothers who have had several children, and must be fitted by a doctor, but can easily be placed in position by the wife alone after receiving instructions from the doctor. See your family

physician or some other doctor who can give the necessary instructions. Pessaries fitted properly and used properly with contraceptive jelly are almost 100% efficient.

Instructions: Wash pessary with soap and water before using. While the pessary is still wet, smear the upper side and around the rim with jelly, using in all 1 teaspoonful. The side of the pessary which has the jelly in the center must be placed directly over the opening to the womb. Before intercourse insert pessary as directed by the doctor.

If the pessary, with the jelly in the centre, has been put in place properly, as directed, you should be able to feel the small hard muscle at the mouth of the womb through the pessary. The pessary should not be removed for at least 8 hours after intercourse, and 12 hours is better unless a douche is taken. If the pessary is removed in less than 8 hours a douche should be taken immediately, half of the solution before removing the pessary and the other half immediately after. Follow instructions on page 5 re method of douching. After the pessary has been removed wash in soap and water, rinse it in clear water, dry thoroughly on both sides and dust with cornstarch, and place in container used for this purpose only. Never use Vaseline or greasy substances on the pessary. Use contraceptive jelly only. Keep the pessary away from radiator or other heat. Pessaries cannot be fitted properly for patients whose organs have been injured by frequent child-bearing and are therefore not in a normal position. We recommend contraceptive jelly used preferably with condoms for such cases.

VINEGAR TAMPON: Take a piece of cotton batting about 3” long, 1 ½” wide, and about ½” thick. Tie a double thread, preferably silk, around the middle of this piece of cotton, and leave the thread long enough so that about 9” double will hang free. Soak the cotton in a solution of equal parts of vinegar and water and then squeeze out gently. It may be easier to insert

the cotton tampon if a little Vaseline is spread over it. In case a tampon soaked in vinegar and water is found irritating, a paste made by whipping together two parts lard and one-part vinegar can be used on the tampon instead of vinegar and water. Hold the wet cotton between finger and thumb, and push it up into the vagina as far as you can place it with your fingers. Allow the end of the 9" double thread to hang out of the vagina so that cotton batting can easily be removed. The cotton should be inserted just before intercourse, and should be left in place at least 8 hours thereafter. Do not use a tampon a second time. Vinegar tampons are not as efficient as pessaries or contraceptive jelly. When cotton batting is not available, a piece of perfectly clean soft linen or cotton rag seven- or eight-inches square, crumpled up, could be used instead. The tampon cannot be lost in the vagina and can be removed with fingers if necessary.

RUBBER SPONGE PESSARIES (for mothers) are a good substitute for the tampon and are also a reasonably good substitute for pessaries in cases where the mother cannot be fitted with a regular pessary. Rubber sponge pessaries can be made by hand out of any fine texture rubber tissue sponge that can be purchased in a drug or department store. A sponge about 5" long by 3 ½" wide and 1 ¼" thick costs about 20 cents, and is large enough to make two pessaries. The sponge should be cut with a sharp scissors into the hollow cup shape, as shown on the illustration, and the wall of the pessary should be about 1/3" thick. A large woman can use a pessary measuring 2 ½" to 2 ¾" across the full width. A smaller woman should make the pessary ½" smaller.

Sew a silk thread securely into the bottom of the sponge pessary and allow about 9" to hang free. Be sure to boil the pessary before using it the first time. It is of the utmost importance that the pessary be thoroughly washed after being used, and kept in an antiseptic solution consisting of 15 drops of Lysol or

a tablespoonful Listerine or a tablespoonful boric acid dissolved in a cup of water. When the pessary is to be used, squeeze it out thoroughly and soak in olive oil. Then press the edges together and push pessary as far up the vagina as your fingers reach. Let the edges go up first and let the string hang out. The pessary should be left in the vagina at least 8 hours after the intercourse and then removed and washed thoroughly.

"THE SAFE PERIOD" According to the book called "The Rhythm" by Dr. Leo Latz and evidently approved by the Catholic Church, the general information is given that "the safe period" for the average women is about 9 or 10 days before, and about 6 or 7 days after the commencement of the menstrual period. This information is likely of uncertain value to the average women, and less reliable for women whose menstrual periods are irregular. Anyone interested in "the safe period' can obtain more detailed information by securing a copy of "The Rhythm" from the Catholic Truth Society, 67 Bond St., Toronto, or by ordering same from almost any book store.

STERILIZATION: There are circumstances in which it is absolutely wrong for parents to risk having any more children. In some cases, further pregnancy endangers the life of the mother. In other cases, there may be the danger of transmitting physical handicaps or diseases which are an injustice to innocent children. A family in which one or both parents are more or less mentally deficient should also guard against further child-bearing, not only because of the danger of transmitting mental disease, but also because even normal children, in homes of mentally deficient parents are handicapped.

A sterilization operation is the only known method that is 100% effective in preventing pregnancy. Only one parent needs to be sterilized, to avoid further pregnancy. The operation of sterilization in both a man and a woman consists merely of cutting and tying back tubes which in a man are very near the surface,

and in a woman are deeper and require an operation which keeps her in the hospital for about two weeks. An operation to cauterize and seal off the tubes at the entrance to the uterus is at present being tried out, and if it proves satisfactory will make the sterilization of females as simple as that of males. The sterilization of a man is very simple, as it can be performed in a few minutes, and does not keep him from work for more than a day or two. Sterilization properly performed has no undesirable or injurious effects mentally or physically, and does not involve the removal of any organs.

IT DOES NOT INTERFERE IN ANY WAY WITH THE SEXUAL FUNCTIONS OR THE NORMAL RELATIONSHIP EXISTING BETWEEN A MAN AND HIS WIFE. Medical information on sterilization can be obtained in Dickinson & Bryant's book, "Control of Conception".

In California over 8,000 cases have been sterilized, and a report of a survey made by the HUMAN BETTERMENT FOUNDATION of Pasadena, California, gives the following information:

1. Sterilization has one effect <u>only</u> -- it prevents parenthood.

2. It in no way unsexes the party sterilized.

3. It does not increase but diminishes immorality.

4. Sterilization is approved by the families of the patients sterilized, and also by medical staffs, probation officers and social workers.

5. Sterilization permits handicapped people to marry and live happily without the responsibilities of children.

There is a rapidly growing conviction in the minds of thoughtful people that this effective measure of relief, for those people who need it, ought to be more available and used more frequently. It relives the parents of all further anxiety or trouble with other contraceptives for the balance of life".

Constable Martel

I will file both English and French versions; both as one exhibit.

The Court: Exhibit 5-B.

Mr. Beament: The French version came from box 4-B.

Mr. Mercier: Yes, it will be 5-B.

Mr. Wegenast: What box?

Mr. Mercier: It is the Burton box, addressed as LeBreton.

Mr. Beament: The English pamphlet is a translation of the French.

Mr. Mercier: The French is a translation of the English.

Mr. Beament: Is just the French pamphlet put in as an Exhibit from it?

Mr. Mercier: I have read both and they are fairly accurate.

To Mr. Mercier:

Q. Proceed?

A. After interviewing Mrs. Burton I was given this box; then I proceeded to the home of Mrs. Hector Goneau, 57 Main Street, but she is now at 39 ½ Montreal Road. The address on this box is 57 Main Street. After having an interview with Mrs. Goneau, I was handed this box containing --.

Q. Just the box and contents?

The Court: Exhibit 6-B.

The Witness:

A. After interviewing Mrs. Goneau then I proceeded to the home of Mrs. William Murphy, residing at 42 ½ Beechwood, Eastview.

To Mr. Mercier:

Q. You did the same thing and got a box?

A. (No reply).

The Court: 7-B.

The Witness:

A. And Mrs. Legare, and after an interview, I was handed this box.

The Court: 8-B.

To Mr. Mercier:

Q. The box and contents?

A. Then I proceeded to the home of Mrs. Deslaurier, 10 ½ Beechwood Avenue. After an interview with her I was given this box with its contents.

The Court: Exhibit 9-B.

To Mr. Mercier:

Q. And then from there?

A. To the home of Mrs. Arthur Maheux, 59 Cedar Street, Eastview.

Chief Manion: 10-B.

The Witness:

A. I also got a box from Mrs. Leo Maheux, 43 Cedar Street, Eastview.

The Court: 11-B.

The Witness:

A. I then proceeded to Mrs. George Desjardins, 36 Cedar Street.

The Court: 12-B.

The Witness:

A. I then proceeded to the home of Mrs. A. Louiseize, 3 ½ Cedar Street.

The Court: 13-B.

The Witness: I then went to the home of Wilfred Sareault, 4 Cedar Street, Eastview.

The Court: 14-B.

The Witness: I then went to the home of Mrs. Henri St. Amour, 22B Cedar Street.

The Court: 15-B.

The Witness: I also got a box from Mrs. Sylvester Douire, 1 Elmwood Street.

The Court: 16-B.

Mr. Wegenast: Is that Eastview?

Chief Manion: Yes.

The Witness: Mrs. A Pharand (missing from photocopy).

The Court: 17-B.

The Witness:

A. Mrs. Arthur Gervais, 148 Vernon Street.

The Court: 18-B.

The Witness: Mrs. Theo Groulx, 152 Vernon Street.

The Court: 19-B.

The Witness:

A. Mrs. Romeo Richer, 27 Cedar Street, Eastview.

The Court: 20-B.

To Mr. Mercier:

Q. All on the same date?

A. No, different dates.

Q. All of course, in the course of the months of August and September?

A. All these boxes were received in August.

Q. And you collected them?

A. In August and September.

Q. Have you them all in now?

A. Yes.

To the Court:

Q. What part of September?

A. Beginning September 6th.

To Mr. Mercier:

Q. After you collected all these boxes what did you do?

A. I took possession of them, brought them into the police station, and on the 14th day of September, 1936, I received a telephone call.

Q. As a result of that what did you do?

A. As a result of that I proceeded to the home of a woman, Mrs. Mousseau, 242 Marier Road, Eastview. I came into the house and I had been given a description.

Q. Tell us what you did when you got into that house?

A. The accused, Miss Palmer, was coming out from the front room, ready to go. I asked the accused her name. She gave it as Dorothea Palmer, age 27, single, residing at 192 Queen Street, Ottawa, employed with the Parents' Information Bureau at Kitchener, Ontario.

Mr. Wegenast: Your Worship, I think we have got to the point where we should raise the admissibility of this evidence.

Mr. Mercier: If my learned friend will wait a minute, until we get the statements.

The Court: He is giving statements.

Mr. Mercier: So far, the name, address, age and occupation.

Mr. Wegenast: You have now the connection with the Parents' Information Bureau.

The Court: The point is well taken.

Mr. Wegenast: I am entitled to cross examination, I think.

To Mr. Mercier:

Q. Yes: after you obtained the names, age and address?

A. The accused asked if any objection.

Q. Tell the court all you know of the statements, by whom – and actually what you did?

A. I asked the accused if she had any objection to coming to the police station and she said, no.

Q. Go on?

A. She then came to the police station accompanied by me. She stated she had no objection to walking on the street with me.

Q. Why did she say that?

A. I asked if she had any objection to walking on the street with me and she said none. We arrived at the Eastview police station about 2:25 p.m. I told her she was coming here to be questioned.

Q. Yes?

A. When we came to the station the Chief was away at lunch. The Chief arrived at about the hour of 3:50. He had a conversation with the accused. The information and warrant were then made out. The warrant was then read to her.

Q. The accused was told what she was charged with?

A. She was warned.

To the Court:

Q. By whom?

A. Chief Manion.

To Mr. Mercier:

Q. Is this the warrant read to her?

A. Yes.

The Court: Exhibit 21-B charging her with an offence under 207.

To the Court:

Q. What is the date of the warrant?

A. 14th September.

Q. After the warrant was read to her what was done?

A. She was then placed under arrest. After, she, on her own free will, without being questioned – she made a statement.

Q. She was warned before that statement?

A. Yes.

To the Court:

Q. What was the nature of the warning?

A. (No reply).

To Mr. Mercier:

Q. Yes, what was the nature of the warning?

A. The warrant was read to her and she was then asked: "Do you want to say anything in answer to the said charge. You are not obliged to say anything but whatever you will say will be taken down in writing and may serve in evidence".

Q. Any promises made?

A. None.

Q. Any threats?

A. No threats.

Q. And was anything else said before the statement was made?

A. No she just started to talk.

Q. You said she made the statement of her own free will: what do you mean by that?

A. She said she did expect to have trouble.

Mr. Mercier: Strike that out.

To Mr. Mercier:

Q. That is all that was said before the statement was made?

A. Yes.

To the Court:

Q. Who was present?

A. Her, the Chief and myself.

Mr. Mercier: My learned friend can now cross examine.

CROSS EXAMINATION

To Mr. Beament:

Q. Constable, when you first got to the police station you had to wait some hour or so for Chief Manion?

A. Not some hours, about three-quarters of an hour.

Q. You got there about 2:40?

A. Yes and the Chief came at 3:50.

Q. An hour and ten minutes, and during that time Miss Palmer asked could she phone for her solicitor?

A. She did not.

Q. Did she ask to use the phone at all?

A. No, not to me.

Q. Was she alone with you?

A. Yes.

Q. She did not ask anybody, if not you?

A. No.

Q. Did she ask the Chief?

A. No.

Q. In your presence?

A. No.

Q. At no time?

A. No.

To Mr. Beament:

Q. Suppose she had refused to come to the police station what would you have done?

A. (No reply).

The Court: It is a suppositious question.

Mr. Beament: It goes to the root of it.

Mr. Mercier: The evidence of the officer is that he asked the accused to walk with him to the police station. She did and he did and what she might have done ---

Mr. Beament: I wanted to test the veracity of this evidence.

The Court: By asking what he would have done if such-and-such circumstances arose -- how that tests his veracity I don't see -- how a hypothetical question ---

Mr. Beament: We propose to prove the officers did bring pressure to bear on this woman. How they got her here to the police station is one element.

The Court: Yes, but you are asking a hypothetical question.

Mr. Mercier: It should be cross examination on what he did, not thought.

Mr. Beament: No, on his attitude when he picked this woman up -- that is relevant.

Mr. Mercier: But not to ask what he would have or might have done under a different set of circumstances.

The Court: I see what Mr. Beament is after; I think it can be attacked in another way.

Mr. Mercier: The officer has made a statement; he is being cross examined on that statement and it would be most improper and irrelevant to ask what he might have done.

The Court: I do not quite entirely agree with Mr. Mercier; I think it is relevant; what was the intention of the officer when he approached Miss Palmer?

Mr. Beament: Exactly, the attitude is relevant: whether there was improper pressure brought to bear.

Mr. Mercier: What he would have done if he did not do what he did?

The Court: That is round about.

Mr. Beament: It must be round about. In asking a witness "Are you telling the truth" -- the cross examiner is entitled to go round about.

The Court: Any evidence given now by the witness what he would have done under a certain set of circumstances, if a, b, c, had happened -- when that evidence is given a month or so after the incident occurred, it is not very weighty evidence because the accused may not have considered those circumstances happening as a matter of fact, and what he thinks now he would have done under those circumstances might not be the same as at that time.

Mr. Beament: But that goes to the weight of the evidence, not the relevancy.

The Court: I will allow your examination.

Mr. Mercier: Subject to my objection?

The Court: Yes.

To Mr. Beament:

Q. If Miss Palmer had refused to come with you to the police station what would you have done?

A. On complaints received I would have laid a charge and brought her here by warrant.

Q. You had no warrant at the time?

A. No.

Q. You would have taken her here by force?

A. No, I had her name and address.

Q. And you would have come and laid a charge on the previously alleged offences?

A. Yes.

Q. But in relation to the Maheux or Mousseau offence that may have occurred that day?

A. No, the others.

Q. Then you brought her back to the police station?

A. Yes.

Q. And waited for Chief Manion?

A. Yes.

Q. When he came what happened -- had you any conversation with her during this hour and ten minutes?

A. She did talk.

Q. Did you warn her?

A. What she said did not concern this business.

Q. It was just a pleasant afternoon in the police station -- what happened when Chief Manion arrived?

A. He asked her name and address, what she was doing, and in reply to her answers the information was typed out.

Q. Before the information was laid all Chief Manion knew was the name and address?

A. Yes, and what she was doing.

Q. What she was doing?

A. Yes, occupation.

Q. That is all he knew?

A. That is all she said.

Q. Yes, then the information was typed?

A. Yes, and the warrant.

Q. Who was the informant?

A. I was.

Q. Then the information was sworn?

A. Yes.

Q. By whom?

A. A J.P.

Q. Who?

A. Begin.

Q. Where was he?

A. In his office.

Q. Was he there all the time?

A. In his office, as clerk.

Q. He hadn't been in the police station?

A. No.

Q. What happened?

A. He signed the information and the warrant and I came back and gave the warrant to Chief Manion and he executed the warrant.

Q. Yes, did he read the warrant?

A. Yes, charging her with the offence. After the warrant was read, she was given the usual warning: he touched her on the shoulder.

Q. You look at that book when you say "after the warrant was read, she was given the usual warning; he touched her on the shoulder"?

A. Yes.

Q. Did you make a note in that book at the time of what Chief Manion said?

A. Yes.

Q. You wrote it down in full?

A. Yes, sir.

Q. Let me see the book.

A. No -- if the court wants to.

Q. It is alleged to be a contemporaneous note: it is not in correct order.

A. (No reply).

Mr. Beament: I say it is alleged to be a contemporaneous note and it is not in chronological order. He can only refer to it on that ground; he cannot read evidence; he can refer to notes made at the time.

Mr. Mercier: If the officer reads anything from notes made at that time, he can refresh himself from his notes -- it is what he says was done at the time.

Mr. Beament: I don't believe it.

The Court: It is up to you: you said "I don't believe him".

Mr. Beament: I want to know why it is not in chronological order in his note-book.

Mr. Mercier: I submit that if the officer recollects and swears positively ---

The Court: It is a question of circumstances under which the notes were made.

Mr. Beament: Yes, and he will not let me refer to his note-book to see if it is in correct order.

Mr. Mercier: Notes need not be taken in a certain rank; it is not signed.

Mr. Beament: My learned friend does not express my point as well as I would like to have it expressed. I am not objecting to the sufficiency. I have no doubt when he read, it was what was written in this note-book, but I am entitled to test whether or not it is a contemporaneous note and one thing that may have

some bearing is the order in which it is kept in his note-book -- as to whether it is kept chronologically. If made at the time it was on the 14th of September.

Mr. Mercier: My learned friend might find out if the book was kept in chronological order.

To the Court:

Q. You said they were contemporaneous?

A. I went to investigate the case; they were marked in the back of the book, the names and address; and this is the warning.

Q. I am not going to examine the book but there appears to be some in one part of the book and some in another.

A. (No reply).

Mr. Beament: This document has been produced and referred to by the officer and he refuses to show it to me.

To the Court:

Q. Have you any objection to Mr. Beament seeing that?

A. Yes, Your Worship.

Mr. Beament: I think it improper for the Crown to refer to documents and not let the Defence see them.

The Court: I think, Mr. Beament, you are entitled to see the notes to which he is referring, but not to go through that whole book. The notes to which he was referring to refresh his memory you (Constable Martel) must show Mr. Beament, but not the whole book.

Mr. Beament: In a case before Justice Kerwin in Kingston in which I was engaged a traffic police officer produced a note-book and the same question as to whether it was a contemporaneous note arose. His Lordship ruled the parties were entitled to see the whole note-book over the objections of the police officer just to see if it was contemporaneous -- in chronological order. I am sorry it is not a reported case but I was in it.

Mr. Mercier: If that question is gone into it should be established fully how the officer keeps his book. In answer to a question if the notes were made at the time he says yes.

The Court: Let me see the book. (Constable Martel shows the book to the Court). I can see there are matters in that book that do not concern this case.

Mr. Beament: It is not the substance but the dates I want.

The Court: There are matters there that do not come into this case.

Mr. Beament: No other than the dates shown in the book may have some bearing on the question on which we are asking the ruling.

The Court: Anything in the book relative to this case is open to inspection as notes to which the constable was helping his memory, but anything in that book with no reference to this case, need not be produced.

Mr. Beament: Anything, A. relative to the case and B. anything relevant to the credibility of the witness is open for discussion on cross examination and the arrangement of the entries in this book may not be relevant to the charge against the accused, but are relevant to the credibility of the witness.

The Court: I order the Constable to show you any references in that book dealing with or having reference to this case.

Mr. Beament: Not any other references such as dates in the book unless they deal with this case?

The Court: Unless you can show me the reported cases.

Mr. Beament: I don't know of any, except the one I was in.

Mr. Mercier: I know of none.

To Mr. Beament:

Q. Now, where is the first entry in that book with reference to this case?

A. Right there.

Q. What you were hiding from me was an entry with reference to this case?

A. Yes, you wanted to see this.

Mr. Mercier: If it is something not given in evidence.

Mr. Beament: Surely, we are entitled to cross examine this witness on anything in this case?

The Court: No, it is exclusively the admissibility of this evidence: later on, it may be anything.

To Mr. Beament:

Q. Let me see the first entry, I want to see what is the date?

A. (No reply).

Mr. Mercier: If it is information or a name the officer has received, he is absolutely right in not showing it.

The Court: You want to see the chronological order of the entries?

Mr. Beament: It makes it impossible for me to establish these entries were made contemporaneously unless I can see the manner in which they are entered in this book.

Mr. Mercier: The officer certainly is not obliged to give you any information as to where he obtained his information: that is well established.

Mr. Beament: If Your Worship rules I might see any entries with regard to this case.

The Court: That might ask the Crown to disclose its whole case. I want to be fair to the accused and all the parties.

Mr. Beament: I submit under the guise of not disclosing this case the Crown cannot withhold evidence to which the accused is entitled. It may be this will result in the disclosure of some evidence the defence could not get at this stage but could get at a later stage. But surely that is less ill than to take away from the accused the right to which she is entitled, namely, the right to test the credibility of this witness of an important matter.

To the Court:

Q. Constable, you were going to show Mr. Beament a certain entry?

A. Yes.

Q. Now what is that entry?

A. In connection with the warning given to the accused, after her arrest.

Q. And is there anything in that book prior to that entry relevant to this case?

A. Yes, Your Worship.

Q. How many entries: and on how many pages are there entries?

A. Ten.

Q. Prior to the entry you were going to show Mr. Beament?

A. Yes -- prior to the entry how many pages concerning this case?

Q. Yes -- prior to the entry you were going to show Mr. Beament?

A. That is the first page, Your Worship.

Q. The entry you were going to show Mr. Beament was the first page?

A. Yes.

Q. There is nothing in the book ahead of that page, towards the front of the book?

A. In connection with this case?

Q. Yes?

A. No.

Q. You swear that under oath?

A. Yes, I swear that under oath.

To Mr. Beament:

Q. Constable, all those entries appearing in the book after the entry you were willing to show me, took place prior in point of time to that entry?

A. After.

Q. The first entry was in August, 26th?

A. That is my affair.

Q. You showed that to me as being an entry in connection with this case?

A. That is right.

Q. It is dated August 26th?

A. Yes.

Q. This warning was given on what date?

A. September 14th.

Q. All these entries to which you referred -- you referred to them continuously when putting in exhibits?

A. Yes.

Q. All those entries were made sometime in August?

A. Yes.

Q. They all appear later on in the book than the entry?

A. (No reply).

The Court: You asked if all entries relevant to these exhibits were made in August?

Mr. Beament: Yes.

The Court: Yes. I understood him to say the majority of these exhibits he obtained early in September.

To the Court:

Q. You had those entries in the book before you got the exhibits?

A. Yes.

Mr. Beament: I have August 26th: he said he started on that date, called up so-and-so and no other date is mentioned. The only date he mentioned was Wednesday, August 26th.

The Court: I asked him when and he said August and early September.

Mr. Beament: I call attention to these entries. They are August 26th and the warning appears in point of fact in an earlier place in the book, filled in in crabbed hand -- by hand. I contend this is not a contemporaneous note.

Mr. Mercier: My learned friend might ask the witness' explanation why this was done that way.

Mr. Beament: I want to find out first what was done before why.

To Mr. Beament:

Q. Did you make a contemporaneous note on the date the accused was arrested?

A. I took notes.

Q. Right then in the book at the time or shortly after?

A. Shortly after.

Q. You were referring to the note-book when giving evidence with regard to her arrest?

A. Yes.

Q. Show me the notes?

A. Well, Your Worship, it is a personal question again and in connection with the informant I don't want to show these. I will show the court if you wish.

Mr. Beament: It is a clear case, Your Worship: this witness continuously referred to his notes throughout his evidence.

To the Court:

Q. You refreshed your memory from certain notes?

A. Yes, I am willing to show the court.

Mr. Mercier: He refreshes his memory from certain notes and gives evidence. My learned friend wants to find out when the accused was warned: let him base his questions on that. I submit the court should know first if it is marked in the book, when, and if not found in its place, why it is not in its place.

The Court: I would like to know that point.

Mr. Beament: I come to a clear point of argument. I ask him to produce only notes dealing with the lady's arrest. He admits he has them; and said he made them at the time or very shortly after and he refers to them.

The Court: He objects because they refer to the informant.

To the Court:

Q. I want to know why matters of informants are mixed up with matters from which you have refreshed your mind?

A. I am willing to show the date of arrest and statements.

To Mr. Beament:

Q. It appears to me there are certain notes of the day in question on which the accused was brought to the police station from which you refreshed your memory?

A. Yes.

Q. It also appears intermingled with those notes are other notes?

A. Yes.

Q. How do you come to have those notes intermingled with what went on that day if you have chronological order in your notes on what went on?

A. There was a space left at the bottom of my note-book and I entered the warning that was given her in that space.

To Mr. Mercier:

Q. When did you enter it?

A. At the time it was said.

To the Court:

Q. Then the notes do not read chronologically?

A. I took notes of it, Your Worship, and entered them.

To Mr. Beament:

Q. These are not your original notes?

A. I have the original notes.

To the Court:

Q. In the book?

A. Yes, now I will show the court the time, maybe the date was not -- but the time.

Q. When was that note entered in the book?

A. On September 14th, 1936, at the hour of 4:45.

Q. At 4:45?

A. Yes.

To Mr. Beament:

Q. Have you got a note of that?

A. Yes.

To the Court:

Q. That would be almost an hour after Chief Manion arrived?

A. Yes.

The Court: There is something to work on, Mr. Beament.

Mr. Beament: Yes, this started at about two.

The Court: She was in the office until about 3:50 when Chief Manion arrived and asked her name, age, occupation; the warrant was typed and the information, and they were sworn.

To the Court:

Q. And that took to 4:45 p.m.?

A. Yes.

Mr. Beament: That covers approximately two hours.

The Court: There was nothing until Chief Manion arrived.

Mr. Beament: She was taken into custody.

The Court: That is the question.

Mr. Beament: My friend's arguments presently suppose this witness' statements must be accepted without question.

Mr. Mercier: No.

The Court: No.

Mr. Beament: This witness' evidence leads up to a confession or admission and he has referred to notes and I want to see the notes dealing with this matter.

The Court: He has stated this warning was written in a blank space at the bottom of the page where there was other writing.

Mr. Beament: Yes, and we are entitled to the whole story of whether he told the truth: the information was sworn and a warrant issued -- we are entitled to the whole story. He has been allowed to read it.

The Court: It was not read.

Mr. Beament: He read the warning verbatim and refers to notes on the whole story and admits he did so. Are we to understand the witness using notes in a circumstances of this kind -- the defence are precluded from seeing those notes?

The Court: No, I certainly think you are entitled to see the notes to which he refers.

Mr. Beament: That is what I am asking for.

The Court: You asked before for the whole book. You are certainly entitled to see those.

To the Court:

Q. If there are other things on the page not referring to this matter you can cover them up but the notes you referred to in refreshing your memory, you must show Mr. Beament. How you can manage it is up to you?

A. (No reply).

Mr. Mercier: Mr. Beament is not entitled to anything else.

Mr. Beament: I am only looking at September 14th.

Mr. Mercier: That is all I want you to look at.

(The witness shows part of book).

To Mr. Beament:

Q. This brings us up to the arrival of Chief Manion?

A. Yes.

Q. What happened then -- now the witness refuses to show further notes: he has the book clutched firmly in his left hand?

A. Does the Court order I should show them.

To the Court:

Q. You used those notes to refresh your memory?

A. Yes.

Q. Any notes you used to refresh your memory you must show to Mr. Beament?

A. The statements in writing?

Q. No, we have not come to the statement yet, but up to there?

A. (Witness shows book).

To Mr. Beament:

Q. Without showing the statement show how far it continues in the book -- I want to see it in relation to the warning -- just count the pages if you will; if you are so coy about it?

A. Nine pages.

Q. Where is this alleged warning in relation to this statement?

A. At the bottom of the page.

Q. Five or six pages ahead?

A. No, the next page to it; it is two pages to September 14th.

Q. And the warning does not appear before the beginning of the statement?

A. No.

Q. I suppose you have been a policeman a long time?

A. Yes.

Q. And often present when people are arrested and warned?

A. Yes.

Q. Do you always take notes when a person is arrested and accused?

A. Yes.

Q. And you always copy the warning in full?

A. No.

Q. That is the usual warning?

A. Yes.

Q. You don’t usually copy it in full?

A. No.

Q. Have you ever copied it out in full?

A. Sometimes.

Q. Have you ever, except on this occasion?

A. No.

Q. And it is not in chronological position -- do you still maintain it was put in at the same time as given the accused?

A. Yes.

Q. And it is the only time you have ever put it in full?

A. It is not in full: "Do you wish to say anything in relation to the charge: you are not obliged to say anything, but whatever you say" --

Q. And you left out: "may be taken down and used against you"?

A. (No reply).

Mr. Mercier: "Used in evidence".

To Mr. Beament:

Q. And you ran out of the page?

A. Yes.

Q. And you say it does not appear in correct order in your notes?

A. I took the notes.

Q. It does not appear in correct order in your notes?

A. No.

Q. But you put it in there so when, I suppose, you came to Miss Palmer's trial: "this was the warning given"?

A. I put it in as the warning was given.

Q. I am talking about this particular warning: wasn't it put in there so you could come down here and refresh your memory?

A. Yes.

Q. And in order to refresh your memory would you have to say it was made at the time the warning was given?

A. No.

Constable Martel

Q. How long have you been a police officer?

A. Thirteen years.

Q. Have you ever been examined on admission and confessions before?

A. Yes.

Q. And you don't know the entry must be made at the time?

A. Yes, or a short time after.

Q. Did you know it or did you not?

A. I did know it.

Q. You did know that and you entered it in full for the first time in your life?

A. Yes.

Q. All right.

RE-DIRECT EXAMINATION

Mr. Mercier:

Q. Then the warning was read before any statement was given by Miss Palmer?

A. Yes.

Q. And the warning -- you swear positively -- the warning as stated by you to this court -- was given Miss Palmer before she made any statement?

A. Yes.

Q. Step out and we will call Chief Manion?

(Witness temporarily retired).

RE CROSS EXAMINATION

(Witness recalled)

Mr. Beament: There is one question if I may have Your Worship's indulgence, I would like to ask Mr. Martel.

The Court: What is the question?

Mr. Beament: I want to know when he took this bag from Miss Palmer?

Mr. Mercier: Mr. Martel is not through giving his evidence.

Mr. Beament: I know.

The Court: Does this lead to the admissibility of this voluntary statement?

Mr. Beament: Yes, we submit they had all the information from her before the charge was laid if their chronology is correct.

Mr. Mercier: I don't know whether this refers to any statement, voluntary or not

To Mr. Beament:

Q. That bag?

A. Yes.

Q. We won't put it in as an exhibit now?

A. Yes.

Q. Was it Mrs. Mousseau?

A. Yes.

Q. Did she carry it to the station?

A. Yes.

Q. It got out of her custody sometime?

A. Yes. We took possession after the warrant was read.

Q. Before or after she made a statement?

A. After.

Q. And you had not seen the contents of the bag until after she made the statement?

A. I did not.

Q. Had the bag been opened in your presence?

A. After she was arrested, yes.

Q. And before the statement was made?

A. As she made her statement.

Q. During the statement?

A. During the statement.

The Court: All right.

(Witness temporarily retired)

CHIEF RICHARD MANION, duly sworn, deposed.

The Court: This examination is limited solely to the admissibility of this statement.

To Mr. Mercier:

Q. You are Chief of Police of the town of Eastview?

A. Yes, sir, I am.

Q. You were present on the 14th of September in your office when Miss Palmer was there?

A. Yes. I came in on the 14th of October.

Q. September?

A. September, rather.

Q. About what time?

A. About 3:45.

Q. In the afternoon? And when you came in who did you see?

A. The accused.

Q. And who else?

A. Constable Martel.

Q. Where were they?

A. A woman by the name of Mrs. Blackburn ---

Q. Mrs. Blackburn was in your office at the time?

A. Yes.

Q. What happened after you came in?

A. After I came in, I interviewed Mrs. Blackburn.

Q. In the presence?

A. Of both Martel and the accused. This interview took possibly 20 or 25 minutes.

Q. Was Mrs. Blackburn there in connection with this case?

A. She had nothing at all to do with it.

Q. While this investigation took place Miss Palmer was in your office?

A. Yes.

Q. It lasted about 25 minutes?

A. Yes.

Q. And after you had this conversation or interview with Mrs. Blackburn, did she go?

A. She left the office and Miss Palmer gave me her name as Dorothea Palmer.

Q. And?

A. I asked her occupation, and she said she ran a bookstore at the corner of Bank and Queen. She said she was asked to accompany an officer from 242 Marier Road and readily consented.

Q. She told you that she was asked to accompany an officer and readily consented?

A. She readily consented. "I will show you what I am doing" and upon that she opened that bag and said, "this is what I am exhibiting to the various houses".

Q. That will be exhibit 22-B, a bag containing -- were these in the bag?

A. Yes.

Q. One box and contents, and certain cards?

A. (No reply).

To the Court:

Q. You are telling us what happened in chronological order?

A. Yes.

To Mr. Mercier:

Q. And certain illustrations?

A. Yes, she further added, "I always carry a box with me for the purpose of demonstrating. I am fully protected under Section 107", she said, of the Criminal Code.

Q. Had she been warned at this time, officer?

A. No warning, it was a statement leading up to her arrest. I asked her if she was conversant with section 207 of the Criminal Code, to which she replied, “I am given to understand by the people that hired me that I was fully within the meaning of that section”, referring to section 207.

Q. Go on?

A. To which I replied; “You may be, but as far as I am concerned there is a breach of section 207 of the Criminal Code transgressed right here”.

Whereupon I left her to obtain the form of warrant which I typed myself also the form of charge -- exhibit 21-B -- this warrant was subsequently handed to me by Constable Martel after being signed.

Whereupon I read the warrant fully to the accused.

Q. What does the warrant say: what is the charge?

A.

> “THAT she, the said Dorothy Palmer between the first day of August, 1936 and the first day of September, A. D., 1936, at the Town of Eastview aforesaid, did unlawfully and knowingly, and without lawful justification or excuse, did offer to sell, or publish an advertisement of, or have for sale or disposal, a means of instructions, and articles, intended or represented as a means of preventing conception.”

Q. You read this warrant to the accused?

A. Yes.

Q. After that what happened?

A. I immediately warned her in the following words:

> “You are not obliged to make a statement unless you so desire. If you do make a statement it may be taken down in writing and may be used in evidence”.

Q. After that?

A. The accused then stated ---

Q. Were there any promises laid out to Miss Palmer?

A. No promises.

Q. Any threats?

A. No threats. She was very pleasant; in fact, the whole interview was exceedingly pleasant.

Miss Palmer: Thank you.

To Mr. Mercier:

Q. You then took the statement?

A. Yes.

Q. At that place?

A. Yes.

CROSS EXAMINATION

To Mr. Beament:

Q. You heard Martel's evidence?

A. Yes.

Q. You were here when he made it?

A. Yes.

Q. You heard him say after you arrived you got from her, her name, address and occupation?

A. Yes.

Q. You heard him say, having got her name, address and occupation, there was no further conversation until after the warrant was obtained and read?

A. I don't recollect.

Q. Martel said after Manion arrived about 3:50 he asked her name and address and occupation and then the information and warrant were made out and then no further conversation took place until after the warrant was read?

The Court: You may be right; I don't recollect.

Mr. Beament: We will have the notes read.

(Reporter reads notes)

"Q. And you waited for Chief Manion?

A. Yes.

Q. When he came what happened -- had you any conversation with her during this hour and ten minutes?

A. She did talk.

Q. Did you warn her?

A. What she said did not concern this business.

Q. Just a pleasant afternoon in the police station -- what happened exactly when Chief Manion arrived?

A. He asked her her name and address and what she was doing and in reply to her answers the information was typed out.

Q. Before the information was laid all Chief Manion knew was the name and address?

A. Yes, and what she was doing.

Q. What she was doing?

A. Yes, occupation.

Q. That is all he knew?

A. That is all she said.

Q. Yes, then the information was typed?

A. Yes, and the warrant."

To Mr. Beament:

Q. You heard that?

A. Yes.

Q. Is that correct?

A. No.

Q. Is that all that was said?

Mr. Mercier: Let him answer.

To Mr. Beament:

Q. I am asking if you asked her her name and address and occupation and if that is all was said?

A. I would not be answering the truth.

Q. You heard Martel say that?

A. Yes.

Q. Was Martel's evidence in that correct?

A. He might have errored.

Q. Was the evidence he gave correct?

A. Not as far as my conversation with the other woman was concerned.

Q. You agree with his evidence?

A. In some materials, I was in 25 minutes.

Q. I am making no point about Mrs. Blackburn; from the moment or as soon as you began to take up business with Miss Palmer Martel said you asked her name, occupation and that is all was said and the information was laid.

Mr. Mercier: Martel said there was no talk.

Mr. Beament: In cross examination we find out what the talk was. This is proper cross examination. My learned friend keeps talking all the time in my left ear.

The Court: Go ahead, Mr. Beament.

To Mr. Beament:

Q. So, Martel was not telling the whole story?

A. It is the evidence I have given.

Q. It is what really happened?

A. Yes.

Q. In other words, instead of stopping short, laying the information, reading it, you did have a certain conversation with her?

A. Very short, as soon as she came to the breach of section 207.

Q. First of all you told us she opened this bag, Exhibit 22-B.

A. Yes.

Q. And she gave you a short resume of what was in the bag?

A. Yes.

Q. And she told you as far as the appliances were concerned, they were carried for demonstration purposes.

A. Quite correct.

Q. And she told you she was going around from place to place with these?

A. Yes.

Q. And she felt she was saved by the saving clause of 107 -- erroneously?

A. Quite right.

Q. Obviously section 207?

A. Yes.

Q. She explained all this before the information was laid?

A. Yes.

Q. And you had it before the information was laid?

A. I had it before the information was laid.

Q. You had the information from her before you laid the information?

A. I had the information it was laid upon.

Q. You did not lay it?

A. I was responsible, partly mapping it out.

Q. You are quite clear the bag was open at that time?

A. Yes, she opened it shortly after she gave me the name and address.

Q. Martel swears it was opened after the warning was read?

A. (No reply).

Q. The first time the bag was opened, she had it in her possession up to the time after the warning was given and then for the first time it was opened, is that correct?

A. She had the bag in her possession up to and including the warning being read.

Q. Is that correct: Martel swore the first time the bag was opened was when making the statement after the warrant was read and you warned her?

A. (No reply).

Mr. Mercier: That is improper: was it correct as Martel swore. You should ask accurately what was said and done.

Mr. Beament: I can understand when two police officers tell diametrically opposed stories and I think it is proper for me to call to the attention of one police officer what the other said in his presence.

The Court: Not whether he agrees.

Mr. Beament: Martel swore the first time the bag was opened was after the warning was read.

The Witness:

A. I do not agree with that.

To Mr. Beament:

Q. You said the bag was opened by Miss Palmer very shortly after she had given you her name and occupation?

A. Yes.

Q. And before you gave the warning?

A. Yes.

Q. Three things came -- the information, the reading of the warrant and the warning?

A. Yes.

Q. That is correct?

A. Yes.

Q. But before that there was some conversation and the opening of the bag and some further conversation after the warning: is that correct?

A. Yes.

Q. You did not keep any note of this?

A. A mental note.

Q. You did not make any written note of the matter?

A. I did not.

Q. Did you see Constable Martel's notes before he brought them into the court?

A. As a matter of fact I instructed him to make those very notes.

Q. With which you now disagree? If his notes are the same as his evidence, you disagree?

Mr. Mercier: That is improper: he cannot be asked if he agrees with Martel's notes.

The Court: The proper way is for this witness to tell us what happened and the other witness to tell us what happened and see what we are going to believe. Naturally if he tells a different story you cannot believe the other witness told a whole story.

Mr. Beament: No further questions.

The Witness:

A. I have not completed my evidence.

The Court: This is just ---

To Mr. Beament:

Q. Was Mrs. Blackburn there when this was going on?

A. No.

Q. She left before this started?

A. Yes.

(Witness temporarily retired)

ADMISSIBILITY OF STATEMENT

Mr. Mercier: That is all the evidence we are prepared to submit as to obtaining a statement. I think the statement should be admitted in evidence.

The Court: What do you say?

Mr. Beament: I can hardly imagine more unsatisfactory evidence than given here. It is impossible for them to say: we have one keeping notes, if those notes are accurate the Police Chief is inaccurate; it seems to me it would be very dangerous to accept statements of that kind.

The Court: The onus is on the Crown in proving warning was given: it is to prove any statements made were made voluntarily and the giving of warning is merely to help them satisfy the onus placed on them.

Mr. Mercier: There were no promises or threats -- it was a pleasant afternoon.

The Court: There is no legal necessity to give a warning: it is simply to help the Crown show the statement was made voluntarily.

Mr. Beament: It is a rule of law.

The Court: Yes, to help the Crown. The whole question is not whether a warning was given but whether the statements were made voluntarily.

Mr. Beament: And judges have established it is better to give as warning in the form they have laid down.

Mr. Mercier: There is sworn evidence a statement was given and there was no influence of hope, fear or threats.

The Court: I have no hesitation on the evidence here, although there is a certain degree of conflict in the evidence what happened up to the time the warning was given. I am satisfied the Crown had discharged the onus placed on it that her statement was voluntary.

She voluntarily accompanied the police to the station, kept the bag in her possession until warned, made statements, and there was no threat made or favour offered.

Mr. Beament: Better put Miss Palmer in.

The Court: I thought you were resting.

Mr. Beament: If Your Worship feels it is sufficient, perhaps we will put Miss Palmer in.

The Court: Adjourn until 2:15 for lunch.

MISS DOROTHEA PALMER, duly sworn, deposed.

To Mr. Beament:

Q. Miss Palmer, you are the accused?

A. Yes.

Q. On the 14th of September last you were at the home of Mrs. Mousseau in Eastview?

A. Yes.

Q. Is that correct?

A. That is right.

Q. And there, after having had certain conversation with Mr. and Mrs. Mousseau, you met Constable Martel who gave evidence this morning.

A. Yes.

Q. When did you first see Constable Martel?

A. Leaving the house, he was on the steps outside talking to Mr. and Mrs. Mousseau.

Q. What happened?

A. He asked me to step inside.

Q. Did you tell him your name?

A. Yes.

Q. You stepped inside?

A. Yes, into Mrs. Mousseau's house.

Q. What happened then?

A. He asked me to go to the Eastview police station, Chief Manion wanted to ask me a few questions.

Q. What happened then.

A. We came down.

Q. Do you remember what time that was?

A. Roughly, two or two-fifteen.

Q. You came in with Constable Martel?

A. There was no one there, two or three men were running in and out; Chief Manion was not there.

Q. You remained there with Constable Martel?

A. Yes.

Q. Did anything happen while you were alone with Constable Martel?

A. I asked what happened and if there was a possibility of being held and he said he did not know and I asked to use the telephone and he said not until Chief Manion would arrive: that was about all.

Q. Was there any suggestion of a charge?

A. No.

Q. When you asked to phone was it suggested you were being held on a charge?

A. No.

Q. You say at that time Chief Manion was not at the station?

A. No.

Q. He subsequently arrived?

A. Since the Sergeant said an hour, I presume it was an hour when he arrived.

Q. When he arrived what took place?

A. He was busy with a woman for sometime and when she was gone he told me he had a few complaints and I asked the Chief again if there was a possibility I was going to be held there as I had business and he said no, he wanted to know what I was doing and I said would it be possible I would be held until six o'clock and he said no and I said, "Very well I can explain that".

Q. Was there any conversation with the Chief about telephoning?

A. I asked to phone and he said in a while, and when he said I was not going to be held I did not bother about the telephone.

Q. And then he asked you what you were doing?

A. I said I was a social service worker: I was going to women I felt needed help and I talked to them about certain kinds of contraceptives.

Q. You had this bag, Exhibit 22-B, with you?

A. Yes.

Q. What happened?

A. It was at that time I said, "I teach contraceptive methods".

Q. He said do you carry that in your bag?

A. I said, "Yes, do you wish to see it: I will be glad to show it to you and show you what I am doing". He said he would; I opened the bag, showed him the methods under which I operated; how parents were referred to us, and the whole method. It took perhaps an hour at least.

Q. There was no charge up to this time?

A. No, I fully expected after telling my story I would be allowed to go.

Q. Then what happened?

A. Chief Manion said he was afraid he would have to talk to the Crown Attorney. I said could I telephone and he said after he talked to the Crown Attorney. He left the room.

Q. Chief Manion left the room?

A. Yes.

Q. He did telephone the Crown Attorney?

A. Yes, he was gone 20 minutes or so and he said, "I have talked to the Crown Attorney; I am afraid you will be held on $500.00 bail: and he said he would make a warrant and he made it out and said he would technically arrest me and he read the charge.

Q. From the warrant?

A. Yes and then he gave the warning -- he said "I am going to warn you" and I said it is a little late.

Q. After all this investigation?

A. Yes, well after.

Q. Was there any investigation after he read the warning?

A. He knew everything.

Q. He knew everything then?

A. No, I don't think so; on the work ---

Q. On the methods of your work?

A. No, just on the telephone again.

Q. There was some conversation about bail?

A. Yes. He told me $500.00 bail.

Q. And you phoned to make arrangements?

A. Yes, I phoned to make arrangements.

Q. Was there any conversation with regards to the facts of the offence, with relation to the charge?

A. Yes, he said it was too bad I had not found I was without the law.

Q. This was after the warning?

A. Yes, and it was also mentioned before the warning.

Q. And you answered questions from him frankly before the warning?

A. Yes.

Q. And at the time he told you you were not going to be held?

A. Yes, and I gave the story thinking I was not going to be held.

CROSS EXAMINATION

To Mr. Mercier:

Q. When you made certain statements to Chief Manion did you do so willingly?

A. Yes, certainly.

Q. Was any promise or threat made to you?

A. No, but if there was a possibility I was going to be held, I would want to wait until I could speak to my counsel.

Q. That is what you say now -- I am informed that when Martel saw you at Mousseau's place, he asked you whether you cared to have him walk with you because he could ride on his bicycle?

A. I said it was not necessary.

Q. You did gladly walk with him?

A. Yes, absolutely.

Q. And when you got here, when Chief Manion asked you these things, there was no question of your arrest?

A. There was: I asked Chief Manion if I was going to be held here and he said I was not going to be held.

Q. And you answered his questions before Chief Manion told you you were going to be arrested -- you answered certain things before Chief Manion said you were going to be arrested?

A. I did not tell Chief Manion anything until I was quite sure I was not going to be held.

Q. This is your evidence?

A. Had Chief Manion told me what he knew at the time I would not have told him anything.

Q. How can you say Chief Manion knew at the time you were going to be held?

A. It was quite evident.

Q. Why?

A. He must have known as Chief Officer.

Q. Why would he have known he was going to arrest you?

A. The fact that he was there at all would point to that fact.

Q. You came here very willingly?

A. Yes.

Q. You were not forced here?

A. No.

Q. When Martel asked you to come here you could have gone away?

A. I would not try that issue.

Q. You could have gone?

A. I did not know that.

Q. When Martel asked you could he ride his bicycle and meet you at the station?

A. Yes.

Q. You could have gone?

A. Yes.

Q. You did come to the station?

A. Absolutely.

Q. There was no question of your being arrested when you gave certain information to Chief Manion?

A. I would not have given him any information if I had thought I would be arrested.

Q. You were warned?

A. After the story was all told.

Q. And you did not say anything about this story until you were warned?

A. It was given.

A. Did you say anything about your story after you were warned?

A. Not any more than I have already said.

Q. As much?

A. No, after I was warned there wasn’t anything more to say.

Q. You say after the two officers -- after saying they warned you -- you make a statement -- you did not make any statement?

A. I said I had told my story.

Q. Did you repeat it afterwards?

A. No, I may have gone over the points again.

To the Court:

Q. Miss Palmer, you just said you may have gone over certain points?

A. (No reply).

RE-DIRECT EXAMINATION

To Mr. Beament:

Q. Did you repeat any of it?

A. I may have done so; Chief Manion said it was too bad I was outside the law: we may have discussed it.

To the Court:

Q. Did you go over certain points of your story after you were warned?

A. I did not.

Q. Did you say you did not.

A. I may have.

(Witness temporarily retired)

Chief Manion

CHIEF RICHARD MANION, already duly sworn, recalled, deposed further.

To Mr. Mercier:

Q. After you warned Miss Palmer, I understand she made a certain statement to you?

A. Yes.

Q. Do you remember what that statement was?

A. (No reply).

Mr. Beament: I object to the admissibility of this statement.

Mr. Mercier: I have no reason to fore-see that.

(Witness temporarily retired)

ADMISSIBILITY OF STATEMENTS – Argument

Mr. Beament: I suggest the evidence of the police must be looked on with a certain degree of suspicion. It is perfectly clear they tell absolutely different stories. It is a matter for Your Worship, but the onus is on the Crown to establish the voluntary nature of this statement.

Miss Palmer's statement -- and I suggest it is a statement worthy of believe (sic) and a reasonable statement in all the circumstances possible -- she was deceived by the police in making this statement.

Now, it was perfectly clear the police had at this time when she came to the station made up their minds to lay a charge against her -- that they had collected all the evidence necessary in that regard. That is obvious from the fact that the charge as sworn to by Martel related to the fruits of his investigation in the month of August and did not relate to any of the circumstances contemporaneous in her arrest.

I think what is inevitable from the evidence of any of the three witnesses who have given evidence on this is that the minds of the police were thoroughly made up as to the facts on which they were proposing to charge her and also on matters in respect to the charge they proposed to lay.

That being the case, what happens. Martel's evidence must be disregarded almost in its entirety. It is clearly not reliable, quite apart from great disagreements with Manion's -- his demeanour in the box was unfavourable and not frank and from it one would not be prepared to justify the truth of his statements.

That Chief Manion obtained a substantial statement from Miss Palmer before laying the charge and warning her is clear from his own testimony. It is clear Martel was not agreed, but that is another reason to reject Martel's testimony. I suggest, bearing in mind, the intent of the police to lay this charge and the course the interview took, namely, an attempt to extract, and the extraction of an admission from this lady -- the charge could have been laid on men's rea, and he was quite aware of

that difficulty from his evidence in the box today -- the Chief just goes ahead. After looking at this lady he goes ahead and obtains a statement.

Now that statement obtained was voluntarily given because she was willing to give it if the facts were as represented, but the facts represented by the police were very far from what was intended by police and had the facts been such as represented to her, she swears -- and it is reasonable -- she would have made no statement without the advice of counsel.

We have here a very reprehensible kind of case: getting a person in first, lulling the person into a sense of security, saying we are asking this for information -- no charge will be laid -- although their minds were made up to lay a charge -- waiting until they have extracted a statement and then laying the charge they intended to lay -- and then laying the charge they always intended laying -- the accused rights were violated and I think it is on these grounds the statement should not be let in.

Your Worship is not (sic) doubt familiar with the Seabrooke case and the extent to which courts will properly go to protect an accused against police imposition.

The Court: I have read it, but in that case, it was decided mainly on the point all the constables and parties present were not heard from on the question of the admissibility of the evidence: that was the gist of the case there.

Mr. Beament: The statement was finally excluded.

The Court: Yes, because there was not enough evidence to admit it.

Mr. Mercier: On this point there is not a tittle of evidence to show the police had made up their minds to arrest this woman before they did. The evidence points to the contrary.

They had not made up their minds and these admissions are clearly admissible.

There is this other point: she came here willingly, and here is the evidence of the two police officers who swear positively they gave her a waring and after it was issued, she made a statement we intend to put it in. Her answer to this is that

she may have said something and the officers are positive she did say what the Crown purposes (sic) bringing in as evidence.

Then, the law is pretty well stated on these matters of admission. It is a question of whether voluntary or not, and the judge or magistrate hearing the case must find if there was any influence of hope or fear and the judge, to summarize the authorities, must take into consideration age, appearance, character and intelligence of the witness: "…" -- there are also cases here -- the case of Little Deer, CCC page 75 and Coleridge -- and numerous other authorities.

It is for Your Worship whether the confession was given voluntarily -- the weight of the authorities is that if there was such fear or circumstances surrounding the making of that statement -- if they were such that the accused might have said something that was not true and which might prejudice her case ---

You have the positive evidence of the two police officers: they warned this accused and it was after this warning of the accused she made a statement to them and the accused herself says she may have said something to them; she does not remember.

Mr. Beament: Shortly, in reply, with regard to the Seabrooke case, Your Worship remembers the accused was brought in when the police had in their minds the intent to charge him with murder but they told him it had something to do with a cheque.

And under that false representation under which he was held they questioned him. That was also one of the grounds on which the Court of Appeals decided and if I recollect, Mr. Justice Jeffrey, the second time rejected police testimony as to admissions.

I want to say, too, the statement cannot be voluntary if induced by deceit and would like also to call your attention to the rules laid down by judges and I think it is fair to say those rules are now considered to be a fair criterion in order to make statements admissible.

Rule 2 is:

> "Whenever a police officer has made up his mind to charge a person with a crime, he must first caution him".

In this case not only was the caution not given but this lady was told she was not going to be charged.

That the police officers' minds were made up to lay a charge is established because they had secured their information previously.

I call your attention to No. 4 of the same rule:

> "If the prisoner wishes to volunteer any statement it is desirable a caution should be administered…".

Mr. Mercier: In the Seabrooke case my interpretation is that there is no question of the police officers having made up their mind. There were five officers there: they told him he would be charged with uttering a false document and then they knew he could be charged with this murder. However, there is the sworn evidence of the police officers here.

The Court: As I have remarked before the whole question of any admissibility of any statement made by any accused revolves upon the question whether that statement was made voluntarily.

The onus is on the Crown to show that there was no threat used in obtaining any statement or no promises of obtaining better treatment; no hopes held out of any lenient sentence and the onus is on the Crown to show in all respects the statement was voluntarily made by the accused.

After that onus is satisfied the statement is admissible.

Now, in this case, Miss Palmer was asked by Martel to come to the police station because Chief Manion wanted to ask her some questions.

She came voluntarily. She waited in the police station some time for Manion to appear and when he finally appeared, he disposed of another matter first then asked her as to her name, address and occupation and proceeded to ask her some questions up to a certain point. At a certain point in the questioning of the accused Chief Manion left the room apparently to get in touch with the Crown Attorney. And information and warrants were made out and signed and the warrant was handed to Chief Manion and he read the warrant to Miss Palmer and gave her the customary warning the police give when questioning accused.

Further conversation took place between Manion and Miss Palmer.

In the questioning before the warrant was made out or the warning read, Manion states that Miss Palmer undertook to show him exactly what she was doing. She opened her bag and displayed its contents and when she got to the point where she thought was within section 207, fully protected, he stopped her and the warrant was made out.

It is apparent the police had been up to that time making certain investigations. The police in any case have to make a considerable number of investigation before they make up their minds an offence has been committed and a certain person is to be the one charged with a certain offence.

Chief Manion in this case questioned Miss Palmer in the light of the investigations which the police had carried out. At a certain point in the questioning he stopped any further statements by the accused and an information is sworn out. Miss Palmer says she was informed by Chief Manion she was probably not to be held. She was not informed that she would be charged. She did not say anything about that: she said she was told she would probably not be held. As a result of the questioning Manion put to her he makes out the charge after consultation with the Crown Attorney.

It does not seem to me up to that point the police had made up their minds to arrest Miss Palmer and until that point is reached by the police any statements made by the accused are voluntary. When the police have made up their minds to arrest a person, then to properly satisfy the onus placed on them they should give that warning.

There were no threats made, promises offered or hopes held out to her. I will hold the statements she made were made voluntarily and I will admit them as evidence.

Chief Manion

CHIEF RICHARD MANION, already duly sworn, deposed.

To Mr. Mercier:

Q. Chief, after warning Miss Palmer, she made a certain statement to you?

A. Yes.

Q. You personally did not take it down in writing?

A. No.

Q. Will you tell His Worship what that statement was?

A. Miss Palmer stated:

> "I am sorry I came into Eastview. I really expected trouble, but I didn't expect trouble from the police. I expected trouble from the clergy.
>
> Now that I am arrested, I am glad that the matter has come to a show-down. I may be the goat in the proceedings but I feel confident that Mr. Kauffman, who lives in Kitchener, a very wealthy man, will see me through.
>
> I have been complimented by Mr. Kauffman's representative, who hired me sometime in April, when I took Miss Todd's place.
>
> I am glad I have those communications, which are received from Mr. Kauffman's representative, and I will produce them when the time comes in court.
>
> I may be imprisoned for two or more months, but I can assure you that the moment I am liberated I will go back to the same work.
>
> I am doing this for the service of women in general. Some of the homes I have visited and some of the women I have spoken to are almost distracted, having children from year to year.
>
> I have visited those homes who have been recommended to me by women who I come in contact with, and in all cases I carry samples for demonstrating purposes.
>
> Some of the women who I have visited, particularly in Eastview, are vey ignorant regarding the use of those instruments; therefore, you can readily understand I have got to demonstrate."

That is the benefit of the statement.

Q. As far as you can recollect?

A. Yes, mentally, without notes.

The Court: Is that all of Chief Manion's evidence?

Mr. Mercier: Yes.

The Court: Any questions?

Mr. Wegenast: If we had known what that statement was, we could have saved a good deal of time for Your Worship.

Mr. Beament: Yes, if we had known.

(Chief Manion retired)

Constable Martel

CONSTABLE MARTEL, already duly sworn, recalled, further deposed:

To Mr. Mercier:

Q. I understand you have taken some notes of Miss Palmer's statements?

A. Yes, sir.

Q. When were they taken?

A. At the time for (sic) words were spoken.

Q. Will you tell his Worship what they are?

A. I have heard the evidence Chief Manion has given, and will further add:

Q. You might read it a little faster? The reporter can take it down faster?

A. After the accused was arrested and duly warned, she made the following statement:

She expected trouble in Eastview, as she knew the majority of people here were Catholic. She didn't expect any trouble from the police but from the clergys.

Now that she was arrested, she was glad it was over, as her mind was more at ease. She says, when she was escorted to the police office, she thought it was to be warned only.

> "Now that I am arrested, I am glad it is over. I may be the goat but I am sure Mr. Kauffman, who is a very wealthy man, will see me through because he is interested in poor mothers who have large families.

Constable Martel

> I had been told by Mr. Kauffman's representative I was well within the law. I was only contributing to the happiness of the mothers who were in many cases becoming desperate.
>
> Mr. Kauffman complimented me on the good work I was doing on many of his letters to me, which I am glad I kept, as I expected trouble sooner or later.
>
> Those letters I will be glad to show when the time comes.
>
> I may get a few months in prison, but in view of the desperate condition I have seen in the homes I have visited, I most certainly would do the same thing over again the moment I am liberated.
>
> A woman should be the master of her own body and should be the one to say if she wants to become a mother.
>
> I don't sell anything: I merely go to homes which have been recommended to friends of women who may be interested.
>
> I always carry a box with me for demonstration purposes. A box as you see."

(This box was shown with the contents.)

Mr. Mercier: Box, Exhibit 22-B, -- it is contained therein?

The Court: The box is contained in the bag, Exhibit 22-B.

To Mr. Mercier:

Q. Go ahead?

A. She also mentioned the contents of the box: tube, jelly and nozzle, condoms for male and female and instruction leaflet.

> "Many of the women I have spoken to were totally ignorant. I had to go fully into the matter of how the jelly and the condoms were to be used."

She always asked if she intended to be pregnant, in which case she did not recommend the use of the articles.

She also said, being a nurse, she was sure the use of the articles did not cause abortion.

Q. Is that all?

A. Yes, sir.

The Court: Any questions?

Mr. Wegenast: No, Your Worship.

Mr. Mercier: I thank you.

(Witness retired).

Mrs. Jennie Grecco

MRS. JENNIE GRECCO, duly sworn, deposed:

To the Court:

Q. Your address?

A. 43 Catherine.

Q. In the town of Eastview?

A. Yes, sir.

To Mr. Mercier:

Q. Speak up: do you know Miss Palmer?

A. No, I never see her before she was at my place.

Q. You never saw her before she went to your place?

A. No.

Q. When was she at your place?

A. Yes, sir.

Q. When?

A. In August.

Q. Do you know when in August?

A. Around the middle of the month.

Q. How did Miss Palmer come to go to your place?

A. She told me somebody sent her to my place.

Q. Now, did she talk with you when she was sent to your place?

A. Yes, sir.

Q. What did she say to you when she was sent to your place?

A. She talk about those boxes.

Q. What did she say?

A. She asked could she talk to me: I said "I don't talk much English; I got work to do." I didn't want to be bothered with the box.

Q. Did she tell you what was in the box?

A. Yes.

Q. Did she show you what was in the box?

A. Yes, she showed me the box she got in her bag.

Q. A box similar to that?

A. Yes, she had a box in her bag.

Q. Box, Exhibit 22-B. What did she show you in that box?

The Court: Ask her what she was shown.

To Mr. Mercier:

Q. What did she show you?

A. Jelly.

Q. With a key, described to her as jelly -- was there anything else in the box?

A. A tube and key, that is all.

Q. That is all Miss Palmer showed you -- did she tell you anything about these?

A. She asked if I wanted to go to hospital, me or my husband.

Q. For what purpose?

A. For an operation, if I wanted to be operated; I would be two weeks or if I didn't want to go, she asked if my husband would go.

Q. She suggested either you or your husband go to the hospital for an operation?

A. Yes.

Q. Did she say what sort of operation: what kind of operation?

A. Yes.

Q. What?

A. I told her I had nine kids living and two dead, and she said, “you are young yet, you might get more; why not get operated; you might have more.”

Q. Did you reply to that?

A. I told my husband and he said, “don’t be bothered with that.”

Q. Is your husband working?

A. No.

Q. I produce this box, Mrs. Grecco, Exhibit 3-B: do you remember seeing that before?

A. Yes, that is mine; that is the one I gave to Mr. Martel.

Q. How did you get that?

A. The mailman came with the box.

Q. How did the mailman come to send you that?

A. The mailman came; he was at my place with that box; he give it to me.

Q. What did you do with it?

A. I put them away so I don’t want the children to see them.

Q. You didn’t want your children to see that?

A. No.

Q. How old are your children?

A. The oldest boy is seventeen.

Q. Any girls?

A. Yes, two.

To the Court:

Q. How did you come to receive this box?

A. Pardon?

Q. Why did you get the box?

A. She told me she was going to send me that box, Miss Palmer.

To Mr. Mercier:

Q. What did you say when she said that?

A. I didn’t say anything. She said, “you will get that box by mail.”

Q. Did you sign anything?

A. I signed a paper but I don’t read English; I don’t know what it is.

Q. Was that paper explained to you in French?

A. I didn’t read the paper.

Q. Was it explained to you?

A. I just see the paper; that is all.

Q. You just saw the paper?

A. Yes.

Q. Did you see your doctor?

A. No.

Q. Were you told to see your doctor?

A. No.

Q. Did Miss Palmer tell you to see your doctor?

A. No, she didn’t.

Q. You just got this box after you signed something?

A. That is all.

Q. Why did you sign this?

A. She told me I had to sign this.

Q. She said you had to sign this?

A. Yes.

Q. Did she tell you why you had to sign this paper?

A. No.

Q. What made you believe she had authority to make you sign this?

A. After she said if I signed it, I would get the box.

Q. You said Miss Palmer told you you had to sign this?

A. Yes.

Q. What made you sign it: because she told you you had to sign it?

A. She told me to sign this paper.

To the Court:

Q. Do you sign papers for every stranger who personally comes into your house?

A. She told me to sign it because I had work to do.

To Mr. Mercier:

Q. Your reply is that you signed the paper to get rid of Miss Palmer?

A. I didn’t want to be bothered with those boxes.

Q. All right.

CROSS EXAMINATION

To Mr. Wegenast:

Q. You knew what the boxes were for?

A. No, but she explained.

Q. So you wouldn’t have any more children?

A. Yes.

Q. You have nine?

A. Yes, and two dead.

Q. Any miscarriages?

A. No.

Q. Any abortements?

A. Two still born.

Q. You didn't think you were doing anything wrong in talking to her?

A. No.

Q. How long have you been married, Mrs. Grecco?

A. Sixteen years.

Q. You are on relief?

A. Yes.

Q. You are on relief now?

A. Yes.

To the Court:

Q. So you have had eleven children in sixteen years?

A. (No reply).

To Mr. Wegenast:

Q. Two not born alive and nine born alive?

A. Yes, eleven altogether.

To the Court:

Q. Is that all?

Mr. Mercier: That is all, unless my learned friend -- All those exhibits are in with their contents and advertising?

The Court: Yes.

(Witness retired).

Mrs. H. Dagenais

MRS. HERMENLINE DAGENAIS, duly sworn, deposed:

Interpreter ROSSARIO HEBERT sworn:

To the Court:

Q. What is your name?

A. Hermenline Dagenais.

Q. Address?

A. 31 Cedar Street.

To Mr. Mercier:

Q. Where do you live?

A. 31 Cedar Street.

Mr. Mercier: (to interpreter): Just put the questions as I give them and give her answers as she gives them?

The Interpreter: Yes.

To Mr. Mercier:

Q. Do you know Miss Palmer?

A. I am not kind of sure it is her. I won't say yes when I am not sure.

Q. All right.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Mrs. Dagenais, you have had twelve children, living?

A. Yes.

Q. And three children, dead?

A. Yes.

Q. And you have had two miscarriages?

A. Yes.

Mr. Wegenast: Is abortement the same?

The Interpreter: It is the same as miscarriage and abortion.

Mr. Wegenast: Miscarriage is up to three months; after that is abortion. Now, ask this witness:

To Mr. Wegenast:

Q. Were they more than three months?

A. No.

Q. So they were miscarriages, and your last child is about a year old?

A. Yes.

Mr. Mercier: Are you putting that card in as an exhibit?

Mr. Wegenast: I can; I am only using it as a memo.

To Mr. Wegenast:

Q. Your husband is out of work?

A. He is working at present.

Q. But he was not working when Miss Palmer called on you?

A. It was a week then he was started work.

Q. Before that he was unemployed for how long?

A. Since last fall.

Q. What income did he have from last fall until the time Miss Palmer saw you?

A. Only that week's earnings.

Q. Do you think you did anything wrong?

Mr. Mercier: She told me she didn't know if she knew Miss Palmer at all.

The Court: I think you have raised the point it was Miss Palmer.

Mr. Wegenast: I would assume Your Worship would think it was.

The Court: This witness said she didn't know; she wasn't sure.

Mr. Wegenast: I think my learned friend was very fair.

To Mr. Wegenast:

Q. When she was talking to the young lady, did she think there was anything morally wrong about discussing the matter with her?

A. I did not.

Q. The eldest child is twenty-two or three now?

A. Twenty-two.

To the Court:

Q. How long have you been married?

A. Twenty-four years.

Mr. Wegenast: That is all.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Did you sign anything?

A. Yes, I signed a card.

Q. That card should be produced. (Card produced). Does she recognize that signature? Is her name written there anywhere?

A. Yes.

Q. What did you sign this for?

Mr. Wegenast: I wouldn't have given that to my learned friend if I knew it would start this.

Mr. Mercier: This document is used and produced.

The Court: It is not produced; counsel can use any document for reference in asking questions.

Mr. Mercier: This person states she has signed the document.

The Court: Is that in cross examination?

Mr. Wegenast: No.

Mr. Mercier: This is re-examination. I can bring it within that. My learned friend has been using a card, with certain information on the card, signed by this woman. I ask for the production of it. Any document in court should be produced if the signature of the witness is on it.

The Court: Defence counsel might have left that in his office and written down the details.

Mr. Wegenast: We have copies here; if my learned friend is thinking of parties it is different, but these are witnesses.

The Court: I don't think that card has been raised in cross examination.

Mr. Beament: It has been identified.

The Court: I don't think we will admit it as an exhibit.

Mr. Mercier: It is arising out of cross examination, Your Worship; my learned friend has asked Mrs. Dagenais if she thought she was doing something wrong.

Mr. Beament: Morally wrong.

Mr. Mercier: By signing this card.

The Witness:

A. It was only to see what it was; I had no chance to read whatever it was on account Mr. Martel came and got it.

Q. When this lady came to see you, did she tell you what you were signing?

A. She told me it was concerning family.

Q. What conversation did you have with this lady?

A. Not very much on account she couldn't speak French and I couldn't speak English.

Q. And this lady who went over to visit you: what did she say when she came into your house?

A. All I understood was that it was for family, because I do not understand English.

Q. Did the lady tell you what it was or what her occupation was?

A. She told me she was a nurse.

RE-CROSS EXAMINATION

Mr. Wegenast: May I ask Your Worship's indulgence: it arises out of my learned friend's examination.

To Mr. Wegenast:

Q. The lady asked some questions?

A. If she did, I did not understand them.

Q. How do you think the lady knew you had twelve children?

A. It is easy to be understood; I understand a little but not enough to keep up a conversation.

Q. All right.

(Witness retired).

MRS. BERTHA BURTON (LEBRETON), duly sworn, deposed:

To the Court:

Q. Your first name?

A. Bertha Burton.

Q. Address?

A. 53 St. Charles.

To Mr. Mercier:

Q. I produce to you Exhibit 4-B?

A. Yes.

Q. Have you ever seen that before?

A. Yes, I had that box at home.

Q. With its contents?

A. Yes, all you see in it was there.

Q. A tube and key?

A. Yes.

Q. Some literature advertising condoms and jellies?

A. Everything is there.

Q. And a nozzle?

A. Yes.

Q. And a box of what we shall call liquid latex? For the purpose of this inquiry?

Mr. Wegenast: Is that a new name -- oh, yes, it is marked on it.

The Court: Let me see the box.

To Mr. Mercier:

Q. How did you come to get this?

A. I don't remember seeing that lady's face before; I was never at home if she passed.

Q. Did you ever sign anything to get that?

A. No, I have never signed anything.

Q. Did you ever request these?

A. I saw certain persons this lady saw, and I said I would find it funny if she came at home, to see what she was giving away.

Q. You were curious?

A. Yes, everybody say it.

Q. You don't know the accused?

A. I never saw her before.

To the Court:

Q. You never saw her before today?

A. At home neither. I was not at home when she passed.

Mr. Beament: If she called.

To Mr. Mercier:

Q. Was anybody else at home?

A. A young girl.

Q. It is marked August 29th?

A. I don't know the date, but I received it about that time.

Q. You had a young lady there about August twenty-ninth?

A. Yes, Mrs. or Miss Hudon.

Q. Did you sign anything at any time to get this tube?

A. I didn't sign anything at all; if I had been at the house I might have, but I didn't sign it myself.

CROSS EXAMINATION

To Mr. Beament:

Q. Mrs. LeBreton, when were you married?

A. Ten years ago.

Q. In 1926?

A. Yes.

Q. How many children?

A. Three.

Q. All living?

A. Yes.

Q. Their ages are?

A. Eight, six, four.

Q. Any miscarriages?

A. None.

Q. No abortions?

A. Never.

Q. Was your husband employed?

A. Working.

Q. He is working now?

A. Yes, but since only two weeks.

Q. He was unemployed in August?

A. Yes.

Q. How long has he been unemployed?

A. Three years.

Q. During that time had he been on relief?

A. Yes.

Mr. Mercier: At this point I want to say I do not want to raise too many objections for the defence. The charge is that the accused did advertise to several persons a mode of preventing having a family. The questions in cross examination do not arise in examination in chief, and the fact that people have so many children and are on relief and have miscarriages and abortions has nothing to do with whether the accused did "advertise to several persons in the town of Eastview … conception." (charge read). As to the motives, I do not think it can be raised in cross examination.

Mr. Wegenast: There are already in the law reports a number of cases, some in the House of Lords, in which these very matters have been made matters of substantial issue.

The Court: Not in a similar type of prosecution.

Mr. Wegenast: No, but when the question was as to whether literature or articles -- literature I think it was in most cases -- came within the purview of the law, was objectionable from the point of obscenity. Of course, this section 207 comes under that head; I can think of no other head, and the defences made support my contention. The cases turned in every case on

questions whether the circulation was for the public good and Steven, in his Digest, makes that the dividing line between what is obscene and what is not.

I want to refer to this again, Your Worship, but section 207 of the Criminal Code was drawn by Steven himself. It is his language and the parliament of Canada adopts it and the parliament of Canada makes it a matter of public good.

Mr. Mercier: It is a question of defence.

Mr. Wegenast: Yes, but we have no pleadings in this case. If I were assured by Your Worship that we would have the usual opportunity of reply, if we undertook to deal with this affirmatively in the defence? We must prove in reply, or one way to meet the charge is by establishing the acts in question were for the public good. If we can undertake to prove that affirmatively and then have the usual reply to any negative evidence my friend brings in?

The Court: We might go on until Christmas.

Mr. Wegenast: Yes; I anticipate your view.

Mr. Mercier: Not that I object so strenuously, but I want it to be a matter or record anyway, that I think these questions are not proper, but if it is for the purpose of shortening the procedure by asking these questions in cross examination on matters not examined in chief, I will not object. It is for the record.

The Court: While I think it is possible to argue on that point, I think I will allow the cross examination.

Mr. Mercier: I could not have anticipated the defence, but I know now it may be that these things were done for the public good.

Mr. Wegenast: That much arises out of the discussion: I think I have been perfectly justified by pleading the surrounding circumstances, which are always pertinent.

The Court: It is always a good point to prove your defence by the Crown's witnesses, if you can.

(Witness retired).

J. Hudon

JEANNETTE HUDON, sworn, deposed:

To the Court:

Q. Do you speak English?

A. Yes.

To Mr. Mercier:

Q. Do you know Miss Palmer, the accused?

A. Yes.

Q. Do you remember seeing her?

A. Yes, when she came home.

Q. When was that?

A. I don’t remember; about a month or a month and a half.

To the Court:

Q. Where do you live?

A. 54 Catherine.

To Mr. Mercier:

Q. Where were you living in the month of August of this year?

A. I was home.

Q. Where? At 53 Charles?

A. No, I lived one week at 53 Charles.

Q. With Mrs. LeBreton or Burton?

A. Yes.

Q. Do you remember what month you were living there?

A. No, I don’t.

Q. In any event, while you were living there you met Miss Palmer?

A. Yes.

Q. And how did you come to meet her there?

A. She came home, the first time I saw her, when I was living at home.

J. Hudon

Q. Where?

A. My place.

Q. Where was that?

A. 54 Catherine.

Q. When was that -- do you remember?

A. No, I don't.

Q. She went to your home and after that went to Mrs. Burton's place?

A. Yes.

Q. That was the second time you saw her?

A. Yes.

Q. You asked her to come to Mrs. Burton's?

A. She passed and said "hello, how do you do?" I was polite.

Q. Did you have any conversation with her?

A. That is all she asked and she came in.

Q. When inside did she speak?

A. Yes.

Q. What was said?

A. She asked me the name of the lady where I was. I told her and she asked me if the lady would like to have a box liked she give me.

Q. She had given you one of those before?

A. Yes.

Q. What was in the box?

A. Well, the same as those boxes there; you know what is in them.

Q. I don't know what is in them?

A. You know as well as I do.

To the Court:

Q. You must say what is in them?

J. Hudon

To Mr. Mercier:

Q. You had a conversation -- did Miss Palmer tell you what would be in the box she would give you?

A. Yes.

Q. What did she say would be in the box?

A. A tube and I don't know how to say the other things.

Q. Were they shown to you?

A. Yes.

Q. What -- would you like to describe them?

A. There was a glass, I don't know how to say it; there was a tube and a key for the tube.

Q. Were you told what to do with those things?

A. Yes.

Q. What were you told to do with those things?

A. I am not going to answer.

Q. You were told to do something with these; what were you told to do?

A. (No reply).

To the Court:

Q. It is a fair question: I am afraid you will have to answer it?

A. (No reply).

To Mr. Mercier:

Q. What were you told to do with the contents of that box?

A. (No reply).

Mr. Wegenast: I think my learned friend's words are a bit ambiguous.

The Court: I think the Crown Attorney is trying not to lead.

Mr. Mercier: I have asked the witness if she was told what to do with these things and she said yes, and I want to know what she was told to do with these things.

J. Hudon

To Mr. Mercier:

Q. Were you told how to use these things?

A. She told me if I want to use it and I said yes.

Q. All right?

A. She show me how to use it; she just put the key in the tube and show me how to put the stuff in the other thing.

Q. Did anything come out of the tube when she showed you how to use the key?

A. Yes, I don't know what kind of stuff.

Q. What did she tell you to do with this stuff, if anything, or, did she tell you to do anything with this stuff?

A. Yes, she did.

Q. What did she tell you to do with this stuff?

A. I can't answer that; that is no question to answer in front of all the people like that.

The Court: Let her write her answer, then.

(Witness writes the following answer):

A. She said to put the stuff that there is in that tube in the glass piece and you put the glass piece inside your body before you have anything to do with a man, if you don't want any family.

To Mr. Mercier:

A. How old are you?

A. Twenty-four.

Q. Married?

A. No.

Q. You were not married either in August of this year?

A. No.

CROSS EXAMINATION

To Mr. Wegenast:

Q. You told Miss Palmer you were married?

A. I told her at first, but after I told her I wouldn't say lies; I told her I wasn't.

Q. You have one child?

A. Yes.

Q. And you have started to have several more?

A. What?

Q. You have been pregnant several more times?

A. No; I had enough of one; don't worry.

Q. You signed this?

A. (No reply).

The Court: It will have to go in as an exhibit.

To Mr. Wegenast:

Q. This paper was made out at your place before you signed it?

A. She asked me a few questions and put them on the paper.

The Court: It is exhibit 23-B, signed "Mrs. A. Hudon."

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Did you use any of this stuff?

A. No.

Q. You didn't -- when you signed this application had you told the accused that you were not married?

A. Yes.

Q. When did you tell her you were not married, the first time or the second time?

A. The first time.

Q. The first time you said you were not married?

A. When she came home she said, "do you want a box." I said yes, and she said "are you married," and I say "yes," and after that she said, "are you sure you are married," and I said, "no, I am not married."

J. Hudon

Q. Was this signed after you had told her that?

A. No, I didn't sign before I told her I was a girl.

Q. When did you sign this: was it after you told her you were unmarried or before?

A. (No reply).

The Court: She just said that.

To Mr. Mercier:

Q. When you signed this did Miss Palmer know you were married or not?

A. She knew I was a girl.

Q. And on this card, Exhibit 23-B, I see "Mrs. A. Hudon; date of marriage, March, 1935;" did you tell her you were married in 1935?

A. I did not.

Q. Did you give the age of your husband?

A. I didn't tell her I had any husband.

Q. The card gives "husband's age, twenty-seven." Did you ever have any abortions?

A. No.

Q. The card says three or four?

A. No.

Q. Did you tell her you had those?

A. No.

Q. Did you say anything about the physical condition of your husband?

A. I didn't tell her I had a husband.

Q. It says here, "physical condition of husband, good;" did you tell her you had miscarriages before as well as since marriage?

A. No, I didn't.

To the Court:

Q. You are under oath, Miss Hudon: you didn't tell her any of those things?

A. No, I didn't.

Q. You didn't tell her you had a husband age twenty-seven?

A. No, I didn't.

The Court: Is that all for this witness?

Mr. Mercier: As far as I am concerned.

(Exhibit 23-B):

"Application and history card:

Name – Mrs. A. Hudon.

Date – Aug. 15, 1936.

Case No. Fr. 35986.

Street – 55 Catherine St.

Nationality – French.

Religion – R. C.

City – Eastview. Province – Ontario.

Date of marriage – Mar. 1935.

Husband's occupation – unemployed.

Income – nil.

On relief – yes.

Wife's age – 24.

Husband's age – 27.

Family physician – Clinic, Water Street, Ottawa city.

No. of living children – one.

Ages of living children – 1 year.

No. of dead children – none.

No of miscarriages – none. Give dates .

Ages of children at death .

No. of abortions – 3-4. Give dates .

Health of children – good.

J. Hudon

State contraceptives used previously – none.

Date of last menstrual period – Aug. 13, 1936.

Check reasons) Economic X . Physical .

For desiring) Desires proper spacing

contraceptive) of children .

information) Other reasons .

Physical condition of husband – good.

Physical condition of wife – good.

If pregnant, date of term – not when contacted.

Instructions to social workers – Write name and address very plainly in ink on reverse side. RURAL (in ink).

Check contraceptives desired:

Contraceptive jelly and nozzle: V .

Or pessary and contraceptive jelly: .

Application: I herewith make application for birth control information and supplies and claim that I am entitled to receive same in view of my circumstances.

Please send English, Polish, Ukranian, **French booklet** (sent) (mark language desired).

Referred by _____

Name Address

Applicant sign here - (sgd.) Mrs. A. Hudon.

Social worker sign here - (sgd.) Dorothea Palmer.

Family physician sign here – Clinic, Water Street; no special doctor.

I recommend size ( ) pessary.

The signature of the social worker is not necessary if the application is signed by the family physician.

The size of the pessary must be ascertained by the family physician. Patient must go to the DOCTOR'S OFFICE to be fitted if pessary method is desired.

J. Hudon

Literature on contraception will be sent to the family physician on his request.

(In red ink): 8-19-36. J. N. & C. (n). D. B.

Remarks: (Home conditions; size and type of residence; how kept; general observations):

This mother has been using abortive methods for the past few years. Before marriage as well as since.

B. C. information much needed.

Send application to The Parents' Information Bureau, 410 King St. W., Kitchener, or Miss A. S. Weber, 410 King St. W., Kitchener."

(Witness retired).

The Court: Five minutes intermission. (At 4:15 p.m.)

(Court resumed at 4:20 p.m., 21st Oct., 1936).

MRS. JENNIE GONEAU, sworn, deposed:

To the Court:

Q. Your Address?

A. At that time, 57 Main Street. Now, it is Montreal Road.

Q. Is there a number there?

A. 49a Montreal Road.

The Court: Did you get that, Mr. Beament?

Mr. Beament: Yes.

To Mr. Mercier:

Q. Are you a married woman?

A. Yes, sir.

Q. In the month of August where were you living?

A. 57 Main Street.

Q. 57 Main Street in the town of Eastview?

A. Yes, sir.

Q. And you know the accused, Miss Palmer?

A. Yes, I met her through one of my friends.

Q. Will you tell the Court how you came to meet her?

A. I went to my friend's and she said she was a nurse.

Q. She told you she was a nurse?

A. Yes.

Q. What else?

A. She asked if I was married and I said yes. She said, "how many children." I said two. She asked "how old are they," and I said, "one is six and one is four." She asked, "do you want a birth control box," one of those -- (indicating exhibit boxes) -- I said, "I might; it might come in handy."

Q. As a result of that conversation did you receive a box, Mrs. Goneau?

A. Yes. She asked the age and all that and how long married and I signed for the box and I got the box in two weeks.

Q. Did she ask the name of your doctor?

A. Yes, it is marked on the paper.

Q. Who is that doctor?

A. Dr. DesRosiers.

Q. Was anything said about consulting your doctor?

A. No; I didn't see him for a long time.

Q. Did Miss Palmer say anything about consulting him before using this box?

A. No.

Q. She didn't tell you that?

A. No.

Q. Will you look at the contents of this box?

A. Everything is in there; I read a few of the papers and put them in the stove.

Q. Was this paper there: "Birth Control and some of its Simplest Methods"?

A. Yes, and a larger page; I burnt them and put the box in the bath room.

Q. And you had this application?

A. Yes, I put it in the bath room.

Q. Inviting you to sent it to your friends?

A. Yes.

Q. And you received this as a result of signing an application form given you by Miss Palmer?

A. Yes, in case it might be handy.

Q. When did you receive this box?

A. About two weeks after; I saw her about the end of August.

Q. It is Exhibit 6-C -- did Miss Palmer show you anything?

A. No, she was in a hurry and passed the door a few minutes after; she said everything would be in the box and not to worry.

Q. That the instructions were in there?

A. Yes, and it is.

Q. You were not shown anything by Miss Palmer?

A. No; I don't believe she had anything in that bag.

Q. She didn't show you anything?

A. No, she just gave me that paper.

CROSS EXAMINATION

To Mr. Beament:

Q. Have you had any miscarriages?

A. No, sir.

Q. Your husband, what is his occupation?

A. Painter.

Q. Has he steady employment?

A. No, just in the summer, a few weeks, that is all.

Q. His employment is uncertain?

A. At Dufour's.

Q. His work is not regular?

A. Not safe.

Q. So there are periods when you are on relief?

A. Sometimes we have to go on relief.

Q. And sometimes your husband has a job for a short period?

A. Yes, sometimes he has good wages.

Q. Did you think you were doing anything morally wrong?

A. No, because I wasn't anxious to get that box but I thought it might come handy.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Did you say you were anxious or not anxious to get the box?

A. I said I was not anxious, but it might come in handy.

Q. That is all.

(Witness retired).

Mrs. Catherine Murphy

MRS. CATHERINE MURPHY, sworn, deposed:

To Mr. Mercier:

Q. Where do you reside?

A. 42 ½ Beechwood.

Q. In the town of Eastview, here?

A. Yes.

Q. Were you living there in the month of August? 1936?

A. Yes.

Q. Do you know the accused, Miss Palmer?

A. Yes, I met her.

Q. When did you meet her?

A. Some time in August, I can't say.

Q. Did you have a conversation -- where did you meet Miss Palmer?

A. In my own home.

Q. Do you know how it came she went to your home?

A. No.

Q. How did she come there?

A. She came, knocked on the door.

Q. You answered the door?

A. Sure.

Q. Did you have any conversation with Miss Palmer?

A. Yes; we talked.

Q. What was the conversation?

A. We talked about birth control.

Q. Who do you mean by “we”?

A. Miss Palmer and I.

Q. She came in and what did she say?

A. I couldn’t say exactly what she said.

Q. Do you remember the substance of what she said?

A. She asked about my family.

Q. And you replied to that?

A. Yes.

Q. After she asked about your family and you replied?

A. I said I wasn’t anxious to have any more children.

Q. You told Miss Palmer you were not anxious to have any more children?

A. Yes; that is what I told her.

Q. How did you come to say that?

A. She said she was helping mothers with big families.

Q. And you told her as a result of something she told you, you were not anxious to have more children?

A. She didn’t tell me that; she just said she was helping mothers.

Q. And then what did she say?

A. She said she would send one of those boxes by mail.

Q. To prevent family?

A. Yes.

Q. Did you sign an application?

A. Yes, I signed a form.

Q. Did she ask the name of your doctor?

A. No.

Q. Did she tell you to see your doctor before using one of these boxes?

A. No, she didn’t mention a doctor at all.

Q. Is this the box you received?

A. Yes, exactly.

Q. And the contents, -- literature, application and envelope?

A. (No reply).

The Court: Exhibit number?

Mr. Mercier: 7-B, Your Worship.

To the Court:

Q. That is the box you received through the mail?

A. Yes.

To Mr. Mercier:

Q. Were you given any explanation how to use the box?

A. She demonstrated it.

Q. How did she demonstrate it?

A. She had such another box as that, I guess it was.

Q. Did she show you how to use the tube?

A. Yes, the key.

Q. Did she give you any instructions how to use it on yourself?

A. Just turn the key and fill it.

Q. Did she tell you what to do after you turned the key?

A. She told me to turn the key and fill the nozzle.

Q. After that what happened?

A. I guess the contraceptive jelly would go through that.

Q. Were you told how to use this by Miss Palmer?

A. Yes, I just told you: to turn the key and fill the tube.

Q. What did she say to do after that?

A. I will not say that.

Q. Did she tell you what to do?

A. No; I use my own judgment.

Q. And you received instructions?

A. Yes.

Q. Which is the correct answer: you tell me in one breath she didn't tell you how to use it and in the next breath you say you won't tell me?

A. She just told me how to fill the nozzle.

Q. Did she tell you to see your doctor?

A. No.

Q. Did you see your doctor?

A. They came and took it back before we had time.

CROSS EXAMINATION

To Mr. Wegenast:

Q. How did they do that?

A. Mr. Martel came and asked was she here and said did she give me anything and I said a box came by mail. He asked to see it and said would I give it to him and I said if he wanted it, he could have it.

Q. You didn’t think you were doing anything wrong in using it?

A. No, I thought it was law and they would have to have it; I thought it was law; it was a policeman.

Q. You thought he had a legal right to take it?

A. I did.

Q. How much family have you?

A. Five.

Q. Have you had any trouble, such as miscarriages?

A. No.

Q. And abortions, anything like that?

A. No.

Q. Why do you not want more children?

A. I think I have enough on my husband’s salary.

Q. Do you think it is your right to stop having any more children?

A. Yes.

Q. Really?

A. Yes, I think I have done my duty.

Q. What church do you go to?

A. I am R. C.

Mr. Mercier: That is all.

Mr. Wegenast: That is all.

(Witness retired).

Mrs. Sarah Legare

MRS. SARAH LEGARE, sworn, deposed:

To the Court:

Q. What is your first name?

A. Sarah.

Mrs. Sarah Legare

To Mr. Mercier:

Q. Mrs. Legare, you know Miss Palmer?

A. I do.

Q. When did you meet Miss Palmer?

A. Around in August.

To the Court:

Q. What is your address?

A. (No reply).

To Mr. Mercier:

Q. What is your address?

A. 40 Beechwood.

Q. That is in Eastview?

A. Yes.

Q. Where did you meet Miss Palmer?

A. In August.

Q. Where?

A. At home.

Q. Your home?

A. Yes.

Q. 40 Beechwood?

A. Yes.

Q. How did she come to go there?

A. She came like a visitor; she knocked at the door.

Q. She came like a visitor and knocked at your door and you answered your door?

A. Yes.

Q. When you answered what did she say?

A. She had a little card and presented it to me with her name on it, like she was mothers' help or something like that.

Q. After presenting her card to you, did she say anything to you?

A. Yes.

Q. What did she say.

A. She asked me how many children I had.

Q. What did you tell her?

A. Five.

Q. Were there any other questions she asked you?

A. She asked me if I could afford to keep them and I said “no, I don’t want any more children.”

Q. What did Miss Palmer say to that?

A. She told me about birth control; about those boxes.

Q. She told you about a certain box and about birth control?

A. Yes.

Q. What else?

A. I can’t remember.

Q. Did she just tell you it was a birth control box and you understood that right away?

A. I can’t remember everything.

To the Court:

Q. Try to remember as much as you can?

A. Yes.

To Mr. Mercier:

Q. Did she tell you what was in those birth control boxes?

A. Yes.

Q. What did she tell you?

A. She showed me and explained how to use everything.

Q. Did she ask you your doctor’s name?

A. Yes.

Q. Did you tell her?

A. Yes.

Q. Who?

A. Dr. DesRosiers.

Q. Did she tell you to consult your doctor before using them?

A. No.

Q. Did you in fact consult your doctor?

A. No, never.

Q. How did Miss Palmer show you to use these things?

A. She showed me the tube and nozzle and key in the box; that is all she said.

Q. And she told you what to do?

A. Yes, what for.

Q. And what to do?

A. She said there was a book inside; I could read the book and see.

Q. It was a box like this you received?

A. Yes.

Q. With an envelope inside it?

A. Yes.

Q. And some literature?

A. Yes.

CROSS EXAMINATION

To Mr. Beament:

Q. And you gave this to Mr. Martel?

A. Yes.

Q. Why?

A. I don't know why: he came to the house.

Q. Because you thought he was entitled to it?

A. Yes, I thought because he was the chief; was sorry after.

Q. Mrs. Legare, you told us you had five children?

A. Yes.

Q. And I understand you were married in May, 1929?

A. Yes.

Q. And those children are six, five, four, three and two years of age?

A. Yes.

Q. And your husband is on relief?

A. Yes, he is working now for two weeks.

Q. And at this time, he was on relief?

A. Yes.

Q. And you feel now you are entitled to stop having children?

A. Certainly.

Q. And you don't think in stopping having children you are doing anything wrong?

A. Certainly not, no, I am not doing anything wrong.

(Witness retired).

Mrs. Deslauriers

Mrs. Deslauriers' name called:

Officer Martel: She is in hospital.

Mrs. G. Maheux

MRS. GEORGETTE MAHEUX, sworn, deposed:

To the Court:

Q. Your first name?

A. Georgette.

To Mr. Mercier:

Q. Mrs. Maheux, where do you live?

A. I can't talk very much English.

Q. Do the best you can and if you can't get along, we will see you get some assistance?

A. Yes.

Q. Where do you live?

A. 59 Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in August, 1936?

A. Yes.

Q. Do you know Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. At my home.

Q. When?

A. In August.

Q. How did you come to meet Miss Palmer?

A. Well, she come to my home and I answer the door and she tell me she was a nurse.

Q. Did she tell you anything else?

A. And she tell me about birth control and if I was interested in it.

Q. And you replied?

A. Yes.

Q. And after you replied "yes," what was said after that?

A. She came in, sat down and ask me some questions and showed me the box.

Q. She had a box containing something?

A. Yes.

Q. What?

A. A tube and nozzle.

Q. Anything else?

A. And a key with that.

Q. And she showed you how to use it?

A. To put the nozzle -- I can't tell in English.

Q. You are getting along fine?

A. (No reply).

To the Court:

Q. Go on?

A. (No reply).

To Mr. Mercier:

Q. She showed you how to put the nozzle?

A. On the tube.

Q. And?

A. Turn the key.

Q. After that, did she tell you anything else?

A. She asked me some questions.

Q. What did she ask you?

A. It is on the card.

Q. I haven't got the cards?

A. If I was married; the name of my husband, where he works and how much children I have.

Q. And what did you tell her?

A. I said "three children."

Q. How long have you been married?

A. Eight years.

Q. What are the ages of your children?

A. Six, five and two and a half.

Q. Is your husband working?

A. Yes.

Q. Steadily?

A. Yes.

Q. Did Miss Palmer tell you anything about her husband?

A. Yes, when she asked the name of my doctor, I tell her Dr. Green and she tell me she likes that doctor and after that, she tell me her husband is a doctor too.

Q. Did she tell you to consult your doctor?

A. No.

Q. Did you in fact consult your doctor about these things?

A. What?

Q. Did you in fact consult your doctor about these things?

A. No.

Q. Is this the box you received, Mrs. Maheux?

A. Yes, that is the box.

Q. And the contents are the same as when you received it? What was in the tube and little envelope?

A. Yes, but they are not there.

Q. This book was in it too?

A. Yes.

Q. And the other applications?

A. Yes.

Mr. Mercier: It is Exhibit 10-B.

CROSS EXAMINATION

To Mr. Beament:

Q. What is your husband's wage?

A. Oh, well, it is fifteen per cent per year.

Q. Forty-five dollars a month?

A. I don't know.

Q. It is not very much?

A. He pays that fifteen per cent. in the cash.

Q. Do you know how much that works out?

A. I can't tell in English.

To Mr. Mercier:

Q. Say it in French?

A. (Translated by Mr. Mercier): He is paid on a commission on money he brings in delivering bread.

To Mr. Beament:

Q. How much?

A. Fifteen per cent.

To Mr. Mercier:

Q. How much per month?

A. It is not always the same; sometimes he is paid by the week.

Q. How much a week?

A. Sometimes twelve and sometimes more than fifteen.

Q. A week?

A. Yes.

To Mr. Beament:

Q. And I understand you were glad to get information about birth control?

A. Well.

Q. You wanted the information?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did you think you were doing anything wrong, morally?

A. No.

Q. In getting this information?

A. No.

Q. And you wanted Miss Palmer to have these things sent to you?

A. Yes.

Q. And you intended using them?

A. Yes; when I took that I was not sure I would use that.

Q. You got it intending to use it?

A. Yes.

Q. Do you feel you have had enough children now?

A. Oh, for a while.

Q. You think you should be able to make up your own mind when you are going to have another child?

A. (No reply).

Mr. Beament: I can ask any questions that are helpful.

The Court: In cross examination, as long as it is relevant, there is no limit in the matter of questioning.

Mr. Mercier: I never thought you could tell somebody something and ask "is that so".

The Court: The Court can size up the witness.

Mr. Beament: It is a difficult witness.

To Mr. Beament:

Q. Do you think you are right in making up your mind when you will have another child?

A. (No reply).

The Court: I doubt if she understands.

The Witness:

A. I would not take it to be bad.

To Mr. Beament:

Q. All right.

(Witness retired).

Mrs. Aline Maheux

MRS. ALINE (LEO) MAHEUX, sworn, deposed:

To the Court:

Q. Your first name?

A. Je ne parle pas en anglais.

(Through interpreter Rosario Hebert, already sworn):

To the Court:

Q. Your first name?

A. Aline Maheux.

To Mr. Mercier:

Q. Mrs. Maheux, where do you live?

A. 43 Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in the month of August, 1936?

A. Yes.

Q. Do you know Miss Palmer?

A. She came home during the kids' summer holidays.

Q. Do you remember what month?

A. No.

Q. Did you receive anything as a result of your interview with Miss Palmer?

A. Yes, I received a box.

Q. Did you receive a box in the same month you had an interview with Miss Palmer?

A. I was not interested and can't pronounce myself.

Q. What do you mean, you were not interested?

A. Because I thought it was the Eastview nurses were coming home and I answered her to the best of my knowledge.

Q. As to the point of date, Your Worship -- is this the box you received, Mrs. Maheux?

A. Yes.

Q. It is Exhibit 11-B and the date is August 13, 1936. Now, how did Miss Palmer come to go to your home, Mrs. Maheux?

A. I can't tell you.

Q. What did you do, did you invite her or did she happen to go by your place or what?

A. She was passing by my place.

Q. And I suppose she rapped at the door and you answered the door?

A. Yes, sir.

Q. Did Miss Palmer speak to you when you answered the door?

A. Yes, she told me she as a nurse.

Q. What language did she tell you that in?

A. In English.

Q. Did you understand her?

A. I understood she came in as a nurse.

Q. Did she ask you anything else?

A. She asked me how much my husband was earning.

Q. Was it in English she was asking that?

A. Yes.

Q. And you understood that?

A. Yes.

Q. And in what language did you reply to her?

A. In English.

Q. You speak a little English?

A. Not enough to interpret myself, but when the Eastview nurses are coming home, I knew a few odd words.

Q. After that -- Miss Palmer asked you how much he earned and you told her -- what did she ask you?

A. I did not understand her.

Q. You did not understand what she told you -- did you understand what she was there to tell you?

A. I always answered my questions because I thought she was an Eastview nurse.

Q. You mean a nurse from the Social Service in Eastview, here?

A. A nurse from the clinic.

Q. You thought Miss Palmer was a nurse from the clinic?

A. Yes, sir.

Q. And is there anything else -- you were talking with her and you didn't understand -- what did she do, if anything, after?

A. She asked me how much my husband was earning and she put the same questions as the Eastview nurses do.

Q. Did you sign anything?

A. Yes, I did.

Q. What did you sign?

A. The paper she presented to me.

Q. Did you know what was on that paper?

A. I did not know. Usually when the nurses come home, they present us with a slip and we sign it and I did sign it.

Q. Did you understand you were getting something if you would sign it?

A. Yes, because she spoke to me about a sample and I did not refuse it.

Q. Did you know what kind of sample it was?

A. No, because I do not speak English.

Q. And as a result of your interview with Miss Palmer you received this box?

A. Yes, you have it.

Q. You opened it when you received it?

A. Yes, I opened it but I didn't read any of the instructions.

Q. Did you see this information and the tube in the box? Were they there when you received the box?

A. I looked in it but I didn't read any of those books.

Q. Was the same thing in there then as is in there now?

A. Yes.

The Court: That is exhibit?

Mr. Mercier: 11-B.

The Witness:

A. Except there was an envelope.

To Mr. Mercier:

Q. Why did you not read the instructions?

A. Because I did not need them.

Q. How did you come to know you did not need the instructions -- did you know what the instructions were for?

A. I had heard about it.

Q. So you knew what was in the parcel?

A. Yes, I did.

Q. And what the purpose of the contents of that parcel was?

A. I knew it for sure.

Q. And why do you say, knowing that, you did not need it?

A. Because I do my duty.

Mr. Wegenast: She said she didn't need the instructions.

To Mr. Mercier:

Q. What do you mean, "your duty"?

A. The marriage law obliges me.

Mr. Mercier: The witness stated she did not know what was in there but heard afterwards.

To Mr. Mercier:

Q. Did you know what you were going to get?

A. (No reply).

Mr. Beament: Ask her what happened?

Mr. Mercier: I will not press it.

CROSS EXAMINATION

Mrs. Aline Maheux

To Mr. Wegenast:

Q. What happened to the envelope that was in the box?

A. I have it at home.

Q. Did she use any of it?

A. I did not.

Q. Nor her husband?

A. No.

Q. You have four children?

A. Yes.

Q. And have had three miscarriages?

A. Yes, sir.

Q. And that is in how many years?

A. Eight years.

Q. In eight years you have had four children and three miscarriages?

A. Yes, sir.

Q. And you knew when you were talking to Miss Palmer what was in that box was to keep you from having a baby?

A. I found out after.

Q. Just two or three more questions: is that your signature?

A. Yes.

Q. And the information I have just asked about was what she gave to Miss Palmer?

A. Yes, sir.

Q. Then we will put that in.

The Court: Exhibit 24-B, card dated August 5, 1936.

Mr. Wegenast: That is all.

(Exhibit 24-B):

"Application and history card.

Name – Mrs. L. Maheux.

Mrs. Aline Maheux

Date – Aug. 5, 1936. Case No. 35433.

Street – 43 Cedar. Nationality – French.

Religion – R. C.

City – Eastview. Province – Ont.

Date of marriage – Oct., 1928.

Husband's occupation – laundryman.

Income - $40 per month.

On relief – no.

Wife's age – 32. Husband's age – 37.

Family physician – clinic, - Civic.

No. of living children – 4.

Ages of living children – 6, 4, 2, 1 yr.

No. of dead children – none.

No. of miscarriages – 3.

Give dates – 1932 – 1933.

Ages of children at death -

No. of abortions – none. Give dates -

Health of children – good.

State contraceptives used previously – none.

Date of last menstrual period – Aug. 3, 1936.

Check reasons) Economic X. Physical -

for desiring) Desires proper

contraceptive) spacing of children -

information) Other reasons -

Physical condition of husband – good.

Physical condition of wife – good.

If pregnant, date of term – not when contacted.

Instructions to social workers, write name and address very plainly in ink on reverse side. RURAL

Check contraceptives desired:

Mrs. Aline Maheux

Contraceptive jelly and nozzle - V.

Or pessary and contraceptive jelly -

Application: I herewith make application for birth control information and supplies and claim that I am entitled to receive same in view of my circumstances.

Please send English, Polish, Ukrainian, French(sent) booklet (mark language desired.

Referred by _____

Name Address

Applicant sign here (sgd.) Aline Maheux.

Social worker sign here (sgd.) Dorothea Palmer.

Family physician sign here – Clinic, Civic Hosp; no special doctor.

I recommend size ( ) pessary.

The signature of the social worker is not necessary if the application is signed by the family physician.

The size of the pessary must be ascertained by the family physician. Patient must go to the DOCTOR'S OFFICE to be fitted if pessary method is desired. Literature on CONTRACEPTION will be sent to the family physician on his request.

(In red ink): 8-13-36. J. N. & C. (n). D. B.

Remarks: (Home condition; size and type of residence; how kept; general observations); Home bare and very shabby. Mother appears rather indolent; untidy about her person. Very glad of help given to her.

Send application to The Parents' Information Bureau, 410 King St. W., Kitchener, or Miss A. S. Weber, 410 King St. W., Kitchener."

(Witness retired).

Mrs. Bertha Desjardins

MRS. BERTHA DESJARDINS, sworn, deposed:

Mrs. Bertha Desjardins

To the Court:

Q. What is your full name?

A. Mrs. Bertha Desjardins.

Q. Your last name?

A. Desjardins.

Q. Do you speak English?

A. Yes.

To Mr. Mercier:

Q. Where do you live, Mrs. Desjardins?

A. 26 Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in the month of August of this year?

A. Yes, sir.

Q. Do you know Miss Palmer?

A. Yes.

Q. When did you meet her?

A. In August.

Q. Of this year?

A. Yes.

Q. Where?

A. In my home.

Q. How did she come to go there?

A. I was outside washing windows and she came to inquire about some party she came to see and she told me she wanted to see that party and she told me about birth control and I told her to come in; I was glad to know about it.

Q. What did she tell you about birth control?

A. She showed me the box after I made her come in.

Q. What was in the box?

A. A tube and nozzle.

Q. Did you sign anything?

A. Yes, I signed a paper.

Q. Did Miss Palmer ask you the name of your doctor?

A. Yes, sir.

Q. Did you answer?

A. Dr. Laframboise.

Q. Did she tell you to consult your doctor before using this?

A. No.

Q. Did you, in fact?

A. No.

Q. You did use it?

A. Yes.

Q. Without consulting your doctor?

A. Yes.

Q. Is this the box you received?

A. Yes, sir.

Q. Look inside and see if it is the same?

A. Yes.

Q. That book was there?

A. Yes.

Q. And the other sheets for applications for friends?

A. Yes.

The Court: That is exhibit?

Mr. Mercier: 12-B.

To Mr. Mercier:

Q. How long have you been married?

A. Twelve years.

Q. Is your husband working?

A. Yes.

Q. Steadily?

A. Yes.

Q. What is his salary?

A. $20 a week.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Do you think you are entitled, Mrs. Desjardins, to make up your mind when you want another baby?

A. I certainly do.

Q. You are not doing anything wrong?

A. No.

Q. And you are a good Catholic too?

A. Yes.

Mr. Mercier: I don't suppose the question of religion should enter into this.

The Court: It is the first time it is raised.

Mr. Mercier: I would like, if at all possible -- I have tried my level best to prevent that being brought in; I am more or less surprised if that issue is raised; it might raise a point, Your Worship, -- I am sure my learned friends and I would be loath to see it come up. I would like to see the case held strictly on a legal plan and leave this question of religion entirely alone. I am trying to be as unprejudiced as I possibly can be.

The Court: I can't limit the Defence in its defence.

Mr. Wegenast: There is a statement attributed to Thomasius in his Institutes:

> "Ne falcem hic immitamus in campum venerandae Theologiae."
>
> "Do not stick your sickle into the dread field of theology."

Mr. Mercier: That is my view.

Mr. Wegenast: It would be a great relief to me, but when we get into the question of public good, we shall find when we come to estimate various opinions and views, we shall come on that, and while I don't want to irritate my learned friend ---

Mr. Mercier: Your learned friend is not irritated. I want to keep religion out of it.

Mr. Wegenast: It simply came to me when I saw this gracious witness standing up for her maternal rights.

To Mr. Wegenast:

Q. Why did you give up that box?

A. The officer wanted it.

Q. Was it the uniform?

A. I don't know.

Q. The officer was in uniform?

A. Yes.

Q. And you thought you had to give it up to a policeman?

A. Yes.

The Court: I would like to ask this witness one or two questions.

To the Court:

Q. Miss Palmer, when you asked her into your house, showed you a box?

A. Yes, sir.

Q. And you said there was a tube and nozzle in the box?

A. Yes, sir.

Q. What else was in that box?

A. That is all.

Q. Just a tube and nozzle?

A. And key.

Q. Nothing else?

A. No.

Q. No other papers?

A. No.

Q. Did she show you anything else besides the box?

A. No.

RE-DIRECT EXMAINATION

To Mr. Mercier:

Q. When you got the box there were papers in it?

A. Yes.

Mr. Beament: That was another box.

To Mr. Mercier:

Q. The box you got had papers and slips saying you might send those to your friends?

A. Yes, sir.

(Witness retired).

Mrs. Juliet Louiseize

MRS. JULIET LOUISEIZE, sworn, deposed:

To the Court:

Q. What is your first name?

A. Ne parle pas en anglais.

Mr. Mercier: She doesn't speak one word of English.

(Through interpreter Rosario Hebert, already sworn):

To Mr. Mercier:

Q. Where do you live, Mrs. Louiseize?

A. 3 ½ Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in the month of August, 1936?

A. Yes.

Q. Do you know Miss Palmer?

A. Since she came to my home.

Q. When did she go to your place?

A. During the month of August.

Q. Of this year?

A. Yes.

Q. And how did Miss Palmer come to go to your place? Do you know?

A. I do not know; she told me she had been sent.

Q. When she came in, did she speak to you?

A. She spoke to me; I did not understand anything so I had somebody interpreting.

Q. When you had somebody to interpret for you, what was said?

A. She told me she was a nurse.

Q. Anything else?

A. She told the other woman to explain to me what she was home for; she asked how many children I had.

Q. And what did you tell her?

A. I told her I had six children.

Q. And after that what did she say?

A. Afterwards she showed me the box and told me if I wanted one, I could get it free.

Q. What did you reply to that?

A. I did not reply as I can't speak a word of English, only she had me sign my name.

Q. Did she ask the name of your doctor?

A. Yes.

Q. And what did you reply?

A. Dr. DesRosiers.

Q. Did she tell you to see your doctor before using anything in there?

A. She didn't tell me anything about a doctor; but she told me we would have papers in the box to read.

Q. Was it just a box she showed you?

A. There were a tube and three letters in an envelope.

Q. She told you you would get instructions?

A. Yes.

Q. And you finally did get a box?

A. Yes. The postman took it over and it didn't cost me anything to get it.

Q. Is this the box?

A. Yes; it is my name and address and what was in it is there now.

Q. And in that box was the same literature as is in this one?

A. There is one letter missing; that is all that is missing out of the box.

The Court: What exhibit?

Mr. Mercier: 13-B.

To Mr. Mercier:

Q. You had not asked Miss Palmer to go to see you?

A. No.

Q. Who interpreted for you?

A. Mrs. Duhamel.

CROSS EXAMINATION

To Mr. Wegenast:

Q. When you get sick you don't go to your doctor always; you go to the clinic?

A. I only went to the clinic here in Eastview with my baby.

Q. You go there sometimes?

A. No, I do not go just now as I have twins that are sick and another baby; the twins, five months old and another baby are sick.

Q. You have had nine children?

A. Yes.

Q. You think it is beaucoup; it is plenty?

A. I believe it is enough when a person can't afford to raise them. My husband earned three dollars a week all summer.

Q. And you think you have a right not to have any more until you are ready?

A. No, it is not that; I took the box because it was given for nothing and I wanted to see what was in it.

Q. And she used one of the condoms?

A. Yes, as I had never used it before, I wanted to see what it was like.

Q. You are only thirty years old?

A. Yes.

Q. And have been married only ten years?

A. It is eleven years.

Q. You have done pretty well?

A. (No reply).

(Witness retired).

Mrs. Juliet Sarault

MRS. JULIET SARAULT, sworn, deposed:

To the Court:

Q. Your first name?

A. Juliet.

To Mr. Mercier:

Q. Where do you live, Mrs. Sarault?

A. 4 Catherine, Eastview.

Q. Were you living there at the same address in August, 1936?

A. Yes, sir.

Q. Do you know Miss Palmer?

A. I seen her when she came to my place.

Q. When was that?

A. In August.

Q. August, sometime?

A. Yes.

Q. How did Miss Palmer come to go to your place?

A. I don't know; she just rapped at the door.

Q. You answered the door and what did Miss Palmer say when she rapped at the door?

A. She came in and asked if my husband was working and I said yes. She asked, "how many children have you," and I said "one." We sat down and talked.

Q. What did you talk about?

A. She asked if I was getting along all right and I said yes.

Q. She asked you if you were getting along all right and you said you were?

A. Yes, and then she showed me a box.

Q. Containing what?

A. A tube and nozzles.

Q. What did she say about the box containing a tube and nozzles?

A. She asked me if I had ever used any of them and I said no, and that I didn't intend to.

Q. Was anything else said after that?

A. No.

Q. Did she ask you to sign anything?

A. Yes, she asked if I cared for one and I said I didn't use it before and she said I could try and I signed the papers.

Q. As the result of signing the paper did you receive anything?

A. I got a box.

Q. Is this the box: will you look at it?

A. Yes.

Q. The same thing is there now as when you got it?

A. Yes, I didn't take anything out of it.

Q. Did you intend to use these for anything?

A. No.

The Court: Exhibit 14-B?

Mr. Mercier: Yes, 14-B, Your Worship.

To Mr. Mercier:

Q. Did Miss Palmer say who she was?

A. She said she was a nurse.

Q. You are quite positive you were not interested, in spite of the fact she asked you to sign the card?

A. I said I didn't use them. She said, "sign the card and she would send a box."

Q. Is your husband working?

A. Not steady, he has been working this summer.

Q. What does your husband do?

A. He drives a truck.

CROSS EXAMINATION

To Mr. Beament:

Q. Mrs. Sarault, your husband has had steady employment this summer for the first time?

A. Yes.

Q. And he gets a salary of $45.00 per month?

A. About that.

Q. And you in addition to keeping your own child there, are looking after twin children?

A. Yes.

Q. Of your dead sister?

A. My brother.

Q. So your family really includes yourself, your husband, own child and two nephews or nieces?

A. Nephews.

Q. Three children.

A. Yes.

Q. You have practically adopted these two children?

A. Yes.

Q. So there is one child really your own and two adopted?

A. Yes.

Q. To be looked after on your husband's wages?

A. Yes.

Q. Your husband is the sole support of yourself and these three children?

A. Yes.

Q. And you did in fact sign an application?

A. I did.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Would you have gone to any extent to get this application?

A. Not if she didn't come to the door.

Q. These two children, are you getting paid for them?

A. No, on charity.

Q. You feel you can take care of two more on what your husband gets?

A. He doesn't give me much, just for dressing them.

Q. You have enough to get along with?

A. (No reply).

To the Court:

Q. You said you had no intention of using what was in the box?

A. Yes.

Q. Why?

A. I never did; I don't know.

Q. Do you think it is wrong to use them?

A. No, Miss Palmer told me all the Catholics around were using them; there is no wrong in them.

Q. You just didn't' feel like using them?

A. No.

Q. All right.

(Witness retired).

Adjournment

The Court: I think that is all we have time for tonight. Has the Crown any more witnesses?

Mr. Mercier: I do not know if all will be called; there are eleven more.

Mr. Wegenast: We do not expect to have as many witnesses as my learned friend, but they may be longer.

I was wondering what shape we would be in on Friday evening and if we sit on Saturday and if an adjournment is necessary to Monday or Wednesday; is it in order to raise that?

The Court: Yes. It occurs to me it depends on how we get along tomorrow. I am prepared to sit Saturday if necessary, if it is possible to finish by Saturday noon.

Mr. Wegenast: My learned friend, Mr. Beament, has an important case in Toronto on Saturday.

The Court: I would be prepared to go through without adjourning.

Mr. Wegenast: On Monday, if we adjourn over the week end --.

The Court: For my other courts I have been able to get assistance for today; I don't know if I can do the same on Monday.

Mr. Wegenast: I thought Your Worship might have a schedule.

The Court: Thursday is my heaviest day. If we adjourn Friday evening, it will be until Monday and then go to a finish.

Mr. Mercier: What I have learned in conversation; on account of the nature of the defence that may be brought up, I might have to ask for a further adjournment after the evidence for the defence is in in order to put in evidence in rebuttal.

The Court: We do not want to cross too many bridges before coming to them.

Mr. Mercier: I am perfectly willing to grant any adjournment for the defence.

Mr. Wegenast: I have witnesses who have a good many other things to do and to bring them here from Toronto and have them sitting here several days is to be avoided.

The Court: I was prepared to go on on Saturday, but if Mr. Beament cannot be here, we will adjourn Friday to Monday.

Mr. Mercier: And sit tomorrow?

The Court: Yes, and Friday.

(The Court thereupon adjourned overnight to 10 a.m., October 22, 1936).

Mrs. Lucienne Duhamel

(The Court resumed at 10:00 a.m., October 22, 1936):

MRS. LUCIENNE DUHAMEL, sworn, deposed:

To Mr. Mercier:

Q. Where do you reside?

A. 3 Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you residing there in the month of August of this year?

Mrs. Lucienne Duhamel

A. I was.

Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet her?

A. I met her in August.

Q. Where?

A. At my tenant's house.

Q. Where is that?

A. 3 ½ Cedar Street.

Q. Under what circumstances?

A. Well, I was home one afternoon and the lady's daughter came to my home.

Q. What is the name of your tenant?

A. Mrs. Louiseize, and she said, "Mrs. Duhamel, there is a nurse at home; she talks only English and my mother wants you to interpret her. I went there.

Q. You went there and what happened?

A. She said, "how do you do."

Q. Who said that?

A. Miss Palmer said "how do you do" and said, "are you a married woman," and I said "yes, I am."

Q. And?

A. She said, "would you mind explaining to that lady," -- first she said "it is about the birth control." She said, "I am visiting families to whom I am sent; would you mind explaining to her what it is about."

She explained to me.

Q. What did she explain to you?

A. She showed me a tube of jelly and the key -- to turn the key, fill the nozzle with jelly first and I told Mrs. Louiseize; I repeated.

Q. Was anything else said about the use of this jelly?

A. She said it had to be used before intercourse.

Q. Was there any conversation about what it was for, what purpose?

A. She said it was for the purpose of birth control.

Q. And you in turn explained that to Mrs. Louiseize?

A. Yes.

Q. Was there any further conversation?

A. Nothing.

Q. Was there nothing more?

A. She questioned the lady and I repeated to the lady the answers and she wrote them down.

Q. Did you have any conversation with Miss Palmer about yourself?

A. Oh, yes; she asked me about my family; I said I had three and she said, "would you be interested in having some too," and I said, "all right." So, she went by the same procedure and I signed my name.

Q. Did you receive anything?

A. Yes.

Q. What was contained in that free sample?

A. There was the tube to fit the nozzle; it wasn't fitted on but there was the nozzle and two pamphlets, one French and one English. There was something else; I was surprised; an envelope with three condoms in it; that is all there was, I think.

Q. Was there any discussion of price about these things?

A. No, it was understood it was to be given as a free sample.

Q. What was to happen -- was there any discussion if you wanted some more?

A. Well, at first, I asked was there any charge for the mail and she said no. I know she said if we wanted some more we would have to pay for the mailing.

Mr. Beament: Postage.

To Mr. Mercier:

Q. For the postage?

A. Yes, but not for the first time.

Q. Is your husband working?

A. Yes, he is.

Q. He is working steadily?

A. Yes, for years.

Q. You have a property?

A. Yes.

Q. You rent part of that property?

A. Well, it is another property altogether.

The Court: Have you got a box?

Mr. Mercier: No.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Is that your signature?

A. Yes.

Q. Will you look that over and see if there is anything on it that is not correct -- look at the other side too?

A. I do no understand about the small apartment here.

Q. You live in a small apartment?

A. No, a big house; perhaps she means the apartment she was in; it was at my tenant's place.

The Court: Card, Exhibit 25-B.

To Mr. Wegenast:

Q. You don't see anything wrong with this: take your time and look it over?

A. I don't see anything wrong.

Q. That is our own comments?

A. Yes, it is.

Mr. Wegenast: She says she doesn't want to take responsibility for remarks below her signature.

The Court: The remarks.

To Mr. Wegenast:

Q. You didn't think you were doing anything wrong in taking this information?

A. Well, I have no information about birth control and to be sincere I wanted to have some information.

Q. Why?

A. To see what it was like.

Q. And do you agree that you have something to say whether you ought to have any more children or not?

A. I believe I have no right to limit my family; according to my religion I have no right to use any kind of contraceptive.

Q. You didn't feel that way at the time?

A. I wouldn't say that, because when I said to get the box, I didn't make any promise and I didn't have in my mind to use it; I just wanted to see what was in the pamphlets.

Q. Have you had any talk about this since; has anyone said it wasn't right?

A. I knew a long time ago it wasn't right.

Q. That isn't what I asked, Mrs. Duhamel: have you had any talk about this since; has anyone said it wasn't right?

A. Not in particular.

Q. You know you are on your oath?

A. I know; I talked with the women who got some boxes and we make jokes; that is all.

Q. Has anybody told you it was a sin?

A. I know it is a sin; that is my religion.

Q. I didn't ask you if it is your religion?

A. Nobody has to tell me; I know.

Mrs. Lucienne Duhamel

Mr. Mercier: My learned friend might ask the witness if she is a Catholic and that will answer his question.

To Mr. Wegenast:

Q. Has anybody said it was a sin to use it?

A. Not since, but before.

Q. Who was it?

A. Oh, ---

Mr. Mercier: This may be very delicate.

The Witness:

A. --- how to -- I know it is a sin; we learn it.

To Mr. Wegenast:

Q. That is not what I asked?

A. First, I learned it when I got married; the priest made me promise not to limit my family, as a good Catholic.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Of course you know, Mrs. Duhamel, there are means of not having children, although you are married?

A. There must be but I didn't know until then.

Q. You live in a small apartment?

A. No, in a house.

Q. Are you very sickly?

A. I have little ills; I am not in very good health right now, but I can walk and go about.

Q. Are you, "not too happily married"?

A. I never said such a thing; it is not the truth, because I am happily married.

Q. It is on this exhibit 25-B. You never had any abortions?

A. Never.

Q. There are "four-five" marked here?

A. It is not true; I never said such a thing.

Q. You didn't say that?

A. No.

Mr. Beament: What is Exhibit 24-B?

The Court: It is a card, Mrs. L. Maheux, of 43 Cedar Street.

Mr. Beament: Thank you, Your Worship.

The Court: 25-B is card dated August 16, 1936, Mrs. A. Duhamel. (Exhibit 25-B):

"Application and history card

Name – Mrs. A. Duhamel.

Date – Aug. 16, 1936. Case No. Fr. 35991.

Street – 3 Cedar St.

Nationality – French. Religion – R. C.

City – Eastview. Province – Ont.

Date of marriage – Nov., 1923.

Husband occupation – clerk.

Income - $45 per month.

On relief – no.

Wife's age – 30. Husband's age – 37.

Family physician – Dr. LeMay., St. Patrick St., Ottawa city.

NO. of living children – 3.

Ages of living children – 11-8-14 months.

No. of dead children – none.

No. of miscarriages – none. Give dates -

Ages of children at death -

No. of abortions – 4-5. Give dates -

Health of children – good.

State contraceptives used previously – none.

Date of last menstrual period – Aug. 8, 1936.

Mrs. Lucienne Duhamel

Check reasons) Economic – X. Physical -

for desiring) Desires proper spacing

contraceptive) of children -

information) Other reasons -

Physical condition of husband – good.

Physical condition of wife – poor.

If pregnant, date of term – not when contacted. RURAL

Instructions to social workers – write name and address very plainly in ink on reverse side.

Check contraceptives desired:

Contraceptive jelly and nozzle – V.

Or pessary and contraceptive jelly –

Application: I herewith make applications for birth control information and supplies and claim that I am entitled to receive same in view of my circumstances.

Please send English, Polish, Ukrainian, French booklet (sent) (mark language desired).

Referred by _____

Name Address

Applicant sign here – (sgd.) Mrs. A. Duhamel.

Social worker sign here – (sgd.) Dorothea Palmer.

Family physician sigh here – Dr. LeMay, R. C., not contacted.

I recommend size ( ) pessary.

The signature of the social worker is not necessary if the application is signed by the family physician. Patient must go to the DOCTOR'S OFFICE to be fitted if pessary method is desired. Literature on CONTRACEPTION will be sent to the family physician on his request.

(In red ink): 8-19-36 J. N. & C. (n) D. B.

Remarks: (home conditions; size and type of residence;

how kept; general observation): Small apt. fairly

Mrs. Lucienne Duhamel

clean; mother very sickly and not too happily married. B. C. information very much appreciated.

Send application to the Parents' Information Bureau, 410 King St. W., Kitchener, or Miss A. S. Weber, 410 King St. W., Kitchener."

(Witness retired).

MRS. ANITA ST. AMOUR, sworn, deposed:

To Mr. Mercier:

Q. Where do you live, Mrs. St. Amour?

A. 22b Cedar Street.

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in August of this year?

A. Yes.

Q. Do you know Miss Palmer?

A. Yes.

Q. Where did you meet Miss Palmer?

A. At my home.

Q. When?

A. When she came over to my place.

Q. Under what circumstances did she go to your place?

A. She came to my place and said she was a trained nurse and asked about birth control and told me she was giving certain articles to prevent family and she asked me if I was interested in it.

Q. And you replied?

A. At first I said “no”.

Q. And?

A. Then she told me that if I took the articles, I was in no way obligated and I could dispose of it in whatever way I wanted.

Q. And?

A. I said I would take it then.

Q. Why did you take it

A. I just took it out of curiosity.

Q. Did you have to ask for this thing?

A. No.

Q. Would you have asked for it if it had not been offered you?

A. No.

Q. How many children have you got?

A. One.

Q. Is your husband working?

A. Yes.

Q. Steadily?

A. Yes.

Q. Did you receive the articles in question?

A. Yes, I did.

Q. I ask you to look at exhibit 15-B and the contents: did you receive that?

A. Yes.

Q. Were the pamphlets in it too?

A. Yes.

Q. Just as it is now?

A. Yes.

Q. Had you seen the contents of that or something similar before you received this box?

A. When Miss Palmer showed me one.

Q. That was on the occasion of her visit to you?

A. Yes.

Q. What did Miss Palmer show you on the occasion of her visit to you?

A. The tube.

Q. Did she show you anything else?

A. She explained it and my baby was crying and I took her in my arms. She said everything would be explained in the box.

Q. She said everything would be explained in the box?

A. Yes.

To the Court:

Q. She said everything would be explained?

A. She said certain things were in the box and everything would be explained.

Q. In the pamphlets?

A. Yes.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Why did you give up the box?

A. Mr. Martel came to my place and asked for it?

A. It was yours?

A. Yes.

Q. Why didn't you keep it?

A. I thought I was obliged to give it.

Q. Did you think there was anything wrong in asking for it?

A. No.

Q. Did you think there was anything wrong in Miss Palmer sending it to you?

A. No.

Q. Do you think it is wrong to decide for yourself about having another baby?

A. I don't care about that.

Q. That is all.

(Witness retired).

Mrs. Marie-Ange Pharand

MRS. MARIE-ANGE PHARAND, sworn, deposed:

To the Court:

Q. Your first name?

A. Ne parle pas en anglais.

(Through interpreter Rosario Hebert, already sworn):

To the Court:

A. You first name?

A. Marie-Ange.

To Mr. Mercier:

Q. Where do you reside, Mrs. Pharand?

A. 72 Beechwood.

Q. Were you residing there in the month of August, 1936?

A. Yes.

Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. When she came home.

Q. When was that?

A. I did not notice the date.

Q. Do you remember what month it was?

A. It must be in August, because I left the place in September.

Q. How did you come to meet Miss Palmer?

A. She rapped at the door and introduced herself as a nurse.

Q. In French or English?

A. In English.

Q. Do you understand English, Mrs. Pharand?

A. I understand a few words.

Q. And Miss Palmer told you she was a nurse?

A. Yes.

Q. And was there any further conversation?

A. She spoke a lot that I couldn't understand; she asked me now and then if I understood.

Q. What did you reply?

A. I thought she was a nurse who came along to weigh my baby as the Metropolitan nurses usually do come.

Q. What happened while she was there?

A. She followed me into the kitchen. She asked me my name and my husband's name; what was our ages and how many children there were.

Q. And how many children have you?

A. I have two; she also asked how many children we had.

Mr. Mercier (to interpreter): She said, "that is all I understood in English".

The Interpreter:

A. That is all I understood in English.

To Mr. Mercier:

Q. After that conversation did you do anything?

A. Afterwards I understood that she was coming regarding maternity, because I understood what was written on the pamphlets. The tile of the pamphlet was, "Control of maternity," but I did not believe I had to sign.

To the Court:

Q. I didn't understand; she had to sign?

A. I didn't know when I signed it was for to send the stuff to me.

To Mr. Mercier:

Q. Is this the pamphlet, Exhibit 5-B?

A. It is a pamphlet like this, which was written, "Control of maternity."

Q. Why do you say you did not think it would be sent to you?

A. Because I did not understand she was going to send some over. I thought we would ask for it.

Q. Did you understand you were asking for it when you were signing this card?

A. No.

Q. Would you have signed the card if you had known it was for the purpose of getting this box?

A. No.

Q. Why?

A. Because I do not need it.

Q. Is your husband working?

A. Yes.

Q. And you have two children?

A. Yes.

Q. I show you this box, Exhibit 17-B: will you tell me if that is the box you received, and the contents of it?

A. It looks like it.

The Court: Exhibit 17-B.

To Mr. Mercier:

Q. Your name is on this box?

A. Yes.

Q. Did you receive this box?

A. Yes.

Q. When Miss Palmer was interviewing you, did she show you anything besides the pamphlet?

A. She showed me what her box was containing.

Q. What was that?

A. The very same thing as she sent to me.

Q. You mean the tube?

A. Yes.

Q. The key?

A. I did not pay attention.

Q. All right.

CROSS EXAMINATION

To Mr. Wegenast:

Q. How far are your children apart in age?

A. A year.

Q. You were married in 1934?

A. Two years ago.

Q. Let me see that box please; this pamphlet, "Control of maternity", was in the box when you got it?

A. She left me one on the table and there was another one in the box.

Q. Why did you sign the application?

A. Because I thought it was only my name she asked me.

Q. Does she always sign things like that?

A. It is the first time I ever signed in English. I usually sign when it is in French, but never in English.

Q. That doesn't quite answer the question: does she always sign things like that when people ask her?

A. It is the first time.

Q. It doesn't seem reasonable to me?

A. It is the first time I ever got fooled; I don't want to get fooled ten times.

The Court: Perhaps book salesmen do not travel in this district.

Mr. Wegenast: Perhaps not, but I didn't think there was any part of the world in which they did not.

Mrs. Marie-Ange Pharand

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Arising out of this cross examination: what did you think you were signing when you signed this card?

A. I thought it was only to prove my age, my husband's age and my children's.

Q. Did you know that when you signed that application?

A. (No reply).

Mr. Wegenast: I do not know if that is the way to put that question.

Mr. Mercier: A card was signed by the witness; on that card there were certain questions answered. There are certain cards in those exhibits, and I am asking, arising out of the cross examination of my learned friend, if she knew she was answering certain things.

Mr. Wegenast: That is leading, I think.

The Court: In the absence of the production of the card, we can guess it is a similar type of card.

Mr. Mercier: But I submit I can ask this witness -- it has been given in cross examination, the woman has signed something: I want to ask her, using the other card?

The Court: She said she signed the card because she thought it was to verify her age and her husband's age and the children's.

To Mr. Mercier:

Q. Why did you sign this card for Miss Palmer?

A. Without reflection of any kind; I didn't put any thought to what I was doing.

Q. That will be sufficient?

A. I signed because she asked me to.

Q. She had told you she was a nurse?

A. Yes.

Q. You told us before you thought she was coming in to weigh your baby?

A. My baby hasn't got two months yet, and the nurses usually come and weigh them; as the nurse used to come and it was during her holidays

RE CROSS EXAMINATION

To Mr. Wegenast:

Q. But she knew before she signed the paper this nurse had to do with the prevention of maternity?

A. Yes, I did know; I can't remember right.

To Mr. Mercier:

Q. What was the first thing she asked you?

A. My name and my age, because during the month my baby fell off the stairs; I went to pick him up and it put my mind off her.

(Witness retired).

Mrs. Lillian Gervais

MRS. LILLIAN GERVAIS, sworn, deposed:

(Through interpreter Rosario Hebert, already sworn):

To Mr. Mercier:

Q. Where do you reside?

A. 148 Vernon.

Q. In the town of Eastview?

A. Yes, sir.

Q. Were you living there during the course of the month of August, 1936?

A. yes, we were the proprietors.

Q. Do you know Miss Palmer?

A. Yes, I do.

Q. When did you meet Miss Palmer?

A. I can’t remember if it is the end of August.

Q. Under what circumstances did you meet Miss Palmer?

A. She rapped at the door and I went to open the door.

Q. Yes?

A. She told me she was coming for the birth control; then she said something I didn’t understand.

Q. Did you understand anything of what she said?

A. I understood it was for family.

Q. Did you understand anything else of what Miss Palmer told you?

A. She asked me my age, my husband's age, and also my children's ages.

Q. And you gave her that?

A. Yes.

Q. Did she ask you anything else?

A. My doctor's name.

Q. What did you tell her?

A. I told her it was Dr. Lemay.

Q. Did you tell her anything else?

A. She asked me if I wanted to get one of those boxes free.

Q. What did you reply?

A. I told her if it was free, I would accept it.

Q. Did Miss Palmer tell you what was to be in that box?

A. She showed me and explained to me, but I didn't understand.

Q. She showed you what?

A. She showed me the tube and the jelly.

Q. And explained what to you?

A. She showed me how to do it, to put the jelly in the tube.

Q. Did she tell you what it was for?

A. She told me it was for family.

Q. What do you mean by that: "she told you it was for family"?

A. She told me it was to distance family.

Q. It might be space -- it is more than space -- it means to keep away -- to keep a family at a distance (referring to translation of witness' evidence). And after that did you sign a card?

A. Yes, I signed a card to receive the box.

Q. Did Miss Palmer tell you to see your doctor before using this stuff?

A. She did not.

Q. Did you consult your doctor about this?

A. No, I did not.

Q. And as a result did you receive this box, Exhibit 18-B, Mrs. Gervais?

A. Yes.

Q. And what you see in there now was there when you received it?

A. Yes.

Q. With the literature?

A. Yes.

Mr. Wegenast: Let me see that box.

To Mr. Mercier:

Q. How many children have you, Mrs. Gervais?

A. Three.

Q. Is your husband working?

A. Yes.

Q. Steadily?

A. Yes.

Q. And do you own your own home?

A. Yes.

Mrs. Lillian Gervais

CROSS EXAMINATION

To Mr. Wegenast:

Q. Your husband is a waiter?

A. Yes, he works in Bowles' lunch.

Q. How much does he make a month?

A. Forty dollars.

Q. I see you did not use the tube?

A. No, it was to see what it was.

Q. How long did you have it before the police took it?

A. At least a month, for sure.

Q. What does she understand by eloigner des enfants (to interpreter)?

The Interpreter: That is the way she introduced herself; it was to distance herself.

Mr. Wegenast: Does she understand to space them, l'un de l'autre?

To Mr. Wegenast:

Q. You didn't see any harm in that?

A. No.

(Witness retired).

Mrs. Olive Groulx

MRS. OLIVE GROULX, sworn, deposed:

To the Court:

Q. What is your first name?

A. Ne parlez pas en anglais.

(Through interpreter Rosario Hebert, already sworn):

To Mr. Mercier:

Q. Where do you reside, Mrs. Groulx?

A. 152 Vernon.

Mrs. Olive Groulx

Q. In the town of Eastview?

A. Yes.

Q. Were you living there in the month of August, 1936?

A. Yes.

Q. Do you know Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. During the month of August.

Q. Where?

A. At home.

Q. How did Miss Palmer come to get there?

A. She rapped at the door and told me she was a nurse.

Q. What did she tell you?

A. She asked my name and my husband's name.

Q. Anything else?

A. How many children I had.

Q. How many did you tell her you had?

A. Two living and four dead.

Q. Was this conversation in French or English?

A. She spoke in English but I can understand it a bit.

Q. You understood everything Miss Palmer told you?

A. Yes.

Q. And after asking you these questions about how many children you had, what further conversation did you have with Miss Palmer?

A. She asked me if I wanted to accept a box.

Q. What box?

A. The box with tube and jelly.

Q. Did she show you this tube and jelly?

A. Yes, she did.

Q. And what did she say about it, if anything?

A. She told me it was good to prolong a family.

Q. What did you understand by that, "prolong a family"?

A. Not to have family so often.

Q. And what did you do after this, if anything?

A. I signed the paper.

Q. What did you sign: do you remember?

A. I signed my name.

Q. What did you sign your name to?

A. To accept the box.

Q. You signed your name to accept the box of what Miss Palmer showed you?

A. Yes.

Q. And would you have asked for this box if it had not been offered to you?

A. Yes.

Q. You would have asked for it?

A. Yes.

Q. Is this the box you received?

A. Yes.

Q. Are the contents the same as in the one you received?

A. (No reply).

The Court: Exhibit No.?

Mr. Mercier: 19-B.

To Mr. Mercier:

Q. Did you know how to get, or had you heard about this before?

A. No.

Q. Who would you have asked for a box?

A. To nobody; I wouldn't know.

Mrs. Olive Groulx

Q. I believe you told me you would have asked for this box?

A. (No reply).

Mr. Beament: This is cross examination.

Mr. Mercier: No, it is in explanation of her own answer: in answer to a question, would she have asked for this box if Miss Palmer had not gone there, she said yes, and I asked to whom, and she said she wouldn't know, and I am asking her to explain the first one in view of the second. I submit to Your Worship that is far from being cross examination.

The Court: Proceed.

To Mr. Mercier:

Q. You have told me you would have asked for this box if it had not been offered, and now you tell me you don't know who you would ask for it?

A. I do not know as I had no address.

Q. Had you heard about this before?

A. (No reply).

Mr. Beament: This is examination in chief.

The Court: There is some limit.

Mr. Mercier: Surely, I can ask the witness if she heard about this before, if that is cross examination.

The Court: Not cross examination, but is it a leading question?

Mr. Mercier: To ask if she heard of anything before? I desist, Your Worship.

Mr. Wegenast: It is one or the other.

Mr. Mercier: It is the first time I learn if asking if she heard of something before ---

Mr. Wegenast: In view of what was said before, it was obviously intended to discredit the witness and make the most of an apparent inconsistency.

Mr. Mercier: I can't see the argument; however, I have desisted.

Mrs. Olive Groulx

The Court: The reason I think it is a bit leading is that it might suggest the answer.

Mr. Wegenast: It depends on sizing up the witness.

Mr. Mercier: "Have you heard about this before"; is there leading or cross examination in that? However ---

CROSS EXAMINATION

To Mr. Wegenast:

Q. You have had six children?

A. Yes.

Q. And two miscarriages?

A. Yes.

Q. Let us see how these children are spaced: just a moment, is the first child living?

A. No, he is dead.

The Court: How many?

Mr. Wegenast: Six altogether; two miscarriages.

To Mr. Wegenast:

Q. The first is not living, and how long is it to the second?

A. Thirteen months.

Q. Is the second living?

A. No, he is dead.

Q. And how long was it from that until the next birth or miscarriage?

A. About a year.

Q. Was it a birth?

A. A four-months' birth.

Q. How far have we got now?

A. (No reply).

To the Court:

Q. How long have you been married?

A. Going on ten years.

To Mr. Mercier:

Q. Over ten years?

A. Going on ten years.

Q. You were married in 1927?

A. Yes.

Q. How long after your marriage was the first child born?

A. Twenty-two months.

Q. That would bring us to November, 1928?

A. It was a miscarriage.

Q. Before the first child was born?

A. Yes.

Q. How long was that after you were married?

A. Twenty-two months.

Q. So the first was a miscarriage in November, 1928?

A. In September.

Q. That is a little less than twenty-two months, so we have a miscarriage in September, 1928?

A. Yes.

Q. What happened next?

A. Another baby in thirteen months after.

Q. That would be in October, 1929; take your time and think it out?

A. No, he was born in the month of March.

Q. March, 1929?

A. In 1929.

Q. Had there been any miscarriages -- is this the first birth in March?

A. The first birth was a miscarriage at six months.

Q. That child wouldn't have lived then?

A. No.

Q. She calls that a "naissance"?

A. Yes, I did.

Mr. Wegenast: If Your Worship isn't quite clear -- we would like to have the history of this case.

Mr. Beament: If the witness would ---

The Court: This witness says she had six children altogether; does that include any miscarriages?

Mr. Beament: No, she doesn't distinguish between miscarriages and births.

The Court: I would like to have the witness explain that point.

Mr. Wegenast: I will put it to the interpreter to explain to the witness that the result of any pregnancy of three months or less is a miscarriage. Anything three to seven months is an abortion and anything from seven to nine months is a naissance, a birth. Is that right doctor?

The Interpreter: I do not understand it.

The Court: You are going to have some difficulty.

Mr. Wegenast: We will get it.

To Mr. Wegenast:

Q. The first was a miscarriage in September, 1928?

A. Yes.

Q. And that was a four months'?

A. Six months.

To Mr. Wegenast:

Q. We will call that an abortion?

A. (No reply).

The Court: The first in September, 1928?

Mr. Wegenast: Yes, and a six-months' child which we will call an abortion. That is what the doctor says.

To Mr. Wegenast:

Q. Then, what was next and when?

A. In 1929.

Q. What was that?

A. A baby boy.

Q. A baby boy at the full nine months?

A. Yes, he lived for two and a half years.

Q. What was the next?

A. Thirteen months later, a baby girl.

Q. Is that girl living?

A. Yes, the first five years.

Q. What was her birthday?

A. The twenty-eighth of April.

Q. In what year?

A. (No reply).

To Mr. Beament:

Q. 1931?

A. Yes, sir.

To Mr. Wegenast:

Q. What next?

A. I do not remember.

Q. We have now two children living.

The Court: No, one.

Mr. Wegenast: Oh, yes; a boy is dead.

The Witness:

A. I have two living, one five and the other eleven months' old.

To Mr. Beament:

Q. Is that the last one?

A. Yes.

To Mr. Wegenast:

Q. So, we have that in October, 1935. Now, we have three more to account for between 1931 and 1934?

A. (No reply).

The Court: Two more.

Mr. Beament: Four more, if my score board is right.

The Witness:

A. I have a little boy dead; it will be two years on the fifth of November.

To Mr. Beament:

Q. When was he born?

A. On the fifth of November.

Q. In what year?

A. In 1935.

To Mr. Wegenast:

Q. A year ago?

A. Two years in November.

To Mr. Beament:

Q. Was the boy stillborn?

A. He lived a year.

To Mr. Wegenast:

Q. And he died just a year ago?

A. Yes.

Q. Then we have two more births to account for and one miscarriage?

A. I know about the ones living; I can't remember the others very well.

Q. Is it true she had six children?

A. Yes, with two miscarriages.

The Court: By "with", does she mean inclusive or exclusive?

The Witness:

A. Four children in time and two miscarriages.

To the Court:

A. Six, including the miscarriages?

A. Yes, Your Worship.

To Mr. Wegenast:

Q. She counts two dead with the miscarriages?

A. No.

Q. Were there four children born that lived and died?

A. I had four; two living and two dead.

Mr. Mercier: You are practically torturing this witness, two living, two dead and two miscarriages.

The Court: That is what I understood from the beginning.

To Mr. Wegenast:

Q. I didn't understand that. Now you know what is meant by spacing children further apart?

A. Yes, I do.

Q. And you think it is a good thing?

A. Yes.

Q. And it isn't wrong?

A. No.

Q. And she has used some medicine sometimes to help space them?

A. Sometimes.

Q. That is all.

(Witness retired).

Mrs. Rhea Dores

MRS. RHEA DORES, sworn, deposed:

To Mr. Mercier:

Q. Where do you reside, Mrs. Dores?

A. 20 Catherine, Eastview.

Mrs. Rhea Dores

Q. Were you residing there in August, 1936?

A. Yes, I do.

Q. Where you met Miss Palmer?

A. (No reply).

The Court: I didn't get the address?

The Witness:

A. 20 Catherine, Eastview.

To Mr. Mercier:

Q. When did you meet her?

A. At my home.

Q. When?

A. When? In August, sometime.

Q. You met Miss Palmer in August of this year?

A. Yes.

Q. Under what circumstances?

A. She came in, asked do I believe in birth control. I said yes, come in, but I said she was a little late.

Q. How many children have you?

A. I have had nine.

Q. How many are living?

A. Eight.

Q. What do you mean by that: she was a little late?

A. Well, I don't know; I think my time is over now.

A. Mrs. Dores, what conversation did you have after that?

A. Well, Miss Palmer asked me if I was interested; I said yes; I told her to come in and we talked.

Q. What did you talk about; what was your conversation?

A. We talked about the goods she had.

Q. What were those goods?

A. A box, I suppose.

Mr. Wegenast: She said, "the good".

To Mr. Mercier:

Q. What was it; "goods" or "good"?

A. "Goods."

Q. What were these goods?

A. A box in her bag.

Q. What was that box she had in her bag?

A. She had that contraceptive jelly and tube.

Q. Was there any conversation about that jelly and tube?

A. She asked if I wanted one and I said “yes”.

Q. And she said what it was to be used for?

A. Yes, she did.

Q. What did she tell you?

A. She told me there would be a pamphlet in there, if I could read English.

Q. What was to be in that pamphlet?

A. It was there for me to read, if I could read.

Q. Did she tell you the purpose of that tube of jelly?

A. She told me what it was for.

Q. What did she tell you it was for?

A. I can’t remember; it was so long ago.

Q. What did she tell you it was for?

A. I guess birth control; that is what she came in for.

Q. Did you receive a box?

A. I did.

Mr. Mercier: We haven’t got that?

Officer Martel: No.

To Mr. Mercier:

Q. What was in it?

A. Tube, jelly and three condoms.

To the Court:

Q. Was there anything else in the box?

A. No, just the three articles.

Q. No literature?

A. There was a pamphlet for me to read.

To Mr. Mercier:

Q. Is your husband working?

A. Yes.

Q. For some considerable time?

A. Yes, he always has.

Q. You signed the application?

A. I did, yes.

CROSS EXAMINATION

To Mr. Wegenast:

Q. The police didn't get this box?

A. No, they didn't; I wanted to see what was in it.

Q. You are not forty-eight years old yet?

A. No, I don't think so.

Q. Not even thirty-eight?

A. No.

Q. So that you may have use for it yet; am I right?

A. I guess I would.

Q. You know what we mean by spacing children?

A. Yes, I do.

Q. Do you think it is a good thing?

A. Yes.

Q. You don't see any harm in it?

A. No.

Q. On the contrary, you think it is a good thing?

A. Yes, in my case I guess I think it is.

Q. You had one child still born?

A. She died at birth.

Q. That isn't the last one?

A. No, it was my second child.

To the Court:

Q. I wanted to know what else was in the box?

A. A pamphlet.

To Mr. Wegenast:

Q. What do you say about your health; is it good, bad, fair or what?

A. I am not bad.

Q. You are not an invalid?

A. No.

Q. What would you say about whether your health is such you can have more children?

A. I can't explain in Court.

Q. You don't want any more children?

A. I can't. I will write it down.

Q. That is why you wanted this contraceptive?

A. Yes.

The Court: Just a minute, before we leave this witness: I would like to have that statement amplified in writing. It is ambiguous; there are two meanings.

To Mr. Wegenast:

Q. I will take the responsibility. Write down, Mrs. Dores, why you say you can't have any more children?

The Court: I wanted to know if it was dangerous to her health to have more children or if she is sterilized.

The Witness (answers in writing as follows):

A. My bladder has been punctured from child birth.

(Witness retired).

The Court: Adjourn for five minutes.

Mrs. Jeanne Richer

MRS. JEANNE RICHER, sworn, deposed:

To the Court:

Q. Your first name?

A. Ne parle pas en anglaise.

(Through interpreter Rosario Hebert, already sworn):

Q. Your name?

A. Mrs. Jeanne Richer.

To Mr. Mercier:

Q. Where do you reside, Mrs. Richer?

A. 27 Cedar.

Q. In the town of Eastview?

A. Yes, sir.

Q. Were you residing there in the month of August, 1936?

A. Yes, sir.

Q. Do you know Miss Palmer?

A. I can't tell as I haven't seen her enough for that.

Q. All right.

CROSS EXAMINATION

To Mr. Wegenast:

Q. Your children, you have five living and one dead?

A. Yes.

Q. And the ages of the living children are 6, 5, 4, 3, 2?

A. (No reply).

Mr. Mercier: I don't think that results from the examination in chief.

Mrs. Jeanne Richer

The Court: She has been called as a witness; I think he can cross examine.

The Witness:

Q. I have six children; one is dead.

To Mr. Wegenast:

Q. Was that the first?

A. Yes.

Q. If it was living how old would it be?

A. Eight years.

Q. So, we would have them spaced about a year apart all the way along?

A. Yes.

Q. Don’t you think it would be better if there were more space between?

A. I think it would be better if we didn’t have all a bunch of kids at once.

Q. And there wouldn’t by anything wrong in making it come that way?

A. I do not say there would be anything wrong.

(Witness retired).

Dr. DeHaitre

DR. JOSEPH EUGENE DeHAITRE, sworn, deposed:

To the Court:

Q. Your first name?

A. Joseph Eugene DeHaitre.

To Mr. Mercier:

Q. You are a duly qualified medical practitioner of the province of Ontario?

A. I am, sir.

Q. How long have you been practicing?

Dr. DeHaitre

A. About thirty years.

Q. Doctor, I want to produce to you Exhibit No. 3 ---

The Court: Exhibit 3-A on the first count.

To Mr. Mercier:

Q. Will you tell the Court if this instrument is intended or can be used to prevent conception?

A. (No reply).

The Court: I think that Exhibit 3-A should become an exhibit on this count as the first count has been dismissed.

Mr. Beament: I have only 1-A and 2-A.

The Court: 1-A is an envelope; 2-A an application form and 3-A was this exhibit: a rubber tube.

Chief Manion: It was Exhibit 3 in the first case.

The Court: 3-A, yes.

Mr. Mercier: In any event, Your Worship, it was part of Exhibit 22-B, Miss Palmer's bag.

The Court: I think it should become an exhibit here.

Mr. Mercier: It is part of Exhibit 22-B.

The Court: Very well, it is part of Exhibit 22-B.

To the Court:

Q. What is your address, doctor?

A. 161 Stewart.

Mr. Mercier: What is the exhibit number now?

Mr. Beament: Part of 22-B.

Mr. Mercier: Will it be part of 22-B, or give it a special number?

The Court: I think we had better give it a special number, 25-B was the last.

Mr. Mercier: It will be Exhibit 26-B.

To Mr. Mercier:

Dr. DeHaitre

Q. Is that an article or instrument that can be used to prevent conception?

A. (Witness examines Exhibit 26-B).

To the Court:

Q. Describe it?

A. This is a form of pessary; it is one of the first I have seen of this style; I must be getting old or antique; I suppose I am not up to date.

To Mr. Mercier:

Q. Doctor, will you look at the contents of this envelope, which is Exhibit 1.

Mr. Beament: 1-A.

The Court: That will become Exhibit 27-B.

The Witness:

A. It is a rubber preserve or what we usually call condoms.

To Mr. Mercier:

Q. Which can be used?

A. On the male organ to prevent conception; it is not always sure.

Q. A safe is not always safe?

A. A safe is not always safe.

Q. Doctor, have you read this pamphlet: "Birth Control and some of its simplest methods"?

A. I have.

Q. It is Exhibit 5-B?

A. Yes, this is in English. I have read it in French; if it was in German it would be the same.

Q. I think it is admitted to be a fair translation. Doctor, what would you say as to these methods being applied without the advice of a doctor?

A. I do not believe so; I think these methods may be all right to prevent conception, but I think in my opinion it is very unwise to practice these without a medical doctor, a man of

experience, who is able before to examine the patient, before these things are resorted to.

Q. On what do you base your opinion?

A. We don't know. We may have to deal with a patient, with a female whose organs are diseased already; maybe sometimes a woman is not examined, but a doctor who knows his business might find the beginning of cancer disease in the cervix, sub-acute or chronic gonorrhea, a tumour or cyst in the neck of the womb. He may find the womb diseased; he might find any of the diseases belonging to the female genital organs. I think it would be very unwise to use that (indicating Exhibit 5-B).

Q. Without the advice of a doctor?

A. Without the advice of a doctor, which may do a terrible lot of damage.

Q. How could the damage be caused by using these appliances by a woman with some disease of the genital organs; what would the danger be?

A. To cite one example: if these things are applied to a woman for instance who has the beginning of cancer of the cervix, if she used those appliances frequently, she would accelerate the cancer and create there a chronic irritation in a lesion that has already begun in the evolution. You accelerate the cancer. Another: if you have a woman with sub-acute gonorrhea and the doctor doesn't detect it or no doctor has seen that patient and she uses those things, by using that pessary -- there is a diaphragm there -- I suppose not ten in a hundred can apply that properly, maybe one in a hundred -- if it is not applied by a doctor or nurse, if the pessary is not put in the proper place, in other words, if that women unfortunately has gonorrhea and you put a pessary there and close the neck of the womb, you push back in the womb the germs of the gonococci, and the first thing you know she has sterilized herself forever. That is one of the dangers.

Q. I see in this pamphlet a formula advertised there for suppositories:

¼ lb. cocoa butter (best grade)

5 drams Borax

Dr. DeHaitre

1 dram Salicylic acid

1 ½ drams Quinine bi-sulphate

What would you say as to this formula being applied to a person who might suffer from certain diseases and it be applied to them?

A. In this: cocoa butter is not an irritant; it is soothing. Borax is not an irritant; it is more of an astringent. Salicylic acid is a great irritant; of course, in the percentage it is there -- I am not much of an analyst or pharmacist -- in a quarter of a pound, 5 drams -- the percentage I don't know by memory calculation.

Mr. Wegenast: One dram.

The Court: One dram in what?

The Witness:

A. Salicylic acid in a quarter pound of cocoa butter. There are great irritants there. Salicylic acid is a great irritant for all the membranes. Quinine bi-sulphate, I know some women take it internally as an abortive, but locally it looks like an irritant to the mucous membranes of the vagina and cervical organs.

To Mr. Mercier:

Q. These may be used without causing harm in some circumstances, but would you think they should be used by anyone before being examined by a doctor?

A. In all cases a woman's organs should be examined first. If you put in a vagina a suppository of that kind where there is disease or inflammation, you increase or augment or magnify that.

Q. And this vinegar tampon on page 11 (Exhibit 5-B)?

A. It depends on the percentage.

Q. Although perfectly harmless to a lot of women?

A. In a normal vagina if the percentage is too high it will create an irritation, vaginitis.

Q. There might be something in the strength of the vinegar; do you believe that although it might be harmless to a lot of women?

A. Unless under proper medical supervision.

Q. It should not be given?

A. No.

Q. Without the advice of a doctor?

A. That is my opinion.

Q. Until after an examination of the woman?

A. Women who do not want any more babies.

Q. Your opinion, is it that although harmless in a lot of cases, in some it might prove very harmful?

A. Very harmful or injurious.

Mr. Mercier: That is all I want of this witness just now for the purposes of the prosecution.

To the Court:

Q. That pamphlet?

A. It is my property.

Q. That is right, doctor.

CROSS EXAMINATION

To Mr. Wegenast:

Q. May I put it in general to you, first, if these conditions to which you have referred are possible conditions?

A. They are a few; there is an incalculable list.

Q. Take it on the basis of those you have mentioned: which would be the more dangerous to the woman: let us say in the case of a woman who had incipient cancer, which would be more dangerous to use: the contraceptive jelly or to have another baby?

A. Repeat that please?

Q. If a woman had the beginning of cancer, which would be the more dangerous for her to use: the contraceptive jelly or to have another baby?

A. That is very difficult to judge; it has been known that cancer is compatible with pregnancy.

Q. Then, it is a fair question?

A. Using that jelly: I don't know what the composition of that jelly is; give it to me and I will answer.

Q. It consists of two per cent lactic acid; ten per cent boracic acid?

A. That is not bad.

Q. And eighty-eight per cent of a starch jelly, a glycerite of starch. What do you think of that?

A. That jelly is not bad; it wouldn't create much irritation.

Q. I would take it then, if a patient would not use the jelly and would have another baby ---

A. I wouldn't say that; it is very difficult to answer; there is the danger of using these contrivances.

Q. I am only referring to the jelly. We will take it apart: I will not crowd you?

A. I will answer: I am limited in my science; I have had thirty years' experience but I have a lot more to learn.

Q. I will take it apart: A woman with incipient cancer and uses the jelly: is it better to use it than to have a baby?

A. I would say have the baby.

Q. Why?

A. There is a question that might go behind the realm or atmosphere of medical science.

Q. I am asking from a medical viewpoint; I am not asking from a theological viewpoint?

A. Well, I would rather she would have a baby than to use a contraceptive.

Q. From a medical standpoint?

A. Yes.

Q. That is extraordinary?

A. No.

Q. Will you demonstrate?

A. It is against my convictions to use contraceptives.

Q. What convictions

A. There is a lot to consider in a woman: her age, social standing, family financial means.

Q. Religion and conscience?

A. Yes, and morals, if any.

Q. Quite so?

A. I wouldn't say to a woman: "use that and you will have no more babies." I couldn't do it; it would be impossible; I wasn't brought up that way. I am a man sixty years of age and I have seen a lot of the world.

Mr. Mercier: This is a serious case; the people here seem to be enjoying themselves.

The Court: I granted a lot of leeway yesterday and today if there is any more disturbance, I will order everyone out of the Court except counsel and those actually in the case at the moment. I will not mention it again.

To Mr. Wegenast:

Q. Let us take this apart and keep it apart; I didn't want to introduce religion and morals; I wanted only the medial standpoint. As a doctor you can rid yourself of other considerations?

A. Yes, pick the medical grounds.

Q. On medical grounds wouldn't it be safer to use the jelly than to have another baby?

A. I wouldn't advise that.

Q. I didn't ask that; wouldn't it be safer from a medical standpoint?

A. For the patient to go on?

Q. Safer for her body?

A. Having a baby with the beginning of cancer, to use that jelly?

Q. Yes.

A. For her general health of the body or her life?

Q. A. Her life?

A. Well, there is no doubt the composition of the jelly you gave me is not injurious.

Q. And having a baby might be injurious?

A. If you want to put it that way, that woman is practically condemned from the beginning of her cancer; she must have a serious operation immediately, a total erectomy (?) or treatment by radium. It wouldn't be wise for her to have a baby, but I wouldn't advise it.

Q. That is the cancer part. Now gonorrhoea?

A. Sub-acute or acute gonorrhoea?

Q. Yes.

A. Yes.

Q. The jelly wouldn't hurt her?

A. No, because I don't think the germicide is strong enough, -- lactic acid.

Q. Do you know when lactic acid first began to be used?

A. No.

Q. You wouldn't know the ancient Egyptians used it?

A. No, I didn't study general history.

Q. Perhaps you will take my word that it has been used for a long time and is well known as a germicide?

A. No.

Q. You don't know if two per cent is a strong enough germicide?

A. No.

Q. Is it desirable for a woman to have a child when she has acute gonorrhoea?

A. No, it isn't desirable.

Q. Vaginitis?

A. It is one of the forms of gonorrhoea.

Q. Syphilingitis?

A. In the organs where conception takes place?

Q. You wouldn’t think if it desirable for a woman to have a child if she is in that condition?

A. They hardly ever have a baby when they have that; they are usually finished. What they need there is proper medical attention and if diseased too long, have the organs removed. It is a sad affair.

Q. It isn’t that you condemn contraceptive methods, if properly administered?

A. It must be done under medical supervision if it is to be done properly.

Q. And if done under medical supervision, it isn’t in every case wrong or bad practice?

A. I couldn’t say that; it hasn’t entered very much in our medical practice; this is the first time I hear so much about contraceptives.

Q. You wouldn’t say you are an expert?

A. No, no; I have been practicing for thirty years; I have seen a lot of gynecology.

Q. Do you know anything of the properties of quinine as a germicide?

A. No.

Q. You don’t know how it would kill germs or how much it would take?

A. No.

Q. About condoms?

A. As a matter of fact we very frequently advise these when we have a lot of men come to see us who are unlucky enough to have acute gonorrhoea and when the time comes the sexual disease

is about cured, we ask them to use the condom; in fact, only on that sole purpose.

Q. Do you think there is any serious damage in using the condom”?

A. To who”

Q. To the woman?

A. No.

Q. Now, suppose you had a clinic?

A. Suppose I had a clinic?

Q. Yes?

A. You haven’t enough; you haven’t succeeded there.

Q. The cover says: “The Rhythm of sterility and fertility in women.” At the bottom it says “Babies when parents are ready”?

A. Yes.

Q. I would like to ask whether from a medical standpoint if there is anything in this business of spacing, anything in your opinion better for babies if they are two years apart than one year apart?

A. It depends on the health of the patient.

Q. A healthy woman?

A. Can have a baby every year.

Q. Do you think it better to have one every two years?

A. No, she can have one every year.

Q. It is better?

A. It might tire her.

Q. Take the great mass, or a cross section of women, do you think on the whole it is all the same to them if they have babies every two years or every year, from the medical standpoint?

A. I don’t know what the women think about it.

Q. I am appealing to you as a doctor with thirty years’ experience: take women in general -- isn’t it perfectly well known in medicine the babies come too often?

A. Yes, yes; I agree with you.

Q. Now, I was going to show you this: where did you get your copy?

A. At the Water Street Hospital; I am one of the surgeons there.

Q. You notice it is published with eccleastical approval?

A. With Roman Catholic censure and approval.

Q. I will read a passage: this is at page 131, paragraph 74, which is a question: "What good" -- mine is the fifth edition, 120th thousand. I will read my edition.

> "What good is expected to follow from the dissemination of this knowledge?"

A. The period of sterility and fertility during the menstrual period.

Q. If the contents are practiced there is no pregnancy?

A. No but it is not fool proof.

Q. (Reading):

> "First of all, we have a right to expect that the married lives of many couples will be vastly enriched with the values, physical, psychic and moral, of married life, as it was intended by the Creator.
>
> Burdens that test human endurance to the utmost limit, and to which all too many succumb, will be lightened. I speak of economic burdens, the burdens of poverty, of inadequate income, of unemployment, which make it impossible for parents to give their children and themselves the food, the clothing, the housing, the education and the recreation they are entitled to as children of God. I speak of physiological burdens, the burdens of depleted physical energies and exhausted vitality resulting from a previous birth or miscarriage, the burden of chronically or temporarily adverse conditions of the heart, the kidneys or other

> organs, or of conditions that threaten the life of the mother in case of pregnancy. I refer to psychic burdens, not infrequently more difficult to bear than

any I have so far mentioned, burdens of uncontrollable fear, anxiety, irritability, of rebellion against God and His Church for seeming to make demands beyond human nature, beyond human powers to endure.

The greatest gain that will accrue to the human race from a judicious dissemination of this knowledge is the prevention of countless crimes against nature, especially abortions and contraception."?

A. Contraception, yes.

Q. Now, is there anything in this to which you take exception?

A. Not at all.

Mr. Mercier: I hope my learned friend isn't questioning him as a religious authority.

The Witness:

A. I am not ashamed; I am a Christian like yourself; I don't think there are any Mohammedans or Buddhists in this room.

To Mr. Wegenast:

Q. (Reading):

"According to 'Abortion in Relation to Fetal and Maternal Welfare' prepared for the White House Conference, committee on prenatal and maternal care, subcommittee on factors and causes of fetal, early infant and maternal morbidity and mortality, Hugo Ehrenfest, M. D., of St. Louis, chairman, there are about 700,000 abortions performed in the United States annually."?

A. I have read that before: 750,000, I am told.

Q. Do you think the conditions are the same in Canada?

A. Our population is less dense; I don't know in proportion whether more in the States.

Q. Do you think there are more in this country than in the States?

A. I can't tell you that, what the percentage should be.

Q. Should there be a percentage of abortions?

A. There always is.

Q. There always is a percentage of abortions?

A. Abortions are against the law of the country and the church.

Q. There are a lot of abortions in Canada?

A. Yes, I understand.

Q. (Reading):

> "Their number is increasing every decade. About 12,000 of the women upon whom abortion was performed died in consequence of the operation in 1930."

That doesn't shock you?

A. No, that is a small percentage.

Q. (Reading)

> "'The reports of doctors allow of no doubt but that abortions among all classes have increased alarmingly and that the number of criminal abortions is more than double the number of normal births.'"

There he refers to a book by himself, Peter J. Latz, M. D., "The Right to Life of the Unborn Child," in the Fortnightly Review, St. Louis, Mo., 1922, p. 27.

> "What a ghastly story these few lines tell. And still, unless we are confirmed pessimists, we must hold that every last woman from whom the fruit of her womb was criminally removed, would a thousand times not have had that occur. Even supposing that one-half of the abortions are performed on unmarried women, the number of crimes that still remain is enormous enough to justify every legitimate effort in trying to reduce it. A dissemination of natural birth control information should help considerably in that direction."

Dr. DeHaitre

Do you agree with that?

A. Yes, sure. Of course, they mention there natural contraception and what happens during the menstrual period of sterility, about eight days.

Q. (Reading):

> "The other evil that we may entertain the hope of reducing, through a spread of this knowledge, is contraception."

And, he goes on to show how the Catholic church is opposed to contraception. At the bottom of the page:

> "According to Lancet, April 11, 1931, p. 42 quoted by the Catholic Medical Guardian, 'The statistics of birth control clinics that have been working in New York, Chicago, Newark, Cleveland between 1921-1928 show that 36% of their clientele are Catholics'"?

A. Yes.

Q. (Reading):

> "These figures would seem to indicate that we Catholics are furnishing more than our quota of clients."

That is in the United States, where the Catholic population is less than here?

A. Yes.

Q. There is nothing in that with which you disagree?

A. No.

Q. Now, may I refer to a sentence in the introduction to this book (Exhibit 80-B, "Rhythm") by Joseph Reiner, S. J., which indicates he is a Jesuit priest:

> "In view of all this, I do not hesitate to say, that no physician, no nurse, no social worker, no clergyman, can afford to disregard the information contained in this book."

Do you agree with that?

A. Oh, yes; I read the book.

Q. Now, as a matter of fact, this pamphlet to which you had reference ---

A. But, this book doesn't advocate contraception except natural; they don't want artificial contraception with jellies, condoms, pessaries, tubes and whatever.

Q. As long as they say "natural", not "artificial"?

A. Yes, natural.

Q. You notice in this the safe period is set out, with others, on the third last page?

The Court: Exhibit 5-B.

Mr. Wegenast: Yes.

To Mr. Wegenast:

Q. It is called the safe period?

A. Ogino-Knaus: one is an Austrian and the other a Japanese. That is only copying. I should have the English copy.

Q. I want to read from the page ---

The Court: What page?

Mr. Wegenast: Page 14 (Exhibit b-5).

To Mr. Wegenast: (Reading):

> "'The Safe Period.' According to the book called 'The Rhythm' by Dr. Lee Latz and evidently approved by the Catholic church, the general information is given that the 'safe period' for the average woman is about nine or ten days before, and about six or seven days after the commencement of the menstrual period. This information is likely of uncertain value to the average woman, and less reliable for women whose menstrual periods are irregular. Anyone interested in 'the safe period' can obtain more detailed information by securing a copy of 'The Rhythm' from The Catholic Truth Society, 67 Bond St., Toronto, or by ordering same from almost any book store."

Is there anything in that you disagree with?

A. No, not at all.

Q. You have mentioned -- it is really not an invention of this man Dr. Latz, but was promulgated or propagated by two doctors?

A. He just wrote what the other two, the Austrian and Japanese discovered in their experimentation in physiological work.

Q. There are only two or three other passages in this Exhibit 5-B ---

A. Ogino and Knaus -- it is not admitted by everybody; there is much controversy on that. It is not admitted as true. Errors have been made and women have been very much disappointed.

Q. I was coming to that: I thought I might have a bit of argument on that. I refer to a few paragraphs at the beginning of the book, one on page four of "Rhythm":

> "Limiting offspring and in that way cutting down the family responsibility and family budget is a burning problem throughout Europe".

He referred to a meeting at Cologne?

A. At Cologne.

Q. (Reading):

> "At the meeting referred to, I was very much interested by the report of a woman physician who talked on the efficiency of birth control through periodical abstinence. She stressed particularly that the method had the approval of the Bishop of Ratisbon.
>
> My interest in the subject stimulated me to investigate this problem further. I was amazed at the great amount of literature that had appeared on the subject and at the careful scientific research that had been conducted in this field and is still going on."

I was coming to that: that investigation in this field of the safe period is still going on.

> "I feel convinced that thousands, not to say millions, of married couples would be relieved of almost

> intolerable burdens of anxieties, fears and pangs of conscience, if the simple truths of nature in regard to physiologic sterility were brought to their attention.

> I am writing the booklet in a popular style in as simple language as I can, in order that it may be placed into the hands of such married people as are entitled to the information which it contains.
>
> The clergy, as well as nurses and social workers, will be able, through this booklet, to assist those who
>
> consult them about a rational method of limiting the size of their families."

You can answer a hypothetical question as well as anybody. If Miss Palmer had confined her activities to the dissemination of the information in the paragraphs I have read out of the little pamphlet, you wouldn't have anything against her doing it?

Mr. Mercier: My learned friend ought to establish whether he has anything against Miss Palmer.

To Mr. Wegenast:

Q. You don't believe her?

A. I don't believe it has been properly done.

Q. But if it was confined to the "Rhythm" and the "Safe Period" it would be all right?

A. It would be pretty hard to make these women understand that from the evidence I have just heard; she would still be at it.

Q. Yes, and she was late, sometimes?

A. Yes.

Q. And in a passage near the end of the book about this knowledge being necessary to the social worker (Rhythm) -- she is a social worker?

A. I think the way she went about it was wrong, in my opinion.

Q. As a social worker, would it have been all right if she had talked the "Safe Period"?

A. Yes, but it wouldn't be complete. She should have seen the local doctors and say, "examine so-and-so and see if she is a fit subject for contraceptive means." I have nothing against Miss Palmer; it is immaterial to me what she is doing.

Q. But you will admit this: many of these women would hesitate to go to a doctor?

A. Look at the danger; they wouldn't have gone and they wouldn't have been examined.

Q. And they wouldn't have had money to pay the doctor; perhaps they would owe the doctor some bills already?

A. Don't you think the chances are terrible to put those instruments of contraception in the hands of those who don't take proper means of cleaning them -- putting them on diseased organs? It would have been a very sad work or move, with complications.

Q. If she was talking about the jelly?

A. But the jelly doesn't go alone; they must use a tube, nozzle or catheter. Those women, some of them don't know how to give themselves a douche properly.

Q. What would you do? They have babies one after the other; they are on relief; they are sick; they have miscarriages and use abortive methods?

A. Establish proper clinics and do it properly.

Q. In the meantime, there is no clinic here?

A. But the means they are using are less than half measures; that is the reprehensible part.

Q. I suppose we all agree with that, but half a loaf?

A. But why not wait until it is properly established?

A. Because women and children are dying?

A. It takes a second to establish a clinic; you can have a committee of doctors named in a day to examine clients; I would be one to examine clients, but not in the way you have gone about it. There have been laws, bills, passed in British Columbia and Alberta where they have sterilization since the end

of 1930. Why not laws for contraception or anti-contraceptional methods?

Q. Just a moment, doctor. I don't want to take the responsibility for all the doctor's statements. I haven't any

ojection, and as long as Your Worship's patience is not exhausted?

The Court: No.

Mr. Mercier: They are in answer to questions.

The Court: The witness is a doctor with thirty years' experience as a gynecologist: I am quite interested in getting his views. After all, we started to read from a recognized authority.

The Witness:

A. Recognized the world over.

Mr. Wegenast: I am quite satisfied. I am only wondering, if you had one hundred medical men you might have one hundred medical views.

To Mr. Wegenast:

Q. I want to refer to page 117, paragraph 59 (page 115 of Exhibit 80-B):

> "How do leading medical authorities regard contraception": "In the statement that he telegraphed to the House Judiciary Committee which was conducting hearings on Birth Control (Jan. 18, 19, 1934), Dr. William Gerry Morgan, Secretary General of the American College of Physicians, at one time President of the American Medical Association, emphasized his 'continued and unalterable opposition to the passage of this or any other kindred bill' because 'of the inevitable and unavoidable harm that it will cause to young women through practices that would be legalized and would result in many cases in profound pelvic disturbances and disease, ill health and misery.'"

I have really put it to you and I think you will agree?

A. Yes.

Q. I want to ask you ---

A. Now, this Doctor Morgan is a big man, a man of probably twenty years' more experience than I have and he comes out there frankly against that.

Q. And you are relying on that?

A. If his opinion wasn't there, I have my experience, but this confirms what I am saying.

Q. And in due time we will hear from other medical men and you will admit they are entitled to the same respect?

A. Undoubtedly.

Q. "Dr. Howard Kelly, of Johns Hopkins University, Baltimore, Md.," ---

A. He was one of the leading gynecologists in the world. Read that.

Q. Yes; it is in my favour.

> "Dr. Kelly, testifying before the same committee, remarked: 'The use of the rubber mechanism in the vagina for a certain period of time'" -- you will note, "for a certain length of time"?

A. Yes.

Q.

> "'Very often produces inflammation of the vagina, the results of which are harmful and dangerous. There is an article in the Journal of the American Medical Association of last September about it. And there have been children born now where the contraceptive drug has been used but not in sufficient quantities to kill the spermatozoa germs entirely; and these children have been deformed as a result of that treatment. And as I have said, you may bring about sterility by these practices of using these things'".

We will have a lot of discussion on this. What have you here?

A. It isn't mentioned there.

Q. (Reading):

> "The injury done to the female genital organs by the use of the various types of contraceptives has been exposed and discussed in the foremost medical journals

of the world. Dr. Niedermeyer in his 'Facultative Sterilitat' gives a long list of such articles which have appeared in magazines like the following: Zentralblatt f. Gynakologie, American Journal of Obstetrics, Muenchner Med: Wochenschrift, etc."

New paragraph 60:

"Have authorities in the field of medicine expressed themselves in favour of contraception? Some have done so. I shall quote from Birth Control, Hearings before the Committee on the Judiciary, House of representatives."

Is that in the United States?

A. Yes.

The Court: It sounds like the United States.

To Mr. Wegenast:

Q. (Reading):

"Jan. 18, 19, 1934. J. Whitridge Williams, M. D., Professor of Obstetrics at Johns Hopkins Hospital, Baltimore, Md., is quoted (p. 16) from the Journal of the American Medical Association, Oct. 27, 1938, Vol. 91, p. 1241:

'Where should we stand as medical men? To my mind, there can only be one answer, and that is, that we must give contraceptive advice whenever it is medically indicated.'"

You agree with that?

A. Yes.

Q.

"'But that it must depend on our conscience as to what advice should be given under other conditions. I hold that it is just as much our duty to give such advice

when medically indicated as it is to advocate the employment of any other prophylactic measure.'"

What do you say about that?

A. Yes.

Q. You agree with that?

A. Yes.

Q. If it is a matter of curing or preventing disease it is the business of the doctor to prescribe?

A. Yes, I have done it myself in disease.

Q. If it is a matter in other cases it is a matter of conscience?

A. Yes.

Q. (Reading):

> "'I hold that it is just as much our duty to give such advice when medically indicated as it is to advocate the employment of any other prophylactic measure.'"

Do you agree with that?

A. Yes.

Q. If you find a case where the jelly would be the thing or the pessary or condom, you would advise it?

A. Yes.

Q. Going on with this -- Dr. Fred J. Taussig, is he an authority?

A. I don't know.

Q. He is about the last word in the world:

> "Dr. Fred J. Taussig, Professor of Clinical Obstetrics and Gynecology, Washington University, St. Louis, Mo., made the following statement (p. 13):
>
> 'I am here to assure you that these experts in the medical profession, the obstetricians and gynecologists, who are most proficient with matters dealing with motherhood, are almost a unit in the

> support of Birth Control and the repeal of the laws that at present restrict it.'"

That is in the States?

A. Yes.

Q. You don't disagree with that?

A. No, I don't disagree.

Q. Now, I want to read paragraph 62 (of "Rhythm"):

> "How does natural birth control differ from contraception" The one is natural, the other unnatural; the one is rational, the other irrational; the one is in harmony with nature, the other does violence to nature, and is 'intrinsically against nature'; the one is permitted and under certain circumstances, may even be required by the will of God, the other is never allowed under any circumstances."

That is Catholic doctrine?

A. Yes.

Q. I will go on and come back to it. (Reading paragraph 63 of "Rhythm"):

> "Are married people obliged to bring into the world all the children they can? Far from being of obligation, such a course may be utterly indefensible".

It may be utterly indefensible for some of these women who were standing where you stand.

> "'Broadly speaking, married couples have not the right to bring into the world children whom they are unable to support, for they would thereby inflict a grievous damage upon society.' (Loch-Preuss, a Handbook of Moral Theology, p. 472)."

You don't disagree with that; you know it is theology.

> "Procreation of a large number of children may proceed from as base motives as prevention of birth of any and

> hence may represent an equal perversion and desecration of marriage."

Do you disagree with that?

A. What they were saying is always based on the natural contraception of the period of sterility during the menstrual cycle of the woman.

Q. Yes.

A. It is natural and not reprehensible.

Q. And where we differ, doctor, as Protestants and Catholics and Jews we are agreed in certain circumstances that birth control is not only desirable and necessary, but we differ as to the method?

A. But one is natural and the other unnatural.

Q. I will come back to that?

A. There is a closed partition between, maybe not very thick, but there is a partition.

Q. Now, paragraph 71 on page 128?

A. This is getting more like a course in sociology or physiology.

Q. I am glad you mentioned that this thing is a matter of sociology: I am glad you brought that up. When we talk about sociology what would you say it does include: what is sociology, anyway?

A. Well, in a broad sense it is a study of society, of the human being; there are so many divisions.

Q. And under that head is there a place for birth control?

A. I suppose so: adults, children and children to be born.

Q. May I put it this way: the question of how many people to be and the kind of people to be is the very basis of sociology?

A. Yes.

Q. Sociology, you will consent, has its medical aspect, do you agree with that, doctor?

A. Yes, moral and religious and economic and aesthetic, whatever we want.

Q. In medicine there are some men who are theorists; it is that way in every science others practice. Now, would you agree a sociologist who sits down in his study and writes studies on sociology is a theorist and the ones like Miss Palmer here who go out and practice it, they are practical?

A. Yes, they are the ones who put it in practice. We must also consider the way they put it into practice. One principle may be good, but ---

Q. Bad in practice?

A. Yes, it is all the difference in practice.

Q. I will read from page 128, paragraph 71 ("Rhythm"):

> "May there be an obligation in conscience for some married couples to take advantage of the rhythm of sterility and fertility?
>
> Such a situation would exist where, on the one hand pregnancy is undesirable because of physiological, economical or social reasons, and, on the other, continence would represent a serious danger for either one or both married persons."

Paragraph 72:

> "Is it permissible to acquaint married people with the rhythm of sterility and fertility?
>
> Under circumstances, such as were outlined in the answer to the previous question, it is not only permissible, but seriously obligatory to do so. We are bound in conscience to go to the assistance of our neighbor who is in need."

Miss Palmer, going from door to door, was quite right in that if she used the right method?

A. Yes.

Q. (Reading):

> "The seriousness of our obligation is in proportion to the moral, psychic, physical need in which our neighbor finds himself and our ability to help him."

You know, doctor, we have a very high authority for loving our neighbour as ourselves. You agree with what is said there?

A. Yes.

Q.

> "The Most Rev. John F. Nell, Bishop of Fort Wayne, gave expression to the Christian spirit of liberty when he made the statement: 'If there be a…law of nature according to which they (parents) may attain their end and purpose (spacing children) without sin, they are certainly entitled to know of that law'"?

A. Yes.

Q. And I take it you wouldn't raise one finger or say one word against her if her methods were correct?

A. They may be correct but not applied properly; I said that at the first.

Q. I included that when I say "correct methods"?

A. You have been quoting from this book ("Rhythm"), but not all Roman Catholics agree with this because there have been excesses. Some young women will take this up and assume all the pleasure of marriage without the duties of a family. They say, "religion is behind us; we will take full liberty and we will have our sexual intercourse during sterility without having children."

Q. Do you think that is wrong?

A. The general principle is all right, but the practice is not; it carries to lawful concubinage and free love, license.

Q. Does it carry it further than the French safe?

A. No, but ---

Q. Listen a minute: don't you know there are thousands sold in Ottawa and Eastview?

A. Hundreds, thousands; a lot for immoral purposes and a lot for hygienic and preventive purposes.

Q. There are other things sold, not to prevent disease, but for contraception?

A. The only things I saw were shown me by Mr. Mercier, the jelly tubes and little tubes and diaphragm and pessary. Condoms, I know them for fifty years.

Q. You didn't know the others?

A. No, I probably wouldn't have.

Q. Doctor, you and I are about the same age and about the same degree of innocence?

A. It is a great thing to be innocent sometimes.

Q. Along the line we are following, there is a foot-note in the very book he mentions, called "Legitimate Birth Control according to Nature's Law, in harmony with Catholic morality, by the Rev. John A. O'Brien, Ph. D,": it has the imprimatur of John Francis Nell, D. D., Bishop of Fort Wayne, and here is the passage I have just quoted:

> "But if there be another law of nature, according to which they may obtain their end and purpose without sin they are certainly entitled to know of that law." (Page 7, 86-B).

The foot-note (page 72, 86-B):

> "Dr. Henry Schmitz, of Loyola University, Chicago, has read this booklet in manuscript form. He is somewhat more conservative in regard to the extent of the sterile period than Ogino and Knaus. While conceding that further observations may establish the absolute sterility of the post-menstrual period…"

That is true?

A. Yes.

Q.

> "…he regards the present data as indicating only its relative sterility. He submits the following statement as reflecting the evidence at present available: 'Women who menstruate regularly every 28 days, calculated from the date of onset of one menstruation to the first day of the next following

> menstruation, may but rarely conceive during the first ten days of the menstrual cycle and cannot conceive from the 19th day to the onset of the next monthly flow. The period of fecundity during which pregnancy of the woman will result, from conjugal relation, begins usually on the 11th day and ends on the 17th day inclusive. The time most favourable to a successful fecundation is from the 14th to the 16th day in a regular 28-day cycle."

That is true?

A. Yes, but it isn't fool proof.

Q. You say this isn't fool proof?

A. No.

Q. It isn't safe?

A. No.

Q. Now, I want to ask you about some of the things in this book, but first I want to show it to you?

A. I haven't seen much; I wanted to see Dr. Marie Stopes' book but I couldn't find a copy.

Q. Could you be satisfied to take the word ---

A. Of a recognized prince of the Catholic Church, but of course I would have the privilege of my own opinion.

Q. Of course, I couldn't cram anything down your throat, doctor. This is "Legitimate Birth Control."

The Court: What page?

Mr. Wegenast: Nine.

To Mr. Wegenast:

Q. (Reading from Exhibit 86-B):

> "The thousands of letters which have deluged us since the publication of the article The Church and Birth Control in the November 26, 1933, issue of Our Sunday Visitor…"

That is a very well-known Catholic paper; you know it is?

A. I don't know.

Q. (Reading):

> "…demonstrate the deep and widespread interest in this important problem of Catholic life. They come from practically every state in the union. They come from rural districts and densely populated cities. They come from prelates and priests, charged with the care of souls. They come from professors in Catholic colleges and universities, charged with the exposition of Catholic doctrine in the light of reason and modern science."

They were just like you and I, innocent and green as I was about four weeks ago.

> "But most of all they come from fathers and mothers, to whom the problem is not a theoretical one, but an intensely real and personal one.
>
> Anxious to discharge the high responsibility of parenthood, they find themselves facing difficulties so serious…"

You agree with that?

A. Yes.

Q.

> "…and so real as to cause them many a heartache and many an hour of mental disquietude. Vast numbers are tortured by the conflict of opposing pressures. On the one hand there is the ineradicable love of children, the yearning for off-spring, which characterizes every decent married couple.
>
> On the other hand, there is unemployment, lack of sufficient means to provide proper food and clothing for the children already born, worry over the prospect of even greater economic privation and suffering, and at times the deletion of the mother's vitality and strength from a recent child birth."

That is straight enough?

A. Yes.

Q. (Reading):

"These are cited not as reasons for not having children, but as reasons for the spacing of births."

It is quite lawful and moral?

A. Yes.

Q. (Reading):

"For the temporary retardation of the next babe until the parents are able to provide for it and for the offspring they already have. Then it will come not as an unwanted intruder, but as a welcome angel in flesh and blood, reflecting their deliberate co-operation with the Most High in His creative power. After reading vast numbers of the letters in which fathers and mothers unbosom themselves, telling in simple and homely language of the worry and the mental anguish, the questionings which arose about the reasonableness of the alleged stand of the Church on this matter, questionings which could not be downed, it becomes easier to realize both the acuteness of this problem and its widespread interest. It becomes impossible to strike a pose of unreality, assuming all is well, and that no problem is disturbing the complacency, no unrest gnawing at the happiness and peace of mind of millions of families throughout our land."

You don't disagree with that?

A. No.

Q. (Reading):

"The dominant notes sounded in the myriad letters have been those of joy and gratitude. Pastors rejoice in the happy solution of a problem that was growing in perplexity, causing disaffection among many, and occasioning latent rebellion and estrangement among more than we like to admit. Professors charged with the exposition of the reasonableness of Catholic belief and practices see in this recent discovery of scientists a striking vindication of the Church's traditional respect for the sanctity of the laws of nature as the reflection of the mind of the divine Legislator. Fathers and mothers see in the discovery

of the period of fertility and of infertility a providential help, showing them how they can achieve in a natural, rational and ethical manner both the primary and secondary ends of matrimony, namely, the procreation of the race and the cultivation of mutual love."

You understand that: they speak of the two ends of matrimony: one, to have children; second, mutual love?

A. Yes.

Q. (Reading):

"Mingled with the expression of gratitude was the desire for more information concerning the Ogino-Knaus discovery. Echoed in letter after letter, was the request for information showing the practical application of this finding to enable parents to achieve the ideal of a rational fecundity. Why should such information not be given?

There are some who say that if such information were disseminated in a widespread manner it would be abused."

There they come to you, doctor?

A. Yes.

Q. (Reading):

"Married couples would use it for utterly selfish purposes, enjoying the rights of the conjugal state but neglecting its responsibilities. Many would have no children at all, while others would rise but one step above that abomination, and have but 'an only child', petted and pampered and thus disadvantaged for the rough and tumble competition of a sturdy life. In short, a vast number would restrict their offspring to a number far below the just requirements of their health, their economic means, and their conjugal happiness, reasonably interpreted. The birth-rate would decline sharply and the race would be threatened with extinction."

I suppose you agree with that?

A. Well ---

Mr. Mercier: I thought Mr. Wegenast was giving evidence.

The Court: Court is adjourned to 2:30 (from 1:00 p.m.).

(Court resumed at 2:40 same day. Dr. DeHaitre still in the witness box).

To Mr. Wegenast:

Q. Doctor, continuing at page 13 of "Legitimate Birth Control" (Exhibit 86-B), I want to read this:

> "That such knowledge might be misused is indeed possible."

Let us say, natural contraceptive methods?

A. Natural.

Q.

> "The remedy lies, however, not in the removal of the knowledge but of the abuse."?

A. Yes.

Q.

> "Does a physician cure a headache by decapitating the patient"?

A. Sometimes.

Q.

> "Or by seeking to remove the pain and suffering the head to remain? Food is abused. Some people commit gluttony be eating to excess. Do we correct the evil by withholding all food or by teaching the people to use it properly? We have just ended fifteen years of the experiment with prohibition, during which we sought to remove the evil of intemperance by withholding all liquor from the people. The nation has deemed the experiment a failure. It now reverts to the time-honoured view that liquor in itself is not evil, but only its abuse. While sanctioning its just use…"

You would agree with that?

A. Sure, sure.

Q. The doctor nods his head.

> "…our nation will fight against intemperance by punishing the individual who abuses it through intoxication.
>
> So, too, the knowledge afforded by modern science concerning the natural method for the regulation of births is not in itself an evil but a good. Evil results only when it is misused. The remedy here, as in the matter of drink, consists not in the withholding of knowledge, but in warning against its abuse and in the establishment of a system of moral sanctions for its just use. We take our appeal directly to the reason and the conscience of the individual."

Do you agree with that?

A. Yes.

Q.

> "Then too we must remember that God has weighted the appeal with the pressure of the deepest instincts of nature. He has planted in the hearts of every normal couple a deep and ineradicable yearning for the perpetuation of themselves in the form of their children."

You would agree with that?

A. Yes, absolutely.

Q. Would you go further than that: there is a general abhorrence of sterility?

A. Yes, there is.

Q. Sterility is something to be feared?

A. Yes, women sterilized feel inferior to those with children.

Q. (Reading):

> "May we not trust the overwhelming majority of Catholic parents to respond to the deepest instincts

of their nature, to achieve the ideal of rational fecundity instead of misusing the knowledge for purposes of groveling selfishness".

You agree with that?

A. Yes.

Q. Then, he has a passage here headed:

"Why Not Proclaim? If married couples are determined to evade the responsibility of parenthood, they have only to approach the corner drug store to secure a variety of contraceptive devices to serve their purpose."

I want to show you these, doctor; I don't want to put them in.

The Court: If you are going to refer to them, I think you should put them in, if asking questions about them.

The Witness:

A. I am not an encyclopaedia.

The Court: I don't see how you can refer to those without putting them in as exhibits.

To Mr. Wegenast:

Q. That is apropos of the drug store?

A. Yes.

Q.

"With hundreds of millions of these devices flooding our land, pouring into every hamlet and village, with thousands of mothers dying from the abortion of unwanted offspring every year, is it not far better to proclaim the knowledge which modern science furnishes us concerning the natural, rational and ethical means of birth control."?

A. Yes.

Q. I suppose you would agree unreservedly with that?

A. Yes.

Q.

"Contrary to the assertion of her enemies, the Church is not obscurantist. She welcomes every new truth. She proclaims it to her children. She recognizes the unity of all truth, natural and supernatural. For it all proceeds from a common source, the omniscient mind of God. The discovery of an additional law of nature, whether it be deciphered by the geologist from the hieroglyphics of the rocks, or teased by the astronomer from the tangled skein of stars and nebulae moving about in the far reaches of the sky, serves but to give us new glimmerings of the mind and will of the divine Author of nature, and to under-gird with richer significance the truths He has already revealed to us. Whatever then is true, let it be proclaimed. For it shall prevail. 'You shall know the truth and the truth shall make you free'".

You agree with that?

A. Yes.

Q.

"Such was the teaching proclaimed by the divine Founder of the Christian religion nineteen centuries ago. Such too is the teaching of the Church today."

Then he goes on:

"Theory or Fact? Has the Ogino-Knaus law, however, been properly verified? Is it an established fact or an unsubstantiated theory?"

Then he goes on:

"The writer pretends to no special competency in this field. Let the answer be given by Dr. R. DeGuchteneere, one of the most eminent gynecologists in Europe. After an exhaustive study of the data, Mr. Guchteneere in an article written for the priests of America states that the Ogino-Knaus finding 'is based on incontestable scientific data, and has been confirmed in startling fashion by the experience of physicians who have made application of the theory.'"

On page 17 the author states:

> "We profess no competency in this field of medical science. We cannot ourselves guarantee the validity of the finds, for they are outside our domain."

I take that to be something like your understanding whether this is one per cent scientifically good?

A. No; there are still discussions and still medical authorities who believe in it, but that is not to say it is one hundred per cent true, and they have proved it has played some nasty tricks on some poor women.

Q. (Reading):

> "Neither do we in any way identify the Church or her authority with the teaching of Ogino-Knaus. We simply offer it for what it may be worth. We cannot, however, be indifferent to a scientific finding with practical implications of a far-reaching character, which some of the foremost gynecologist in the world assure us has been thoroughly tested and verified.
>
> Especially are we impressed by the verdict of Dr. Guchteneere, reached after exhaustive study and investigation, and prepared for the practical guidance of the priests of our country."

Do you know his works?

A. Who?

Q. Dr. DeGuchteneere?

A. Is he a German?

Q. I think he is a Belgian?

A. You have a regular circulating library.

Q. You haven't seen anything yet, doctor. I will go on with this:

> "No New Issue. It is to be noted that the dissemination of this knowledge raises no new problem for the moral theologian or the pastor of souls. Catholic theologians have been unanimous in sanctioning the practice of confessors in dispensing prudently and cautiously information concerning the

safe period. The information generally given was the rule laid down by Capellman?"

A. Capellman?

Q. Yes.

"Which claimed to solve all cases with a uniform formula. It specified the week in the middle of the menstrual cycle as the safe period. It is this period which modern science discloses to be the very period of fertility!"?

A. Yes.

Q.

"No wonder there are still heard echoes of disappointment and dissatisfaction and of incredulity concerning the 'safe' period!"

You agree with that?

A. Capellman was absolutely wrong.

Q.

"Can any one rightly maintain that it was entirely proper to dispense information concerning the infertile period, which was false and misleading, but now that we have the correct information, it becomes improper and wrong to dispense it? Would not such a contention outrage every sense of honesty, justice and truth? No argument is needed. The mere statement of such a contention is sufficient to disclose its monstrous and fallacious character."

Now, we come to a reference to the encyclical, Castii Cannubis, page 19 (of Exhibit 86-B):

"In his scholarly Encyclical on Christian Marriage, Pope Pius XI proclaims to the world that married people are not to be considered as acting contrary to the order of nature, if they exercise their marital rights 'according to sound and natural reason, even though no new life can thence arise on account of circumstances of time'".

You have seen that?

A. It was read in all the churches, probably.

Q. And the thing is based on the new or present theory or practice, based on circumstances of time. I think I have it in Latin; will you take the translation?

A. The translation, yes.

Q.

> "The dissemination of the findings of Ogino and Knaus serves but to specify the 'circumstances to time' referred to by the Holy Father himself. We follow humbly along the trail of clarity and frankness blazed for all Christendom by the Supreme Pontiff."

Now, there is this at the middle of page 20, I would like to put to you. You agree with what I have read?

A. Absolutely.

Q.

> "'This theory,' it declares, 'has displaced all former theories, and rightly so, as it is based on exact scientific research, and a good deal of success has attended the application of the theory. If there is a failure now and then, at all events the theory has proved to be sound almost ninety-nine per cent, whereas former theories were about ninety per cent failures, especially the theory of Dr. Capellman. If this method proves to be as successful as it is asserted to be, then the modern immoral contraceptive methods will be abandoned in large measure.'"

Do you care to comment on that?

A. Read that over again?

Q. He puts this new Ogino-Knaus theory on the basis of ninety-nine per cent?

A. According to my experience ---

Q. I will read it again:

> "'If there is a failure now and then, at all events the theory has proved to be sound almost ninety-nine per cent.'"

You wouldn't go that far?

A. Not in my experience.

Q. We will skip to page 21 and take the heading, "Why Bother About It?"

> "Why bother, however, about the broadcasting of this information through the Catholic press? Why not allow it remain buried in medical journals and scientific monographs until it finally comes after a long span of years to the general public?"

You see the pertinence of that?

A. Yes, I see it.

Q. The Church finds herself thinking, "we can sanction it," and he addresses himself to the question whether to leave it to the medical journals and these women not get it in their lives?

A. Excuse me?

Q. Yes?

A. The intention of the Church is to counterbalance the contraceptives put forward; the Church is glad to find a natural reason and pronounce it.

Q. I will not be surprised if you will agree with all this, except the ninety-nine per cent?

A. It is in order to avoid excesses.

Q. I think you will agree with everything except the ninety-nine per cent?

A. You haven't' several hundred pages to read?

Mr. Mercier: Leave the book with the doctor and see what he decides.

To Mr. Wegenast:

Q. (Reading):

> "Simply because the Church is interested in the welfare and the happiness of her own children and indeed of all humanity. She is not the harsh, stern mother inconsiderate of the cries of her children for happiness, as she is so often depicted by her enemies.

She is a tender, kind and loving Mother, responsive to all the anxieties and yearnings of her children."

You don't disagree with that?

A. No, it is absolutely natural.

Q. Now, the passage, "Rational Fecundity," page 22 (of Exhibit 86-B)?

A. Yes.

Q. (Reading):

"Farthest from our intention in the publication of the Ogino-Knaus finding is the lowering of the Catholic birth rate or that of the general population of our country. The purpose is simply to enable parents to space their children."?

A. Yes.

Q. Rational fecundity governed by reason?

A. Yes.

Q. Not by accident?

A. No, by reason.

Q. (Reading):

"This will vary with parents, depending upon their health, their economic resources, and the reasonable requirements of their conjugal happiness. Sociologists point out that in order to keep the population simply at its present status, families should average 3.2 children. This number is required to offset the number who die in infancy, and those of us who do not marry, and hence perish with no contribution to the preservation of the race."

I suppose you do not disagree with that?

A. No.

Q. Here are two paragraphs in quotation marks by way of criticism, on page 26 (of Exhibit 86-B):

"'The stand of the Catholic Church against birth control is harsh, oppressive and reactionary. It

forbids all methods of family limitation except that to total abstinence. It imposes upon married couples a burden that is out of all proportion to the strength of human nature as it is actually constituted. It ignores the great joys and comforts of the marriage relationship and thinks only of the continued procreation of children. The Church's teaching is thus responsible for parents bringing into the world more children than they really want or can decently support.

Her unreasonable attitude is causing disaffection among many of her own members, and driving them into secret rebellion. Vast numbers are ignoring her law in practice, salving their consciences with the statement that it is not only unreasonable but morally impossible of observance. The public opinion of the world is against it. It alienates the intellectual esteem and good will of non-Catholics and nips in the bud any interest they might have in looking into her teachings.'"

That is the end of the two paragraphs in quotation marks. The author says:

"Such is a criticism that is heard on many sides today. It embodies the gist of a severe arraignment of the Church by Dr. Clarence C. Little in Scribner's Magazine of October, 1931, and echoed in many other quarters. Let us ask our dear non-Catholic friends to approach this subject with an open mind and see for themselves whether or not the real teachings of the Church warrant such criticism. Let us present the authentic teaching of the Church's supreme authority, the Holy Father, Pope Pius XI, and then see if there be in it anything opposed to reason or to the welfare and happiness of married couples. In previous instances it has been shown that what enemies of the Church have usually fought against were not her real teachings but mere caricatures of them. Will the present instance prove an exception to the rule?"

The next is:

Dr. DeHaitre

> "Pope's Own Words. Now, what is the real doctrine of the Church on this vexing problem? Is it true that she condemns all forms of family limitation other than that of total abstinence? Such is a widespread impression. Even some Catholics seem to share it. But it is certainly more rigorous than the teaching of Pope Pius XI in his Encyclical on Christian Marriage, issued on December 31, 1931. Newspapers throughout our country and the world carried scattered paragraphs from it. Most of them played up his condemnation of the deliberate frustration of the conjugal act in an artificial manner as a violation of a natural law. But few carried the following important paragraph."

Might I ask you, doctor, if that is anything like your experience after this thing was published and read: the first impression was that the Church was opposed to all birth control methods?

A. That was the impression at the time, that Roman Catholicism was opposed to all contraception.

Q. I thought you would say that. Here is the quotation from the encyclical itself:

> "'Nor must married people be considered to act against the order of nature, if they make use of their rights according to sound and natural reason, even though no new life can thence arise on account of circumstances of time.'"

Would you mind, doctor, putting that into your own words?

A. Read it again?

Q.

> "'Nor must married people be considered to act against the order of nature, if they make use of their rights according to sound and natural reason, even though no new life can thence arise on account of circumstances of time.'"

Isn't that Ogino-Knaus?

A. Yes, that is the teaching recognized by the Church.

Q. Yes, but that is ---

A. Yes, married couples can have all the marital intercourse and pleasure they want during the period of sterility, but personally I don't agree with that; that is my own opinion, of course.

Q. Just to finish the sentence:

> "Circumstances of time or the existence of some defect. For there also exist, both in marriage itself and in the conjugal use of the rights which it confers; some secondary ends, for instance, mutual assistance, the fostering of mutual love, and the allaying of concupiscence."

That is to say, there are other ends than having children?

A. Psychology and so forth.

Mr. Mercier: The doctor is here as a medical man and my learned friend is questioning him on his opinion of an encyclical of His Holiness the Pope. I don't suppose, and I submit to the Court, that Dr. DeHaitre says he is an authority on religion?

The Witness:

A. I am not.

Mr. Mercier: I established him as a duly qualified physician of the province of Ontario, and he is now asked his opinion of an encyclical by the Pope. I think it would be just as relevant if my learned friend gets a doctor into the box and I ask him his opinion of the Lambeth Conference or some other conference and if I examine him on it. He is put in the box for the purpose of establishing if these could be used as contraceptives, and I intended calling the doctor later in rebuttal, if necessary. He is now asked to deal with questions of religion on which people much more learned than he is will undoubtedly be called, if required for evidence. "If you agree with this or that of a doctor of divinity and if the Pope was right and what is your impression."

Furthermore: another question arises: what was the effect on the Catholic population of the city or the doctor's parish when this Encyclical was read. The doctor isn't in a position to establish that unless my learned friend can establish he is?

The Witness:

A. I can't.

Mr. Wegenast: Your Worship, I rely on my rights of cross examination the boundaries of which are well known. The witness himself insisted on bringing this into the case and expressing righteousness and wrongfulness and the attitude of the Church. I have the right to examine him on that and he has undertaken to do that. My learned friend has already suggested that the real battle of the Crown lies over the question whether the dissemination of this contraceptive information is for the public good and on that there must in the very nature of things be a very wide base.

The Court: Is it wide enough?

Mr. Mercier: But asking his opinion on religious authorities is going too far.

Mr. Wegenast: The doctor is competent in his way to give evidence tending to show what the public good requires.

The Court: But you are developing now into a line almost purely theological.

Mr. Wegenast: I propose to ask this question.

The Court: I have been allowing you to continue as I haven't seen yet what you are heading for.

Mr. Mercier: You might ask him if he believes in the Pope.

To Mr. Wegenast:

Q. Is it for the public good to disobey the rules of the Church?

A. (No reply).

The Court: We might do that without reading a book.

Mr. Wegenast: Then how does he justify these things fitting into that answer?

The Court: The doctor is one member of the Catholic faith who appears in Court as an expert witness on medical testimony and you are asking him as one individual, not as an expert, on theology and sociology matters.

Mr. Wegenast: He ventured those views; I couldn't stop him.

The Court: Those views, I am sure, are not as an expert on sociology matters but as an individual. I understand it is the intention to call experts on sociological matters?

Mr. Wegenast: It is a question of reading it now or with another witness in the box.

The Court: Don't you think it would be advisable to put them while an expert on sociology is in the box and not to a medical expert?

Mr. Wegenast: I am entirely in Your Worship's hands.

The Court: I realize you want to bring all this angle out but when you get an expert on sociological matters it would be more pertinent then.

Mr. Wegenast: Then, without any further argument, I propose to fall in with Your Worship's views and only pick out those things in this book which have to deal with medical matters.

The Court: And undoubtedly if you did cover all this ground with this witness, you would be covering it all again with another witness who would perhaps be better qualified.

Mr. Mercier: I don't think there is any suggestion the Pope considers himself an expert doctor in the encyclical.

Mr. Wegenast: I put my question to the doctor and I should have an answer to that: whether he thinks for the public good the people should sin or disobey the rules of the Church?

The Witness:

A. I think that is extra-medical completely; I don't know.

The Court: Maybe you put the question, having regard to this excerpt; Mr. Mercier and I were afraid you were going to read the whole book.

Mr. Mercier: Let the doctor take the book and point out what he doesn't disagree with. File it as an exhibit.

Mr. Wegenast: Yes. The last half of the book isn't ---

The Court: There is much theory yet.

The Witness:

A. You would have to be a moralist, philosopher, and theologist in order to be able to answer that; even after reading it there is not much medical ground.

To Mr. Wegenast:

Q. I am with you, doctor, even if his Worship hadn't ruled. Now, give me a moment to pick out places having to do with medicine. I want to ask this, doctor, as a doctor and a Catholic, which I find on page 46:

> "The notorious fact is, however, that the use of contraceptive devices…"

Mr. Mercier: He says as a "doctor and a Catholic" -- he isn't here to declare his faith: he is here to give medical evidence.

To Mr. Wegenast:

Q. (Reading):

> "The notorious fact is, however, that the use of contraceptive devices is almost universal outside the Catholic fold, and even within it, the practice is much more widespread than most of us are willing to admit."?

A. I don't believe it.

Q. It is a book with the imprimatur?

A. The book can say that.

Mr. Mercier: That will open quite a ground for cross examination of my learned friend's witnesses.

The Witness:

A. If it is my privilege, I would like to be questioned only on medical questions.

To Mr. Wegenast:

Q. I am not asking ---

A. If you had a doctor of theology.

Q. As a doctor, does your experience bear this out: page 51 (of Exhibit 86-B):

> "There is scarcely an individual in all our population who does not learn about the common methods of contraception before he even reaches maturity. There is scarcely a village, town or city in all our land which does not have its corner drug store from which a person can secure not only literature concerning contraception, but the devices to practice the same. Magazines of national circulation carry thin-veiled advertisements about contraceptives obtainable from the manufacturers or at your local drug store. No person, unless he be blind, deaf and dumb, can be unaware of this."?

A. It is true.

Q. Then he goes on with his article, "Why Withhold Knowledge?" That I must read to you. This has a medical aspect, at the bottom of page 52 (of Exhibit 86-B):

> "To withhold from general circulation the findings of science in any domain is always short-sighted. It is doubly so in this vexing field where they lessen burdens that would be otherwise excessive, and replace mental disquietude with peace and serenity."

Isn't the problem of sex replete with questions of mental health?

A. (No reply).

Q. Isn't it a fact sexual disturbances are responsible?

A. For insanity?

Q. And nervousness?

A. For nervousness, yes.

Q. Now, you differ with this, I take it, at the bottom of page 58 (of Exhibit 86-B):

> "We may boldly declare, "'that, thanks to Knaus and Ogino, periodical continence offers a security at least approximating the absolute security claimed by the majority of the artificial methods for the limitation of births.'"

I don't think you will agree with that?

A. Well, if the male is strong enough to withhold for the period of the menstrual cycle of fertility.

Q. I thought we agreed it wasn't even ninety-nine per cent?

A. It isn't ninety-nine per cent, but there is only a small space in the month when a female is infertile, according to the theory of Ogino and Knaus.

To the Court:

Q. When you say the period of infertility is not ninety-nine per cent, is it in its application?

A. When applied.

Q. If properly applied?

A. No, there are so many surprises; we are dealing with life, which is a constantly changing problem.

To Mr. Wegenast:

Q. What do you say to this, which is set out in some of the books: I think some put it at forty-four per cent and some at fifty per cent, and some put it that the one regular thing about the menstrual period is that it is irregular?

A. Very frequently we can never rely on the subject having twenty-eight days; it may be twenty-nine, thirty-five or twenty.

Q. So a woman whose menstrual periods are irregular would be condemned to total abstinence or to having children?

A. Yes.

Q. If she is irregular?

A. She would have to be or else use some of the birth control things.

Q. In other words, the woman who is irregular and can't use the Ogino-Knaus idea must use something else?

A. Total abstinence or some of the contraceptives.

Q. I want to show you this book, doctor: I said I would?

A. You don't want me to read this?

To the Court:

Q. Arising out of that doctor: one question: in your experience as a gynecologist for thirty years would you say the average among women is towards regularity or irregularity?

A. I would say it would be at least fifty per cent of women are irregular.

Q. And fifty per cent regular?

A. But very frequently a regular woman will walk in to a doctor and will say, "it is too soon" or "it is too late." If it is too late it may be the beginning of pregnancy or it may be cold, fatigue, grippe, emotion or anything.

Q. So a woman ordinarily regular might quite suddenly develop irregularity?

A. Yes, and return later to the regular cycle.

To Mr. Wegenast:

Q. And the Ogino and Knaus theory is that she must be continent for a year before she can watch herself?

A. Yes, and even then watch her step very closely.

Q. Now, doctor, isn't there such a thing as Catholic medical jurisprudence?

A. I don't know anything about it. I know a lot of medicine but not much of religion or of any religion in fact.

Q. By the way, doctor, what is your specialty, the science of gynecology?

A. I am a surgeon for the last twenty-five years.

Q. I understand you are somewhat of an expert in genito-urinary diseases?

A. Yes, but mostly a surgeon.

Q. That is apart from gynecology?

A. Yes. In some countries they are the same, but here a gynecologist is one and an obstetrician is only for maternity.

Q. This book, "Rosenau: Preventive Medicine and Hygiene"?

A. I never read the book.

Q. You recognize it as an authority?

A. Yes.

Q. We needn't read the long list of his qualifications?

The Court: What page?

To Mr. Wegenast:

Q. Page 497, the third paragraph in the middle:

> "It is important not only for the maintenance of the health of the individual but plays a significant role in the preservation of the public health and in preventive medicine."

You agree with that?

A. Yes.

Q. At the bottom:

> "Every new endeavor to improve public health passes through a difficult period of opposition. Dr. Robert L. Dickinson points out that: 'Control of conception presents no exception. In this department of preventive medicine, however, the study of the matter of subject to peculiar handicaps. The transmission of information that is essential is hampered by law and custom;'"

He is speaking of the United States.

> "'opposition is dogmatic and emotional;'"

You don't agree with that?

A. No.

Q.

> "'the experience of any one individual is limited. The more the need, therefore, of careful collection of data and open-minded analysis of whatever tests have been made'."

As a scientist you will agree with that? You want a broader base?

A. Yes.

Q.

> "This new power to control human reproduction voluntarily carries with it serious problems of vital concern to society. To the physician, however, it offers an important addition to his equipment in the preservation of maternal and infant health."

Do you agree with that?

A. Yes.

Q.

> "Contraception will prevent undesired pregnancies and decrease abortion. It will lessen maternal mortality by making it possible to control pregnancy for those for whom maternity involves excessive hazards."

Do you agree with that?

A. Yes.

Q.

> "It will also lower infant mortality through the control of the intervals between births and safeguard the lives and health of children."

Do you agree with that?

A. Yes.

Q.

> "It will lessen congenital disease and hereditary defects"?

A. Certainly.

Q. Now, at the top of page 498:

> "Birth control, of course, is not exclusively a medical problem but when medically indicated and under medical supervision, is a health factory of vital concern to the individual and to the public."

Do you agree with that?

A. Yes.

Q.

> "It will lessen congenital disease and hereditary defects"?

A. Certainly.

Q. Now, at the top of page 498:

> "Birth control, of course, is not exclusively a medical problem, but when medically indicated and under medical supervision, is a health factory of vital concern to the individual and to the public."

Do you agree with that?

A. Yes, absolutely.

Q. At the bottom of page 498:

> "The method most commonly advocated in birth control clinics, and which has had the greatest percentage of success in carefully studied series of cases, is the use by the woman of some form of mechanical barrier -- diaphragm or cap -- together with a spermicidal jelly. The condom also shows a high degree of success."

What do you say about that?

A. As I said this morning, when those things are done according to medical science and under medical supervision, but in many cases, they are not fit to use those contraceptives.

Q. I have already asked and I think I have your answer; when the doctor is called in to prescribe the form and kind of pessary to be used by a woman, you are satisfied?

A. I am sorry to say I have been in practice thirty years and I don't think I have prescribed them in that time. They are out of date. We used to use pessaries for falling of the uterus, prolapses and so forth, but I never had occasion to prescribe a pessary like you showed me this morning.

Q. You already said you haven't gone into that branch very deeply. Let me ask you what you would say as to that?

A. That is another form of pessary. The other has a ring; this is a diaphragm. A few years ago, the pessary was in order to press the uterus in its proper position, but this is in order

to obstruct anything going into the canal or cervix.

Q. You don't want to express an opinion on this?

A. No.

The Court: Exhibit 28-B.

The Witness:

A. I never used it; if a woman is diseased enough, I treat her otherwise.

To Mr. Wegenast:

Q. Is this the one you are speaking of, doctor?

A. No, you haven't got it; it is made of hard rubber.

Q. Are you referring to the one this morning?

A. No, it is hard; it is gutta percha.

Q. You would regard this as generally in the same class as ---

The Court: Exhibit 28-B.

The Witness:

A. Yes.

To Mr. Wegenast:

Q. This is 29-B?

A. It has a wall or partition.

Q. That, with the spermicidal jelly?

A. I never had experience with it.

Q. If the jelly was reasonably effective, that, with the diaphragm put in as Exhibit 28-B, do you think that would be reasonably successful?

A. They wouldn't be one hundred per cent safe.

Q. I don't know if anything is one hundred per cent safe. What do you say about this one, which will make Exhibit 30-B?

The Court: Yes.

To Mr. Wegenast:

Q. Take a look at that?

A. It is on the same principle. It is around the neck of the womb and the diaphragm, but if you have a subject with a cervix long enough, if a very short cervix -- it depends on the length of the cervix.

Q. That depends on a physical examination by a doctor?

A. Yes, some women's cervices are much larger than that from cervicitis.

Q. Now, having shown you those, doctor, I come back to the paragraph:

> "The method most commonly advocated in birth control clinics, and which has had the greatest percentage of success in carefully studied series of cases, is the use by the woman of some form of mechanical barrier -- diaphragm or cap -- together with a spermicidal jelly."

I take it you don't want to give a final and conclusive opinion?

A. No, I take it all in.

Q. On what Mr. Rosenau says?

A. Yes.

Q. Now, this paragraph:

> "Recent medical studies have demonstrated the importance and advisability of spacing pregnancies to avoid too great a drain on the health of the mother,"?

A. Yes.

Q.

> "and to guard the best interests of the children already born. We do not here undertake to define the ideal interval between births, dependent as it is upon a multiplicity of factors."?

The Court: What page?

Mr. Wegenast: 499.

To Mr. Wegenast:

Q. Now, doctor, look at the methods of contraception on page five hundred: I would prefer not to read them out. Some

of them are not suitable subjects for public discussion and I would like to ask you, doctor, if those exhaust the methods?

A. There are a lot of those things of which I have no knowledge.

Q. Yes.

To the Court:

Q. The question is: so far as your knowledge of gynecology goes, do those exhaust the methods?

A. I think I was told there are six hundred things; you haven't a tenth of them.

To Mr. Wegenast:

Q. Dr. Rosenau didn't know of them?

A. I don't know.

The Court: When was that book published?

Mr. Wegenast: It is the sixth edition, 1935.

To the Court:

Q. There might have been a lot of developments since 1935?

A. The human brain isn't exhausted yet in trying methods and I could shock your ears with a lot of things you would hardly believe.

Mr. Mercier: Of course, Your Worship, we are more or less interested in those put in as exhibits; we don't want a discussion on four or five hundred others.

To Mr. Wegenast:

Q. Now, it is pointed out to me this doesn't profess to be exhaustive. It is divided into three heads, first:

> "I. Those found most practical and effective: 1. Vaginal diaphragm with contraceptive jelly, 2. Cervical cap with contraceptive jelly."

What is the difference?

A. There is the diaphragm in both to obstruct the entrance to the womb.

Q.

"3. Sheath (condom)"?

A. Yes, the condom.

Q.

"4. Chemicals alone: suppositories, powders and jellies."?

A. Yes.

Q. Now, the:

"II. Those found to be impractical for general use, uncertain and questionable: 1. Abstinence, 2. Coitus interruptus (withdrawal alone), 3. Coitus reservatus, 4. Douching or lathering alone, 5. Lactation."?

A. I have no knowledge.

Q. Letting the mother keep the child at breast?

A. That is very deserving.

Q.

"6. Foam tablets, 7. Stems (cervical and intra-uterine)."

Page 500?

A. They plug the cervix.

Q. These are the rest:

"III. Those needing further experimental and developmental research before being prescribed for general use: 1. Intra-uterine silver rings or silkworm gut."?

A. Very bad.

Q. He says there is need of more experiment?

A. Yes; bad.

Q. The next is the: "2. Safe period"?

A. Yes.

Q. "3. Hormones"?

A. I don't know.

Q. "4. Spermatoxins"?

A. I don't know.

Q. "4. Irradiation to ovary or uterus; to testicle"?

A. Yes, you can sterilize a woman by X-ray and you can do the same for a period and it comes back.

Q. "6. Reversible operations"?

A. Yes.

Q. What do you say of the three classes; some are practically effective; some impractible for general use and some need further investigation: have you any observations on that?

A. (No reply).

The Court: Are you testing the doctor on his knowledge of this subject or is this leading up to something in the case in point. Those are not exhaustive. Some are recommended; some not recommended and you are asking the doctor's opinion.

Mr. Wegenast: Rather than answer that I would not go on at all.

The Court: You are not limited, but are you leading up to something on the point?

Mr. Wegenast: I don't want to say what.

The Court: I don't want to limit it but is it on a point concerned?

Mr. Wegenast: I am concerned too, but I have a distinct purpose.

Mr. Mercier: If the doctor is going to be cross examined on all these, we might go home and come back.

To Mr. Wegenast:

Q. The doctor might make observations on those classes?

A. I can't say; I am not conversant with it.

Mr. Mercier: The doctor wasn't called as an expert on all contraceptives but on certain types.

To Mr. Wegenast:

Q. This is a work by Dickenson, published in 1932?

A. I never read this.

Q. We will let that go. What would you consider are the indications for contraception? That is the medical phrase you and I understand?

A. The way you apply them, as we were shown in the box, the jelly and so forth.

Q. Do you know ---

A. In general?

Q. In general what are the pathological or other conditions for which you would prescribe contraceptives?

A. I would prescribe for all diseases of the generative organs -- to start by the vagina, vaginitis from whatever cause; gonorrhea; tubercular; or syphilis or streptococcus. Now, going further in the generative organs we meet the cervix. Now, any disease of the cervix -- cervicitis, ulceration; cancers, cysts, ulcers. Now, in the cervix also, chronic endo-cervicitis and others, diseases of women.

Q. Then, jump to this: the general health of the woman, and the possibility another child might injure her health?

A. She couldn't have another child with those.

Q. Would you take another case: that of a woman who had had a child and was in such a state of health she had better not have another child for two years?

A. I would say, treatment to better her condition.

Q. I see?

A. Cure her condition. I would say to the husband: "keep quiet if you don't want your wife to die in the next two years."

Q. Would you depend on that husband?

A. If he is a man of honesty I would.

Q. I am going to put the case of a husband who comes home drunk at night?

A. That is a different proposition.

Q. I understand doctor -- correct me if I am wrong -- I understand, doctor, in the matter of how a devout Catholic -- if no difference to my learned friend?

Mr. Mercier: No difference: I am not sitting here as a bishop.

To Mr. Wegenast:

Q. Will you prescribe a contraceptive if the health of the mother indicates it?

A. You are putting the answer in my mouth.

Q. I did?

A. No; I would not prescribe that; I would say to the man: "your woman must be treated, get her to a hospital or stay away from her or you use a condom." I wouldn't prescribe jelly or an instrument to put in her vagina.

Q. Do you know about this: "Every man in sickness and in health"?

A. No, I don't know. A lot of those are post-medical and extra-medical. I read my test books and journals; I am no encyclopaedia.

Q. Here is, "Need Our Mothers Die," issued in Ottawa by the Canadian Welfare Council. Do you think that is worth listening to?

A. Certainly.

Q. On page 47, in the middle of the page (Exhibit 69-B) (page 53?):

> "Maternal Morbidity. 'It seems almost incredible that every year one woman in every ten of those who bear children is to be more or less disabled, or has to endure an operation to cure her injuries. Yet, in the absence of exact figures, this seems to be a conservative estimate.'"

What do you think of that?

A. Yes.

Q.

> "'Besides, probably many more bear in silence minor lesions which may prove fatal later.'"?

A. Yes.

Q. Going further, the Council makes these findings:

> "Important and disturbing as is the unnecessarily heavy death toll of mothers in childbirth as a national problem and pathetic and disintegrating as are the consequences of the loss of the mother in the life of the home, the social agency concerned with child protection and family life is faced with a related problem of equal significance and even greater extent in the undermining and, often, the disruption of the family group through the crippling or permanent invalidism of the mother, who survives childbirth. No substantial study of these conditions has yet been made in Canada, but the most reliable estimates…" -- Here a footnote says "English Departmental Committee Report, 1932, Ch. VIII." -- "…from other countries of comparable population and services suggests the number of mothers more or less handicapped as the result of childbirth as roughly ten per cent of the total bearing children, while twenty times the number dying are permanently impaired in health each year."

You have already expressed your opinion on that?

A. Yes.

Q. Now:

> "It is impossible to estimate debility and similar conditions following on childbirth and consequently there is always a danger of overstating the case, but the application of these calculations (cited from Blair Bell ((Prof. Blair Bell, Maternal Disablement, the Lancet, May 30, June 13, 1931)), and the comments of the English Committee's report) would give us in Canada a total of approximately 23,000 women (if calculated at twenty times the number dying) who would be more or less handicapped as the result of childbirth annually."

Do you think that may be so?

A. (No reply).

Mr. Mercier: The witness says "23,000 women and something may happen and what the doctor thinks of that." I think a lot of this going on is irrelevant and unnecessary.

The Court: The doctor is being examined for the purpose of giving his expert opinion.

Mr. Mercier: If there were 23,000 women in Ottawa ---

The Court: You are reading a lot of statistics without giving the doctor time.

To Mr. Wegenast:

Q.

> "Those who would suffer some sickness or debility, minor lesions, or other impairment in health or physique but not necessarily of a permanent nature (one in ten of those bearing children) would give us another 22,000 to 23,000 who face some degree of suffering or ill health but not to the extent of permanent handicap, as part of the cost of childbirth."

That is to say, besides those who die we have another 23,000 who suffer?

A. Yes, incapacitated.

Q.

> "Thus, over a five-year average the complete toll of motherhood in Canada, that 230,000 children may be born, is the death of 100 to 1400 mothers annually."?

A. Yes.

Q.

> "The more or less permanent handicapping of another 23,000 mothers?

A. Yes.

Q.

> "And the impairment of health to lesser or greater degree of another 22,000; and the stark inescapable condemnation of the whole unfortunate story is that at least 50% of this cost is unnecessary and preventable by means within our knowledge, control and capacity, if we have but the courage and determination to apply them."

You don't disagree with that?

A. No, it has been like that always.

Q. Now, I show you this book of Dr. Frederick J. Taussig, M.D., F.A.C.S. (Exhibit No. 91-B). He is supposed to be the world's greatest authority on abortion. Will you look at it?

A. I have never seen the book before.

Q. It is comparatively new?

A. Yes; all right.

Q. He says this, doctor: see what you say?

The Court: Published when?

Mr. Wegenast: 1936.

To Mr. Wegenast:

Q. He says this, and see what you say: Page 451: under the heading of "The Role of Contraception":

> "Of all the measures suggested for the control of abortion none equals in importance the widespread establishment of clinics for contraceptive advice and provision for the free distribution of contraceptive materials among the poor. It is self-evident that by the prevention of the undesired or undesirable pregnancy we can reduce the number of cases requiring abortion to a relatively small number."?

A. Between the two evils you must choose the lesser, of course.

Q. Another:

> "Concerning 'Abortion and Contraception', the Committee on Maternal Welfare of the League of Nations has made the following impressive statement:" taking the paragraph at the bottom of page 451: "Apart from the practice of contraception for personal or economic reasons, it may be necessary to avoid pregnancy on account of the mother's own health, and in such cases it is preferable to prevent pregnancy occurring at all rather than to interrupt it."?

A. Yes.

Q.

"But it is not sufficient merely to tell a married woman suffering from tuberculosis or heart disease or nephritis that she should not again become pregnant. It is necessary to explain exactly what steps she and her husband should take to prevent this happening."?

A. Yes.

Q.

"If the private doctor is not prepared to do this, the information can be given most appropriately at the health centre."?

A. Yes.

Q.

"Naturally no preventive measures can be one hundred per cent successful, and it will certainly be impossible for some time to have them applied widely enough to eliminate undesired pregnancies as a factor in abortion."?

Do you agree with that?

A. Yes.

Q.

"Peller believes that in the next few decades birth control will materially reduce the need for abortion and that with this reduction the public will accept the wider medico-social indications for interruption."

Do you agree with that?

A. Yes.

Q.

"To accomplish this end, however, we must make every effort to establish maternal health centres in all our larger cities in connection with medical schools, dispensaries, and hospitals, and to seek co-operation of state boards of health to establish similar clinics in outlying districts throughout the country."?

A. Yes.

Dr. DeHaitre

Q. You have already expressed your opinion as to that?

A. Yes.

Q.

> "The movement for the control of induced abortion is therefore directly dependent upon the success of the movement for medical contraception."

Do you agree with that?

A. Yes.

Q. He winds up in the end of the book on page 452,

> "No problem in preventive medicine gives greater promise of definite beneficial results. The medical profession must assume full responsibility for the appalling frequency of abortion and its high death-rate, if it fails to attempt correction of these fundamental evils."

Do you agree with that?

A. Yes.

Q.

> "For this reason, it is my hope that this work will not merely serve as a source of information upon the subject of abortion, but that it will stimulate my fellow practitioners to realize their obligation and opportunity of aiding in its control."

Do you agree with that?

A. Yes, good.

Q. "Good," he says. Let us see what you say about "Technique of Contraception by James F. Cooper, M.D."?

A. You are well supplied with a library.

Q. He is: "Medical Director of the American Birth Control League and, until January, 1929, of the Birth Control Clinical Research Bureau, New York City; formerly Professor of Clinical Surgery, Foochow Union Medical College, Foochow, China; and Clinical Instructor in Obstetrics, Boston University Medical School."

The Court: What is the name?

Mr. Wegenast: Cooper.

The Court: His initials?

Mr. Wegenast: James F. Cooper, M.C., page 153.

To Mr. Wegenast:

Q. I am afraid you will not like this?

A. I am open to all knowledge.

Q.

> "In the preceding chapter consideration has been given to fallacious practices. A little attention is now given to fallacious ideas concerning contraception. Comment has already been made that there has hitherto been a dearth of scientific information on the subject of contraception. What is meant, of course, is that there has not previously been an adequate study on a sufficiently large number of cases under proper control to make any definite conclusions possible. This does not mean that all phases of the subject have hitherto been absolutely neglected; for many investigators have made observations on related studies which throw some light on this subject.
>
> It is absurd, however, under these circumstances for anyone, who may have a traditional or emotional attitude against having contraception prescribed for any cause whatever, to come forward with unwarranted, unproved statements and expect thinking people to accept them. It is equally deplorable to hear physicians, who are as a rule devoted to the scientific attitude of demanding facts, repeat without question the unwarranted and unqualified statements that contraceptives are injurious."?

A. They have improved, but ten or twenty-five years ago the damage was done mostly by those things. It must be done under medical supervision and the proper way to apply them given in individual cases, not in the general mass.

Q. I thought when you started in this afternoon, in response to my learned friend, that all these artificial contraceptives were bad?

A. Not all bad.

Mr. Mercier: He said in examination in chief that these contraceptives were all right and harmless providing they were given under proper supervision.

The Court: That is the doctor's stand.

Mr. Mercier: And in fact, my learned friend's stand is that they were all right under proper supervision. I can't see he can get anything further from the doctor than this.

Mr. Wegenast: Yes, but the doctor dragged in "natural" and "artificial".

The Witness:

A. It is scientifically divided.

To Mr. Wegenast:

Q. I thought when we read extracts from "Rhythm", if natural, o.k.; if artificial, not?

A. Not in all cases, but in individual cases; I am speaking your language?

The Court: From my notes, the doctor speaking of acute gonorrhoea: you asked would the jelly hurt and he said no but it must be done under medical supervision. That refers to one of your articles.

Mr. Wegenast: But he is referring to the wrongness of artificial methods.

Mr. Mercier: He said he didn't believe in them but they may be harmless if done under proper medical supervision.

The Witness:

A. In individual cases, but not in the general mass -- ones that come to my office.

To the Court:

Q. You take every case on its own merits?

A. On its own merits.

Q. In some cases it is quite proper to prescribe them?

A. Yes, the condom, but if you can't use that…

To Mr. Wegenast:

Q. (Reading from Exhibit 95-B, p. 154):

> "It is also possible, however, to select measures which will be harmless as well as effective"?

A. Certainly.

Q. Further down the page:

> "One of these unwarranted statements is that the practice of contraception leads to sterility. The fact is that women, who for one reason or another are unable to avail themselves of medical advice, may in their desperation and ignorance resort to unnatural methods. During the reading of an excellent paper by Dr. Cary of Brooklyn, at the American Medical Association meeting at Dallas, Texas, 1926, on the subject of sterility, he mentioned the use of an intra-uterine stem pessary as a cause of sterility. The point was well taken, and that type of pessary is condemned in Chapter III of this book."?

A. Yes.

Q. Now, you will see the pertinence of my question?

A. (No reply).

Q. (Reading):

> "There is an impression in some quarters that the use of contraceptive measures per se is a cause of sterility."?

A. Yes, perhaps from infection they carry, or injury to the generative organs; it has been mentioned by very good authority.

Q. The next sentence:

> "This, I feel, is one of those generalized statements which has never been substantiated and which is very misleading."?

A. The men who have made those statements were certainly not in a position to prove them or know in their own practice.

Q. But you say it is not a thing to rely on; you need a broader base?

A. Yes.

Q.

> "The adoption of any other ill-advised method recommended by a friend may have been a cause of sterility; but the point I wish to bring out is that contraceptive measures per se are not necessarily a cause of sterility, and that there are many methods which have been used over long periods of time without having any sterility following their use."?

A. Yes, certainly.

Q.

> "This statement is based on observation of more than 5,000 cases in the Birth Control Clinic of the American Birth Control League Research Department, in New York. There is other information from many sources in Europe where contraception has been practiced for a long time showing that there are rational methods of contraception which do not result in sterility and which under medical prescription and supervision are perfectly safe to use from this standpoint."?

A. Absolutely.

Q.

> "A certain percentage of all human matings are sterile from congenital or birth defects or lack of development like infantile organs or lack of delivery of the ovum or live sperms. Such people often marry and decide that they cannot afford children during the first few years of married life and therefore practice contraception by some method. Then later, having concluded that the time for childbearing has arrived, they discontinue their birth control method. Finding no pregnancy resulting, they naturally infer that a sterility had been caused by their contraceptive practice."?

A. Yes; they draw their own conclusions; there is no scientific ground.

Q.

> "William J. Robinson (Limitation of Offspring, p. 71) quotes such a case. The young couple came to him and blamed the methods they had used for the sterility of the union. Upon examination the man was found to have azo-ospermia, and therefore could not have impregnated his wife. In a word, contraceptives per se are not a cause of sterility."?

A. In themselves, but some authorities say they may be the cause.

Q. They may be. Now, we come to cancer. This man says:

> "It may be repeated here, however, that there has never been any convincing proof brought forward by anyone to show that contraceptives cause cancer."?

A. It hasn't been proved, but isn't it possible? To prove a thing, and say it is possible…

Q.

> "Diet, germ infection, and all sorts of theories have been advanced as a cause of cancer."?

A. Irritation.

To the Court:

Q. Even if not the cause, they may irritate?

A. Yes, irritation is one of the great causes of cancer. We learn that in college and we still find it in the medical journals: the cause of cancer we don't know but most probably it is irritation, chemical or microscopic, or what.

To Mr. Wegenast:

Q. The next sentence:

> "Whether, for example, the pessary is used for the correction of displacements or for contraception, the mechanical effects will be the same. The relationship of vaginal pessaries as a cause of cancer was summed up by Weiss (Samuel Weiss, M.D., Some Considerations

> of the Cancer Problem. American Medicine, February, 1928, page 109) as follows: 'were irritation and ulceration necessary for the production of cancer of the cervix, surely as pointed out by sir John Bland-Sutton in his classic work on "Tumors, Innocent and Malignant," the pessary would be a chief cause.' He mentions several cases of long forgotten pessaries, and states that patients were examined under the impressions that they were suffering from advanced cancer and none was found."?

A. Yes.

Q. The doctor points out to me that the pessary is not exclusively a contraceptive?

A. No, it is for therapeutic treatment, for correcting mal-position or prolapsus.

Q. Now, I am going to speak of infections: you were on that subject, and Dr. Cooper says, at page 157 and page 158:

> "Claims have been frequently made that contraceptives cause infection of the vagina and uterus. This may have been true of a soft rubber pessary left in position a month at a time as originally recommended by Mensinga. It may have been true when uterine stems were used. It may have been true also when any ill-advised or self-prescribed irrational method was used. It cannot be said, however, that the method and technique of any of the modern clinics lead to infections."?

A. No, that is my contention: it should be under proper medical supervision and scientifically done.

Q. In small caps on page 159: this is on "Effects on the Woman."

The Court: Five minute adjournment (at 4:00 p.m.).

(Court resumed at 4:10 p.m.):

To Mr. Wegenast:

Q. Dr. Cooper speaks of "Effects on the Woman":

> "On account of absence of information about sex life, or the possession of misinformation, many young women arrive at the marriage day in the densest ignorance. In the ignorance of a bygone day, this was considered the ideal condition in which to enter marriage, and is still so considered by too large a percentage of our people.
>
> The series of revelations and shocks which has come to many young women during the first few days of married life has created mental attitudes of an undesirable nature from which they have never recovered."

Is there something to that?

A. You mean from lack of knowledge?

Q. Yes.

A. Yes.

Q.

> "Besides this group of uninstructed women, there are those who have a native delicacy and reticence, who shrink from any physical examination by a physician, even of the most general character."

You have seen a good deal of that?

A. They don't want to be examined and refuse examination on timidity or they are ashamed or their modesty…

Q.

> "Naturally these women have some feeling of revulsion against using any contraceptive. This means that the husband must use the condom, coitus interruptus, or continence. After a time there is usually a revolt and the woman is asked to 'do her part', meaning that she is to adopt some contraceptive measure; or if nothing is done and pregnancy results, and there should be some sound health or urgent economic or other obvious reason for her not becoming pregnant, she learns to overcome her timidity. It is very seldom that women who have had children and feel that

they should not become pregnant again, for the time at least, have any aversion."

What do you think of that?

A. That is quite true.

Q.

"When the aversion to an unwanted pregnancy becomes strong, the aversion to preventive measures tends to disappear."?

A. Yes.

Q.

"The fear of unwanted pregnancy does more psychic damage than do all the reactions against preventives."?

A. That is a very debatable and discussable question.

Q. This is what the doctor says here?

A. I have a book here.

To Mr. Mercier:

Q. I don't suppose you shold reply by a book, doctor?

A. (No reply).

To Mr. Wegenast:

Q. Very well, I don't want to put anything in the way of a witness like the doctor being unbiased. This is a medical journal?

A. Yes, I used to get it.

Q. Here is an article, "Primary Carcinoma of the Vagina."?

A. Yes, it is rare.

Q. "Most authorities agree…factor."?

A. It is one of the rarest forms of cancer; I have never seen a cancer of the vagina in thirty years.

Q. You don't agree with this?

A. No.

Q. I think you will agree that the condom is relatively harmless?

A. Yes, it is, because I have prescribed it myself several times in cases where it was called for.

Q. Let me say, is this a fair way of putting it: you have no reason to suppose that the use of this contraceptive jelly, consisting of two per cent lactic acid, ten per cent boracic acid and eighty-eight per cent starch jelly, glycerite or starch, would be harmful?

A. It might not be harmful.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Arising out of cross examination: in answer to my learned friend's last question as to this jelly that it might not be harmful, what would you say as to this jelly being used and placed in the vagina by the use of this instrument or nozzle, used by somebody without instructions where to place it?

A. I am of the opinion it would be injurious to the cervix; it would be more injurious to the cervix or vagina if used by somebody who don't know how to use it.

Q. In order to sum up your evidence in this lengthy cross examination, you told in examination in chief and repeated in cross examination, some of these, or although the majority, may be absolutely harmless, in your experience of thirty years' standing, they should not be used without medical supervision or direction?

A. Absolutely.

Q. And for those who ask for them would you prescribe them?

A. Not without examination and seeing if the patient is a proper subject for birth control. I would take the means of explaining to her, but up to now in my practice I have never had occasion to do so, except for the use of condoms by the male.

Q. Although harmless by themselves, they may be harmful if not used properly?

A. They may be harmful if not used properly and under medical supervision.

To the Court:

Q. Doctor, you have given your opinion on some of these points and I would like to get your opinion again on this point: with regard to the use of this jelly, you say in itself it is comparatively harmless: would you as a physician be prepared to recommend the use of this jelly through this nozzle for any person without medical examination and explanation first?

A. I would not.

Q. They should in all cases be prescribed the use of that jelly?

A. Yes; before a doctor prescribes something, he must know the condition of the patient. A gynecologist is in a position to make a diagnosis if any pathological condition of the female, but it must be done by a doctor before anything is prescribed. It is a general rule in medicine, scientific or rational medicine: a drug or medicine, or whatever therapeutic measures, must be prescribed after proper examination. If a man suffers from a heart condition, I wouldn't prescribe alcohol or stimulants to cure him or if a woman is suffering from a cancer or tuberculosis, I wouldn't prescribe sports. Some of those examinations are so long we must take the patient in the hospital and examine them for seven or eight days before we make up our mind.

(Witness retired)

Mr. Mercier: That is the case for the Crown, Your Worship.

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

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Mr. Wegenast

Rex vs. Palmer

Defence

non-suit argument

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to

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Defence Argument

DEFENCE

Mr. Wegenast: We might like to take some evidence of the Defence.

The Court: Yes.

Mr. Wegenast: Before a motion for non-suit.

The Court: Yes.

Mr. Wegenast: Without prejudicing that argument at a later stage. We have no right to call more than five as experts.

The Court: No.

Mr. Wegenast: We can call five sociologists, five on medicine, five on religion and so on, but I would not wish to go in that fashion, but I ask Your Worship to consent to our calling more than five experts.

Mr. Mercier: He has my consent.

The Court: This case is so important I shall exercise the discretion of waving that stipulation and I will allow more than five experts.

Mr. Mercier: Before stating my case is closed –- there is a third count there, Your Worship, and I don't suppose my learned friend would like me to repeat all the evidence for the third count –- if they wish as a mater of record to consider the evidence in the second count for the third count, I am perfectly willing to let it go at that.

The Court: I will make an order rendering the evidence on count b applicable to count c.

Mr. Beament: And the corollary defence ditto.

The Court: Yes.

Mr. Wegenast: Then, this is the time, perhaps, to state the form the defence should take. Let me have Section 207 of the Criminal Code:

> "207. Publishing Obscene Matter: Everyone is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse:
>
> Defence Argument
>
> (c) offers to sell, advertise, publishes an advertisement of, or has for sale or disposal any means or instructions or any medicine, drug or article intended or represented as a means of preventing contraception or of causing abortion or miscarriage; or advertises or publishes an advertisement of any means, instructions, medicine, drug or article for restoring sexual virility or curing venereal diseases or diseases of the genative organs.

2. No one shall be convicted of any offence in this section mentioned if he proved that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required."

(Reporter checked above quotation with Crankshaw's Criminal Code, Fifth Edition, 1924)

Stopping there, one question shall arise, I think; at some stage; whether the Crown can fall back on that section as relieving it from proving what is enunciated in the charge:

"knowingly or without lawful justification or excuse".

Mr. Mercier: I am prepared to submit that if I have made a case. Unless the Defence succeeds in non-suit, I am prepared to meet him now before he enters on his defence.

Mr. Wegenast: Then my defence will be: I want to go over the whole ground on which the debate might arise here.

My defence in brief is merely because sub-section 2 is there, there is no relaxation of the rule. The onus is on the Crown that the offence, if any, was committed knowingly and without lawful justification and excuse and my justification is that it was not proven it was without lawful justification and excuse.

The provision in sub-section 2, I submit, should be regarded as an additional means of defence.

It places us in the position of starting out to prove certain facts and the question arises, as I put it to Your Worship at the beginning, whether we must be content with our power in court on that, putting in our defence, and whether we must anticipate -- although there are no pleadings as in a civil

case, we must anticipate what my learned friend must bring forward and negative every point we bring forward in our affirmative case.

The Court: In rebuttal.

Mr. Wegenast: If Your Worship's mind can remain sufficiently elastic, if I can put it that way?

The Court: I must function as judge and jury.

Mr. Wegenast: I am content to await that event but I would be agreeably surprised if the Crown does not raise the question. To give an example: Supposing the Crown starts to prove the use of some of the contraceptive methods she has recommended would be harmful, I think the onus of proof is on them, the prosecution, to prove they are harmful.

Mr. Mercier: In rebuttal.

Mr. Wegenast: Then we must prove they are not. Otherwise we must prove in defence they are not harmful, anticipating the arguments of the Crown.

Mr. Mercier: On that ground, Your Worship, I submit the Defence, taking the attitude that the public good was required, they must make as full a case as the Crown is capable of rebutting. We cannot have rebuttal of rebuttal and rebuttal of rebuttal of rebuttal; although the Crown having the last word, I don't expect to have to use it, although it might take a long time.

The Court: There are two elements in the sub-section, "public good" and also the fact of "no excess beyond what the public good requires".

Mr. Wegenast: Quite so.

The Court: The question of harmfulness arises under excess.

Mr. Wegenast: It would not include it.

The Court: That is your defence.

Mr. Wegenast: Supposing my learned friend brings in the question of harmfulness, I do not have to start out in my submission they are harmful.

Mr. Mercier: I don't suppose he should because he submits they are for the public good and no excess, but I can answer in rebuttal. If there is any law, and I don't know of any -- if the Defence puts in evidence, the Crown, having the last word, there may be further evidence of rebuttal of rebuttal and rebuttal of rebuttal of rebuttal.

The Court: We must limit it. It seems to me it should be dealt with in your defence in showing it was for the public good. You must establish that in your defence.

Mr. Wegenast: That brings us to another point, Your Worship. When the Statute says "for the public good," does it mean the net public good. Suppose I prove it is for the public good in one way, then can my learned friend knock that out by saying the balance of the public good is the other way?

Mr. Mercier: I would not say or confine myself to "for the public good of Eastview" and not for Ottawa.

The Court: It is like asking a debater to define terms.

Mr. Wegenast: Suppose I prove it is for the public good of mothers of Eastview, Ottawa and Canada; is that a defence?

Mr. Mercier: I submit my learned friend cannot ask Your Worship what you will deem sufficient for his defence at this stage.

Mr. Wegenast: I must establish whether I can prove the net public good or not in one or more aspects.

The Court: It seems to me in your defence you must submit what those terms in the section mean.

Mr. Mercier: That is what we all want to know.

Mr. Wegenast: I have to anticipate the worst.

The Court: I am afraid you must do so.

Mr. Wegenast: I do, but put in a caveat if there is any line I have not succeeded in clearing and my learned friend the first word, I should have a chance to reply.

Mr. Mercier: This is one of those bridges we will have to cross when we get to it.

The Court: No.

Defence Argument

Mr. Wegenast: A case in point: My learned friend bridled at the first suggestion of the religious aspect. Suppose I left all religious and moral matters out of the defence, what if my learned friend came along and undertook to prove it is not for the moral good –- that the people should sin –- then must I anticipate I would take that position. That gives Your Worship an example. I don't want to put Your Worship on the spot.

The Court: I don't see how you can help it.

Mr. Wegenast: I am in a dilemma: I want to do what I can to help by pointing this out.

The Court: I don't see at the moment how I can define your terms for you in your defence.

Mr. Wegenast: All I can do then, Your Worship, is throw myself on Your Worship's compassion. If it does arise something is brought forward by my learned friend that I have not foreseen.

Mr. Mercier: I can hardly imagine that possibility.

The Court: As there is very little in the nature of decided cases it may be that this whole question of public good must be gone into and defined.

Mr. Wegenast: I am prepared to go into the origin of the section and if it would help, I can do so at this stage. What is the use of giving evidence on a lot of material Your Worship may not think pertinent? If Your Worship decides I must do the defining and take chances, I will have to make sure.

The Court: We won't be out of the trenches by Christmas.

Mr. Wegenast: If we can arrive at an understanding at this stage ---

Mr. Mercier: I submit that would be next to impossible. The section reads:

> "No one shall be convicted of any offence under this section mentioned if he proves the public good was served."

There being no definition of public good -- I have searched the dictionaries and authorities.

Mr. Wegenast: I don't admit there is no definition.

Defence Argument

Mr. Mercier: I have not been able to find one that would fit this. Now, the Crown has or has not made a case. If it has:

> "No one shall be convicted of any offence in this section mentioned if he proved that the public good was served."

There may be several definitions of what the public good is. We may all have our own opinions of what the public good is.

The Court: I think Mr. Wegenast is trying to place some limitation on his defence.

Mr. Mercier: I can't see how.

The Court: I can't see at the moment how he can place any limitation on it.

Mr. Mercier: It is a question for argument.

Mr. Wegenast: At what stage?

Mr. Mercier: The Crown has made its case: my learned friend has raised the point –- I don't know if he is going to insist or move that the Crown has not made out a case or if it was not done without lawful justification or excuse.

The Court: I think the proper point would be to argue that now, as to whether a prima facie case is made out, and cross that bridge first. If you are in other words moving a non-suit, I think I better hear argument on that point. Then of course the question comes whether you are thrown on your defence.

Mr. Wegenast: Well, Your Worship, I will let Mr. Beament deal with that first.

The Court: Are you prepared to argue on that or would you desire to postpone it until tomorrow or conclude it tonight and I could consider it before tomorrow.

Mr. Wegenast: Could we have some indication of the other point: we must foresee every negative.

The Court: I cannot see how we can hear argument on the defence until the case for the defence is in.

Mr. Wegenast: It would suit me more to have an adjournment.

The Court: It would suit me more.

Mr. Beament: I don't care to tackle this cold.

The Court: I will adjourn argument until tomorrow morning at ten o'clock.

(The Court adjourned at 5 p.m., October 22nd, 1936)

(The Court resumed at 10 a.m., 23rd October, 1936)

The Court: All right gentlemen.

Mr. Beament: Your Worship: this charge is laid under a statutory provision which has no counter-part, as far as I can discover, in the law of any Anglo-Saxon jurisdiction. Also, as far as I have been able to discover, it has never been the subject of judicial determination on any of the points which are in any sense relevant to this case.

The first thing I submit is the wording of the charge against the accused –- where is the accused?

The Court: The accused is not present. The court is adjourned until the accused arrives.

(The Court adjourned for three minutes)

The Court: Miss Palmer, this court starts at 10 o'clock, not ten after.

Miss Palmer: I am sorry, Your Worship.

Mr. Beament: As I say, Your Worship, there seems to be no similar offence in any Anglo-Saxon jurisdiction and no jurisprudence, therefore, exactly for an offence of this kind and it is one we must argue inferentially from the merest elemental type of thinking.

Therefore, we must consider the words in which the accused is charged, in that she did:

> "Between the first day of August, 1936, and the first day of September, A. D., 1936, at the Town of Eastview, aforesaid, did unlawfully and knowingly and without lawful justification or excuse:
>
> (b) did advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled: 'Birth Control and some of its simplest methods' and also 'Le Controle de la natalite et quelques unes de ses

> methodes le plus simples,' instructions, drugs, medicine or articles intended or represented as a means of preventing conception."

And with the same general preamble, during the same dates:

> "(c) did have for disposal means or instructions represented or intended as a means of preventing conception."

While at that point I may say that the Crown, on the order of Your Worship, particularized the second of those two charges as follows:

> "The 'means' therein referred to are the exhibition to certain persons in the Town of Eastview of rubber articles, tubes of jelly and other articles of similar nature which were alleged to be intended or represented as a means of preventing conception.
>
> The 'instructions' therein referred to are the instructions contained in the pamphlet referred to in paragraph 'B'."

I submit it has not been proved beyond any reasonable doubt that the accused committed the offence with which she is charged. It is open to the defence to prove any defence which would be open in common law and also to establish the statutory defence contained in sub-section 2 of the section, namely, that what was done was for the public good.

I submit the onus of public good rests on the defence but also the onus of calling witnesses to prove it does not rest on the defence and the public good can be proved out now by the Crown witnesses. I will come to that point at a later time.

I think perhaps it might be proper at this stage to discuss the facts disclosed in the Crown's evidence.

The Crown has produced a number of ladies who were visited by the accused and they say this accused was interested in the propagation of knowledge relating to birth control and that it was that is beyond doubt. That she committed the offences charged against her is quite a different proposition. The first point that strikes one with regard to this evidence is that this lady was not distributing and in fact did not have any articles

of any kind relating to contraception except for the purpose of demonstration.

In the so-called confession to which the police have sworn, it is perfectly clear it only went to demonstration. Woman after woman was interviewed by Miss Palmer and they said these articles were demonstrated and there is not a tittle of evidence of any kind that any of the articles of any kind were ever given by Miss Palmer to any of these ladies.

It is perfectly clear what happened in every case: what happened was, after discussing the benefits to be derived from birth control, were the ladies willing to receive these benefits, they filled in an application which was forwarded to Kitchener and by mail and without expense and purely as a matter of charity, they received these devices.

Further, with one exception, did Miss Palmer ever show, read, or handle a pamphlet referred to in charge b and then referred to in the particulars of charge c to anybody.

The women who received this pamphlet received it from Kitchener in conjunction with the appliances in the box. I am not sure how many received them from Kitchener but for the purpose of this argument, I am willing to assume all did.

One exception is Mrs. O. Pharand, who says she could not understand –- she spoke French only –- and Miss Palmer let her read the pamphlet and really in that case, the pamphlet was the interpreter and it was simply a method of translating to Mrs. Pharand the verbal information which Miss Palmer was in the habit of giving to these ladies.

Again, I want to point out that the only contraceptives that were supplied to any of these women were condoms and the contraceptive jelly. There is absolutely no evidence whatever any of these women were supplied with or advised to have pessaries or anything else, except the evidence of Dorothy LeBlanc, who says the pessary was discussed with her and she was told before she could have it she would have to see her doctor, Doctor Cowan, and even she never got a pessary.

Dr. DeHaitre spoke broadly about the methods used, but his evidence applies to a lot of devices but not the two; the

contraceptive jelly and condom, and the Crown must fall or stand on what they prove in relation to that.

Now, leaving out the question for the moment of public propriety or otherwise of this, I suggest we analyze the charge in the light of that evidence. First, the charge is that she did advertise to several persons in the Town of Eastview by means of a pamphlet entitled so-and-so, and also using the French words, instructions, drugs, medicine or articles intended or represented to be the means of preventing conception.

Now, I am not going to read that pamphlet to Your Worship; you have heard my learned friend read it. Your Worship will recollect that pamphlet gives instructions for the practice of birth control and I say to Your Worship and urge strongly as I can that that pamphlet is not advertising: it is the instruction and it may be in the single case of Mrs. Pharand where it was allowed to be read by Mrs. Pharand that the accused did give instructions to Mrs. Pharand from a pamphlet or by means of a pamphlet but that is a very far step from that she did advertise instructions to several persons by means of the pamphlet, and I would say on the facts of the evidence adduced by the Crown that the charge completely fails.

Now, to go to the second charge: it is charged in the words of the Statute particularly and the information itself does not set out any means by which it was carried out or particulars of the charge whatever. Your Worship did order particulars but on the authority of Brodie and King, with which Your Worship is familiar, which is reported in 1932 S.C.R., 198, the charge to be

valid must set out the facts to be relied on and the particulars are only for their amplification of those facts of having been given a book it was biding on the Crown. Further the particulars if incorporated in the information or indictment, as long as they remain particulars, do not rectify the improper indictment or inclination and I say that is just this case: that charge c as set out –- the offence against a person as set out by the Supreme Court of Canada in the Brodie case and it is not the accused but the particulars.

Coming to the particulars for a moment, Your Worship ordered particulars of two things: to find the means and then the instructions. I would like Your Worship to analyze the particulars as to the means. We are charged with having for

disposal means of preventing conception and we are asked for particulars of what the means are and the means of preventing conception as exhibited to certain persons in the Town of Eastview by certain articles.

Now, the exhibitions cannot be the means of preventing conception and, I say, with relation to the charge as laid, the particulars are utterly meaningless. The exhibition of means of conception –- surely no one would argue that showing a tube of jelly to anyone and saying it is efficacious –- is that. That is perfectly meaningless and must be disregarded as instructions or particulars.

Your Worship is asked to find on this evidence that Miss Palmer had for disposal means. Even assuming we had received proper particulars of means, what evidence is there she had for disposal anything: she never disposed of anything. She did, it is true, have a demonstration kit and the exhibition of that demonstration kit might be some other offence –- I don't know –- but that kit was not for disposal.

There is no evidence here that lady disposed of anything to anybody. Certainly, there is no suggestion of sale. She showed contraceptives but did not dispose of them and did not advertise a method the Crown alleged and, after all, the Crown drew this information.

Now, Your Worship, I want to go on and deal with the public good because I submit strongly the Crown has proven the defence on that ground. As I said, a person who is charged with proving the fact is not bound to produce evidence of that fact if the other side has already proven it by their evidence and that I submit is the case here.

The evidence is no doubt fresh in Your Worship's mind and I do not want to take any undue length of time going over it.

First of all, what this lady was doing was charitable work. There is no suggestion of ulterior motive, if that is relevant, and I will try to establish it is relevant.

Secondly, the conditions as found in this evidence are appalling, economically and medically. We have seen here unfortunate women who have had children year after year, whose husbands have been on relief for years and from which we must

deduce that these children brought into the world are a charge on the public and corollary to that they cannot be given that fair start in life which will be conducive to their mental, moral and physical welfare.

We have had also a shoal of evidence from these women they consider they were entitled to say when they should have children, that they were the best judges when they shall bring children into the world and that they do not consider in getting advice enabling them to limit or space their children they are doing anything morally wrong –- that is, that anything this lady suggested or said offended them or that she acted with impropriety. None of these ladies appear to have been shocked by her remarks or the methods displayed. The evidence shows her actions were kept on a high and proper plane.

Furthermore, I want to point out to Your Worship these ladies were all married women with, in most cases, very large families and they had those very large families over a short period, with the one exception of Miss Hudon, who now says and no doubt rightly was not a married woman but who, Your Worship will recollect, mentioned that she told Miss Palmer she was a married woman and signed an application as a married woman and it is true she said later before Miss Palmer left, she told Miss Palmer she was not married and that she had had a child and several miscarriages.

The Court: She denied that.

Mr. Beament: She signed the card; she denied the abortions but not the child.

The Court: Yes.

Mr. Beament: And I gathered from the way Your Worship reminded her she was under oath that Your Worship had not a high opinion of her credibility.

That was the sole exception and there was a very great deal of leading astray of Miss Palmer of statements she admittedly made at some time to Miss Palmer, whether or not she denied them later on.

Now we come to the evidence of Dr. DeHaitre. He has told us on two or three occasions he is not very familiar with the question of contraception. In fact, many of these were things he had not

heard of and so on, but he was not familiar with some of the more familiar forms of contraception. Your Worship will recollect he was at one with the defence upon the right of a

woman to space her children; upon the economic ills and medical ills that flowed from unrestrained child-birth. He agreed with a great many methods.

> "Burdens that test human endurance to the utmost limit, and to which all too may succumb, will be lightened.
>
> I speak of economic burdens, the burdens of poverty, of inadequate income, of unemployment, which make it impossible for parents to give their children and themselves the food, the clothing, the housing, the education and the recreation they are entitled to as children of God. I speak of physiological burdens, the burdens of depleted physical energies, and exhausted vitality resulting from a previous birth or miscarriage, the burden of chronically or temporarily adverse conditions of the heart, the kidneys, or other organs, or of conditions that threaten the life of the mother in case of pregnancy. I refer to psychic burdens, not infrequently more difficult to bear than any I have so far mentioned, burdens of uncontrollable fear, anxiety, irritability, or rebellion against God and His Church for seeming to make demands beyond human nature, beyond human powers to endure."

And he said in his opinion the limitation of families with control of birth was a very proper thing. He differed with the defence only in respect of method and in respect of method, he was perfectly prepared to say that without doctor's advice at all any person might endeavor to limit their families by the method set out in the book "Rhythm" to which reference was made and the book the Reverend Mr. O'Brien, I think, "Legitimate Birth Control".

But he was not prepared to admit that the same end should be or could be accomplished by the use of artificial or mechanical or chemical contraceptive devices.

Now Your Worship will remember that when Dr. DeHaitre got into the box his statements were of a sweeping nature. He condemned

as highly dangerous all devices, mechanical and chemical, without a doctor's advice. On further examination Dr. DeHaitre admitted two things –- he admitted a number, but two are relevant –- he admitted condoms are harmless and the contraceptive jelly supplied in this case was perfectly harmless. Now, he did say, and his evidence was rather extensive, that anything in the nature of a pessary –- certain chemicals might have a bad effect but he acquitted our contraceptive jelly in that respect. And he said certain mechanical devices women used could cause irritation and so on but I will again remind Your Worship there is no evidence we supplied that in any case except in the case of Mrs. LeBlanc who was referred to her doctor to be fitted and Dr. DeHaitre says that is quite proper. He has no objection to any of these things if prescribed after examination by a qualified practitioner. And the only case where it is suggested that anything which was harmful according to Dr. DeHaitre –- that lady was referred

to her doctor. The thing supplied according to the Crown's evidence were according to Dr. DeHaitre perfectly harmless.

I want to be fair here in arguing for non-suit: there was a suggestion that before using a nozzle she should have medical advice.

Mr. Mercier: Not exactly that.

Mr. Beament: That it would be dangerous to insert it, using the jelly, without the doctor's advice. I suggest that that is what the doctor intended. If he did intend that, it is utter and arrant nonsense.

We know women use vaginal douches purely for the purposes of cleanliness and surely the Crown will not suggest women should get a doctor's advice before using the vaginal douche.

Mr. Mercier: It was suggested.

Mr. Beament: No. Now, the doctor, the only expert, so far, giving evidence, goes with the defence 100% on the necessity of this practice with the limitation which I have tried thoroughly to point out to Your Worship. There is one other limitation: he approves a clinic but unless and until the Crown establishes clinics after this, this very necessary work, if it is to be done, it must be done as we are doing it, by private enterprise

and charity. We would welcome, as Dr. DeHaitre suggests, the establishment of a public clinic in Ottawa, and should this work not be brought to these women because the government had no clinic, we must. And whether this is done in the public good, it must be done this way without a clinic; spreading this work in this way, without a government clinic, is filling a necessary gap in social organization and therefore is for the public good.

Now, Your Worship, I don't agree with my friend. He stated there is no definition of public good. There is one I have been able to find in our own courts and several in American courts. I have not brought the American reports here. They were dealing with matters very foreign to the matter before us but the importance of their decision was that public good was a word of wide and changing importance with relation to changing conditions in the world. But we have one English case which is also very far on its facts from the matter we are dealing with here. I am reading from the judgment of Ells, J., 91, 1 Queen's Bench, Liverpool Corn Trading Association against the London and North Eastern Railway Company, page 120, at page 136:

> "Whilst it may undoubtedly be most difficult whether this or that be for the public good, I would point out the question is not altogether foreign to many which have from time to time been freely entertained by the court. Many a contract…I agree with the Attorney General…grappling with it."

Now, there is one expression of judicial opinion that public good is in its nature a branch of public policy. And the learned judge there says that judicial authority is behind the times in its profession and changing times should have changing policies.

I would also call Your Honour's attention to Queen and Ramsay, reported in 48 Law Times, new series, at page 733. I am reading from the judgment of the Lord Chief Justice at page 735. This was a case of blasphemous libel. The facts have no application here, but only to changing conditions and views:

> "Therefore to base…absolutely untrue…some tribunal I am bound by."

There is another citation in this case about the changing conditions of law which I will refer to later if I can find it.

Defence Argument

Now, as I have told Your Worship, there is no similar offence in any jurisdiction and persons who attempted to enlighten the population by spreading contraceptive information in the past were in the Anglo-Saxon jurisdiction if dealt with at all under the law, were dealt with in respect to obscene exhibitions and publications and it is under that law we must look for facts relating to this case.

The late Mr. Justice Stephens, who was admittedly one of the greatest authorities on criminal law, set out in a codification of the law of England –- it is set out in the 7th English Stephens Digest of Criminal Law, page 170. He deals with article 247 of his Criminal Code:

> "Every man commits a misdemeanor…hard labour."

He then makes his submission in support of his draft and he says:

> "A person is justified…publication is for public good…exceeding public good… published."

As Your Worship knows Stephens Codification was the basis on which our criminal code was first enacted and it is clear that sub-section 2 of section 207 is simply a re-wording of Stephen's submission as to his interpretation of what the code meant. It provides first, for the public good and second, a further proviso, no excess and that is the source of our section.

Stephens gives by way of illustration:

> "A. Exhibits…a monstrous birth is a misdemeanor…B…before students A. has committed a misdemeanour."

I think I have made the point clear that in defining public good one has to take into consideration the general conditions existing at the time the alleged offence took place; the conditions existing at the place of the alleged offence and the nature of the thing done in relation to the particular circumstances. It might well be and no doubt it is so that had an

accused person been distributing contraceptive measures in a high school to young persons, it would be very difficult to argue that was for the public good and that I think clearly shows that the circumstances are an important element.

Defence Argument

Again, in this regard, I would like to give Your Worship some further remarks. The case is that of Sutherland and Stopes; it was a civil action for libel arising out of some comments on a book of the plaintiff when the book was defamed. The case went to the House of Lords on pleading. We have dicta of some very learned judges and I am giving it to Your Worship purely as dicta.

The case is in 39 Times Law Reports, page 67(?).

I propose to read from the judgment of lord Justice Scrutton, at page 680. I may say this action came on for trial in 1932 and there was some reference in objectionable passages of the book written by the defendant Sutherland to comparing Dr. Stopes to Bradlaw who had been convicted at the trial of the charge arising out of the Bradlaw—Besant difficulty. It was finally quashed in 1877:

> "Bradlaw was convicted in 1877…sometime in similar position…in 1923 there is a great change…advisability of such methods."

So, times change. I would like, also, in the same case, when it got to the House of Lords, to call Your Worship's attention to the judgment of Lord Wenbury in that House. It is reported, among other places, in 1925 appeal cases.

The Court: Is it the same case?

Mr. Beament: Yes, an excerpt: I will read it to Your Worship: it was in the Court of Appeal, 1925 Appeal Cases, page 47. Lord Wenbury wrote a dissenting judgment. It is his judgment I am reading. The point I am reading in his judgment is not dealt with by any of the other judgments and is purely dicta.

The Court: We often get our best law in dissenting judgments.

Mr. Beament: In the House of Lords:

> "…has increasingly engaged the attention…from 1913 to 1916…commission was subsequently reconstituted…among them was Dr. Marie C. Stopes…major importance…advancement of more than a limited number of children…Stopes is a lady of that opinion…in the nature of the subject with which I have to deal."

Defence Argument

Now, I submit to Your Worship, whatever may have been said about the dissemination of birth control in 1977, I have at least given you opinions that that is no longer the law of this country.

Indeed, I do submit we ought to look upon people who take upon themselves the burden of spreading this knowledge as public benefactors instead of criminals.

That the frame-work of our social knowledge has changed. That contraception is practiced wholesale is admitted by Dr. DeHaitre. That one may step into any drug-store and obtain contraceptives devices or drugs –- I don't know whether he admitted drugs or not –- but certainly devices –- but it does seem that it is an element Your Worship should consider –- whether it is not better to have this work carried out under a trained worker providing devices of chemicals which are harmless –- in no sense harmful –- is it not better -– and providing them perhaps in many cases where the subject is perhaps economically incapable of paying for them –- surely that is better than having uncontrolled sale and by all the evidence of the Crown, surely this is for the public good.

I submit to Your Worship that the whole background of this case shows this is a legitimate charitable work. I suppose that in the Commonwealth of Massachusetts, some years ago, Miss Palmer would have been burned as a witch, but I do trust in the Province of Ontario in 1936, we have got over our superstitions.

Mr. Mercier: I understand my learned friend is not taking up the question of lawful justification or excuse?

Mr. Beament: You have heard what I said.

Mr. Mercier: My position is not that of my learned friend. As an officer of the court, I have an information properly laid under the Criminal Code of Canada. The law is there and while it is there, I submit it should be obeyed.

I will not endeavor now or again to make the case for or against birth control, but on this argument for non-suit, one of the points raised by my learned friend in his argument is that the Crown has failed to make its case and that these instruments or advertising were not supplied by the accused herself but they were sent after an interview between the accused and certain witnesses; witnesses called here, and that as a result of that

interview received a pamphlet and also certain material which was intended or represented as a mode of preventing conception.

Now, Your Worship and my learned friend are undoubtedly familiar with Section 69 of the Criminal Code which says:

> "Everyone is a party to and guilty of an offence who:
>
> (a) actually commits it; or
>
> (b) does or omits an act for the purpose of aiding any person to commit the offence; or

(c) abets any person in commission of the offence; or

(d) counsels or procures any person to commit the offence.

2. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose." (Crankshaw 5th, 1924)

Code subject to satisfying the court that it was not done for the public good and subject also to proving the case itself.

Now, there is undoubtedly, I submit to Your Worship, the fact that these contraceptives and booklet of advertising not only jelly and the use of condoms, but also the use of several other things such as the tampon and certain other methods of preventing families –- there are pessaries and sterilization and several other things –- which are before Your Worship. There are not only these matters my learned friend has spoken of.

I say by virtue of section 69 of the Criminal Code of Canada the accused has helped distribute these advertisements and a prima facie case has been established.

Now, Your Worship, my learned friend has mentioned the Pharand case. That is not a question of translation or not –- the fact of showing the pamphlet was advertising means, instructions and so on.

As far as the question of particulars is concerned, Your Worship, I have given the particulars requested and I have an excerpt here from the hearing in court:

Mr. Beament: The only particulars I referred to were ordered here.

Mr. Mercier: In any event, I supplied particulars which were sufficient to secure the accused a fair trial and in the absence of an affidavit from the accused that she did not know anything about this offence at all, I supplied the necessary particulars.

Now, Your Worship, he makes a defence of the disposing –- she is not charged with disposing but having for disposal by means of advertising –- people sign a card and by signing they would receive these things. That is not contradicted.

As far as the Crown is concerned, this is what we allege: were it not for Miss Palmer, they would not have received it and therefore she had it for disposal. She had the means of disposing those, of which she had a sample in Exhibit 22-B.

My learned friend has argued the women were on relief. There were people who were. No explanation is given why he referred to them. There was also the argument of people having several children. There were also people here who had one child and also Miss Hudon who represented herself to Miss Palmer as a married woman: it was the duty of the social worker to make sure the people are married before being handed those things; otherwise, there might be no end.

And there is the reference on the part of the defence to the prosecution that these things while harmless in themselves may be harmful if not given under medical supervision. Dr. DeHaitre was very positive in that and there is quite a bit of evidence to the fact no one of these cases was advised to consult a doctor.

Dr. DeHaitre's evidence, although he agreed with the matter of condoms, said that he favoured the natural way of preventing conception and he was as a doctor strictly opposed to any artificial means of preventing conception. The doctor has admitted subject to the statement of my learned friend's colleague in this case that the jelly if it were composed of the ingredients referred to would be all right but on account of the

way it was applied, it might be harmful if used without medical examination to see if this nozzle as introduced would cause irritation or anything.

Pessaries are advertised in the pamphlet, although under medical supervision, and the doctor stated in his evidence several women don't know how to use the douche and harm might come to them with improper use if used when they were diseased in any way.

Your Worship, my learned friend has given a lot of dicta laws in England, but there is no law in England against this, but we are faced here with a section of the criminal code which says it is an offence unless it was done for the public good and there was no excess.

I submit it was made out in the evidence of the Crown. Now, the point about lawful justification and excuse.

Mr. Beament: I did not raise that.

Mr. Mercier: I asked you.

The Court: It was not raised.

Mr. Mercier: Now, we are faced with this: that the accused at the Town of Eastview did knowingly. There is plenty of evidence she knew what she was doing –- the evidence of all the witnesses it was explained to them to prevent families and her own admissions and statement that Your Worship has that she was doing this with good motive which is irrelevant here, but there is evidence she knew what she was doing and intended to do.

That she did advertise –- I say she did advertise by going to these families and in at least one case, showed the pamphlet and as a result of the interview and of her work, these people did receive a box containing advertising on several methods of using contraceptives and that they were intended or represented as such. That is very clear from the evidence.

It is not in dispute. Now, that Miss Palmer had for disposal means or instructions: Exhibit 22-B shows she did have means and instructions. And as she had for disposal, I submit she did have for disposal. She went to these houses uninvited and advertised them, going to almost every home and telling these people who she was and giving them information intended or represented as a means of preventing conception.

Defence Argument

I submit, Your Worship, the Crown has made an absolutely prima facie case, subject of course to the defence.

I submit of course to Your Worship that certainly the evidence of Dr. DeHaitre cannot be taken as evidence it was done for the public good.

A very strong case must be made for public good in this; not just say some people are on relief and they should use contraceptives which might, according to the evidence offered by the Crown, be injurious.

I submit the Crown has made its case.

Mr. Beament: I will deal with the first point on the second charge. He refers to Section 69 saying in that section:

> "Every one is a party to and guilty of an offence who:
>
> (a) actually commits it; or
>
> (b) does or omits an act for the purpose of aiding any person to commit the offence; or
>
> (c) abets any person in commission of the offence; or
>
> (d) counsels or procures any person to commit the offence.
>
> 2. If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be, a probable consequence of the prosecution of such common purpose." (Crankshaw, 5th, 1924).

She is charges with having for disposal in Eastview. My learned friend tried to get over that, "with supplying". She is not charged with supplying; she is charged with having for disposal.

She did not have for disposal. The evidence of everyone is that she had for demonstration. These people sent away to Kitchener and if anybody has anything for disposal, it was in Kitchener and this court has no jurisdiction.

Defence Argument

Leaving Mrs. Pharand these instructions because Miss Palmer's French was not good enough was not advertising that pamphlet. That is what we are charged with. The Crown do this charge.

I don't think my learned friend deliberately tried to misconstrue my remarks on particulars and the mention of the affidavit. The first branch of his particulars are meaningless and therefore are not particulars and the second branch is not proven.

With regard to advertising, it connotes some element of commerce, especially in the words in which it is used. I suggest to Your Worship that it well can be found that this section was aimed at the commercial,exploitation:

> "…offers to sell, advertises, publishes an advertisement of or has for sale of disposal any means…"

The whole thing gives one the background the attempt of the legislation is to stop sale.

He said the motive was irrelevant. I say it is relevant in this case and sub-section 4 to which my learned friend has referred, that far from showing motive was irrelevant shows that it was within the purview of the legislation. It was relevant. Sub-section 4 says:

> "The motives of the manufacture, seller, exposer, publisher or exhibitor, shall in all cases be irrelevant."

In this section, sub-section A:

> "(a) makes, manufactures, or sells, or exposes for sale or to public view, or distributes or circulates, or causes to be distributed or circulated, or has in his possession for sale, distribution or circulation, or assists in such making, manufacture, sale, exposure, having in possession, distribution or circulation, any obscene book or other printed, typewritten or otherwise written matter, or any picture, photograph, model or other object tending to corrupt morals, or any plate for the reproduction of any such picture or photograph;

Defence Argument

> "(b) publicly exhibits any disgusting object or any indecent show; or…"

Sub-section 4 refers to manufacturers, sellers, exposers, publishers or exhibitors. It does not refer to advertisers or to a person having for disposal.

Under legislation where it is enacted for one class, other classes are deemed excluded and the legislature by omitting to include “and advertisers” and “persons having for disposal” intended that they should not be subject to the stricture that their motives are irrelevant and therefore I say here the motive is relevant and the Crown has admitted her motive was a good one.

Mr. Mercier: Maybe good.

Mr. Beament: There is no evidence it was not and the law does not assume a bad motive.

Mr. Mercier: On the intention of disposal, I say this: and just like a commercial traveler comes with a catalogue, sells goods to a store and as a result of an order being given to him, this store receives goods ordered; that man has for disposal. He can dispose of the goods of his manufacturer or head office and in this case, the accused could dispose of the goods of the manufacturers or whoever they were in this case.

As to advertising, my learned friend has forgotten it is for a commercial purpose because in each and every case, in each and every one of those boxes, there is contained a printed advertisement for a renewal of the things for two dollars.

Mr. Beament: We are not charged with that?

Mr. Mercier: I know, but my learned friend has raised the point, as far as the public good is concerned, it may be for the protection of the medical man when he prescribes these things.

Surely on the argument of my learned friend, I do not think the Court can find a prima facie case has not been made. I think it is for Your Worship to find a breach of this section of the Criminal Code was committed and it was advertising and the fact is that she did dispose of them.

Mr. Beament: In Eastview?

Mr. Mercier: Yes, in the Town of Eastview, she had them for disposal and the evidence is there that as a result an application they obtained these at the request of Miss Palmer and in her presence they did receive in the Town of Eastview and she did have those goods for disposal in the Town of Eastview.

Mr. Beament: Could my friend suggest that if I, in Ottawa, took an order to supply somebody with a bottle of Liquor Commission whiskey and I phoned to Hull to a man who had it delivered and paid for, I had the bottle in my possession? I could be charged with selling, but not for having in my possession a bottle of liquor contrary to the law, and, “having for sale and having for disposal” necessarily means some element of possession, and I submit had we taken an order in Eastview and it was paid for, we would be guilty of selling, but we are not charged with that.

Mr. Mercier: The accused is charged with "having for disposal in the Town of Eastview," and no better example could be given than my learned friend suggests.

A commercial traveler –- she represents a house –- some institution which has been identified –- she represents herself as coming from this institution and as a result of that goods are delivered, which shows she has the power of disposing of the goods.

Mr. Beament: We are not charged with disposing, but having for disposal.

Mr. Mercier: These goods are at her beck and call. The minute a signed application is sent or an order is taken by her or the commercial traveler, an order is sent; therefore, she has them for disposal. Surely my learned friend does not contend she would have to have them on a counter in an establishment?

Mr. Beament: My learned friend ---

Mr. Mercier: I suppose she should have been charged with having them for disposal in Kitchener?

Mr. Beament: I think so, yes.

Mr. Mercier: I submit she had them for disposal in Eastview whether they came from Kitchener or London, England.

The Court: If that concludes the argument, we will adjourn for five minutes.

Defence Argument

(Court adjourned for five minutes)

(Upon resumption of the hearing)

The Court: Now, gentlemen, a motion has been made by the defence for the dismissal of this case on the grounds the Crown has not made out a case under the charges as laid and that the evidence does not support the charges as laid, and also the point has been raised by the defence that by means of a Crown witness, they have proved their defence under sub-section 2, that the public good was served by the acts alleged.

As Mr. Beament has remarked, this is a case in which there apparently is no jurisprudence on this particular point, as raised in this case.

There have been a great number of points raised in the argument.

I do not feel disposed to give an offhand decision at this moment on this motion for dismissal. It is too important a case to deal with without going into it thoroughly on my part on the points raised.

I therefore reserve my decision on the motion for dismissal.

Mr. Mercier: I would ask that the case be adjourned until such time as Your Worship has decided on this issue.

The Court: I see no reason at the moment why the case should not continue and the defence proceed, subject to my reserving decision on the motion to dismiss, and I will not grant the adjournment at the request of the Crown and I will request the defence to proceed with the defence.

Mr. Mercier: Then Your Worship, I wish to have my objections noted on the record.

The Court: Granted.

(Defence evidence follows)

Mr. Wegenast

Rex vs. Palmer

Miss Weber D-240 to D-271

Mr. Kaufman D-272 to D-307

W. E. Scott D-308 to D-317

Larocque D-318 to D-320

Col. Sims D-321 to D-332

Decision re non-suit D-333 to D-339

Savoie D-340 to D-348

Exhibits by consent D-349 to D-350

Miss Weber

Miss Anna Weber, duly sworn, deposed:

To Mr. Wegenast:

Q. You are head nurse in charge of the Parents' Information Bureau?

A. I am.

To the Court:

Q. What is your address?

A. 71 Fairview Avenue, Kitchener.

To Mr. Wegenast:

Q. You are not an expert witness in the sense of being used to this?

A. No, I am not.

Q. Now, your residence and work are in Kitchener?

A. Yes.

Q. That is where the head office of the Parents' Information Bureau is?

A. Yes.

Q. What is Miss Palmer's relation or position with respect to the Parents' Information Bureau?

A. Miss Palmer is a visiting nurse.

Q. A visiting nurse of the Parents' Information Bureau?

A. Yes, she is.

Q. How many of these visiting nurses have you?

A. Fifty-five.

Q. Now, Miss Weber, we want you for a moment to lay aside your modesty and tell us enough of your history and diplomas and so on to show His Lordship what right you have to express opinions on this matter of birth control; where did you graduate?

A. Casovant Memorial Hospital, Chicago.

Q. You graduated as a nurse?

A. Yes.

Q. What did you do after that?

A. I spent about a year doing private nursing and various other minor things; then I returned to my own hospital as night supervisor.

Q. At Casovant Memorial Hospital, Chicago?

A. Yes.

Q. You were back there for some time as night supervisor?

A. Yes.

Q. Yes?

A. In 1913, I went to Elkhart General Hospital, Elkhart, Indiana, as assistant superintendent and surgical supervisor.

Q. How long were you there?

A. Until 1917, I was there in that capacity.

Q. Yes?

A. Then I became superintendent of the hospital and was in that position until May, 1919.

Q. Yes?

A. Then I was in ill health, a slight chest condition; I was at home for a year.

Q. Then, next?

A. I went to the Pacific coast, in Vancouver, and also Los Angeles.

Q. Then what?

A. I returned to my own hospital in 1922 as superintendent of nurses.

Q. How long were you there?

A. Until 1925.

Q. What happened then?

A. I went to Europe.

Q. Then what?

A. After my return, I went to Northwestern University as social worker in the medical clinics.

Q. The Northwestern University; where is it?

A. Chicago.

Q. Was this a hospital you were connected with or the university?

A. Clinics of the medical school.

Q. Did they have anything to do with birth control?

A. Yes, as a social worker, I was permitted to refer mothers needing instruction to recognized birth control clinics in the city.

Miss Weber

Q. When did you take service with Mr. Kaufman?

A. In January, 1929, I came to Kaufman Rubber as industrial nurse.

Q. You are still industrial nurse for the Kaufman Rubber company?

A. Yes.

Q. And also you carry on the work of the Parents' Information Bureau?

A. Yes.

Q. How much of a staff have you at Kitchener in connection with the Parents' Information Bureau?

A. Myself and three graduate nurses and a medical supervisor who is part time; he has his own practice.

Q. Who is that?

A. Dr. R. G. Ratz of Kitchener.

Q. By the way, do you know anything about Dr. Ratz' qualifications?

A. Yes.

Q. About this work, anything he has done to qualify himself?

A. For the ---

Q. Work in connection with the Parents' Information Bureau?

A. Yes, Mr. Kaufman sent Dr. Ratz to New York in November, 1930 to establish a birth control clinic.

Q. Perhaps it would be of value to His Worship if you would tell how this work started in Kitchener. Were you in on the inception of this work by Mr. Kaufman?

A. I was.

Q. Give us, in your own words, a brief account of how the thing started?

A. In the fall of 1929, Mr. Kaufman called me into his office and told me that he had complaints that the employees

laid off were very much in need of work on account of poverty.

Q. Yes; then what did you do

A. He asked me to make an investigation to find out if the complaints received were true.

Q. You made that investigation?

A. I did.

Q. What did you find?

A. I found they were only too true.

Q. Yes?

A. There was a great deal of poverty, unhappiness and distress in some of these homes where the father was laid off work.

Q. What about the families of these people?

A. They were large, most of them.

Q. Was there any indication of their getting larger?

A. Every.

Q. You made your report in due time?

A. Yes.

Q. What did you report?

A. That conditions were very distressing in these homes; some of them were feeble minded. In other cases of large families, there were a number of problems.

Q. Subject to objection, what instructions did you get as a result of your report to him?

A. (No reply).

Mr. Mercier: It would be hearsay.

The Court: I am afraid that is rather hearsay; I would like to admit everything possible.

Mr. Mercier: I wish to give all the latitude possible, but I

also must insist on respect for the laws of evidence.

Mr. Wegenast: I thought she would be able to say what the instructions were.

Mr. Mercier: As a result of any instructions, she did certain things.

The Court: Yes.

To Mr. Wegenast:

Q. What did you do as a result of instructions received from Mr. Kaufman?

A. I suggested ---

Q. No, what did you do as a result of instructions received from Mr. Kaufman?

A. As a result of my instructions, I discussed the possibility of arranging for sterilization through the family physician of the feeble-minded wives of employees.

Q. We just want a brief sketch of this –- the high spots; were those arrangements made?

A. Yes, cases were discussed with the family physician in question.

Q. And were sterilizations actually done?

A. Yes, several each year.

Q. That answers my immediate purpose, Miss Weber. Now, can you tell us anything about the formation of the Parents' Information Bureau; when and under what circumstances?

A. I didn't have very much to do with that; Mr. Kaufman made the arrangements and I am one of the directors.

Q. Can you say anything more about the operations of the Parents' Information Bureau than what has come out in the evidence here?

A. May I ask a question?

Q. Yes?

A. You mean the present method of operation?

Q. Yes, what I have in mind –- we know it so well; there is

no use going over what is done, but if there is anything else that will explain what Miss Palmer has done?

A. (No reply).

The Court: Anything as to the method of operation which has not actually come out so far.

Mr. Wegenast: Yes, perhaps that was too broad a question. May I have one of the blanks sent in by Miss Palmer?

The Court: One of the application forms, you mean?

Mr. Wegenast: Yes.

The Court: Exhibit 25-B.

To Mr. Wegenast:

Q. I show you Exhibit 25-B. This came from Miss Palmer?

A. Yes.

Q. Now then, will you say whether Miss Palmer had any authority –- did she or did she not have authority to decide whether contraceptives would be sent to the applicant in this case?

A. The application is sent to us and we make the decision.

Q. On what basis do you make the decision?

A. Providing the information we have is satisfactory.

Q. To what extent do you use the doctor in dealing with these applications?

A. Originally doctors decided upon the methods we are using.

Q. Yes?

A. And we are told they are harmless; that is, the contraceptive jelly, condom and nozzle; therefore, if we feel the information is satisfactory, we are justified in sending out that.

Q. Do you do that in every case without asking the doctor?

A. If there is no reason why he should be consulted.

Q. What sort of reason would make you consult a doctor?

A. As a rule, the doctor in the locality where the nurse is working is presented with unusual findings in a case.

Q. You refer to the local doctor?

A. Yes.

Q. When do you use your own doctor?

A. When very unusual circumstances arise.

Q. Unusual conditions disclosed by the application?

A. Yes.

Q. If my friend will allow me to put it this way: in the ordinary way, this has to follow the routine?

A. Yes.

Q. And in unusual circumstances, you refer it to the local doctor?

A. Yes, and sometimes we ask the nurse to refer it to the local doctor.

Q. I see an entry on the back of this application in red ink, “8-19-36”?

A. That means the contraceptives were mailed from our office on the nineteenth of August and there are the initials of the nurse who sent them.

Q. The initials “D. B.” are the initials of the worker who sent the contraceptives out?

A. Yes.

Q. What facilities have you; what is your procedure in choosing your visiting nurses for the various districts?

A. We have two organizing nurses attached to our staff, one in Winnipeg and one in London. They go to the various centres, discuss contraceptives with the outstanding physicians of that city and choose the worker and we rely on her judgment, the organizer.

Q. I want you to give His Worship your opinion on this

Miss Weber

point: whether and to what extent or why not this sort of work in disseminating birth control information could be left to the local physicians?

A. Some of the physicians are not interested; they are not informed. That is quite common.

Q. You heard what a doctor said here; he said about not knowing the technique?

A. It is quite common, especially among the older practitioners.

Q. So what?

A. So our workers discuss the simple contraceptive methods with the patient.

Q. What rule or assurance have you that guarantees you against doing more harm than good?

A. Competent medical doctors have passed on the contraceptives we are using and they tell us ---

Mr. Mercier: No, no, not what the doctors tell.

To Mr. Wegenast:

Q. What is the procedure where the pessary is desired or indicated?

A. They are referred to a doctor competent to describe the size and method.

Q. Do you ever prescribe these pessaries yourselves?

A. Never.

Q. Is Mr. Kaufman making any money out of these pessaries?

A. He is losing money.

Q. Where does he get them?

A. The first ones came from Germany and were found inferior. Then New York and they were expensive for philanthropic work, and then Mr. Kaufman found he could manufacture better ones at less cost.

Q. I want you to give His Worship your viewpoint of this

visitation method against the clinical method employed by Mr. Kaufman in some other centres?

A. The advantage is that the worker goes into the home; she sees the mother in her own environment and in only a third of the cases we have handled of mothers have they the initiative to go to a clinic if there is one or to the doctor.

Q. You have had experience in that?

A. Yes.

Q. Where?

A. In Toronto and Kitchener. In 1932, we referred 124 mothers to the family physician, a doctor in each case, and on making a survey the following year, we found that only thirty-eight per cent of the mothers actually went to the doctor. They wanted the information, but didn't go.

Q. Can you give any reason why these women don't go to the doctor?

A. Yes, they told us.

Q. What?

A. Many had unpaid doctors' bills; others when not ill were ashamed to be examined by a physician.

Q. Yes?

A. In other cases, there was no one with whom to leave the baby and still other cases where there was no clothing or suitable clothing.

Q. Can you think of any other advantages about Miss Palmer's method of going about?

A. (No reply).

Q. Let us see the reverse side; what are the advantages of the clinical method?

A. There is the pelvic examination which is always desirable.

Q. And what else; that is, of course, what Dr. DeHaitre spoke about?

A. Yes, if that is made and the patient properly measured for a pessary, we feel perhaps the pessary is the best method of contraception.

Q. Yes?

A. Because the mother can apply that herself.

Q. I think you already said where the pessary is indicated in cases of the visiting nurse, it means going to the local doctor?

A. In all cases.

Q. How do you find the local doctors, as a rule as, to efficiency in fitting pessaries?

A. The majority tell us frankly they have no experience in fitting the diaphragm.

Q. That is the advantage of the clinic?

A. Yes.

Q. As a social worker, will you tell us about the conditions in Eastview –- there being no clinic here or in Ottawa –- if the methods adopted by Miss Palmer are in the public interest; what do you say?

A. We are thoroughly convinced they are.

Mr. Mercier: I wouldn't expect the witness to give any other answer after the way the question was put, and my learned friend hasn't established the witness as an expert of conditions in Eastview.

Mr. Wegenast: You can hardly think otherwise.

Mr. Mercier: You hardly expect this witness to criticize your methods?

The Court: She knows nothing of the conditions in Ottawa and Eastview except there is no clinic.

To Mr. Wegenast:

Q. Taking Eastview as an average town in Ontario, what do you say as to the advisability of these methods of Miss Palmer's, having in view there is no clinic here?

A. We feel all mothers should have the privilege of voluntary motherhood, particularly in cases where poverty, unemployment and illness are present.

Q. That is clear enough; let us pass from that. Tell us if you have made any particular study of the prevalence of abortion?

A. We make a monthly statistical report and we find during 1935, there were 25.8 per cent of the mothers whose applications were submitted had abortions or miscarriages; we don't separate them.

Q. What about 1936?

A. I am not quite sure about that; I did go over eight months and I think it is seventeen percent, a little lower.

Q. Did you ever get requests for abortions?

A. During last year, eighty-six.

Q. Definite requests for abortions?

A. We write and tell them it is wrong and that if there is any reason why they should not continue with the pregnancy, they should see the family physician; he is the one.

To the Court:

Q. These statistics you prepare are prepared from the applications sent in?

A. Yes, by the visitation branch.

To Mr. Wegenast:

Q. How many applications, approximately, have passed through your hands at Kitchener, visitation cases?

A. About forty-three thousand, I think.

Q. I think there is only one other thing I want to ask Miss Weber and that is: you know the formula of the contraceptive that you sent out; don't you, the jelly?

A. Yes.

Q. What is the formula?

Miss Weber

A. It is lactic acid, boracic acid with a glycerate of starch base.

Q. I gave it to Dr. DeHaitre yesterday. You heard the evidence; didn't you? What do you say as to that?

A. (No reply).

Mr. Mercier: He might return.

Mr. Wegenast: Two per cent lactic acid, ten per cent boracic acid, eighty-eight per cent glycerate of starch base?

A. Yes.

Q. What would you say to that?

A. Doctors have passed on it and say it is harmless.

Q. Is that the formula?

A. (No reply).

To the Court:

Q. You are not familiar with the manufacturing of this?

A. No.

To Mr. Wegenast:

Q. Who prepares the jelly for you?

A. Ingram and Bell.

Q. A leading pharmaceutical firm in Toronto?

A. (No reply).

Q. Do you know of anything else in the content of the jelly than the ingredients I mentioned?

A. Not so far as I know.

Q. There is nothing else in it, as far as you know?

A. No.

Q. Another thing I overlooked: what is your experience as far as this jelly being harmful or harmless; what have you found?

A. We have had, roughly speaking, a dozen complaints.

Q. What were they?

A. A slight irritation.

Q. How do you explain that?

A. The first two we received were on local cases and the method was discussed with the family physician and he said in both instances, there was an erosion (?) of the cervix in both cases.

Q. What would be the effect of that jelly on that condition?

A. He suggested the continuation of the jelly.

Q. As a therapeutic?

A. He said it was quite all right to continue the use of it.

Q. That is all, Miss Weber, I think.

CROSS EXAMINATION

To Mr. Mercier:

Q. I take it, it is Miss Weber?

A. Yes.

Q. Therefore you are not married?

A. No.

Q. And although you have the required technical knowledge, you have no practical knowledge as a mother?

A. No, I have not.

Q. I don't suppose you could be an expert and tell me how a mother feels when she has three children to…

(Missing page D-255)

Q. …made on the application sent you by the local nurse?

A. Yes.

Q. And you judge from that application, which you expect to be true in all senses, whether a contraceptive should be sent to the applicant or not?

Miss Weber

A. Yes. Do you know the qualifications of Miss Palmer; is she a graduate nurse?

A. No, she has had training, but I understand she is not a graduate.

Q. You must have learned of her qualifications before she was employed?

A. Yes.

Q. What were they?

A. She received her training in Sheffield, England.

Q. How many years'?

A. About a year and a half.

Q. Do you know what she was doing before that?

A. No, I do not.

Q. Do you know what she was doing after that?

A. Yes, she did nursing for various institutions after she came out to Canada.

Q. Although she is not a graduate nurse?

A. Yes, she nursed in homes for incurables where graduates are not required.

Q. And one would expect a person representing herself as a nurse –- a person might expect she is a graduate nurse?

A. Not necessarily.

Q. Why do you say “not necessarily” –- or a nursemaid?

A. We have practical nurses and student nurses, and when we speak of a nurse, it is not necessarily a graduate nurse.

Q. Then anyone might go anywhere and call herself a nurse?

A. Yes, if she calls herself a nurse.

Q. And in your opinion, it might not lead anyone to think she was a graduate nurse?

A. It might.

Miss Weber

Q. And in these cases, you refer them to a local doctor?

A. Not at the present time.

Q. Not now?

A. Our work is largely routine.

Q. The local nurse is instructed to confer with the local doctor?

A. Not in all cases.

Q. In what cases?

A. It is left to her judgment.

Q. Whether to consult a doctor?

A. Yes.

Q. What would she judge by?

A. The condition of the mother, as she sees her, and the report.

Q. Would you not say it was advisable before advising people to use these contraceptives, it would be better to see their doctor?

A. It would be the ideal method.

Q. And it would be advisable?

A. If it could be so arranged.

Q. And why would it be advisable to see a doctor before using any of these contraceptives?

A. If there is a pathological condition, it would be discovered.

Q. Therefore can I take it for granted when there is a pathological condition, they should not be used?

A. No, they are harmless.

Q. But given a pathological condition and using this nozzle, which is not the jelly, could they not cause some irritation?

A. Our doctors say not.

Miss Weber

Q. What do you say about the introduction into a sick vagina of any kind or description of instrument, couldn't that cause irritation?

A. If that condition is severe, she should be consulting her family physician.

Q. How would you know that condition doesn't exist if a person who is not a graduate nurse goes into a house, asks a person how many children, if they want any more, and gives a box; how would you find this condition?

A. In our opinion, the nozzle couldn't do any harm.

To the Court:

Q. That is not the question.

A. (No reply).

To Mr. Mercier:

Q. How would you find out if there was any disease or condition?

A. That can only be decided on examination.

Q. You have stated, I believe, and I stand to be corrected, "a pelvic examination is always desirable"?

A. Yes – no.

Q. Before using ---

A. It is always desirable.

Q. Why is it always desirable?

A. If there is a condition present in which treatment might be indicated.

Q. In which case, the treatment might be better than the contraceptives?

A. The contraceptives are harmless.

Q. Of course, the aim of your society is not to prevent wealthy or healthy people from getting families?

A. We are not interested in the wealthy.

Q. And to prevent people who have a little in the way of living, not millions, to prevent them having as many children -— supposing a person on a salary of forty dollars with nine children?

A. They cannot properly take care of that number of children.

Q. Suppose they can?

A. I have never seen one.

Q. Anyway, you stated a pelvic examination is desirable?

A. Yes.

Q. Then your statement is that the pelvic examination is always desirable on account of the use that might be made of the pessary?

A. No, if the pessary is desirable, then there should be a pelvic examination and measurement.

Q. But you claim the pelvic examination is not always desirable in the case of using contraceptives?

A. No.

Q. It is not desirable?

A. No.

Q. You used the term, “voluntary parenthood” and “birth control”; what is the difference?

A. It is the way; allowing the mother to decide when she wants the next baby by using contraceptives.

Q. You stated when you receive requests for abortives you reply if no further pregnancy is wanted, the family doctor should be consulted?

A. (No reply).

The Court: I think: if the patient doesn’t want the pregnancy to continue.

To Mr. Mercier:

Q. Now, this “Birth Control and some of its simplest

methods" is distributed by your firm?

A. Not apart from including it in a box with the contraceptives.

Q. Then what would be the need of your local workers having several of them in their possession?

A. As a matter of convenience.

Q. And you say they are not being distributed except when they are included in a box with the contraceptives?

A. She doesn't leave pamphlets with the mother; she is discussing a paragraph in that pamphlet with the mother.

Q. There should be some purpose in sending a supply of these pamphlets?

A. They haven't many.

Q. Fifteen or twenty?

A. No, she doesn't have fifteen or twenty.

Q. I count seventeen in Exhibit 22-B; are they supplied with this?

A. Well, they get soiled and we send some additional copies.

Q. At no time are they supplied to them?

A. Not to mothers.

Q. Would they need seventeen if one became soiled?

A. (No reply).

To the Court:

Q. If they had needed only one for that purpose, wouldn't it be better to carry one?

A. I suppose.

To Mr. Mercier:

Q. A very devoted worker might be inclined to leave one?

A. I don't know.

Miss Weber

Mr. Wegenast: Are those English?

Mr. Mercier: French.

To Mr. Mercier:

Q. Do you agree with Dr. DeHaitre that many women do not even know how to douche themselves?

A. My experience is that some poor women are ignorant and need instructions.

Q. Do you believe very ignorant people should receive such a book or people not clean in their habits should receive a book advising methods of birth control?

A. If ignorant it wouldn't be used much.

Q. On the other hand, intelligent people might resent it and poor people want it. Now, the use of the sponge and vinegar tampon without the advice of a doctor?

A. We had competent physicians pass on that method and they felt it was quite all right.

Q. A solution of one-half water and vinegar, maybe it would not cause much irritation, but it might cause greater irritation if there were an irritation already there?

A. (No reply).

Q. Vinegar is an acid; would it cause a greater irritation if there is already an irritation?

A. Not pelvic.

Q. Supposing a vagina suffers from the beginning or end of venereal disease; do you think these should be used without reference to a physician?

A. They are harmless.

Q. Vinegar is an acid?

A. It is antiseptic.

Q. But might not it cause irritation if there is an irritation already there?

A. That is a medical question I am not qualified to answer.

Miss Weber

Q. You know of this book?

A. Yes.

Q. You have read it thoroughly and carefully?

A. Yes.

Q. I find at the beginning of the book, you mention a method of control there. The first one mentioned is withdrawal, and you state:

> "It is mentioned here only to condemn it. It is unsatisfactory to both parties, but particularly to the wife, whose climax may be approaching just as her husband

withdraws. This may result in a nervous tension that may keep her awake and restless for hours."

Wouldn't you consider that might be just as serious or more serious than a woman who would have one of those cotton-batten tampons?

A. I am not prepared to discuss that.

Q. You don't know about that –- being a nurse of such considerable experience –- the contents of the jelly, lactic acid, boracic acid and glycerate of starch; is it?

A. Yes.

Q. What is the effect of that; -- I mean, I might make myself a little clearer, Miss Weber –- would it be strong enough, you think, to kill the spermatozoid germs?

A. Chemists say it is.

Q. And talking about the frequent use of this jelly, but certain people who do not douche themselves frequently or do not take very great care of the parts, might it not cause irritation through continued use?

A. It is antiseptic.

Q. So is Vaseline?

A. No.

Q. Or any other thing – the same thing, if

Vaseline is left in those parts, it is a greasy substance?

A. Yes, but the jelly has an antiseptic content.

Q. And that jelly, does it stay there for some considerable time or must it be used every time?

A. It is used every time.

To the Court:

Q. These visiting nurses such as Miss Palmer are the means your organization uses to come in contact with mothers you think may have need of the articles you are supplying?

A. Yes.

To Mr. Mercier:

Q. You have to rely on the information supplied you by the visitor?

A. Yes.

Q. This visiting nurse?

A. Yes.

Q. Don't you think that where a visiting nurse speaks no French and calls at a home of a woman who speaks no English and obtains or purports to obtain information, fills out a card and sends it to you, that information cannot be very reliable for the purposes which you claim are the principles of your organization?

A. She couldn't obtain the information unless she had some means of interpretation.

Q. But if she fills out a card with the information on it and sends it in, it seems rather strange?

A. No, we have interpreters.

Q. But there is no evidence an interpreter ever went around with Miss Palmer. She called herself at these places and there is evidence some of the witnesses for the prosecution that all they could understand was enough to give their name, age of themselves, husband and children, and yet that is all they could understand she asked them; they could understand nothing she

Miss Weber

explained and they were sent a box?

A. We assume when we receive an application that the information is correct.

Q. But don't you think in a case like that it was wrong to supply a box without further information?

A. (No reply).

Q. You are relying on this information, but don't you think it is wrong for workers to send in information without a further investigation of the circumstances of the applicant?

A. We assume she made that investigation.

Q. I will just take a hypothetical case. If a worker would obtain only superficially some information and fill up a card with the information which apparently has not been obtained, in such a case, would you consider that worker was not carrying out her duties as instructed?

A. Well, in all cases, we expect in order to get that information as stated, that she knows the situation in that home and the condition of that mother.

Q. You rely necessarily in your system on your visitor but if such a visitor acted in that manner, would you feel she was carrying out the instructions?

A. If she didn't obtain the information she should have and if perhaps she might not be as carefully as she might be, but her applications seem to be all right.

Q. Another point: you spoke in your statistics as to the number of abortions, which statistics you say you prepare from these applications sent in?

A. Yes.

Q. There is one case -- in fact two, I recall in which the application form set out three or four and in one case five abortions and when the witness got in the witness stand, she denied ever having abortions and telling Miss Palmer about it. That upsets the value of your statistics, if it is a common occurrence?

A. We are inclined to believe Miss Palmer got that

Miss Weber

information from the mother and they don't want to give it here.

Q. They are under oath?

A. (No reply).

Mr. Wegenast: Under the eyes of the officers of the law.

To the Court:

Q. Don't you think where you are employing a visitor in a community which has a large proportion of French population, it would have been much better to employ a bilingual visitor?

A. It would be very desirable.

To Mr. Mercier:

Q. What exactly are the nature of the instructions you give workers when you accept her as one of your visitors?

A. (No reply).

Q. After all, you are head nurse of this Parents' Information Bureau?

A. Yes.

Q. I suppose you have something to say as to who is selected?

A. Our organizer does; we are not in the districts.

Q. What are the instructions given the worker chosen as nurse?

A. She is instructed to call on mothers who are referred to her by either a social agency, doctors –- we have many doctors referring mothers –- or anyone else in the community who knows the particular family to which she is being sent.

Q. Yes, what are the instructions?

A. May I read from this?

A. You may refresh your memory?

A. We advise the worker not to call on anyone without having information; it is only to mothers to whom she is referred, possibly by another mother or a friend, and we advise

that worker not to urge anyone to accept contraceptives unless they are definitely interested.

Q. In other words, if a worker finds a person who is actively opposed to the whole idea, the box will not be sent?

A. Yes, and she is privileged to leave her card and she will know if the mother changes her mind.

Q. But not to fill out the card and have a box sent if it is contrary to the mother's wishes?

A. Yes.

Q. And I suppose it is contrary to your instructions to go haphazardly from door to door?

A. Yes, unless referred by another mother.

Q. That is what I mean?

A. Yes.

Q. I think you stated in cross examination you expect the local worker to use her own judgment as to whether applicants' condition requires consultation with the local doctor?

A. If that mother is ill, she should consult her doctor.

Q. Do you think a casual conversation between a person who cannot speak French and a person who cannot speak English can give the worker any idea as to the health condition of the applicant?

A. Yes, I think if a woman looks well, she looks happy; if she looks ill, I think if you are keen, you sense the situation very easily.

Q. Not a very strong test of whether a local doctor should be consulted or not, simply by a sizing up of the woman's looks like that?

A. As a rule, an ill individual looks ill.

Q. It is quite possible for a person to look quite healthy and yet have something radically wrong internally?

A. If that mother complained of pain in the pelvis.

Q. How can you expect a woman who cannot speak English will

complain of pain to a visitor who cannot speak French?

A. An interpreter should be present; otherwise, the information cannot be obtained.

Q. I think that is all.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. Arising out of what Your Worship asked, may I ask this: in your social work, do you come across the language problem frequently or is it all smooth sailing in English?

A. No, we come across the language handicap.

Q. And what is the ordinary practice in the city of Chicago; does the worker go around with an interpreter or get along as well as she can?

A. I did social work in the clinics, but I think they try to have someone to assist the worker where special information is desired.

Q. Have you had any occasion to consider this language question in Ontario before?

A. In many places. In Kitchener, we have that; if it is a Polish patient, we have a Polish mother assist us in getting our information and if a Ukrainian mother, we have another Ukrainian mother to assist us.

RE-CROSS EXAMINATION

Mr. Mercier: With Your Worship's permission?

To Mr. Mercier:

Q. Your workers, I suppose, are strictly forbidden to show any of these instructions that would be the cause of any unmarried people receiving these contraceptives?

A. They are for married people. Our service is for married people.

Q. There, I submit to you that your workers should be very careful to find out whether the person to whom they will send contraceptives is married or not?

A. There is always the human element; anyone might make a mistake.

Q. You should be especially careful?

A. We try to be.

Q. Any unmarried girl might represent herself as married and receive a box of contraceptives?

A. If she misrepresents herself to the worker, especially if there is a child.

Q. Should it not occur then to take great precaution to see that unmarried people do not receive these contraceptives?

A. Our instructions are to interview married people.

Q. Could your instructions not be improved by adding to them one should be especially careful to see that people to whom they are given are really married?

A. We assume that in all cases.

Q. You assume that in all cases, but otherwise, you will bear with me there might be the extraordinary danger of a lot of young unmarried women receiving these contraceptives?

A. That is where the home visitor is helpful; she goes into the home and sees the set-up.

RE-RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. Arising out of that —- it is new —- if it were a home with no marriage certificate but children, would you in your experience as a social worker think there would be any harm in giving contraceptives? If a man and woman apparently living as husband and wife and there are some children, do you think there would be any harm in giving contraceptives?

A. No, they have established a home and there are children and the law doesn't interfere with the establishment of that home; while we do not deal with that matter as a rule, we might.

(Witness retired)

The Court: Adjourn for lunch (at 1:00 p.m.).

Mr. Kaufman

(Court resumed at 2:35 p.m.).

Alvin R. Kaufman, duly sworn, deposed:

To the Court:

Q. Your first name?

A. Alvin R.

Q. Address?

A. Kitchener.

To Mr. Wegenast:

Q. You reside in Kitchener?

A. Yes.

Q. And you are the owner of the Kaufman Rubber Company Limited?

A. Yes.

Q. And of the Parents' Information Bureau?

A. Yes.

Q. You are a married man, too?

A. Yes, sir.

Q. And have three children?

A. Yes.

Q. and you have some other commercial enterprises besides the rubber company?

A. Yes.

Q. Now, if you will, just part company with your modesty for a moment. I want you to tell His Worship frankly about your philanthropic activities. This is not the first; is it?

A. No.

Q. What other philanthropies have you been in?

Mr. Kaufman

A. I have contributed substantially to the Y.M.C.A., Kitchener, and continue to do so, and relatively substantially to many social organizations when canvassed and I am frequently about the first to be canvassed in Kitchener.

Q. Now, you have already said you control the Parents' Information Bureau; have you the charter here?

A. In my portfolio.

Q. This is the charter, Mr. Kaufman; is it?

A. Of the Parents' Information Bureau Limited.

Mr. Wegenast: I don't suppose it needs to be an exhibit; it is a government document.

To Mr. Wegenast:

Q. I want to read to you the usual objects ---

Mr. Mercier: If it is being referred to?

The Court: If there is a question raised on appeal, why it is not in?

Mr. Wegenast: I will put it in.

To Mr. Wegenast:

Q. The objects are:

> "To obtain and distribute, by publication of books, magazines and periodicals, or otherwise, educational and scientific information."

A. (No reply).

The Court:

Exhibit 31-B (Charter of Parents' Information Bureau Limited).

To Mr. Wegenast:

Q. Will you tell His Worship how you came to get started in this birth control work?

A. I employ labour in my business and on account of the fluctuations of business, I must discharge a considerable percentage of the help in December of each year for the lack of

sufficient business to keep them busy. I got the usual complaints. I discharge the people who need money the most and I keep those who it is thought need the money the least. The criticism was true, but the circumstances were unavoidable because I cannot meet competition by discharging the best help and keeping the inferior help.

The difference between December 1929 and previous years was that I had engaged a nurse and I incidentally asked her to investigate the home conditions of those most in need of help. The report was that conditions were not only unfortunate, but perhaps more so than the families involved realized.

I considered the matter and more or less in desperation suggested to Miss Weber she might tell the wives of these employees that birth control might be a good idea. In cases where mental deficiency was observed, sterilization was suggested and birth control was suggested where we felt it was likely the methods would be used properly.

I expected that my suggestion would be rejected as utter nonsense, but somewhat to my surprise, my suggestions were gratefully received.

I then arrived at the point where I realized I was just as innocent as Mr. Wegenast was a few weeks ago and I had also to do something to keep my promise, in view of my suggestion.

I sent a doctor to New York to one of the best-known clinics to get information. I checked the information with various authorities I could contact and after considerable correspondence, we managed to get half a dozen contraceptive methods that were approved by, I think, the leading authorities of the world.

We then went back to these patients and arranged for the sterilization of some of the most needy who were interested and sent the other patients to their family physicians to get birth control information and if possible be fitted with a pessary.

We checked up later and found a large percentage of women –- over half –- about two-thirds –- failed to go to the doctor for various reasons which I can't recite.

Q. What you found?

Mr. Kaufman

A. (No reply).

Mr. Mercier: It is hearsay of the worst kind.

Mr. Wegenast: No, this man is conducting this work; he is prepared to give reasons why he couldn't leave his work to the doctors. Ordinary human commerce must be carried on by investigation and conversation and if he got it by conversation.

Mr. Mercier: It is strictly against the law of evidence; it would be a new rule of evidence.

To Mr. Wegenast:

Q. I am asking for the reasons why they didn't go to the doctor?

A. (No reply).

The Court: He was going to give reasons why these women did not go to the doctor.

Mr. Wegenast: I was asking why he couldn't leave the matter to the doctors by that method.

Mr. Mercier: If he is to say that by relating a conversation, it can't be used.

The Court: That is right.

The Witness:

A. I found that only about one-third of the referred patients went to the doctor; the other two-thirds didn't. I also learned a large percentage of the doctors are not posted on contraceptives because it is not taught in the medical schools. I had acquired information about the leading methods and decided in view of the interest of these unfortunate mothers, I should adopt some other method to help them.

I much preferred having the work done by doctors, but had to recognize where the work went by default.

I had booklets printed somewhat similar to those on exhibit and the mothers filled application forms somewhat similar to those in as exhibits and contraceptives were then sent to the mothers.

I started with employees, but we soon got requests for other

unfortunate mothers whose husbands were not employed and as I was gradually coming to the conclusion that my birth control work was much more constructive than other things I had done in the past, I decided to spread the work beyond my employees. It has spread considerably.

To Mr. Wegenast:

Q. How many nurses have you out, Mr. Kaufman?

A. I think it is fifty-five active.

Q. Are they all graduate nurses?

A. No, I think three or four are not.

Q. What has been your experience as to the kind of workers you find most successful?

A. Social.

Q. Graduate nurses, what do you find as to the necessity of graduate nurses?

A. I am interested in their personal caliber and efficiency rather than their diplomas, but incidentally with only a few exceptions, we have graduate nurses.

Q. When these applications come into the Parents' Information Bureau, what do you do with them?

A. They are scrutinized by the staff and if approved, the contraceptives are sent.

Q. "If approved" –- then they are not given out to everybody?

A. Not everybody, we get applications we don't approve.

Q. Can you give examples of what you weed out?

A. Applications from people who are not referred by our staff and we don't send contraceptives to such people until we have more information.

To the Court:

Q. Have you ever refused to send contraceptives to an applicant who has signed an application form and sent it in through your nurse?

A. Many weekly, largely for the reason some of the applications are dated more than four weeks after the date of the last menstrual period. We will not send contraceptives to pregnant people until after they are at least eight months' pregnant.

Q. Some of the applications are dated?

A. Not more than four weeks after the last menstrual period, which might indicate such patients are pregnant.

Mr. Wegenast: Your Worship will see on the blank there is a space for that and you will see the importance of it, so there is no chance of the methods being used for abortion purposes even if they could be so used.

To Mr. Wegenast:

Q. That is your idea?

A. Yes, we don't consider it advisable.

Q. You don't supply contraceptives to married men?

A. No, only wives.

Q. Always to women?

A. Yes.

Q. What other classes do you exclude?

A. I don't think any definite classes, but we get an odd assortment of various cases from people not married or about to be married or various other cases we will not send contraceptives to.

To the Court:

Q. The applications are actually sent in by your workers; what other type of cases would be not approved?

A. (No reply).

Q. You mentioned where more than four weeks after the menstrual period as noted on the form. What other type of cases do you not send contraceptives to?

A. In cases where the women are beyond the child-bearing

age. Also, in cases where we think the husband has sufficient income to go to the family doctor. Also, in cases where the information on the application is not complete.

To Mr. Wegenast:

Q. Now, I gather from what you said there is a relation between sterilization and birth control; are you prepared to say in what proportion of cases it is either?

A. In our opinion –- I am only guessing –- but I think it is about five per cent of the applications we receive that indicate sterilization.

To the Court:

Q. Indicate the need of sterilization?

A. Yes, indicate the need of sterilization.

To Mr. Wegenast:

Q. I was rather going to ask you this first: in how many cases do you consider it should be done?

A. We let the doctor decide that.

Q. Now, I would like you to satisfy His Worship as to whether you are making any money out of this business or not, and I have here the balance sheet of the Parents' Information Bureau Limited where from the inception of the company to the thirtieth of September, it is defined by the auditors; you recognize that?

A. I do.

Mr. Wegenast: We will put that in as an exhibit.

The Court:

Exhibit 32-B (balance sheet of Parents' Information Bureau Limited).

Mr. Wegenast: The inception of the company is the date of the charter; it is a little over a year.

The Court: April 6, 1935. (Note: Exhibit 32-B, balance sheets, says: "period from August 7, 1935 to September 30, 1936").

Mr. Wegenast: (Reading from Exhibit 32-B):

Mr. Kaufman

"ASSETS:

Cash in bank	$ 135.54
Inventory (estimated)	532.80
Deficit, brought forward from Statement of Income and Expenses	1,384.52
	$2,052.86

LIABILITIES:

Unpaid accounts	$2,022.86
Capital Stock, paid up	30.00

$2,052.86

STATEMENT OF INCOME AND

EXPENSES INCOME:

Sales and fees	$ 9,887.01
Donations	48,184.25
Rent	162.00
	$58,233.26
Deficit for period,	
Carried to balance sheet	1,384.52
	$59,617.78

EXPENSES:

Fees for applications	$29,102.15	
Materials	16,978.08	
Less inventory (estimated		
		Mr. Kaufman
September 30, 1936	532.80	16,445.28
Salaries and travelling expenses		9,691.45
Toronto clinic expenses		3,007.73
Rent Toronto clinic		720.00
Miscellaneous expenses		651.17
		$59,617.78”

To Mr. Wegenast:

Q. That is correct, Mr. Kaufman?

A. Yes, sir.

Q. So that answers the question whether you are making any money or not. You are manufacturing the pessaries you are using now; how long is it since you began that manufacture?

A. About two years, I guess.

Q. Why do you manufacture them?

A. Because I couldn't get them good enough or cheap enough.

Q. Where did you get them before?

A. Several places before I gave up.

Q. Now you are manufacturing them yourself?

A. Except the extreme sizes; I didn't buy the molds for those and the molds are so expensive, I didn't buy them even if I do lose on them.

Q. Will you give us an idea of the cost of manufacturing these pessaries and whether you make any money on them apart from your general enterprise?

A. They cost me twenty-three cents to make in the factory and I average thirty-one cents for them.

Q. That is what you get for them?

A. Yes, I must deduct from the thirty-one cents about three cents for mailing and I deducted about twenty per cent for overhead which brings the net receipts down to twenty-three cents, say, as

the cost. I decided there wasn't any object in deducting any more, but my business experience showed me they were costing more.

Q. You were not in it for profit?

A. No, I am losing money.

Q. What about the contraceptive jelly?

A. I buy it and what I do sell, I make no money on and what I give away, over ninety-nine per cent is free. I sell a little, but on the whole, even with all the sales, I still give away eighty per cent of the total.

Q. And you give away some of the pessaries?

A. Most of them.

Q. So when you say you get twenty-three cents, what do you mean there?

A. I collect an average of thirty-one cents and I must deduct postage from that which brings it to twenty-eight.

Q. You get on an average thirty-one cents; does that take into account those you give away?

A. Those I give away, I get nothing.

Q. That is unfair to you. Have you any idea what is the cost of those you give away?

A. I doubt if I average five cents.

Q. I think that is all, Mr. Kaufman, -- you don't manufacture condoms?

A. No, only pessaries.

Q. Do you make any money on the condoms?

A. I do not.

Q. You sell them at twenty-five cents a dozen?

A. Yes.

Q. Do you know the usual price in the drug store?

A. Not very definitely, but I understand it is much more.

Q. Do you give any of them away?

A. Most –- by far the most.

CROSS EXAMINATION

To Mr. Mercier:

Q. Are there any shareholders in your company?

A. Three.

Q. Who?

A. Miss Weber, Mr. Schroeder and myself; we each have one share.

Q. And you invested all the capital in this company so far?

A. Yes.

Q. I see that your charter does not mention that you are a philanthropic organization; did you intend this always to be a philanthropic organization?

A. I don't know what I may do some day, but I don't see any hope of it ever being anything else.

Q. I suggest that if some day birth control would be legalized in Canada it might be for the purpose of making an investment in it: that charitable organizations, if the government of the province or country decided to legalize this matter, you would be in a position to sell this material?

A. I think it would take more than the balance of my life to recoup my losses.

Q. It all depends on the market for these products if allowed to circulate freely?

A. When it comes to that point, I am not interested.

Q. You are prepared to take your loss?

A. I am prepared to quit when the government takes it over; I am primarily a manufacturer of rubber products.

Q. In the meantime, you are sending literature to people contained in their box, telling them:

> "Contraceptive supplies will be sent free to those patients who cannot afford to pay, and whose
>
> Mr. Kaufman
>
> applications we approve. Patients who can afford to do so should send all or part of a two-dollar fee which merely covers expenses involved.

What would you send for the two dollars?

A. All.

Q. What is the cost of the pessary?

A. Twenty-three cents.

Q. And a tube of jelly?

A. Twenty-six cents.

Q. The nozzle?

A. Ten or eleven cents.

Q. And the key?

A. It wouldn't make much difference.

Q. And in that parcel, you include three condoms?

A. Yes.

Q. They cost?

A. Five or six cents.

Q. And the literature is with these contents?

A. Yes.

Q. And if people want that they may pay two dollars?

A. They may.

Q. And if many do that, it wouldn't take long to recoup your losses?

A. Less than one per cent pay anything.

Q. Then you have another pamphlet or sheet here which says:

> "These articles are sent by mail to people who are recommended if the payment is included."

A. Could I see the slip?

Q. (Slip shown).

A. What is the question?

Mr. Kaufman

Q. You say on that if the payment is included you will send the articles?

A. To mothers who received the initial contraceptives.

Q. In French, it doesn't read that way:

> "The preservatives following are sent by mail to people recommended if the payment is included.
>
> (Les preservatifs suivants seront envoys par la poste a des gens recommandes si le paiement est inclus.)"

That is what I have in French?

Mr. Wegenast: "To people recommended."

The Court: "The following contraceptive supplies will be mailed to recommended people."

Mr. Mercier: "The preservatives following will be sent by mail to people recommended if payment included." Exhibit 10-B.

Mr. Wegenast: After one of the mothers receives the initial contraceptives.

The Witness:

A. The French is supposed to be a right translation.

The Court: That is not the form in Exhibit 4-B.

Mr. Mercier: This is one in 10-B.

The Court: This one says, “to properly recommended persons.”

The Witness:

A. We have these printed at various times and I imagine this one I am looking at is a later one, but relative to that, we confine our contraceptives to our patients; we don’t send them outside.

Mr. Mercier: But if payment is included —- taking this out of Exhibit 10-B and making it another exhibit?

The Court: Exhibit 33-B; it is a price list in French.

Mr. Mercier: It is taken out of Exhibit 10-B, which is the box addressed to Mrs. A. Maheux.

Mr. Kaufman

To Mr. Mercier:

Q. And you are perfectly willing to give thirty-six cents’ worth of goods or thirty-three cents’ worth of goods —- and you are perfectly willing to accept two dollars for what costs thirty-three cents?

A. It is a very minor part of the cost; you have calculated the supplies only. We have a big office overhead and the social workers are also paid, and my estimate of the cost is about two dollars.

Q. What do you base that on?

A. The social workers are paid at least one dollar.

Q. How are your social workers paid, by the way?

A. On the basis of the approved applications.

Q. So the more applications they send in, the more money they get?

A. Provided we approve them.

Q. Provided they are approved, but the more approved applications to their credit, the more money they get?

A. That is repeating.

Q. In a letter from the Parents’ Information Bureau:

> “Dear Friend:
>
> The Parents’ Information Bureau is a philanthropic organization…”

Mr. Wegenast: I don’t know why my learned friend is reading that.

Mr. Mercier: It is part of Exhibit 10-B:

> "The Parents' Information Bureau is a philanthropic organization financed by one individual who feels that birth control information is one of the greatest needs of unfortunate and deserving mothers. The eager interest shown by these desperate mothers has caused the work to expand so rapidly that the Parents' Information Bureau has found its philanthropic work very expensive, and in order to limit the cost must confine its donations of contraceptives to first
>
> Mr. Kaufman
>
> supplies only. It is likely that the expansion of the work must be checked on account of the expense…"

To Mr. Mercier:

Q. I take that to mean these first visitations by your social service workers or nurses are for the purpose of showing a sample of these goods and sending people a sample and you hope they will repeat the order?

A. There is no object in my getting repeat orders from a financial standpoint; there is an object in avoiding it.

Q. I suppose if there is a bigger number of orders?

A. A million times nothing is nothing.

Q. We have your statement it costs two dollars with your overhead. There isn't much evidence of that whether it is because of the number of goods you distribute, what overhead you have. This missionary work you are doing now?

A. It can be called that.

Q. And it always costs a little to start something that may profit you later on?

A. In my case, it has cost considerable; I have no hope of every establishing myself on a commercial basis.

Q. You sell them?

A. Second supplies.

Q. And you claim you wouldn't make money on the second supplies?

A. Yes.

Q. And you state you manufacture or obtain them as cheaply?

A. I manufacture only pessaries and buy as cheap as I can consistent with quality.

Q. Why did you come to the conclusion birth control was the best solution of these difficulties?

A. Circumstances forced me.

Q. Would the improvement of the general business of the country –- if many more people had work or a lot of people had work, would that affect your interest?

Mr. Kaufman

A. If everybody had work and was happy, I doubt if I would ever have thought of the idea.

Q. But if an improvement in the business of the country would warrant the ceasing of these activities, would you desist in them?

A. I am no prophet.

Q. Do you mean I can interpret your answer as this: even if business continues to become better in the country and people make more money, you can't tell me you would desist in your activities?

A. There might be ten others.

Q. Answer that?

A. If I felt unfortunate mothers now in need would no longer be in need, I would lose interest.

Q. When are they not in need?

A. When they can support their families.

Q. Then do you think sometime in the future, if families get fair salaries like they did ten or twelve years ago, you would see any more purpose to this work?

A. I think there was considerable distress ten years ago.

Q. When was the peak of business in Canada?

A. I think there was considerable distress at the bottom of the ladder at the height of prosperity.

Q. And you would only send them to needy mothers?

A. That is the only kind we send them to; those who can afford to pay go to the doctor.

Mr. Kaufman

Q. It is not your purpose, I suppose, to have anyone go from door to door peddling this stuff?

A. It is against our policy.

Q. You take an active part in the work yourself, Mr. Kaufman; you supervise it thoroughly?

A. Miss Weber is director; I set the policies.

Q. Now, that being the case, you stated, I believe, certain people were refused. Now, what people and why?

A. I stated the applications are refused for lack of sufficient information; when the date of the application is more than four weeks after the date of the last menstrual period and when we need to get a satisfactory explanation; when we consider the income of the husband justifies their going to a doctor; when we get an application from people who are not properly referred.

Q. Then you establish this: you are absolutely against any people receiving these things if they are pregnant?

A. Until after they are past eight months.

Q. Until after the child is born?

A. Until after they are past eight months.

Q. What do you mean "until after they are past eight months?"

A. After eight months the pregnancy has terminated.

Q. What do you mean by that?

A. When they expect a confinement within four weeks.

Q. Before that you don't object to people pregnant using that?

A. We refuse to give contraceptives to pregnant mothers under the full months.

To the Court:

Q. If you receive an application four weeks after the last menstrual period?

A. Yes.

Q. You will not send any for the next eight months?

A. Yes.

To Mr. Mercier:

Q. You mean if a woman is pregnant two weeks or three weeks?

A. If the date of the application is more than four weeks after the date of the last menstrual period, it is possible the woman is pregnant and with that as a guide, we refuse to send contraceptives to mothers who may be pregnant.

Q. And the only way you find that out is from the report form of the worker?

A. Yes.

Q. By the replies given to the worker?

A. Yes.

Q. And it might be easier for a doctor to tell if a woman is pregnant than by her answering a question?

A. We are not doctors.

Q. And anyway, it is not your policy to send these to people who are pregnant?

A. We do not.

Q. Do you know whether or not –- don't answer unless you wish, do you know if some women are pregnant sometimes without knowing it?

A. That is possible, but we have still got our guide; a good guide.

Q. Would you be surprised if a lady received a box on August thirteenth and gave birth to a child this week; would you say that is according to your policy?

A. It is against our policy.

Q. The box is dated August thirteenth of this year?

A. It is against our policy.

Mr. Kaufman

Mr. Beament: I don't know whether my learned friend is stating it as a fact; there is no evidence.

Mr. Mercier: I am asking questions as to policy.

Mr. Beament: It is a hypothetical question?

Mr. Mercier: I might possibly, later on, call a witness.

The Court: It is purely hypothetical at the moment.

Mr. Mercier: It is a hypothetical question.

Mr. Beament: I don't object if it is on the record it is hypothetical.

The Court: As long as it is clearly understood it is hypothetical.

To Mr. Mercier:

Q. That is reprehensible?

A. Yes, and against our policy.

Q. Now, if a lady receives a box of this and was never interviewed by your worker, what do you say as to that?

A. It depends on circumstances.

Q. What is your policy on that?

A. Our policy is that we will not send contraceptives to people not properly referred. I am only guessing, but I would imagine ninety-six or -seven per cent of our cases are referred by the social workers. We have the odd case referred by former patients and, in such cases, if the name of the family physician is given and we have any doubts about the circumstances, we consult the family physician or refuse to send the box.

Q. Then, Mr. Kaufman, in a case where the worker calls in a certain place and the lady of the house is not there, somebody else is there and this lady receives a box, is that according to your policy?

A. We insist on applications for contraceptives being signed by the mother who is to receive them.

Q. It would be a personal contact?

A. We must have that signature and it is a personal contact in well over ninety-five per cent of the cases.

Q. And it would be part of the duties of your worker to find out first if the person was really married; secondly, if this is the person who is going to receive the contraceptives?

A. Repeat?

A. It would be part of the duties of your worker to find out first if the person was really married; secondly, if this is the person who is going to receive the contraceptives?

A. (No reply).

Q. Is that part of your worker's duties?

A. We don't expect a worker to go to the registry office.

Q. I am asking if you don't expect the worker to find out if the mother is married?

A. She takes the mother's word for it unless suspicious of the circumstances.

Q. Then if there is a young girl minding the house while the wife is away, your worker calls and the young girl represents herself as a married woman, she can get a box of contraceptives?

A. We seldom call on people unless they are referred to the social worker.

Q. That is a policy?

A. That is our policy. The social workers do not make a door to door canvas.

Q. At least, they are not supposed to?

A. I think it is very seldom done.

Q. From door to door?

A. It is contrary to our policy.

Q. And your workers must be at all times ready to tell who recommended them to go on to the next customer?

A. I think that is stated on the application.

Mr. Kaufman

To the Court:

Q. There is a space for it, but here are a number of exhibits with no remarks?

A. I am only guessing now, but we may insist on that only when the applications are not referred by our workers.

To Mr. Mercier:

Q. So your worker can go anywhere and knock at the door and get these orders without being referred there by anybody?

A. She would do it very long once we found out.

Q. You have stated these contraceptives are sent to women only; you stated that in your evidence?

A. Yes, with very few exceptions.

Q. If a man applies for these condoms, does he get them?

A. They don't. There might be an exception; if the husband of a woman whose application is on file wrote, I think we would send them.

Q. Why send them to women only?

A. If this is in order, my nurse shakes her head and says we never send them to husbands.

Q. It is not quite proper, but I will accept it?

A. I can't be expected to know all the details.

Q. Why are these sent only to women; is there any special purpose?

A. It is our policy to deal with them only.

Q. Why should you deal with them only?

A. We think they are more concerned and they are usually at home when the nurse calls.

Q. Is there any policy of your company, before sending a box of these things to a woman, that her husband should be consulted?

A. We don't consult the husband and, in many cases, don't see them.

Mr. Kaufman

Q. You would rather not consult them in many cases?

A. We are quite pleased.

Q. You don't and don't give instructions to that effect?

A. To consult husbands?

Q. Yes?

A. It would be impossible to carry it out.

Q. Therefore if a woman wants to use these without the authority of the husband, she can get it –- again speaking of condoms?

A. It would be rather difficult for him to be ignorant.

Q. Why?

A. If the contraceptives are used, he would be conscious of it.

Q. If the jelly is used, he would be conscious of it?

A. Quite right.

Q. Why and how?

A. He could sense that in use.

Q. You believe he could –- you are not giving this theory as an expert?

A. I am not, but I understand so.

Q. But it would be quite possible for the wife to use it for some time without the husband knowing anything about it?

A. I can't say so.

Q. Some of you, intending to do a lot for humanity, believe in the authority of the husband in the home?

A. I am not discussing that.

Q. Some of us have very good bosses, but is that a recognized rule of society?

A. I have never investigated that.

Q. I am not going to ask you if you are boss in your home;

if Mrs. Kaufman were here, you might not like to give the right answer. But don't you believe in doing all this work, a certain husband might find out his wife against his wishes –- he might want a family and she uses these contraceptives –- it might cause trouble in his home?

A. I think you are expressing concern about something that is practically impossible.

Q. Don't you think it might be possible that man might not like his wife using these? Take an instance where a married couple have no children and the husband would like to be a father and the wife by using these things deprives him of children; wouldn't that cause trouble?

A. It would not be undiscovered very long.

Q. It would be likely to cause trouble?

A. I am no authority on social conditions like that.

Q. In any event, these things can be supplied to them without the husband's knowledge?

A. Yes, but they would not be used very long without the husband's knowledge.

Q. But they might be received without the consent of the husband; without his authority and knowledge?

A. Yes.

Q. And they can be sent without the husband knowing a thing about it; your workers haven't got to interview the husband?

A. No.

Q. And do you advise your workers that in all cases, the local doctors should be consulted?

A. Not necessarily.

Q. What is your theory as to the local doctors so far as this work is concerned; what is the policy of your firm?

A. If the information from the mother indicates the need of a doctor's attention, the mother is usually told to go to the doctor.

Q. Only in that case?

A. If the nurse discovers need for it.

Q. If a woman doesn't know she has some ailment, how is the nurse going to find out if she isn't properly examined?

A. That is not the nurse's responsibility to make a physical examination.

Q. I understand that, but if this woman is sick and doesn't know it, how is your nurse going to find out she is sick?

A. If the mother has no indication of pain and discomfort and feels all right.

Q. The nurse takes a chance?

A. It doesn't indicate the nurse is taking a chance.

Q. And if the mother is pregnant and doesn't know it and the nurse doesn't sense it?

A. It is against our policy to send it to mothers if it is four weeks after the last pregnancy.

Q. How are you going to find out?

A. If the mother tells an untruth, we might be deceived.

Q. And if the woman is examined by a doctor, you might not be deceived?

A. We might not.

Q. And therefore there is a chance, a possible chance, a pregnant mother might receive some of these goods?

A. It is possible in the early stage, but we find mothers usually have no object in hiding the fact.

Q. But a mother who would hide the fact for the purpose of getting one of these boxes could?

A. It is possible.

Q. If she did not tell the truth to your worker?

A. It is possible.

Q. If she were not examined by a duly qualified medical

practitioner?

A. It is possible.

Q. It is possible a pregnant woman in the early stages might receive a box?

A. It is possible.

Q. And if your worker can call on anybody who has been recommended to her by anyone of the clients?

A. She can call on them, yes.

Q. If I ask one of your workers to call on a person today, I suppose she would?

A. If she thinks the recommendation is genuine.

Q. If she thinks I am correct enough to give correct information?

A. If she thinks you are responsible, she would likely go.

Q. Of course insofar as the community is concerned, you would not want people not to know what they are getting, but you want thorough confidence between the worker and the public?

A. The representative should explain the purpose.

Q. And all it means, just according to you, is that a person knocks at the door, says "I am from the Parents' Information Bureau regarding birth control, and if you are interested"; the woman says "yes" and answers a few questions, and away goes the card to the Parents' Information Bureau?

A. We want the worker to explain and let the mother know what she is doing.

Q. Is it the policy of your Parents' Information Bureau that these people should be told thoroughly whether they are willing to have no more children: shouldn't that be gone into by your worker?

A. We don't go into details; if the mother says she is not interested ---

Q. You do go into details?

A. It is our policy to explain.

Mr. Kaufman

To the Court:

Q. Is it the policy of your Bureau if the mother says she is not interested to have the worker go ahead with the card and send it in and send a box?

A. No.

To Mr. Mercier:

Q. And is it your policy to send a box to people not thoroughly acquainted with it or who haven't received the fullest explanations?

A. We expect mothers to have enough explanation so they will understand.

Q. And people who do not understand thoroughly should not have this?

A. We expect the mother to understand before the application comes in.

Q. In a case where the mother understands little English and the worker no French, is it the policy to send a box?

A. If each has a smattering of the other's language, I think they can get along.

Q. Do you think a few words will explain this matter; after all it is important for a woman to know what she is doing?

A. I think a smattering of each language to the other is sufficient and we have reason to believe very few applications come in without the mother understanding and we expect outside of the province of Quebec, most of the people understand English.

Q. Not “expect” -- what are the facts?

A. We expect that very few applications come outside of Quebec from people who do not understand English.

Q. Quebec is not a reserve; you know many people there speak the same language as in Ontario?

A. But outside Quebec, we expect people to know enough English to understand.

Mr. Kaufman

Q. You “expect,” but it doesn’t always exist, but what do you mean by a “smattering of the language” there?

A. Enough to understand one another.

Q. What do you think is “enough to understand one another”?

To the Court:

Q. In spite of the fact that for about half of the witnesses in this case, we had to use a court interpreter?

A. (No reply).

Mr. Beament: No.

The Court: Four anyway.

Mr. Wegenast: And they broke into English.

The Court: One didn’t.

The Witness:

A. They wanted to give their answers before the interpreter.

Mr. Beament: And Mrs. Louisseize was through an interpreter.

Mr. Mercier: And she wanted it out of curiosity.

To Mr. Mercier:

Q. Do you approve of people getting them out of curiosity?

A. We don’t approve of that motive, but there are times that they hide their motives.

Q. That is possible?

A. (No reply).

To the Court:

Q. Mr. Kaufman, in this Exhibit 4-B, a box sent from Kitchener, 410 King West, to Mrs. Leblanc, there was in that box a slip of paper which I would call a price list. Now, it says, "the following contraceptives will be mailed to properly recommended people". What does that mean -- that term, properly recommended people, mean?

A. Our intention or meaning is that we satisfy ourselves

they are the proper people to receive the contraceptives.

To Mr. Mercier:

Q. How do you satisfy yourselves as to that; I am not trying to trip you up; is that the people from whom cards are sent in through the workers?

A. Our sales are confined almost entirely to mothers whose applications we have on file.

Q. You would consider a proper person to make recommendations would be people whose applications you have on file?

A. Yes, ninety-nine percent, outside some we send to doctors and jobbers.

Q. This goes on:

> "The following contraceptive supplies will be mailed to properly recommended people, at prices shown, if payment is sent with order to Parents' Information Bureau, 410 King St. W., Kitchener, Ont."

Then it lists articles and prices. That is an offer to sell:

> "1 – highest grade pessary – fifty cents."

Suppose a person has an approved card on file, opens their box, sends an order with fifty cents for one highest grade pessary, do you supply them?

A. If they got an original one on the order of the doctor. They will not get an original pessary without an order from the doctor.

Q. This is not an original pessary; this is a box?

A. And no pessary?

Q. No pessary and being a properly recommended person, according to this, you offer to sell a high-grade pessary?

A. If we got fifty cents from a mother who never got a pessary, we wouldn't send one; that is for replenishments. It is useless to send one to a mother who has not been fitted.

Mr. Kaufman

Q. I wanted to find the policy?

A. The original must be ordered by a doctor.

Q. That is the policy followed in every case?

A. There would be no object in doing anything else; it is useless to do anything else.

Q. It says, "properly recommended people" can get these articles?

A. But we check these things.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. How long do the pessaries last?

A. It depends on the care; if given proper care, they will last two or three years.

Q. And if not properly cared for?

A. They don't last.

Q. How often would you expect a woman with a properly fitted pessary to use it?

A. Two years, but if it is left on the windowsill or near a stove…

Q. You might repeat the order?

A. If we got four repeats within a year, we would know there was improper care or peddling.

Mr. Wegenast: I want to put this in as an exhibit. Mr. Kaufman says this is the latest printing.

The Court:

Exhibit 34-B: Price List

To Mr. Wegenast:

Q. Would you say what effort you are making to get yourself out of this birth control job?

A. I have one worker in Toronto whose chief business it is to do educational work. She with others are assisting in the

Mr. Kaufman

formation of a birth control league in Toronto and I think that will materialize very shortly.

I started a clinic in Windsor about three years ago and within about a year, it was taken over by an organized Essex county maternal health league and I donated my equipment to the league, which is now operating the clinic.

To the Court:

Q. It is still operating successfully; do you know anything about it?

A. Yes, it is still helping patients.

Q. And carrying on the work you started?

A. Yes, carrying on the work I started.

To Mr. Wegenast:

Q. Can you say anything more about the function of this worker of yours who you say is doing educational work?

A. Contacting ministers, educators and others interested and encouraging them to come to the Toronto clinic, investigate and come to their own conclusions.

Once we get them to the clinic, we have converts, ninety-nine per cent. Once they overcome their prejudice and come to the clinic to investigate, they become friends.

Q. Did you have much difficulty organizing this clinic in Windsor?

A. I merely started it and the Essex country maternal health league was organized in fifteen months or a year from the start.

Q. You are not in Hamilton; you had nothing to do with that?

A. I had nothing to do with that.

Q. In Brantford?

A. I had nothing to do with that, but I understand the Board of Health staff there recommends various cases for birth control information and they get it.

Mr. Kaufman

Q. Subject to my learned friend, I want to ask Mr. Kaufman what are his other purposes and plans in connection with this work?

A. I feel this work is not primarily my responsibility and I hope the time is coming when it will be taken over by the government, when I think the responsibility will be taken over.

I have had suggestions it might be helpful if I do educational work in the meantime. I have said to people with influence and better opportunities might do it themselves, but I get a smile and they say, “You understand”.

In the meantime, I am helping the cause along in the hope I won't have to be in the business and I must say I am getting considerable encouragement.

Q. I think that is all I want to ask. Have you any figures showing what number of cases were dealt with during the period from April, 1935 to the end?

The Court: From the inception of operations, August 7, 1935, the charter is in April.

To Mr. Wegenast:

Q. Could you give us those –- the number of cases the parents' Information Bureau has dealt with during the period covered by this auditor's report of statement of income and expenditure?

A. That is a little over a year; including the Toronto clinic, I would say close to twenty-three thousand.

Q. That is all, Mr. Kaufman

(Witness retired)

The Court: Adjourn for five minutes (at 4:00 o'clock).

Mr. Scott

(Following five-minute recess, at 4:05 p.m.)

Walter Elliott Scott, duly sworn, deposed:

To the Court:

Mr. Scott

Q. What is your full name?

A. Walter Elliott Scott.

Q. Address?

A. 180 Winona Drive, Toronto.

To Mr. Wegenast:

Q. What are the contents of this box, just speaking generally?

A. Contraceptives.

Q. Where did you get them?

A. In various drug stores in Ottawa, Eastview and surrounding.

Q. Will you tell just where you got them and what…?

A. (No reply)

Mr. Mercier: Filed as one exhibit?

Mr. Wegenast: Three are in as exhibits. I think we will take them in the order in which Mr. Scott has them on his memo and note them down.

The Court: If more than one from one drug store, they will be one exhibit.

Mr. Wegenast: We would have to tie them up.

The Court: Each one will be an exhibit.

To Mr. Wegenast:

Q. The first is from the Standard Drug Store, Rideau Street?

A. Yes.

Q. What is it?

A. Three safes at fifty cents.

Q. Tell us what happened when you got those?

A. I just went into the store and asked him for a box of safes and he gave me a box and he wanted to know if I wanted

three for a dollar and I said three for fifty would be all right. I asked if he had any other contraceptives and he said he hadn't, but other stores were selling a cocoa butter arrangement for contraception, but they didn't have any.

Q. Did you say whether you are a married man or not?

A. I didn't say.

(Filed as Exhibit 35-B)

Q. Now, then, what was your experience with Mr. Brown's drug store at 390 Rideau Street; what happened there?

A. I asked Mr. Brown if he had any safes.

Q. Did you tell him if you were married?

A. No, I didn't. If he did keep them or not, he hadn't them.

Mr. Mercier: I don't know if this is relevant; "I went into a drug store and after a conversation, I did so-and-so".

The Court: He tells what he got or saw.

Mr. Wegenast: I am proposing to submit the larger view; the laws of evidence are not the laws of the Medes and Persians.

The issue in this case is of such a nature that my submission to Your Worship is that considerable latitude should be allowed and in this instance what I propose to show is the state of affairs in connection with which and in which Miss Palmer worked and it is a necessary item in discussing whether it was for the public good or not.

My argument is: how in the world could it be said Miss Palmer could carry on operations in the way she has when this could be got by a casual stranger without a recommendation or introduction.

Those are the conditions and what he finds drug stores willing to sell is, I submit to Your Worship, evidence.

The Court: Quite so and he had the exhibits here as to what he finds drug stores willing to sell, but as to any conversation he had in the drug store during the transaction, on what grounds can you argue that is evidence?

Mr. Scott

My policy is to allow as much as possible the admission of everything relevant if it has any basis; I do not like the exclusion of evidence on technical grounds.

To Mr. Wegenast:

Q. What did this drug store offer to sell you?

A. (No reply).

The Court: Brown's drug store, 390 Rideau.

Mr. Mercier: That would be the same as a conversation, if the drug store "offered". The witness should be limited to:

"Q. You went to a certain drug store?

A. Yes.

Q. Was there any conversation?

A. Yes.

Q. As a result of that, what did you do; did you get anything?

A. Yes.

Q. As a result of that, did you get anything else?

A. Yes."

I submit any conversation should not be allowed.

Mr. Wegenast: I can ask this witness if certain things are on sale.

The Court: What he saw.

Mr. Wegenast: With his eyes or ears; it is beating behind the bush.

Mr. Mercier: The laws cannot be changed to suit this case.

The Court: I can't change them.

Mr. Wegenast: I can see what is on sale; surely the evidence of the eyes is not so much better than that of the ears.

The Court: I will not allow conversation.

To Mr. Wegenast:

Mr. Scott

Q. What was offered at Brown's drug store?

A. In the absence of not having safes, he himself offered the articles I have here.

Q. What are they?

A. A sanitary health sponge.

The Court:

Exhibit 36-B.

To Mr. Wegenast:

Q. And?

A. A box of W.J. Rendell's pessaries.

The Court:

Exhibit 37-B

To Mr. Wegenast:

Q. And?

A. A box of contraceptive jelly.

The Court:

Exhibit 38-B

The Witness:

A. "Contraseptone," containing contraceptive jelly and tube.

To Mr. Wegenast:

Q. What was the price of 36-B?

A. Twenty-five cents.

Q. And the pessaries? (Exhibit 37-B).

A. One dollar, I think; it is right on the parcel.

Q. And this box? (Exhibit 38-B).

A. One-fifty.

Mr. Wegenast: Your Worship will note that is a smaller box and tube than the Parents' Information Bureau supplies.

Mr. Scott

To Mr. Wegenast:

Q. Now, Molot's drug store, Rideau Street —- did you say anything about being married to Brown?

A. No.

Q. Coming to Molot's, did you say anything about marriage?

A. (No reply).

Mr. Mercier: That is hearsay.

To Mr. Beament:

Q. Had he any way of knowing whether you were married or single?

A. No way I could tell.

To Mr. Wegenast:

Q. Molot's?

A. He had a box of safes.

Q. 39-B, a box of safes, twenty-five cents, and?

A. One sanitary sponge, twenty-five cents.

Q. 40-B, and what else?

A. A box of "Norforms" suppositories.

The Court:

Exhibit 41-B

To Mr. Wegenast:

Q. Which cost?

A. One dollar.

Q. And then?

A. One “Ortho-gynol” with tube, one-fifty.

The Court:

Exhibit 42-B

To Mr. Wegenast:

Mr. Scott

Q. What else?

A. One pessary.

Mr. Wegenast: This is already Exhibit 29-B; it was shown to Dr. DeHaitre.

To Mr. Beament:

Q. How much was that?

A. One-fifty.

To Mr. Wegenast:

Q. So far, I should ask you whether this exhausts all they had to offer; did they have anything else?

A. I don’t remember clearly in connection with those three stores, but there were duplicates I could have got in other stores.

Q. Where next?

A. Aikins drug store at Rideau and Charlotte, three safes at fifty cents.

Q. 43-B and?

A. A box of suppositories, one dollar.

Q. These are called “Rendell’s Wife’s Friend”?

A. Yes, but put up by Aikins’.

Q. It is well known in England; it is in the text books?

A. This is manufactured by the man himself after their formula.

(Exhibit 44-B).

To the Court:

Q. The same as Rendell's, Exhibit 37-B?

A. The same formula.

To Mr. Wegenast:

Q. Richard's drug store, Rideau Street?

A. A box of suppositories, one dollar.

Mr. Scott

Q. 45-B, this is manufactured in England, and?

A. One rubber pessary.

Q. They stuck you hard for that?

A. Yes, three dollars.

Q. That is already an exhibit?

A. (No reply).

The Court: 30-B.

To Mr. Wegenast:

Q. Had they any means of knowing whether you were married or unmarried?

A. Not that I know.

Q. Next?

A. Richards'.

Q. This is one dozen Zonite suppositories, one dollar?

A. (No reply).

The Court:

46-B

To Mr. Wegenast:

Q. What is this?

A. Jelly with nozzle.

Q. Called "Koromex"?

A. (No reply).

To the Court:

Q. From Richards'?

A. No, from Liggett's.

To Mr. Wegenast:

Q. Had he any way of knowing you were married?

A. Not that I know.

Mr. Scott

The Court:

Exhibit 47-B

To Mr. Wegenast:

Q. Now, we come to?

A. Kehoe's stationery and tobacco, 118 Bank Street.

Mr. Mercier: And etcetera.

The Witness:

A. Three safes, fifty cents.

The Court:

Exhibit 48-B

To Mr. Wegenast:

Q. What next?

A. Thrifty drug store, 131 Bank Street.

Q. What did you get there?

A. A rubber pessary.

Q. How much?

A. Eighty-five cents.

Q. You will notice the price on it is ten dollars?

A. It was bargain day.

The Court: It was Exhibit 28-B.

To Mr. Wegenast:

Q. What next?

A. "F.H." suppositories, one dollar, Thrifty drug store, 131 Bank Street.

The Court:

Exhibit 49-B

CROSS EXAMINATION

To Mr. Mercier:

Mr. Scott

Q. What is your occupation?

A. Government relief inspector for the provincial government.

Q. Are you acting in that capacity now?

A. Not just now.

Q. Have you any occupation now?

A. Not connected now.

(Witness retired).

Mr. Larocque

Duchaine Larocque, duly sworn, deposed:

To the Court:

Q. What is your name:

A. Duchaine Larocque.

Q. Address?

A. 63 Beechwood.

To Mr. Wegenast:

Q. Is that in Eastview?

A. No, the Ottawa side.

Q. New Edinburgh?

A. Yes.

Q. Can you identify any of these?

A. Yes.

Q. Tell me about them?

A. Condoms or rubber goods.

Q. You have seen them before?

A. Yes, I have.

Q. Where?

Mr. Larocque

A. I received this one at Beauchamp's in Eastview.

Q. You went there?

A. Yes.

Q. Had he any way of knowing whether you were married or not?

A. No.

Q. And you bought these safes there?

A. Yes, I did.

Q. How much?

A. Fifty cents.

To the Court:

Q. What is Beauchamps'?

A. A drug store.

Q. Do you know the address?

A. No, just on the Montreal Road.

The Court:

Exhibit 50-B

To Mr. Wegenast:

Q. What about this I show you?

A. I got that from the druggist, Leech, on Creighton Street.

Q. New Edinburgh?

A. Yes.

Q. How much did you pay?

A. Fifty cents.

Q. Did he have any way of knowing you were married or not?

A. No.

The Court:

Exhibit 51-B

To Mr. Wegenast:

Q. This last one?

A. Belanger's, Beechwood and Creighton.

Q. How much did you pay?

A. Fifty cents.

Q. Did he have any way of knowing you were married or not?

A. No.

The Court:

Exhibit 52-B

To the Court:

Q. How much did you pay for these?

A. Fifty cents.

CROSS EXAMINATION

To Mr. Mercier:

Q. Your occupation?

A. Truck driver.

Q. Employed now?

A. Not at present.

Q. That is all.

(Witness retired).

Ernest Sims, sworn, deposed:

To Mr. Wegenast:

Q. Mr. Sims, you were a colonel in the Salvation Army?

A. I am now, but retired.

Q. What experience have you had in soci8al service work?

A. Twenty years director in charge of all social work in the Salvation Army from Vancouver to Halifax.

Q. Twenty years –- without asking you any more regarding your previous experience in the Salvation Army, will you tell us briefly what your views are of the relation of birth control to social service?

A. I don't want to speak soft, neither do I want to press, but I can tell you candidly over and over again broken and broken, wishing I knew or could properly give some advice.

I don't know whether it is in order to give cases, but there are cases I know indelibly.

A man was in and out of jail for years and years. Personally, myself and my assistants and social service workers knew he was mental, but every time the magistrates would send him down for another few months, he would be out again and the children kept coming about every fifteen months. The woman was at our office, scores of times, asking for furniture, extra bedding and help and oh, how I wished –- I am going back years now –- I knew some way of advising her, but I didn't know.

At any rate, I thought it was a matter against conscience. Yet how, I felt, if the children didn't come. Most are now delinquents from sixteen down, and had I known then what I heard from a clinic in Toronto, I would certainly have found some way to get the woman some help.

A man comes to the office –- I have a dozen of them -— out of work, on relief, but he says, "good God, what can I do"? I said, "what a pity you are living in botched district with two rooms, five children; why, why, why?" And the poor beggar looks at me and he says, "how will I stop it"? I tried to tell him, but he said, "I can't sleep under the bed; I am a man and my wife is a woman".

That man, I was able to tell his wife to go to a place on Dundonald St4eet.

Q. That is Mr. Kaufman's clinic there?

A. Yes, I didn't know it then.

Mr. Sims

A case going back more years than that: one of the sweetest women one would ever know. Her husband was a drunk, in prison and out. She would come and say, "shall I give in to him when he comes out of jail?" And every time he came out of jail, the children came on an average of every fifteen months. And I went back for some time and it seemed as though if there had been some means for that woman of forgiving him and not having children; yes, but taking him back, she had children. And I said to my wife –- you know I am over modest; it is not in the curriculum of the Salvation Army. I am speaking personally, but I said to my wife, "tell her by the only way we knew," which we felt was under condemnation.

I know dozens of cases like it. I know some men might object. I know of one man with nine children in three rooms and when someone brought him to task, all he said was his wife was having as many children as God sent. Whether he thought he was God or not is another question.

But, in my case, I felt no doubt and no sense of condemnation in passing on the address, to give the people the name and address where they can get this information, although I can't give it.

Mr. Wegenast: There is this, Your Worship, that in textbooks on the subject, there are two ways of making a point: one is statistics elaborately gathered and mathematically accurate and the other is cases. Books are filled with cases; after all, there is something convincing about those things. My suggestion is that Colonel Sims is worth hearing in referring to these cases.

Mr. Mercier: I do not believe it is strictly relevant, but I am not pressing the point. I haven't taken any objection.

The Court: It is experience.

Mr. Mercier: We all know a lot of cases of hardships where the father doesn't work. I might go into the box and cite them.

To the Court:

Q. Go on?

A. It is my experience has convinced me as to the righteousness of giving women, men if you like, this advice whereby they can space their children and decide whether they

can or should have any more.

The reason I feel convinced and I could conscientiously advise is because if circumstances bettered and they felt they could now have children, there is nothing to prevent them so doing.

There is the case of a boy, years ago, born in Ottawa, who came back to my hands recently. He was born illegitimately in Ottawa. Two or three years after, he comes into the home of which I have oversight in London, Ontario. His mother, in the meantime –- a possible mental case -– has been a worry to Ottawa and Toronto social workers, but she gets married to a man, a refined kind, quite safe mentally, but incapable of making a living; he had only one arm. He does try to make a living picking up scraps, but the children come first.

I suppose you would say that is a case for sterilization, but had that man and woman, when they were married, had the vision given them and had they taken means to prevent children –- now they have four, five or six –- what a God-send it would have been to them. I don't think there is a social worker in Toronto doesn't know the family I refer to.

To Mr. Wegenast:

Q. By the way, Col. Sims, you are on the Canadian Welfare Council?

A. Yes.

Q. That is the organization with which Mr. Silcox is identified?

A. Yes.

Q. He is secretary?

A. Yes.

Q. I think you should be in a position, Colonel, to give us an opinion as to the propriety of birth control in a social service programme generally?

A. Personally, I am one hundred per cent carried, but I do not speak for the Salvation Army.

Q. You are retired?

A. Yes, but my personal experience has made me one hundred

per cent where used properly.

To the Court:

Q. You say, “where used properly”?

A. Yes.

To Mr. Wegenast:

Q. You say years ago you thought there was some question of objections of birth control and I want to know whether or not there has been a change of mind on your part?

A. I did not understand the method as I do now. I always looked upon it as something obnoxious -- a drug store affair -- but as I have understood it since visiting the clinic, as far as I can understand it, it is clean, healthy, ordinary advice given as sane and helpful.

Q. We have a person accused in this case, Miss Palmer, going around to homes on the recommendation of this, that or other social worker and taking a history of the facts in connection with the mother and forwarding the facts in the form of an application to Kitchener, in response to which the Parents’ Information Bureau sends contraceptives in cases where they see fit?

A. (No reply).

Q. They send a box of contraceptives, tube of contraceptive jelly and the condoms. What, in your opinion, or what is your opinion as to the propriety of that method of carrying on?

A. Taking it for granted the cases she visits are such as I have referred to, I think it is a good work. I would be glad to know of anybody doing that work.

Q. I will ask this further, Colonel, whether you think or do not think there are cases even of unmarried women where it would be to the public benefit to let them have a contraceptive?

A. I wouldn't say that unless the unmarried woman is practically a wife, living with a man. It is the same; I can't discriminate.

CROSS EXAMINATION

To Mr. Mercier:

Mr. Sims

Q. You wouldn't advise a social worker that young girls or girls with one child should be encouraged in continuing in prostitution by having these things?

A. I would be very sorry to have any of those making a convenience of it.

Q. You referred in your evidence to the fact you knew certain cases or case where a man was going to jail had children; are all of them delinquents?

A. One family.

Q. You, of course, have also heard, I presume, of children of wealthy people who had small families and some of them becoming delinquents and criminals?

A. More in proportion, I think.

Q. You think some children of wealthy parents are more inclined in proportion to become delinquents?

A. Some of them would be mental. They can afford to get advice as you say.

Q. You also are a social worker and a man of considerable experience and know the work of the Salvation Army. It is excellent work, well thought of. What would you think of a woman being shown and talked into taking contraceptives without the consent of the husband?

A. I think the woman should do the deciding.

Q. And she shouldn't consult her husband on such a trivial issue?

A. If she had a husband like that man I speak about.

Q. Take a careful husband and wife who get along fairly well together and are good friends, partners and pals who have the misfortune of not being wealthy enough to provide for their children like they would wish; –– take the ideal home –- is it your opinion a woman who has told her husband everything, has been a good pal and faithful wife, that this woman before deciding to use these contraceptives should not consult her husband?

A. I think she should know the mind of the husband before

Mr. Sims

she approached it.

Q. And if the mind of the husband is against it, do you think she should acquire these nevertheless?

A. Under the circumstances, I think she has a right to control her life.

Q. But after your experience in social service work, don't you think it might create difficulty between husband and wife?

A. That is possible, but I think the greater benefit would be otherwise.

Q. You must know of some couples who for good or bad have the habit of telling each other everything in their lives –- people fortunate enough to be that way –- take the husband who finds out later he was not consulted about his wife using these contraceptives, there is the possibility of serious difficulty in the family?

A. There is the possibility, but my experience has told me –- men have come to my office and gone over their troubles and wished they could find some way.

Q. They were looking for that information, but in your opinion, wouldn't it be much better or even advisable the husband should be consulted before -— after all, it is an important affair to the family whether they have more children; don't you think the husband should be consulted?

A. I would rather think the woman would have a kind of foreknowledge of what her husband's mind would be; there are cases it would be unwise to tell him.

Q. And at the risk of disrupting the family, it would be more wise for the wife to use them without telling the husband, at the risk of disrupting certain marriages?

A. I suppose in some cases.

Q. The greatest good to the greatest number –- you have told us, I believe, you thought it was against your conscience some years ago to advice people to use contraceptives?

A. It was against my conscience many years ago?

Q. Yes.

A. Yes.

Q. Why then?

A. Maybe my lack of knowledge and my ignorance.

Q. Why did you feel it was against your conscience then?

A. My viewpoint years ago was: I understood nature provided spacing of children, that if the mother nursed a child a year that they would be spaced about two years, and I was brought up

that way and that was in me, that it wasn't according to nature, that the man and wife lived together naturally, but twenty years' social work, seeing the distress and sorrow, and then the possibility of avoiding it, I couldn't help but change my mind on that and feel that married life was a matter between the man and wife and their own good.

Q. Between man and wife?

A. Between man and wife, living their own lives.

Q. And in order to prevent conception, it should be a matter between man and wife?

A. Go on: all right?

Q. Would it not be according to your opinion the matter of having children or not having children should be a matter between them to settle?

A. Yes, but there must be cases where they don't agree.

Q. And where they don't agree, the woman should go ahead?

A. Well, she must be her own judge.

Q. Col. Sims, you say in your experience you have come across a great number of cases in which you think some advice along the lines of birth control should be highly beneficial to individual cases?

A. Absolutely.

Q. What do you think of a case where the social worker visits a home, talks to the wife, asks the wife if she has ever used contraceptives; the wife says, "no, never, and I don't ever intend to" and yet the social worker still has a box of contraceptives sent to that home?

A. I can't imagine it being done. I know nothing about the clinic's work.

Q. In your opinion, would you agree with such a practice; what would you say if that were ever done?

A. Do I understand it right, Your Worship?

Q. This is a case of a family, husband and wife. The wife is approached as to the use of contraceptives. She says she never used them and doesn't want them and never intends to use them; yet in spite of that, the social worker goes ahead, has a box sent to that home, in spite of the wife distinctly saying, "I don't want to use them". Now, that is distinctly different to cases in your practice?

A. My opinion would be it would be most unfortunate; so much so, I can hardly imagine it being done.

Q. Unless you thought there was a real need of such advice and devices, you don't think they should have been sent to the wife?

A. In that person you refer to, -- I don't know if it is a hypothetical case –- if she thought that there was some reason that woman said no at the moment and thought she might change her mind and come back to her.

Q. But the social worker would have knowledge of what she might do?

A. On the bare fact the woman doesn't want it, I could have a good opinion.

Q. It is a matter of each individual case as far as you are concerned whether this advice should be given?

A. Certainly, it would be the woman's wish. She may be ignorant of any method not harmful and it would be kind to explain, but it must be by her wish and desire.

Q. Your evidence is very helpful, Colonel.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. This is a point that comes out of what my friend and Your Worship have asked the Colonel: if there is to be a consultation as to whether there will be more children or not, who would be best fitted to discuss it with the husband, the social worker or the wife?

A. What is that?

Q. If the question of using contraceptives should be discussed with the husband, should the social worker or the wife talk to him?

A. I think the worker would have an awkward situation; I can't see how a woman, a social worker, can talk such things with a man. I have sent dozens of men home to tell their wives to go to the clinic. I don't think ordinary social workers, women, should talk to men about it.

RE-CROSS EXAMINATION

To Mr. Mercier:

Q. There may be men social workers?

A. I have done it myself.

(Witness retired).

The Court: Adjourn from October 23, 1936) to Tuesday morning at ten o'clock (October 27, 1936).

(The Court resumed at 10:00 a.m., 27th October, 1936).

The Court: A motion for dismissal was made by the defence at the close of the Crown's case. There are two counts remaining against the accused.

As regards Count B: In examining the Crown's evidence, we find evidence of the displaying by Miss Palmer of only one pamphlet (in French) to Mrs. Pharand.

Many of the other Crown witnesses, however, received a pamphlet in a box sent from Kitchener as a result of acts done by Miss Palmer; namely, the obtaining of information from the witnesses by means of an interview and the sending in to Kitchener by Miss Palmer of signed application cards. Miss Palmer did an act or acts for the purpose of aiding some person or persons in

Kitchener to send the pamphlet to these persons. If the sending of these pamphlets by the Kitchener person or persons was an offence, Miss Palmer is a party to and guilty of the offence by virtue of Section 69.

The next question to consider under Count B is whether the sending of the pamphlet by the person or persons in Kitchener to several persons in Eastview constitutes an offence under Section 207(c). Mr. Beament argues that the term "advertising" denotes some element of commerce. Now, the purpose of this pamphlet is to give instructions to women in the use of the free sample sent to them. Miss Palmer told several witnesses that everything was explained by means of the pamphlet to be sent in the sample box. After using up this free sample, in accordance with the instructions in the pamphlet, the women can obtain replacements in accordance with the terms of a price list enclosed in the sample box. There the pamphlet has an element of commerce in it. The instructions contained in the pamphlet are part and parcel of the advertising designed to induce purchases of articles sold by the Kitchener firm, the Parents' Information Bureau. The pamphlet therefore is advertising.

Therefore, the Crown under Count B has made out a prima facie case, on the facts, against Miss Palmer.

As to Count C: Mr. Beament argued that the count as set out in the information, exclusive of the particulars, does not set out the means or instructions and therefore must fail by reason of the case of Rex vs. Brodie. I do not agree with Mr. Beament on this point.

Looking next at the particulars, which have become part of the record, first as to the word "means". There is no evidence that Miss Palmer had any "means" for disposal in Eastview. She had only a demonstration box of tube, jelly and nozzle and never apparently attempted to dispose of anything in that nature which she had in her possession. "Having for disposal"

denotes some kind of possession. It is stretching the meaning of the word "possession" a bit far to say that she had constructive possession of articles in Kitchener.

Then further, in the particulars, the "means" are explained as the "exhibition" to certain persons of certain articles. I should think that the "means" would be the articles and not the

"exhibition" of the articles and the first paragraph of the particulars becomes rather meaningless

The second paragraph of the particulars sets out that the "instructions" are the pamphlet mentioned in Court B. Turning again to the evidence, we find that in Exhibit 22B, the bag taken from Miss Palmer when she was arrested, are some seventeen copies of the French version of the pamphlet in question. Miss Palmer apparently carried these with her on her visits.

Then, turning to Mrs. Pharand's evidence, we find that Miss Palmer not only showed her the pamphlet, but left the pamphlet on the table for Mrs. Pharand. True, that is the only instance where Miss Palmer apparently displayed or left a pamphlet. But she did do so on this occasion. This together with the fact that she carried a considerable quantity of these pamphlets with her lead the Court to the inference that she had them for disposal.

Upon the Count C, therefore, I must hold that the Crown has also made out a prima facie case upon the facts.

The defence next raises, to both these counts, the point that, by means of the Crown witnesses, particularly Dr. DeHaitre, they have established that the acts done by Miss Palmer were done for the public good, and that there was no excess beyond what the public good required.

Let us examine Dr. DeHaitre's evidence on the principle of the dissemination of birth control information. He was cross examined at great length by Mr. Wegenast. But the whole of his long testimony can be very briefly summed up. He agrees that

Dissemination of birth control information is not objectionable from a medical standpoint. What he does disagree with most emphatically is the method used by Miss Palmer. He says that he advises a properly established birth control clinic. He claims that the methods used by Miss Palmer are less than half measures. He advises a proper examination by a qualified medical practitioner in all cases. He agrees that the condoms and jelly in themselves are harmless, but does not recommend the use of the nozzle unless the woman is properly instructed by a doctor as to its use and the use of a douche.

There may be conditions present in the woman requiring medical

attention and treatment that couldn't be discovered by Miss Palmer in the very brief conversations she has had with some of the women approached, particularly those who could speak very little English; whereas, Miss Palmer could speak very little French.

Dr. Dehaitre states that the nozzle could be injurious to the cervix of the vagina if used by someone who did not know how to use it properly. He himself would not prescribe it without examination and explanation.

What are the methods used by Miss Palmer with which Dr. DeHaitre disagrees most emphatically?

We find Miss Palmer, from the Crown's evidence, supplying an unmarried woman with a sample box. Miss Hudon swears that she told Miss Palmer that she was unmarried before Miss Palmer left the house.

We find many cases where Miss Palmer did not advise the woman to see her own doctor at all. We find several women saying they did not understand Miss Palmer's demonstration or explanation. We find women denying emphatically that they gave Miss Palmer certain information Miss Palmer has written upon the application cards. We find one woman saying she had never used any contraceptives and never intended to use any, yet she got a box. We find one woman saying she was not at home when Miss Palmer called and signed nothing, yet she got a box. We find women signing the card simply because Miss Palmer asked them to, not knowing what they were signing. We find one woman who said Miss Palmer showed her nothing, that she was in a hurry and that Miss Palmer told her not to be anxious about it, that the instructions were in the box.

This is the Crown's evidence. Perhaps Miss Palmer has an answer for all this. But at the moment, the Crown's case stands. Apart, therefore, from the general question as to whether the dissemination of birth control information is or is not for the public good, the defence has failed to establish to the satisfaction of the Court that the acts alleged to have been done by Miss Palmer fall within the saving clause in 207(2). The accused will therefore be put on her defence on both Counts B and C.

Argument re non-suit

Mr. Beament: Your Worship is in error on the facts on Count C. In that Exhibit 22-B, there is no evidence it or its contents were in Miss Palmer's possession in Eastview on the dates charged in the information. It was acquired by the police in the station on the fourteenth or fifteenth of September, which is two weeks after the offence of which we are accused.

Mr. Mercier: It might be constructed as showing the habit; there is no positive evidence it was not there or was there.

Mr. Beament: You are not suggesting the onus is on the accused to make her case?

Mr. Mercier: It might show habit, Your Worship.

The Court: It is a good point you have raised, Mr. Beament.

Mr. Mercier: There is also the evidence: Several witnesses have said Miss Palmer took these exhibits out of her bag.

The Court: There is only one, Mr. Mercier, who mentions the fact she took the pamphlet out of her bag. The others mention just the sample box.

Mr. Mercier: If the pamphlets were there on the fourteenth, it might be logical to assume they were there before.

The Court: At the moment, I cannot find anything in the evidence that goes against your contention.

Mr. Beament: The question didn't come in until the police were examined.

The Court: I will examine the evidence at noon and deal with it this afternoon.

Proceed with Count B for the moment; it might rule out Count C, but Count B definitely stands.

Mr. Wegenast: I hope Your Worship will keep your mind open and these findings of fact are only prima facie on the evidence.

The Court: Simply prima facie on the evidence.

Mr. Mercier: That is quite clear from His Worship's remarks.

Mr. Savoie

Denis W. Savoie, duly sworn, deposed:

To the Court:

Q. Your name?

A. Denis W. Savoie.

To Mr. Wegenast:

Q. Mr. Savoie, you are the relief officer of the Town of Eastview?

A. Yes, sir.

Q. And you have certain records of your work?

A. Yes, sir.

Q. You haven't them with you?

A. No.

Q. Will you be prepared to let us have them?

A. Yes, what I have ready.

Q. In what form are they; cards or sheets?

A. Well, of course, there are all sorts of records. Originally, there is the application for relief. There are the individual receipts for relief already issued and then statistics on costs, numbers of persons on relief and all that sort of information.

Q. Are you in a position offhand to give us information as to how many persons are on relief?

A. Yes, sir.

Q. You haven't the records here?

A. No.

Mr. Mercier: Is it my learned friend's purpose to recall the witness later on?

Mr. Wegenast: If he has them in his head.

The Court: There has been no objection so far.

To Mr. Wegenast:

Q. How many people are on relief in Eastview now?

A. Twelve hundred and forty at October thirty-first.

Q. How many families are on relief?

A. That is about two hundred and fifty.

Q. How many were there on relief last winter, say in the middle of February?

A. February, 1936, well, there was substantially more than that. At the very least, -- four hundred persons now –- there was even more than that. There must have been six or seven hundred persons more on relief in February than at the present time.

Q. When was the peak of numbers on relief?

A. Oh, December, January and February, I think was our peak.

Q. Of this year?

A. December, 1935; January and February, 1936.

Q. Have you ever seen anything like this or any part of it? it is supposed to be a survey by the Ottawa Council of Social Agencies.

A. No, I don't think I have.

Mr. Mercier: What is the exhibit number; is it an exhibit?

Mr. Wegenast: I hadn't intended putting it in as an exhibit; I thank you for the suggestion.

Mr. Mercier: I want all the information available.

Mr. Wegenast: This is June, 1935, and I want to ask the witness if conditions are substantially different.

The Court:

Exhibit 53-B

To Mr. Wegenast:

Q. Were you relief officer in June, 1935?

A. No, sir.

Q. Were you in the preceding winter?

Mr. Savoie

A. No, since April first, 1936.

Q. By the way, by whom are you appointed?

A. By the town council.

Q. Not appointed by the government?

A. No, sent by the government, but appointed by council of the town.

To the Court:

Q. Since when?

A. April first, 1936.

To Mr. Wegenast:

Q. I see here in the report in June, 1935, the number of people on relief is put at twenty-three hundred people?

A. I don't think it was that high, but if you are asking me if conditions today are any different from then, I would say they are much -- very much better.

Q. When did the substantial betterment begin?

A. Well, from June of this year, both our number of persons on relief and our costs have receded to a great extent; it has been going down continuously.

Q. When would you say that going-down started?

A. I don't want to say anything and be proven wrong, but my own records ---

Q. I can't cross examine you?

A. I came here in April and I think we started to clamp down a little and things immediately started to go down, but when the big drop first came would be from the end of April; it has been going down continuously ever since.

Q. You are getting one hundred per cent assistance from the provincial government now?

A. Not one hundred per cent; the municipality has to make its contribution.

Mr. Savoie

Q. What is its contribution?

A. I have never figured it out; the town contributes five thousand and the total would be about one hundred and thirty thousand.

Q. So the town is contributing less than five per cent?

A. Oh, yes.

Q. You will find a statement here that ninety-five per cent of the people on relief are French; do you agree with that?

A. Yes, there is a great percentage; I don't know what.

Q. What I wanted to know from you, Mr. Savoie, is some figures as to the number of children born to families on relief; can you give that off hand?

A. No, that is something we have never paid any particular attention to, so we have no figures on that.

Q. It wouldn't be difficult to obtain that?

A. Not particularly.

Q. Would you be willing to undertake that yourself or could someone else take it in hand?

A. I don't know whether I should say this or not, but relief records have always been considered as something very confidential and our instructions from our department are not to make any information public or not to give any information that pertains to families on relief. Now, I don't know whether I can just go ahead and get it; I suppose it can be gotten.

Mr. Mercier: I submit, Your Worship, the witness cannot give information without an order of the Court.

Mr. Wegenast: It is quite clear that they don't want information given as to particular families, but there is nothing in that to prevent giving out general figures.

The Court: General figures are in a different category and giving them, you wouldn't have to give particular information about any one family?

The Witness:

Mr. Savoie

A. No.

To Mr. Wegenast:

Q. How long would it take to get those figures out?

A. I would have to go back before my time and the records were not in very good shape then. I can give since my time, but before that, I can't give very much.

Q. You will let us have what you can?

A. Yes.

Q. How shall we go about getting this, Mr. Savoie?

A. I wonder; can I ask for an order to get that information?

To the Court:

Q. If it will be of any assistance or protection, -- no information relating to any particular family, but just general information –- I will make an order for your protection?

A. Yes, it will take a day and a half.

To Mr. Wegenast:

Q. We will give you three or four days. Now, Mr. Savoie, can you make any observations as to the size of families on relief; what is the largest?

A. I think we have three families of thirteen people.

Q. People or children?

A. Eleven children.

Q. Is eleven children the largest you have?

A. Yes, eleven is the largest we have.

Q. Can you give any idea as to the spacing of those children, apart?

A. No, no idea at all.

Q. I think you might ascertain that for us; you can give them fictional names or what you like, but tell us about the spacing?

Mr. Savoie

A. (No reply).

Q. I think we will trouble you to do this too, Mr. Savoie; segregate the figures of those families that are capable of having children; where, for instance, there isn't a father or mother, there obviously cannot be children, or where the mother is above the age of forty-eight, there wouldn't be any more children?

A. (No reply).

The Court: Among those large families –- are you asking him to tabulate every family on relief as to spacing?

Mr. Wegenast: He is to look them all over and I am asking him to tabulate them as to spacing. We want to be able to set the figures of births alongside the number of families that could have births. This, Your Worship, is part of the technique of statisticians. We purpose calling Professor Kemp of Toronto University whose particular task is to teach others how to consider statistics and if there is no objection by anybody, I suggest we might save time if Professor Kemp could co-ordinate with Professor Savoie so when we get the figures, we will have no fault to find with them. As to statisticians in themselves, Your Worship, as the saying goes, "there are liars, other kinds of liars and statisticians".

Mr. Beament: "Liars, experts and statisticians."

Mr. Mercier: I see where the evidence in rebuttal might be considerable.

Mr. Wegenast: We want to save Your Worship any recriminations on that score and if Professor Kemp could look over the figures with Mr. Savoie.

The Court: Has the Crown any objections?

Mr. Mercier: No, qualifying the witness' first statement that his statistics are confidential, it is entirely up to him.

The Court: I am afraid we will have to leave that to the witness. I can't order him to display those books to the professor.

The Witness:

A. I think if we want to save some argument, I will talk

this over with the professor before starting.

CROSS EXAMINATION

To Mr. Mercier:

Q. Why not get the figures for the previous years also?

A. I have only 1935 compiled with 1936. Any other information I can get previously would be just general information.

Q. Now, you told my learned friend there was a reduction in the relief. Have you any idea as an official of this municipality what the cause of that might be?

A. Just a lesser need for relief.

Q. What is the cause of that lesser need for relief?

A. People are working.

Q. In greater proportions than before?

A. The last year, anyway.

Q. And my learned friend has asked you if forty per cent are French?

A. (No reply).

The Court: Ninety-five.

To Mr. Mercier:

Q. I would rather term it this way; Canadians of French origin?

A. I can't say there are ninety-five and I can't say there aren't ninety-five.

Q. Do you know what the population of Eastview is as to Canadians of French origin or people of other origins, commonly called English speaking?

A. I don't know that either.

Q. You might help Professor Kemp find that out. And you don't know if children born on relief were born while their parents were on relief?

Mr. Savoie

A. There are some.

Q. It hasn't prevented the reduction of relief lists, the fact more children were born?

A. No, it hasn't.

Mr. Wegenast: That is all.

(Witness retired).

The Court:

"Exhibit 53-B ("Survey of Greater Ottawa")

Exhibits filed by consent

Mr. Beament: I have discussed these exhibits I propose to put in with the Crown Attorney and he has consented. The first one is the Labour Gazette; it will be Exhibit 54-B, issue of October, 1936, which shows at page 886 and following pages the latest available figures on unemployment in Canada.

Exhibit 55-B: A letter and three statements from the Census and Vital Statistics Branch of the Dominion Bureau of Statistics showing in three methods the relation between birth rates and infant mortality.

The Court: It is a letter dated October 21, 1936, from the Dominion Bureau of Statistics.

Mr. Beament: Exhibit 56-B is the report of the Dominion Commissioner of Unemployment Relief, up to and including March 31, 1936. That is the last report available and it is put in for the purpose of showing, as it does show, the amount expended by the Government of the Dominion of Canada for relief purposes during the period in which the Relief Acts have been in existence, roughly.

Exhibit 57-B is a photostatic copy of relief report of the City of Ottawa for the month of February, 1936, showing employables and unemployables.

Mr. Wegenast: These will be acceptable to His Worship; we haven't copies.

The Court: What?

Exhibits filed by consent

Mr. Beament: We have extra copies of 56-B.

The Court: Surely you can get copies of these?

Mr. Wegenast: Yes, I didn't know we had them.

(E-1 follows)

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

Volume III (of 9 volumes)

Pages E-1 to F-36

Mr. Wegenast

REX vs. PALMER

Silcox (I)

Claris Edward Silcox, affirmed, deposed:

To the Court:

Q. Your first name?

A. Claris Edward. I wish to affirm.

Q. You affirm?

A. I do.

Q. Address?

A. 166 Douglas Drive, Toronto.

To Mr. Wegenast:

Q. You are a Canadian?

A. Yes.

Q. Born at Embro in Oxford County?

A. Yes.

Mr. Wegenast: I don't know if Your Worship knows what it means to be born n Embro; we in Western Ontario do.

The Witness:

A. It is a highland community.

To Mr. Wegenast:

Q. You are general secretary of the Social Service Council of Canada?

A. I am.

Q. Will you tell His Worship what it consists of?

A. It was organized in 1907 to promote social welfare generally and it was re-constituted in 1919 when it received a general charter. I think it was the first organization of its kind in Canada to receive a charter.

Its major concern is the study of all social problems, especially those that are recognized as relating to the welfare of the people of Canada. Its scope extends throughout all the provinces, also Newfoundland and Bermuda. At the present time, it is essentially -- or for the most part, its membership is limited to a number of Dominion-wide churches; only Dominion-wide organizations can become units.

At present, these are the Baptists of Ontario and Quebec; the Church of England in Canada; the Central Conference of the Evangelical Church; the Salvation Army; the United Church of Canada; the National Council of the Y.M.C.A.; and I might also add that the Society of Friends has requested affiliation within the last year. Their membership must be passed first by the Council and only within the last few weeks, the committee on Church Life and Work of the Presbyterian Church has recommended to the General Assembly that the Presbyterian Church become affiliated with our council.

Q. I suppose we might put in this brochure?

A. We issue that.

The Court:

Exhibit 58-B, Pamphlet issued by the Social Service Council of Canada

To Mr. Wegenast:

Q. I suppose as secretary of the Social Service Council of

Canada, you are what most secretaries are, “the works”?

A. I regret sometimes that seems to be the case.

Q. I would like you now to tell His Worship what your qualifications are for that post. First, let us know what your academic attainments are?

A. Graduate of the University of Toronto; I graduated in the year 1909 with the degree of Bachelor of Arts. From there, I went to Brown University, Providence, Rhode Island, where I spent three years and received from that university the degree of Master of Arts and (illegible) in Sociology. My professor there was Professor Lester Ward who was the star of sociology on this continent and is the nestor or grand old man of sociology. Then, Harvard, where I studied under Professor Peabody and received the degree of Bachelor of Sacred Theology from that institution. Then, I was in work in the active ministry in New England and New York City for eleven years.

Q. What church?

A. Congregational in New England and New York; and I am still connected with the Congregational Church. Part of that time, I was pastor in the City of Newport, Rhode Island, where during the war we had an extraordinary number of representatives of the army and navy, 35,000, and where many numerous complicated social problems had to be solved.

I might also say that in 1925, I resigned from the active work of the ministry and was sent to Europe with The Inquiry specializing in social education, and was with the World’s

Y.M.C.A. in studying problems of modern youth and prepared a report in Geneva which served as the basis of the world’s Conference at Helsingfors in 1926. After that I returned to the States.

To the Court:

Q. In 1929?

A. 1925 and 1926 at Geneva.

Q. Yes.

To Mr. Wegenast:

Q. And 1926 at Helsingfors?

A. Yes, and I returned to the United States in 1926 and the next two years worked largely in the field of better relations between Catholics, Protestants and Jews and Christians, working almost exclusively in that field for two years; perhaps a little over two years.

In 1929, I was asked to undertake the responsibility for a rather comprehensive study of conditions in the Latin American continent under the International Survey and I spent a year and a half, part in Spain, Portugal, Cuba, Mexico, Brazil, Uruguay, Peru and numerous other places, going and coming.

Q. What was this International Survey?

A. It was primarily a study of the work of the Y.M.C.A. and Y.W.C.A., a joint study to discover the value of the work being done in the foreign field and it had to do with the field of physical education and normal education; we had to take up entire social problems that we found in these countries to see

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whether or not these organizations were really trying to meet definite needs or whether their work was a supererogation. All the (illegible) work was not connected with the Y.M.C.A. or the Y.W.C.A.; I have not been a member since college days

Q. Did you have anything to do with sex problems?

A. One couldn't go to Latin America without having to do with sex problems. At Helsingfors in 1926, the whole question of the relationship of the attitude of young peoples to sex was one of the most important subjects for discussion.

Our reports at that time came from widely different types of country; from Madagascar, China, India, from various African colonies, from Latin America and all different European countries, and one recognized when all this material came together what a wide divergence of views on sex problems there was and it was my duty to synthetize those views and, afterwards, prepare a report on the discussion which followed, which was sent to the American Social Hygiene Review and was published in 1927.

Mr. Wegenast: I don't know whether Your Worship cares to see that report?

To Mr. Wegenast:

Q. I see this is reprinted from the Journal of Social Hygiene, 1927, under the auspices of the American Social Hygiene Association. I am interested not merely in the fact of it, but as I wouldn't like my learned friend to think I am withholding anything, I think I will submit it as an exhibit. It does bear also on the competence of the witness.

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The Court:

Exhibit 59-B

The Witness:

A. In connection with the survey in Latin America, I had to take up problems of health, venereal disease and general problems of promiscuity, which are rather notorious in certain Latin American countries, and I had to consult various public authorities, e.g., in Sao Paulo and naturally that was one of the most important subjects to be dealt with.

Q. You have written on these subjects?

A. Yes, and I read them myself; it is supposed to be rather heavy reading, I am sorry to say.

Q. I don't know if my learned friend will cogitate on the scriptural passage, "Oh, that mine enemy had written a book". You are also editor of a paper called the "Social Welfare"?

A. Yes, that is the official organ of the Social Service Council of Canada.

Q. I would like an explanation of the science and scope of sociology; it is a science?

A. There may be some discussion as to the exact scope of sociology, but I think that it is generally recognized and is certainly a science; one of the most important and most difficult of all sciences. As a science, it must follow an inductive method of understanding human relations. As a pure science, you should not bring any pre-suppositions of what things ought or ought not to be into your study, but let yourself be guided by what you actually find.

Q. When you say "a pure science," that may be not quite clear; what do you mean by that?

A. Well, sociology as a pure science is objective. It is a matter of indifference to pure science whether people behave this way or that, but how they behave. After you have gone to the stage when you feel you have some reasonable data of human behavior, you may be interested in applying such knowledge, if you have any, to the problems of human welfare. So I would say sociology moves beyond pure science to applied science, which again is fairly akin to social work in general.

Q. Yes?

A. Where sociology does that or where it seeks some of the goals of human action, it becomes very closely akin to philosophy. So it is really a science and a philosophy and aims when it becomes combined with philosophy to approach (illegible) the real (illegible) aims, to create or help social improvement. And perhaps one might say, in a sense, the aim of sociology is to provide a scientific foundation for a conception of the public good.

Q. Coming down to this work Miss Palmer was doing in Eastview, will you tell us whether in your view or how much of it was sociology and how much social service work?

A. I would have to distinguish between sociology and social service work.

Q. Applied sociology?

A. R.M. MacIver, formerly professor of economics at Toronto and now of Columbia, has defined the relation of sociology to

social work as the relation of a science to an art. It is quite possible a person might use certain facts which sociology turns up as an art without having a complete foundation in sociology, and vice versa.

Q. Sociology being a theory, Miss Palmer was practicing the art?

A. In at least one important aspect; she was engaged in social work directed primarily to the question of birth control.

Q. If you can lay yours hands on what Professor MacIver says?

A. This is found in a little volume put out in 1931, "The Contribution of Sociology to Social Work," and the first sentence is, "The relation of sociology to social work is the relation of science to an art."

Q. Now, we must take it from what you say that sociology as a science takes tribute from the other sciences?

A. It must of necessity.

Q. And what others?

A. The social sciences include a wide variety; history, anthropology, economics, geography because of the importance on human group relations of climate, and one might enlarge on those almost indefinitely. Perhaps one can move over into the more limited areas of education, housing, public health; everything of that kind can be included in sociology. It must make its observations and draw conclusions from what other scientist in various fields are turning up all the time. The sociologist must proceed from those findings to analyze them and especially

to synthetize them.

Q. Direct your mind to the question which this Court has before it, of birth control. Under what heads do you think that ought to be considered or, in other words, suppose you consider the arguments for and against birth control; under what sub-divisions should a preacher put them?

The Court: Preacher or teacher?

Mr. Wegenast: Preachers are more used to making it "firstly, secondly and thirdly," and I am asking Mr. Silcox as one.

The Witness:

A. I have been accused of any end of points when preaching. The subject is so vast and comprehensive from a sociological point of view, it is extremely difficult to set further definite classifications. One might consider first public health, provided you include in medicine, mental health and psychiatry.

To Mr. Wegenast:

Q. And prevention?

A. All preventive forms of medicine.

Q. That would be medical knowledge?

A. And secondly, it might be economic.

Q. Don't explain them; just take the heads?

A. In the third place, you might consider it from a biological or eugenic point of view. In the fourth place, the moral point of view, which almost inevitably draws us close to subtle and refined considerations, and one would have to admit

there might be many other aspects which we might lump and call sociology.

Q. Suppose we start with one of those heads. First, let me ask for two or three authorities of your statement that birth control is a matter of sociology, and may I couple with that, that the dissemination of birth control knowledge is a matter of social welfare work?

A. I think that possible.

Q. We don't want to put them in?

A. I have here the "Encyclopaedia of Social Sciences," vol. 2 which is possibly the most important reference book in the study of sociology because it covers almost everything there is to consider. The year of publication of this edition is 1930. There is a very full article on birth control.

Q. Find a short paragraph or a few sentences which will bear on the place of birth control in sociology?

A. On page 559 (Exhibit 60-B):

> "Methods of birth control have varied with the type of culture and the amount of available knowledge. Infanticide (q. v.) has been and still is widely practiced among primitive peoples and was prevalent in all the East Mediterranean cultures of antiquity."

Q. Under what heading is the article?

A. "Birth Control." It is difficult to pick any particular sentence.

Q. On birth control?

A. Yes, there are thirteen columns altogether on the question of birth control.

Q. In the "Enclyclopaedia of the Social Sciences"?

A. Yes. I have here the "Social Work Year Book," 1935, published by the Russell Sage Foundation. (Exhibit 61-B).

Mr. Mercier: I don't know if all these books do come in as evidence, but Your Worship or the Crown might wish to consult them.

The Court: Where are they available?

Mr. Mercier: If reference is made to them, I think they should be put in as evidence.

Mr. Wegenast: We could swamp the Court. I was going to suggest -- and I think we have authority -- that in this case, Your Worship should feel free to consult whatever literature there is on the subject. The question is so extraordinarily broad, the question of public good, that I have been prepared to argue, apart from any authority, that Your Worship is entitled to draw largely on judicial knowledge, which is what one finds in newspapers and elsewhere. Subject to what my learned friend may say, my suggestion would be for Your worship to accept them.

Mr. Mercier: What is the aim of putting them in?

Mr. Wegenast: To read special passages.

The Court: You have asked him to produce authorities and he has produced an article; can't you do better than that?

Mr. Wegenast: The article was by way of showing what we find in the "Encyclopaedia of the Social Sciences" on "Birth Control".

Mr. Mercier: In thousands of dictionaries "birth control" is found.

The Court: It is the "Enclyclopaedia of the Social Sciences" and it might refer to anything. It doesn't necessarily say that is an authority that birth control is a part of sociology.

Mr. Wegenast: I have given it for what it is worth.

The Court: If you are going to refer to any of these matters, they should be exhibits.

Mr. Wegenast: I am satisfied. In the case of the House of Lords, Lord Wrenbury feels free to say ---

The Court: What case?

Mr. Wegenast: Sutherland and Stopes, 1925 Appeal Cases, begins at page 47. I am going to refer to this later. His Lordship points out he has found in the columns of the "Times" certain facts. At the beginning of his judgment, he refers to a National Birth Rate Commission and brings the story up to a certain point and says from the "Times" newspaper of November eighth, "I have learned the birth control committee of this commission met this year…and others gave evidence".

The Court: Was that put in as an exhibit? We don't know what he meant by that.

Mr. Mercier: He might have said he read the columns of the "Times" and thought something from it; that doesn't say His Worship has read this "Encyclopaedia of the Social Sciences," although he might have.

To Mr. Wegenast:

Q. Go on with it?

The Court: Are you putting it in?

Mr. Wegenast: Yes, but we want to consult them during the trial.

The Witness:

A. Yes, I hold the "Social Work Year Book".

The Court:

Exhibit 60-B, "Encyclopaedia of the Social Sciences"

The Witness:

A. I hold the "Social Work Year Book, 1935. We have no year book in Canada, to my knowledge, but this contains the activities of 990 agencies in the social field. On page 47,

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there is an article on birth control from which I will read this paragraph:

> "The birth control clinic movement has expanded rapidly in the last decade, and social case work agencies, for the guidance of their clients, are increasingly calling upon such clinics and upon private physicians for medical assistance. At the present time, not less than 150 birth-control clinics are operating in the United States, though some of them, located in hospitals, are not generally known as such. In localities where clinics are not yet functioning, the American Birth Control League has several thousand co-operating physicians. Current information as to the location of birth-control clinics may be obtained from the American Birth Control Leagues."

That is on page 48. I would indicate that this volume, which is one of three, the first was published I think in 1929, the second in 1933 and the last in 1935; all three contain articles on birth control.

(Above filed as Exhibit 61-B).

I hold one of the newest text books on sociology, "An Introductory Sociology" by Kimball Young. On page 181:

> "In the light of these facts, what are some of the suggested solutions of the problem produced by these 'danger spots' of excessive pressure of numbers? Among many solutions offered, we shall mention six: (1) emigration to other countries, (2) the postponement of the age of marriage, (3) the diffusion of the practice of birth control, (4) further advances in science which increase food supply, (5) peaceful international agreements looking to solution of problems arising in connection with the use of land, markets, raw materials, etc., and (6) the seizure by force of unused or underused land areas by those overpopulated nations which are powerful enough to effect it."

The rest of this chapter is an exegesis of those six various procedures, but in any treatment of population by sociologists,

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it is practically imperative that they consider the pros and cons of birth control.

(Exhibit 62-B, the above).

I might also put in an article by Father Kerby of Washington in the "Catholic Encyclopaedia," Volume 14, special edition. Page 116, there is an extraordinarily interesting article on sociology itself. I quote from the bottom of the page:

> "If, for instance, the sociologist proposes a standard family of a limited number of children in the name of human progress, by implication he assumes an attitude towards the natural and Divine law which is quite repugnant to the Catholic theology. Again, when he interprets divorce in its relation to supposed social progress alone and finds little if any fault with it, he lays aside for the moment the law of marriage given by Christ."

He deals with the interaction of secular sociology and sociology founded on Catholic, Christian or other principles.

The proposal for a standard family is one you might expect from the sociologist.

(Above filed as Exhibit 63-B).

Q. Have you anything else on that point?

A. With regard to the general question of sociology as a science?

Q. No, to what extent or relation birth control is a part of sociology?

The Court: Is MacIver's book going in? (Exhibit 64-B).

To Mr. Wegenast:

Q. You have nothing more than that?

A. One might add historically that this whole question has been highly discussed ever since Malthus spoke.

Q. He didn't favour birth control?

A. Not artificial contraception. He saw the danger in

progression of population geometrically to a progression of natural resources arithmetically.

Q. Put it in common English?

A. If you had a backyard in which you kept rabbits and all the rabbits would get to eat would be in the yard, you would have a geometrical progression of rabbits by doubling and redoubling and you would not have any parallel development in the food supply.

Q. The grass in the backyard?

A. Yes, the food supply in the backyard.

Q. In other words, if population keeps on multiplying, there will not be enough to eat?

A. Yes. So he said something would have to be done to restrict the population if it would not out run the world's resources. He himself could only advocate extending the age of marriage or total abstinence. He himself married and had, I think, two or three children, but he didn't advocate anything more than that.

Then, about 1820, certain writers carried that idea of limitation of population further and advocated some use of contraceptive devices and from that time to this, this matter has been constantly discussed by sociologists.

Q. Let us leave that for a moment and tell His Worship something of the methods and conditions under which birth control work is carried on in different countries.

The Court: Adjourn for five minutes.

(Court resumed after five-minute adjournment).

To Mr. Wegenast:

Q. We were on this point: how social welfare work is carried on. I would like to have a general statement as to the way in which it is carried on and the methods by which it is carried on in some of the different countries and under what auspices?

A. Generally or birth control?

Q. This particular branch which we always have in view?

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Mr. Mercier: General or birth control?

Mr. Wegenast: General.

The Court: Can't we get to birth control right away?

Mr. Mercier: If we study the social conditions of the world, this will be another kind of stork derby.

The Court: I hope it won't last ten years.

Mr. Mercier: It might.

To Mr. Wegenast:

Q. You have heard what the Court and my learned friend have said?

A. The auspices under which social work and birth control is carried on in some of the different countries of the world would vary from country to country and possibly from community to community. If one wants to go back into history, most social work was carried on in the past, up to the eighteenth century, under the aegis of the church. It built institutions, orphanages, homes for the blind, aged and so forth, and even gave its charitable doles which were distributed through the church, with few exceptions, like the Elizabethan poor laws in England.

Then, I would think one would have to recognize, through the eighteenth and nineteenth centuries, the increasing development of private social work where individuals, feeling a particular need that society had, got together apart from the church and state and organized welfare organizations, supplied finances, workers and started doing things.

I think any person who has studied social welfare work in the United States, Great Britain and Canada -— possibly outside of Quebec —- will recognize the very large field in which initiative has come from private persons grouping themselves together. Sometimes, they may seem to be fanatics of cranks, but they either prove their point or prove no point is there.

Q. What about single individuals?

A. The records of social work are full of enterprises started almost exclusively on the part of one individual who became possessed of an idea.

Q. For example?

A. One of the most famous examples in history of social work on this continent is Dorothy Dix who, about the year 1840, felt terribly about the conditions of the insane. Prior to that, an insane person usually was put in gaol. Dorothy Dix visited some of these gaols and dungeons in which these people were kept and she went on the war path on her own.

One of the most noteworthy examples is when she visited a wealthy man, Butler, in Providence and she said, "I want forty thousand dollars from you to establish a new wing to the hospital where we can house the insane," and to her surprise and Butler's, he said "I will give it to you". And that was the beginning of Butler Hospital where some of the most important work for mental cases in the United States has been carried on since. It was because she went on the war path.

Q. Any other examples?

A. Florence Nightingale and the Red Cross; Elizabeth Fry; Howard Plimsoll, who tried to protect people travelling on ships in the days when there was no water line on ships, and he started an agitation which compelled all shops to have a water line so people could know when embarking if the boat was overloaded.

These people became obsessed with an idea and carried it through.

In my studies in Latin America, I found that the Latin American is not quite like the Anglo-Saxon. He more or less waits for the government to take action. Any time I would suggest to a Latin American sociologist that such and such a thing needed to be done, he would say, "that is a good thing; we must take that up with the government".

I think in the United States, the government would be about the last person they would take it up with; they would work it out themselves. Then, when they have proved their point, the government comes along about fifty years later and takes it over. That is the difference between the Anglo-Saxon mentality and the Latin American mentality.

Q. Is there anything else you want to refer to on that?

A. General or birth control?

The Court: Birth control.

To Mr. Wegenast:

Q. The question of individuals engaging in this, like Mr. Kaufman?

A. As far as birth control is concerned, it has been promoted entirely by individuals and groups gathered around them. This isn't the first court case in the history of birth control.

There is the famous case in 1977 when Bradlaugh was hailed into court. Also, Truelove. Marie Stopes in England, and the case of another very active lady in the United States who has spent a good deal of her time in the effort to practically force it upon public attention, unwilling though it may be. Had it not been for those individuals, whether right or wrong, this department of social work would never have received the promotion which it otherwise has.

Q. I think you have a passage here in Bromley which you might refer to. Justice Riddell has said this is perhaps the best book on birth control yet written, "Birth Control: Its Use and Misuse," pages 205 and 206?

A. This relates to the extent of the number of clinics in the United States:

> "In September, 1934, there were 147 clinics and mothers' centres scattered over the country, and more are being organized every month. These centres of birth-control information are of different types, although they are all staffed by accredited physicians. A certain number, like Mrs. Sanger's, carry on under independent auspices, some having been established by a committee of public-spirited men and women, others by a state birth-control league or local birth-control group. A second type of clinic, like the one in Hull House, Chicago…" ---

If I might interject, it is generally well known Hull House in Chicago is the mother house of social settlement in the United States.

> "…is housed by a social welfare organization and

> supported either by a state or local league or by a responsible group of citizens. A third type is maintained by hospitals as part of their service. A fourth, still comparatively rare, is supported by the public health authorities. In a few communities and rural districts where there is no established clinic, arrangements have been made with reputable physicians to advise patients of the lower- and moderate-income class on a clinic basis.
>
> In New York City, the hospital clinics for the most part confine their services to their own patients and make admission so complicated than many women prefer to register at Mrs. Sanger's clinic or at one of the neighborhood mothers' centres now located in a number of settlement houses. In a few cities, however, the hospital clinics serve a wide public. In Detroit, the Harper Hospital Clinic is one of the most active in the city, and in Cincinnati, the Maternal Health Clinic, established under the aegis of the Academy of Medicine, and now housed in the Children's Hospital Research and Clinic Building, serves every class of the community."

(Above filed as Exhibit 65-B).

Q. We must not trouble His Worship too much with this?

A. I might add that I have here a list of centres in the United States as of June, 1935, and at that time, they had 203; in fact, it had grown from 147 to 203 in one year. This list tells the location of these clinics, forms of admission and regulations regarding admission.

(Filed as Exhibit 66-B).

To the Court:

Q. Compiled by the American Birth Control League?

A. Yes. I also know that In Europe, Germany, Austria and Switzerland, there have been marriage consultation centres established. In some cases, these are under the auspices of the church and in some cases are promoted by secular bodies. Some give information on contraception; some do not. Some cover the

whole wide field of marital guidance. Some are under government auspices.

The reason why the movement flourished in Germany, prior to the advent of Herr Hitler, and received so much impetus was that state health insurance, widely practiced in Germany, brought out clearly that the expenses of taking care of women who had abortions performed became a big drain on the state health insurance funds and consequently they became interested in promoting this type of clinic, partly to protect their own finances.

In England, of course, there had been a running campaign for many years and but a few years ago, the Minister of Health issued instructions whereby in regular medical clinics under the Ministry of Health, this information may be given where there are medical indications for contraception.

To Mr. Wegenast:

Q. We have memo 153-MCW; another circular, 1208, and another; all are Exhibit 67-B.

The Court: Circulars issued by the Minister of Health under which clinics are established.

To Mr. Wegenast:

Q. Which of these systems do you regard as the best; the system under municipal authority or by an individual or by an organization or whatever methods there are? Which of them do you think is preferable, and may I ask you to have particularly in mind the method employed by Miss Palmer as, after all, that is what we come back to?

A. That is a difficult question in regard to the relation of private and public welfare. One could easily develop a discussion in the field of social work today in respect to relief and, as a whole, there is now a tendency to delimit the areas of private social work and public social work. Local conditions have a good deal to do with it. National conditions have a good deal to

do with it. Financial conditions have a good deal to do with it. It may be easier to get money from individuals than by taxation.

If a piece of work is regarded as social work, who administers

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it is of far less importance than whether you get it done or not. "For forms of government, let fools contest; whate'er is best is administered best." (Pope's "Essays on Man.")

There are some communities in which government action is admirable; in others, it is a fiasco. In this particular kind of work, the government has been slower in initiating things; although, as we see, when the work has been started, the government has given at least limited recognition to the work and it is very largely a matter at any one moment of the state of public opinion as to whether the work should be initiated by private persons or under government auspices.

I think there is an illustration which I read in Miss Bromley's book a minute ago. She referred to the clinic in Cincinnati. I have visited that clinic and heard its story from the founder and director of it. You have an interesting experiment there and it shows the limits of municipal action.

The Academy of Medicine of Cincinnati approved the establishment ---

Q. Of a birth control clinic?

A. Yes, they took two steps. First, there is the Municipal University. It is not a state nor a private institution; it is municipal and has a department of medicine. Those promoting birth control saw that in the faculty of medicine courses were offered in contraception in order that doctors, lamentably ignorant, might get information needed. Secondly, they established the clinic in the Municipal Hospital, which is subsidized by municipal funds. It is difficult to reckon the religious (illegible) of the City of Cincinnati, but it is said to be 65 per cent Catholic. When it was known that the Municipal University was offering courses in contraceptive techniques and the Municipal Hospital was offering facilities for mothers to come and get the information, there was a good deal of disturbance in the city. There was pressure on the leaders and there was some intimation that the revenue for these might be reduced or withdrawn unless the clinic was removed and the special courses in the university removed, with the result that those promoting the work had to take the clinic away from the Municipal University and it was taken over by the Episcopal Hospital.

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That is an example of the difference between state and private control.

Q. You have made a study of contacts of people with various views and I would ask you to say to His Worship what your position, scientifically and personally, is amongst these leading authorities; am I putting that properly?

A. “Leading authorities” covers a large field; on what?

Q. This man O’Brien, for example; do you know him? He writes “Legitimate Birth Control”?

A. I mentioned about Cincinnati. I was commissioned in New York in 1933 and 1934 to make a study of the points of contention and agreement of the three major religious groups of the United States and Canada: Catholic, Protestant and Jewish groups, and in that study, I naturally had a good deal of entré to prominent persons in those bodies or churches and I had to discuss the question of birth control because that was one of the points of contention. We also had to take up the problem of tension in the community chests and our study took us to thirty cities.

To the Court:

Q. Canada or the United States?

A. Both. We visited the community chest people, federations, Jewish, Catholic and Protestant charities and we got their opinion as to where they got along famously and where there were difficulties, and naturally the whole question of birth control came into the picture.

To Mr. Wegenast:

Q. I want you to satisfy His Worship whether you are on such terms with these people you are in a position to express their views and without bias?

Mr. Mercier: This is getting to be very broad indeed. If the witness is allowed to state the conversation he had with the Bishop of Cincinnati, I am afraid the Crown might have to summons the reverend gentleman to come here to say if the conversation as reported is correct or not. The situation is this: I do not wish, as I have said before, to restrict their

defence of birth control. There is a charge before the Court against Miss Palmer that she did:

> “advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled: ‘Birth Control and Some of its Simplest Methods,’ and also ‘Le Controle de la natalite et quelques unes de ses methodes les plus simples,’ instructions, drugs, medicine or articles intended or represented as a means of preventing conception.”

Their defence is that the common good was served by the actions of Miss Palmer. The evidence should be whether the common good was served in this particular case in the Town of Eastview.

Now, we have been, for a while, going all over the world, going into certain scientific date which is very interesting and the people who are promoting this idea of birth control are endeavouring to make this a case for birth control and are going much beyond the scope of the charge laid before Your Worship.

I believe I should go on record as objecting; although, I do not wish to curtail the whole of the defence and put them within the limits of the charge itself. But I think they should limit themselves in their defence, that the public good was served by the actions of Miss Palmer in the Town of Eastview.

If we are going so far afield, there will be no end to this case. I understand Sutherland vs. Stopes lasted six days in the House of Lords and compared to this, it must have been a small case because, according to this, we may be here until Christmas and I am serious when I say this because the Crown may bring in evidence in rebuttal.

Interesting as the discussion may be and learned as it may be and beneficial as it may be to all of us, I believe we cannot afford here in this court room of the Town of Eastview to make the case for or against birth control.

We are concerned primarily with the offence alleged to have been committed in the Town of Eastview, and a matter of record and in order that I may not be criticized by the profession or the legal authorities, I should put myself on record.

I do not wish to restrain my friends' enthusiasm, but I submit the case should be kept as much as possible within the bounds of

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the charge and even there I am willing to allow some latitude within the bounds of the charge itself.

After all, if the public good was served by Miss Palmer, it is for the defence to show it was served in this case at the Town of Eastview in every particular of the evidence put in by the Crown. Personally, I would enjoy a couple of afternoons with Mr. Silcox.

Mr. Wegenast:

Q. I thank my learned friend and I am quite willing to work within the limits he suggests. There is this observation, however, unless one must regard Eastview as some special plague spot or out of the ordinary, I have the right to refer to conditions in Canada and the United States and in England and other countries as to whether birth control is for the public good because if it is for the rest of the world, why not Eastview?

Mr. Mercier: That is a wonderful cover for the proponents of this movement to deal with.

The Court: Mr. Wegenast, we are not deciding whether birth control is for the public good. We are dealing with the alleged acts of Miss Palmer. I am not sitting up here to say whether birth control is good for the world at large; I am here to decide upon the acts of Miss Palmer. I agree it can't be confined entirely to those narrow limits, but if it is proposed to proceed on those broad general lines with every witness, I must place some limitation.

Mr. Wegenast: Yes, I anticipate that, Your Worship, but I think I can satisfy Your Worship that the other courts –- and this is an important issue no less because it arises in Police Court in Eastview –- and it is no less important that Your Worship shall have before you all the evidence pertinent –- it is no less important in this little court room of Eastview than in the biggest court in Montreal or Toronto.

Mr. Mercier: There was more meat in my remarks than that it is in Eastview.

Mr. Wegenast: Human nature is much the same.

The Court: There can be a narrowing down with full freedom to

Mr. Silcox

the defence.

Mr. Wegenast: I am very conscious of that and I propose to fall right in line.

Mr. Mercier: In order that there may be some understanding, I submit that my learned friend's endeavor to prove that the public good was served –- my submission is that all the conditions existing all over the world are not material to this issue. If the defence can prove the public good was served in the case before the Court, I can't see any necessity for having world-wide conditions brought in here. If I were specially assigned to deal with this and the case were to go to appeal that might be quite all right, but there are limits to what we can possibly do and what we should do.

The Court: The accused is entitled to the best possible defence, but is there no limit to what this Court must take cognizance of?

Mr. Wegenast: I am in this difficult position; I had no idea until this morning that my learned friend wanted to take these particular cases point by point**.** I have to anticipate everything, apparently, according to Your Worship's preliminary ruling. It might be contended that while it is in order that a municipality, provincial or dominion government might do it, it is not for the individual, Mr. Kaufman, to send out fifty nurses.

The Court: That is Mr. Kaufman's method.

Mr. Wegenast: She is just a cog in the machine; I should have argued it that way. Then, the question arises if it is in the public good or public interest, that is, if persons were not approached, -- if that would be a defence and I propose to show by regular methods that is the stock method of carrying on social service work and showing that I think I have put up a substantial item of defence.

The Court: You may be coming to it, but so far there is no suggestion of that.

Mr. Wegenast: We have shown that it is carried on in clinics.

The Court: Yes.

Mr. Wegenast: By various methods and under various auspices.

Mr. Silcox

The Court: But so far you have been entirely on generalities. There is nothing so far in Mr. Silcox' evidence as to this particular case in Eastview.

Mr. Wegenast: Your Worship knows the difficulties of counsel?

The Court: Yes.

Mr. Mercier: And how damaging a little knowledge is.

Mr. Wegenast: When we find that sociologists and experts like Mr. Silcox in social work approve these methods and say they are all right and say they are followed elsewhere.

The Court: Get to that.

Mr. Mercier: Under Section 203 (207) (?):

> "2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required."

The Court: I feel like stating this now: there are two things you have to satisfy the Court on. First, and primarily, you must satisfy the Court as to the acts alleged to have been done by Miss Palmer. If you satisfy the Court the acts she is alleged to have done were for the public good and there was no excess in them, then the case fails. There is no question of going into this general question of whether birth control is or is not a good thing. That is one line of defence. The second is, having put in that evidence, naturally I can't give my decision then as to whether or not you have proved your point; then you must naturally go into the broader question. Naturally, you must deal with both the particular and the general in your defence.

Mr. Wegenast: I have no thought of dealing with the particular before laying down general premises with respect to which the particular must be judged.

The Court: Quite so, but my only comment is: can you not limit to a certain extent the general?

Mr. Mercier: When?

Mr. Wegenast: Right now.

Mr. Silcox

Mr. Mercier: I am very sorry for this interruption then.

To Mr. Wegenast:

Q. Now, Mr. Silcox, let me ask you what are the benefits of the work such as that which was done, according to the evidence, by Miss Palmer?

A. Promotion of birth control from a sociological point of view, I should say it ought to make for a great many factors in the public good.

Q. Let us see; if we take them ---

A. It is commonplace that birth control reduces infant mortality. Secondly, it reduces maternal mortality. Third and fourth would be that it promotes infant health and maternal health. Firth, and particularly valuable, it reduces the number of abortions, which have serious consequences. Sixth, I think a sociologist would argue that it would tend to reduce prostitution and the spread of venereal disease.

Q. Yes?

A. There is a common statement made today by those entrusted with the work that it does promote maternal happiness and contentment and the proper adjustment of sex matters?

Q. Yes?

A. I think it could be argued that it tends to help (illegible) equality and the economic opportunity which at present doesn't exist.

Q. Let us leave the comments?

A. That it would reduce taxation inasmuch as it would enable the family that brings children into the world to assume its own proper share of the responsibility in bringing it up.

Q. Yes?

A. It would improve the race; the eugenist would say that.

Q. Yes?

A. It would improve the birth rate along eugenic lines which is somewhat similar, although different, to the previous point.

Q. Yes?

A. That it would reduce areas of inter-cultural friction.

Q. Explain that better?

A. We know that in the world at large –- I am roaming again.

Q. We are part of the world?

A. The population pressure is serious and an important factor. Wars are caused by population pressure. We find a race between France and Germany and the Italians and others, an effort to get a surplus of man power through indiscriminate breeding, because of the fear of possible conflict. Just as that might be allayed by a more disciplined bringing into the world of

children, so inter-cultural tensions might be relieved. There is a fear on the part of certain sections of this country that the other sections are trying to outbreed them. That creates inter-cultural tension and suspicion and if there is an assurance that this breeding is taking place normally in respect to the economic capacities of the people that factor of tension is removed and sociologically people are themselves and minorities live with majorities without fear, whether it is a national stork derby or international. I may have omitted something.

Q. What about the standard of living?

A. That would be included, partly under the economic, and it can be proved beyond the shadow of a doubt that a controlled population enables the people to maintain standards of living and without that knowledge, they cannot do it.

Q. What is the effect of birth control on infant mortality; have you any authorities to cite on that?

A. I have here a chart which I would like to put in evidence. Perhaps before doing that I might also put in some figures from the general department of statistics, the Dominion Bureau of Statistics, with regard to birth rates and infant mortality in Canada.

I might say that on the whole in the last five or six years the rate of infant mortality has been going down somewhat. I wouldn't care to argue from that that it was because the birth

rate was going down at the same time, but these figures indicate precisely that the provinces which have the highest birth rate are those you will find have the highest infant death rate. That is based on the years 1931 to 1935. The highest birth rate in Canada by provinces is the Province of Quebec, 26.6 per thousand. That is the crude, not the legitimate birth rate.

Q. What do you mean by that?

A. There are various ways of taking the birth rate. It is necessary to know which way it is being (illegible). You might have the crude birth rate, the total births to the total people of all ages and sexes. Secondly, we have another way, i.e., in relation to the total number of women who are considered, as far as we know, the only ones who can bear children. In Canada, there is an excess of men over women. Then, to be more strictly accurate, it is generally regarded that the only women who can produce children are married women between the ages of fifteen to fifty.

To the Court:

Q. What is the method here?

A. The crude.

Q. What do you mean, the rate per one thousand of men and women?

A. Yes.

To Mr. Wegenast:

Q. Legitimate and illegitimate?

A. Yes, all ages and sexes. That is 26.6 in Quebec and 18.5 in Ontario. Now, infant mortality, it is 98; the next to that is New Brunswick with 82.

Q. Ontario?

A. 61.

Q. Now, there seems to be a connection between high birth rates and high infant mortality rates?

A. On the second page, the Dominion Bureau of Statistics has drawn up the birth rates for females, fifteen to fifty, married or unmarried. Here again they have drawn up the birth

rate by racial origin of the mother, because it is recognized there are racial characteristics in fertility.

Mr. Beament: It is Exhibit 55-B.

The Witness:

A. We find, working on the average of the years 1930 to 1932, the highest birth rates of women by racial origin indicate that the Japanese and Chinese are highest in accordance with their numbers; they are more prolific, but the number of these women is extremely small. Another high is the Ukrainian, with 131.9 live births per one thousand females of fifteen to fifty years of age. We come to the better-known races in Canada, the French with 131.4 as opposed to the English with 73.8; the English, Scottish and Irish are between 66 and 73.8. Now, infant mortality shows the same disparity as in Quebec, 108 per thousand live births to mothers of French racial origin. The English, Irish and Scottish vary from 63 to 55. In short, there seems to be a definite ratio between high birth rates and high infant mortality rates.

To Mr. Wegenast:

Q. The Jewish figures also?

A. The Jewish birth rate is the lowest of practically any group in Canada, 44.8, but they have also the lowest infant mortality rate of 41, and in short, I think it is fair to assume that the Jewish child gets care and attention which children of the other racial groups in Canada do not receive.

I think those figures are fairly conclusive that there is a definite connection between infant mortality and high birth rates.

I have a few other things I would like to put in.

Q. Yes?

A. I would like to put in a chart which was prepared on the figures from the census of the United Kingdom in 1911 and the chart appears in the Journal of the Royal Statistical Society. It is based on an analysis of all married couples in England where the wife or the mother had been married at the ages of twenty to twenty-four and who were living in England in 1911.

Mr. Silcox

Now, when you remember that the vast majority of marriages are contracted by women between twenty and twenty-four, that would include practically the majority of homes in England.

This chart -- I think it would require a statistician to explain it more fully –- proves beyond peradventure of doubt that the rate of infant mortality goes up with the speed at which children are born into the world, and I think that perhaps is the most authoritative analysis that could be submitted; it is based on millions of cases in the census of 1911.

The Court:

Exhibit 68-B, Chart

To Mr. Wegenast:

Q. Is there anything else you want to give on that?

A. I might say I don't want to go too far afield again, but the importance of spacing is recognized even among primitive peoples and sociologists know that indiscriminate and hurried breeding is something that even a savage wouldn't permit in his own tribes. An illustration: missionaries in the French Congo have had difficulties in persuading the men to give up polygamy. They found that when a child was born, the man almost invariably took a concubine or another wife and as Christian missionaries, when they tried to find out why, they received this answer every time -– and the wives were just as insistent as the husbands –- "if he doesn't take a concubine and if he has intercourse with me before two years after the baby was born, the baby will die." Consequently, the wife and the new mother preferred, if need be, the man to take another woman rather than imperil the life of a child. Naturally, it is perfectly obvious what is behind that.

Q. Now, I want to make a suggestion to make it easier for me because His Worship and my learned friend hold me responsible for you. Instead of arguing the case yourself, if you would leave that to my learned friend and me and give me the facts you have and the authorities on which you rely that contraception will decrease infant mortality?

A. We have in this very important book which has just out: "Medical History of Contraception," by Norman E. Himes, Ph.D. The bibliography is more than sixty pages. It covers

Mr. Silcox

contraception from fifteen hundred years before Christ to the present time, not only in civilization but among primitive peoples. We have on page 5 (Exhibit 93-B):

> "Reports are available of magical and rational means of controlling conception used by the members of African tribes. Junod (Henri A. Junod, 'Life of a South African Tribe,' i, 55), for example, states that the Thonga prevent conception by what seems to be coitus interruptus. Upon the birth of a child, abstention from intercourse is enjoined. On the day when the child begins to crawl, however, a ceremonial rite is performed and the parents 'must (on the same day) have sexual intercourse, but in such a way that the mother will not become pregnant'. After this rite has been performed the child is considered as a grown-up, full member of the family or tribe."

Q. What other authorities have you? I think you have a passage from a book published here in Ottawa?

A. I have certain facts on maternal mortality.

Q. "Need Our Mothers Die"? (Exhibit 69-B).

A. This is maternal rather than infant mortality.

Q. Are you through with infant mortality?

A. We have a chart here based on studies in the United States where the infant mortality rates are given by the interval since the preceding birth, which I think that can also be handled more adequately by a specialist in this field. Where there is spacing of one year, you have a high infant mortality. If two years, you have it reduced and again at three years and so forth. All the statistics tend in the same direction, that lack of spacing and infant mortality is definitely related to each other.

Mr. Wegenast: Now, would Your Worship relieve me of nervousness and apprehension that this bears on Miss Palmer's case, that is, maternal mortality?

Mr. Mercier: How does it affect conditions here?

Mr. Wegenast: I am trying to get from the relief officer what statistics are available here, but I am surely on safe ground

Mr. Silcox

when I say statistics for Canada and the United States are an important item of evidence.

The Court: They are evidence, but you can't go into the full details how they are prepared. It must be taken into consideration that the opposite side in any case can produce opposite statistics?

Mr. Wegenast: If they can.

The Court: There is evidence of some statistics showing that with spacing of children, the further children are spaced apart, the less seems to be the death rate of the children.

Mr. Wegenast: Then my submission is that Mr. Silcox, an expert in sociology, has the right to refer to authorities on which he bases his opinion and his evidence.

Mr. Mercier: The witness is very clear in his evidence on that point and I believe he has stooped for an authority (reached for a book).

The Court: Himself?

Mr. Mercier: And the deductions he draws from his learning and experience is that the highest infant birth rate coincides with infant mortality. He has made that exceptionally clear and he has put in statistics. I submit there is no use amplifying that by saying certain things exist in the Belgian Congo or South Africa or England, France or Germany. I am quite satisfied.

The Court: Foreign countries have necessarily unknown quantities: if you can confine the statistics as far as possible to Canadian conditions?

Mr. Wegenast: We are doing that very strictly, excepting England.

Mr. Mercier: I might have to go into certain countries and try to prove by this witness that the climate -- say in Borneo.

Mr. Wegenast: If my learned friend isn't ---

Mr. Mercier: I want to be fair.

Mr. Wegenast: I ask him if it is fair to mention Borneo?

The Witness:

Mr. Silcox

A. I mentioned from remote times and only mentioned the Tonga tribe.

Mr. Mercier: Confine it to Canada.

The Court: As far as possible.

Mr. Wegenast: Unfortunately, we haven't them as fully here.

Mr. Mercier: We can't go into the whole economic conditions of the United States.

Mr. Wegenast: He relies on the authorities for his opinions.

The Witness:

A. This is the Dominion Bureau of Statistics report for Eastview for 1931.

Mr. Beament: 1931 is in fact the best report because it is the census. I might suggest, without giving evidence, Your Worship will notice that Exhibit 55-B deals with infant mortality with racial origin of mothers averaged over 1930-31-32 because the gentleman in charge thinks it is the safest way to average; before, during and after the census year. It is the most accurate thing available.

The Court: Yes.

To Mr. Wegenast:

Q. Can you follow that up, Mr. Silcox?

A. I think it would be necessary for me to study these in relation to the size of the community. There were 174 births and 15 deaths in one year, at that time. I couldn't tell you from these figures how many women were in Eastview or what the birth rate was.

Q. Let us have that later; my friend says you have proved your point there. Let us go on to maternal mortality and the effect of spacing on that?

A. If you wish evidence in regard to Canada, it is to be found in the only study that has been made in Canada on this question and this was published in December, last year, in "Need our Mothers Die," a special report of a study made by a special committee of the Division on Maternal and Child Hygiene of the Canadian Welfare Council. The names of the consulting members

of the committee may be found on the second page. It is as careful a study as we have in Canada. I know of no other (Exhibit 69-B).

Q. What does it show?

A. Page 42:

> "All the studies seemed to confirm the fact that the highest death rate occurs in first pregnancies, and in pregnancies after the fifth, with the lowest rates in second and third pregnancies.
>
> These facts taken together may suggest a very definite relationship between economic and social factors tending to defer the age of marriage, and a maternal mortality rate which has remained unchanged or risen in recent years."

To the Court:

Q. Is there anything there as to spacing decreasing the maternal death rate?

A. Not necessarily on that particular point.

Q. You were asked for an authority on spacing on the maternal death rate?

A. It is difficult at that point to distinguish between certain types of spacing and the number of confinements. Most maternal deaths –- when the first child is born you have a very high rate of maternal mortality. That may be accounted for in several ways. In the first place, very often the first birth is a case of illegitimate children and naturally the unmarried mother seeks to conceal her condition and doesn't get medical advice that she needs until possibly it is too late. Illegitimacy and deaths in first pregnancies have a definite relation.

Also, it is fairly obvious that a great many women become pregnant who should not have become pregnant in the first place and should never become pregnant, and pregnancy is practically a sentence to death. "6.2 deaths per thousand confinements."

To the Court:

Q. What are you referring to?

Mr. Silcox

A. The City of Baltimore, in Bromley (Exhibit 65-5)?

Mr. Mercier: I am not very much interested in those.

To the Court:

Q. Have you any Canadian statistics?

A. Unless Eastview is entirely different, it all goes to prove the same thing.

Q. You have been asked on what authority you say that spacing decreases birth mortality. Now, have you any other authorities or statistics of the Canadian maternal death rate?

A. One would have to make a careful study.

Q. Either you have an authority or you haven't?

A. I have no special authority at the moment.

To Mr. Wegenast:

Q. Say so and we can go on to something else. What other authority have you that spacing reduces infant mortality?

A. I think I ought to explain.

Q. No, have you any other authorities than you have given, and then we can explain, or you?

A. Well, I would submit that book by the Canadian Welfare Council is the only thing that has covered Canada.

Mr. Wegenast: I don't know that His Worship has ruled we can't use statistics elsewhere than in Canada.

The Court: This will be Exhibit 69-B, "Need our Mothers Die?".

The Witness:

A. This book has been already submitted into evidence, this little book, the "Rhythm," (Exhibit 80-B):

> "61. Are all Catholic doctors in agreement as to the serious physical consequences of contraception?
>
> Very few have had the occasion to express themselves on this subject in print. Probably the majority of Catholic practicing physicians would subscribe to Dr.
>
> Mr. Silcox
>
> F.M. Walshe's statement in the Catholic Medical Guardian of July, 1927, pp. 83:
>
> 'We have, then, to ask ourselves whether the events which contraception is designed to prevent, namely, pregnancy and parturition, are themselves free from danger. In a country (England) where 3,000 (United States 15,000) women die in childbed every year, and many thousands suffer a life of long morbidity from the same cause, it would be utterly cynical to raise a hue and cry over the dangers of contraception unless we could show that these were accompanied by as great a holocaust of maternal life and health as are pregnancy and parturition. No one could possibly contend that this is the case. Hence, however great our forebodings as to the physical evils which may be associated with birth control practices, we cannot decently initiate an active medical campaign against them and remain inactive and silent where a much greater evil obtains.'"

Now, that doesn't deal with spacing particularly, but the whole question of maternal mortality.

The Court:

Q. We want about spacing?

A. (No reply).

The Court: Adjourn for luncheon.

Mr. Beament: Your Worship said you would check through the evidence as to Exhibit 22-B.

(Court adjourned)

Decision further re non-suit

(The court resumed after lunch)

Mr. Beament: Your Worship said you would check through the evidence as to Exhibit 22-B?

The Court: A number of pamphlets were found in Exhibit 22-B, taken from Miss Palmer September fourteenth, the day she was arrested.

She was charged:

> "On or between the first of August and the first of September that she had for disposal in the Town of Eastview."

The only evidence is that of Mrs. Pharand, to whom this French translation was displayed and with whom a pamphlet was left, so I am afraid we will have to ignore what was found in the bag, as to Charge C.

Now, there is the evidence of one pamphlet having been disposed, but if Miss Palmer intended to dispose of these pamphlets, it is reasonable to expect we would find some evidence among the other women witnesses called by the Crown, at least of displaying of the pamphlet, but no other witness of the Crown states Miss Palmer showed a pamphlet.

She demonstrated a tube and nozzle and jelly to them, but Mrs. Pharand is the only one to whom she actually displayed the pamphlet. She couldn't speak English and the pamphlet was in French.

I think, therefore, it would raise a reasonable doubt as to whether Miss Palmer was disposing of the pamphlets. The accused must be given the benefit of the doubt and it was only in one case; in no other case did she even display a pamphlet.

I think, therefore, the charge under Count C will fail and this will leave the Count B standing against Miss Palmer.

Mr. Mercier: Count C reads, "did have for disposal".

The Court: There is only the evidence of the one pamphlet.

Mr. Mercier: Isn't that for disposal?

The Court: She might have had it for demonstration purposes, not for disposal.

Mr. Mercier: There is evidence she did have for disposal and left it on the table.

The Court: She did, yes, but if it was her intention she would have pamphlets for disposal, it is reasonable on other occasions she would have left or displayed it and in this case, she couldn't speak French and the woman couldn't speak English.

Decision further re non-suit

Mr. Mercier: And the Court will hold on that point that Count C is dismissed?

The Court: I will hold that, yes.

(F-1 follows)

Rex vs. Palmer

Silcox (II)

pp. F-1 to F-36

Mr. Silcox

(Following the Court's decision dismissing Count "C"):

To Mr. Wegenast:

Q. As to the effect of spacing on maternal mortality, what have you decided?

A. There can be no statistics to my knowledge on any large scale on the question of spacing itself, relating to maternal mortality. I know of no statistics on that.

Q. The statistics to which you refer have reference to what?

A. To the incidence of maternal mortality in view of the number of pregnancies. We have much material of that character.

Q. Now, we go to the heading of the effect of birth control on marital happiness. What is the effect of that; first, your own view?

A. My own personal view is that the effect on marital happiness of a knowledge of adequate and harmless methods of

Mr. Silcox

birth control is of such importance that it overshadows practically all other sociological considerations. It is increasingly recognized that problems of divorce, problems of domestic unhappiness, are almost bound to arise where there is not a proper sex adjustment within marriage. And, where it is possible to provide sex adjustment within marriage, then any of the other problems that inherently arise when two people try to live together over an extended period of time are far more likely of solution that if these problems are accentuated all the time by sex maladjustment.

Q. Let us have the authorities you care to refer to on that important point?

Mr. Mercier: Of course, Your Worship, on that point I might say there is not before the Court any evidence of divorce in any of these couples nor is any evidence of any effect on the marital happiness of these couples before the Court. Your Worship may deal with it, but I intend as much as possible to object to any evidence irrelevant.

Mr. Wegenast: Of course, Your worship realizes Miss Palmer's work is preventive; you do not wait until the horse is stolen to lock the stable.

The Court: Dr. Silcox has been proven as an expert on these matters. Can't he give his opinion without referring to multitudinous authorities?

Mr. Wegenast: He could if his counsel would let him and his counsel will be guided by what Your Worship wishes, but I thought Your Worship would like something more than one man's opinion, but I think, if I might so put it, having reference to authorities reinforces his opinions?

The Court: Can you limit his authorities; we are piling them up?

Mr. Wegenast: We haven't had one on this point yet.

The Court: I see him producing about five now; what if he does that for fourteen points?

Mr. Wegenast: I wish the work were less onerous. Each and every time this very learned witness exposes a theory or cites an authority, the Crown not only may have a witness, but in

rebuttal several witnesses and books. On this question of birth control, all the people; doctors, physiologists and theologians, do not agree, so the more this witness brings in authorities the more may come in rebuttal.

I am bound by the duties of my office not to press anything but to bring before Your Worship everything that comes before the Crown, in order that Your Worship can arrive at a proper conclusion. Being bound by my duties, if the defence goes on expanding all these theories and mentioning authorities, -– which I may say have nothing to do with the case at bar –- the trial may last a considerable time and if Your Worship allows them for the defence then they may be allowed for the Crown in rebuttal.

The Court: I cannot refuse the Crown anything allowed the defence, naturally.

Mr. Wegenast: I must use my imagination. If I thought my learned friend would produce three witnesses on this, I would know I must pick four or five. We have no pleadings and I don't know how much negative to prove. I am entirely in Your Worship's hands and Your Worship must see my difficulty.

The Court: I still think on this point there should be some limitation in the matter of authorities cited and the number.

Mr. Wegenast: Let us have in both "Rhythm" and "Legitimate Birth Control," but the better of the two. Suppose we take "Legitimate Birth Control," page 132.

The Court: Isn't the quoting of these authorities already filed as exhibits something for argument?

Mr. Wegenast: If Your Worship says so.

Mr. Mercier: I will have to consider cross examination on all these and we may be here all week.

To Mr. Wegenast:

Q. Let us leave "Rhythm" and "Legitimate Birth Control" and take "Health and Empire"?

A. This is the March, 1936 issue containing an article by Rev. A. Herbert Gray, D.D., on marriage, dealing with "Reconciliation in Matrimonial Cases."

Mr. Silcox

To the Court:

Q. What page?

A. Page 25.

The Court:

Exhibit 70-B

The Witness:

> "I would like to say how surprised I have been to find that of all the causes of failure, the commonest is the failure to achieve sexual adjustment. I am exceedingly grateful for the fact that the British Social Hygiene Council is working at that matter in such a wise and thoroughgoing way. When sexual adjustment is achieved within marriage, it becomes a bond between two people which holds them together while they achieve all sorts of other adjustments, leaving their natures harmonized and liberated, so that they are able to conquer all sorts of difficulties by mutual co-operation. It is, perhaps, the most important factor for the couple who want to solve the inevitably difficult problem of achieving a successful marriage. But when sexual adjustment is not achieved, then the situation produces irritability, depression, resentment, and disappointment; a condition of affairs in which all the other difficulties are magnified and in which many of the problems become insoluble. That is the fact I have discovered and which thousands of others have discovered. It was a great surprise to me, I confess; but there it is. And yet I believe that adjustment -— really true, happy, harmonious, healthy sexual adjustment –- might be achieved in nearly all cases --

very nearly all –- if the right help and instruction were forthcoming for men and women."

To Mr. Wegenast:

Q. Now, let us have one of the two others? You select the best one?

A. This one is "Personality Adjustment and Domestic

Discord." It is by Mowrer of the Jewish Social Service Bureau of Chicago.

Q. The date of the book is 1935?

A. It is based on about eight years' experience in dealing with questions of domestic discord in Chicago and the method used is that of the case method. In the introduction ---

Q. Do you think it necessary to explain the case method as distinct from the statistical method?

The Court: I don't think so.

The Witness:

A. In the editor's introduction, page XI of the preface, he says this:

> "Nevertheless, the place of sexual adjustment must not and cannot be overlooked. Over and over again, it is apparent from the cases that the problem of mutual understanding and adaptation in this area of interaction was a stumbling block to continuity of the family itself."

I just quote that one sentence. The whole of Chapter IX, which one could hardly read in full ---

Mr. Wegenast: Does my learned friend want any part?

Mr. Mercier: My learned friend has no permission to ask me and I certainly do not wish to jump up every moment to object. I must repeat here again; I wish to give the defence all possible latitude, but within reason.

The Court: He said, do you not wish to hear part of Chapter IX.

The Witness:

A. Sexual maladjustment is treated in this chapter.

To Mr. Wegenast:

Q. What does it boil down to in this case –- in reference to this case?

A. Where the couple like to have their more intimate personal relations without undue fear of the possibility of

pregnancy, possibly of some other eventualities, and where both man and wife can experience contemporaneously what is commonly known or called the climax in sex relations, you have the basis for contentment, for happiness, for adjustment.

Where that experience is not possible, then you have a possible cause of nervous tension, irritability, maladjustment and an exaggeration of all the other kinds of difficulties –- perhaps over the pocket-book –- out of all proportion to its real size.

Q. I think we can get along better with your own opinions?

The Court: I thought that is what would happen. He is an expert; let him leave other experts alone.

The Court:

Exhibit 71-B

To Mr. Wegenast:

Q. What is the effect of birth control on the practice of abortion?

A. I would assume abortion is generally regarded with horror. It certainly has been in the history of the Christian church, especially as the church had to face a paganized empire in which abortion was common as we know it in the literature of classical times, and the church steadfastly set its face against it on the ground of the toll it was taking of human life, and I think that position has been generally maintained down to the present time.

We are all aware it is extremely difficult to indicate definitely and accurately the number of abortions which are committed in any country at any time, and the people, for obvious reasons, are not inclined to admit it even when they have committed it.

We have definite studies on this matter and I might refer to, “Need our Mothers Die”.

Mr. Beament: Exhibit 69-B.

The Witness:

A. As far as Canada is concerned, there are no great statistics on the subject, but we have this statement on page 47

(Exhibit 69-B) dealing with maternal deaths; it refers to the influence of abortion in Canada on maternal deaths:

> “F. Abortion. Maternal deaths will never be lowered in Canada until we abandon the ostrich pose in respect to the truth about the toll due to abortion and to sepsis following on abortion.”

It is in the middle of the page.

Now, we have a great deal of statistical information gathered largely from clinics in the United States. One study is based on more than ten thousand cases indicating the number of abortions to the total pregnancies and the result of the various studies has been compiled by Prof. Taussig who was called into the White House conference on child welfare. He has estimated in the United States at the present time there are approximately 681,600 abortions performed every year. He gives in his most recent book –- the most authoritative on this -— the authority on which he draws this estimate and according to his statistics, there is one abortion for every 2.1 living births in the United States at the present time.

I might say he is Professor of Clinical Obstetrics and Clinical Gynecology, Washington University of Medicine, St. Louis and is recognized as an authority on abortion.

In addition, there has just come out a remarkable study of the Oxford Press by Mr. Glass on the "Struggle for Population".

To the Court:

Q. Are there any statistics helpful in that?

A. Yes, I can't remember them. In this volume, which just appeared from the press, he says in Belgium and France after the war, in 1920, an effort was made by organizations against the spread of information on contraception and he deals here –- I do not need to quote unduly from him –- the relative measure of success and failure which the activities of these societies proved.

Q. Give statistics and not conclusions?

A. "While the French and Belgian law…increase of abortion…150,000 live births."

Mr. Silcox

I think in the light of the recognized extent of abortion in the world at the present time and their serious consequences to health, it can be safely assumed that whether contraception in itself is good or bad, at least it is a very potent factor in reducing the number of abortions.

To Mr. Wegenast:

Q. The question of differential fertility, that is, who has the most children, the poor or the rich, what can you say as to that?

A. My own opinion or the authorities?

The Court: Your own opinion.

To Mr. Wegenast:

Q. Yes, your own opinion?

A. I think it is perfectly obvious we don't need any statistics on that point to prove in general the highest fertility is among the more economically depressed classes.

Q. You are prepared to give some authorities?

A. Yes.

Q. MacIver on that, it is at least Canadian?

A. Yes. In a chapter called —- it is from "Population Problems."

To the Court:

Q. What book?

A. That is the name of the book.

Q. What is the date of publication?

A. 1926.

To Mr. Wegenast:

Q. Page 287-288?

A. The article is entitled "Trend of Population with Respect to a Future Equilibrium" (Exhibit 87-B). It mentions the British Report on the Fertility of Marriage, and produces graphs.

Mr. Silcox

Q. What do the graphs show, roughly?

Mr. Mercier: Of course, this isn't this witness' opinion.

The Court: No, I wish this witness would stick to his own opinion.

Mr. Mercier: Your Worship will realize I will not be obstructed in my presentation of evidence in rebuttal even if I have no considerable number of publications as my learned friend has.

Mr. Wegenast: It concerns the nature and validity of the objections.

The Court: We must cross that bridge when we come to it.

Mr. Wegenast: If I take it Your Worship is convinced the largest families are among the poor and those on relief have the largest families among the poor?

The Court: We ask this witness an opinion and he starts reading from an authority.

Mr. Wegenast: I thought MacIver might be an authority.

The Court: Yes, but he reads MacIver's opinion; I want this witness' opinion with statistics.

Mr. Mercier: If all this is admissible, Your Worship may rest assured you will have a greater library than you have even seen before.

The Court: If he would give his opinions, backed by statistics.

Mr. Wegenast: I take it Your Worship is not disputing my right to appeal to an authority, but as to its probative force?

The Court: Right.

To Mr. Wegenast:

Q. Let us have your opinion on the standard of living; it is a matter of sociology?

A. The standard of living is one of the most important facts to be considered in sociology.

Q. Yes?

A. The effect of a knowledge of birth control methods,

whatever those methods of birth control might be, as long as they are effective, would, I think, be adjudged by most sociologists as helping to maintain and spread an adequate standard of living among all classes. The obvious fact is that, as some of us have found out, two can't live as cheaply as one; three as cheaply as two and four as cheaply as three, and so on. That is quite obvious, and the number of children which may be born into a given family does create fresh economic problems, especially in these days when the demand for unskilled labour is being steadily reduced and when the economic opportunities which are present for any person are very largely contingent upon a man's training.

Now, it is very difficult –- in exceptional cases it may be done –- for the parents of many children to give their children the opportunities for specialized training. The result is that at a certain early age, the child in the large family is forced out into gainful occupation before he has had an adequate training and unless he has the ability, he is apt to remain under the heading of unskilled labour. That fact can be learned not so much from statistics, but from ordinary observations.

Q. We now have your opinion on it and we call upon His Worship to exercise a certain amount of judicial knowledge on that point. We have been dealing with the medical, eugenic, moral and sociological aspects. The last has touched almost all the others. I will ask your knowledge, Mr. Silcox, and this, with the exception of certain questions on particular points, will be all I will ask you about. I will ask you now to venture into the dread field of theology, in which you are an expert, and I will ask you this first.

Mr. Mercier: Of course, Your Worship again sees the very wide field my learned friend is opening now.

The Court: Yes.

To Mr. Wegenast:

Q. I will ask you under the head of moral arguments against birth control, what heads should one take up? How would you divide it; we must start somewhere? How would you divide morality for the purposes of exposition?

A. In this special field of birth control, the moral

arguments usually set forth as arguments against contraception, at least by mechanical methods, fall under possibly three general heads.

Q. What are they?

A. First, that it is against the dictates and mandates of revealed religion. Secondly, that it is against natural morality; artificial methods are unnatural and consequently irrational in a precise sense of the word rational, and third, that it offends decency, i.e., that the practice of contraception by mechanical devices is in itself disgusting and offends public decency. There may be others.

Q. Let us start with the last one, that it offends decency; let us have your expert opinion on that as a basis of morality?

A. One would raise the question: Is there an absolute standard of decency? Decency would seem to be something varying from age to age and it depends on the locality, time and the people. Among primitive peoples, something may be decent or indecent which would not be so regarded in another cultural group.

I remember, if I may be permitted to express my personal opinion and general experience, while making a study in Geneva, a report was received that in Madagascar the average youth there had none of the difficulties experienced by the average youth in Europe and it was because they were brought up in an atmosphere where sex is a normal part of life; they didn't associate decency or indecency with it.

Beyond that, in most highly civilized peoples, decency becomes a relative fact. I remember quite well when women began to shorten their skirts and at that time, some of us who had our own ideas of what was decent and what was indecent had rather difficult times. The change in the kind of bathing suit which has come within the memory of most people in my own generation indicates that decency is a relative thing.

The most extraordinary thing along that line is the complete change of attitude of Mohammedan women towards the use of the veil. Before and during the war, no decent Turkish woman would appear on the streets of Turkey without a veil.

Mr. Mercier: Draw a curtain, not a veil.

To the Court:

Q. Let us get to the point?

A. Decency is relative and, I think, also a condition of society because that which might have seemed indecent at one time may become quite decent.

The question that confronts society at the present time is pretty largely a biological question. I suppose the most distinct development of the last century was the tremendous increase of population in the world; there has been more in the last century than in the ten centuries previous. The last frontiers of territory have been passed. Medical science today has discovered ways and means of increasing longevity. The median age is steadily rising. Now, with all this being done to preserve human life, we find ourselves on a planet from which as yet there is no escape. The last frontiers are passed and we must meet a new biological situation. Where that is increased and where one finds sexual impulse undiminished, things sexual may become decent that in a previous age were indecent.

To the Court:

Q. Can you come to the situation today?

A. An extremely large and growing number of people have no sense of indecency with regard to the practice or discussion of contraception.

To Mr. Wegenast:

Q. What would you draw from the attitude of the women who appeared here as witnesses?

A. One thing that impressed me rather particularly –- I am not here to judge the witnesses –- was whether they believed in the signing of these cards and the information they did wrong and almost invariably said no –- as far as I know, almost invariably.

Q. Let us go into the second head; what is the natural and what is the artificial? We are now leaving out an enormous number of authorities.

The Court: We are getting along better.

Mr. Wegenast: If you are willing to take his word.

The Court: He is produced as an expert.

Mr. Mercier: He is a lecturer.

To Mr. Wegenast:

Q. Let us take the argument that contraception is morally wrong because forsooth it is artificial; what do you say to that?

A. That raises rather a difficult point.

Mr. Wegenast: If His Worship will allow me to not anticipate difficulties: we all know the artificial and natural means; let us proceed on those lines from the known to the unknown, if necessary?

The Witness:

A. If you care to proceed on those lines and leave these more detailed matters aside, it seems rather difficult to lay a case against contraception on the ground that it is unnatural when the whole progress and development of the human race has been affected by utilizing nature and extending and developing it to meet its own purposes.

To Mr. Wegenast:

Q. For example?

A. Well, the simplest example is the fact that we wear clothes. Certainly, at all events, the phrase 'au naturel' is not exactly the way in which most of us go. We utilize what is natural by developing it and subordinating it to the higher, or what we consider to be the higher, mode of life.

Q. We will generalize. Give us examples; give us two or three more?

A. It isn't natural for a man to fly in the air, but we do.

Q. It isn't natural for man to run about at sixty miles per hour in automobiles?

A. It is certainly a development of natural forces by artificial means. It isn't natural to eat cooked foods; I suppose the early savages found cooked foods not to their liking.

Mr. Silcox

Q. What about decency there?

A. I suppose the first savage who ate cooked foods was considered indecent.

Q. What about the use of cow's milk?

A. Sub-dignitate: This has been dealt with in one of the earliest Copic (sic) reports in 1924 and I don't think it can be satisfactorily answered, but the point of the report was simply that all human development is the utilization of natural law to its own ends; we can't distinguish the natural from the artificial.

Q. Have you any authority from the Catholic church on that: I think you have a Catholic dictionary?

A. In the Catholic Encyclopaedia, volume 10, page 716, there is an extraordinarily interesting article by Dubray. He says about nature, dealing in a minute sense:

> "Hence nature, as the internal principle of action, is opposed in the first place to violence and coercion which are external principles of action and prevent the

> normal play of human faculties. It is opposed also, but less strictly, to education and culture, which at times may be the checking of natural tendencies, at times also their development and perfection. Education, physical and mental, is not a primitive endowment; it must be acquired and is built upon nature as its foundation."

Skipping something, we have this at the end of the first column on page 716:

> "Even artificial productions are governed by the laws of nature, and, in man, natural activities, after they are perfected differ not in kind but only in degree, from those that are less developed."

Q. We will leave that there, Mr. Silcox, if you don't mind, and again I assure my learned friend he is saved from an avalanche of authorities.

Mr. Beament: Is that going in, Your Worship?

The Court: In she goes.

Mr. Silcox

Mr. Beament: Exhibit 72-B?

The Court:

Exhibit 72-B

To Mr. Wegenast:

Q. Now, the supernatural authority or divine command: I would like you to say to His Worship what your views are as a doctor of sacred theology, whether there is any divine inhibition against birth control?

Mr. Mercier: I wish to say again this opens a very wide field for evidence in rebuttal of the defence.

Mr. Wegenast: I am again in the position that my learned friend might argue it isn't for the public good that the public sin. Might I ask my learned friend through Your Worship if I would drop the theological, is my learned friend entitled to take it up?

The Court: It has already been raised.

Mr. Mercier: Very much so, indeed.

Mr. Beament: Not by the defence.

Mr. Mercier: There are several religions. I personally do not believe any of them are bad and every one may be good; I think that is well established, but this witness might give an interpretation of Genesis or holy scriptures and there might be hundreds of other witnesses of

any denomination or several denominations entirely who would not say the same thing as this witness.

Mr. Beament: There has been no theological opinion yet.

Mr. Wegenast: I was stopped.

Mr. Mercier: After considerable ---

Mr. Wegenast: I was stopped as my learned friend suggested it was a matter for theological experts and I have one here.

Mr. Mercier: I do not wish to object to bringing in any evidence at all which might shut the defence off, but I am giving warning to the defence through Your Worship that I may be

expected to bring evidence for rebuttal of his defence, as may be necessary.

The Court: And I can't anticipate what rebuttal.

Mr. Beament: That is our difficulty: if the Crown is prepared to say now, and it is a threat he made how wide he might go, -- if he takes the view one would fear he does take, namely, that the theological field has not been touched on, and that he will only deal in rebuttal with the evidence touched on in defence, -- and I think perhaps that is his position -— possibly there is considerable time could be saved by dropping it altogether.

Mr. Mercier: A lot of theology has been brought in by the booklet “Rhythm” and other pamphlets.

Mr. Beament: Then there seems to be no sense in my friend’s threat.

The Court: I am not going to allow reply to rebuttal and reply to reply ad infinitum.

Mr. Mercier: That is the point; if this matter of theology is taken up, I submit the defence should deal with it as fully as possible. That is the danger I am afraid of. Then if I bring certain witnesses in rebuttal and they do not agree with some of the defence witnesses, they would want more.

The Court: Inasmuch as I will not allow the defence to reply to the Crown’s rebuttal, suppose they gamble now and drop entirely the theological question?

Mr. Mercier: It has been brought in.

The Court: Not very thoroughly, but suppose they drop it now and the Crown goes into it thoroughly?

Mr. Beament: Yes?

The Court: The defence must anticipate what rebuttal may produce.

Mr. Mercier: If the defence does bring in the theological point of view, I wish to request, Your Worship, that they should be told to bring it in as fully as they can.

The Court: I will not request the defence to do anything; it is for the defence to do what they wish in proving their defence.

Mr. Silcox

To Mr. Wegenast:

Q. Assuming, then, Mr. Silcox, it wouldn't be for the public good for people to disobey supernatural authority, the views of experts on supernatural sanctions, that is, the clergy; what supernatural sanctions are there against birth control?

A. I think in the first place, one would have to consider what there is in the accepted scriptures of the Jewish synagogue and Christian church, which at least are the accepted vehicles of revealed religion for a very considerable section, or the vast majority, of our Canadian population. I would have to put it in my own opinion.

The Court: That would be the basis of encyclicals or dogmas of each section of religion or branch, but I don't think that is what you want, Mr. Wegenast?

Mr. Wegenast: No, what I want from Mr. Silcox is anything he knows in the way of divine command or supernatural sanction which is or would seem to be opposed to contraception and it is very brief?

The Court: If brief, let us have it.

The Witness:

A. As far as the scriptures are concerned?

Q. Without ---

A. Genesis, 38 chap., 9th and 10th verses.

Mr. Wegenast: I would ask Your Worship to read it instead of reading it in the Court room.

To Mr. Wegenast:

Q. Begin at the 6th verse, down to the tenth, in the 38th chapter.

Mr. Mercier: It can be read into the record.

Mr. Wegenast: Your Worship has judicial knowledge of the Bible. 38th chap., 6th to 10th verses of Genesis are as follows:

> "6. And Judah took a wife for Er his first born, whose name was Tamar.
>
> 7. And Er, Judah's first born, was wicked in the sight of the Lord; and the Lord slew him.

8. And Judah said unto Onan, Go in unto they brother's wife and marry her, and raise up seed to thy brother.

9. And Onan knew that the seed should not be his; and it came to pass, when he went in unto his brother's wife, that he spilled it on the ground, lest that he should give seed to his brother.

10. And the thing which he did displeased the Lord; wherefore he slew him also."

To Mr. Wegenast:

Q. Now, do you see anything else in the Bible bearing on contraception?

A. I think it would be very difficult to find anything either in the old or new testament.

Q. I would like you, Mr. Silcox, to tell His Worship what there is by way of ecclesiastical development that is supposed to stand in the way of contraception?

A. Both in the Jewish and Christian church, the assumption has been made on the basis of the passage which I have just indicated.

Q. By the way, let us just pause on that passage and will you say to His Worship what your interpretation of that passage is, as an expert?

A. This passage deals, of course, with what is commonly called the sin of Onan, from which the modern sin of Onanism is derived. Careful reading of this passage indicates that the displeasure of the Lord was shown towards Onan, not at all on the ground that he practiced what is now called coitus interruptus, but because he refused to fulfil the functions of levirate marriage. It was practiced by primitive Jewish peoples, whereby if a man died and left widow and she had no children and consequently there was no successor to him or to his property, a younger brother was supposed under the law, to use the technical term, to go into his brother's wife and raise up a child through her who might succeed his brother. It is still practiced among primitive peoples.

Mr. Silcox

Q. What is a reference to that?

A. Deuteronomy, 25th chap., 5th verse, as follows:

"5. If brethren dwell together and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger; her husband's brother shall go in unto her and take her to him to wife, and perform the duty of a husband's brother unto her."

It is also stated there any man who has this obligation laid upon him and refuses to fulfil that obligation is anathema. The 9th verse, in case he refuses to do this:

> "9. Then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house."

To Mr. Wegenast:

Q. That was Onan's offence?

A. Historically one must distinguish here the meaning of this passage and the Genesis passage applied to it by the Christian and Jewish schools.

Q. Is there an authority besides your own opinion on that?

A. Yes, the Dictionary of the Bible and Adolph (illegible) most recent book on Israel deals with levirate marriage.

Q. As far as you know, there is no other passage in scriptures, old or new testament, which contains any sanction against contraception; is that right?

A. As far as I know, there is no such passage.

Q. How did it get this way; tell us that?

A. In the first place, we must recall the remarkably disputative ability of the Talmudic authorities, and although I do not claim to be an expert in the Talmud, we find undoubtedly a very definite conception of the law of Israel that at least the man must not practice contraception, based very largely on this law of Onan.

There is no law, as far as I know, in the Jewish authorities or

Talmud –- there is no law against a Jewish woman practicing any contraceptive method, providing she has given birth to at least two children and has thus fulfilled what was known in ancient times as her duty to the Jewish race.

The whole thought of ancient Jews was the subject of an address by American Rabbis to one of the most distinguished Talmudic scholars of the world, Rabbi Lauterbach. He was asked to give an opinion and he brought in what is technically known as responsum to the American Rabbis, in which he states clearly the point of view which I think I have fairly interpreted, and the conclusions of which I think are important and should be laid before this Court.

The responsum is found at pages 369 to 384 "Central Conference of American Rabbis, 1927, Exhibit 73-B". This is the most authoritative statement I have seen. At page 383, in the conclusions:

> "1. The Talmudic-Rabbinic law does not consider the use of contraceptives as such immoral or against the law. It does not forbid birth control but it forbids birth suppression.

2. The Talmudic-Rabbinic law requires that every Jew have at least two children in fulfillment of the biblical command to propagate the race which is incumbent upon every man.

3. There are, however, conditions under which a man may be exempt from this prime duty: (a) when a man is engaged in religious work like the study of the Torah, and fears that he may be hindered in his work by taking on the responsibilities of a family. (b) when a man because of love or other considerations marries a woman who is incapable of having children, as an old or sterile woman. (c) when a man is married to a woman whose health is in such a condition as to make it dangerous for her to bear children. For, considerations for the saving of human life…set aside the obligation to fulfill a religious duty. In this case, then, the woman is allowed to use any contraceptives or even to permanently sterilize herself in order to escape the dangers that would

threaten her at childbirth.

4. In case a man has fulfilled the duty of propagation of the race, as when he has already two children, he is no longer obliged to beget children and the law does not forbid him to have intercourse with his wife even in a manner which would not result in conception. In such a case the woman certainly is allowed to use any kind of contraceptive or preventive."

To the Court:

Q. What is the book?

A. It is minutes of the "Central Conference of American Rabbis."

To Mr. Wegenast:

Q. Let us leave it there; go on with present developments?

A. Assuming that is the traditional Jewish point of view, we would naturally come next to the impact of Christianity.

The Court:

Book filed as Exhibit 73-B (Central Conference of American Rabbis)

The Witness:

A. On the whole field of sex morality.

To Mr. Wegenast:

Q. Yes?

A. Without going into the whole details, we must remember that not only in the Roman Empire were there abortions but contraception was practiced. Christianity did face a very serious danger and a very great enemy in the Roman Empire, of which there are many instances, indicated in the epistles of St. Paul to the church at Corinth.

Paganism was rampant and profligacy. The church tried to inculcate high ideals of sexual morality. I think that is one of the glories of the church; its fight with paganism, even

though it was forced almost to lean over backward and adopt the ascetic attitude to combat paganism.

But down through the history of the church, I don't think the church dealt with contraception, as such, but with abortion and it was not until the last century we find the whole question of contraception being considered and discussed by the church and churches and religious moralists and theologians, if you will.

In 1798 Malthus published his book. He was a clergyman; he didn't advocate contraception at all. He advocated raising the age of marriage and recommended practically total abstinence as a method of controlling population.

Later, about 1821, writers began to extend this conception of control of population through artificial means and as a result, we find some of the first indications of ecclesiastical action.

There are references in the advice issued by the sacred office and by the sacred penitentiary from 1851 on to 1891 dealing with certain aspects altogether of the whole matter.

The Bradlaugh trial in England in 1877 stirred up a great deal of interest, but it was not referred to in the encyclical on Christian marriage issued by his holiness the Pope, Leo, in 1880. At least I haven't been able to find any reference in it. In that year, 1960, the sacred penitentiary did issue instructions, the gist of which may be found in the "Rhythm," which permits the practice of intercourse only during the period of alleged sterility. That is the method urged by Dr. Latz.

Q. But for the reverse period?

A. At that time, the period deemed to be sterile happened to be the period which they generally declare now is the most fertile.

I think possibly the next important ecclesiastical action was after the world war when in England, in particular, there was an abnormal situation, an excess of women over men, and which raised many of the very difficult problems which those of us who lived during that period recall.

A commission on the birth rate was set up which brought in a very extended report, two volumes, which I could leave on the table if necessary, but which raised the question what would

happen to the population of England, of what was happening to the population of England and, of necessity, the question of contraception as a possible method of controlling population.

In connection with the evidence given before the commission, the Catholic population was represented by Monsignor Brown and I have that statement of Monsignor Brown's to be read into the record, if needed.

The issue thus was raised in a very insistent manner. In 1921 Lord Dawson of Penn, who was physician to his late majesty, King George V, speaking at Birmingham, raised the whole question of contraception and the position he took before the church congress was this:

> "It is for you to decide whether contraception is all right in principle. It is not for you to decide whether this or that contraceptive is harmless. If you decide it is right in principle, then it is up to the doctors to say which existing contraceptive is or is not harmless. And if contraception is right in principle and no harmless contraceptive exists, it is up to the doctors to find one that is harmless."

That statement coming from Lord Dawson of Penn to the church congress was undoubtedly stimulative of opinion.

In 1924 a conference on politics and citizenship was held at Birmingham and a majority report was given on the relation of the sexes, that covered birth control. Practically all the churches of England were represented; the Church of England, Non-Conformist, and Catholic.

In the discussion dealing with birth control, there was a majority and minority report. The majority favoured under certain conditions the use of mechanical contraception within marriage and the minority was opposed to the use of mechanical contraception within marriage. The majority and minority reports are both contained in this little book, "The Relation of the Sexes," which appeared in 1924, which is a very significant document. It marked the beginning of an era of intensive thinking of organized churches on this matter.

In 1925 –- I don't want to ramble too far, but it is necessary to get the history ---

The Court:

Exhibit 74-B ("The Relation of the Sexes")

The Witness:

A. --- Judge Lindsay wrote his book, "Revolt of Modern Youth". The churches were obliged to take greater cognizance of that new movement and as I intimated this morning when I myself had some responsibility for setting up the discussion on the mind of modern youth at the world

congress at Helsingfors in 1926, we had to take cognizance of new world thought on birth control. No definite conclusions were reached; there was divergence of opinion on the subject.

In 1927 came the responsum to the American Conference of Rabbis, which I have just read, and between 1927 and 1930, there was a great deal of study by special commissions set up by the churches along these lines.

In 1928 a commission on marriage in the home, of the Federal Council of Churches in the United States, studied this. I sat in at the first meeting of that commission in the Cathedral of St. John the Divine in New York City. No reports came out except from some of the smaller denominations. The Unitarians made a report in 1928, I think.

But in 1930 there was an unusual pronouncement which had marked repercussions throughout the world.

During the Lambeth Conference, which is the ecumenical Anglican body in the world, -- it meets every ten years and is attended by practically all the bishops of Anglican communion who can possibly attend –- this conference received a report on the whole question of family and moral standards within the family.

To Mr. Wegenast:

Q. Page 89, I think?

A. Yes, the report of the committee may be found on pages 89 to 92.

Resolutions were passed by the Lambeth Conference and are included in an encyclical letter sent out to Anglican bishops throughout the world and may be found on pages 43 and 44 (of Exhibit 75-B).

Mr. Silcox

Q. Read it, please; it is short?

A.

> "15. Where there is a clearly felt moral obligation to limit or avoid parenthood, the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit. Nevertheless, in those cases where there is such a clearly-felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used, provided this is done in the light of the same Christian principles. The Conference records its strong condemnation of the use of any methods of conception-control from motives of selfishness, luxury, or mere convenience." (Carried by 193 votes to 67)

This report was presented to and acted upon by the Lambeth Conference and it created new interest in many communions.

In that same year, the Social Service Council of Canada received a report or statement on Christian marriage and in the following year, statements on trends in family life both of which included sections dealing with birth control.

But in 1930 the main or most important step or pronouncement was that issued by his holiness on December 31, 1930, the last day of the year, in the encyclical Casti Connubii. I don't happen to have the original Latin, but I have here a translation put out by the Catholic Truth Society of Canada, which I purchased at the Catholic Truth Society, and it was generally considered that this was directed, in certain sections, against artificial contraception. Without putting in any special passage, there is a definite reference on page 29 of this encyclical in which the encyclical states that those are not to be adjudged guilty of improper contraceptive methods who "use their right in the proper manner although on account of natural reasons either of time or of defects, new life cannot be brought forth".

The Court:

Mr. Silcox

Exhibit 76-B (Encyclical on Christian Marriage, 31st December, 1930)

To the Court:

Q. That is a reference in the "Rhythm"?

A. Yes.

Following the publication of the papal encyclical in 1930, on December 31st, which appeared in full in the New York papers, we find a large number of statements by different churches, notably the issuance on March 21, 1931, of a statement of the committee on marriage in the home, of the Federal Council of Churches in America. In this statement, there is again a majority and minority report. The majority favoured the use in conscience of contraceptive measures. I have here a copy of that report.

To Mr. Wegenast:

Q. What churches are included in the federal council?

A. It would be rather difficult to remember them all; there are between twenty and twenty-six.

Q. Give us some of them?

A. Presbyterian, north and south; Baptist, north; Methodist, north and south; the Reformed Church.

To the Court:

Q. Never mind the north and south?

A. One would be in and the other wouldn't.

To Mr. Wegenast:

Q. They are separate churches?

A. Yes, the Evangelical church; Congregational; Disciples; Friends on certain commissions; Protestant Episcopal church, which is analogous to the Church of England, on some commissions; and the Lutheran also on certain commissions; it is difficult to remember.

Q. Go on?

A. This report was published in March, 1931.

Mr. Silcox

Q. Have you a copy?

A. I have a report of their statement, pages 3 to 7, under that heading, "Moral Aspects of Birth Control".

The Court:

Exhibit 77-B

To Mr. Wegenast:

Q. Yes?

A. Later in that year and in the light of the Lambeth Conference report, the Toronto diocese issued a statement on marriage, section 3, of which deals with the whole question of birth control.

To the Court:

Q. What date?

A. 1932.

Mr. Beament: The Toronto Diocesan Council (illegible) of the church of England in Canada (Exhibit 78-B).

To Mr. Wegenast:

Q. About this time, numerous other denominations in the United States passed resolutions included in this document. In Canada in the same year, 1932, the United Church of Canada, meeting in general council at Hamilton, approved a statement which had been presented on "Meanings and Responsibilities of Christian Marriage".

Q. What does it say about birth control?

A. It was fully dealt with and in a pamphlet issued later, it may be found on pages 8, 9, 10 and 11 and it recognized the right or "duty of every Christian to determine in the light of all the facts and obligations involved, how far such agencies shall be employed in his or her own life". That is on page 10 (Exhibit 79-B).

Q. In the light of that, would you define the difference between the Protestant churches and the Catholic church? Leave that out just for the moment.

Mr. Silcox

A. I would state, in the first place, while the preponderant opinion of the Protestant church would be expressed in such documents as these, there might be and probably are certain Protestants who wouldn't accept without reservations all the statements. Some of these bodies have prepared statements by majority and minority reports. Taking the Catholic and non-Catholic or Protestant viewpoints.

Q. Yes?

A. Both would agree there is no responsibility on individuals to raise the largest number of children in the least time. Both would insist that birth control in the general sense, not the special sense –- some method of birth control is desirable and people are under no compulsion to raise larger families than…

(Continued on F-37)

Mr. Wegenast

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Mr. Silcox

To Mr. Wegenast:

…they can adequately look after, but there would be a difference in the method proposed by the Catholic moralist and the method proposed by the non-Catholic moralist. The method proposed by the Catholic would be along the line implied in the encyclical of his holiness, or this book, the "Rhythm," or in "Legitimate Birth Control," while the non-Catholic moralist on the whole would fail to see what subtle distinction could be drawn between contraception which is

natural and supposedly rational and which is artificial and consequently irrational. It would be a

difference of method rather than a difference of fundamental position.

Mr. Wegenast: Your Worship, the cover of this book, "Rhythm" says, "babies when parents are ready," to appeal to the public on that ground.

The Court: Adjourn for five minutes.

(Upon resumption of the hearing)

To Mr. Wegenast:

Q. Mr. Silcox, let me see a reference to conscience.

> "Speaking for the United Church of Canada, we associate ourselves with these representative voices of the Christian conscience in recognizing the duty of every Christian to determine in the light of all the facts and obligations involved, how far such agencies shall be employed in his or her own life."

Is that the passage?

A. Yes, there is also a reference in the Lambeth Conference report.

Q. To conscience; what is the corresponding authority in the case of Roman Catholics? We have here made reference to individual conscience or judgment; what is the corresponding sanction in the Catholic church?

A. The authority of the church quite obviously might be used, although I think one would admit the Catholic moral theologians would say even the church itself would not have authority to abrogate the law of nature. But it is authoritarian.

To the Court:

Q. What is the Roman Catholic authority, namely; is there any —- not what Catholic theologians would say, but is there any; that is the question?

A. It is primarily the church itself as an organ of revealed religion.

To Mr. Wegenast:

Q. In other words, it is left to the ipse dixit, the dixit of the church, and the Protestant is left to his conscience?

A. I would say that is substantially the situation.

Q. Now, finish your story, Mr. Silcox; you have only two or three years to go yet?

A. We come down to October, 1932. In 1932 we have the first edition of the "Rhythm" published according to the printing in my own edition, and it was about that time –- I remember quite definitely –- it was published, and a great deal of interest created in it.

Q. This was published by ecclesiastical authority?

A. With ecclesiastical approbation.

Q. How is it distributed?

A. A foundation has been established; I don't know the organization of it exactly; Dr. Latz has it, but Father Reiner, I think, in writing an introductory note says,

> "Because the matter on which he writes is of such a delicate character and because the discoveries are not his own, he shrinks from exploiting them for personal gain. He waives all profit from the sale of his book. This action enhances his service."

A foundation has been formed which distributes the book.

Q. How is it distributed in Ottawa?

A. I didn't try Ottawa; I secured that copy in Toronto at the Catholic Truth Society.

The Court: This book has been referred to a great deal, but has not been put in as an exhibit.

Mr. Wegenast: I have one with my own markings.

The Court: I was supplied with a copy, which I have at home, I think.

Mr. Wegenast: It may be my own copy, marked for argument.

The Court: It is:

Exhibit 80-B ("Rhythm")

Mr. Silcox

To Mr. Wegenast:

Q. Say more about Rhythm?

A. It was published in 1932. It is the 130th thousand copy, but it says sixty thousand copies have been issued; I don't know how many have been distributed.

Q. Yes?

A. The publication of this book created considerable interest, so much so that on February 25, 1933, Father Wilfrid Parsons, who is the most competent editor of the Jesuit weekly, "America," published an article in his own paper entitled "Is this Catholic Birth Control".

Q. This is an article covering two pages of this journal, but if not abusing any privilege, I should like Your Worship to read the whole of it or let Mr. Silcox read a part of it; it is highly

significant. It is a Jesuit priest's sizing up of the result of the publication of "Legitimate Birth Control" and "Rhythm".

A. "Legitimate Birth Control" hadn't been published at that time.

Q. Pardon me; I thought it had?

A. No, 1934.

The Court: It can go I in with the other exhibits and be referred to in argument.

Mr. Mercier: If the witness would give his own resume?

The Court:

Exhibit 81-B ("America")

The Witness:

A. The main importance of the article is that Father Parsons issues a warning to Catholics that may have enthusiastically taken up the idea underlying "Rhythm". Although based on text and authorities, it may be misplaced and may result dangerously not only because of certain inherent problems in the methods proposed, but also –- if I might just read the last paragraph, he says:

Mr. Silcox

> "That is why we are now being sneered at for having found a way of allowing people merely to satisfy their passions without the consequences, and why many Catholics believe that, too. Naturally if they do, they will not see much difference between that and what birth-controllers call a 'scientific' method. In view of this danger, both within and without, Canon Coucke advises 'utmost prudence'. The need of this warning is real."

It suggests it would be very difficult, even for the loyal Catholic, to see any fundamental difference between the methods of control of conception urged by Dr. Latz and his school and those of any artificial methods urged by the birth control experts.

Q. Yes?

A. That was in February, 1933.

Q. Go on?

A. In 1934, at a conference in Toronto called under the auspices of our own Council, representatives of the different churches participated in a round table discussion on "the present crisis on marriage in the home". The Chairman was Canon Plumtre and the Secretary, the Reverend Ernest Thomas of the Board of Evangelism and Social Service of the United Church of Canada.

The report they presented dealt with four different points, the fourth of which was birth control. I would like to read that because it is one of the recent expressions of a group that represented a large number of denominations n Canada.

> "The group took note of the fact that great and representative bodies of Christian people have in varying terms and with more or less openness and explicitness recognized that contraceptive agencies have a legitimate place under some circumstances with Christian marriage. It was noted that marital acts have meaning in themselves apart from procreation and that there are times when those values may best be achieved free from anxiety about new experiences of parenthood. Yet the present law seriously hampers the

> general dissemination of information and equipment for purposes of contraception and there appears to be no measure of law which can prevent this being accessible to young persons who are not married. The precaution needed in this field was dealt with in the previous finding. But the prevalence of half knowledge or positively misleading information, as well as commercial exploitation of the situation, calls for some wisely-guided and well-informed technical advice for those who should enjoy it. On those grounds: 4. The group favours the establishment of Birth Control Clinics under proper leadership and supervision."

The Court:

Exhibit 82-B

The Witness:

A. It was in December, 1934.

In 1934, the same year as that, "Legitimate Birth Control" by Rev. John. A. O'Brien, Ph.D., Chaplain of Catholic Students, University of Illinois, was published. Dr. Father O'Brien is generally recognized as doing most important work among the Catholic students at the University of Illinois, and at Newman Hall, and has a tremendous influence at that university trying to show the body of Catholic students there that their faith and the current movements in the outside world can go hand in hand.

He published this, most of which is taken from the "Rhythm," and much of which has already been read into the court's record.

To Mr. Wegenast:

Q. There is a page or two I wanted to read to Dr. DeHaitre, and I desired to use my friend's term on the assumption that it had better be read by a theological expert, and I ask you, Mr.

Silcox, to read into the record the portion beginning at page 32 as to the attitude of the church, which is the subject we are on –- a section of two inches in the middle ---

The Court:

Exhibit 83-B ("Legitimate Birth Control")

The Witness:

Mr. Silcox

A.

"The method by which married couples may determine the periods of sterility and fertility is presented in Chapter III of this booklet. The determination of these periods show how births can be properly spaced and the ideal of rational fecundity attained. We do not think that Dr. L.J. Latz exaggerates when he says that, as a result of the judicious dissemination of these findings, we have a right to expect 'that the married lives of many couples will be vastly enriched with the values; physical, psychic and moral, of married life, as it was intended by the Creator. Burdens that test human endurance almost to the limit, and to which all too many succumb, will be lightened'."

To Mr. Wegenast:

Q. The rest is a quotation which I think I have already read, I think from "Rhythm," but go on at page 23, if you please, under the heading, "Sex, God's Creation"?

A.

"In view of these facts, is it not evident that the teachings of the Church on birth control are eminently suited to attain these two great goods; the enrichment of marriage with the greatest physical, social, psychological and moral values and the prevention of the enormous number of criminal abortions now converting our land into a whitened sepulcher, fair without but within filled with the bones of unborn children? In the Church's teaching, there is a just recognition of the primary end of marriage, the propagation of the race. But there is recognition no less clearly those secondary ends to which the Holy Father calls express attention.

Contrary to the assertion of Dr. Little and other misinformed writers, the Church does not look disparagingly upon sex nor upon the enjoyment of the conjugal relationship by married couples even when there is no probability or even possibility of conception. It is precisely because she holds sex to

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be the high creation of Almighty God, the source of mankind's deepest happiness, as well as the divinely ordained fountain whence streams the race, that she raises her voice in protest against its degradation by the unnatural method of artificial contraception. Nothing could be farther from the truth than to picture the Church as viewing sex as merely a necessary evil which must be indulged to keep the race from extinction."

Q. The paragraph beginning near the top of page 36, over to the middle of the following page?

A.

"That diversity of human nature which prompts man and woman to find the complement for their own incomplete nature in the conjugal union, she views as the reflection of the Divine Will. To belittle that plan, to disparage that divinely implanted hunger, to scoff at the great endowment of sex would be to manifest disrespect for their divine Author. Such is the plain teaching of the Catholic Church. It is precisely because she views this universal hunger of humanity as the mirroring of a divine plan, that she seeks its adequate fulfillment in a life-long union and fights against its degradation as a mere instinct that plays no part in the development of the nobler qualities of the human personality."

Q. That is a repetition of what was said before?

A. (No reply).

The Court: Is it your intention to ask the witness his opinion on these matters or just to read them into the record?

Mr. Wegenast: I hadn't made an actual decision.

The Court: Why read these, then, than any others; it is going in as an exhibit?

Mr. Wegenast: Quite.

The Court: When questioning Dr. DeHaitre, you asked his opinion as a medical witness and are you using this witness as a theologian?

Mr. Wegenast: I passed over a great deal of material on which I wished to quote authorities, but if we can refer to it in argument that will be so much for now.

To Mr. Wegenast:

Q. Now, in 1936?

A. Yes, in 1936, the general conference of the United Church of Canada met in this city only last month.

An overture from, or a memorial received from, one of the conferences asked for a more comprehensive statement on birth control than that furnished the general council in Hamilton in 1932.

A commission was appointed to prepare such a statement and at the general conference at Ottawa last month that commission brought in its statement. The first part deals with birth control and the second part with sterilization. Light on both these matters has been asked in the original memorial.

I leave this with the Court, calling attention not to the arguments in the body of the report itself but to the recommendation on page five relative to birth control. That recommendation with the report was received and adopted by the general council of the United Church of Canada.

Report No. 2 on sterilization was received and filed for information and no definite action was taken on the report.

The Court:

Exhibit 84-B ("Report of Commission on Birth Control and Sterilization")

The Witness:

A. That brings us to 1936.

To Mr. Wegenast:

Q. Is there anything more then?

A. I could think of a lot more, but I think we know about that here.

Q. Now, coming to the facts of this case, Mr. Silcox, and viewing them through the spectacles of a sociologist, I want to

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ask you generally, if I may, whether and to what extent the methods employed by Miss Palmer as a social worker in this case, as brought out in the evidence of the prosecution —- without admitting those to be the precise facts —- whether and to what extent those methods fall in with the recognized standard or practices of social welfare work?

A. I should say that judging from the evidence as put forward, Miss Palmer used techniques generally recognized as utilizable and quite proper in the field of social work.

Social work depends upon, to a very large measure, not exclusively, but almost exclusively, on visitation to the homes. It may be carried on in hospitals where people come or clinics where people can go. Or it may be carried on from a central office which exists largely for consultative purposes, but all social work, I think, to be effective, does depend on visiting homes because social workers recognize that, after all, you know more and learn more by visiting homes than sitting in a swivel chair.

Q. Would you say there was or was not any element or inference of excess?

A. (No reply).

The Court: That is a question for the Court." For a jury.

Mr. Mercier: And you are the judge and jury.

The Court: I do not think it is a matter for expression of opinion by a witness.

Mr. Wegenast: I suppose I could ask the witness if Miss Palmer did anything more than a social worker should have done.

The Court: Ask what she could have done other than she did.

Mr. Beament: Or was it objectionable.

The Court: That is a matter for him to express his opinion on end for the Court to decide.

Mr. Wegenast: Will Your Worship put the question?

The Court: You are quite capable.

To Mr.Wegenast:

Mr. Silcox

Q. Do you know anything Miss Palmer did that as a sociologist you wouldn't approve?

A. Not so far as I have heard.

Q. Let us go a little into detail. From the evidence on the other side, which wasn't answered on one occasion, she went to a woman to whom she hadn't been introduced and undertook to explain birth control; what do you say as to the propriety or otherwise of that?

A. Social workers are going to people to whom they have not been introduced all the time. It doesn't necessarily follow that social workers' work is limited to cases brought to the worker. Passing from the role of sociologist to the role of Christian minister, I should say social work in no small measure is an amplification of the spirit of Christ himself, who went outside to seek lost sheep; he didn't wait for them to come to him.

I grant you, in many cases of social work, it is carried on very largely waiting for people to come and tell you what they need, but you can't limit it merely to those who have the initiative to come to the office.

If the social worker knows of someone who because possibly of some handicap or economic disability needs help, I see no reason why that social worker shouldn't consider it her opportunity, providing she is doing social work, to go to that woman with whatever she feels that individual may need.

Q. Something has been said about the reluctance of these people to go to a clinic –- reluctant to start going to a clinic?

A. I don't think any person relishes going to a hospital or clinic. I do think a great many women, and possibly some of the best women, would hesitate to go rather automatically to a formal clinic, but they might be more than glad to have some person come to them and help them as they feel they deserve to be helped.

There are certain difficulties, it might be said, about some people going to clinics. You have a very intensive examination in a clinic, from which certain women would rather recoil.

As I gather from the evidence, there were certain fundamental facts, with regard to the clients, taken down on cards. The cards I have seen for some birth control clinics in the United States have a long list of questions and it might be that a woman would hesitate going to a clinic to answer questions on matters far too intimate in her own life. It would seem to me there might be the fear of an official atmosphere which is overcome by the more free and casual visitation of an ordinary nurse or worker.

Q. You have had a great deal of experience with sociological work and seeing these women who have given evidence here, would you say to what extent they were proper subjects for a social worker's administrations?

A. There is an antecedent question.

Q. What is that?

A. The question is this: is the kind of information which the defendant in this case is alleged to have been giving the kind of information to which these women were normally entitled?

Q. Just a moment there. With Your Worship's permission, I will put it to you; there is nothing illegal or contrary to the law of Canada about using contraceptives and as we have already seen, a great many people know about that. Now, in the light of that, what about your question?

A. I will go back to my antecedent question: as far as I could judge, they were all entitled to this information and should have it.

Q. Is there any reason, Mr. Silcox, one way or the other, why these people are more or less entitled to this information than people, let us say, more fortunate in life?

A. More fortunate people sometimes can get information by going to their doctors, if they are the kind of doctors that give that kind of information and if they pay for it.

Q. Yes?

A. Most of these women –- some of them had a small income, some were on relief; I don't recall at the moment what the highest income was. If my memory serves, they were either on

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relief or averaging forty to fifty dollars a month; they couldn't afford to go to a doctor.

If they are on relief, I don't suppose the Town of Eastview would give a written order to go to a doctor and get this information, although possibly that is the best thing the Town of Eastview could do.

Q. On that, what about leaving this whole thing to the doctors? I think that has been hinted; Dr. DeHaitre strongly advocated it.

A. There are certain things should be left to doctors. This matter of birth control shouldn't be left to doctors to decide as doctors. I mentioned earlier Lord Dawson's statement: the question of what was a proper contraceptive or a harmless contraceptive or not is for the medical profession to decide. If it is a question of fitting an appliance to the body, that is for the medical profession certainly, but if not a matter of an appliance to be measured or fitted to a part of the anatomy and if there isn't any antecedent question of disease involved, it may become a question purely of economics or mental happiness, and I don't think a doctor as such is necessarily an expert in economics or morals or theology.

Mr. Mercier: Is my learned friend asking a medical opinion of this witness who he has established as a theologist and sociologist? Unless he is qualified, he shouldn't be asked to give his opinion as a doctor.

Mr. Wegenast: My witness has said it isn't a medical question; he is drawing the line.

Mr. Mercier: That is just it.

Mr. Wegenast: I don't know why it should be left to doctors to draw the line exclusively as to what is medicine and what isn't. Anyway, we know sociology employs medicines.

The Court: I think your original question was possibly a little ambiguous. It was. What about leaving this matter to the doctors?

To Mr. Wegenast:

Q. Yes?

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A. Do you mean the decision whether the dissemination of birth control information is a good thing, to the doctors, or leaving the question of how to disseminate birth control information to the doctors?

The Court: That is the method ---

Mr. Wegenast: Yes, that is what I had in mind.

The Court: The witness got very far afield from that.

Mr. Wegenast: Somebody had to say it and the doctor wouldn't and he is no more competent.

To the Court:

Q. As a sociologist, what is our opinion of leaving the dissemination of birth control information and supplies to doctors?

A. I don't approve of it.

To Mr. Wegenast:

Q. Why?

A. In the first place, relatively few doctors know enough about this particular aspect of the subject, by their own admission, to deal constructively with it. Only relatively recently have courses been established, in what I might call by the ambitious name of contraceptive techniques, in schools of medicine.

In every case where I have visited or investigated in a clinic of this character, doctors who might be employed in those institutions had, on employment, to be sent away to be instructed. Frequently doctors know of devices used twenty-five, forty or fifty years ago, some of which are deleterious, but seldom do they know of the rapid advances in the last few years.

A second reason: unless the doctor is a woman, I should say a normal woman would far rather discuss some of these intimate and personal things with another woman than with a doctor. I think that more or less stands to reason.

In the third place, one would recognize –- what is the question again?

Q. Having dissemination of birth control literature left to the doctors?

A. The third reason why I should be opposed to a monopoly is that a certain number of doctors, not on medical grounds, but on other religious or social grounds, might hesitate to give information to a client who came asking for it and who would have a right to have it.

I might go further: some doctors might hesitate, not because of religious scruples, but perhaps because of economic scruples.

Q. What do you mean?

A. It might touch their pocket nerve.

Q. In what way?

A. They might be afraid if they gave information of that character and it got nosed about, they might be criticized and lose some of their clientele.

Mr. Mercier: Is that a doctor of sociology? If this deals with what a doctor might do ---

The Court: Adjourn to Wednesday morning, October 28th, at 10:00 o'clock.

(Court resumed at 10:00 a.m., October 28, 1936

To Mr. Wegenast:

Q. Mr. Silcox, we gathered from what Mr. Kaufman said in the box, and the form of these applications for contraceptives, that he imposes on himself certain limitations. He said, "it isn't our policy to do this and that," and I want you to give His Worship the benefit of your opinion as to the necessity or propriety of the limitations which he seems to be imposing on himself. Taking them in detail, his policy seems to be, although this didn't come out in evidence, to give this only to married women. What do you say as to that?

A. I think that is an unnecessary delimitation. I think that all women should have this information, especially if they themselves wish for it. In many places, at the present time, definite steps are taken to provide all women about to be married with this information, feeling they should have it prior to marriage instead of after, in order that they may, from the

beginning of their married life, make those sex adjustments which, I think I tried to say yesterday, most social workers feel today to be absolutely necessary for marital happiness.

I think, judging the thing entirely from the point of view of what might serve the public interest, there might be certain unmarried women who especially ought to have the information. If, for instance, a social worker came across an unmarried mother who had already presented society with one or more illegitimate children, and knowing as the social worker would know there has been a growth in illegitimacy, let us say in this province –- I haven't the figures in my mind for 1934, but I think our illegitimacy in this province runs about 42 per thousand; that is, in every hundred births in Ontario, over four are illegitimate, and the rate has gone up in the last few years; one could find those statistics in the book of vital statistics –- and knowing illegitimacy is becoming not only a social problem of the first magnitude, but an economic problem involving taxation and all that, and if the social worker felt this particular unmarried mother for one reason or another might be expected to do the same thing again, I think it would be not only an act of mercy to her, but an act of mercy to the state to give her the information, if she would only use it, and lift some of the burdens which rest upon her and some of the burdens that rest upon the state.

The social worker has to estimate people as they are, has to estimate possible courses of action. They may make mistakes; they are not infallible, but I can say my position is to provide such a person with that kind of information.

Q. Having regard to the fact that, after all, a social worker is human, I want to ask you without prompting too much whether and to what extent the nurses' usefulness would be limited if she didn't have a margin in which to make mistakes; what do you say to that? Or let me put it this way: to what extent do you think it necessary or desirable from a sociological point of view to prescribe strict rules such as Mr. Kaufman attempted to lay down?

A. Of course, we all make mistakes, even sociologists, and there is inadequate data for any dogmatic statement on certain things, even in the realm of sociology. Doctors make mistakes and we pay for them.

Mr. Mercier: They bury them.

The Witness:

A. Looking back, as a clergyman, over my past experience, I have had to advise people in very difficult and conflicting matters and I can see, looking back, where my advice was perhaps not all it should have been, but we have to act in the light of the information we have and as best we can and that is also true of social workers. They have some situations confronting them for which there seems to be no possible certainty, no desirable answer. They have to choose between the lesser of two evils and make up their own mind and that margin of error is just inherently there. If a doctor made mistakes every time, a social worker made mistakes every time, he had better try something else, but that we should insist his technique is so perfect that in every concrete situation he should know so much about the human mind and the potentialities in this state or that state of circumstances is laying on any person an impossible burden.

To Mr. Wegenast:

Q. What about giving this information to women who are promiscuous or plain prostitutes; what do you say as the advisability of that?

A. It might be a waste of money, but certainly from all the medical judgment we have to date, it would do them no harm and it might do them good.

I see no reason why all women should not have the best information on this subject which is available. What they do with that information is another matter. From the point of view of moral philosophy, shall I say, the essence of morality is freedom of action. He or she is moral who makes the choice.

Now, it seems to me if a woman –- if the woman making the lamentable choice –- although sometimes one recognizes the force of pitiful circumstances that might force them into a life of that kind, but if they make that lamentable choice, I can't see that this information can do any harm and it might do good.

A number of years ago, a certain kind of contraceptive was developed by the prostitutes of Vienna and used by them. It so happened that that particular type of contraceptive, while it

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might have been effective for the purpose it was used, is generally recognized as deleterious, and that particular kind of contraceptive might lead to uterine cancer. If that is what they were using, it seems to me it would be far better to give them information of contraceptives that would not lead to uterine cancer, not only for the error or moral ways, but physiological ways also.

Q. Since it lies at the basis of some of your sociological work, I want you to give His Worship your opinion of the desirability of bringing children into the world, either in the case of the unmarried mother or the prostitute, and the probabilities of the child becoming a useful item in community life?

A. As one interested in social work, I could not possibly admit that all children born into the world out of lawful wedlock are community liabilities. We all know of men in political life and other forms of life who have rendered extraordinary service to the state and have assumed positions of moral leadership who have not been born in lawful wedlock, and if you look up in Who's Who, you will find the name of the father not given.

But, by and large, we know a great deal of illegitimacy is connected with feeble mindedness of the mother. As a matter of fact, any social worker dealing with cases of illegitimacy would almost ask, "is this a case of feeble mindedness or not". It doesn't necessarily follow, but there is so great a connection between feeble mindedness and illegitimacy that it comes up.

In mental hospitals in this Dominion, there are at the present time a number of feeble-minded girls, physically very attractive. They are there because they present a succession of illegitimate children who become a burden to the state. They could be released from that particular hospital and sent back to public life and possibly earn a little towards their own maintenance and the maintenance of their children. There is no provision for sterilization and those who are in charge of the hospital take the position: if we release these girls, they will simply present society with more children.

To the Court:

Q. Isn't that a question of sterilization, not birth

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control?

A. I am dealing with the feeble minded: the question as I took it was whether it was socially advantageous to have illegitimate children or not.

To Mr. Wegenast:

Q. Are contraceptives at all an effective substitute for sterilization in those cases?

A. If the woman in question will use them, yes. If the woman in question won't use them, no, but at all events, they have the knowledge of what can be done and I think that is possibly the least society can do in its own protection.

Q. That is the least society can do in its own protection?

A. Yes, and for the sake of and the benefit of the girls themselves.

Q. We find Mr. Kaufman also was unwilling to extend his activities to people who could afford to pay for it themselves; what do you say as to the advisability of that?

A. I suppose, after all, there are some limits to the philanthropy of certain individuals who can't carry the whole load themselves. I don't see why a person should be deprived of securing information simply because he can pay for it, but on the hand, it is felt the person who can afford to pay for it could get this information through some other means.

To the Court:

Q. Your view a moment ago was that all women should have this information?

A. Certainly.

To Mr. Wegenast:

Q. Just as they know about aspirin and bromo-quinine?

A. I feel the whole progress or lack of progress of society in sex hygiene is lamentable. This is a normal part of training that should be given every woman; in view of the fact that she is a woman, she should have it and as a moral being, she should learn how to use that knowledge. That is the way civilization progresses, by learning how to use knowledge.

Mr. Silcox

Q. We have something new there: you are relating contraceptives to sex hygiene; do you know to what extent sex hygiene is being taught? I know of some; there is teaching in public schools even. Do you know anything about that?

A. That, of course, raises the very difficult question as to who should do the teaching.

Q. Is that being done or mooted?

A. It is being mooted all the time, but it is a question of home, church or school; who should do it?

Q. We will leave it at that. Do you know of any cases where it is being done by schools or under public auspices?

A. I can't think of any very special cases now except in a general way in certain universities disguised as a question of biology, but it seems to me to be a question of more than biology and more than physiology.

Q. Have you seen any text books setting out that sort of information for use in schools?

The Court: I don't want any authorities; I want this witness' own opinion.

Mr. Wegenast: I didn't ask for authorities.

The Court: I saw him make a dive for his valise.

Mr. Wegenast: I have seen what he has.

Mr. Mercier: We are willing to believe Mr. Silcox has gathered part of his information from text books.

To Mr. Wegenast:

Q. But are there text books on that?

A. Yes, by the American Social Hygiene Council, which is doing admirable work. There are certain experiments of which I have intimate knowledge which have been worked out in a combination of home, school and church, but it is only touching the fringes of the public need, in this respect, and the information the people get is not the information the people should get and it is not provided where they should get it, under the auspices of childhood.

Mr. Silcox

Q. With respect to sex hygiene, are we where we were fifty years ago in the teaching of contraceptives?

A. I would like to be a little more optimistic than that, say twenty-five years ago.

Q. What about giving this information to a young couple who have no children, or have one or two, and with a good income and, to all appearances, in a position to bring up a large family?

A. They should have it. I should think they should have something more than the knowledge; I think you should make them feel as far as possible their responsibility for racial values, and after all a life of mere selfishness never gets one anywhere. You don't get happiness when you pursue it, but beyond that, it might be said that information of that kind –- undoubtedly there is information of that kind which they must have if they are to space children properly, and also in a case where there might be a need for spacing in the case of a woman with some physical sickness or some defect which might make it necessary for her to postpone indefinitely the bearing of children, and that information –- I don't like to repeat it ad nauseum, but all women are entitled to that information.

Q. What about the language question with relation to sociology and social work and social workers; what is the experience of social workers generally as to the possibility of getting along without a knowledge of various languages?

A. Of course, the last question, both in the United States and Canada, is an inherent one in social work. Our two countries, although English is supposed to be the language exclusively of the United States and in this country, it is the dominant language and French is recognized as a language of record in both these countries, we have a multiplicity of linguistic minorities. We refer to the United States sometimes as the melting pot. We in Canada also have our melting pot. According to the last census, only fifty-one per cent are Anglo-Saxon; twenty-eight per cent French; Ukrainian to a considerable extent, and German is still used in such areas as near Kitchener. We have these language blocs.

In the United States, they have even more than these. A social

worker may be assigned to a district that is Polish, Cheko-Slovak, Ukrainian or others.

Q. Is it the practice to send an interpreter?

A. No, in some cases it might be done, but it would be financially impossible to do it all the time; they have to use their common sense in that.

Q. Is it the practice of social workers to make people sign for the benefits they receive? When making a case record, is there any standard practice or is it the practice to make people sign their names?

A. It might be.

Q. Just a practice, are there any reasons?

A. I can't think of any place at the present time where it is necessary. There might be certain special instances, but usually a case record is made out by the case worker and is regarded confidentially and I don't think the patient or client very often sees the record. If I were making an observation of people, say in this court room, from a point of view of social work, I don't think they would like to see all I might put down about them.

The Court: It might be as well we didn't.

To Mr. Wegenast:

Q. Exhibit 25-B, I see on the one side this:

> "Application: I herewith make application for Birth Control information and supplies and claim that I am entitled to receive same in view of my circumstances."

Then:

"Please send English, Polish, Ukrainian, French booklet (mark language desired). Referred by…Name…Address."

Then comes the signature of the applicant and that of the social worker and a place for the signature of the family physician. Now, I will ask you, first, generally if that is anything like the forms in ordinary use?

A. In clinics of this kind?

Mr. Silcox

Q. Yes?

A. Some of the applications I have seen go into far more meticulous details.

Q. On the reverse side, we find a large, I would say ---

A. They are never large enough for the average social worker!

Q. That seems to be a very modest one and is apparently intended to be filled out by the social worker and apparently is not intended to be covered by the signature. Now, I think it might be of value if you told His Worship what the ordinary practice of social workers is in conducting these investigations?

A. In this kind?

The Court: Can't you get it narrower than that?

To Mr. Wegenast:

Q. Yes, in birth control work?

A. I have among these copious papers some forms used by clinics elsewhere which, as I indicated, cover a vast number of meticulous details in regard to the economic and especially, the medical history.

Q. For statisticians to make fun with?

A. For statisticians to bother their heads with.

Q. Yes?

A. I would say from the point of view of the social worker, quite apart from the good or bad that the service rendered does to the individual.

Q. Yes?

A. This kind of information helps provide about the only scientific data we can find anywhere in regard to a number of questions. For instance, the relationship of the number of deaths to the number of pregnancies. To spacing and all those things.

Q. Yes?

A. It is the only information I know of in those respects, the mass material turned up in clinics, so the only people who can know what they are talking about are people who base their conclusions on data like that.

Q. I think that is all.

CROSS EXAMINATION

To Mr. Mercier:

Q. I may have to ask Mr. Silcox a few questions. Mr. Silcox, according to your social knowledge and your economic knowledge and general knowledge, and I also understand you are an historian; I have been told that?

A. I am a historian?

Q. Yes?

A. I wouldn't say that; I am an honour graduate in history at the University of Toronto, if that means anything, but I doubt it. I have written some books on historical lines, yes.

Q. What, in your opinion, should be the average Canadian family?

A. Do you mean from the point of view of maintaining the population at its present level?

Q. Let us have it that way?

A. Presumably, roughly speaking, every mother should I think, according to the statistics, have 3.2 or 3.02 children –- I am not quite sure –- to maintain the population at its present status. Difficult questions come up at once that population is not determined naturally by natural increase, but by immigration and emigration and these upset your statistical apple cart every time.

Q. Let us take it from the point of view of economics, let us say?

A. Economics, that raises other conflicting questions, whether the Court wishes to go into this.

To the Court:

Q. counsel wants your opinion as an expert in sociology?

A. I can conceive of a variety of economic problems and political systems; the answers to that question would vary.

To Mr. Mercier:

Q. In Canada?

A. Under the present economic system (illegible) if we eliminate Communism, which involves a controlled capitalism by the proletariat?

To the Court:

Q. Under Canada's status today?

A. I think the size of your families would have to be guided very largely by the kind of economic opportunity which our government and our leaders in economic construction make possible for the Canadian people. If we have a situation under which only a certain number seem able to be absorbed due to our economic structure, then you must pare down your population to the number than can be absorbed and the standard of living maintained.

We in Canada have grown by natural increase and also by immigration. If you make a careful analysis ---

Q. I am speaking about what under the actual circumstances should be the actual Canadian family? As they exist on this twenty-eighth day of October. You are treading very dangerously on grounds of economics, tariffs and so on.

Mr. Beament: He was asked in the light of economics?

The Witness:

A. I can't answer directly; I must enlarge whether I want to or not. The (illegible) question of population to economics is the most baffling to sociologists.

To the Court:

Q. There is a school which says greater population would create greater demand and greater prosperity?

A. There is, yes, in France and Belgium; there is a school that says greater population will enable the manufacturer to have greater mass production and therefore cheaper production.

Q. Is there a school in Canada, in the West?

A. There is, and there is one that takes the opposite point of view.

Q. So there is nothing cut and dried on it?

A. No.

To Mr. Mercier:

Q. What, in your opinion, should be the ideal Canadian family under the present circumstances?

A. I would answer that question by laying down certain principles of the standard of living we want to maintain in this country.

Q. Taking the circumstances and the Canadian nation how it is today?

A. With one million people on relief?

Q. Yes, with one million people on relief, and that leaves how many not on relief?

A. Approximately ten and one-half millions.

Q. Yes?

A. I certainly think where you cannot provide on an economic basis for what you already have, any effort to open the flood gates to let in further population would only increase the call on relief or to encourage large families with a view of encouraging our commercial structure, personally, I think it is insane, but there may be other people who take another view.

We can't answer this question without raising the whole question of economic structure. I pointed out yesterday that one of the most fertile groups in Canada are Canadians of French origin, but in the last fifty or sixty years, they have not been able to incorporate their own population in their own area and we have sent over to the United States by the millions what you might call our surplus populations.

Q. Do you mean British peoples in Canada?

A. Yes, British peoples in Canada, but the French went across into Vermont, Massachusetts and Rhode Island and I

Mr. Silcox

imagine there is now fifty per cent as many there as in Quebec. They could not be incorporated in the economic (illegible) situation of Quebec.

Q. I hope you don't differentiate between the Canadians of French origin and British peoples in Canada?

A. No, Anglo-Saxons, and I don't know what that means.

Q. If birth control became law, it might reduce the size of the average family?

A. No, the birth control movement as I understand it at the present time is not negative; it is positive. It does not stand for the decapitating of the population, but by developing and adapting the population which is believed to be conducive to conditions; physical, economic and otherwise. It is not negative; there is a very grave mistake in the public mind that both is a way of keeping down population.

I can easily conceive of birth control leading to increased population and in countries like Holland, where birth control is commonly practiced and known and to give the information is

legal —- Holland is a densely populated country and always has been; they have had to reclaim land from the sea, and its birth rate is greater than in Belgium where birth control is illegal. You will find the figures in the exhibits and I have a book by Sands —- and the infant mortality rate is twice in Belgium what it is in Holland.

Or I might go to Sweden; one of the curious effects of birth control in Sweden is that while there has been a decline in population, it is being recruited more from the upper classes; —- whether that is good or bad, I don't raise that question —- there is a larger number of childless families among the lower classes than others.

It can't be longer argued it is merely dysgenic; it is eugenic. Those economically more competent —- whether intellectually better or not doesn't matter —- are doing their duty more than ever and those who were presenting society with a continuity of babes are easing off.

After all, the unit of society from the point of view of the sociologist is the family and as far as I have any fundamental principles left at all I would say society is never justified in

taking a burden off the individual that he should bear for his and society's and the family's good and for the good of the state itself. Just as I would say the nation is not justified sociologically in taking the responsibility from the municipality and the municipality is not justified in taking it from others and so on down the lines of groupings. Taking primarily the responsibility of the maintenance of children from the family into which they were born and placing them on society as a whole, we are entering a phase which is morally and sociologically challengeable.

Q. Mr. Silcox, the effect of birth control might very possibly be the reduction of the population?

A. Yes, it might, but it doesn't need to.

Q. Which would be the more natural tendency, to increase it or reduce it?

A. One has to take certain long-range views in that regard.

Q. So I notice.

A. Take the case of Sweden?

To the Court:

Q. Mr. Silcox, you are familiar apparently with conditions throughout the world as to the different countries and their problems and peoples. Would you confine your answers to Canada under the conditions in which it is today?

A. If all the people in Canada had this information available and all practiced it, contraception, under what conditions?

Q. Do you think it would reduce the population?

A. (No reply).

To Mr. Mercier:

Q. If birth control were advocated like in this case under all the conditions existing in Canada today, do you think it would have a tendency to increase the population or a tendency to decrease it?

A. Any kind of birth control?

Mr. Silcox

Q. Let us take the case at bar, or the methods explained in the pamphlet Exhibit 5-B?

A. We have already been considering here not only the particular methods used by the defendant or recommended by the defendant or given by the Parents' Information Bureau at Kitchener; there has also been raised here other methods and the use of the sterile period which has been recommended. If one tends to restrict the population unduly, the other will. If neither works, we can't say what will happen. If they are adequate, then it will give to the people, no matter what method they use, the right and power of spacing their families.

To the Court:

Q. That is not the question, as to the right and power of the people; it is the effect. Kindly confine yourself to the questions asked?

A. I would like to answer your question.

To Mr. Mercier:

Q. I am not interested, as I have stated before, in making a case for or against birth control generally. I am interested, as Crown prosecutor in this case, to know whether an offence was committed and I am only interested now in that the accused is charged with advertising at the Town of Eastview certain methods of contraception against section 207 of the Criminal Code.

I respect your vast learning, Mr. Silcox, but my only endeavor is to bring out the facts in this case. You are put in the box as an expert witness and I am cross examining you on that.

Birth control doesn't interest me, at the moment, although I have otherwise an opinion on it, but if you will confine your replies to my questions, we will get along wonderfully well.

Now, these birth control methods being advertised by the Parents' Information Bureau through Miss Palmer; do you think they would have a tendency to increase or decrease population?

A. Ultimately, I would think they would have a tendency to increase the population, especially in Canada.

Q. Yes?

A. Because where you enable people to plan and space their

children, if they are normal people at all, they will have children, but one of the difficulties at the present time is the economic uncertainty where there is the fear and burden of another child, even if wanted, but if you make the process of family augmentation normal and take from it the burden of worry and anxiety and trust to their own inherent love of children, they are going to have children.

If you can't trust their inherent love of children, I don't think that even in Canada we want them to have children. Especially in Canada, I added.

Q. Yes?

A. Especially in Canada, there is not here a certain potential economic pressure; there is at the present time undoubtedly, but potentially there isn't such as exists in India or China. If we in Canada can provide the proper means of spacing children and trust our women and trust their inherent decency, I think the processes of nature will take care of themselves to the public good.

If we don't allow our women to have this information so they have to resort continually to dangerous means of contraceptives or unreliable means of contraceptives or to abortion and eventually they get a distaste for the whole question of sex itself, then we won't have the population we want.

It is a question of whether rationality or irrationality prevails.

Q. Mr. Silcox, what are you going to do to keep your family at a certain average in Canada if certain people keep on not having children? It has to be made up in some way; has it not?

A. Well, of course.

Q. You can't force people to have children?

A. No, I am glad you mentioned it; you can't force people to be good, even by keeping information from them. You can't force them to be temperate by keeping beer and wine away from them. You create ideals not by process of law, but by ideals which are beyond coercive laws.

Q. That applies to birth control?

A. Yes.

Q. If you could teach people to be good, there would be no need of birth control?

A. No, since they can't exercise real moral force without proper information.

Q. If a certain class of people –- there are among the wealthy people many who have the fewer number of children?

A. There are certain problems of differential fertility as it is called. You will find the professional classes generally do not have as many children as the coal miner in Wales.

Q. The wealthy classes?

A. One reason for that is this: a person trained to enter the professions has spent many years of his active life in preparation. He has to go to university, technical school, law school, theological college or faculty of medicine and he is probably at a minimum of twenty-five to thirty years of age before he can think of getting married under the present economic situation. What comes next? He has to get a little economic competence before he can venture to take on the responsibilities of a family and especially those of parenthood. The result is that marriage is delayed until he is thirty-two or thirty-five.

Q. It is a fact?

A. It is a fact that in the higher degrees of specialized education you get a differential of fertility between the upper and lower classes.

Q. And it is a fact among the wealthier classes and the professional classes families are smaller?

A. Yes, and infant mortality is lower.

Q. If among the more wealthy classes and professional classes we could not reach the average required to keep the population of this country at what it should be, and if under the methods of birth control the common people do not supply the difference of what the average should be, how are we going to keep up that average?

A. You suggest a method of going at the thing from the wrong end. However, we must distinguish from the lowest classes –- I have a hesitancy of speaking of the lower classes ---

Q. They may not be the worst people?

A. No, there is no inherent inferiority in differences of economic competence. You must distinguish in the lower classes between those who do take their responsibilities seriously, struggling against untoward circumstances of life, and those who simply are irresponsible to the duties of life.

To the Court:

Q. You are simply wandering around the question. Do you think the spacing of the children of the lower classes, speaking without opprobrium, would lessen the size of their families?

A. No, probably I ---

Q. And the reason you give that the economically better classes do not have larger families –- and those conditions will not change –- and if the families of the lower classes are reduced –- the question is, how are you going to keep up the level of the population?

A. I don't think you can put it just as succinctly as that from the sociological angle.

Q. It was from more than a sociological angle that you put it?

A. There is a differential in fertility between the professional group and the others. One of the difficulties of the situation is that it is impossible to set one factor against the other. For instance, there is no way of telling at the present time how far people in the upper middle classes are restricting families because of taxation they are called upon to meet to pay for those who provide more than their quota of children.

To Mr. Mercier:

Q. Has there been any time in the history of Canada when the more wealthy or higher classes have had bigger families?

A. I would say the provident people have always had to carry the improvident on their backs.

Mr. Silcox

Q. Has there been any time in the history of Canada when the more wealthy or higher classes have had bigger families?

A. (No reply).

To the Court:

Q. Did the wealthier classes fifty years ago have bigger families?

A. I doubt then if there was a very wide difference in the classes as today.

To Mr. Mercier:

Q. I believe you could answer that question very readily; I have a lot of respect for your knowledge, according to your special studies on the subject. Isn't it a fact that the higher classes of society have always had a tendency to have as few children as possible?

A. It is perfectly true from the days of ancient Rome that the so-called proletariat was defined by Servius Tullius as that portion of the population that provided the surplus population for the state. That is what technically and etymologically the word means, to provide surplus children.

Q. And that condition exists today?

A. Yes, and for the first time in history, we have found safe methods of controlling population.

Q. The point I am trying to make; isn't there always that tendency, and your answer to that question is since the time of Rome, the better classes always had as small families as possible?

A. Not as possible.

Q. Then smaller"

A. I think you will find, down through history, England's noble families have always had four or five children. They do not represent the professional classes, necessarily.

Q. And in Canada here?

A. I have made no special study on the differentiation of fertility in Canada.

Mr. Silcox

Q. If you had answered that in the first place, I wouldn't have pressed the question?

A. Or in Eastview.

Q. Will you admit with me birth control isn't recognized by everybody?

A. Recognized how?

A. This is a new movement or relatively new in Canada, here?

A. In Canada we are seven, ten or twenty-five years behind developments; we are a smaller people; we wait to see what is being done in England and the United States and then cautiously we act. It is relatively new in Canada.

Q. Therefore everything pertaining to it should be done very carefully?

A. Oh, yes, but I might say we have the benefit and advantages of all the experience in those other countries before we began. That makes it probably so much simpler than if we began where Bradlaugh began in 1877, and others since.

Q. I take it you are a firm believer in birth control; I take that from your evidence?

A. I take this from the sociological point of view.

To the Court:

Q. I think the question is unnecessary. He says every woman should have this information; what could be clearer than that?

A. I feel it is fundamental; the spread of proper information is fundamental to practically the whole task of social improvement and social betterment.

To Mr. Mercier:

Q. But you personally are a very firm believer in birth control?

A. Absolutely.

Q. Have you any connection at all with Mr. Kaufman or his

Mr. Silcox

organization?

A. No, I only met him a year or so ago for the first time.

Q. I am not insinuating you have any financial connection?

A. No, I am sorry.

Q. According to the Court, I don't know why you should be sorry for not having any financial interest in his business unless you know something we do not know. You believe, therefore, this birth control is an exceptionally important matter in our social relations?

A. Absolutely, as I said yesterday, my own primary ground for believing as I do is that this information in the hands of women ought to do more than any other thing toward marital happiness and sex adjustment within marriage. It is on that point I am primarily insistent.

Q. I therefore take it you consider it important enough to be approached with a certain amount of learning on the subject. Before a person consents or is decided to use any of these contraceptives, do you not believe the matter should be thoroughly and learnedly discussed with a person or should it be done by just asking the person: "would you like to limit your family to have no more children; I will send you a box and some instructions." Do you think, supposing the thing is done that way, birth control and its methods are not important enough to be discussed thoroughly with a person?

A. (No reply).

Q. It has sociological aspects, religious aspects, aspects of proper relations between the husband and the wife and their happiness. Don't you think the subject matter should be disposed to the proposed patient or person with a great deal of learning?

A. One of the witnesses, as I recall it, said to the questioner when the defendant visited her and asked about general questions said, "you came too late".

The Court: That is not the point.

To Mr. Mercier:

Q. In view of the importance of the subject of birth

Mr. Silcox

control, you realize it has social aspects, religious aspects, health aspects; do you believe that it should be discussed with a patient or mother –- do you suppose it should be discussed lightly or should the matter be gone into thoroughly?

A. Thoroughness is a relative term. I have been studying this question for nearly thirty years; I wouldn't expect to tell a patient everything I have unearthed in five minutes, ten minutes or an hour. The point is this: if there were far more general knowledge available –- people are discussing this quite openly, but what they haven't got is information based on the best opinion.

I don't think it is necessary for the social worker to take two or three days off to discuss the social, medical and other aspects. I think it is only necessary to say what is the approved method and where (illegible) it is obtainable.

I might say I was asked to look over a large number of such application cards. There were women who could sign, but one or two couldn't and it was designated that the women were illiterate.

Q. That doesn't mean they couldn't understand?

A. Not what was being talked about, but the level of intelligence might not be high at all.

Q. But all the important matter should be given to them indiscriminately, is that your contention?

A. I think there is far more discrimination in the method used by the defendant.

Q. I am not asking what you think of the methods of the defendant; you told me you thought it was exceptionally important. Now, should an important thing like that, from a religious, social, medical and other aspects, be given or discussed lightly with a woman?

A. Nothing relating to sex should ever be taken lightly, indiscriminately or otherwise. I think those are words from the marriage service.

Q. Do you think they should be thoroughly impressed with the importance of the subject?

A. But specially ---

Q. Should they understand very well what they are doing; that also might be relative?

A. I think they should understand what they are doing.

Q. Upon all its angles?

A. If you waited until (illegible) any client was being approached by a social worker to explain everything being done for them, why, there would not be enough social workers. There should be the fullest cooperation possible.

Q. What does that depend on?

A. The social worker.

Q. I will give a hypothetical case. A social worker calls at a home. The social worker is representing a firm that gives away birth control information; “are you satisfied you have had enough children, and if you don’t want more children, I can give you the means of not having them. Sign here and you get a free sample”?

A. I should say that was very expeditious.

Mr. Wegenast: Not a free sample.

To Mr. Mercier:

Q. You will get some material free and literature free?

A. That would be very expeditious.

Q. What, in your opinion as a sociological worker, theologian and in view of all your knowledge, should be the proper procedure for the social worker before the person is convinced of using these contraceptives, relying always on the importance of the matter?

A. It would vary, of course, with the individual and the need to guard her fundamental technique, that is, the information she has expected to gather on that point. Most of that is set down in the regulations of social agencies.

Q. Is there any direct answer to that question?

A. No, you are dealing with individuals.

Q. Is there any possible method you should suggest?

A. It would depend on the individual. If a person came to me, he couldn’t tell the line I would take in advance; it would depend on the individual. That is case work. That is the essence of social work.

Q. Take individual cases and I would like your opinion on that: on page B-1 (of this evidence), a woman would reply to a social worker ---

Mr. Beament: This is hypothetical?

Mr. Mercier: Yes, and then we might prove it in evidence.

To Mr. Mercier:

Q. There is a conversation and her reply is:

“It was for the birth control, you know; she asked if I got a big family; I said nine, and she asked if it was enough, so I took the parcel; I wanted it myself; she didn’t ask me to take the parcel.

Q. You are talking about a box?

A. Yes.

Q. What happened about the box: what did you do: did she show you a box or offer it?

The Court: 'I asked for it.'

The Witness:

A. I took it myself; she said 'take it,' and I took it with my own consent.

To Mr. Mercier:

Q. Miss Palmer offered you a box and you accepted it with your full consent?

A. Yes.

Q. After you talked about birth control?

A. Yes.

Q. What was the conversation about birth control after you got this box?

A. She said if I need some, I could have some for nothing; if people cannot afford to have those, they give them to people who can't afford a big family.

Q. What were the explanations given: you had a conversation with Miss Palmer before this box was offered you and you accepted with your consent. Before this box was offered you, there was some conversation?

A. Yes."

The Court: If you are going to make a hypothetical case, you had better leave the names out.

Mr. Wegenast: Under the very thin guise of a hypothetical question, I submit my friend is putting the evidence of this witness when the evidence is all in.

Mr. Mercier: This is the evidence of Mrs. Lafleur.

The Court: It is not hypothetical?

Mr. Mercier: No.

The Court: Adjourn for five minutes (at 11:30 a.m.).

(Upon Court being resumed)

To Mr. Mercier:

Q. Do you wish me to go over the evidence of Mrs. Lafleur or do you remember it sufficiently?

A. I think I remember it sufficiently. She was the second woman called; was she not?

Q. Now, the conversation: (reading pages B-1, B-2, B-3, B-4 and B-5 of this evidence):

"Q. Do you remember what she told you?

A. It was for the birth control, you know; she asked if I got a big family; I said nine, and she asked if it was enough, so I took the parcel; I wanted it myself; she didn't ask me to take the parcel.

Q. You are talking about a box?

A. Yes.

Mr. Silcox

Q. What happened about the box: what did you do: did she show you a box or offer it?

The Court: 'I asked for it.'

The Witness:

A. I took it myself; she said 'take it,' and I took it with my own consent.

To Mr. Mercier:

Q. Miss Palmer offered you a box and you accepted it with your full consent?

A. Yes.

Q. After you talked about birth control?

A. Yes.

Q. What was the conversation about birth control after you got this box?

A. She said if I need some, I could have some for nothing; if people cannot afford to have those, they give them to people who can't afford a big family.

Q. What were the explanations given: you had a conversation with Miss Palmer before this box was offered you and you accepted with your consent. Before this box was offered you, there was some conversation?

A. Yes.

Q. You said Miss Palmer told you these boxes would be given to people who could not afford to have big families?

A. Yes.

Q. Was anything else said?

A. She just showed me how to.

Q. She just showed you how to what?

A. I can't say that in English.

Mr. Wegenast: I am satisfied to have her say it to Your Worship in French and have Mr. Mercier repeat it.

Mr. Silcox

The Witness:

A. She showed me how to use it.

To Mr. Mercier:

Q. She showed you how to use what?

A. The tube.

Q. Answer in English the best you can: you needn't be nervous. She showed you how to use what, Mrs. Lafleur?

A. The tube.

Q. I see a box here addressed Mrs. G. E. Lafleur, 30 Catherine Street, Eastview, Ontario, which I will put in as an exhibit, Your Worship, from 410 King Street West, Kitchener, Ontario, Canada postage nine cents paid, August 19th, No. 877.

The Court: Exhibit 1-B in this count. The exhibits in the previous (first) count will start at 1-A.

To Mr. Mercier:

Q. I show you this box, Mrs. Lafleur; what do you say as to this box?

A. It is my box.

Q. That you received?

A. Yes.

Q. After the visit from Miss Palmer?

A. Yes.

Q. And Miss Palmer showed you how to use what is in this box?

A. It was in the bag; she showed it quick.

Q. What do you mean she showed it quick; just exactly how did she show you?

A. She got a parcel in the bag; she just turned the key.

Q. At the bottom of this tube?

A. Yes, and it was out.

Mr. Silcox

Q. Is that all?

A. Yes.

Q. She showed you how to use it?

A. Yes.

Q. You received also an envelope in this box?

A. Yes.

Q. Was this in your box when you received it?

A. Yes.

Q. It was in the box and known as liquid latex, and together with this you also received a slip that also was in your box, which reads as follows:

> 'The following contraceptive supplies will be mailed to properly recommended people, at prices shown, if payment is sent with order to:
>
> Parents' Information Bureau, 410 King St. W., Kitchener, Ont., or
>
> Miss A. S. Weber, 410 King St. W., Kitchener, Ont.
>
> 1 – 4-oz. tube of contraceptive jelly, .35 each or 3 for $1.00.
>
> 1 – nozzle made to attach to jelly tube - .35 each or 3 for $1.00.
>
> 2 – 4-oz. jelly tubes and 1 nozzle - $1.00.
>
> 1 – highest grade pessary - .50.
>
> Good quality condoms - .25 per dozen.
>
> Condoms will be sold to patients only, and no more than six dozen per year. Send money orders – do not send silver.'

That was also in your box?

A. Yes.

Q. Was this in your box also?

A. Yes.

Q. A slip, 'Parents' Information Bureau…yourself,' to which is attached two copies of Exhibit 2-A.

The Court: Yes.

To Mr. Mercier:

Q. Did you receive any other literature?

A. No.

Q. Have you ever seen these pamphlets before?

A. No.

Q. You have never seen them?

A. No.

Q. Did you pay anything for that?

A. No, not a cent.

Q. Did you know about these things before meeting Miss Palmer?

A. No.

Q. It was as a result of information received from her that you used it?

A. Yes.

Q. And you say Miss Palmer told you it was for birth control?

A. Yes.

Q. Was any explanation added to that: did she just tell you it was for birth control?

A. She asked me first if I had a big family and I said nine kids, and we laughed, and I said we get along fine and she asked did I care to take this box.

Q. What did she tell you about that box?

A. It is hard to tell, you know.

Q. Why is it hard to tell: she told you something about that box: you might tell the Court what it was Miss Palmer told you?

A. She told me it was to stop getting kids.

Q. Is your husband working?

A. Yes.

Q. What is his occupation?

A. Pressman.

Q. Where?

A. Mortimers.

Q. Has he steady employment?

A. Yes.

Q. For how long?

A. Thirty years.

Q. What is his average salary?

A. Forty a week." (concludes reading).

Mr. Mercier: Do you want the cross examination too?

Mr. Wegenast: You might as well.

Mr. Mercier: I will read all the evidence:

"CROSS EXAMINATION

To Mr. Wegenast:

Q. This was sent by mail?

A. Yes.

Q. Miss Palmer didn't leave it there with you?

A. No.

Q. And you didn't pay anything for it?

A. Not a cent.

Q. Now, is this your signature, Mrs. Lafleur?

A. Yes.

Q. That is your signature?

Mr. Silcox

A. Yes.

Q. I suppose we can mark this?

The Court:

Exhibit 2-B

To Mr. Wegenast:

Q. You have nine children living?

A. Yes.

Q. The last one is not very strong or wasn't when Miss Palmer was there?

A. It is never sick.

Q. It is not as strong as the others?

A. They are all the same.

Q. And you have had four abortions –- abortements –- enforced coucher ---

A. Just one.

Q. Just one: it says four here?

A. Just one miscarriage; it is a long time.

The Court: What is the date of that application?

Mr. Wegenast: 11th August, 1936. This is case No. 35781.

To Mr. Wegenast:

Q. You had a talk with a friend about Miss Palmer?

A. Yes.

Q. Who was it?

A. Mrs. Mousseau.

Q. And you know Mrs. Mousseau gave your name to Miss Palmer?

A. No, I gave a card to Mrs. Mousseau.

Q. And who told Miss Palmer about you?

A. I don't know.

Mr. Silcox

Q. Now, we have here, Mrs. Lafleur, that you have been using abortives: I don't know whether I can explain that to you: medicaments pour faire abortements? Vous vous en etes servi?

A. Oui, oui, justements.

Q. She admits she uses abortives. It says here the last baby wasn't strong?

A. It was a big fat baby, nine and a half pounds. They are all strong.

Q. Nine of them?

A. Yes.

Q. Down from the age of fifteen to nine months?

A. Pardon?

Q. One is fifteen?

A. Sixteen.

Q. Down to the baby?

A. Just eleven months.

Q. You had another baby still born; it died at two months?

A. Between the first one.

Q. That makes ten children altogether?

A. Yes.

Q. Now, you didn't think you were doing anything you shouldn't do?

A. No.

Q. It was not morally wrong?

A. No.

Q. In consulting Miss Palmer?

A. No.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Mr. Silcox

Q. All your children are healthy?

A. They always have been.

Q. Did you have four abortions, Mrs. Lafleur?

A. Just one.

Q. There are four marked here, also that the last baby is not strong?

A. Oh, no, it is strong.

Q. It is Exhibit No. 2-B." (concludes reading).

Then there is the application card (page B-9 of this evidence).

Mr. Wegenast: Put Exhibit 2-B in the hands of this witness.

To Mr. Mercier:

Q. Yes. Will you look at that card and see if that is enough of a thorough discussion. I think you might take notice also of the fact the doctor's name is mentioned and "not contacted". This woman is shown as an "R. C." –- a Roman Catholic?

A. From the point of view of the information read, I can't just here see any substantial difference which the notes recorded on this card from what Mrs. Lafleur said herself, except at the one point of the number of abortions. On one side, "health of children" is given as "good"; on the other side:

> "home conditions: home very clean and children appear well cared for. This mother is much in need of our help. Has been using abortives."

There is the statement there, "last baby not strong".

Q. That is denied?

A. From the point of view of the card itself, I would need more information as to how the person who made out this card got the information. It says, "Give dates —- 1928 – 1929 – 30."

Q. That might be interesting to know too?

A. Further, of course, in social work generally, very frequently and especially in social work of this character,

Mr. Silcox

information is given to the worker from other sources and contact is made for that purpose, although Mrs. Lafleur states in her evidence, if I remember, she doesn't know who suggested that the defendant see her.

Q. I believe she said she gave a card to Mrs. Mousseau?

A. But she doesn't know who suggested her name to the defendant, nor can I tell from this card. I would like to have further information with regard to these dates of "1928 – 1929 – 30".

Q. The only person who can give that, I suppose, is Miss Palmer. But do you believe from this evidence the social worker has given importance enough to this very important matter?

A. I think unless she was making up the story out of whole cloth, she had a longer conversation.

Q. I don't like to tell you this, but I think you are evading my questions. I would ask you to answer my questions. You told me it was very important, the ways and means of distributing this information. I want to know your opinion as a sociologist and theologian with all the qualifications you have and have put at the disposition of this Court. I want your opinion; is that a proper way of getting this information?

The Court: Never mind further evidence.

The Witness:

A. On behalf of that particular case, I should say yes.

To Mr. Mercier:

Q. Yes?

A. She had information which was adequate under the circumstances.

Mr. Wegenast: He didn't say the importance of the matter should be discussed with the patient.

Mr. Mercier: He said it was an important matter.

Mr. Wegenast: Surely some of these people who need the information most are incapable of understanding it?

Mr. Mercier: That is all the more reason why it should be given

to them. I am asking him from every point of view; social, religious and others. He is an expert and I submit it is a very proper question.

The Witness:

A. In the first place, the mother certainly was anxious to have the information and asked for it. In the second place, she had nine living children, all healthy, and if I assume all mothers are entitled to it under any circumstances, a woman who has brought nine healthy children into the world should have it.

Mr. Mercier:

Q. Do you think the information was given properly?

A. (No reply).

Mr. Wegenast:

Q. You read it in French, "medicaments pour faire abortement" —- medicine to make abortions.

The Witness:

A. I understand.

To Mr. Wegenast:

Q. She said it was a long time ago?

A. (No reply).

To Mr. Beament:

Q. She said she was taking medicine to bring on abortions?

A. I might say, at that point, it is generally known women hesitate to admit practices which all social workers understand are extremely common and especially to admit it in public, but I

cannot go beyond the record here and on the basis of the testimony and on the basis of this card, I feel that the method used had nothing in it at all reprehensible.

To Mr. Mercier:

Q. And you believe the method was explained fully enough to this woman in order to have her understand it from every angle in which she might be interested exactly what she was doing?

A. In the lack of further evidence, I think so.

Q. Now, there is the evidence of Mrs. Jenny Grecco, (D-1).

"To Mr. Mercier:

Q. Speak up; do you know Miss Palmer?

A. No, I never see her before she was at my place.

Q. You never saw her before she went to your place?

A. No.

Q. When was she at your place?

A. Yes, sir.

Q. When?

A. In August.

Q. Do you know when in August?

A. Around the middle of the month.

Q. How did Miss Palmer come to go to your place?

A. She told me somebody sent her to my place.

Q. Now, did she talk with you when she was sent to your place?

A. Yes, sir.

Q. What did she say to you when she was sent to your place?

A. She talk about those boxes.

Q. What did she say?

A. She asked could she talk to me. I said, 'I don't talk much English; I got work to do.' I didn't want to be bothered with the box.

Q. Did she tell you what was in the box?

A. Yes.

Q. Did she show you what was in the box?

A. Yes, she showed me the box she got in her bag.

Q. A box similar to that?

A. Yes, she had a box in her bag.

Q. Box, Exhibit 22-B. What did she show you in that box?

The Court: Ask her what she was shown.

To Mr. Mercier:

Q. What did she show you?

A. Jelly.

Q. With a key, described to her as jelly. Was there anything else in the box?

A. A tube and key, that is all.

Q. That is all Miss Palmer showed you. Did she tell you anything about these?

A. She asked if I wanted to go to hospital, me or my husband.

Q. For what purpose?

A. For an operation. If I wanted to be operated, I would be two weeks or if I didn't want to go, she asked if my husband would go.

Q. She suggested either you or your husband go to the hospital for an operation?

A. Yes.

Q. Did she say what sort of operation –- what kind operation?

A. Yes.

Q. What?

A. I told her I had nine kids living and two dead, and she said, 'You are young yet; you might get more. Why not get operated; you might have more?'

Q. Did you reply to that?

A. I told my husband and he said, 'don't be bothered with that'.

Q. Is your husband working?

A. No.

Q. I produce this box, Mrs. Grecco, Exhibit 3-B; do you remember seeing that before?

A. Yes, that is mine; that is the one I gave to Mr. Martel.

Q. How did you get that?

A. The mailman came with the box.

Q. How did the mailman come to send you that?

A. The mailman came; he was at my place with that box; he give it to me.

Q. What did you do with it?

A. I put them away so I don't want the children to see them.

Q. You didn't want the children to see that?

A. No.

Q. How old are your children?

A. The oldest boy is seventeen.

Q. Any girls?

A. Yes, two.

To the Court:

Q. How did you come to receive this box?

A. Pardon?

Q. Why did you get the box?

A. She told me she was going to send me that box, -- Miss Palmer.

To Mr. Mercier:

Q. What did you say when she said that?

A. I didn't say anything. She said, 'you will get that box by mail.'

Q. Did you sign anything?

A. I signed a paper, but I don't read English; I don't know what it is.

Q. Was that paper explained to you in French?

A. I didn't read the paper.

Q. Was it explained to you?

A. I just see the paper; that is all.

Q. You just saw the paper?

A. Yes.

Q. Did you see your doctor?

A. No.

Q. Were you told to see your doctor?

A. No.

Q. Did Miss Palmer tell you to see your doctor?

A. No, she didn't

Q. You just got this box after you signed something?

A. That is all.

Q. Why did you sign this?

A. She told me I had to sign this.

Q. She said you had to sign this?

A. Yes.

Q. Did she tell you why you had to sign this paper?

A. No.

Q. What made you believe she had authority to make you sign this?

A. After she said if I signed it, I would get the box.

Q. You said Miss Palmer told you you had to sign this?

A. Yes.

Q. What made you sign it, because she told you you had to sign it?

A. She told me to sign this paper.

To the Court:

Q. Do you sign papers for every stranger who personally comes into your house?

A. She told me to sign it because I had work to do.

To Mr. Mercier:

Q. Your reply is that you signed the paper to get rid of Miss Palmer?

A. I didn't want to be bothered with those boxes.

Q. All right

CROSS EXAMINATION

To Mr. Wegenast:

Q. You knew what the boxes were for?

A. No, but she explained.

Q. So you wouldn't have any more children?

A. Yes.

Q. You have nine.

A. Yes, and two dead.

Q. Any miscarriages?

A. No.

Q. Any abortements?

A. Two still born.

Q. You didn't think you were doing anything wrong in talking to her?

A. No.

Q. How long have you been married, Mrs. Grecco?

A. Sixteen years.

Q. You are on relief?

A. Yes.

Q. You are on relief now?

A. Yes.

To the Court:

Q. So you have had eleven children in sixteen years?

A. (No reply).

To Mr. Wegenast:

Q. Two not born alive and nine born alive?

A. Yes, eleven altogether.

The Court: Is that all?

Mr. Mercier: That is all, unless my learned friend… All those exhibits are in with their contents and advertising?

The Court: Yes." (concludes reading).

To Mr. Mercier:

Q. What do you think as to this case from social, religious, medical and other standpoints?

A. Could I see the card?

The Court: There was no card in this.

Mr. Mercier: No, but it is the same.

To Mr. Mercier:

Q. There were nine children and two miscarriages?

A. In sixteen years of married life.

Q. Yes?

A. I think that information was enough.

Q. Whether she understood enough?

A. On that point, I will have to form my own opinion as to her credibility.

Q. I suppose the credibility of all these witness –- what they say as to the suggestion of operation of the social worker who comes into the house and says "what about that"?

Mr. Wegenast: I don't want to limit my learned friend, but that is not covered by the charge and it is hearsay.

Mr. Mercier: It is not hearsay.

The Court: Not hearsay?

Mr. Wegenast: It is hearsay as far as this charge is concerned.

Mr. Mercier: It might prove motive in the worker, that anything is good enough that controls birth.

The Witness:

A. One cannot give a categorical answer to that. She should have mentioned to her under certain conditions; perhaps she should have.

To Mr. Mercier:

Q. Do you still think birth control information was indicated?

A. Yes.

Q. And you don't think it was dealt with lightly as a social worker and theologian and under all the other circumstances –- do you think the social worker did her work well?

A. I wouldn't recommend sterilization to everybody. That would be a very violent manner of reducing the population, but with certain people and under certain circumstances that might be quite proper.

Q. Give a similar set of circumstances; if social workers recommend birth control, do you think there was sufficient information here?

A. There might be on the basis of that particular interview, but there might also be other information which the social worker had to corroborate her judgment.

Mr. Mercier: We can only judge what we saw here.

Mr. Beament: By what we saw in the box, the appearance and demeanour of the person in the box.

Mr. Mercier: But in another case, the same thing might be done

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and it would be all right, and it would be proper propaganda for birth control, having regard always to its importance.

The Witness:

A. Unless one assumed a priori grounds that sterilization is wrong, I would say it is proper.

To Mr. Mercier:

Q. Of course you are admittedly a confirmed believer in birth control and the method of the Parents' Information Bureau?

A. As far as I know them.

Q. Take Mrs. Desjardins?

Mr. Beament: This is one of the women who didn't recognize Miss Palmer.

The Court: Skip that one.

Mr. Mercier: I think it was established on cross examination that Miss Palmer was there.

Mr. Beament: Her name was used as meaning somebody was there and the Court stopped it, and it was as to the general conditions of the family.

The Court: She didn't identify Miss Palmer.

Mr. Beament: I have no objection, but it doesn't seem to get us anywhere.

Mr. Mercier: In cross examination –- "Martel came and got it."

To Mr. Mercier:

Q. A woman who would want something just out of curiosity, and she would get it –- let us say a woman –- a hypothetical case, a woman would wish this just as a matter of curiosity; do you think she should have it?

A. I have already said I think all married women are entitled to the information if they want it.

Q. What do you mean by information; the pamphlet, or do you mean all the information regarding the importance of the matter? The way I understand you about that –- I may be wrong -– is that all women should have it, but I take it when properly explained

Mr. Silcox

to them, the information in general, not only the information contained in the pamphlet and the way to use this tube. If I am wrong in my impression, I would like you to correct me?

A. I don't know what other information outside of these concrete contents of the box and pamphlet were given. The other information which may have or may not have been given, we can't judge on that.

Q. But in the case of a woman who is curious to find what is in the box; do you think it is justifiable to send the information and the box?

A. Whether she wants it or not? I think it is wise. Whether it is wise to waste money sending it to people only to look at it ---

Q. Do you think, from a social, religious and all other angles, all women are entitled to get it whether they are apprised of the importance of the matter or not -– everybody should get it, a little girl of 16 or 17?

A. From my point of view, it is a matter for the individual. If the society that the person has belonged to has been remiss in not providing the fundamentals of morality, of sin or poor conscience, whatever the outlook of the woman, she is entitled to have that information and should have it.

Q. Shouldn't the conscience of the party be found out; whether the woman has any social objection, religious objection, or any other sort of objection?

A. If she has religious, social, or moral objections, presumably, she would not sign the card.

Q. Even out of curiosity?

A. I can't be accountable for the curiosity of women.

Q. No, that would be quite a subject. Let us take the case of Mrs. Burton (LeBreton) at page D-13.

Mr. Beament: I want to point out again that this is a woman who never saw the defendant.

Mr. Mercier: I understand, but there is evidence further on that she was living at the same place where an unmarried girl was living. It is not only from the point of view of the social

worker, but from the point of view of dissemination of this stuff.

Mr. Beament: I thought my learned friend was insisting we are trying Miss Palmer.

Mr. Mercier: I thought my learned friend insisted we were trying birth control.

Mr. Wegenast: I don't know what birth control has been tried; all our evidence has been bearing on matters before the Court.

Mr. Beament: It is irrelevant.

Mr. Wegenast: And when the time comes, we can ask Your Worship to rid your mind of it.

To Mr. Mercier:

Q. Take a hypothetical case: do you believe a woman who does not ask for these instruments or material and literature should get them even if she does not request them?

A. There might be very sound reasons why she should have them.

Q. Even if she did not ask for them –- however, I will keep on, while I do not expect I will have any different answer. The case of Jeannette Hudon (Reading D-19):

"To Mr. Mercier:

Q. Do you remember seeing her?

A. Yes, when she came home.

Q. When was that?

A. I don't remember; about a month or a month and a half.

To the Court:

Q. Where do you live?

A. 54 Catherine.

To Mr. Mercier:

Q. Where were you living in the month of August of this year?

A. I was home.

Q. Where? At 53 St. Charles?

A. No, I lived one week at 53 St. Charles.

Q. With Mrs. LeBreton or Burton?

A. Yes.

Q. Do you remember what month you were living there?

A. No, I don't.

Q. In any event, while you were living there, you met Miss Palmer?

A. Yes.

Q. And how did you come to meet her there?

A. She came home, the first time I saw her, when I was living at home.

Q. Where?

A. My place.

Q. Where was that?

A. 54 Catherine.

Q. When was that; do you remember?

A. No, I don't.

Q. She went to your home and after that went to Mrs. Burton's place?

A. Yes.

Q. That was the second time you saw her?

A. Yes.

Q. You asked her to come to Mrs. Burton's?

A. She passed and said, 'hello, how do you do?' I was polite.

Q. Did you have any conversation with her?

A. That is all she asked and she came in.

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Q. When inside, did she speak?

A. Yes.

Q. What was said?

A. She asked me the name of the lady where I was. I told her and she asked me if the lady would like to have a box like she give me.

Q. She had given you one of those before?

A. Yes.

Q. What was in the box?

A. Well, the same as those boxes there; you know what is in them.

Q. I don't know what is in them?

A. You know as well as I do.

To the Court:

Q. You must say what is in them?

To Mr. Mercier:

Q. You had a conversation; did Miss Palmer tell you what would be in the box she would give you?

A. Yes.

Q. What did she say would be in the box?

A. A tube and I don't know how to say the other things.

Q. Were they shown to you?

A. Yes.

Q. What –- would you like to describe them?

A. There was a glass. I don't know how to say it; there was a tube and a key for the tube.

Q. Were you told what to do with those things?

A. Yes.

Q. What were you told to do with those things?

A. I am not going to answer.

Q. You were told to do something with these; what were you told to do?

A. (No reply).

To the Court:

Q. It is a fair question; I am afraid you will have to answer it.

A. (No reply).

To Mr. Mercier:

Q. What were you told to do with the contents of that box?

A. (No reply).

Mr. Wegenast: I think my learned friend's words are a bit ambiguous.

The Court: I think the Crown Attorney is trying not to lead.

Mr. Mercier: I have asked the witness if she was told what to do with these things and she said yes, and I want to know what she was told to do with these things.

To Mr. Mercier:

Q. Were you told how to use these things?

A. She told me if I want to use it and I said yes.

Q. All right?

A. She show me how to use it; she just put the key in the tube and show me how to put the stuff in the other thing.

Q. Did anything come out of the tube when she showed you how to use the key?

A. Yes, I don't know what kind of stuff.

Q. What did she tell you to do with this stuff, if anything, or did she tell you to do anything with this stuff?

A. Yes, she did.

Q. What did she tell you to do with this stuff?

A. I can't answer that; that is no question to answer in front of all the people like that.

The Court: Let her write her answer then.

(Witness writes the following answer):

A. She said to put the stuff that there is in that tube in the glass piece and you put the glass piece inside your body before you have anything to do with a man, if you don't want any family.

To Mr. Mercier:

Q. How old are you?

A. Twenty-four.

Q. Married?

A. No.

Q. You were not married either in August of this year?

A. No.

CROSS EXAMINATION

To Mr. Wegenast:

Q. You told Miss Palmer you were married?

A. I told her at first, but after I told her I wouldn't say lies, I told her I wasn't.

Q. You have one child?

A. Yes.

Q. And you have started to have several more?

A. What?

Q. You have been pregnant several more times?

A. No, I had enough of one; don't worry.

Q. You signed this?

A. (No reply).

The Court: It will have to go in as an exhibit.

Mr. Silcox

To Mr. Wegenast:

Q. This paper was made out at your place before you signed it?

A. She asked me a few questions and put them on the paper.

The Court: It is Exhibit 23-B, signed 'Mrs. A. Hudon'.

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Did you use any of this stuff?

A. No.

Q. You didn't -– when you signed this application had you told the accused that you were not married?

A. Yes.

Q. When did you tell her you were not married, the first time or the second?

A. The first time.

Q. The first time you said you were not married?

A. When she came home, she said, 'do you want a box?' I said, 'yes,' and she said, 'are you married,' and I said, 'yes,' and after that she said, 'are you sure you are married,' and I said, 'no, I am not married.'

Q. Was this signed after you had told her that?

A. No, I didn't sign before I told her I was a girl.

Q. When did you sign this; was it after you told her you were unmarried or before?

A. (No reply).

The Court: She just said that.

To Mr. Mercier:

Q. When you signed this did Miss Palmer know you were married or not?

A. She knew I was a girl.

Mr. Silcox

Q. And on this card, Exhibit 23-B, I see 'Mrs. A. Hudon; date of marriage, March, 1935'; did you tell her you were married in 1935?

A. I did not.

Q. Did you give the age of your husband?

A. I didn't tell her I had any husband.

Q. The card gives 'husband's age, twenty-seven.' Did you ever have any abortions?

A. No.

Q. The card says three or four?

A. No.

Q. Did you tell her you had those?

A. No.

Q. Did you say anything about the physical condition of your husband?

A. I didn't tell her I had a husband.

Q. It says here, 'physical condition of husband, good'; did you tell her you had miscarriages before as well as since marriage?

A. No, I didn't.

To the Court:

Q. You are under oath, Miss Hudon; you didn't tell her any of those things?

A. No, I didn't.

Q. You didn't tell her you had a husband age twenty-seven?

A. No, I didn't.

The Court: Is that all for this witness?

Mr. Mercier: As far as I am concerned." (concludes reading).

The Court: And the card is Exhibit 23-B (given to the witness)

To Mr. Mercier:

Q. What do you say as to that case? Of course, you already told us you believed girls who had one child should be entitled to this information and even in view –- if my learned friend will remember the very straight forward way this young girl said she did not want any more.

Mr. Beament: I believe she did say that straight forwardly and I also believe it was the only straight forward thing she did say.

Mr. Mercier: My learned friend will take the evidence as he likes it.

The Witness:

A. I think I did already answer that question and there is the question of the credibility of the witness in the light of all the circumstances. I think she admitted having one child.

The Court: Yes.

To Mr. Mercier:

Q. We have got down to this; every woman should be sent this stuff whether she wants it or not, whether she asks for it or not, whether she understands it or not?

A. I would reply in the words of Saint Paul, "all things are lawful, but all things are not expedient".

Q. What do you say as to the case at bar?

A. I would say that a woman of that kind never intended using it or needing it again.

Q. I want to shorten my cross examination on the subject if I can at all do so. I want an expression of your opinion upon this: you told us it was a very important matter and you told us social workers were there to give the information. I have tried to show you cases where the information was little and cases where the information was none and you made a general observation that every female should get this information. Now, where do we stand? Now, in

relation to the importance of the matter, how should this be distributed; should it be sent to everybody?

A. It would be most uneconomical.

Q. Only from that point of view?

A. It would be most unnecessary.

Q. Why, because every woman needs it and should have this information and pamphlet and box?

A. They should have the information.

Q. Everyone should have the box and pamphlet?

A. No, the information.

Q. What do you mean the information, that she should be instructed in the matter before these things are sent to her?

A. I think the information belongs necessarily to the whole process of sane sex education.

Q. What do you mean by information: I haven't got your definition of that?

A. The woods are full of schemes and methods used by women in all classes of society and particularly by those in what one might call the economically depressed classes. Some are recognized as being dangerous. Some are recognized as of indifferent harmfulness and some are recognized, as far as medical science can determine, as harmless.

Now, it seems a question of whether a woman should be left to find out for herself what is harmful and what is harmless, so she can make her own decisions without running the physiological danger. From a moral and religious point of view ---

Q. Should that be explained before the box and pamphlet are sent?

A. I say modern society has not provided today what it should have provided years ago. In the whole of our structure, we are not facing the problem of sane sex education and until we are able to do that, we must use the methods we do use, when we can use them and where we can, to spread the knowledge which is not harmful, but which is harmless.

Q. May I take it to be your opinion then that the box containing the jelly, tube and three condoms and instructions for repeat orders and pamphlet of birth control information should be sent to every woman whether or not she has been told

by a social worker what it all means?

A. Every woman?

Q. Yes?

A. Whether contacted or not?

Q. Yes?

A. Sent through the mail?

Q. Yes?

A. It would be nonsensical. A social worker –- if you are selling tooth paste, you might send a sample, but a social worker trying to meet a social need should make a contact and make up her mind as to the need, otherwise, it is not social work; it is commercial exploitation.

Q. I have not been able to get you down to a definite answer. I gave you special cases. There was the case of the woman who said, 'I don't need it,' after the woman says, 'I have had nine, two, one children'; -- whether she wants it or not or wants more children or not -- does that warrant sending her this stuff?

Mr. Beament: My learned friend states women would not want it.

Mr. Mercier: I said if a woman did not want it.

Mr. Beament: As a matter of fact, my learned friend has not pointed to me a case where the woman said she did not want it.

Mr. Mercier: It is hypothetical.

Mr. Beament: If it is, I withdraw.

Mr. Mercier: I am trying to find out whether these things should be dealt with indiscriminately.

Mr. Beament: I think we should be careful of hypothetical questions because at least one newspaper has mentioned as gospel evidence a hypothetical case.

Mr. Wegenast: The Toronto Daily Star edition of October 23rd gives the evidence of Mr. Kaufman:

Mr. Silcox

> "A box had been mailed from Kitchener on August 15th to a woman who gave birth to a child last week, the Crown Attorney said."

Was this not contrary to the witness' contention that he did not send boxes to pregnant mothers?

Mr. Beament: That was a hypothetical case.

Mr. Wegenast: That was put out as a positive statement by this paper.

The Court: There is no evidence of that.

Mr. Wegenast: I am absolving my learned friend, the Crown Attorney.

The Court: It should be made very clear whether discussing an actual case or a hypothetical case. I am not limiting you, but make it perfectly clear whether it is an actual case or a hypothetical case.

Mr. Beament: I am not suggesting my learned friend is trying to do anything like that.

To Mr. Mercier:

Q. I believe that this witness might be able to answer my question and give me his answer, or opinion, as to what information should be given women before the pamphlet and box are sent to them. I have tried certain cases, hypothetical cases, and general ideas and I do not seem to be able to get anything but general answers as to what information should be given before the pamphlet and box are sent. I have used indiscriminate and hypothetical cases.

Have you any method according to sociology and theology, according to your learning and interest in these matters -- what would you suggest a social worker should do in disseminating this propaganda?

A. One could suggest a certain ideal set-up of the whole business, if that is desired by the Court.

Q. Do you not believe, Mr. Silcox, at this point, that if the matter is very important that the set-up should be as ideal as it possibly can be? After all, we are dealing with mothers with children, with families, which is one of the great

institutions of the country, and any interference with their natural rights –- I would like to know what the ideal way would be?

A. I would not be here unless I had to, and to testify in this case, if I did not believe quite as the Crown Attorney has suggested: that this is a matter of supreme importance. It does not follow that ideal methods are practicable at any one particular time. We don't set up when beginning new branches of social work –- set up after a blueprint conceived from our imagination, or our ideas of what is the best. We try to provide the service as best it can be provided in the light of financial assets or lack of assets, or in the light of the presence of workers thoroughly trained or not so thoroughly trained –- in the light of movements in the community that might go with us the whole way or half way and might be critical, and you must take all those factors into consideration and do the best you can and, in most fields of social work, as I indicated the other day, certain individuals take the initiative, try it in experimental work, prove it, and then you have a foundation on which a more ideal method can be established.

Q. This idea is the subject of considerable controversy at the present time and maybe half the people believe it and the other half not. Medical and sociological and other experts do not agree that birth control is right?

A. If social workers waited until everybody agreed ---

Q. If sociologists do not agree?

A. Most of them overwhelmingly agree.

Q. And it is not accepted generally by sociologists?

Mr. Wegenast: The pamphlet among other methods suggests different methods; it suggests rhythm.

Mr. Mercier: I am not trying to make a case for the Catholic church.

Mr. Wegenast: My learned friend mentions methods in the pamphlet and I am recalling that.

Mr. Mercier: I have said all the methods –- the necessity of the principle has not been accepted by all sociologists; in the practice, they differ.

Mr. Silcox

To Mr. Mercier:

Q. As to the ideal method?

A. I think in every community there should be established what I would call a bureau of marital guidance to which those about to be married would come for advice before marriage and those already married and who thought they had made a mistake could come. I would want that to be a bureau; that would not be a court. I would want to permit the freest possible interview between the worker and the persons who come there, no coercion or constraint about it.

I would want the clinic to have on its staff men and women qualified to meet not only the obvious requirements of married women, but meet a lot of the more subtle problems that disturb married life.

Now, I would have that set-up in every community. I would have it operated by a board on which there would be the leading men and women in the community of recognized social leadership and recognized in the field of social work and recognized in the field of medicine and recognized in the field of religion. If that were possible and we could get collaboration from the different groups on that who would collaborate with the board and offer to those people the help they need –- I believe that that kind of bureau should be set up in every community in Canada –- whether it would be practical is another matter –- noting would be more effective in promoting marital happiness, the happiness of children, the health of children, the health of

mothers, and the health of fathers because fathers have some right to happiness in the world too. It would do great good.

However, one must take the situation as it is and do what he can.

Q. The matter itself would be important enough to move all the social agencies and medical bodies and others into one group in order to give the information?

A. Yes, but the body politic never moves unless somebody pushes it.

Q. And the social workers can replace all that by going into homes and asking how many kids they have had and if they are satisfied with preventing having any more?

Mr. Silcox

A. I doubt if any social worker would use that language and I doubt if any person in the whole community knows the tragedy that may be behind these applications except the social worker.

Q. There are tragedies also in homes where there are not very many children?

A. Absolutely.

Q. And some times greater tragedies than in homes where they are happier and have large families?

A. Not as a sociologist, but as a minister of religion, I know that, and very often for the same reason.

Q. Some very large families are very happy though poor?

A. Very often the source of trouble in those other families is the result of sex maladjustment.

Q. But a very large number of large families, although poor, are happy and greater tragedies are found in the wealthier families than in families with a large number of children?

A. But social workers only deal with the 15 per cent of tragedies at the bottom of the ladder. The social worker's work is primarily among the economically depressed classes and it is there the social worker sees the tragedy. I myself have been a minister of rather wealthy churches and the tragedies I knew were often not the tragedies the social worker knows.

Q. And also great men have come out of families with a large number of births?

A. Absolutely.

Q. And would you go this far with me that in greater proportion do big men come from large, poor families than from wealthy families?

A. I think it is dangerous to assert that. A study of Who's Who in America shows an extraordinary percentage of men sufficiently well known to be there are sons of clergymen.

To Mr. Mercier:

Q. That does not prove large families ---

A. No, some come from large families. It proves they

have some cultural chances in the home.

Q. Some clergymen have large families too?

A. Yes, and some have black sheep.

Q. And some have none?

A. None.

Mr. Wegenast: Some are not supposed to.

To Mr. Mercier:

Q. A social worker going into the home can replace for the time being the information necessary for this important matter?

A. I think so.

Q. And how could a social worker replace all those things which you claim to be ideal for this important matter? What qualifications would you require, for instance, in a social worker doing that?

A. First, I would put common sense, which is always the most desirable quality, far above academic degree.

Q. Yes?

A. I would put sympathy, –- what the psychiatrist would call empathy –- the power of sitting down and by asking a few questions let the other person tell you.

Q. The information contained on those cards?

A. That is true of any social worker.

Q. And the information contained on those cards –- once the social worker has that, that there are so many children, whether the husband is working or not, whether getting a fair salary or a very small salary, whether the woman has had abortions or not, whether conditions in the home are very happy or not –- the minute a woman signs that card with the information contained therein, if there is no other information than that –- if you do not wish to have more children –- that information is sufficient?

Mr. Beament: My learned friend has asked the witness the qualifications of a social worker and interrupts with this long

statement.

The Court: This has been going on all the time in this case. A question is asked and before it is answered, we are in Arabia.

To Mr. Mercier:

Q. Are you through?

A. I could go on.

Q. Yes?

A. I was trying to hold one or two points. The first is common sense, which is one of the rarer qualifications. The second is sympathy, or in a rare sense, empathy; the capacity to listen, and I think that is the supreme qualification of any social worker. I would say she would have to have some general rules or special technique to follow. It depends on how highly organized the work is; whether complex or simple, and whether it concerns matters she is qualified to act upon. If they are matters fundamentally for medical men, all she could do would be to contact the client with the doctor, but she would have to have certain rules of technique and follow those rules.

I think she would have to have a large measure of initiative in order to know and make up her own mind, in situations perhaps more complex than usual, just what the best policy was in the light of all the circumstances.

I would not say in this particular field she would need to be a specialist in sociology or moral theology. I think many preachers, many ministers of religion, are called upon to give advice in matters of sex who don't know anything first hand, second hand, or third hand about these things.

I don't expect the nurse would have to be a moral theologian to give advice on subtle problems. She ought to be able to appraise the situation and try to secure the cooperation of the client and cooperate with the client herself and, in the main, decide how much she could do to help the client to the good life.

Q. How would the social worker know, for instance, if it was a case for medical attention, if the applicant did not tell her or lie to her, in the lack of this ideal center?

A. Of course, as I have already intimated, many of the persons to whom the social worker goes -— already the names have been suggested by doctors sometimes, by other social agencies sometimes, and by other individuals sometimes. Certain information may be in the hands of the worker before she goes. Beyond that, if the patient lies, I think the responsibility is not on

the social worker, but on the client. It is not the job of the social worker to carry on medical examinations.

Q. You would not advise that a person using these contraceptives should consult a doctor first?

A. No, no more than if I would consult a doctor before using one toothpaste or another.

The Court: Adjourned 1 o'clock until 2:15.

(Court resumed)

To Mr. Mercier:

Q. Now, Mr. Silcox, I wondered if you would put your opinion fairly about the distribution of these contraceptives, if I might put it this way. First of all, you say the use of contraceptives for birth control a very important matter and that you believe that all women should have this information available to them and that the responsibility of who should or should not have in the circumstances in the Town of Eastview, where there is no clinic, should be upon the social worker and if according to the social worker's judgment even if people do not thoroughly understand what this social worker says, she should just let them receive these contraceptives and general information about how to prevent families; would that be putting your opinion fairly?

A. Not exclusively on the social worker. The doctor might give information many of the social workers could not give. As a matter of fact, a large majority of women in middle- and low-class circumstances get what information they have from other women in the community; sometimes it is good, sometimes bad.

Q. A social worker goes into a home. In that home, she is not thoroughly understood by the mother she visits. She fills up one of the cards, which are part of the exhibits, and gets that information more or less to the best of her knowledge and ability and from the information on that card, the social worker

gets the lady to sign that card and the lady receives contraceptives and instructions not only how to use the contents of the box that is sent her, but also several other methods of contraception; do you believe that is sufficient?

A. One of the main tasks of the social worker in a community is to discover which of the members of a community are in such peculiar need they should receive, let us say, public charity, public benevolence. One task of the social worker in this particular field might be to justify the giving of something which was a public benefit. It was given to them freely; it cost money and whether or not an organization or individual is justified in giving that material or

information gratuitously or freely is, as a matter of fact, a decision which would have to be made in the light of the need of the client and his ability, or perhaps inability, to pay for it.

Q. And the social worker would decide that after an interview, –- you would not contend that the social worker would have to sit down with the woman for half an hour or so and explain what it means from all points of view –- she would just judge from the conditions in that home and the way she feels personally about the situation and would recommend that these people receive birth control?

A. I don't think a social worker would need necessarily to sit down and spend an hour and a half or two hours on that particular matter, particularly because a large number of women, so far as my knowledge goes, are already conversant with the general subject. There are conflicting views about it, but what most women want to know is what is harmless and what is reliable. That is just about the one thing they don't have an opportunity of finding out.

Q. What would you say about the social worker entering into the home of the mother, let us say, of six, seven, eight, or nine children and the people were on relief; what would you say the social worker, according to your knowledge, should do when she gets into that home? What should be the trend of the conversation in order to give information to that particular mother?

A. That again raises questions of technique and personally, I do not feel that one can ever formulate or codify technique in

a situation like that. You are dealing with persons, not inanimate things. You have to feel your way.

Q. What do you mean?

A. You may ask a few questions and you may get a response. You may find you are on a par with the person you visit. On other occasions, you may feel there is a great deal to talk around and about the person interviewed. My own judgment –- and it is not infallible –- is that the vast majority of mothers are generally conversant with the facts of birth control, but not with specific methods. Consequently, it is best to come to mothers with something concrete, definite, thoroughly reliable, and something which you are not promoting there on a commercial basis, but with the idea you are doing good to the person interviewed.

Q. Let us say in a case that is hypothetical, of a mother who knows nothing about it, with a family on relief of six, seven, or eight children. The social worker goes in to this place. You are the social worker. What would be the trend of your conversation? What information would you wish given this woman?

A. I certainly would want to give the kind of information the defendant gave because I feel very keenly a woman with eight or nine children on relief had a certain public responsibility to

herself as well as to the eight or nine children already born and to children who might be born if she did not have this information. I think if I could possibly give this information, I would do so.

Q. In other words, everything Miss Palmer did in these circumstances was absolutely justified?

A. As I said before, in the light of what I have heard, I could not criticize.

Q. And that would be the proper way to handle similar cases?

A. Yes, I also said this morning the ideal method is by the state; it was not possible in the light of present circumstances.

Q. And you believe everything Miss Palmer did according to

Mr. Silcox

the evidence is proper?

A. Unless there is something else not in the evidence.

To the Court:

Q. According to the evidence?

A. I see nothing wrong.

To Mr. Mercier:

Q. You think the methods of distributing information in this case were quite proper?

A. Yes.

Q. That is your opinion?

A. Yes.

Q. You have got that in.

Mr. Beament: He said that before.

To Mr. Mercier:

Q. Now, in the notes you have referred to in your evidence, you gave an authority by Kimball Young; would would (sic) be your explanation of that so far as Canada is concerned?

A. We have a very low density of population in Canada.

Q. How would birth control in that aspect be of any benefit to Canada?

A. The objective of birth control is not limitation of population, but development on rational lines.

Q. That is your claim?

A. It isn't mine; I haven't any.

Q. That is your belief?

A. That is my belief of the purport of birth control as commonly presented today.

Q. You will agree with me there is room in this country for a much larger population than we have now?

A. Yes, but the economists differ greatly on the optimum of

population for Canada.

Q. There is room for many more in Canada than now?

A. We must remember that in spite of all our elegant speeches the resources of this country, at least 1,500,000 square miles of this country, thinly populated, may or may not be suitable for permanent population. At present there are only 12,000 or so Indians and Eskimos living in that territory. Whether it would be suitable for others, I do not know.

Q. There is room for more population in centers that can produce enough -- there is room for double the population we have now?

A. The difficulty we have in answering that is that the whole question of our economic structure is involved and I don't know if we want to go into that.

Q. Don't you think a little more attention paid to the possibilities of Canada as a whole —- to this Canada of ours —- would be more beneficial?

A. We are raising already more agricultural produce than we can possibly sell.

Q. I suppose it might be possible under a more ideal system to find enough people to eat it?

A. We are not under the ideal system.

Q. Don't you think something might possibly be done to relieve the people by encouraging increasing the population?

A. I should be glad to see a larger population in Canada and I should also be glad to see that population made richer and I should be glad to see things for them to do when the population is increased, but even with the removal of approximately 200,000 people from relief in the last two months, we still have 1,000,000 people receiving relief in Canada. Until the time when as many as are employable, —- and many are not -- until they are absorbed in industry and agriculture, the question of increasing population is away from the main point.

Q. There might be possibilities of increasing employment in Canada?

A. I think the Unemployment Commission is thinking that

over.

Q. Don't you think it would be an excellent idea to await their decision before doing this?

A. (No reply).

Mr. Wegenast: Why not wait for our idea?

Mr. Mercier: By the time this case is through, maybe they will find so many less children they may not need to provide work for anybody.

To Mr. Mercier:

Q. You have talked to us about clinics in the United States?

A. Yes.

Q. All these are under proper medical supervision?

A. I would not say all; there are special laws in certain states which definitely prevent any information on this subject being given to anybody, except by a doctor on medical indication of contraception.

Q. You say they forbid it in the States?

A. In certain states.

Q. In certain states?

A. Unless those instructions are given by a doctor on medical indication of contraception. I am not justifying the laws in the States; that happens to be the law. Consequently, when those clinics were established, it was necessary to keep within the letter of the law and care had to be exercised at that point. It was at least a policy of expediency.

Q. You don't know, therefore, whether all the United States' clinics are under medical supervision?

A. I think in one or two states you can't get any information of any kind.

Q. But how many are under medical supervision?

A. 120 in 1934, 250 in 1935 and they were being established with such rapidity in 1936, and whether any of the clinics more

recently established are limited by medical supervision or not ---

Q. Are those you know under medical supervision?

A. Those I know best are. Perhaps the best established of all was in Baltimore and it was on the initiative of a ranking gynecologist of the States, Williams, and he gathered the leading men at Johns Hopkins together at Baltimore and established a clinic and it is under medical supervision.

Q. At Johns Hopkins do you know Prof. Howard Kelly?

A. He was, at one time, professor of gynecology.

Q. Do you know he was, at one time, opposed to birth control?

A. Yes, and he is opposed to many other things too.

Q. If we all agreed, we would not be here today. You said about marriage centers; are they under medical supervision?

A. In the States.

Q. In Europe?

A. I don't think they are.

Q. How do they work there?

A. Some are under churches, Protestant and Catholic, and some under government auspices and some come under direct medical supervision.

Q. Are there not doctors employed at these centers?

A. There are. There is a very interesting report on that very point prepared by Dr. Helen Kopp which appeared, I think, in the June, 1933 issue of the Journal of Obstetrics and Gynecology. You will find towards the end of that article various reasons why they found in Europe that the doctor often was not the best person to decide those cases. If the doctor was a specialist in matters venereal, a woman would rather hesitate in consulting him for various reasons if he was a specialist in certain diseases of that kind. She might hesitate going to a specialist in obstetrics and they found, especially in Germany, that it was necessary to secure the collaboration of

the medical social workers and it was found women more readily consulted them.

Q. Your evidence on that is quite sufficient. What is a medical social worker?

A. For the most part, in most hospitals you have a Social Service Department. A social worker is attached to the hospital. Her job, as I take it and understand it, is primarily to follow up hospital cases. They come to the hospital especially where there are unusual economic needs to follow up into the homes and possibly, they carry on in one way or another in the home.

Q. That principle is a trend in medicine?

A. Not necessarily.

Q. Why do you term it “medical social work”?

A. They are attached to a medical institution. I imagine many, if not the most, have training or some training as nurses.

Q. I believe you told us there was a considerable number of abortions in Germany at one time or maybe now. Are there any statistics showing whether these abortions are on girls or married women?

A. I think the opinion of those who studied those things, like Professor Taussig, is that they are on married women.

Q. In Germany?

A. I can’t recall at this moment.

Q. What would you say as to Canada here; are the majority on married women?

A. I think the report prepared by the Canadian Welfare Council indicates how relatively little we know of the situation in Canada.

Mr. Wegenast: I think perhaps that record will not look right because of the exact sequence of the words. I think you were understood to say the figures are from Germany; Taussig is American.

To Mr. Mercier:

Mr. Silcox

Q. No, when I asked about Germany, I think he corrected that impression. In Canada there are no figures to show whether the majority of abortions are on married women or girls?

A. The only way we can gather statistics on that is by the sampling method. We get some institution which has facilities of studying several thousand cases of women and we get the facts about those 10,000 or 15,000 women as accurately as they can be obtained. On the basis of those facts, we make our computation of the probable number of abortions in the whole country and we find as a rule, where those facts have been gathered, they are the best we can secure because there are no fundamental facts available about women practicing abortions; there is no record made as a rule with the government; it is kept secret and all we can know is through clinics like the various ones established in the United States and the carefully tabulated experiences of medical men who, on confidential grounds, venture to express an opinion.

Let me illustrate a comparable case. There is no way we can estimate statistics on venereal disease in Canada. The secretary of the Social Hygiene Council sent me figures the other day. Those facts are based on Toronto doctors’ experiences; many did not answer, but those who

did gave figures on the number handled in a period of time and on the basis of that, he made his computation of the incidence of venereal disease in Toronto.

To the Court:

Q. In other words, it is difficult to get real figures on abortions?

A. Except where the sampling method is used.

Q. Do you think when the authorities quoted some 600,000 abortions a year in the United States, do you think those figures are reliable?

A. I think it is from Taussig, who is Professor of Gynecology at the University of St Louis; if he makes a wrong estimate, the rest of us are off.

Q. It is possible?

A. He was called to the White House conference in 1930 as

Mr. Silcox

an authority on this subject.

Q. Do you, yourself, know how he got that figure?

A. It was based largely on two sampling studies. First, he got a report on 10,000 cases collected and carefully tabulated by Dr. Helen Kopp in clinics in New York City. The second was in Indiana.

Q. In any event, that was made on two sampling bases?

A. Yes.

Q. You know of none in Canada?

A. No, there is reference, of course, to the prevalence of it and certain things a doctor might explain in our table of the Dominion Bureau of Statistics in the matter of deaths. We could postulate how many people died directly from abortions, but that is only a very small proportion of the whole problem. We have no statistics.

To Mr. Mercier:

Q. In England, if I took these notes correctly, there are clinics where there are medical indications for the use of contraceptives with a medical examination in all cases?

A. I presume there would be medical examinations in England, but that would not include all England. There are special government clinics.

Q. These are recognized by the government?

A. Yes.

Q. And the others?

A. The government permits them to carry on.

Q. By themselves?

A. Yes, the government came in rather late.

Q. Like the social worker in this case of one witness here?

A. Yes, better late than never.

Q. Now, you said there were local and national medical considerations for birth control?

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A. I think I divided it into medical, economic, eugenic, moral and sociological. In one of them, I would bring in the case of inter-cultural friction; is that what you mean by national?

Q. And the promotion of birth control ought to make for any factor of the public good?

A. Birth control reduces infant mortality and maternal mortality, increases infant health and increases maternal health.

Q. It reduces the number of abortions?

A. Yes.

Q. But you cannot tell me here whether the abortions are on girls or married women?

A. Here in Canada?

Q. Yes?

A. No.

Q. And you said it reduces the spread of venereal diseases?

A. Yes.

Q. And promotes marital happiness?

A. Yes.

Q. And it tends to establish better racial conditions?

A. Yes.

Q. Reduces taxation?

A. Yes.

Q. And improves birth rate along eugenic lines?

A. Yes.

Q. Reduces areas of inter-cultural friction?

A. Yes.

Q. Population pressure is the cause of war?

A. Yes.

Q. That would not be very much the case in Canada here?

A. No, I don't think it.

Q. And you mentioned something which I believe is of particular interest to a lot of people in this country, that there is a fear about breeding in Canada?

A. You have, I believe, mentioned that.

Q. Today, as a result, I suppose, of personal studies you have made, investigations you have made and so forth?

A. And common attitudes.

Q. You were at the Institute of Human Relations in August of last year?

A. Yes.

Q. And if you are reported correctly by the press, an Associated Press dispatch dated August 28th, 1935, they have you as J.E. Silcox, Secretary of the Social Service Council of Canada, who said before the Association:

> "…is the extraordinary fecundity of the French Canadian and the suspicion the French are trying to out-breed the English…he said the Dionne kids are the symbol of a great fear…over a sequence of generations."

Is the press report correct?

A. As press reports go, it is correct.

Q. You are qualifying; what do you mean as press reports go?

A. I have suffered before.

Q. Are you suffering now?

A. I may; I am not sure.

Q. Do you say you were misquoted?

A. No, I say at that particular conference where we were dealing with the relations of ethnic groups, one to the other, in the United States, Mexico and Canada and I was, along with the editor of the Catholic Register and a Jewish (illegible) from Toronto –- we were presenting the problems of Canada, and I did refer to the blessed event of the Dionnes and newspapermen, with that everyday desire for headlines, used it over the whole question and gave me a great

deal of publicity throughout the United States and Canada, but it was a purely incidental remark in, I think, an analysis of different types of conflict where you have majority and minority groups.

Part of my paper dealt with problems of Jews and Gentiles in Canada and part with problems of French- and English-speaking Canadians and it covered quite a number of points besides that; that was the first point that attracted the attention of the newspapers.

Q. There is something else in this -- “What is this suspicion the French are deliberately trying to out oust the British in Canada?” Now, I know quite a few of them and if the witness is interested, I will show him a comment on it I published shortly afterwards in the local papers.

A. I should be happy to see it.

Q. What is this fear the French are deliberately trying to oust the British in Canada?

A. It is the fear cherished by a great many English-speaking people. I am not saying it is a matter of deliberate policy, but I do say that fear is there. A sociologist recognizes that fear and looks at it submitting it to sociological analysis.

Q. But from a sociological point of view, what would be the danger in their fear, which I am not by any means admitting?

A. Neither am I.

Q. What would be the danger?

A. (No reply).

Mr. Beament: A fear of fact?

To Mr. Mercier:

Q. Fact?

A. From a sociological point of view, it might be a very good thing to have the French dominate the English.

Q. As a matter of fact, there have been complaints of

English people in the Eastern townships that their people are not doing their duty?

A. I don’t know why the Anglo-Saxon or any other race should dominate here; my own first name is French.

Q. “A silent struggle is going on in Ontario”; would it not be part of the motive of birth control propogandists to extend their activities a little more in French centres than in other centres?

A. I don't know what their intentions are, I am sure. I have no knowledge of that. I do say, since you raised the point, and I said that it might tend to reduce intercultural tension, I do say, if you could relieve that fear —- whether justified as fact is another matter and whether it would be desirable or not —- if you could relieve that fear, you would create greater confidence between the two great groups in this country and, as a Canadian, I feel very keenly the public good of this country is dependent on the complete confidence and cooperation of these two groups in this country.

If you care to look up some of the other newspaper reports, you may find that last fall when I went to Western Canada speaking before Canadian Clubs that was over and over again the burden of my addresses there.

If you care to look up newspaper reports in Western Ontario, you will find it there.

Partly as a result of my extended travel in Europe and Latin America, I came back to my own country feeling out of my personal experience that the people of my own racial extraction in Canada were entirely underestimating the real value of the French Canadian to this Dominion in every way; culturally, economically, and every way, and my hope and desire is that nothing may be done to restrain these two peoples from achieving the destiny of this country and the greatest public good of this country by the cooperation of these two peoples.

Now, suspicions whether founded on fact or founded on falsehood do not lead to goodwill between the English-speaking and the French-speaking Canadians or Canadians of French origin. Let us take Montreal and in that area the whole question of groups is raised in order that the French Canadian preserve their language

and their culture in the deepest sense of the word and if we preserve the distinctive things we may have to contribute, we may work together for the building up here of a country that we may be proud of, but we cannot do that unless we can eliminate these areas of intercultural friction through which we will have a divided Dominion.

Q. You say there is a fear on the part of the English-speaking majority?

A. (No reply).

Mr. Beament: Not on the part of the English-speaking majority.

Mr. Mercier: They are in the majority.

Mr. Beament: I thought you meant the majority of the English speaking.

To Mr. Mercier:

Q. No. Does that same fear which you wish to do away with, might be created in the French people by their English-speaking compatriots by the fact that these birth control clinics might

be established in centres where there is a majority of French-speaking people and traditions –- do you think there should be established these things, or that this propaganda will make for a better understanding? Or do you think that on account of the fear certain English people have of the French outbreeding them –- would that be creating another fear?

A. No, I think it would tend to allay that fear.

Q. How?

A. Because if we have information and knowledge by which we can control population and progress along rational lines and we are doing it for both the French and English –- those things should tend to eliminate that particular area of friction and we know, for instance, that in Ontario and in Quebec ---

Q. I am not interested in Quebec at all?

A. We know that here in this very area you have this situation which one rather hesitates to mention. It is involved in the school question; it is involved in the charities and other immensely difficult situations. We have in the province at the present time difficulties over the allocation of taxes to

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schools. I might say to this Court, although it may be gratuitous information, I myself have had occasion to hold off certain Protestant attacks on the resolutions of the last government because I felt it was not the time for hasty and inconsiderate action. The whole school question is involved. How are our school questions to be decided because of increased friction and tension? I am for peace and eliminating as far as possible these areas of friction. Take the City of Ottawa.

To the Court:

Q. Doesn't it seem reasonable to argue that the very method Miss Palmer has used in this matter may simply cause the estrangements you hope may never happen; what is your considered opinion on that point as to these methods being estranging ones?

A. If the women to whom she offered this information bitterly resented the receipt of it, there might be something in that contention.

Q. But don't you have to go beyond that question of that matter, speaking with reference to the attitude of mind of the people actually being contacted by Miss Palmer?

A. To what?

Q. To the attitude of mind of the people of the two races as a whole?

A. Of course the moment you begin to analyze the factors that are involved in difficulties between minority and majority groups –- and that happens to be the things I have given the

most recent years of my life to –- the moment you bring into the open these areas of tension, you may deal with them; some are unimportant and others become important, but you can't eliminate them unless you bring them into the open, but I don't believe you will ever have peace in the community or nation until the elements in that nation frequently face all the facts involved in conflict and by process of elimination reduce those to matters of cooperation and we learn to live by compromising on those points.

Q. I suppose you might argue it this way; –- this is not the attitude of the Court -– although her method in itself was not a cause of estrangement, the fact of it ending in this court case and a hearing, this may tend to eradicate those views?

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A. Absolutely.

To Mr. Mercier:

Q. In the case of people, Canadians of French origin who are traditionally Roman Catholics, who believe in their religion and who, I may assert, do go the church very often or as often as required by the laws of the church, that a woman -– I will not take an intellectual woman, but a woman like many put it this way, of the less learned classes –- people who believe in traditions, who have been brought up on traditions, part of which tradition is their religion, and one does not go without the other, and these people for generations having been brought up in these principles: do you believe that insofar as the public good is concerned that somebody all of a sudden coming into the house suggesting things that they are known to be absolutely fundamentally opposed to: do you not believe that would cause more friction than would be required for the public good?

A. Sometimes temporary friction is necessary for permanent public good.

Q. How does that apply in this case –- do you believe in religion?

A. Yes, and in the right of promulgating my religion, such as it is.

Q. I do not know what it is, but the majority of us, at any rate, can boast we are all Christians and there was a time when everybody was a Christian?

A. Except the Jews.

Q. Don't you believe that would cause more friction than would be necessary for the public good –- coming into a centre or place, into homes known to be Catholic homes?

A. There might be immediate friction, but afterwards there might be great benefit in the alleviation and amelioration of these points of tension. I suppose it must be said that the people who are promoting birth control hold it almost as a gospel at the present time. Whether you like it or I like it is immaterial.

Q. The gospel as preached openly?

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A. Yes, and when first preached, one reads in the accounts of the apostles, the people who preached it were accused of turning the world upside down. They went into the Jewish Synagogues and made life extremely uncomfortable for those there.

Q. But it was a public place?

A. No, it was in the home and if you want to be accurate, some meetings were held in homes because one man fell out the window during the sermon.

Q. He must have been asleep?

A. Not in the court room, --but there was friction, it was for the public good. Take China –- I am not in Arabia now –- missionaries have upset the Chinese home, disintegrated it and there are Chinese who say, “You ought to leave us in the old ways”.

There seems to be something to say for that on sociological grounds, but nothing can be accomplished with it. No cultural practice in life can exist long without being affected by currents of thinking all over the world. These are the movements of the times and let the group that is responsible, the church that is responsible for the protection of the moral standards of that community –- it must meet the situation in its own way, but it cannot hope, any more than the Chinese can, to insulate the people from this kind of information. I do not believe it can be done.

Q. In other words, instead of leaving these people alone, the church should change its position entirely?

A. No, I wouldn’t say that, and I always try to give the Catholic viewpoint fairly.

Q. Yes, and I want to say now, probably your evidence yesterday was fair?

A. But so far as artificial contraception violating what they think is a natural law, that not even the Pope and the College of Cardinals and the whole Catholic church can change. That is their position. They cannot recant on that in the logic of their own attitude. They may reinterpret it, but they cannot recant.

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Q. You interpreted the law of Onan and not everybody agrees with you?

A. I still think I am right.

Q. You agree with yourself?

A. I do.

Q. What exactly is your reaction to people traditionally Roman Catholic who follow their religion carefully and are regular church goers and believe in it; wouldn't they be unhappy if placed in the position of using these contraceptives or if they did use them to have to forego their religion?

Now, you take a happy, contented Catholic family, who may be happy in their misery, who believe in God in the way they see in their faith to believe in God, like a Protestant of any of the numerous Protestant churches who believe in adoring God, although at a different altar and are happy; do you not think that to ask them to abandon their traditional church where they have been taught to believe and adore God -- do you not think it would be better to leave them in their own happy conditions than to interfere?

A. If I thought they were mistaken, I would not very well take that point of view. I do think that one who went to them to change their point of view, like Protestants and Catholics disturbing the point of view of the heathen, must entertain respect for those people. That is fundamental. I think you must try always to understand the point of view of those with whom you do not agree and state your point of view frankly and fairly.

Q. So that point of view must be stated fairly?

A. I know in a great many clinics in the United States Catholics are 50 per cent of the clients.

Q. Maybe 100 per cent?

A. And I know they often make a practice when Catholics ask for that advice they remind them, "Now you are an R.C., you know what the church thinks about this".

Q. And you believe that is the correct attitude?

A. Not necessarily.

Q. And that should be done?

A. It is fair for a woman to say afterwards we have got to have that information.

Q. But that is different to a person going there and seeking it, but that isn't fair?

A. I do not think it is showing a spirit of unfairness. I would not go where there is a Catholic; it would be against my inner taste to go and run down his religion and it might be against his inner taste to run down mine. At the same time, I do not think I should keep my children impervious to great trends of thinking towards the public good.

Q. Any Protestant would resent a Catholic going in to show them how to do something against their religion.

A. (No reply).

Mr. Wegenast: I don't know of any evidence of resentment here; I think there is a complete absence of it.

Mr. Mercier: I am bound to bring out everything and I intend to. I am on record that I did not want religion brought out and my learned friend started it.

Mr. Wegenast: My learned friend's witness started it.

The Court: It was your cross examination.

Mr. Mercier: I stated before Dr. DeHaitre went into the box it was for the one purpose of stating whether these instruments were contraceptives or not.

The Court: I think that is it.

Mr. Mercier: And my learned friend, after cross examining him on those questions, claimed the doctor being there, he was subject to cross examination on everything.

Mr. Wegenast: That is not complete. It was Dr. DeHaitre who opened the matter in answer to a question of mine which hadn't anything to do with religion. I think the record will bear me out. I said in an earlier part of the trial we would inevitably come to it.

The Court: Adjournment for five minutes.

Mr. Silcox

(Upon court being resumed)

To Mr. Mercier:

Q. Wouldn't you resent somebody coming to your home and suggesting something against the principles with which you are convinced?

A. Of course I might resent some person doing that if I belonged to another political party.

Q. We are talking religion.

A. I might resent it in the same way. There is a difference at that point. The Protestant, in the end, determines these matters very largely in the light of his own conscience.

Q. Wouldn't' the same thing apply to a Roman Catholic?

A. Except at this point: there are not, within the Protestant churches, such authoritarian attitudes and principles laid down, so that a Catholic could say almost anything he wanted to a Protestant and the Protestant might resent it or take his opinions without due seriousness and to that degree, you might say he would resent it, but I do not think the average Protestant would resent the Catholic to come, in his state of mind, to urge him to accept certain Catholic provisions. I think a Protestant would insist that is quite a proper procedure.

Q. That also is relative and if a person went into a home of a mother of the working class, for instance, who is a good church goer –- I am talking about a Protestant home –- and had

something or suggested something which is absolutely against the principles of her religion, isn't there danger that that might be the cause of great friction?

A. It might be the cause of friction, but it might be due to the church rather than to the worker.

Q. I am not discussing that now, but the cold facts the way they are. You admit that might happen?

A. Yes, when Christian missionaries in our own country have tried to change the state of the Jews, to make Jews into Christians, the Jewish community has often resented that. The

whole question of proselytism is of great concern.

Q. Therefore, the Catholic population might resent that too?

A. It might resent it too, yes.

Q. And it might cause friction?

A. In the nature of our society, it becomes more and more inevitable, in the study of relations of majority and minority groups, you do not have lasting peace by any process of insulation. I do not believe the Jewish group can hope to overcome certain antipathies which they suffer at the hands of non-Jewish groups by the process of insulation. It is by the Jewish groups coming out to meet the Christian and then he may retire into his own particular enclave, but I say you cannot have real peace where there is insulation, where that insulation renders impenetrable the ideas formed in the outside world.

Q. This subject of fear, –- you have mentioned it yourself as one of the points favouring birth control -— what to your knowledge is this fear and suspicion that the French are deliberately trying to outbreed the English? If there is such a fear, what is the cause; there must be a cause?

A. In the first place, I would say the facts, whether susceptible to one interpretation or another, the facts form a ground of fear.

Let us look –- I think I have already shown fecundity tables for the Dominion showing much higher fecundity and infant mortality of the French people.

Q. Why should that cause fear?

A. Let us accumulate (illegible) and take the question of the Catholic population in general in the country. The Catholic population of Canada is approximately 42 per cent including the Ukrainians and so forth. If I might refresh my memory from the figures –- the population 20 years of age –- I am using my own calculation from the census of 1931 –- I won't guarantee my arithmetic is correct, but I think the Catholic population under 20 was 47.2 per cent; under 10, 49.16 per cent; under 5, 50 per cent.

On the whole, that progress may be observed. I have the figures

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for all the provinces. It means the number of children born in this country in Catholic families is (illegible) numerous. I am not saying if it is a good thing or a bad thing that Catholics have a numerical preponderance, but it is felt where one racial group is growing more rapidly than others we have a ground for suspicion and if you add to that ground a fear that in say the province that is dominantly Roman Catholic –- and once again let me say it isn't a question of whether it is right or wrong, but if this is that situation –- if you have reports coming from that province to the effect that they encourage such large families –- from that and other factors, there may be deduced the proposition that the knowledge of methods of controlling population are being withheld –- we have a further suspicion, whether it is (illegible) technique or not, there is the belief that they are being kept from a knowledge of that and encouraged to have large families with a possibility in the end of pushing their representation over 50 per cent.

Whether that is desirable for the public good is a matter for debate. My only point is that, as a hard-boiled sociologist, that creates a danger.

Q. Being a sociologist, there is a suspicion the French are trying deliberately to outbreed the English. It creates a fear for which there must be some explanation. Explain what is the fear; is it for patriotic purposes or is the safety of the Empire at stake if Catholics dominate in this country numerically?

A. There might be a variety of grounds. There might be ardent Imperialists of the flag-waving variety who are highly sensitive to that sort of danger. It might be that the hypothetical Anglo-Saxon stock fears inundation in Ontario. It might be -- especially as there is a replacement of Anglo-Saxon stock in the West at the present time by the Ukrainian and others, it might be a fear of Roman Catholic domination.

Q. I am not comparing Ukrainian with the original settlers of this country?

A. (No reply).

Mr. Wegenast: Or the Indians.

To Mr. Mercier:

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Q. Or those who came after them?

A. When Canadians of French extraction migrated to New England, there was very great tension there and I happen to know about it as I lived there. In some of the books I have read by leaders of the French Canadian population in New England, they openly advocated the hope that the fecundity of the French would be such that New England would be swamped; that was

40 or 50 years ago and I knew what it was, but the tension has largely been removed for other reasons.

Q. In Ontario, here, there are suspicions of this inferiority of something; I would like to know, according to your knowledge of the data you have been able to gather about that fear, what it is that English Canadians fear in that respect?

A. The whole history of our country since 1759 has unfortunately been the history of efforts to resolve this cultural conflict. I remember I think the first passages of Lord Durham's report; he regretted the fact that the government of the time had exerted all its influence towards perpetuating difficulties which he said the government should have tried to obviate.

Q. Here we have not, in my judgment, resolved that problem and I, on my own part, believe that the faults are on both sides —- it is an issue that becomes predominant in new Ontario and along the Ottawa Valley. It manifested itself, as it did a few years ago —- as it did in this area in the question of education; I don't mean to remind anybody of regulation 17.

Q. I know it by heart?

A. It is foolish to blind our eyes to the reality of these things. I think a person who is a real Canadian at this time, whether Anglo-Saxon or of French origin, should set himself to obviate all unnecessary tension.

If the method of the rhythm is widespread or can be made widespread under parish auspices, I think that will help reduce that tension. Whether it is reliable or not is another matter.

Q. Should there be among those reasons a fear, as I suggested before, a fear that it would be dangerous to the

British Empire or the Province of Ontario if the province became predominately French or Catholic?

A. I would separate what is very difficult to separate in Canada, the French and the Catholic.

Q. Very?

A. If I am willing to grant the French population is as fertile as they are, and the Protestant the same, a good deal might be obviated. It is difficult to say which part of the fear is fear of the French and which part is fear of the Catholic domination.

Q. From that angle, is there any fear allayed by our English-speaking compatriots in that respect as far as the security of the Empire is concerned?

A. There might be quite a few with a fear for the safety of the British Empire. I am inclined to believe an increasing number of Anglo-Saxons in Canada are siding with Canadians of French origin in putting Canada first.

Q. Is there any reason for fearing for the safety of the Empire?

A. There might be some.

Q. Do you believe as an historian there is any ground for that fear from the past history of Canada, let us say from 1775, the date of the American Revolution?

A. I have heard the date before.

Q. And I mean would our learned friends have the right of practicing our learned professions had it not been for certain interventions on the part of the French people among the people of that far day?

A. I would agree with my old professor of history, Professor George MacKinnon Wrong; he commented on the anomaly in 1776 when in all British North America that which was British ceased to be British; the only part that was French and not British remained British.

Q. There was another instance if I remember correctly in the war of 1812?

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A. Several instances.

Q. Those two are outstanding?

A. Yes.

Q. 1776 when a change might have been exceedingly dangerous –- new subjects of a new Empire –- it might have been exceptionally dangerous at that time?

A. We passed over 1791.

Q. The first thing you know you will be proving yourself an expert historian and we will have to go on for a long time. This is all comes out of this?

A. (No reply).

Mr. Beament: The fear of security and Imperial defence.

Mr. Wegenast: And that has not come up on this side of the Ottawa River.

The Court: Adjourned until Monday at 10 o'clock.

Mr. Mercier: We will continue next week?

The Court: Solely ---

Mr. Mercier: Until the defence, at any rate, concludes its case.

(Adjourned from October 28th, 1936, till Monday morning, November 2nd, at 10 a.m.)

(Court resumed, Monday morning at 10 a.m.)

To Mr. Mercier:

Q. You are already sworn Mr. Silcox?

A. I think so.

The Court: He is affirmed.

The Witness:

A. Yes.

To Mr. Mercier:

Q. I believe, sir, from some of the evidence you gave you

mentioned something of certain circumstances where a woman's health will not allow the birth of a healthy child; how could that be determined except under medical supervision? Could a social worker tell if a woman's health would not allow the birth of a healthy child?

A. So far as it is a question of disease or lack of health or physical difficulty of some kind, that of course is a matter upon which the doctor would properly be expected to render an opinion, but in my judgment, it is only in cases where there are definite medical indications a doctor should be regarded as exclusively the voice to determine matters of contraception; then it is a medical matter.

Q. Would you say in the investigation as conducted by the accused in this case, from that point of view, would that justify the investigation made by the accused, even in a case of this kind where it might have been possible the woman's health would not allow the birth of a healthy child, that the investigation conducted by Miss Palmer was sufficient to determine it?

A. I think that primarily would be a question for a doctor of medicine to answer rather than one speaking from a sociological viewpoint.

Q. Yes?

A. If the medical conditions were such as indicated in the question, I think there would have been the most urgent reason for her having this information regarding contraception.

Q. Talking about infant mortality, you said it was due to the high rate of births?

A. They go together.

Q. Are there any other possible causes?

A. Oh yes, there might be other possible causes.

Q. I mean you would not lay it down as a general opinion?

A. There has been a general decline in the last five years of infant mortality in Canada due to a drive of health authorities and social workers on infant mortality. It has also been noticeable while there has been this decline, there has

been a decline in the birth rate.

Q. Very many children die from auto accidents and diphtheria?

A. Not many die under one year from one or the other.

Q. Oh, you are considering under one year?

A. Yes, infant mortality is that, and where the birth rate is high, the death rate is invariably higher. It comes to its peak in over-crowded countries like India where the death rate is something terrific.

Q. Maternal mortality is not always due to pregnancy; there are other causes contributing to the death of the mother?

A. Yes, there might be physical conditions there which, had they been know in advance, would have warranted the use of contraceptive measures even at the outset of marriage.

Q. But always under proper medical supervision?

A. Not necessarily: if these are known —- and even a doctor might not be able to tell in every case —- but if known, contraceptive measures should be used.

Q. I don't suppose that if the doctor could not tell neither could the social worker?

A. No, nor the theologian.

Q. You also state in all cases using contraceptives, they would cause greater joy in marital relations; wouldn't there be any cases where it might cause a certain lack of satisfaction?

A. Possibly if either party was selfish and undisciplined, that party might object to anything which prevents him or her getting what they want at the moment. You cannot avoid by the use of contraceptives the need for self-discipline and self-control in marital relations. You can't thus eliminate selfishness and exchange lack of self-control or of mutual consideration for a sense of tenderness; you can't eliminate that under any circumstances.

Q. We might agree on this from the aesthetic point of view; these contraceptives are not the most appealing?

A. Some might think, from an aesthetic point of view, they

might constitute something of a barrier, but that is due somewhat to the fact of our hangover from former attitudes, and I think increasingly a larger number of people recognize that that constitutes no adequate barrier to the aesthetic participation.

If the couple really feel that in the marital or conjugal act there is a factor of mental quality quite apart from what is considered in canon law as primarily the purpose of marriage: if they feel it is a sacramental act, it seems to me that the aesthetic aspect of the act is adequately safeguarded. If, on the other hand, there is a feeling this is not a sacramental act, then the whole act itself is cheapened and the aesthetic value lowered accordingly.

Q. Would you say that would be by a good social worker doing her duty and giving a knowledge of contraceptives, that that part would not be discussed by a social worker when she enters the home where a woman has not been convinced as to the use of contraceptives: after all the considerations you have given that marriage is a sacramental act and self-control might be better than the use of contraceptives: should these things not all be explained to the people? I take it we agree on one thing and it is an important thing not to be treated very lightly and if treated lightly should it be gone into lightly?

A. I think that the majority of people in their fundamental attitude towards the sex relation would not be substantially changed much one way or the other by the preachments of a social worker or a doctor or theologian.

I think the element of tenderness towards this act, the sacramental sense, is not born in a day. It is the result of a life of moral discipline and I cannot really see that a long preachment by a social worker on that point would make very much difference.

I think her assumption or his assumption would be that the couple in question recognize a validity in the act, but I don't think they need to go into the details as to why the act is valid or not.

Q. But might they not go into the sense of tenderness?

A. I think in many cases the social worker may have reasons

to think in the marital relations that tenderness does not exist.

Q. And the social worker may advise rightly or wrongly the use of these contraceptives?

A. I come back to my statement this knowledge should be in the hands of every woman. She needs it for her own defence; she is entitled to it, and what she does with that information is a question for her own conscience.

Q. You said numbers of children create fresh economic problems, especially in these days; –- none of us believe it will ever be otherwise –- do you not think the social worker should find ways of ameliorating economic conditions?

A. They are trying and there are two sides to that question; first, a frank recognition of how we find ourselves and how we can attempt amelioration of these conditions and cut our coat according to our cloth.

There is also the problem confronting not only sociologists, but scientists of every kind in discovering ways in which possibly the food supply of the world can be increased –- certain possibilities towards sterility avoided and better distribution of the means of life (illegible). Those conditions are not easily solved and recently, sociologists in California have decided on an optimum population as the most baffling problem.

If we lived by ourselves, we could cut our coat accordingly, but we depend for our existence upon other countries for certain things and when difficulties and problems are interposed in the nature of exchange of goods, the question of social economic betterment is not simple.

If we can exchange the things we have for those we need in other countries, well and good. At times and in certain circumstances, we have been able to do that and in other times and circumstances, we have not been able to do that. And the fact we have far more than enough wheat, more than we can consume even in times of drought, doesn't mean it is a simple question to determine standards of living.

Agricultural scientists today are making some extraordinary experiments in California in respect to the enhanced production of food crops. They are growing food now in trays in factories,

for instance, tomatoes. Before the best crop ever raised was about 20 tons to the acre; now they raise 200 tons to the acre by growing them in trays without soil, in trays with only water and chemicals. If that continues, most of our farm land will have to be given over to golf clubs and cemeteries and we will have to bring all the people into the cities. That state has not arrived yet.

Q. I don't suppose your opinion would be that birth control would be an immediate relief for the situation?

A. I am not sure what the question is.

Q. Birth control would not be an immediate relief to economic conditions?

A. You mean if we stopped all children, but that wouldn't better conditions; even if some died, it wouldn't relieve the tension.

Q. Unless some method of decapitation which would be legal could be found?

A. I don't think even if you could provide immortality for old people and stop all children being born, we would be able to solve our economic problems immediately.

Q. Birth control then would make economic conditions much better in what sense; would it give greater opportunity to everybody to become learned?

A. I think a little learning would not hurt any person under general principles, but if you are to maintain even our minimum standard of living, it is impossible to provide that minimum standard of living in families which are so large that the parents can't support them and they have to be supported in whole or in part by the state.

We must remember in this province there is compulsory education; that is not true of some of the other provinces, but in this province they say you must go to school until you are a certain age and we will see that the means by which you will be taught will be supplied. Parents have no option. The state assumes the responsibility.

The costs of education are very high. In Toronto, the per capita cost of education in the public schools is about $75.00 a

child. It varies between rural and urban centres and large cities and small communities, but education is one of the important features of our budget.

Now, I think it stands to reason that where the state accepts the responsibility for the education of children, it is contrary to public policy that certain parents produce far more children than they can adequately look after because it means the state must educate them to a certain age and, in times like these, the state has to maintain them on public relief.

On either side, it is not fair to the state to burden the state with an excess of children when parents are unable to support them properly. Carrying that further, while you will find it is true that, here and there, children come from large families and perhaps are the bright boys or girls of the family and are pushed and make names for themselves; nevertheless, by and large, I do not believe it is fair in these days to the children who are born in large families because increasingly there is a weakening demand for unskilled labour.

That is one of the outcomes of our economic system and the mechanization of life. Fewer can be used and only those with a measure of training, and those few are going to have difficulty getting that training where they come from large families because in large families, children are necessarily thrust out into gainful occupations before they receive that necessary training.

That is one of the reasons why in certain provinces in Canada there is statistical evidence of this; we know there are not as many Catholic doctors, druggists, or lawyers per thousand of the Catholic population as there are non-Catholics per thousand of the non-Catholic population.

I am not saying that is wrong, but I am saying one of the reasons why that is so is that the average lad in these large families does not have the educational chance he would have if there were fewer children and these children should have an extended education.

Q. If everybody became an intellectual, there would be fewer of them inclined to manual labour, such as nobody to shine our shoes. There must be some who are not masters and if everybody were intellectual, what would become of them?

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A. Of course we are using machinery more and more. A few years ago, men dug ditches; now machines dig them.

Q. But there are men on the machines?

A. It requires mechanical knowledge to work them.

Q. But the average intellectual would rather stay at home and write books?

A. Many of them do not want to and many of them ---

Q. And many write them who are not intellectual?

A. Yes, and sometimes the more they write the less intellectual they become. But I do not say that we can rest on the assumption that society for the fulfilment of its normal functions requires a large number of illiterate and uneducated people to blacken shoes and so forth.

I would hope we would not have to depend for our independence on untrained minds. There is always the great danger than many people will consider themselves too good for manual work. One of the worst things that happened in the States was the introduction of black labourers as slaves. You still have the idea in parts of the States that hard work is not white man's work, and that is dangerous because if we were all intellectual and still had some labour to perform, it would be better for our health and mentality.

Let our manual workers be intelligent and let our intelligent people do some manual work.

Q. Under the general head of theology, you made certain moral arguments; first, it was against the mandates and dictates of revealed religion and against rationality?

A. I was stating them as arguments against.

Q. From the point of view of mentality, would you agree with me, except in very rare cases, sexual intercourse is very much mental? Ideas of sexual relations –- the idea of having intercourse is almost as much mental as it is physical?

A. From my point of view, most things are mental. A lot of people are mental too.

Q. And others are not?

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A. Of course your fundamental basis of sex is physiology and it is quite well recognized that if people are brought up and trained to have an improper mental attitude towards sex, it will discourage the whole relation of sex.

Q. And on the contrary?

A. If brought up with a sane sense of sex, yes.

Q. And if a man is a reasoning animal, that reason should be used to a certain extent in these sex matters?

A. It depends on what you mean by reason. I assume reason should be used on all occasions. I think very many things are put forward in the name of reason that are purely irrational.

Q. If money was spent to educate people to the proper use of their senses, wouldn't that be better than spending large sums of money to promote the sale of contraceptives, or which of the two goods, as you refer to them, would be the better?

A. Once again you raise the question of the ideal and the real world. The world in which we live is a world in which a large number of people have received no adequate training in what I would call rational sex life.

Also, it is a world in which there are all kinds of abnormal stimulations and excitations which don't exist in a primitive society, but are a mark of what we call a high degree of civilization.

That is the world in which we do live and it is rather nonsensical to say that 25 or 30 years ago we should have spent money which we didn't spend in providing educational techniques which we didn't provide, rather than provide some remedy at the present time for the intolerable situation in which society finds itself on the whole sex question.

I want to see sex education carried on among the young, but that is not reason why you must not do the best you can with the type of people we find on our hands at the present moment.

Q. Sex education, I suppose, should not be made by the social worker who advertises contraceptive methods. Wouldn't it be better for the social worker to begin by doing that than advertising contraceptives? Wouldn't that be better for

society? I mean not the cursory interview –- I think the person if they did not react then, they should have the other?

A. I am not sure that this work of sex education to which I refer is essentially at the present time the work of the social worker. As I said the other day, you have three different schools of thinking. Some say it is only for the parents; others say it is for the schools, others the churches.

There are some today who say social workers must get into that field, but I doubt very much if that is primarily the task of the social worker. It may come in incidentally, but if that is to be done adequately, it must be along scientific lines and with the collaboration of all these agencies.

Q. Do you think the matter is important enough to take it that way?

A. In what way?

Q. Through all these scientific organizations?

A. I think there is no more important matter and society has not treated it as such. It has kept it dark in a sense of indecency.

It has cultivated the idea about sex that the less we think and say about it the better.

Society has looked upon it as a negative thing and society is paying the price.

I think the church is responsible for the wrong conception of sex that has developed down through the ages. I think the church as a body, —- I am not distinguishing between the churches, but as a body —- they have held up ideals in this field as they should never have held them up. I say that as a Christian minister, that the responsibility can be placed on their shoulders that we have the unpleasant situation we have.

There can be no immediate answer to it; we must begin at the beginning and build up and entirely remove the present concept of sex.

Q. And the best way to do that now is to send a social worker into a house and send these contraceptives right away and explain after?

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A. Granted, people being what they are, there would seem to be no more certain way of providing them with the information which could at least enable them to space their children in some legitimate manner than by the dissemination of this kind of information, but that does not cover the whole question; it is one of the things that can be done, and so far as it can be done, I say it should be done.

Q. It would have for effect just the spacing of children and would you take it a lot of people would avoid the responsibility if they found a means of having pleasure with no responsibility; do you think it better they should have that information?

A. There are a lot of people who endeavor to avoid responsibility not only in this field but in others, and I don't know what one could do with them. If they want to dodge their social obligations in the deeper sense of the word, I am not sure it would be a good thing for them to bring children into the world.

Q. If instead of spacing children they might never have any?

A. Perhaps it is just as well if they are that kind.

Q. In certain cases?

A. In a lot of cases, but there are various kinds of irresponsibility. I would claim that the person who brings into the world far more children than he can support, as can be witnessed in certain episodes in Toronto at the present time -— I would say those people are utterly socially irresponsible just as well as people who won't have any children.

Q. One must have a certain admiration for the population because there were very few entered into the Stork Derby?

A. It is limited to Toronto, I am sorry to say.

Q. Some might have moved there?

A. Yes, but the City of Toronto has had to pay for it.

Q. As to your evidence about natural methods and artificial methods of birth control: "Some years ago, we didn't wear any clothes. We were not flying; were eating raw meat and no milk

and human development has tended to further its purposes." What has contraception to do with that; would you say that artificial contraception might interfere with the purposes of nature?

A. The moment people begin thinking, something happens —- the moment people begin to apply their reasoning to processes of nature, you have possibilities of extension or delimitation.

Just the illustration I used a few moments ago: the experiments being made in California at the present time with regard to food production. Now, we have always thought of food as being dependent on soil, but now we find that it is not. They put wire netting over water and sawdust on that, and the roots will go through the wire netting into the fluid in which there are chemicals for the plant.

That is unnatural, but it utilizes what we have already discovered about the processes of nature and, as a result, we have discovered we can grow far more and can control plant diseases and have a perfect harvest.

That is the way science is beginning to work in that field. We know too —- I don't look forward to it with any great enthusiasm, but we know artificial semination is being tried in which what is normally known as sex does not function at all, but science is utilizing what it knows concerning the latent powers of nature and 50 years from now —- it is impossible for us now to envisage what may be the commonly accepted practice according to what we think now.

That is inevitable where you have the human mind understanding the field of nature. There will be advances, just as we have had advances in bacteriology since Pasteur. It may not be a pleasant world to live in, but that is another matter.

Q. Getting to theology, I submit Genesis I, 27:

"So God created man in his own image, in the image of God created he him, male and female created he them."

28. "And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it, and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth."

Mr. Silcox

What is your interpretation of that?

A. Man has done it, women too –- be fruitful and multiply –- "They have dominion over the fish, the sea and the air" and it is all a part of the process.

Q. And even if there is plenty more room in Canada we should not have to worry about it?

A. No, man is under no obligation under this commandment to be fruitful and multiply and replenish the earth all by himself.

Q. There is no law that obliges people who can have children to have them, so in order to have a proper ration it is necessary for some to create for those who do not wish to create?

A. I would say in certain countries of course, not particularly Canada, they have found it necessary to practice infanticide in order to reduce the population to manageable limits. In Genesis there is nothing said about overcoming the forces of disease, but we have done more. We have found ways of banishing disease; in the last century there has been one triumph after another., typhoid fever, yellow fever, smallpox. In the 18th century, the man over 50 years of age was relatively rare because frequently a third of the population would be wiped out by smallpox.

We have found ways of banishing typhoid fever, yellow fever and malaria; now, we are working on cancer and tuberculosis which are the outstanding plagues which still challenge us somewhat. But with all that, we have applied our reason in such a way that the command to be fruitful and multiply has not the same potency today as it might have had in the days when the population was wiped out, or half wiped out, every few years by disease.

We have found another way in the past of reducing the population, war. Unfortunately, it may still be a way, but we are trying to use our reason now instead of trying to reduce the population of the world by war and other means. We are still commanded to be fruitful and multiply and also to have dominion over such things as in the past –- that our population will be a large population -– that war and things that go with war and disease will be done away with as far as it is humanly possible to do away with them and that men and women and children will

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have an opportunity of sitting under their own fig tree and none will make them afraid of life.

I think we are obeying the divine commandments.

Q. Now, will you turn to Genesis 38, 8 and read it please?

A.

> "And Judah said unto Onan, go into thy brother's wife and marry her and raise up a seed to thy brother."

Q. 9?

A.

> "And Onan knew that the seed should not be his; and it came to pass when he went in unto his brother's wife that he spilled it on the ground lest that he should give seed to his brother."

Q. And in reference to that you have told us that the levirate law?

A. Yes, in Deuteronomy.

Q. Would you admit there is there a question of marriage whose aim and purpose was that of Genesis in the words of Judah?

A. In early society, you have levirate marriage and ancestor worship. It was regarded in the ancient days of Rome as (illegible) if one did not leave children to perform the ancestral rites –- that is true still in Japan and China. In levirate marriage if a man died without a child by whom his line should be carried on, it was bad business. It was given out at a very early stage of history of Israel whereby in the case of a difficulty of that kind, the younger brother was supposed to go into his brother's wife and raise up a line of descent for his brother, not for himself, and I think Onan did not like the proposition.

Now, I think the theologian and any person who has studied theology, (illegible) an exegete, can elaborate and elaborate –- just like a lawyer can take a small part of the law and elaborate and elaborate –- until the original meaning is completely forgotten and you have a great structure of theology without its original foundation.

Q. Would you say Onan was punished for disobeying the law, not for spilling seed?

A. Yes, and I think you will find in an earlier verse about Er, the brother, in verse 7:

> "He was wicked and the Lord slew him."

The Lord was cleaning them all out at that time. As a matter of fact, the more recent exegetes think this is a story invented by the children of Israel in order to account for one or two tribes of

which the records lost sight. That is not at all impossible some modern exegetes would recognize the large (validity of such an interpretation) place the method would have.

Q. That is one interpretation?

A. Yes.

Q. And it is your interpretation?

A. I say it is what some of the scholars say; take your choice.

Q. Let us take the documents put in by yourself as exhibits on the aspects of the church, always in view of this Eastview case. Here is the Lambeth Conference. There is the encyclical Casti Connubii and the Hamilton conference and the publication of Rhythm —- exhibits 75-B, 76-B, 80-B —- take 72-B.

Of course, Your Worship, we must wander a little bit afield on account of the evidence put in by the defence, but I always like to keep in view I am trying to keep the case within the scope of the alleged offence, and if our wish to discuss these learned things, it is whether their views should be taken in judging these disseminations of contraceptive information here in Eastview.

I have here a resolution of the Protestant Episcopal Church:

> "RESOLVED: That we endorse the efforts now being made to secure for licensed physicians, hospitals and medical clinics, freedom to convey such information as is in accord with the highest principles of eugenics and a more wholesome family life, wherein parenthood may be undertaken with due respect for the health of mothers and the welfare of their children."

Mr. Silcox

There you have an idea that medical practitioners should be required. Do you agree with that?

A. Are you reading it all?

Q.

> "Wholesome idea of eugenics…welfare of children…endorse…clinics convey such information."

Not the social worker?

A. I would say on that point the legal limitations thrust around giving this right to doctors generally in the United States —- I would like to read a section on this point —- now, we have to recognize that these legal restrictions have existed and it is the purpose of this resolution primarily to break down and urge the breaking down of those restrictions.

In "Birth Control, Facts and Responsibilities" by Meyer, page 9 of the preface:

> "The conservative attitude of the medical profession in general is perhaps difficult to understand. It is proper that the principal reasons be stated. The first among them is the fact that many physicians are intimidated by the idea that there are prohibitive laws where they actually do not exist. The next point is the fact that owing to some of our laws, the topic has to be excluded even from the textbooks and discussions of professional journals using the mails and there is neither research nor proper teaching on this topic in most medical schools. Moreover, the physician does not want to give himself the appearance of assuming responsibilities on matters which depend to such a great extent on those who have to carry out what advice one has to offer."

I would point out the difficulty in the United States, in certain states, is that the giving of this information was prohibited by anybody. In other states, it is only to be given by doctors for health reasons. And by federal laws, it could not be sent by mail. So you must consider that in view of the existing legal situations in the States.

Q. And there are other things also; Page 3, paragraph 2

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(Exhibit 77-B):

> "In conception we are in the presence of the wonder and mystery of the beginnings of human life. In this mystery, the two mates, knowingly or unknowingly, are acting creatively with God. When so understood, the circumstances and incidents of conception, growth and family of birth are astonishing manifestations of divine power, and inexpressibly beautiful. To be a mother is seen to be the supreme fulfilment of womanhood, as to be a father is of manhood. It becomes apparent, also, why sex relations are guarded as by a flaming sword, why prostitution is abhorrent to the conscience of mankind, and why the instinct of the race regards intercourse between unmarried persons as immoral and antisocial. A man, said Christ, expressing the pure ideal, is not to harbor the thought of adultery in his heart. But in the sex relations between husband and wife, we are also in the presence of another mystery. 'From the beginning of the creation God made them male and female,' said our Lord. 'For this cause,' He continued, 'shall a man leave his father and mother and shall cleave to his wife: and they twain shall be one flesh.' We have here the passing of shame and the realization of the meaning of sex in the divine economy, which make the union of the two mates a supreme expression of their affection and comradeship. These relations, therefore, have their source in the thought and purpose of God, first for the creation of human life, but also as a manifestation

of divine concern for the happiness of those who have so wholly merged their lives."

On page 5 in the middle of the page:

"A majority of the committee holds that the careful and restrained use of contraceptives by married people is valid and moral. They take this position because they believe that it is important to provide for the proper spacing of children, the control of the size of the family, and the protection of mothers and children; and because intercourse between the mates, when an expression of their spiritual union and

affection, is right in itself. They are of the opinion that abstinence within marriage, except for the few, cannot be relied upon to meet these problems, and under ordinary conditions is not desirable in itself. But they cannot leave this statement without further comment. They feel obliged to point out that present knowledge of birth control is incomplete, and that an element of uncertainty although it is small, still remains. More serious is the fact that all methods are as yet more or less subject to person factors for their effectiveness. Married couples should keep these facts in mind and welcome children, should they come.

The public should be warned also against advertised nostrums, which are beginning to appear in thinly disguised forms in reputable periodicals, and so-called 'boot-legged' devices at drug stores, for which there is no guarantee of safety against injury or of suitableness of individual cases. It is essential to consult the family physician or to go to established clinics or health centres for information or assistance.

That serious evils, such as extramarital sex relations, may be increased by a general knowledge of contraceptives must be recognized. Such knowledge, however, is already widely disseminated, often in unfortunate ways, and will soon be universally known. Guided by the past experience of the race as to the effects of scientific discovery upon human welfare, we should expect that so revolutionary a discovery as control of conception would carry dangers as well as benefits. Society faces a new problem of control with each fresh advance of knowledge. If men generally cannot properly use the knowledge they acquire, there is no safety and no guarantee of the future. These members of the committee believe that the undesirable use of contraceptives will not be indulged in by most people, and that if the influence of religion and education is

properly developed the progress of knowledge will not outrun the capacity of mankind for self-control. But if the sex impulse and the use of

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contraceptives are to be kept under moral control, the church and society, including parents, must give greater attention to the education and character building of youth and to the continued education of adult opinion."

I mean the Federated Council of Churches of Christ in America are giving certain views there that may not be exactly yours?

A. Yes, I agree with everything you have read there.

Q. You agree with everything I have read. Then:

"In view of the widespread doubt among Christian people of the morality of the use of contraceptives, and the scruples experienced by many in making use of them, it appears to these members of the committee to be the plain duty of the Christian church, when control of conception is necessary, to uphold the standard of abstinence as the ideal."

A. That is a report of a minority.

Mr. Beament: It is like reading from a dissenting judgment.

Q.

"Recognizing it as a counsel of perfection, and that Christian morals are much more exalted than is generally supposed. But they would point out that the grace of God is sufficient for those who are conscious of a difficult and high vocation; and that we have as yet but touched the fringes of spiritual power which is all about us like God's gifts of air and sunshine. Those who adventure and trust are rewarded, and they know the joy and strength which accompany all victories of the spirit.

The method of abstinence is therefore to be used to meet conditions and situations in which otherwise contraceptives would be necessary. This does not mean that sex relations between married people as an expression of mutual affection are wrong, but they are to be denied when childbearing is hazardous to the well-being of mother or child or the household."

Now, the entire committee on page 7:

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"Finally, the entire committee unites in calling attention, and most earnestly, to the importance of a spiritual adjustment of the physical relations between

husbands and wives. All natural desires, however sound and wholesome, must be kept within bounds. If this applies to eating and drinking, how much more to the fateful and powerful impulse of sex. If marriage centers upon sex indulgence, it is sure to result in unhappiness and usually in disaster. A high degree of self-control, especially during the early years of married life when marital habits are forming, is necessary to the happiness of the mates and the spiritual life of the home.

To attain this command of the sex impulse, and this mutual and sensitive consideration for one another, husbands and wives are urged to keep ever in mind that marriage is a divine institution and that they are cooperating with God in their union and in the conception and rearing of children."

Now, would you say, sir, according to what I have read, that the methods disseminating birth control material in Eastview were in accordance with the ideas of this pamphlet or the resolutions of this association? Do they not consider it should be done in a much more delicate manner? I mean after expressing the views of these learned men?

A. Primarily the problem is whether the people are delicate people or not.

"All natural desires, however sound and wholesome, must be kept within bounds. If this applies to eating and drinking, how much more to the fateful and powerful impulse of sex. If marriage centers upon sex indulgence, it is sure to result in unhappiness and usually in disaster."

I don't think any person promoting birth control would deny that statement.

"A high degree of self-control, especially during the early years of married life when marital habits are forming, is necessary to the happiness of the mates and the spiritual life of the home."

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Q. Does the social worker ever advise this in the homes before sending these things out?

A. I don't know what the social worker does. I assume if these people had any religious training worth having, they would know you can't find any alternative to self-control and mutual consideration and tenderness.

Q. Then, according to that, the duty of a social worker under this is just to go into a house, ask the people if they want it and care to get it and the other considerations are left aside?

A. On the majority report:

"The public should be warned also against advertised nostrums, which are beginning to appear in thinly disguised forms in reputable periodicals, and so-called 'boot-legged' devices at drug stores, for which there is no guarantee of

safety against injury or of suitableness for individual cases. It is essential to consult the family physician or to go to established clinics or health centres for information or assistance."

Now, I take it the work carried on in Eastview was being carried on by a central bureau which was providing information which has medical opinion back of it at the present time. If the medical opinion is not back of it, if the methods recommended or advocated are contrary to sound medical opinion, then it would seem to me the work would fall short, but if there is medical opinion back of it, and general medical over-sight as far as it is necessary, it should be all right.

I acknowledge there are medical aspects (illegible) in other things –- then, it seems to me the job which is being done by that organization is essentially the job of making public information which for some reason or other is being withheld and it is not necessary for the social worker to go into all the details of the case or pry too deeply into something, it seems to me, which is an intimate matter and should be left to the part of conscience.

The Court: Adjourn for five minutes.

(Hearing resumed after five minutes)

Mr. Silcox

To Mr. Mercier:

Q. I am endeavouring to shorten the proceedings as much as I can; you have read all these memorials thoroughly I understand?

A. Yes, but not necessarily recently.

Q. But according to your knowledge of these memorials put in as exhibits, would you say that the attitude of Miss Palmer in Eastview here, from what you recollect of the evidence, falls within the purview –- leave the encyclical Casti Connubii aside –- according to the attitude of the Protestant churches.

Mr. Wegenast: And the Jewish.

To Mr. Mercier:

Q. Yes, would that work fall within the views they suggest? They give very careful attention to the matter. Assuming, as you believe, it was an exceptionally important matter and they laid down certain principles; do you think it applies to the method used in Eastview by Miss Palmer?

A. It is rather difficult to keep in mind all that may be found here. I would say I believe that those who took the majority position in the report from which you have just read and which is rather typical of the main emphasis of all these reports would feel the public good was being served by what took place in Eastview.

As I intimated the other day in the stand, one might postulate an ideal set-up, but as I also intimated, an ideal set-up might have been quite impracticable under the circumstances and what social workers have to do, and do, is to do what they can as they can.

Q. That is your general view of social workers; to do what they can?

A. Yes, aiming at the public good.

Q. I am including in this all the memorials we have on the subject, Your Worship. I notice all the doctors, learned theologians and divines who have compiled these things lay stress on the medical supervision and care; is it fair to say after reading these that they insist very much on the medical

view?

A. I am not sure that the Lambeth Conference included that; it may.

Q. I believe it does.

A. So far as the emphasis of the American groups is concerned, I can only reiterate the limitations in the laws of the states. In Connecticut this information cannot be given even by a doctor, but in some states the law was so framed it was restricted to doctors and one must read all the American laws.

Q. In England?

A. It is given by doctors and others not doctors too.

Q. That might be the case in Canada too?

A. I think the customary way is for one housewife to ask another what she does and as a result she gets a great deal of useless information which is very unreliable and unsanitary and against public good.

Q. And all more or less established that parenthood is for married people the foremost duty?

A. That is one of the purposes of marriage undoubtedly.

To the Court:

Q. Don't all these reports by these various committees of churches set out that parenthood is the primary end of marriage?

A. The primary end of marriage.

Q. And they consider a secondary end?

A. They consider a secondary end, yes. I cannot from memory recall whether it is included, but there might be cases where a couple become married and a physical condition is discovered where it might make it necessary to avoid having children on medical grounds.

To Mr. Mercier:

Q. And none advised indiscriminate advertising of birth control information?

Mr. Silcox

A. It depends on what "indiscriminate" means.

Q. Very widely?

A. I think all these religious bodies are opposed to dissemination which, if it were the type of dissemination, would merely create promiscuity because all religious bodies hold the marriage relation as of supreme significance, spiritual as well as physiological, and I think all these religious bodies hold promiscuity and infidelity in abhorrence.

I think one can postulate that is the fundamental view of all these bodies and if the type of dissemination would mean the advocating of promiscuity, they would consider it with fear.

> "That serious evils, such as extramarital sex relations, may be increased by a general knowledge of contraceptives must be recognized. Such knowledge, however, is already widely disseminated, often in unfortunate ways, and will soon be universally known."

Consequently, the view of the federal council is that this is going on all the time and people who should not know about it are being told about it and people who should know it are the people from whom it is being withheld.

Consequently, you can't expect to be withholding that proper knowledge to lessen and diminish the proper use and knowledge of contraceptives.

The people who are going to misbehave themselves probably already have the information and are already misbehaving. This information will be generally known and the duty of the church is to develop that discipline and sensitivity to moral values which will stand the test of normal married life and create within marriage a high degree of sympathy and tenderness.

I think in some of the churches there is a feeling the knowledge of contraceptives would decrease promiscuity rather than increase it because in the first place it might enable a great many people who cannot marry now but only at a delayed age. They could marry now if they felt there would not be that tension and responsibility for bringing life into the world before being able to afford it and that they could make the adjustments necessary and in that way it would diminish promiscuity and it would make for sex adjustment within

marriage. And if it is done wisely and if there are decent ideals behind those people, then I think the desire to go outside the marriage relation is to be lessened.

We will always have scamps and rogues. The question is one of moral self-discipline.

Q. If the husband and wife have both truly examined their consciences?

A. Where is that?

Q. On page 9 of this Lambeth Conference and I believe it is repeated in most of the memorials. The intimation seems to be all the churches recommend this after the most careful consideration of the primary and secondary ends of marriage and every serious consideration should be given and couples examine their consciences, both husband and wife.

Nowhere in these memorials is there a suggestion these contraceptives should be used without the consent of both parties, or until after they have examined their consciences as to whether they should or not?

A. What is to prevent the wife taking it up with the husband? The information is primarily given to the woman.

Q. I understand, but we have been doing a lot of roaming around and I am trying as much as possible to try to confine this case to Eastview. As a matter of fact, in most if not all of these, they lay stress on that both husband and wife examine their conscience. They lay stress on that?

A. The Lambeth Conference does and perhaps others. I do not think it is mentioned in a good many, but it is more or less assumed that as intercourse is a matter for two persons, there are more attitudes to be cultivated in two people than in one.

But after all, I think any person who knows anything about the subject, or knows anything about the attitude the male has taken towards the female down through history, must recognize historically and up to the present time the woman –- except in primitive civilization, we have the matriarchal system as opposed to the patriarchal and women had the say in earliest days –- later men took that prerogative –- that woman has been thought too much as the chattel of man.

Mr. Silcox

The assumption is that she will discuss it with the husband and in my judgement, it is not necessary for the social worker to discuss it with them together. I think the average mother, woman or wife would rather discuss it with another woman and then let the husband and wife discuss it later.

Q. Without finding out if both agree?

A. I think the woman has the right to this information whether the man agrees or not. His behavior in the past has thrown on the woman a great burden and is the responsibility for a great deal of the trouble in marriage at the present time. I think that is one of the most important aspects of it.

The woman, from that point of view, who has to bear the responsibility, has the right to protect herself against the passion of an individual whose whole contribution to the sex process is purely casual as compared to the responsibility which the woman, by the grace of God and physiological law, has to bear.

The Court: One point, Mr. Mercier.

To the Court:

Q. You say you understand since you have read that pamphlet thoroughly –- isn't it fair to say that in practically every one of those memorials, as far as each separate entity goes, it is to recommend the dissemination of birth control through physicians, hospitals or clinics?

A. I should say primarily those are the only places in the United States, in view of the laws governing most of the states, where authentic and wholesome information on this could be obtained.

One must recognize the background of the report. I don't think the churches would care to commit themselves merely to the approval of any kind of contraceptive device because certain types might be harmful and certain types harmless, but the greater assurance, especially in the United States, that the people would have information concerning the type that would be harmless should be obtained at clinics and hospitals –- but the whole question should be read in the light of present and existing laws in the various states of the Union.

Mr. Silcox

To Mr. Mercier:

Q. In one of the memorials of the United Church of Canada, the most recent one, 1936, do you know how many delegates there were present at that conference?

A. A good many went home the last day.

Q. I understand 280 were there?

A. Yes, I imagine that would be the number.

Q. And 104 voted on the question?

A. A good many went away the last day.

Q. And the vote was 53 for, and 51 against?

A. I don't think that means much as the majority of those who went away were ---

Q. In favour of it?

A. Probably.

Q. You would like to see it that way?

A. I think I understand pretty well the feeling of the church on that particular point.

Q. Now, about prostitution, the danger of it: you told us you thought there would be less prostitution if these things were more widely distributed and known; can you tell me how a woman will be more moral if she is shown ways of being immoral without responsibility?

A. If immorality depends solely on whether you are likely to have a child or not –- if that is the basis of morality in this field, then it might accentuate immorality. If people are only going to be good in the field of sex because if they are not good, they will be burdened with a child, and if you can show them how they can avoid that responsibility of having a child and yet enjoy themselves, then you may have trouble.

It depends whether you trust people adequately or not: whether you believe that after all the heart of humanity is essentially sound: that young people are romantic: that as youth develops in the stormy days, love is born; that loyalty is born with it –

- it depends on whether people can be trusted or cannot be trusted.

I take the ground that if you train people normally and get them thinking that sex is not something indecent, and, if I might interject, part of the tragic difficulty in the whole thing is the juxtaposition of the organs of excretion with the organs of generation –- that is why sex may seem dirty, but sex is not indecent nor dirty.

If you teach sex, you provide inoculations and vaccination in early youth against the ideas that are too current which later degrade sex and encourage self-indulgence. It comes down to the question, can you trust people or not. And I believe youth will respond, but you have to set your ideals high and get rid of all that element of indecency and unnaturalness and secretiveness and furtiveness with which our sex life has been encumbered far too long, and if we get rid of that and through a knowledge of contraceptives at least make it possible for people to marry a little earlier without running unnecessary risks of bringing children into the world before they can be properly looked after and make the necessary adjustments of sex within the marriage, then I think the degree of promiscuity will be reduced rather than encouraged.

In certain countries of the world where no information of this kind is recognized, you have the greatest prostitution and promiscuity imaginable. I think of Brazil, for instance, where the amount of promiscuity and prostitution and venereal disease is appalling. Institutes have been formed in Rio de Janeiro to cope with disease. It is so common that in 5 years, quite apart from

the work of doctors, clinics dealt with 145,000 cases and are dealing with 30,000 cases a year. I saw the records myself in Rio de Janeiro and I don't think we have anything like that and I don't think a knowledge of contraception is going to lead to any greater promiscuity than we can already find in countries where that knowledge is not available. After all, morality does not depend on withholding knowledge.

Q. Do you know of Dr. Dublin?

A. I have one of his books in my trunk.

Q. I believe he is a very confirmed anti-birth controller?

A. I don't know about that.

Q. At the request of Mrs. Sanger, he was requested to address a conference. He gave an address on "The Excesses of Birth Control". This book, Your Worship, belongs to the Department of Health.

Mr. Wegenast: What year is that book?

Mr. Mercier: 1925.

The Witness:

A. I would say in the year 1925 any expression of doctors or statisticians –- of course Dublin is statistician for the Metropolitan Life –- their observations must be taken with a grain of salt in view of the change of public opinion in the last ten years. If you will read (illegible), published in 1926, you would get a variety then that would be difficult to collect in 1936.

In this book of Dublin's, you will find the article from MacIver, which he includes as Chapter XIX. This book was published in 1926 in which MacIver more or less looks forward:

> "Nobody hopes or fears that the medical men will achieve so rapid a success. But would the gradual attainment of the goal be disastrous? It would involve real dangers to meet which would require a greater social intelligence than we now exercise. In particular, education in eugenics would be absolutely necessary, since fewer of the physically unfit would be eliminated at the pre-reproductive ages. Other steps would be to extend the knowledge of birth control to the lowest social classes."

Dublin edited this book and included this article by Professor MacIver on the matter.

Mr. Mercier: I will read this statement:

> "I cannot consider…that such methods were a recent discovery…this is clearly a misconception…recent years."

To Mr. Mercier:

Q. I believe you have held the other day it would not make

Mr. Silcox

for a decrease in the birth rate?

A. Probably in the upper classes, but I might point out Dublin's position would be subject to certain reservations.

One of the curious things about these birth control clinics is that many people come to them for the cure of sterility. Now, it is generally suspected that modern civilization itself is making for sterility and that primarily is due to the kind of life people live. We are living a most unnatural life, cooped up at office desks without an adequate amount of sunlight. The fertility of rural and peasant peoples is always higher than that of urban peoples and , I think, in the case of a great many of these rich and intelligent people, many of them could not have children if they wanted them, not because of disease, but because of the kind of life they live and its nervous tension that makes for sterility.

One of the aspects of the movement would be to help overcome sterility and let people live a normal kind of life without sacrificing their creative and dynamic personalities.

Q.

> "…birth control is only one aspect of the population problem…life of the state… who shall and who shall not be born"?

A. That is one of the reasons why MacIver says in this book it is so necessary to carry the knowledge of contraceptive devices to the lowest classes because as at present operated birth control methods are known exclusively in any authoritative way only by the upper classes.

You have tendencies that are dysgenic. People with qualities we might want repeated are being limited, while the population is being recruited to a very large degree from those people whose capacities have not been exercised or shown. If you compare the number of children born in mental hospitals and various homes, you find most of the feeble-minded ones come from the lower society and Dublin, I don't think, would want society to be recruited purely from the least competent classes.

Q. Then would you suggest the remedy to oblige the people who are of the higher classes to have enough children to make up for the loss?

Mr. Silcox

A. I think it would be a good thing to put some economic pressure on them that would be fair rather than seek to take away by taxation from the middle classes what they have put aside

for their old age. At present the middle classes are being practically wiped out by taxation. I would not mind a real soaking of the rich.

Q.

"…an evil which we greatly deplore…in the background…you are playing with fire…mistakes in population policy are more easily made than rectified?"

A. Yes, we have made mistakes like Germany encouraging population with the idea of hopping on France's back. France is put into a difficult position.

Q. France has had too much contraception?

A. I think it is a territory with 40,000,000; that is an optimum population. I think Germany is over its optimum population. When you have countries that are not hesitating for one moment to make war upon one another —- when you have that kind of mental attitude —- then the whole foundation of the idea of morality is being undermined.

Q. But France is a wonderful example of contraceptives being used to keep the birthrate lower?

A. Yes, and France has produced some of the greatest minds too —- one, Louis Pasteur —- if he was the only one, France will be remembered for all time, but you have in France cultural values that are unique.

Take Holland, the Dutch people have made a tremendous contribution to civilization. I think the only country showing the way to economic reconstruction is Sweden where birth control is practiced. You have there the foundations for building a proper economic structure far ahead of that of other countries in Europe.

Q. He claims here:

> "…the birth controller disregards the interest of the state…'I owe the state nothing'…very short sighted and indefensible."

Mr. Silcox

What do you say as to that?

A. I say we owe the state and the state owes us a good deal. The question raised there is a fundamental question of relations. If the state educates me, puts out its money on me, protects me; certainly, in the day of emergency, I shall have certain obligations to perform to the state. One way I can avoid thrusting problems on the state is to avoid having too many children, more than I can support.

Q.

> "Most of us…parental responsibility…today we live, tomorrow we die…society accordingly seeks to protect itself against such a contingency…the number of children is an item in fixing the amount of taxes?"

A. It does not give a person enough exemption per child on a question of taxation generally. I don't think any person will disagree with the statement that selfishness may abound, that people may take a careless and indifferent attitude, but the sources of morality are not to be found in keeping people ignorant. If we are to develop real unselfishness and moral freedom at the same time, we shall have to make our choice deliberately and we must find our salvation in something else than ignorance.

Then there is the other question which Mr. Dublin does not meet, and that is the question of the whole social structure of society at the present time. In the early part of the last century when England was suffering from economic pressure Carlyle wrote, "Go to the Pampas of the Argentine or the prairies of America". Those days have gone by. In the last 100 years most of the vacant land of the earth has been penetrated. The opportunities for pioneer life beyond the frontier are no longer what they were, let us say, when the Mormons went to Utah and brought in galaxies of women to help populate the state.

We have a new biological situation; we must find ways of developing a type of morality within the confines of these new conditions.

The only other solution to an uncontrolled population is the discovery of a new kind of disease which will wipe the people out –- new and more terrible forms of famine which may come with

a very few years of drought, and bigger and better wars. If that is the alternative, very well, but frankly I consider that irrational and immoral.

Q. There has been quite an amount of contraceptives used in the States for some time and would you consider that the Yankee stock is getting low –- the older stock -- and there is need for immigration?

A. There is much difficulty about it and the facts would want careful analysis, more careful analysis than is given. Let us take New England as Exhibit A of the people holding that theory. In 1830 streams of population came in. First, were the Irish in the days of famine in Ireland; a little later, Canadians of French racial origin from Quebec; on top came Italians, Poles and whatnot. Some of these came into New England and the most vigorous sons of New England went west and their prolific elements may be found in the western states running ranches and bringing children into the world.

In the second place, there was the Civil War in 1960 and a good many young men were killed. Time and again, I came across the most charming women who were spinsters and by

arithmetic, I worked it back and found they were possibly at the age of romance during the civil war and I pieced it together. They lost their men.

And to that degree, those who remained have not been as prolific.

There is the third factor; whenever you let in a huge immigration population there is a tendency to pull down the standard of living as in Saskatchewan at the present time. In order then to maintain their standard of living, your original population or older type who are anxious to maintain the standard may for a time restrict the population to a certain degree.

Immigration itself might tend to be dysgenic. It might tend to stop the production of children of the older stock because where you have a new economic competition introduced, the older stock tends to protect itself in a different way and I don't think it is nearly as simple as that statement indicates.

I have watched that closely in parish after parish in New

England. You will find their stock all over the States today especially in the middle and far west and where you find particular triumphs of free democratic institutions in the middle west, you will find that the nucleus of those organizations hailed from New England.

Q. A little later on:

> "…economic battles cannot be fought by other than…I take them directly through a broad social programme including the better organization of industry… the greatest and noblest possess is children…without a struggle?"

A. If that were written in 1926, I would say we have all had a pretty good spell of thinking on economic troubles since.

Q. This was written in 1925 and I take it economic conditions were much better then?

A. Yes. And we have seen during the last five, six, or seven years, perhaps more keenly than ever recognized before, the dynamic forces in society making it most difficult to effect this social reconstruction to which Mr. Dublin refers there.

Some see no options in order to effect these social changes other than communism or socialism and those who don't like either communism or socialism recognize that under any form of our present society –- and I would agree –- we must do everything we can to the promotion of education and housing and the provision of adequate care, medical and otherwise, health insurance if you will –- we can't do that satisfactorily unless you have at the basis of your social action a people who will take their responsibilities to the state seriously enough and not consider that they can bring into the world any number of children whether they can afford to do so or not, but who do so just on the assumption the state will look after them.

Unless we are willing to postulate socialism or communism and, while I am neither, I am willing to consider that eventuality, but unless you consider that, we cannot have any sound social reconstruction without at least the bulk of our population being thoroughly apprised of some means of contraception and duly considering the responsibility of bringing children into the world.

Mr. Silcox

The governments are spending more in mental hospitals than in universities. I think the public good is something that needs to be drilled into the minds and consciences of the people.

Q. He says:

> "The very first question that arises…life or health of the mother is in danger."

It might be a good definition of public good so far as Section 207 is concerned. He says:

> "Shall contraception information be available to those who have already born several children…boys and girls…dream of permitting it."

What do you say?

A. If you give the date as 1925.

Q. Yes?

A. Well.

Q. Yes? Somebody thought no sane community would put this in the hands of boys and girls.

A. In the early part of 1925, Judge Ben Lindsay published his work on modern youth and the whole of the United States was raging on the subject of companionate marriage.

Q. Wouldn't companionate marriage be the same as birth control?

A. I don't see any relation.

Q. It is trying it out –- many people might use contraceptives and this contraceptive information and never have any family at all.

A. It is quite possible.

Q. Quite probable?

A. And perhaps it would be better if they were that kind of people. I would think the children who might accidentally be born would have to be protected in some way.

Q. All those children who should not be born do not belong to large families?

Mr. Silcox

A. I think lots of people should not have any burden at all if they can't take care of it.

Q. There are some people who are poor and take excellent care of their children while wealthy people with one do not?

A. Lots of people with large families make noble fights where their resources are too limited. And it might be the reverse in the one-child family where the child may be petted and given too much and it becomes a social problem just as well as the others.

Q.

> "…might very well take up the other side of the picture…the rank and file of the people?"

A. I think many people of the middle classes today might have more children but for the financial pressure which is being exerted upon them. Some of the rich people can get out of paying their income taxes, but men on a normal salary are soaked to the limit and they must support not only their own families, but other people's and consequently he feels he is being squeezed out.

I think if we redistribute the responsibility in the upper and lower classes and let the middle class have a chance, it would be a good thing.

Q. In the American Mercury there is an article by Harrison Reeves?

A. Who is Harrison Reeves?

Q. I don't know. What is your opinion of American Mercury; I consider you a learned man?

A. Thank you.

Q. No thanks for that; it is deserved, but am I to assume you do not know the American Mercury?

A. I have read it occasionally, but it was then under the editorship of Henry Mencken and we know what it was after. I am not so sure what the editorial policy is now because it seems to represent quite a wide diversity of views.

Q. This is an address to the intelligent minority?

A. (No reply).

Mr. Wegenast: The only observation I can make on this: if this is to be sauce for my learned friend, it is to be sauce for me. If my learned friend is going to read from the American Mercury and qualify the witness' answer, I am content.

Mr. Mercier: I hope my learned friend will not restrict my right to put in a few books if I wish and I might say I do not intend to supply the court with as complete a library as he has so far.

Mr. Wegenast: I based my submissions on the authority of the works. They are works of standing deliberately written and they stand for something. I am not quite sure about the American Mercury. I don't say you shouldn't put it in, but I don't think I should be cramped in my style then.

The Court: I don't think we can refer to the American Mercury as authoritative.

Mr. Mercier: No, but a certain person has written an article on birth control.

The Court: If you are going to open this –- we have limited it so far to authorities.

To Mr. Mercier:

Q. Do you know what amount, from a strictly industrial point of view, the volume of birth control devices is in America today?

A. From memory I would say the American consumption of condoms is 3,750,000 a year. If the article is authoritative, you will find in last week's Saturday Night that the sale of contraceptives in the City of Toronto is $15,000 a week.

Q. And $300,000,000 a year besides condoms in the United States?

A. I would be inclined to think that would be a little high, but somewhere between 150,000,000 and 300,000,000 might be accurate.

Q. Would you think that at that stage there would be potential profits there?

A. Undoubtedly, especially at the rate at which these are sold at a profit of 300 to 400 per cent. It surprised me these are being offered at 25 cents a dozen here where in the regular line of business they were put in by those who bought them in the city at three for 50 cents or three for 75 cents.

Q. Would you say that birth control is largely a debate between sociologists and doctors?

A. In that case, I would say most doctors have become sociologists. I might say, just at that point, I have here an interesting report issued by the league of Nations organization on maternal welfare, issued in 1931, dealing with abortions. The first section of the report dealing with maternal welfare concluded:

> "Apart from the practice of contraception for personal or economic reasons, it may be necessary to avoid pregnancy on account of the mother's own health, and in such cases it is preferable to prevent pregnancy occurring at all rather than to interrupt it. But it is not sufficient merely to tell a married woman suffering from tuberculosis or heart disease or nephritis that she should not again become pregnant. It is necessary to explain exactly what steps she and her husband should take to prevent this from happening. If the private doctor is not

prepared to do this, the information can be given most appropriately at the health centre."

After this the Catholic physicians in the United Kingdom and Ireland sent a protest on this matter and had that report withdrawn. The physicians opposed to it are almost increasingly and entirely representing a religious point of view and even a scientific statement like that was withdrawn because of religious pressure.

Q. That citation you have just read shows it is restricted to certain things: the doctors for maternal supervision?

A. That is not maternal; that is for medical supervision.

Mr. Beament: Is that an exhibit, Your Worship?

The Court: I think it would be better, 85-B.

Mr. Silcox

The Witness:

A. You have pretty much the same thing in a statement recently issued in a statement in 1935.

To Mr. Mercier:

Q. They advise going to a health centre or a doctor?

A. Yes. Where there are definite indications for contraception. Here is a clipping from the Seattle Catholic N.W. Progress of June 26, 1936:

"STERILIZAITON IS UNSCIENTIFIC, SAYS MEDICAL CONGRESS.

By Frederic Funder, M.D. (Vienna Correspondent, N.C.W.C. News Service).

Vienna, June 24 – At the second International Congress of Catholic Physicians held here, prominent representatives of medical science from almost all European countries dealt chiefly with sterilization and the demands of so-called eugenics. They also took an interest in the work of mission doctors and its promotion.

The congress, welcomed by the dean of the Vienna Medical Faculty, the dermatologist Professor Kerl on behalf of the University, was attended by the Rector of the Catholic University of Milan, Dr. Agostino Gemelli, O.F.M.

Father Gemelli conveyed the blessings and greetings of the Holy Father.

'The Pope expects us,' he said, 'to prove in the field of medicine that, seen from the point of view of biology, the church did not err when she condemned eugenics and sterilization as errors and social crimes'."

Here is a clipping of a meeting of Catholic physicians meeting to agree to what the church has already found. Consequently, you will have opposition from certain doctors, but it is largely on religious grounds rather than on medical grounds.

Q. Do you know of a Dr. Bell from Washington?

Mr. Silcox

A. I don't recall.

Q. Have you heard anything of this Hyde family in the States, 2000?

A. Descendants.

To the Court:

Q. You have heard of the Jukes?

A. Very much so.

Q. If you do not know him, I will not cross examine you on this.

You have heard of George Bernard Shaw's description of birth control?

A. I don't remember everything of Shaw's.

Q. He is not very squeamish about it?

A. I would say he is not overly meticulous at that.

Q. He is a man of a certain standing in a community as an intellectual?

A. (No reply).

The Court: We have heard of him.

To Mr. Mercier:

Q. He calls it reciprocal masturbation?

A. One of the Catholic Archbishops called it that to me too; I don't think much of the definition.

Q. From the point of view –- I do not expect that this witness will at any time during the most lengthy examination admit that the methods used by the accused were objectionable in any way, matter, shape or form. I am quite satisfied with that and I wish to say that in all other matters he has been especially fair, but I think his mind is so wrapped up in birth control that I do not think that any further examination as to this offence will be of any value. I do not think he wants to be unfair.

The Court: Meyer's book and Dublin's book were referred to.

Mr. Silcox

Dublin, 87-B and Meyer, 88-B.

Adjourn for lunch.

(The Court resumed after luncheon adjournment)

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. Mr. Silcox, taking these things in fragmentary fashion, as we must now, because we have only a few things to ask you arising out of my learned friend's examination.

The idea that my learned friend seems to make the main thread of his examination is that in the first place, this matter of the use of contraceptives is a very important thing and should not be brought about lightly and there ought to be a certain, shall we say, moral background and that ought to be inculcated if it is not there, or something of that kind.

Now, I would put this to you, Mr. Silcox: whether the suggestion of my learned friend: a social worker approaching a person with a view to giving this information would be able to make a more proper approach by entering on a discussion of morality or religion, let us say, than by getting right down to business; I hope that doesn't lead to much; I don't suppose I could lead you anyway. What do you say as to that?

A. One could argue with a couple almost interminably about certain subtle aspects of the question and the effect of that would be only to confuse their minds rather than to clarify them.

It would seem to me, too, in general, the social worker might assume that the moral problems have already been stated to the person or to the couple and if they wished information which is contrary to the teachings they have received, of course it seems to me that just indicates they have not fully accepted the teaching.

I don't know that any long discussion on the matter would be of any great value.

Q. Have you observed, Mr. Silcox, that this pamphlet, Exhibit 5-B, sets out methods of safe contraception and mentions Rhythm?

A. I read this some time ago.

Q. Had you this in mind; that the method recommended by the Roman Catholic Church is set out there?

A. Yes, it is set out there along with the others.

Q. Then I put it, generally, as a purely practical question; as a sociologist, and sending out social workers, you would instruct them to enter not on a theological or moral conversation before discussing contraception?

A. There are subtle points. It says here, six or seven days after.

To the Court:

Q. The question is if you were sending out a social worker.

A. No, if you went to a Jewish home and entered into a discussion of moral points…

To Mr. Wegenast:

Q. What do you say under the heading of the safe period?

A. Yes, because a Jewess usually is not supposed to have intercourse in part of the safe period or for seven days after the menstrual period and then she becomes clean. I would not want a social worker to go into a discussion as to the safe period here and the Jewish law, which is opposite; it would confuse the issues.

Q. You would leave those matters of morality and religion to be dealt with by somebody else and you would get down to business on the subject of contraception?

A. Yes, I think that is what a social worker should do and the moral aspects of the question should be properly dealt with on the whole by other people and because the information is given to a couple of individuals, it does not necessarily follow that that couple or individual will follow that information, but practice their own method of contraception.

Their point of view is whether their teaching is from parents or church or elsewhere; their moral point of view is what registers itself.

Q. My learned friend suggested there was something shocking

Mr. Silcox

to the decency in the use of contraceptives. You remember the various women who gave evidence here, their answers and demeanour generally; what would you say, that they had a sense of decency or not?

A. I think they had a sense of decency like the rest of us and I also thought they thought in asking for further information, they were not doing anything wrong.

In one case, as I remember it, the woman seemed to profess, at least she had not known anything about it and wanted nothing to do with it, although she signed the card and one would suspect in that case, someone had labored with her (illegible) to give her a sense of opposition; I don't know.

Q. I put this to you as secretary of the Social Service Council of Canada and a man who obviously knows about these things: in laying out a scheme for visits in Ottawa, in Eastview, you would take into consideration and give your worker special instructions as to methods of approach, let us say, to Catholics or French Canadians differing from the method of approach to Protestants or Jews or others? What if any other distinctions would you instruct your workers to make?

A. If I were sending out a worker in this field, I would not expect them to go out of their way to attack any cherished religious position or attack any particular religious body. I don't care whether it would be the Roman Catholic Church, Adventists, Pentecost, the Jewish Church, the Church of England, or what. I think the worker in this case should make enquiries as to whether they would care to have the knowledge made available to them and to have these contraceptives and if after the individual asks for them and gave information indicating they would want them and show they were not being shocked in their sensibilities ---

Q. Would there be any difference in the method of approach advised between Catholics and non-Catholics?

A. (No reply).

To Mr. Wegenast:

Q. You go to a Catholic and do it this way, and to a Jew this way; would you distinguish?

Mr. Silcox

A. There are so many varieties of religion I think it would be rather difficult to make any differentiation in technique or method as long as the worker would not deliberately belittle or attack the religion held by the party.

Q. Would this be fair; to put it as far as religious and moral considerations are concerned, you would want the worker to be neutral?

A. Yes.

Q. That is not her part of the job?

A. No, that is not her part of the job.

Q. We go a bit further: the worker must rely on the information from the patient, or prospect, or whatever you would call the person getting the information; how far would you go to verify whether the people actually were married or not?

A. If we had to send one worker on the trail of another, you would be keeping up a procession all the while. I think the worker's answers would have to be considered ---

Q. The patient's answers?

A. No, the answers the worker claimed she secured from the client would have to be the basis of action at the central office.

Q. Would you instruct your workers in any case to get a marriage certificate in order to prevent giving it to unmarried persons?

A. In my case, I would have to get it in the bank vault; I would take their word for it.

Mr. Mercier: I think the witness has already said every woman, married or unmarried, should get this information.

To Mr. Wegenast:

Q. But should the worker be satisfied in taking the answers given to her?

A. If she has a strong suspicion you were withholding the facts; for instance, if a person said they were getting $45.00 a month when the whole circumstances surrounding the visit would

indicate $250.00 per month, that would indicate that the worker might investigate further.

Q. You would not put them on oath?

A. No, not even on affirmation.

Q. Now, I refer to that incident of Onan and I want to ask you, as a theologian, whether in view of what Onan was supposed to do; namely, raise seed to his brother, he would be condemned by the church, or law, or society today?

A. I would not speak with definiteness on that; as far as the laws of consanguinity are concerned, I can't keep them all in my head. In general, I would be inclined to believe he should not.

Levirate marriages have ceased to exist and they have passed out of public practice, even in Israel at a rather early period.

In this volume, which I have here, by Adolphe Lods, "Israel from the Beginning to the Middle of the 8th Century", ---

To Mr. Mercier:

Q. What is the exhibit number?

A. --- it simply refers to the fact of the Levirate marriage:

"One can follow the progress of the limitation of this rite."

To Mr. Wegenast:

Q. Yes?

A. It gives numerous biblical passages showing how it was wiped out even before the time of the Catholic or Christian Church.

Q. Deuteronomy 25?

A. It is stated in Deuteronomy 25.

Q. I don't think you get the full force of my question. Here is the younger son; the eldest brother has died; the younger may be engaged or married; he is asked to raise seed for his brother and my question was, would that be permitted now?

A. I don't think so.

Mr. Mercier: I think they were ordered to marry according to my learned friend's statement this morning.

The Court: No.

To Mr. Wegenast:

Q. Whether this incident from the Jewish writings would have any standing is an item of doctrine?

A. Deuteronomy 25th chapter, the 5th verse:

> "If brethren dwell together, and one of them die and have no child, the wife of the dead shall not marry without unto a stranger; her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her."

Now, one must remember concubinage was practised then. Patriarchs could take several wives.

Q. David?

A. Yes, and Solomon. And sexual life has progressed. The Levirate marriage has passed out of the picture and it gives an opportunity to lawyers and theologians to build interesting cases from then on and forevermore, I guess.

Q. Now this: we have our present society which some people would call private capitalism -- because I don't suppose anybody wants to abolish capitalism -- where one man may work and another get wages; we have the financial resources of the family depending on the head of the house. I want to put this to you, Mr. Silcox; what, if any, provision will have to be made? What changes, if any, will have to be made in that system if the present condition of large families on relief goes on?

A. I think the state will have to step into the gap. Of course you can let the surplus children die, which I don't think is in conformity with the Christian conscience, or let the state step into the picture and provide for them at public expense, or have the state bonus large families per child irrespective of the earnings of the head of the house, man or woman.

Q. Or throw them all on the state, as in Russia?

A. If you do that, you do not keep within the present system; you change the whole system.

Q. I want to ask you, -- and this appears rather leading, although I don't think anybody could lead you into saying anything you don't want to say ---

Mr. Mercier: We might quite agree.

To Mr. Wegenast:

Q. --- do you consider it the business of sociologists and social workers, generally, to press such changes in society, or adapt themselves to things as they are? I quite understand my learned friend might object to the leading form of the question, but what do you say to that, Mr. Silcox?

A. I would answer both.

To Mr. Mercier:

Q. That would not be the first time?

A. I would feel that the social worker would have to recognize things as they were and try to meet the situation as it presents itself under the existing conditions, but I would feel happy if the social worker would also become somewhat of an ardent advocate of a fair chance for everybody so far as the chance can be provided. I refuse to accept the dilemma.

Q. I raised the point: the Bible, Chapter 38, verse 8, of Genesis:

> "And Judah said unto Onan, 'Go in unto thy brother's wife, and marry her, and raise up seed to thy brother'."

I think my learned friend has referred to the word "married"?

A. This whole period was one of concubinage and many wives.

Q. There is quite a bit of that today too?

A. (No reply).

To Mr. Wegenast:

Q. In social service work, is there any specialization or do you expect a social service worker in a district to exercise

all the functions and to do everything; let us say, look after the baby, look after getting people out to vote, if that is part of social service, and supply them with contraceptives, see that they have proper nourishment and are properly housed; is it practical to put it all in the hands of one worker, or do you specialize?

A. I think one agency is always referring clients to other agencies.

Q. For example?

A. The Family Welfare may run across a case where there is a strong suspicion of sub-normality. They get the clients to go to a psychiatric clinic or for some other pathological condition, or it may be a case where a patient needs to be brought in touch with relief, or if it is a special problem, let us say, of a prisoner returning from reformatory or penitentiary; if they can find the agency dealing with those things, they get the client in touch with it. The world is full of specialists.

Q. They spread the work out and do turn about?

A. In the same way a great many cases handled by other clinics are sent to birth control clinics and birth control clinics have cases that are handed to other agencies who are qualified to serve them.

Q. And vice versa?

A. Yes.

Q. Another point you referred to, the report of the Committee of the League of Nations; tell me the date of that report. I think it was 1931; I am not sure.

Q. Having regard to the development and technique and conscience and other things in the past few years, would you not consider it probable or possible that a report of that kind would have been made, let us say, 20 years before?

A. I don't think there is the slightest possibility.

Q. What would you say about 10 years ago?

A. In 1926, no, things were just beginning to move in 1926.

Q. May I ask you briefly, by way of filling up what my learned friend elicited from you, what would you say was the period of the greatest development with respect to this subject has been?

A. I would say, undoubtedly, 1926 to 1931; I think that was a time of very open public discussion, especially in the United States and the United Kingdom.

I think the terminal date I give, 1931, probably is put there because in 1930 you had the statement from the Lambeth Conference and on the last day of that year, the encyclical of the Pope, which touched on this matter, and in 1931 you had the report of the (illegible) Council of Churches.

I think that represents the period of crystallization of public opinion and I would say that that five years was the period in which medical opinion and the churches underwent a general change.

Q. That is what I had in mind. Along the same line, what can you say as to the literature on the subject; what does that give you?

A. Do you want me to go into the trunk again?

The Court: No.

To Mr. Wegenast:

Q. What attention should be paid to a book on this subject 10, 20, or 30 years old?

A. Books written prior to 1926 on the subject are valued primarily as historical documents and not as affording any guidance today.

You have in books prior to that time a certain amount on the part of the protagonists of birth control, something almost approaching savagery at times towards the people who disagree with them and I think you would find over-statements.

On the other hand, among the most conservative forces, you have a tendency to take refuge in a very exalted moral position, which might at times smack a good deal of moral hypocrisy.

I think I intimated in (illegible) book in 1926, you will find

many medical opinions, but since then the air has been cleared and you will find the opinions more clarified on that question.

Q. I wish you would refer to some books particularly; who are the people who wrote in the days when writings were not so hot?

A. If you take, for instance, in 1925, right after that report of Copec, you will find in the Hibbert Journal a statement prepared by the wife of the master of (illegible) and she set the case against birth control on a very exalted level, —- I don't think it has ever been on a higher level —- but it was above the reach of the common people. You will find about that time in England, the books read most often were the books by Marie Stopes in favour of birth control and the general attitudes opposed to it can be found represented best in the questions propounded to the Birth Rate Commission in 1916 and 1920.

In the United States, you have Judge Lindsay with his companionate marriage idea, which rather confused the issue. You had Margaret Sanger, who had her back to the wall all the time and was fighting, and you had –- I think the name has been mentioned in this room -– Professor Howard Kelly, who was very conservative in his religious point of view, as well as medical; although a very learned gynecologist at Johns Hopkins; another, Williams, was the moving spirit in forming a clinic in Baltimore.

Q. You see I must get evidence for the defence. Now, suppose the other side brings along Dr. Howard A. Kelly, or Sutherland, or McElroy; I must anticipate some of that, and I want you to say generally to His Worship what sort of writer to look out for who are not reliable in your opinion?

A. I cannot speak as a medical man, but as a sociologist, I would say beware of anything prior to 1925. I don't say they don't tell the truth, but I think 1925 was the dividing line.

Q. That is all.

Mr. Mercier: I have no further cross examination, Your Worship.

To the Court:

Q. Just one point: as you stated on many occasions

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throughout your evidence, it is your opinion every woman is entitled to information regarding birth control and it is up to her on the question as to how she uses that information if she uses it at all?

A. I think it should be given to every woman when she reaches the age of consent.

Q. That being your opinion, this Exhibit 77-B purports to contain memorials and statements of most of the Protestant churches in the United States and of the Lambeth Conference; do any of them go as far as that?

A. I doubt if any go as far as that.

Q. Am I not right in saying the furthest they go and the widest is limiting birth control to married women through clinics and hospitals?

A. I think none of them are limited as to adequate education on sex, but I cannot conceive of any adequate or comprehensive education on sex that would not frankly face up to that problem.

Q. For instance, they say the technique of contraception should be a responsibility of the medical profession?

A. That must be read with reference to the American scene.

Q. The Comstock Law?

A. Yes, and I would go further and say that the contraceptive method used should be approved by a legitimate body of medical opinion.

I don't think anybody would be justified in going around without first seeking medical opinion.

Q. But you don't believe each individual case sometimes by itself requires medical advice?

A. Not unless there are clear medical indications.

Q. Isn't there difficulty to ascertain if there are definite indications for medical treatment?

A. I think even if women inclined that way are suffering in some way –- suffering or conscious of any weakness, the method

used would not accentuate the difficulties and, indeed, the difficulties might be ameliorated.

Q. All right.

A. Thank you very much.

(The Witness Retired)

F. W. Wegenast, Esq., K.C.

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Mr. Savoie (recalled)

DENIS SAVOIE, already sworn, recalled deposed:

To Mr. Wegeneast:

Q. You are already sworn, Mr. Savoie?

A. Yes.

Q. You have a document prepared for us?

A. Yes.

Q. I haven't seen it?

A. (No reply).

The Court: Adjourn for five minutes.

(Hearing resumed after five minutes)

To Mr. Wegenast:

Q. Mr. Savoie, this is a tabulation of the information you have obtained from your records?

A. Yes, sir.

Q. And it is correct?

A. As far as I could get it.

The Court:

"Exhibit 89-B"

Mr. Wegenast: Then, Your Worship, I propose to call Professor Kemp to make such observations on this information as may be useful to Your Worship on this case.

The Court: Will you be recalling Mr. Savoie; it is for the purpose of cross examination?

CROSS EXAMINATION

To Mr. Mercier:

Q. What is the percentage of people in Eastview -- what is the total population of Eastview?

A. According to the assessors for 1936, it is seven (missing word).

Q. How many are on relief now?

A. Twelve hundred and thirty-six (1236).

Q. What proportion?

A. Seventeen point six five (17.65).

Q. How does that compare with 1935?

A. This time in 1935?

Q. Yes, at this time in 1935?

A. We had 26.76.

Q. It has been reduced from 17.65 to 26.76?

A. Yes.

Q. How many families are on relief?

A. Two hundred and forty-two (242), these are the figures of October 31, 1936.

Q. You had 242 families on relief then?

A. Two hundred and forty-two (242) families on relief then.

Q. What is the total of number of families in town?

A. The total families in town?

Q. Yes?

A. Sorry, I can't say.

Q. You have over seven thousand persons?

A. Yes.

Q. How many children up to seven years of age have you got on relief as compared with 242 families?

A. Two hundred and seventy-four (274) children.

Q. Two hundred and seventy-four (274) children for 242 families?

A. Yes.

Q. Which would make it one point (1.) what?

A. A little over that.

Q. That would be one point something?

A. Per family.

Q. Under seven years of age?

A. Yes, under seven years of age.

Q. How many families have you got on relief in which, for one reason or another, births could not be expected to occur?

A. Eighty-one (81) at this time. I mean by that our records show we have 81 families which were in our estimation where births wouldn't be expected to occur from this time on.

Q. Eighty-one (81) out of 242?

A. Yes.

Q. Explain that?

A. Because the heads of the families are aged, we have 63 families where we wouldn't expect anything like that to occur. We have eleven families where the head of the family is a widow or widower and seven families where the heads are separated; where the husband or wife isn't living with the other head. That makes 81 families.

Mr. Mercier: I reserve the right of calling Mr. Savoie in rebuttal.

RE-DIRECT EXAMINATION

To Mr. Beament:

Q. Of course, in 81 families you do not take into account families where natural sterility might be expected in one or other of the heads?

A. Yes.

Q. Eighty-one (81) is the mean?

A. That we know of.

Mr. Wegenast: That is all, Mr. Savoie. Stay here in case we need you again?

The Witness: Yes.

(Witness retired)

Professor Kemp

PROFESSOR HUBERT KEMP, duly sworn, deposed:

To Mr. Wegenast:

Q. First, we must establish your status in this Court and I must ask you to do what under other circumstances would be boasting. It will hurt us more than it will you. In the first place, you are a graduate of?

A. Graduate of the University of Toronto where I also have a degree of Master of Arts and I later studied at the University of London School of Economics.

Q. Then you have the degree of B.A. and many others?

A. That is all.

Q. You are now one of the faculty of the University of Toronto?

A. Associate Professor of Economics.

Q. How long have you been on the faculty of the University of Toronto?

A. Sixteen(16) years.

Q. What special line did you follow?

A. My principal work is in statistics. I have been teaching economic statistics at the university during most of this period and, in general, I have done some general work in economics. I have also taught public finance.

Q. You have done some work outside your university work in this and in foreign countries; tell us something of that?

A. I have been doing outside work practically every year since I became a member of the staff of the university.

During three years, I was engaged for four months each year for famine relief work in Russia, Germany and for a short time in Poland, I was engaged with the Department of Institutions and Agencies of the state in charge of making a study of statistics of crime, public welfare bureaus, mental institutions and so on.

I spent some time working for the Social Science Council of New York, which is a federation of a number of learned bodies

including economists, statisticians, sociologists and others in social work.

More recently, I have been engaged by the Tariff Board and in 1938, I was on the preparatory committee working on material for the Imperial conference in Ottawa.

Q. That almost seems enough, Professor, on that score?

A. (No reply).

Mr. Mercier: I agree.

To Mr. Wegenast:

Q. You have been going places and doing things. I am going to put this to you before I forget, whether you have any knowledge of sociology?

A. (No reply).

Q. You would say or wouldn't say whether the work done by Miss Palmer, who is accused in this Court of an indictable offence, is or is not an item of sociology or sociological concern or an item of social welfare work?

A. Undoubtedly, it is.

Q. Now, I want to invite you first to make whatever observations you think would be of value to His Worship on the figures put in by Mr. Savoie, which were compiled, I think, partially at your suggestion and with your cooperation?

A. I want to say I haven't seen any of these figures before being presented by Mr. Savoie here and if I had more time, I could make perhaps more pertinent remarks and I might make now what I think to be the most important highlights.

Q. Quite so?

A. The memo begins with the population of Canada, ten million and some hundreds of thousands, and the number of persons on relief shown by the Department of Labour for July this year was one million and a little more making a total of ten per cent of the total population on relief.

I could add to that, I suppose, that up to the present time, the expenditure by the Dominion, provincial and municipal governments on relief since the beginning of the depression is

estimated at about six hundred million dollars, so the cost of relief represented by this situation is undoubtedly a matter of great public concern.

The situation in Eastview is presented by Mr. Savoie as considerably worse off at the moment than the population of Canada as a whole. Whereas ten per cent of the people of Canada are on relief, in Eastview the percentage is, I think, seventeen per cent.

Q. And it was higher?

A. One-third or thirty-three per cent higher.

To the Court: The population for Canada was of July, 1936? (Exhibit 89-B says census 1931 – reporter).

A. Yes, and Mr. Savoie's figures were the 31st of October.

To Mr. Wegenast:

Q. Will you tell His Worship where the figures for July come from?

A. The Department of Labour, released to the press on the 28th of October, 1931. (10-28-36?).

To Mr. Beament:

Q. They are in Exhibit 56-B?

A. Yes, in the Labour Gazette. Leaving the statistics in Canada as a whole, Mr. Savoie comes to the Town of Eastview where he shows the total population according to the census of 1931 was 6686 of whom those of French origin were 71 per cent and those of other origins 29 per cent; the actual totals being 4747 of French origin and 1939 of the other origins. The assessor's figures show the same percentages, but a slightly higher population since 1931, since when it went from 6686 to 7000.

I don't know whether it would be of any interest to the Court to know anything about the pace of growth of the population of Eastview. I did look it up myself as a matter of interest, thinking it would be of interest, and I have the figures here.

In 1921 the population of Eastview was 5324. In 1931 it was 6686, so it has gone up about 1300 during that period and the

Professor Kemp

natural increase runs about 150 a year on the average; that is, the surplus of births over deaths. I don't know whether there is anything else here about the population.

To Mr. Wegenast:

Q. Probably not, Mr. Kemp?

A. But, however, as a background for any other information you may need about the Town of Eastview ---

Q. The persons on relief are 1236?

A. Yes, which is 17.65 per cent of the total population.

Q. Take the families?

A. On relief, there were 242 on that date, as shown by Mr. Savoie's report, of which 191 were of French origin; that is, 78.92 per cent of the whole, and 51 families were of other origin; that is, 21.08 per cent.

Q. Twenty-one point eight (21.08) per cent –- now, we have here a list of the families?

A. Before leaving that table -- and I don't know that it makes any difference –- the percentage of people of French origin in the town is 71 and the percentage of families on relief of French origin is 78.92, making a very small difference between the two.

The next table deals with the number and sizes of families on relief as of October 31, 1936. I don't think Your Worship may read all this.

Q. Come to it later?

A. There are three families with thirteen children; one with twelve, three with eleven, six with ten and so on. Summing up, we might take the more prolific. Seventeen families consist of one person, which could hardly be called a family in a statistical sense.

Q. What would a family of one be?

A. A bachelor or spinster.

To Mr. Mercier:

Q. Widow or widower?

A. Yes.

Q. Or orphaned child?

A. Yes.

To Mr. Wegenast:

Q. Would that nullify the statistics?

A. It is not a statistical way; you must in relief figures take them as a family even if not belonging to any others; they must be families in themselves.

Q. And then these families of one must be included in the 81 Mr. Savoie told about?

A. I think it is clear from his tabulation what he has done. He has shown the total families as 242 and 17 individuals, so I would take it he has not included them as families in that connection.

To the Court:

Q. Seventeen individuals over and above 242 families?

A. Yes, and there are 46 families of two persons and I would suppose they would be mostly young couples, though possibly there might be a father and son or mother and son. But in any case, a good many would not be families of complete sterility; that is, although they have no children today, some day they might have twenty.

Q. There are 46 of those?

A. Yes, of two persons.

Q. Yes?

A. Thirty-seven of three, making a total of 111 people there; more likely man, wife and one child, although there might be other combinations.

To Mr. Wegenast:

Q. Yes?

A. Taking 242 families as the total, you might say

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say approximately half of them have five children or more and the total number of persons on relief is classed here by racial origin ---

Q. I don't know if we are interested in that?

A. Then there is the classification of their status; 242 heads of families, 225 wives, 752 dependent children and single cases 17, making a total of 1236. There may be other children of those families not on relief or not dependent. These are only children dependent on these heads of families and they are on relief.

Q. You have heard the evidence, Professor Kemp; what would be your impression?

A. Mr. Savoie has a table next showing how many families there are in which births would not be expected to occur from this date on.

To the Court:

Q. Families on relief?

A. Yes, because of age, separation or death of one or other parent, birth would not be expected to occur from this date on. Mr. Savoie has pointed out some of these might have had births within the last year or so, but he is only making his comparison on whether they are likely to have births from now on.

To Mr. Wegenast:

Q. Yes?

A. He shows in this table a total of 383 families. I don't know how that fits with the 242.

To the Court:

Q. Those must be all the families in town?

A. No, they couldn't be because only about one-fifth of the town is on relief.

To Mr. Wegenast:

Q. If there are 242 families on relief, you could hardly say 383 expect no more children?

Professor Kemp

A. No, that is 81. Oh, I think that 383 is not the families, but probably the total number of members of those families. He has particulars here of 81 families in which further births are not to be expected.

That is what the whole page is about?

A. Yes.

Q. Yes?

A. Making that calculation, that means out of 242 families, 81 are not likely to have children and there are therefore 161 left where it is possible more children may be born. I think that perhaps should be taken in conjunction with another table he shows with the ages of dependents of families on relief. He shows families now on relief having a total of 38 children under one year of age; that is, they have been born within the last twelve months, and if there were 161 families twelve months ago and capable of having children and they had 38 children, that means one in four that could have had a birth had one. There may be more than 161 families in that category a year ago, but it may be said that one (missing words) steady and consistent birth rate, running about that level.

Q. Take some of the individual cases?

A. That is another chart.

Q. Have you any more observations to make on that one?

A. No.

To the Court:

Q. Those figures are not the number of children?

A. These are all families with children born within the last five years to families now on relief, so we have knowledge of the histories of these families. There is one point I wish to correct myself on; if there are 161 families today who can have children today, there might be 162 or 165 or more than that back to that time.

Q. You didn't get back to that? To twice that many?

A. It would be quite impossible because after you add 81 families, you get to the limit.

Q. And did you consider what that means?

A. I was wondering if the number of families now here would be as large as a year ago.

Q. Eighty-one (81) families might not have been so large?

A. Yes, maybe 45 years ago. It is almost certain there were more families five years ago capable of having children.

To Mr. Wegenast:

Q. At one jump, we have 47?

A. (No reply).

To the Court:

Q. Five years ago?

A. Five years ago.

To Mr. Wegenast:

Q. Is that all?

A. I think that is all; that table should be read. It is divided into racial origins. I passed over ---

Q. Yes?

A. Here is a comparative statement of the cost of relief and number of persons on relief in 1935 and 1936. Is it all right to put these figures on the record?

Q. They are in as an exhibit. Point out anything seems to bear on the matter before us?

A. In the first table, the interesting thing is that costs of relief in Eastview have gone down by not quite a third during the twelve months last past, when they were only about two-thirds of the year previous. The number of families on relief has also shown a gratifying decline. The highest here is February, 1936, which is 469 heads of families on relief, and I think now it is about 242, and the total number of persons on relief has been as high as 2423, which is 34.61 per cent.

Q. Of the whole population?

A. Of the whole population, yes. That was the case early

this year and coming to the period when Miss Palmer's activities were described here, there were, at that time, 20.91 of the entire population on relief and at the present moment, it is 17.65 and I don't know how they have managed to get it down.

Q. When you say Miss Palmer began here, what percentage was the unemployed?

A. In May, 30.21 per cent of all the people in the Town of Eastview. Now, this table, on which I commented before, contains a survey of the ages of families on relief. There is one thing in this table that might be of interest; it shows how long people on relief have been on relief –- how long the dependents on relief have been on relief, rather. In general, out of 752 dependents on relief, there are 122 have been on relief four years or more. There are 48 who have been on relief three to four years, 130 two to three years and 124 one to two years, and 318 less than one year.

That table might be taken, I suppose, to indicate to what extent relief has become a more or less chronic situation.

We have something like nearly one half on relief have been on relief not less than a year. Three hundred and eighty-two (382) out of 752 have been on relief less than one year.

Mr. Savoie's table shows the spacing of children in families, nine or more, of persons on relief. He has taken it out of the records, concerning twenty-three families, being all the families of nine persons or more on relief.

There are nine families here with seven children plus parents and in order that the number of individuals may be brought before the Court, he has designated these families as 1, 2, 3 and so on and there is no disclosure of personal affairs.

In family No. 1, there are nine members including seven children. These were born as follows: one under one year, one two years and one three -– at an interval of a year – and then three were born in successive years. It would take too long to read all this thing.

Q. The highlights?

A. No. 2 has five born in five successive years. The next one, family No. 3, runs this way: at intervals of two or three

years, with two born in successive years. Family No. 4 has five children born in successive years.

Q. Five in a row?

A. Yes.

Q. There are 13 in this family (indicating)?

A. Yes, 11 children.

Q. Here is another with two in a row, three in a row and here is one?

A. With six in a row.

To the Court:

Q. What number is that?

A. No. 15. Here is another three in a row and the others are spaced more widely. This is a case of ten children.

To Mr. Wegenast:

Q. Here is No. 22?

A. Yes.

Q. Eleven (11) children?

A. Yes.

Q. Spaced over what?

A. Eighteen (18) years. Here is one with 11 children spaced over 17 years.

That is the way in which I think this table shows the situation. There is no use going into further things there.

The last thing in the folder Mr. Savoie has prepared shows the number of persons on relief has gone down from May of this year, when I believe he took over, until the end of October, the results declining from 2250 to about 1200 during that period.

I think that is about all I can say about this.

Mr. Wegenast: I would like to resume examination of Mr. Savoie.

The Court: Any cross examination?

Professor Kemp

CROSS EXAMINATION

To Mr. Mercier:

Q. The cost of relief in the Town of Eastview has gone down in the past five months, since May?

A. That is right, sir.

Q. And the number of families on relief have been reduced since last may?

A. Yes, sir.

Q. And now only 17 per cent of the population is on relief?

A. Right.

Q. And in May it was 30 per cent?

A. Yes.

Q. And in the month of May, Miss Palmer arrived in the vicinity according to information we received?

A. I don't know.

Q. I don't suppose out of these figures one could arrive at the conclusion the 13 per cent reduction between May and October would be the result of the work of Miss Palmer?

A. It would be very gratifying to hear.

Q. I don't mean by any contortion of reasoning or indulgence of mind she would be the cause of that?

A. I don't think so.

Q. If that was so, it might be well for the international powers to send her to international countries?

A. (No reply).

The Court: You are calling Mr. Savoie?

To Mr. Mercier: There has been a drop in relief elsewhere as well as in Eastview. There has been quite a drop in Eastview since February; has there been any decrease for Canada?

A. I think I could find that out.

Mr. Beament: These figures are in for part of 1934.

To the Court:

Q. I want to get some relation on the remarkable drop in Eastview and how it bears with the rest of the country. I want some information on that later on?

A. This table in the Labour Gazette for October, 1936, Page 887 shows the figures on the top, in part. It is for March, which is the peak.

Q. It is from December, 1935 to July of this year?

A. Yes.

Q. In February of this year, there were 1,389,362?

A. Yes.

Q. And in July?

A. One million sixty-three thousand five hundred and forty-six (1,063,546).

To Mr. Beament:

Q. March is the peak month?

A. (No reply).

The Court: Yes.

To the Court:

Q. But I was trying to relate the figures for Eastview with those of Canada?

A. For the Town of Eastview, August is 20.91; May is 30.21; February was 34.61 of the population; July, 22.96.

To Mr. Beament:

Q. That is a drop of about fifty per cent?

A. From February to July?

Q. In Eastview?

A. Yes, the summer months are nearly always better. People get jobs.

(Witness retired)

Mr. Savoie (recalled)

(DENIS SAVOIE, already sworn, recalled, deposed:

To Mr. Wegenast:

Q. You have had some experience in this relief work before you came to Eastview?

A. Yes.

Q. Where?

A. Windsor and vicinity.

Q. What would be the worst month for relief during the winter?

A. Well, February is usually the peak.

Q. Now, judging from the course of relief last year, what would you estimate the cost of relief to run up to in February coming?

A. (No reply).

The Court: That is a poser.

Mr. Mercier: I don't think this witness can estimate what is going to happen.

Mr. Wegenast: I think I can answer that myself.

Mr. Mercier: That may be father to the thought.

Mr. Wegenast: We have relief costs month for month in the year 1935 and 1936 up to the present time: last November, twelve thousand odd; December, thirteen thousand; March, eighteen thousand.

To Mr. Wegenast:

Q. If it keeps on going up, by the time February comes, what might it be?

A. It will not be as high as last year, but it will be higher than now.

To the Court:

Q. In September of last year, the cost of relief was

$9,670.70 and in December?

A. Thirteen thousand six hundred seventy-two dollars and four cents ($13,672.04).

Mr. Wegenast: It has started up and I am asking the witness what it will likely go to?

The Court: August of last year, it was twenty thousand.

Mr. Wegenast: Is Your Worship just ---

The Witness:

A. It seems a difficult question to answer. I can't tell what the situation will be this winter; the peak comes in February or March.

To Mr. Wegenast:

Q. Then $12,000 a month would be a decent figure –- in February, 1936, the costs shown were $15,056.41?

A. Yes. A greater expenditure was made for fuel last winter –- that expenditure developed –- and there should be about three thousand dollars' worth of food not included.

Q. So for February, 1936, there should be another $3,000?

A. Yes.

Q. And for February, 1936, it was?

A. Fifteen thousand fifty-six dollars and forty-one cents ($15,056.41).

Q. Add three thousand to that?

A. Yes, and August has a pretty good figure, $6,791.14.

Q. Now, the number of dependents now is 1,236; what would you say it would run to in the ordinary course by February and March?

A. I don't expect it to go any more than seventeen thousand, I think. Sixteen thousand is high enough.

Q. Now, the cost is borne in part by the province; can you give a proportion of the cost borne by the province with reference to any particular year?

A. Nineteen thirty-six (1936) is the only year I can tell you about.

Q. Take for the nine months?

A. I cannot tell what it will be for the rest of the year. The municipality shares the costs.

Q. Out of a total of?

A. One hundred and thirty thousand dollars ($130,000)

Q. Can you tell me what the division is at present; you say it is $130,000 and the Town of Eastview contributes $5,000?

A. That is an arrangement made between the municipality and the provincial government.

Q. By whom?

A. The provincial government and the Town of Eastview.

Q. On what date did the Town of Eastview get off with $5,000?

A. I couldn't say; I wasn't here.

CROSS EXAMINATION

To Mr. Mercier:

Q. It wasn't the birth rate?

A. No, I don't suppose so.

Q. Were you here when the arrangement was made?

A. No.

Q. Do you know whether the percentage of the population on relief had anything to do with it?

A. No, the ability of the people to pay was the main factor.

Q. Is there a Protestant doctor in Eastview, do you think?

A. I don't know if there is one or not.

Q. Do you know if there are any doctors in Eastview?

A. Yes, two; Dr. Dufour and Dr. DesRosiers.

A. Yes, two; Dr. Dufour and Dr. DesRosiers.

Q. Dr. Dufour is in Eastview?

A. Yes.

Q. Is there any birth control clinic here?

A. I don't know.

Q. You would know if there was one?

A. I imagine so.

Mr. Wegenast: I thank you for your work.

(Witness retired)

The Court: Adjourn to tomorrow morning.

Professor Kemp (recalled)

(Court resumed at 10:00 a.m., 3rd Nov., 1936)

PROFESSOR HUBERT KEMP, already sworn, recalled, deposed:

To Mr. Wegenast:

Q. Now, Mr. Kemp, I think you have some figures on various phases of the case and I think the best thing we can do is give you your head and we will get through faster than if I ask you questions. Let us see what you have in your budget?

A. I have tried to answer the questions, as far as I could, whether there was anything in the particular conditions in Eastview that was relevant to the selection of Eastview for this work.

Q. Is there anything about Eastview that makes it appropriate or inappropriate to carry on this work and ---

A. I have looked into seven different points with regard to Eastview. Perhaps I might mention these by giving them first and then going back and elaborating.

Q. Yes?

A. The first is that Eastview is a town with a number of large families. Second, it is a rather poor district and third,

Professor Kemp

there are in Eastview a number of families in which children have been born in very rapid succession. Fourth, infant mortality in Eastview is high. Five, relief costs are beyond the powers of the Town of Eastview to meet. Six is that the financial situation in the schools also indicates a rather poor population and seven is that there is no clinic for birth control in Eastview and, so far as I have been able to ascertain, there are no Protestant physicians here.

Conning over these various points in succession to begin with, before entering on them, while what I have to say might concern Eastview, I don't mean Eastview is the only place in Canada where there would be reason for carrying on this work. I should think the absence of some of these conditions would be no reason why it shouldn't be carried on. There isn't a town in Canada that shouldn't have this information.

But in Eastview, something clearly brought out by Mr. Savoie's figures yesterday and also by the ladies who gave evidence in the early part of the trial: that the town is poor and no particular proof is necessary; one can walk along the street and see it.

Apart from that, the relief statistics I am going to mention later will throw further light on it.

There are families here in which children are born in very rapid succession; that also is shown very clearly by Savoie's figures. Although they only represent twenty families in Eastview, they at any rate show such families are to be found here and the evidence of the ladies called here before also shows that.

I don't know if it is relevant to consider all the families like that and the fact there are some is apparently the important point.

With regard to infant mortality, I have made a careful study and search of the records in the Dominion Bureau of Statistics ever since they began publishing reports on vital statistics. They began publishing them in 1921 and there are statistics in existence in fourteen published reports for which I have added figures for 1935, obtained directly from the Bureau.

From 1921 to 1935 inclusive, there have been 2064 babies born in Eastview.

Professor Kemp

During that same period, the number of babies who have died before reaching the age of one year was 373, making an infant mortality rate of approximately 140 out of every thousand babies born.

Things were a great deal worse in the earlier part of this period than in the last five years, during which figures are 859 born; number died before reaching one year, 78, making an infant mortality rate of about 91 per thousand.

Q. The rate must have been a good deal higher in the former period?

A. From 1921 to 1930, there are some perfectly terrible rates to be found; for instance, in 1922, 200 born and 38 died before one year, and the infant mortality was 190 per thousand. I suppose it can be equaled in a civilized country, but it is terrible.

Q. What year?

A. Nineteen twenty-two (1922).

Q. How does that rate compare with other rates in Canada?

A. I have the other rates here in the Canada Year Book, which gives provinces and also cities of Canada.

Take by provinces: this table is found on page 176 of 1936 Canada Year Book, as it hasn't been put in as an exhibit?

Q. I don't suppose we should have it as an exhibit; what do you say, Mr. Mercier?

Mr. Mercier: I have no doubt —- as it is the evidence of the witness, I know he will not mislead the Court.

The Witness:

A. If the Magistrate wants to have it?

The Court: I can always get a copy without difficulty.

The Witness:

A. Taking them, the death rates per thousand live births, this table shows averages from 1921 to 1925 and 1926 to 1930 and then the individual years 1931 to 1934 and the condition that existed in 1921 to 1925 may be shown by the figures for Ontario.

Quebec is not given at that time because it is not then included in the registered area. In Ontario then the rate was 83 per thousand live births. Nineteen twenty-six (1926) to 1930, the Ontario rate was 74 and Quebec shows the highest in Canada; it was 127.

To Mr. Wegenast:

Q. This Eastview rate for 1921 was?

A. Nineteen twenty-two (1922) was 190 —- I beg to say for 1923 —- and it was over 180 in the next two years.

Q. So that we have a rate of infant mortality in Eastview more than twice what it is in the rest of Ontario?

A. Yes.

Mr. Mercier: The same year?

Mr. Wegenast: That period, 1922-23?

Mr. Mercier: Yes, as to the figures for Ontario and Quebec, 1936?

The Court: No, 1921 to 1925?

The Witness:

A. I have no figures for Quebec for 1921 to 1925 because it wasn't in the registered area, but Ontario for 1921 to 1925 averaged 83 and the Eastview figures for that period ---

To Mr. Wegenast:

Q. Have it exactly; it is worth a minute's calculation?

A. The average mortality, infant mortality, in Eastview for 1921 to 1925 was about 195; the actual figures being 869 born and 170 of them died before reaching the age of one year. Now, do you want them for the next five years?

Q. We might as well have it complete?

A. (No reply).

Mr. Mercier: Although, Your Worship, I don't suppose the figures for 1921 and 1922 are very pertinent to this case ---

Mr. Wegenast: We are coming to that later.

Mr. Mercier: But we are in 1936 and conditions in 1936 are what we must consider, although it shows improvement.

The Court: There may be a large number of factors for a death rate of this kind. Statistics always must be used with a certain amount of suspicion as to conditions and circumstances at the time the figures were obtained. They do help to give a general background.

The Witness:

A. From 1926 to 1930, the rate in Eastview was 134 as compared with an average rate in Ontario of 74 for the same period.

To Mr. Wegenast:

Q. Still more than twice?

A. And in 1931 –- shall I give the actual totals for 1926 to 1930?

Q. Do you know the last ---

A. The last five years, 1931 to 1935, there were 859 babies born; 78 died before reaching the age of one year, making an infant mortality rate of about 91 per thousand born.

Q. Getting better?

A. As compared with the rate for Ontario; 70, 62, 60, 57. The last shows the Ontario rate for 1934.

Q. Can you compare them with Brantford; I want to have evidence as to Brantford?

A. I have the figures for Brantford; 1931, 1932, 1933, 1934, which were 57, 50, 63, 45 respectively. The highest rate I see is for Three Rivers, Quebec, where in 1934 the rate was 287 per thousand, and they are to be found –- they are scattered a bit.

Q. Let us have a few examples of the lowest rates?

A. Calgary, Alberta with 41.

To the Court:

Q. What year?

Professor Kemp

A. Nineteen thirty-four (1934). Here is Moncton, New Brunswick, 40; Moose Jaw, Saskatchewan, 35; St. Boniface, Manitoba, 30. Sandwich, Ontario, 35; that is a small population. Stratford, Ontario, 41. Victoria, British Columbia, 31. Those are some of the low rates.

To Mr. Wegenast:

Q. That will do for those. Now, I will let you go on in your own way?

A. I don't think it would be unfair to say, in the present state of medical knowledge, at least half the babies dying in Eastview ought to be saved. Of these 373 children who have died from 1921 to 1935, I should think it probable that at least 150 ought to have been saved, having in mind what has been achieved in other places.

Q. Of course there is a very substantial drop in the rate here. Have you any idea —- this is not statistics, but it may be you, in your knowledge, might suggest what has contributed to this?

A. I think it is largely due to a considerable attempt by the health authorities and medical profession, in general, throughout Canada. I think, too, the extension of social service work has had a good deal to do with it, especially inasmuch as extra food is provided by the public in many cases and I think the decline in the birth rate has to do with it.

Q. Has there been a decline in the birth rate in Eastview?

A. No, I have it for Eastview; there is a very slight decline, but it is very small.

Q. How does Eastview compare with the rest of Ontario as a whole?

A. I can't make a fair comparison because the number of children born in a community depends on what the percentage of population are married is at an age suitable for bearing children. I asked the Bureau of Statistics for that information for Eastview and they said it wasn't tabulated in the census of 1931, so I can't make a fair comparison.

Q. Give whatever you think best?

Professor Kemp

A. I have mentioned that the infant mortality in Eastview is unfortunately high and I have been interested for a good many years in the statistics of population and, among other things, in the relation between infant mortality and the high birth rate, and I have brought here what is probably the most extensive and complete study that has ever been made of it by a government department. This was made by the British census authorities on the basis of the census of 1911 and every married couple in England was included in the study.

All these married couples were required to state to the census how they had been married, at what age married, how many children born to them and over what period children had been born and how many of the children were still living. As a result of that, two volumes of material were collected and published in the English census of 1911 as volume 13, parts 1 and 2, and the material was also interpreted by Dr. T.H.C. Stevenson who was medical statistical officer in connection with the British census and was a very eminent statistician. He died two years ago.

The results of this study have been synopsized in a graph which has been submitted to the Court.

Mr. Beament: Exhibit 68-B.

The Court: This is the exhibit.

Mr. Beament: No, I put that on, Your Worship.

The Witness:

A. This is a photostatic copy of a graph found in the original article in the proceedings of the Royal Statistical Society for 1920-21 on page 404 and the article contains a description of exactly what was done and what was found. I would like to explain what this graph means or at least point out what it shows. This graph synopsizes the experiences of 2,800 families in round numbers, being all families in England and Wales where the mother married between 21 and 24 years of age and were still living with the husband at the time of the census.

The different kinds of lines on this diagram show the different duration of marriage; for instance, the solid black line at the top left represents the marriages lasting zero to five years.

The next is marriages that lasted five to ten years, according to the key in the lower right-hand corner.

Along the bottom, it shows the number of children born to the family during the entire married life. On the other side, the number of children who had died at the date of the census per thousand born.

Interpreting the thing, taking the black line first, marriages duration zero to five years. In such marriages where only one child was born, only about 60 per thousand died. If two born, about 110 per thousand dead; three, 175 per thousand dead; four born, 275 per thousand dead; five born, 350 per thousand dead; six born, almost half were dead at the time of the census; showing, as far as that line is concerned, among families married five years, the mortality of the children varied enormously according to the number of children born during that time.

This is direct evidence on spacing and it is the effect on the death rate of infants and children.

The results of families married up to five years are similar among those married five to ten years, indicated on the second line.

There is one anomaly in that second line; the death rates in families of nine is a little lower than for eight. That is the only exception or anomaly on the graph and is really accounted for by the fact in England there are very few families with nine children born in ten years.

Looking at it in another way, if five children are to be born, what is the length of time desirable in which they should be born in order to keep down the mortality? If these five children were born in less than five years, 350 per thousand are dead. If the births are spread over ten years, only 210 per thousand are dead. If spread over fifteen years, 165 per thousand are dead. Generally speaking, by that method of reading the graph, it is evident that the death rate may be practically three times as high where children are born in rapid succession.

If the same number are born in a longer period of time, it will show a lower death rate and Dr. Stevenson himself sums up this

Professor Kemp

part of the investigation saying that the death rate among children varies enormously both according to the size of the family and the rapidity with which the children are born.

This material, of course, dates from the census of 1911 and from another country and is relevant here only insofar as it may indicate a general tendency irrespective of the particular place or race or particular surroundings.

The next point I wish to bring out: before reaching this infant mortality subject, there was one other point that ought to be stated. It would not be fair for me to give the impression to the Court that the infant mortality in Eastview could be brought down to the Ontario level merely by birth control methods.

I am afraid there is a good deal more here than that. However, I think the evidence does at least warrant the conclusion that there is a close association between the high birth rate and high infant mortality and that there was reasonable cause for the Parents' Information Bureau to believe that the work accomplished some good with regard to the birth rate in Eastview.

To Mr. Wegenast:

Q. The infant mortality?

A. The infant mortality in Eastview. The exact nature of the connection between the rapid birth of children and the infant mortality is something that the medical people can explain in greater detail, but from what I have read on the subject, I believe it is partly the strength of the mother is diminished by frequent and rapidly repeated pregnancies and further, she isn't able to devote the attention she ought to the child and already another one is on the way.

With regard to the relief costs in Eastview, Mr. Savoie has clearly shown that out of a cost of $130,000.00 the authorities have agreed that Eastview isn't able to pay more than $5,000.00 itself which is very striking proof of the poverty of the town and there is some reason to believe that poverty is connected with the birth of large numbers of children, with the existence of very large families.

In this connection, I have made some search in the records of Ottawa, which has, in some ways, similar problems.

Professor Kemp

The Court has before it an exhibit, a mimeographed copy of the Ottawa returns to the government in connection with direct relief recipients.

The larger of these two sheets —- they come in pairs -- one shows what is printed on the back of the original and the other is the front. Looking at the front of the larger sheet, we have a classification of those on relief.

The Court:

Q. Exhibit 57-B you are referring to?

A. First, the employable -- they are covered on the large sheet showing how many employables -- 4072 male heads employable, 336 female heads employable, making a total of 4408.

The next column shows the number of employable dependents under these heads of families. The next shows the number of employable individual cases and the last section shows the total number of employable persons, being the total of the preceding columns.

At the right side of the page, there is a survey of the dependents of these heads of families and in columns 15 and 16, we have a classification of their children according to age.

The total number of these children according to age is shown in column 19, the last column on the page.

Now, as these figures stand, they probably appear to mean very little, but it may be said as a general principle, the members of the population more than 16 years old have to support the ones less than 16 years old, at least in Ontario. Therefore, the ratio between the number more than 16 who have to do the supporting and the number less than 16 who have to be supported is one of the measures of the situation in a community.

Among the population on relief, this sheet indicates that for every 100 persons over 16, there were 65.8 persons under 16 in the relief population. Whereas, the census of 1931 shows for the whole population of Ottawa that for every 100 persons over 16, there were only 40.7 under 16.

That is, among the whole population -- the whole population of Ottawa at the census of 1931, every 100 people over 16 had to support 40 dependents under 16.

Professor Kemp

Among the population on relief, every 100 of the people over 16 had to support 68.5 under 16.

To Mr. Wegenast:

Q. Would have had to support them?

A. Of course, they were all being supported by relief.

The Court:

Q. They had a moral obligation to support them?

A. It seems so; their families are very much larger.

To Mr. Wegenast:

Q. Fifty (50) per cent?

A. Roughly.

To Mr. Mercier:

Q. That is 1931?

A. Yes, comparing the population of Ottawa in 1931 with the relief in 1936.

I don't think there has been any wholesale decimation of children in Ottawa since 1931 and probably the situation is not very much different. That is the Ottawa situation. Again, it isn't Eastview; it is relevant here only as indicating the situation in a nearby community for which we happen to have the information.

With regard to the cost of education in Eastview, I have here the report of the Minister of Education for the Province of Ontario for the year 1933. And what it shows —- I will read the figures —- is that in every community, the cost of education is partly born by people living in that community and part by the provincial government in the form of grants and the usual grants from the provincial government are a good deal less than what is paid by the local community.

In Eastview in 1933, the grants from the provincial government were about equal to the sums paid by the local community, indicating that the town was then regarded as being more in need of assistance from the provincial government than were other towns.

Professor Kemp

The exact figures showing this: I quote first, the public school system. In Eastview, as is well known, most of the children go to the separate school and the public school is a minority here.

I happen to have the public school statement before me. In 1932, the school rates raised by the people of Eastview for public schools were $9,200. The legislative grant was $1,957.50.

The public school has rather a small attendance compared with the separate school and it will be noticed that most of the cost of the public school in Eastview was met, at that time, by the Eastview people themselves.

In the separate school, where I estimated four-fifths of the children are to be found, the Town of Eastview raised $11,091.15 and the legislative assembly gave $11,688.63. The legislative assembly therefore provided more money for the separate schools than did the Town of Eastview.

I don't want to be understood as drawing any odious religious comparisons here at all. This is just the way the statistics are in the book and there are many and obvious reasons to explain the particular situation.

But compare Eastview with all the towns of Ontario; put them all together, the towns themselves provided $369,877.88 for the separate schools, while the legislative grants were $67,660.20. In other words, taking Ontario as a whole, the town put in five dollars for every one dollar they got from the legislative assembly, but in the Town of Eastview, the situation was such that the legislative assembly had to put in more than one dollar for every dollar the people in Eastview were in a position to find.

At the present date, the situation in Eastview with regard to the costs of education is perhaps worthy of note too. I understand the public school system is now in default on its capital expenditure; that in Ottawa -- the public schools in Ottawa, last year, spent $53.77 per head in the public as against $30.56 in Eastview and that the separate schools in Ottawa, $25.71 as per or against $12.77 in Eastview. I have misread my table here. These sums are not dollars per head; they are cents per head per day.

They indicate the amount spent on education in the Town of

Eastview is one-half or three-fifths as much per pupil per day as in Ottawa and, as I say, the public schools are apparently in default on their capital expenditure.

To Mr. Wegenast:

Q. So many cents per head per day; would the year be 365 days or the number of school days?

A. I should be inclined to think in making this calculation, they have probably made it on 365, but I am not certain.

Q. But the total cost per pupil per year, which one knows in a general way –- if you haven't it readily at hand let it go?

A. This is not, of course, brought in to suggest there are too many children in Eastview, but rather as an indication of the relative wealth or poverty of the various communities.

The last point I mentioned was that so far as I have been able to ascertain, there is not in Eastview any birth control clinic where the people of Eastview could get information on this subject and so far as I have been able to ascertain, there is not living in Eastview any non-Catholic physician from which I assume that information of this sort cannot be got from medical sources in the Town of Eastview.

Q. There are drug stores of course?

A. Yes.

Mr. Mercier: That is admitted.

The Witness:

A. Apart from these figures relating to Eastview, there is one bit of statistical information relating to Canada as a whole which is probably relevant to the thing and it is also to be found in the Canada Year Book page 107.

The population of Canada in 1901 was 5,371,315. In 1931, it was 10,376,786 or practically double in thirty years, which is a very rapid rate of increase for a northern country.

In addition to doubling the population, Canada exported population by emigration to the extent of 865,889 in the first decade and 1,297,740 in the second decade and 1,245,555 in the

third decade. So that if Canada had retained all the natural increase and the emigration of the last thirty years, the population today would be between 14 and 15 million and the country would have multiplied its population by some number between two and a half and three during the period of thirty years.

Actually, there was a very considerable loss of population by emigration, both of those born in this country and those who came to this country from other places.

I think that is about all the statistics I have.

To Mr. Wegenast:

Q. I would like to ask one or two questions as an economist. Do you know any objection from the standpoint of economics to this work of Miss Palmer?

A. (No reply).

Mr. Mercier: I wonder if the professor is there as a judge. My learned friend might ask if certain things should be done and leave it to Your Worship to decide.

Mr. Wegenast: I think I am far enough away from questions Your Worship has to decide. This man is an economist; he can tell us from his broad general knowledge anything that is pertinent.

The Court: It is a very broad way of putting the question. If you ask for any observations from the viewpoint of economics and if he says no there isn't much to go on there.

To Mr. Wegenast: There is the necessity of proving there is no excess in the acts under the section. How could I put it?

The Court: Let us see what the witness answers.

Mr. Mercier: I must admit it has been done before.

The Court: There have been a few things not strictly according to Hoyle.

Mr. Wegenast: I still submit to Your Worship that the laws of evidence are not so inflexible that they will not permit such evidence as is necessary to satisfy Your Worship on this very exceptional statutory provision which puts a certain onus on us to prove a negative.

The Court: That is why I have been stretching the rules about as far as I can go.

Mr. Wegenast: It must be in the nature of things, but it is open to me to show that negative. I have thought, but can find no other way of putting it.

The Court: I don't think it was the negative Mr. Mercier objected to, but to the manner of asking.

Mr. Wegenast: I can always put it in the stock manner: "what"?

To Mr. Wegenast:

Q. What do you say as to that?

A. I find the question rather a general one. Do you mean what is my opinion as to the practice described in the case of the individual women here in court or do you wish my opinion on the general question whether birth control information should be supplied?

Q. I have in mind the existing situation here which you have given us in detail?

A. Actually, I haven't any difficulty answering that question. I think the situation in Eastview is one in which there would be good and adequate reasons for believing good might be done by the judicial circulation of this information and in the case of the individual women who appeared in court, having heard their stories, I think that they were the sort of people I would myself have selected as being the sort of people who should have the information.

Q. Is there any exception to that; it isn't sufficient for me to prove it was for the good of the community, but the onus is on me to show there wasn't anything that wasn't good within reason?

A. Are you now referring to the actual cases who appeared here?

Q. Yes, what Miss Palmer did?

A. There is evidence, if the principle of selection had been exercised –- they were all with one exception married women; they were all without exception women who had had a child or children. They were not all women who had had large families

and as one rather pathetically remarked in court when she had had ten children and Miss Palmer came, "it was rather late" to give her that information.

The only exception to the women being married was one unmarried girl and having more regard to her activities in the community than the economical considerations, I don't think I would have excluded her from the list of people to whom the information should have been provided.

Q. I suppose it is hardly worthwhile to put this question to you, but I want to see how the answer will come from an economist; what the effect must be of the excessive birth rate in a place like this on taxation?

A. There is no doubt if the people of Eastview continue to have more children than they can afford to support themselves, somebody else will have to support them and that will be obviously reflected in the general taxation of the rest of the community.

I don't wish to be understood as saying that birth control will do away with the depression or bring about an entirely new economic heaven on earth. That would be an excessive contention to make for it. It may be regarded as one of a number of policies that might be considered as tending to lessen existing economic evils.

Q. It will not bring about a new economic heaven; what about it bringing about a state of childlessness in the community?

A. I am myself a teacher. I meet a great number of young people in the course of my everyday work and I notice they still want to get married and have children and I think the natural desire of people is to marry and have families and that will continue and we need not fear the dissemination of this knowledge will have any such effect as that.

There are of course some statistics –- some statistical evidence that has already been mentioned in this court of European conditions where it is found in Holland, where the information has been available for many years and very freely disseminated, the birth rate

continues to be higher than in other countries where the circulation of the information is forbidden.

Professor Kemp

Q. Is there anything further you can usefully say; I want to extend an invitation to you? I have nothing more to ask you.

A. (No reply).

CROSS EXAMINATION

Mr. Mercier:

Q. Mr. Kemp, you have stated that Eastview isn't the only place in Canada which might be in the same condition?

A. That is true.

Q. I don't believe you believe that from your evidence so far, that birth control is the only method of improvement so far as improving economic conditions goes?

A. I believe I have already said many of the things that might be done.

Q. I would like you to exemplify on this; do you know of any better method of economics than birth control? Let us begin by other methods.

A. I think in the first place in answering that, this ought to be done and not that other things ought not to be left undone and the second answer is, during the impression in particular, all the governments in Canada and all the economists have been racking their brains to think of other things to do and it is probably safe to say anything they have been able to think of and anything the community has been able to think of has been and is being done.

Q. I believe, sir, we might get along much better if you will not follow the preceding reverend gentleman (Mr. Silcox) in the box and let yourself run away with my questions.

I believe you said birth control is one of the methods?

A. Yes, and there are other methods of curing economic evils.

Q. Mention some of them?

A. I am not quite sure as to whether or not my evidence in this trial in Eastview –- whether I ought to talk to you for a day or two of the many other things to remedy economic

Professor Kemp

conditions. I could easily labour at least one hundred, unless you ask me to desist.

The Court:

Q. Mr. Mercier will qualify you as a Canadian brain trust?

A. (No reply).

Mr. Mercier:

Q. That is a very good answer. You say hundreds, and maybe thousands of other ways; will you tell me if birth control is the best of them all?

A. I would say that where the evil exists is in the excessively rapid production of children to the extent the health of the children is hurt and the population is carried into poverty and there is no other remedy than a less rapid production of children.

Q. That is what you hold?

A. If the evil is the rapid production of children, the remedy is the less rapid production of children.

Q. If a factory were built here in the Town of Eastview –- there are after all only 242 families on relief here, and there are 20 large families in those, and the others seem to be getting along rather well?

Mr. Beament:

Q. On relief?

A. Do you mean 161 families on relief are getting along well?

Mr. Mercier:

Q. I say only 20 large families not getting along and on relief?

A. You base that family of nine as large?

Q. If I took you down right, you said 20 large families on

relief?

A. I was reading from Mr. Savoie's figures showing 20

families of 9 children and more and on relief, but I wouldn't hesitate to describe those with 8 as being large.

Q. From the point of view of infant mortality, there has been a decrease also in Eastview, I understand?

A. That is true.

Q. Do you think birth control is the best means of preventing infant mortality?

A. It is one among many. I would have to have a medical knowledge of conditions in Eastview to decide if it is the most urgent one to be dealt with.

Q. I believe you stated at least 150 of these children might have been saved?

A. That is true.

To the Court:

Q. By medical knowledge?

A. My statement was that in view of the present state of medical knowledge, it ought to have been possible to lessen the number of deaths by that number in the light of what other communities have done during the same period.

Q. In other words, there has been quite a reduction in infant mortality in Eastview in the last few years?

A. In Eastview and elsewhere.

Q. Which is due largely to the increased social welfare and public health work?

A. Yes.

Q. And if it had been extended to the extent it might, you think at least 150 of those children might be alive?

A. I think all along infant mortality in Eastview has been almost twice as high as other parts of Ontario at the same time, so Eastview has lagged behind.

Q. You said you think 150 of those might be alive today if all the medical knowledge of today had been applied?

A. Including the knowledge we are dealing with, yes.

Q. Including the knowledge or the dissemination of birth control?

A. yes.

Mr. Mercier:

Q. Do you not believe, sir, from the point of view of infant mortality, it might be better to establish in Eastview certain baby clinics to give prenatal care to mothers?

A. I think that would be a very desirable thing.

Q. As compared to birth control clinics, which do you believe now, in the present circumstances, would be the best?

A. I think you would have to tell me first what facilities are available now in Eastview for prenatal advice to mothers; is there a deficiency in that respect?

Q. I am not here to answer questions?

A. (No reply).

Mr. Wegenast: Give him more to work on before ---

The Court: Exhibit 53-B, report of June, 1935, of the Ottawa Council of Social Agencies, "survey of greater Ottawa," says:

> "The Victorian Order of Nurses have a nursing service in the town providing bedside nursing and operating a Well Baby Clinic. One of the Victorian Order Nurses from the City of Ottawa goes out to the Public School one-half day a week…"

Mr. Mercier: A well baby clinic?

The Court: Yes.

> "…and examines the children and makes home visits if necessary. The Public School Board of Eastview pays the Victorian Order Nurse $150 per annum. There is no nursing service nor medical inspection in the Separate Schools. The financial situation seriously handicaps the health work in Eastview and were it not for the fact that a number of the people hold Metropolitan insurance policies, it would not be possible for the Victorian Order nurses to finance themselves there.
>
> Professor Kemp
>
> "The well baby clinic has an average attendance of 38 babies."

The Witness:

A. This is all postnatal work. The report doesn't seem to mention anything about prenatal clinics.

Mr. Mercier:

Q. Taking it for granted there is nothing in Eastview such as prenatal clinics, do you think a maternity centre and baby clinic in Eastview would be more important than a birth control clinic?

A. (No reply).

Mr. Wegenast: I don't want to interfere, but if my learned friend wants to put a question; for instance, is there a physician in charge of the clinic, he should put it on all fours.

Mr. Mercier: I consider this witness is an expert. He is put in the box as one.

Mr. Wegenast: He is asking you for information.

Mr. Mercier: He hasn't yet and I think he can take very good care of himself. I am asking him a question; if he can't answer, I believe he will quickly tell me he can't.

The Witness:

A. Here is my difficulty; I haven't much experience in the matter. When a woman is expecting a baby in the group I am acquainted with, she goes to see a doctor a long time before the baby is likely to be born and the doctor gives her advice; talks about diet and various other things and she makes frequent visits. He takes care of her and eventually the children are born.

My children have never attended a clinic, but I think they are well taken care of.

There are doctors in Eastview and if they do that for mothers as part of their service, there may be no need of a clinic. I don't really know the situation in that respect.

To Mr. Mercier:

Q. Granting the need for a baby clinic in Eastview, do you believe it would be more important to have a baby clinic to take care of those little beings who have already come into the world and see they live or would it be more important to have propaganda to prevent more children; which is more important?

A. If I were a man of means and wanted to do good for Eastview, I would put my money into both of these clinics.

Q. I think I will have to coin a phrase; I think you are answering a la Silcox. That is with all respect. If you can possible tell me which of the two things would you consider best to do?

A. (No reply).

Q. I am not asking this question to embarrass you, but I feel you will give me your candid and fearless opinion on that?

A. Without trying to evade your question, I will answer by an analogy.

If a doctor came to you and said, "which is best, castor oil or quinine," you would say, "for some diseases, castor oil is the best and for some other diseases, quinine is the best, but it is very difficult to tell which of the two is the better."

Mr. Mercier: I wonder if they are giving a special course in Toronto on the way to answer these questions.

To Mr. Mercier:

Q. So you have no choice in the matter?

A. I would say in some conditions birth control advice is the appropriate remedy and for other conditions, a well baby clinic is the appropriate remedy.

Q. Well, then, sir, I put it to you that in the Town of Thetford Mines in the Province of Quebec, there was an exceptional situation there at one time, I understand, and that the infant

death rate was exceptionally high; it was three hundred per thousand. They had a maternity centre and baby clinic, in charge of a nurse, opened to give prenatal instruction and baby care. At the end of three years, the death rate dropped from three hundred per thousand to ninety per thousand. As a result, the government appropriated $90,000 for

such work in other communities?

A. (No reply).

Mr. Mercier: I will put it in, Your Worship, if you wish. It is, "Educating for Longer Life," page 16.

Mr. Wegenast: May I see it?

Mr. Mercier: It is from the Metropolitan Life.

The Court:

"Exhibit 90-B"

To Mr. Mercier:

Q. Do you not believe that would be a much better way to spend money than to prevent children coming into the world?

A. I think I can only repeat what I said before; I think it is a very excellent thing, what was done in Thetford Mines and I would like to see it done elsewhere, but also, I would like to see the other work go on too.

Q. You have given us some figures of 1911 in England?

A. Yes.

Q. On infant mortality there compared with the birth rate?

A. Yes.

Q. But of course science has advanced very much since then?

A. No doubt.

Q. Science has advanced considerably in those 25 years?

A. Yes, but I think it is still true that the excessively rapid production of children is not a good thing for the children.

Q. Pardon?

A. I think it is still true that the excessively rapid production of children is not a good thing for the children, notwithstanding the advances of science.

Q. That is your opinion?

A. Yes.

Q. It doesn't necessarily mean it is caused by that?

A. Oh, no.

Q. Talking about the cost of education in Eastview, comparing the separate and public schools, you know, I suppose in Eastview, as in many other municipalities where there are public and separate schools, the rates for public schools are always lower?

A. I didn't know that that was the case in Eastview; in fact, it would surprise me a little bit, as in Eastview, there are only a little more than 200 go to public schools and something like a thousand or more go the separate schools.

Q. I know in Ottawa that is so?

A. It is in most cases.

Q. There are a lot of separate school supporters who should pay their rates to the separate schools and they pay them to the public schools?

A. I wouldn't be surprised and I don't want you to feel I am throwing any reflection on anybody.

Q. And the fact of people being poorer might not be a reason for the government having to assist, but it might be those who should pay to the separate schools don't and they pay to the public schools?

A. That may be so, but I don't think it would make much difference if they did pay to the separate schools.

Q. You mentioned the principle of selection; what did you mean by that?

A. I would say if you erect a billboard at the entrance to the City of Eastview and inscribed thereon certain information, there would be no principle of selection in choosing the people receiving that information, but I take it the women brought before the Court to give evidence were probably, in the opinion of the Crown, the worst cases that could have been selected. I don't wish to suggest you have done anything unfair.

Q. If that statement is made, I will have to qualify it and I will have to say something I don't care to say. By all means,

all witnesses that might possibly have been called by the Crown have not been prepared or picked.

It is the duty of the Crown to show that some crime has been committed and if an accused has done a number of things, some of which are inoffensive and others are crimes, it would be appropriate for the prosecution to lay special stress on the actions supposed to be wrong and if that is so, I would suppose it would be only the natural thing that these cases would be, at best, a typical selection and at the worst, the worst cases the Crown was able to find.

A. (No reply).

Mr. Mercier: I think the evidence will show this prosecutor, at any rate, never interviews witnesses. They were brought here to show they received these contraceptives contrary to a certain section of the Criminal Code.

Mr. Wegenast: Alleged to have been.

The Witness:

A. You asked me what method of selection; I would say all the married women with the exception of one and I would think that one was a suitable one to receive the information. That is the principle of selection.

To Mr. Mercier:

Q. Have you read this pamphlet, Exhibit 5-B?

A. (No reply).

The Court: Adjourn for five minutes.

(Court resumed at 11:45 a.m.)

To Mr. Mercier:

Q. Now, sir, after looking over this pamphlet —- every woman, you saw their mentality and way they acted in the box, their intelligence -- do you believe it proper for every one of those women to receive that pamphlet?

A. I see no reason why they shouldn't.

Q. Now, there was something you said -- regarding childless marriages —- you wouldn't fear that by circulating among the

younger people this information —- their mentality is that they would love to get married and have children —- I believe you said that, sir?

A. (No reply).

Q. The danger of birth control information dissemination, granting it would encourage it?

A. I don't grant it.

Q. But granting that it would?

A. I don't grant it would.

Q. But in order to make a point sometimes you do grant a certain set of circumstances –- granting it would encourage childlessness; do you believe it would be preferable to use other means?

A. I have already said explicitly I do not think birth control would cure the depression.

Q. But it was one of the means of curing it?

A. No.

Q. Of helping to cure it?

A. It is a means of dealing with the economic evils from which we suffer, of which the depression is one.

Q. Now, in Holland, with the dissemination of this literature, the birth rate is higher?

A. Yes, than in Belgium.

Q. Now, has the climate of Holland much to do with that?

A. I don't think there is much difference.

To Mr. Wegenast:

Q. It is the same as Belgium?

A. Even in both and I don't think I have heard the climate of Holland has to do with human fertility, although they grow nice flowers there.

To Mr. Mercier:

Q. Do you believe the mechanization of industry has to do with the depression?

A. I don't think it does; I know there are people who do hold that view. There are many people think that is the main cause.

Q. And you would think they would be wrong because you don't hold that view?

A. (No reply).

Q. From 1913 to 1927, the population of the whole world in that period of 15 years increased by 9 per cent; production gained 13 per cent and material 35 per cent?

A. I don't know if those figures are correct?

Q. Granted they would be; the population of the world increased 9 per cent, production 13 per cent and material 35 per cent?

A. I don't know whether it would show anything that is particularly pertinent to the present case in Eastview.

Q. Of course I must not hold you to Eastview because the public good has been extended to the whole world. You are the first witness who has kept it to Eastview in bounds, more or less?

A. I think you would have to say where the increase in population took place and where the increase in wealth took place to make that more definite. Supposing there was a great increase of population in China and an increase in wealth in the United States, I think that is what happened.

Q. That is, the whole world population increased 9 per cent and notwithstanding that production increased 13 per cent and material 35 per cent?

A. (No reply).

Q. If the figures are correct?

A. A very perfunctory and superficial and ill-advised conclusion to draw from that is that the wealth of the people is increasing faster than the numbers of people and that doesn't show whether the increase in population took place where the

increased wealth is. It is generally known that some of the most prolific countries are also countries in which this increased wealth isn't taking place to any extent.

Q. Isn't there room in Canada for increased production and increased raw materials?

A. Absolutely.

Q. Plenty of room in this country for more people?

A. If they all stood together, one to each square foot, we could have many more.

Q. But without going that far, there is room for increased production?

A. Yes, there is room for many more and I would like to see them there, but I can't help looking back at that history of the population in Canada. I showed you that in spite of having all this room and natural resources, we have a loss of three and one-half million people by emigration during the last 30 years, and I can think of many of my old school chums who couldn't get employment in Canada, as they would have liked, and it is a great pity.

I think with all these resources, there is only a certain rate at which we can absorb increased population. If we try to absorb faster than that, it doesn't work; we have to keep at a steady rate.

Q. Isn't it better to adjust the country to economic possibilities and have a country with a bigger population; isn't the aim of everybody to improve economic conditions rather than to

restrict the birth rate and take away, as one author says, “the most prized possession, children”?

A. I think it is generally known if there is any way to improve economic conditions, we should use it.

Q. And you will agree the possibilities are there?

A. The space and resources are here, but there is a limit to the speed at which we are able to increase population and use them.

Q. Would you agree there is enormous waste in production and distribution?

A. I think, on the whole, the industrialists of Canada are probably doing as well as they know how and comparing with what we are now doing, or might do, 100 years from now, our present methods will likely seem inferior, but most people are trying to improve their methods where they can.

Q. There are certain classes of people have immense revenues and immense profits in this country?

A. I am willing to accept your word for it.

Q. I mean, I suppose as an economics professor, you might give me a much clearer answer that that; you should know better than I do?

A. There is, undoubtedly, rich and poor in Canada.

Q. And that labourers are receiving insufficient revenue?

A. I would certainly like to see them receiving more.

Q. And notwithstanding these conditions, they are receiving insufficient revenue for the work they might possibly do?

A. I think the majority of people have wants they are unable to supply with their present incomes.

Q. Do you not think it would be better to adopt social conditions and environment to the family than diminish the number of children to the social organization?

A. I think my analogy of the castor oil and quinine comes in here again.

Q. That still stands?

A. I think probably we ought to be doing both, but if the trouble in the family is that a mother is producing children at so rapid a rate that the health of the children and herself is harmed, I don’t know about your conditions and the environment. That may be a good thing for her children and, undoubtedly, it would be.

Q. Now, is unemployment always caused by overpopulation?

A. No.

Q. Is overpopulation one of the causes of unemployment?

Professor Kemp

A. Sometimes.

Q. But unemployment doesn't always cause overpopulation?

A. No.

Q. Now, in England, I am told, men over 55 years in 1901 were 10.6 per cent and in 1928 were 15.8 per cent. Could one deduct from that, if the proportion continued, it would be approximately 19 per cent in 1941 as against 7.5 per cent of children?

A. That is a question in arithmetic and I would like to know how you got those figures because if it was 10 per cent at one date and 15 per cent later and you assumed it would keep on increasing at the same rate ---

Q. Yes?

A. It would eventually be 100 per cent.

Q. In 1901, it was 10.6 per cent?

A. Yes.

Q. Of men —- an increase of aged persons and a decrease of children?

A. Yes.

Q. And in 1901, it was 10.6 per cent; in 1928, 15.8 per cent?

A. Yes.

Q. In 1941, it would be 19 per cent against 7.5 per cent of children less than 5 years old?

A. I should think those figures are possibly as to the past and as to the future, I don't want to look into the thing before calculating what the possible future population would be.

Q. If infant births continue to decrease, undoubtedly, your older men will decrease also as time comes?

A. That is quite true.

Q. What would you say, that poverty isn't the result of overpopulation, but unequal distribution of resources?

Professor Kemp

A. I think you asked me that question before and I replied:

> "There are some people who hold that view. There are two separate views there and they need to be separately considered."

First, that poverty isn't the result of overpopulation. The average wealth of a community is arrived at by dividing the total population into the total wealth. Whatever the quotient may be, it results automatically from the simple division. If you have no change in wealth and double the population, it is a matter of simple arithmetic; the average wealth will be half as much.

I think your point is, does a large population necessarily cause a diminution of wealth. You have examples in the world of both. I think in China it was the likely cause, that a large population is the cause of poverty. In the United States with a somewhat smaller population, it hasn't had that effect.

As to whether it arises from the unequal distribution of wealth, many of us feel there is a greater inequality of distribution of wealth than we would like to see, but the whole thing moves in a historic programme. A good deal of the industrial structure we have today wouldn't have come into existence without centralization of wealth. Professor J. M. Keynes, a recognized British economist, has a passage in one of his books:

> "In the pyramids in Egypt are morals to be found for the Pharoahs' times and in England are to be found in the railroads, morals of the centralization of wealth in the Victorian times and without that centralization of wealth, the railroads wouldn't have been built."

I wouldn't like to answer definitely without considering the question in its whole prospective.

Q. Of course, I have been learning a lot –- birth control as a remedy for unemployment which is not caused by overpopulation?

A. That is true.

Q. Sociology becomes very sentimental as to conditions of family life in all its daily needs. It advocates as methods of solving these, birth control. Granted that this birth control

movement would cause people who spend $300,000,000 a year in contraceptives, in one year, in a period of unquestioned depression ---

A. Is that in the United States?

Q. Yes, I understand those are the figures?

A. (No reply).

Mr. Beament: Given by the American "Mercury".

Mr. Mercier: Yes, that is what I understand they are.

To Mr. Mercier:

Q. Where would the people on relief get the money to pay for these instruments?

A. So far as Miss Palmer's clients are concerned, the evidence is that they didn't.

Q. They…?

A. (No reply).

The Court: Not for these.

Mr. Mercier: Not for the first installments and there is also the suggestion they might ask their friends or the relief and get it, the two dollars.

Mr. Wegenast: The recipe is in the booklet?

The Witness:

A. The question is: how can people under present economic conditions afford $300,000,000 on these things? The other question is: would it be cheaper for them to spend a dollar on contraceptives or have a baby?

To Mr. Mercier:

Q. Where would people get it if they are on relief?

A. From the same source they get it to buy contraceptives and pay for abortions and pay for unduly large families they are having.

Q. I don't suppose they would get anything from the Welfare to cause abortions?

A. I hope not, but I am afraid they do get it some place as there is generally agreement that there are a large number of these cases regrettably occurring.

Q. That is all.

Mr. Wegenast: That is all, Mr. Kemp.

(Witness retired)

G-1 to G-49

Mr. Zeidman

MORRIS ZEIDMAN, duly sworn, deposed:

To the Court:

Q. Are you Jewish?

A. No, Presbyterian of Jewish descent.

To Mr. Wegenast:

Q. You are a Presbyterian, I believe?

A. (No reply).

The Court:

Q. Your address?

A. 307 Palmerston Boulevard, Toronto.

To Mr. Wegenast:

Mr. Zeidman

Q. And you are a clergyman?

A. Yes, sir.

Q. And a bachelor of divinity?

A. Yes.

Q. From what college?

A. Knox College, Toronto.

Q. And you are head of the Scott Institute in Toronto?

A. Yes, sir.

Q. Tell His Worship what that is?

A. It is a mission and also provides social service in the community. At the present time, it is feeding the unemployed and we are giving relief both to single unemployed and married people with families. We used to provide also a dispensary, but that has been done away with because of the near proximity of the general hospital and the hospital for sick children.

Q. You might tell His Worship what other organizations and movements you have been connected with and how?

A. In connection with the Scott Institute?

Q. In connection with welfare work, let us say?

A. I just don't ---

Q. You were on a commission appointed by the mayor of Toronto?

A. Yes.

Q. Tell us about that?

A. It is a committee appointed by the mayor of the City of Toronto to investigate and make a survey of all the relief in the City of Toronto.

Q. When was that?

A. In 1934, I believe, or 1933; 1934, I think it was.

Q. Who else was on that?

A. Representatives from practically every denomination;

Brigadier-General Mitchell; Rabbi Sachs representing the Jewish people; Fries representing the house of industry; Stevenson representing the labour people, Dr. Pocock, osteopath, representing the Catholic people of Toronto, Capt. Lambert representing the veterans.

Q. That will do to give a general idea of its scope. What was the function or purpose of this committee?

A. An investigation of all social service and relief including relief work, particularly among married people with a family, and rent, hospitalization and also relief for single unemployed men and women.

Q. So you speak of your knowledge of conditions as you found them on that investigation?

A. Yes.

Q. Did you take any part in that investigation?

A. I did.

Q. I suppose it is reasonably safe to say you had as much or more practical experience as any of the other members of the committee?

A. Some of them like Capt. Lambert had considerable experience; others had not as much practical experience as I had.

Q. Now, you know the issue here is as to the advisability of a nurse like Miss Palmer coming into a community like Eastview disseminating knowledge on birth control and putting people in the way of getting contraceptives. Now, without leading from me, I would like you to give His Worship your opinion of the advisability of activities of that kind?

A. From experience, I would say that in social service visitors are absolutely necessary. Visitors are, so to speak, pioneers who go into the homes and investigate just the conditions of the homes.

A visitor may be or is usually of very valuable service. For instance, a person coming to the relief office gives certain information and the relief officer can ask for a family history of that particular client, but the social service worker who is

a visitor can gather much more information and knows the whole background of that family.

For instance, a mother would confide to a social service worker, particularly to a woman. They give information to a clergyman, information that we don't ask for and don't like to hear.

Myself, I am a bad visitor; I haven't the patience to listen to all the stories.

On the other hand, a lady social service worker goes into a home, sits down, talks sympathetically and the woman tells all her troubles and worries she might have.

Q. As compared with the plan of having the woman come to the clinic and be examined by a doctor, what would you say as to the methods employed by Miss Palmer?

A. If it was a clinic and a doctor attending the clinic and if a social service worker goes out and tries to induce them to go to the clinic and learn the methods, I think it would be an advantage. It might take a lot of persuasion and education.

Q. Taking it generally from the standpoint of doing the most good, how would you compare the two methods; a clinic established under supervision of a doctor waiting for people to come to it, on one hand, and the social service worker, on the other hand, going out talking to people and getting in touch with them as Miss Palmer did?

A. That is rather a difficult question to answer. The doctor may sit in the clinic forever –- that is rather exaggerating –- but somebody would have to go out and inform people in the neighbourhood there is such a clinic in existence. Even then, some of them are afraid to take advantage of things.

For instance, about 15 years ago, we organized a fresh-air camp for children and I remember it was very discouraging for social service workers to go to homes and try to persuade mothers to send children to the camp.

Q. Did it cost them anything?

A. No, we offered everything free, with fare.

Q. Yes?

A. There was some fear, something of a string attached

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to it –- they knew it would do the children good and wouldn't cost money, yet they were afraid to send their children. Now, after 15 years, we wouldn't think of going out asking them to go to the camp; they ask to come back in March and February and they pay for it now.

Q. In other words, you need a certain amount of pioneering?

A. Yes.

Q. Now, I wonder if you would care to give us some idea, from the experiences of which you speak, of the work your own institute does?

A. From actual conversations I have had myself with mothers and from the information some of the other workers have brought to me, I would say very lamentable conditions exist among some of the poorer classes.

If mothers have two, three, four children, there seems to be a dread of having another child.

Q. You heard my friend saying about children being about the only right or pleasure of the poor; what do you say?

Mr. Mercier: I did not say that; I am sorry to say so brutally. It was "depriving the working man of his most prized possessions".

Mr. Wegenast: That is right.

To Mr. Wegenast:

Q. What do you say?

A. I know of a family who attended the birth control clinic in Toronto. They were a young couple with one child. The little girl is about seven or eight and I know they have been using contraceptives and they didn't care to have any children until last spring when they decided they wanted another child and they had a baby girl, so no one deprives them of that pleasure; they can have a child whenever they want to have one.

Q. I was thinking of the other side of the picture. What would you say: you have probably heard the story: they wouldn't give 10 cents for another?

A. Some of them wouldn't give a penny for another. We have

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had any number of them come to us and say, “take my daughter”; “take my two or three children”; “take them away from me.”

Q. And as to “prized possessions,” there are two sides to that picture?

A. I would say so.

Q. Now, when I asked about the extent of your experience, I want you to give His Worship some idea of what your institute does; the breadth of its work and the breadth of relief work in Toronto, generally, in a word?

A. Last year, I would say we were feeding an average of eight hundred to a thousand meals a day.

Q. Eight hundred to a thousand meals a day, yes?

A. That was to single, unemployed men and the occasional woman. Then, we distributed clothing to men and women and children; I mean married men, married women and their children, at the rate of about four or five hundred articles every day.

Q. Is this an independent enterprise of your own or is it part of relief or of the Presbyterian church?

A. It is a private enterprise supported by private subscriptions of Toronto people.

Q. What are your relations with the Toronto city council?

A. None whatever.

Q. They recognized your work?

A. Yes, but we don’t get any financial support from them.

Q. They just say nice things about you?

A. That is all.

Q. I would like you to give two or three examples of the cases you have to deal with that bear on the problem here?

A. Our experience is, where there is a very large family, even if the father is employed and I would say about the average wage of the unskilled labourer would be between fifteen and twenty and the skilled between twenty and twenty-five, or a maximum of twenty-eight.

Mr. Zeidman

To the Court:

Q. Per week?

A. Per week, yes. If a family of, say, nine –- if the father brings home $20 a week and there is another family, the neigbour, who works at the same business in the same factory and gets the

same amount of money and he only has three to support, naturally the family of three will be able to carry through and the father with the family of nine or ten, they cannot make ends meet and they have to come to the Scott Institute for help, clothing or what not. I have a letter ---

Q. Give us information, but you are not supposed to read a letter?

A. I will leave out the names:

> "The Scott Institute:
>
> I am the mother of 9 living children all under 14 years. I gave birth to my 10th baby August 14th, a baby girl. And I have no carriage to take her out in and my husband is not able to work as he is 100 per cent heart case and I am not strong and the doctor said I need lots of fresh air as I have not much blood and as I have two other small babies, I am handicapped without a carriage.
>
> I wonder if you could help me out; I would be willing to work for one in a couple of weeks when I get stronger?
>
> If you need a reference as to my honesty, that I really need one, you can phone the Rev. …… on …… street as I am a member of his church.
>
> I am, yours respectfully, Mrs. ……"

Mr. Mercier: I can see what will happen if we get evidence of this kind before a jury. We are all prepared to admit cases of large families in distress and I can cite a large number of them and also wealthy families.

Mr. Wegenast: I wouldn't expect the witness to cite evidence like that.

The Court: You asked him to cite cases.

Mr. Zeidman

Mr. Mercier: We had gentlemen here before from the Salvation Army. We admit that there are homes with large families suffering considerably; that there is dire misery.

Mr. Wegenast: I pointed out one way of dealing with this is statistics and the other is examples.

Mr. Mercier: Every priest and minister knows them.

Mr. Wegenast: We have had figures and now examples and I would like to clothe the figures with a little flesh. We might very well have to build up the case on examples.

The Court: I think it is in order, but the probity of it is in question.

To Mr. Wegenast:

Q. Give us some idea of the actual conditions, having in view the charge against Miss Palmer. You are at liberty to cite cases, but give us in the briefest way the result of your experience?

A. My experience is that most of the married women who come to the Scott Institute have at some time or other because of their dread of having a child, brought on abortions Some of them or most of them wouldn't know anything about a birth control clinic and the only information on abortion when it came was gossip or hearsay from the neighbours.

Q. Yes

A. I think if a properly qualified person who has experience and knowledge about contraceptives would go around and visit some of those homes, I think it would be a wonderful help to some of those women. Some of them told me the doctor told them they had had several abortions.

Q. That is double hearsay?

A. It is a fact, the doctor told them they would most likely do it once too often.

Q. May I put this to you: Why not leave this whole thing in the hands of the doctors for them to look after it?

A. The average woman in the community, the type we deal with, when you speak about a doctor, the first thing that crops

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up is "who is going to pay for it". The doctor expects a fee.

Q. He is not like Mr. Kaufman?

A. No, not at this time; now, because before the depression the doctor didn't mind giving free advice, but now they have had too many of these cases. Another thing that would keep them from going to the doctor is that the average woman wouldn't think of going to the doctor unless she is absolutely sick. She wouldn't think of going to a doctor about contraceptives. She would more likely expect some neighbor to tell her about it. In that way, it would be much better for the social service worker or nurse to go around and give the information.

Q. Put it this way; if the average woman felt if she went to a clinic, she could have to undergo a physical examination, would that deter them?

A. Some of the most intelligent might go, but most wouldn't go just like refusing to go to the dentist. They know it is good for them, but they just don't want to go.

Q. Having regard to the people in your institute, what proportion of them would be willing to undergo a physical examination at a clinic?

A. I would say only about 25 per cent; if the whole thing were thoroughly explained to them,

---

Q. They would go to a clinic for examination?

A. Yes.

Q. Something has been said here about a sense of decency and people being shocked and there being something repellent about it. What do you say about your particular constituency in that respect; would you say your people would be any different from the witnesses who appeared here and answered questions whether they thought there was anything wrong; what, in general, would the attitude of your people be?

A. I think, generally, just the same as the women who appeared here in the witness stand.

Q. The same what?

A. They would welcome from the proper source such information and knowledge about contraceptives.

Mr. Zeidman

Q. Of course I needn't ask you, Mr. Zeidman, as to your own personal view as to whether supplying contraceptives is wrong?

A. It depends who does the supplying. For instance, if a barber or shoemaker supplied them, I would say it is absolutely wrong, but a person who has special knowledge and specializes in this work, I would say it is proper and decent.

Q. What do you think about giving contraceptives to an unmarried mother?

A. That is a debatable question. I am thinking of an unmarried mother who comes to our institute, whether sterilization would be better or contraceptives; I wouldn't like to pass on it.

Q. What I want: is there anything wrong, in your opinion, in giving it to unmarried mothers?

A. Well, by the time she has had one child, she knows as much as a married woman and I see nothing wrong in giving her contraceptives

Q. That is all I want to ask you, Mr. Zeidman.

CROSS EXAMINATION

To Mr. Mercier:

Q. You talked about a social service worker going into a home; what do you mean by "social service worker"?

A. I mean a person who does work in the community or neighbourhood.

Q. What kind of work?

A. Social service work is rather a wide term. It may include ordinary visiting. It may include teaching of certain things; languages, how to wash their curtains, to keep their room clean or a good many things.

Q. What do you think of a social service worker –- so-called -– employed for one purpose only; the advertising or distributing of either literature or the means of preventing conception –- employed for only one purpose, that of distributing information on contraceptives?

A. I would say she is just as much a part of the social

service work as anybody else.

Q. According to you, she is a social service worker?

A. Oh, yes.

Q. You have said, I believe, that –- what importance do you give to this distribution of contraceptives; do you believe, for instance, it should be given to everybody; do you believe the giving of it should be solicited?

A. No, it should not be distributed to everybody.

Q. Do you believe it should be distributed to everyone, every woman?

A. Every married woman.

Q. Do you believe it should be distributed to every female?

A. Every married female.

Q. Do you believe it should be distributed to that woman without the knowledge and consent of her husband?

A. That is rather a hard question. Marriage is supposed to be a partnership and both should agree. Of course, if the husband doesn't want to, I don't know what the wife would do in that particular case.

Q. Do you believe the wife should use contraceptives if her husband is not willing, marriage being a partnership as you state?

A. I wouldn't like to see any disruption enter into the family.

Q. Do you believe that it might be the cause of disruption in the family?

A. If the husband wants children and the wife doesn't, that might cause it.

Q. The use of contraceptives might cause disruption in that family?

A. Yes.

Q. Might it not cause a certain amount of jealousy?

A. Pardon?

A. I will give you a case where a woman might use contraceptives without the knowledge of her husband. They have been married five or six years, have two or three children, always have been very happy. A certain method of contraceptives comes into the home and the husband notices it and notices the wife has been using something. Might it not cause jealousy there and cause the husband to feel the wife might be going out with others -- might it not be the cause of jealousy?

A. You think the husband doesn't trust his wife?

Q. He has trusted her all his life, say, and in this case, he finds it and might it not be the cause of distrust?

A. You mean she brought it there by surprise?

Q. No, she brings it in and he finds it and is surprised then?

A. The average wife doesn't get stuff and bring it into the home without discussing it. In most marriages, they discuss how many children and the spacing of children and if spacing them they would naturally begin to think of some kind of contraceptive.

Q. Do you believe the husband and wife should consult each other in these matters?

A. Absolutely.

Q. And do you believe the wife should be advised to consult the husband before using these contraceptives?

A. Yes, but it depends on families. There are some cases where the husband dictates to the wife and some cases where the wife dictates to the husband.

Q. That is in most cases, I believe?

A. Yes.

Q. And do you believe this should be done without mutual consent of both parties?

A. There should be mutual consent.

Q. And the social service worker going in there should

assure herself that instead of bringing the means of unhappiness into the home between the husband and wife?

A. The average social service worker takes the average family; for instance, if a nurse comes into the home, she does not ask the wife if the husband will object to her having a tooth brush and tooth paste in the family.

Q. No?

A. The social service worker takes it for granted the mother and wife knows what she is doing and if she feels the husband will object, she will tell the worker, “my husband disapproves of those,” and that is all there is to it.

Q. I believe that all comparisons are odious, and as to the comparison of the tooth brush?

A. Yes.

Q. And isn’t the matter of contraceptives more important than the tooth brush?

A. All matters of hygiene are of equal importance.

Q. So the social worker going into the home should not worry more about contraceptives than about the matter of a tooth brush?

A. No.

Q. What do you say?

A. The worker coming into the home -- it might be necessary to teach the family not to expectorate on the floor. If she comes in and specializes ---

Q. In contraceptives?

A. Yes.

Q. Now, you have the idea of the social worker who should enter the home advising people on contraceptives -- you have certain ideas on that?

A. Yes.

Q. Do you consider the matter of introducing contraceptives into the home very important?

A. Yes.

Q. From the point of view, moral, physical life and hygienics?

A. Yes.

Q. Taking that into consideration, what would you say should be the attitude of the social service worker going into a home for the purpose of advertising these contraceptives?

A. The duty of the social service worker would be to come into the home and begin the conversation.

Q. Yes?

A. And I would explain the value of contraceptives.

Q. What do you mean, “the volume”?

The Court: “Value.”

The Witness:

A. Explain the value of contraceptives, if she cares to have it or not. If I were a social service worker, I would endeavor to explain to her, as conditions warranted, the value of these.

Q. And how to use them?

A. Yes.

Q. You don’t believe the social worker should explain all the aspects of the case when going in interviewing the wife?

A. (No reply).

Mr. Wegenast: Including economics and statistics?

Mr. Mercier: Not as far as we have gone here today. The witness can take care of himself.

To Mr. Mercier:

Q. The worker goes in and says, “I have the means of contraception. You have how many children; does your husband work…”

A. (No reply).

Mr. Zeidman

Mr. Wegenast: If it is a hypothetical case?

To Mr. Mercier:

Q. If as a result of that…

A. (No reply).

The Court: If you are only asking a hypothetical case?

Mr. Wegenast: Then it should be put fairly. This accused has no power to say whether it was right or not.

To Mr. Mercier:

Q. And if as a result of a conversation, in this home, the lady in question did receive the contraceptives and instructions how to prevent conception, would you say that would be sufficient?

A. (No reply).

Mr. Beament: And that is a hypothetical case?

The Court: He said ---

Mr. Mercier: I said I am putting it as such.

The Witness:

A. The social service worker disseminating the knowledge of contraceptives would be, in that case, a little bit different than any other social service worker because I believe every married woman, at one time or another, had already thought over the matter of how to perhaps either prevent a birth or how to space the birth of her children. That is, the social service worker wouldn't have to argue an awful lot about the value and good of that particular information.

To Mr. Mercier:

Q. The idea, as we commonly say, would be sold before she walked in there?

A. Yes, it is a good idea.

Q. You also said in your evidence this information should be disseminated by persons of proper knowledge; what did you mean as to that, quality as to persons distributing contraceptives and contraceptive information?

A. I think the social service worker should be able to explain to the person how to use it and when to use it.

Q. And that is what you mean by a properly qualified person with experience and knowledge?

A. There is no end to a person qualifying himself for a certain calling.

Q. You would say the definition you have given me is that of a properly qualified person of experience and knowledge?

A. I wouldn't undertake to go around myself, but if a young woman has done that and is experienced, I would say she is experienced. I wouldn't ask any social service worker who doesn't know anything about it.

Q. You have said a lot of women also would not like to go to hospitals as they were afraid they would have to pay?

A. (No reply).

Q. Further, in Toronto, there are, like in Ottawa, certain clinics at certain hospitals where certain doctors devote themselves free to give free treatment in the hospitals to help bring

children into the world free and they give free examinations; doesn't that happen in the clinics in Toronto?

A. I don't think there is any hospital apart from the birth control clinic that actually gives the information free. I don't know of any that gives information free and contraceptives free to women.

Q. There are some clinics giving these free?

A. Birth control, yes.

Q. Do they tell people down there they can get a second order for two dollars?

A. I don't think it is just like that. Any married women who wants the benefit of the clinic has to be recommended by a social service worker. For instance, people come into my institute and I would only recommend a married woman.

Q. I believe that; you told me that before?

A. Yes.

Mr. Zeidman

Q. Is there any paying to do at this clinic at any time?

A. If a person can afford to pay, I believe they do. But if not, I understand they can get it free.

Q. Does social service or welfare department pay for it?

A. No.

Q. They do not. An unmarried mother —- now, I'm asking you this as a man who has been dealing in things spiritual; don't you think very many of these unmarried mothers regret having their first baby and the means of putting contraceptives into their hands might encourage prostitution and prevent them leading a better life?

A. I am afraid those unmarried women are not average.

Q. Yes?

A. They are subnormals and they are special cases.

Q. You will agree with me a lot of unmarried mothers are very normal?

A. Not very many of them, the most we find are subnormals.

Q. There may be some?

A. There may be some and those would be very ignorant.

Q. Do you believe there should be extreme care taken in the distribution of these contraceptives?

A. I do.

Q. You do not believe in the wide distribution of them?

A. No, not just giving them to everybody.

The Court: Adjourn (at 1:00 p.m.) to 2:15.

(The Court resumed at 2:15 p.m. same date)

To Mr. Mercier:

Q. In your examination in chief this morning, one of the pitiable instances you had was one of the women going to you and offering you her children; did you accept them?

A. I did not, sir.

Mr. Zeidman

Q. Therefore, you didn't get the reaction you would have got if you had tried to get them?

A. On second thought, we did take the children out to a camp for an extraordinary period; that is, a double period of camping. That didn't seem to work any hardship on the mother.

Q. You will admit with me, sir, in very few circumstances, a woman, even in dire circumstances and misery, will be willing to let her children away from her?

A. There are ones, mothers, leave their children in creches and have them adopted.

Q. The percentage must be small?

A. I couldn't give you the exact statistics.

Q. What is from the moral –- I mean the religious -– point of view your opinion on the distribution of contraceptives?

A. As far as I know, taking the Bible as our guide, there is nothing there to indicate it is a sin or that it is forbidden.

Q. And the divine command in Genesis, the Lord says he created man, male and female he created them, to go and increase and multiply and fill the earth; that has nothing to do with it?

A. No, it has not.

Q. What is the meaning of that part of Genesis?

A. Just what it says, be fruitful and increase and multiply and fill the earth.

Q. Fill the earth?

A. (No reply).

Mr. Wegenast: It doesn't say "fill"; it is "replenish" the earth. You have it in French.

Mr. Mercier: I haven't it in French and I don't think holy scriptures can be interpreted but in the language in which they were written.

The Witness:

A. "And replenish the earth."

Mr. Zeidman

To Mr. Mercier:

Q. "And replenish the earth"?

A. Yes, but even that has no bearing on it.

Q. That has no bearing on it?

A. Because the Lord commanded to be fruitful and multiply, but did not say how many. That is left to the individual to multiply by one, two or three.

Q. And the divine command in Genesis, The Lord in the doctrine of Onan, "go and bring seed to your brother's wife"?

A. When you come to the Bible, it is rather unfair to take the Onan matter —- they were a desert tribe —- and to bring its customs before the bar of justice in the twentieth century. If you want to take this as an example, it would be right for us to go and commit adultery the way Judah did and Judah's daughter-in-law committed adultery with her father-in-law; that is no criterion today.

Q. That is your opinion today

A. It is not my opinion; it is the expressed word of God.

Q. It is your explanation of that part of the Bible?

A. It is not mine.

Q. It is the one you give?

A. Not in regard to Onan. He was not killed by the Lord because the sin he committed was refusing to raise children for his brother.

Q. If being married —- the text said, "go and marry"?

A. I don't think the text says, "go and marry".

Q. Look at it.

A. I remember the Hebrew; it says, "go and know her".

Q. If that version says "go and marry," it is wrong then?

A. I would say the interpretation or translation is wrong.

Q. We might as well leave it at that.

Mr. Zeidman

Now, you know there have been several pronouncements of several religious bodies made on this question of contraceptives or birth control or voluntary parenthood as it has been called. I take it in the majority, if not all of these pronouncements, these churches are exceptionally careful. They do not recommend wholesale birth control, but they raise it up very conscientiously and they do say, "use this if you must, if you will, but we implore you not to use it too often". That may be my interpretation of the consensus of opinion with the different churches and I am leaving out the theories of the Catholic churches?

A. I don't think there is any warning there at all to it. It is left to the good sense of the people.

Q. Do you believe the family physician should be consulted before the use of these contraceptives?

A. I don't think it is necessary.

Q. There is a pronouncement here; it is on page 5 of "Federal Council of the Churches of Christ in America"?

A. (No reply).

Mr. Beament: Exhibit 77-B.

To Mr. Mercier: I read here; it is a pronouncement of a majority of the committee of the Federal Council's committee on marriage in the home, in 1931. It is by the majority of the committee. In the middle of the page 5:

> "A majority of the committee holds that the careful and restrained use of contraceptives by married people is valid and moral. They take this position because they believe that it is important to provide…"

Further down at the bottom of the page:

> "It is essential to consult the family physician or to go to established clinics or health centers for information or assistance."

Do you believe that should be done or not?

A. In extraordinary cases, there may be a necessity, but I do not think in all cases.

Mr. Zeidman

Q. "It is essential to consult the family physician"?

A. I do not think it is essential.

Q. You do not agree with that pronouncement?

A. Not fully.

Q. “That serious evils, such as extra-marital sex relations, may be increased by a general knowledge of contraceptives must be recognized.”?

A. They assume what might happen. If you take this for a moment: it would be impossible for me to drive a car because I might assume what might happen to me.

Q. Do you believe that pronouncement is correct; do you believe according to your own ideas on the subject that serious evils, “such as extra-marital sex relations, may be increased by a general knowledge of contraceptives must be recognized”?

A. I don’t think there is any serious danger of anything like that.

Q. At the top of page 6:

> “Guided by the past experience of the race as to the effects of scientific discovery upon human welfare, we should expect that so revolutionary a discovery as control of conception would carry dangers as well as benefits.”

Do you agree with that?

A. Not with a general statement like that.

Mr. Wegenast: I must point out my learned friend is giving only a line or two.

Mr. Mercier: If you wish, I will read the whole of it.

Mr. Wegenast: There is a certain continuity.

Mr. Mercier:

> “Such knowledge, however, is already widely disseminated, often in unfortunate ways, and will soon be universally known. Guided by the past experience of the race as to the effects of scientific discovery

> upon human welfare, we should expect that so revolutionary a discovery as control of conception would carry dangers as well as benefits. Society faces a new problem of control with each fresh advance of knowledge. If men generally cannot properly use the knowledge they acquire, there is no safety and no guarantee of the future. These members of the committee believe that the undesirable use of contraceptives will not be indulged in by most people, and that if the influence of religion and education is properly developed, the progress of knowledge will not out run the capacity of mankind for self-control. But if the sex impulse and the use of contraceptives are to be kept under moral control, the church and society, including parents, must give greater attention to the

> education and character building of youth and to the continued education of adult opinion."

To Mr. Mercier:

Q. I have read the whole of this; what danger do you think it would carry as well as benefits?

A. I haven't met, in my experience yet, with any case where any danger accrued.

Q. That is one pronouncement; am I fair in stating that you partly disagree with it or fully disagree with it?

A. It is a general and vague statement that is there made, but you can't give just a yes or no answer.

Q. I will ask you a general question and will ask you not to try to illustrate it. I will go further on page 6 and read the third paragraph.

> "In view of the widespread doubt among Christian people of the morality of the use of contraceptives, and the scruples experienced by many in making use of them, it appears to these members of the committee to be the plain duty of the Christian church, when control of conception is necessary, to uphold the standard of abstinence as the ideal."

Do you believe that abstinence should be the ideal?

Mr. Zeidman

A. (No reply).

Mr. Wegenast: Read a few more words.

Mr. Mercier:

> "Recognizing it as a counsel of perfection, and that Christian morals are much more exalted than is generally supposed."

I don't think that is weakening it any.

To Mr. Mercier:

Q. I take it these reverend gentlemen believe that the soundness of Christian morals is more exalted than generally supposed?

A. What is Christian morals?

A. You should know better than I do?

A. The statement is made about Christian morals.

Q. I don't happen to be a moralist or theologian; I don't believe I could answer that to you. You have those pronouncements; you have an understanding of these things I have not?

A. A Christian moralist is a man legally joined to his wife and nobody has a right to dictate when they should have children or how many.

Q. Nobody should interfere with them?

A. Not to pass judgement whether their actions are Christian or not.

Q. On page 7, the second paragraph:

> "Finally, the entire committee unites in calling attention, and most earnestly, to the importance of a spiritual adjustment of the physical relations between husbands and wives. All natural desires, however sound and wholesome, must be kept within bounds. If this applies to eating and drinking, how much more to the fateful and powerful impulse of sex. If marriage centers upon sex indulgence, it is sure to result in unhappiness and usually in disaster. A high degree of

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> self-control, especially during the early years of married life when marital habits are forming, is necessary to the happiness of the mates and the spiritual life of the home."

What do you say as to that pronouncement?

A. I would say birth control would come in very nicely there.

Q. It would keep natural desires within bounds?

A. If you ask the question, within bounds of what?

Q. I am asking you to interpret this thing. I take "within bounds" would be within the bounds of reasonable sexual intercourse. My opinion, if you will confirm it –- if you can or will –- the pronouncement of the churches is that they were exceptionally careful and before advising any method of birth control, they advise people to use self-control?

A. They were advising the two sexes to use self-control and on the other side, the husband has a right to his marital privileges.

Q. And that is why they advise people their sexual relations should be kept within bounds?

A. (No reply).

Mr. Wegenast: I am not quite sure if the witness caught that this part was from the minority report.

The Court: He said that.

Mr. Wegenast: I know, but the witness?

The Witness:

A. I did not know but that this was a unanimous report.

To Mr. Mercier:

Q. I have spoken of a majority report and then a minority report and now the entire committee:

> "Finally, the entire committee unites in calling attention, and most earnestly, to the importance of a spiritual adjustment of the physical relations between

> husbands and wives. All natural desires, however sound and wholesome, must be kept within bounds. If this applies to eating and drinking, how much more to the fateful and powerful impulse of sex. If marriage centers upon sex indulgence, it is sure to result in unhappiness and usually in disaster. A high degree of self-control, especially during the early years of married life when marital habits are forming, is necessary to the happiness of the mates and the spiritual life of the home."

I have endeavoured to make myself clear and endeavoured to get your opinion on the subject. If you wish, I will be glad to read it all over again?

A. As a general statement, I believe most of it is true, but I don't see what birth control has to do with that.

Q. It has everything to do with it; it has to deal with the methods; it contains the pronouncements of religious bodies compiled by the committee on marriage and the home of the Federal Council of the Churches of Christ in America. It includes the Lambeth conference report?

A. (No reply).

The Court: Show the witness the copy.

Mr. Wegenast: Yes, with deference to my friend.

The Witness:

A. I agree with the general content of it, but you must realize this isn't given ex-cathedra.

To Mr. Mercier: But it is an opinion worthy of respect, I submit?

A. Yes.

Q. And I am trying to get your opinion as to whether or not these churches and religious bodies have not -- although admitting the principle of birth control, have not surrounded it with the utmost recommendations of careful attention before anybody indulges in it?

A. This may be true of a good many cases, but taking a case in mind: a woman has been several times in the office because

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of abortions; her husband works late at night, comes home at two or three in the morning. The wife is fast asleep and before she even knows it, she is pregnant. Has the wife no rights?

Q. Tell me ---

A. That isn't an extreme case at all. What is the Council of Churches going to do?

Q. Then it is the duty of the social worker or the association dealing with this question: would it not be better to begin trying to show people what there is in sexual control and keep them in bounds?

A. Yes, but it isn't being done and we have seen workers advise wives against husbands.

Q. Even if the church gives all these considerations, the church recommends birth control shouldn't be too widespread?

A. It depends how wide you make the term.

Q. I said before all things are relative in this world?

A. I said they should be widely distributed between married people.

Q. All birth control information?

A. Yes.

Q. Let us continue with page 7, third paragraph:

> "To attain this command of the sex impulse, and this mutual and sensitive consideration for one another, husbands and wives are urged to keep ever in mind that marriage is a divine institution and that they are cooperating with God in their union and in the conception and rearing of children. Their personal relations are therefore sacred and in the divine care. These relations are always at their best when the two live together in the daily consciousness of the presence of God. Things they might not be able to accomplish unaided are abundantly possible through His help."

Do you think there they recommend the wide use of contraceptives -- that every married woman should know it or that they ask for

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divine guidance?

A. I would say this report here wasn't composed in the slums of New York or Toronto or Chicago, but in some office.

Q. Then you take it for granted these gentlemen would make an interpretation for one class, of the divine words of God and another, for the people in the slums?

A. They set a standard.

Q. Didn't they mention it; isn't it a fact these men passing these resolutions are learned men in social matters and theology?

A. (No reply).

Q. Do you think there is a law for the poor and a law for the rich?

A. (No reply).

Mr. Wegenast: Is it in the circular?

Mr. Mercier: It is entitled, "Pronouncements".

The Court: It is a finding of the committee.

Mr. Wegenast: It does call itself a pronouncement, so I have to back up my learned friend on that.

To Mr. Mercier:

Q. And if you think it had been prepared in the slums?

A. I do so.

Q. And now, the Lambeth conference, page 8, third paragraph and second paragraph:

> "It must be recognized that there is in the Catholic church a very strong tradition that the use of preventive methods is, in all cases, unlawful for a Christian. We acknowledge the weight of that testimony, but we are unable to accept that tradition as necessarily final. It must be admitted that it is not founded on any directions given in the New Testament. It has not, behind it, the authority of any Ecumenical council of the church. Moreover, it is
>
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>
> significant that the communion which most strongly condemns in principle all preventive methods; nevertheless, in practice recognizes that there are occasions when a rigid insistence on the principle is impossible. If our own communion is to give guidance on this problem, it must speak frankly and openly, with a full appreciation of facts and conditions which were not present in the past, but which are due to modern civilization.
>
> We are convinced that many of the results which have followed from the use of the discovery of more effective methods are very grave. They have encouraged illicit intercourse among the unmarried by removing the fear of consequences.

> They have been frequently used to avoid the responsibilities of parenthood and as a means of escaping from the self-control which should be exercised in married as well as in single life. They have become a danger to many civilized nations by a disproportionate reduction of their best stocks. We think that some of those who are most active in the advocacy of birth control do not give sufficient weight to these considerations."

What is your opinion of that?

A. My opinion is that these gentlemen are just about a hundred years too late; when was that Lambeth conference?

Q. Six years ago.

A. All these conditions existed 100 years ago.

Q. That is your opinion on that?

A. Not my full opinion. These fears existed 100 years ago.

Q. Give me your full opinion and that therefore these gentlemen assisting in the Lambeth conference were in arrears about 100 years?

A. I believe so and it is no argument against birth control or contraceptives.

Q. But is it an argument against the widespread distribution of birth control or do you not think it should be taken more carefully?

A. It should be distributed most carefully and widely among married people.

Q. I think all these people had in view –- you don't agree with them –- they were 100 years too late?

A. Some are not too late.

Q. Which are not too late?

A. They speak about conditions that have existed 100 years ago and all their arguments and fears of danger of immorality existed 100 years ago and it is not birth control or the use of contraceptives brought these conditions into the world. They take it for granted birth control brought these conditions into the world.

Q. What conditions do you refer to?

A. Unmarried people gaining a knowledge of birth control.

Q. That is their meaning there?

A. Of one paragraph you have read. The second paragraph:

> "We are convinced that many of the results which have followed from the use of the discovery of more effective methods are very grave. They have encouraged illicit intercourse."

We have had illicit intercourse as far back as the time of Adam.

Q. We have it now?

A. Yes, it is not birth control or the use of contraceptives brought this on.

Q. Do you believe the use of contraceptives might encourage illicit intercourse among unmarried people?

A. I didn't get that.

Q.

> "They have encouraged illicit intercourse among the unmarried by removing the fear of consequences."

Do you believe that?

A. (No reply).

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Q. Do you believe that a knowledge of contraceptives encourages illicit intercourse between unmarried couples?

A. I don't think so.

Q. In the next paragraph:

> "It is axiomatic that parenthood is for married people the foremost duty; to evade or disregard that duty must always be wrong. It is equally axiomatic that the state of marriage is a divinely ordered relationship in which intercourse between man and woman calls for the highest exercise of the Christian virtues of self-discipline, self-control and self-sacrifice. There are multitudes of married people who have found in that mutual sacrifice a bond of deeper unity as well as an ever-increasing moral strength. It follows, therefore, that it can never be right to make pleasure or self-indulgence the motive for determining to limit or refuse parenthood. Equally, it can never be right for intercourse to take place which might lead to conception, where a birth would involve grave danger to the health, even to life, of the mother, or would inflect upon the child to be born a life of suffering; or where the mother would be prematurely exhausted, and additional children would render her incapable of carrying out her duties to the existing family."

What do you think as to that?

A. I myself, and I would say that hundreds, if not thousands, of priests and nuns would agree with that.

Q. I am not asking you what the hundreds and the thousands of priests and nuns would say on that?

A. (No reply).

Q. And by the way, I have not heard of nuns being authorities on theology, but I am asking your opinion?

A. It is, I say, meaningless that parenthood is the foremost duty of married people. I think they are wrong and I think Catholic doctrine opposes that too.

Q. I told you before I am not a theologian, but you think

it is wrong?

A. Yes, that parenthood isn't the foremost duty of married people.

Q. What is the foremost duty of married people?

A. To glorify God.

Q. That is their foremost duty?

A. That is their foremost duty.

Q. Isn't that everybody's duty?

A. Everybody's.

Q. And more especially so for married people?

A. I wouldn't say it is more so for married people than single people.

Q. Why then make that statement that the foremost duty of married people is parenthood; why say it once and then say the foremost duty is (sic) married people is to glorify God?

A. (No reply).

Q. I said isn't that the duty of everybody and you said yes?

A. Many things may come in; I have known some of the finest saints of God who are married and have no children.

Q. I will agree with you there, but why should this be there that parenthood is the foremost duty?

A. Because the old idea was that marriage is simply an institution to bring children into the world. That is not all.

Q. That is not all?

A. No.

Q. What is it?

A. The main duty of any individual human being is to glorify God and if two people get together, I would say, for the benefit and comfort of each other ---

Q. Page 9, second paragraph:

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> "The primary and most obvious way of dealing with such circumstances as seem to make the limitation of parenthood obligatory is total abstinence from intercourse, even it may be for long periods. Such abstinence brings with it to those who claim and receive divine grace the opportunity for the highest exercise of Christian love and self-denial."

What do you say as to that?

A. I don't believe that.

Q. A little further down:

> "Yet there exist moral situations which may make it obligatory to use other methods. To a certain extent, this obligation is affected by the advice of medical and scientific authority. But in all such cases, as in those where abstinence is the way chosen, the final decision must still be determined by reference to the spiritual ends for which marriage was ordained; and the attainment of these still calls for the same exhibition of Christian self-discipline and virtue. Each couple must decide for themselves, as in the sight of God, after the most careful and conscientious thought, and, if perplexed in mind, after taking competent advice, both medical and spiritual."

Now, what do you say to that?

A. (No reply).

Q.

> "And the attainment of these still calls for the same exhibition of Christian self-discipline and virtue. Each couple must decide for themselves in the sight of God, after the most careful and conscientious thought, and, if perplexed in mind, after taking competent advice, both medical and spiritual."

What do you say to that?

A. To sum it up, I have never read that brochure, but most of the excerpts you read, there is a lot of good advice in it. I am not saying it is wrong, but the gentlemen who made up these

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statements evidently lived in the sky; they were not on the earth. They were not rubbing shoulders with the human being.

Q. But I believe before we get through, you might make one admission; they were very carful about advising the use of contraceptives?

A. Yes, they were very careful about advising the use of contraceptives.

Q. Then the paragraph following this:

> "In our judgment, the question which they should put to themselves is this: Would conception be for any reason wrong? If it would clearly be wrong, and if there is good moral reason why the way of abstinence should not be followed, we cannot condemn the use of scientific methods to prevent conception, which are thoughtfully and conscientiously adopted."

What would you say to that?

A. This is characteristic of the rest of the pronouncements.

Q. In what sense?

A. That over emphasizes they were thoughtful and conscientious and from the way this is drawn up, you would think that the people are without morals and have no understanding or have no sense themselves. There is practically nothing left for the imagination of the person or his reasoning.

Q. Practically nothing left there?

A. No.

Q. Plainly they say in the fifth paragraph:

> "Other reasons are often urged for the use of such methods -- circumstances of income, housing and education, are all advanced in justification. These need carful scrutiny. We are unable to accept conception control as the right solution of unsatisfactory social and economic conditions which ought to be changed by the influence of Christian public opinion."

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A. The whole thing is characteristic of Gamaliel.

Q. Who was he?

A. A certain type in the New Testament. He was one of these pharisees who heard about Christ and his Gospel and he thought he would take the safe way out of this question and was not going to oppose it; but at the same time, he was not wholeheartedly in favour of it.

That is the stand they take. They are cautious; they know they cannot oppose it. "Let this thing go along; see what happens. If it is a success, we will jump on the bandwagon. Someday, we will build a monument to Mr. Kaufman and Miss Palmer."

Q. That is your opinion?

A. Yes.

Q. It finishes in the last paragraph on page 9.

> "In all these matters of sex, self-deception is all too easy. Let none forget that in this, as in all relationships of life, Christ calls to a heroism to which by His power His servants can attain."

Do you believe there is something in that?

A. It is a very good statement; it does not mean anything. Can you explain to me what it does mean?

Q. I am here to ask you.

A. They are a lot of very good statements.

Q. Perhaps I would like to have an opinion of these learned gentlemen, of their comments on your work. Now, sir, we will come to more recent pronouncements. This is the 1936 report of the United Church.

The Court:

Exhibit 84-B

Mr. Wegenast: You know this gentleman does not belong to this communion.

Mr. Mercier: Does he belong to any of the others?

Mr. Wegenast: He is a Presbyterian.

Mr. Mercier: I have raised this up with the utmost care, that birth control should be thought over very carefully?

The Witness:

A. That is what I say.

To Mr. Mercier:

Q. But with their views, you disagree almost entirely?

A. They don't give any views.

Q. They don't give any views?

A. No, they don't give any definite views; they are for it and against it.

Q. And in your opinion, those pronouncements should be entirely disregarded?

A. I would say so.

Q. Then, I do not suppose, sir, -- I will not ask your views on the report of the United Church of Canada in 1936. We will let it go at that.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. My learned friend refers to a pronouncement and I admit the word appears at the head of document 77-B. Now you notice –- you know something of theology?

A. I know something of the Bible.

Q. Of the Bible -- you are drawing a distinction. What I want to ask you is as to whether these so-called pronouncements can be laid alongside pronouncements of the Roman Catholic Church and whether they are of the same effect in their own constituency?

A. No, no.

Q. What difference would you draw?

A. The difference is this, in the church of Rome, disobedience of a pronouncement or encyclical ---

Mr. Mercier: I would say the Church of Rome has nothing to do

with that.

The Witness:

A. I know that, but a pronouncement or pastoral or encyclical of the church if pronounced by the highest authorities of the church, even if given by an ordinary bishop or priest –- if a member disobeys, his disobedience is a grave affair. In the Protestant Church, every man and woman is a priest.

Q. Explain that; it is epigrammatical?

A. There is no mortal sin or venial sin in disobeying this pronouncement.

Q. Every man for himself?

A. Yes.

Q. Governed by whom?

A. God.

Q. Interpreted by whom?

A. The Bible.

Q. And that is interpreted according to his own conscience?

A. Yes, that is interpreted according to his own conscience.

Q. There is a difference –- you have seen Mr. Kaufman's clinic in Toronto?

A. I have, sir.

Q. And referred people to it?

A. I have, sir.

Q. Do you know of any other clinic in Toronto doing that work?

A. I don't think so.

Mr. Mercier: Does that arise out of cross examination?

Mr. Wegenast: I think so.

To Mr. Wegenast:

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Q. You are familiar with the work of Mr. Kaufman's clinic?

A. I have been there several times, and listened to lectures.

Q. What do you think of it?

A. I think it is a wonderful contribution to social service and a wonderful contribution to the life of the nation.

Q. I have already asked you some questions about the differences between going to a clinic and having a nurse come to the house. I want to ask you this; whether in your opinion from your experience there is any necessity or desirability of calling the doctor in this matter at all?

A. I would say under normal conditions; that is, to all appearances, if the mother or wife is in good health, I don't see any necessity for inviting in the doctor, particularly for certain contraceptives.

Q. I don't just happen to remember if you spoke of this or another witness, so I will ask you again with His Worship's permission; where do these women get such knowledge as they have?

A. They get it from such a thing as a quack doctor and through ordinary gossip and they get it through many ways.

Q. To what extent do you think a married woman ought to know about contraceptives?

A. I think, at the present time, it is practically universal even if they don't use it, they know something about it.

Q. Then what is the use of the work like Miss Palmer's?

A. The use would be —- take for instance in the matter of contraceptives —- in the matter of abortions some of the most ridiculous information goes about and then there is a certain amount of publications, sort of a cheap kind pornographic literature being sold everywhere throughout the continent and there are advertisements there about this and that and these people send a few pennies or a dollar or five dollars for these pills and get them and find they have lost five or six dollars and they are not helped any.

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Now, the benefit of the social worker; she goes to the mother, makes a visit, and usually when the mother has any troubles and does not know how to meet them and has too many of them —- the mothers, most of them, are only too anxious to have the worker come in.

They sit down, talk it over, and the first thing the mother will tell the social service worker how many operations she had, who had the measles, who had whopping cough, and so forth, and she pours her heart out. That is far better than seeing a doctor who runs in for a few minutes and has not the time to listen to her.

Q. We found on some of the applications which Miss Palmer put into the Parents' Information Bureau Limited, there were a certain number of abortions reported. Then we found women here in the court room saying they had not had so many abortions; what do you say to that?

A. I know many women speak to me —- I don't get so shocked now —- but then they speak to me of things I would not like to repeat and I would say a woman talking to a social service worker in the privacy of her own home would be freer to open up her mind in her own home.

Q. Than even under oath?

A. Yes, even, if derogatory to her husband or church.

Mr. Mercier: I don't think their evidence is under question.

To Mr. Wegenast:

Q. What do you think of the social service worker approaching the home with an argument or dissertation on theology, economics and eugenics and this and that? This is very important —- I suppose you will admit that; having people put in the way of getting contraceptives is important?

A. Yes.

Q. My learned friend says because it is very important you must handle it with gloves and educate these women all about contraceptives and so forth?

A. I would say, not to put it down lightly or frivolously or anything like that, neither should it be necessary to go into

a discussion of morality or economics.

Q. Another thing –- what about explaining to these women

the process of reproduction, the bees and flowers and everything?

A. (No reply).

Mr. Mercier: I suppose she could not explain the bees and flowers and so forth.

The Court: And the bulbs of Holland.

Mr. Mercier: The witness can give us a very learned answer to that question.

To Mr. Wegenast:

Q. What do you think of it?

A. I took some biology at university and I think I have forgotten all about it. But I don't think it is necessary to do that.

Q. A married woman after all is a married woman?

A. Yes, and she knows the process of having children.

Q. My friend has pressed you on the question of whether a wife had any right to refuse to become a mother as between her and her husband…

A. (No reply).

Mr. Mercier: I don't think I asked it that way. The use of contraceptives without the knowledge of the husband, that is as far as I have gone in this case at any time.

To Mr. Wegenast:

Q. Speaking of the right or propriety of a married woman using contraceptives without the husband's consent or talking it over with him; now, I put it to you as an expert in social welfare, is it necessarily proper or desirable that the social worker should take the matter up with the husband himself and discuss it?

A. No, if I were a social service worker and a lady, I don't think I would discuss that question with the husband.

Q. Why not?

A. Usually the husband is ignorant about the whole matter. I think the proper person to discuss the matter is the wife; after all, it is she goes through all the suffering and it is her health is being undermined and she has to nurse the child when it is born and the husband usually is ignorant of the dread that some of the women have looking forward to a child being born. No man can realize that.

Q. It isn't a man's job?

A. No, he doesn't ---

Q. The theory is this: I want your theory of the marriage being a partnership -- and some would say it is a sacrament -- and the two, having come to a certain agreement or understanding in the relationship, it isn't up to either one to make up his or her mind not to have children. If either one or the other is to have the veto –- the veto power, who should it be?

A. I would say the wife.

Q. Then, just see how far you would go?

A. The ideal would be if you get a husband who is considerate and thoughtful, that question would never arise.

Q. That is what these men in offices in high office buildings like. You have a man who wants children or a child or doesn't care whether there is one or not, and you have women who do not care whether there is one or not; who wins?

A. I would give the right to decide to the wife.

Q. That is all.

(Witness retired)

The Court: Adjourn for five minutes

Mr. Wegenast

REX vs. PALMER

Summerhayes

(H-1 to H-12 already supplied)

Zeidman recalled

Press item

H-13 to H-25

CANON THORNTON FRANK SUMMERHAYES, duly sworn, deposed:

To Mr. Wegenast: Mr. Summerhayes, you are what we ordinarily call an Anglican clergyman?

A. Yes, sir.

Q. There are other ways of putting it?

A. Yes.

Q. And you are entitled to the title of canon?

A. No, plain reverend.

To the Court:

Q. What is your address?

A. Forty-five (45) Chisholm Avenue, Toronto.

To Mr. Wegenast:

Q. And you are secretary of the Toronto Anglican Diocesan Council for Social Service?

A. Yes.

Q. That, I take it, represents the general sort of work Mr. Silcox's organization is doing generally, but yours is confined to the Anglican Church?

A. We are a member of his unit.

Q. And you also have your own independent operations?

A. Yes.

Q. Now, we have heard a number of times about the Lambeth Conference; I suppose you are reasonably familiar with that?

Canon Summerhayes

A. Yes.

Q. I want you ---

A. I have a copy handy.

Q. I want you to tell His Worship just in a general answer how the activities of Miss Palmer in Eastview as so far developed in the evidence tally with the views as embodied in the resolutions of the Lambeth Conference?

A. The Lambeth Conference of bishops laid it down that what they called conception control, meaning by other means than self-control, were permissible where there was a moral reason for limiting parenthood, providing it were done according to Christian principles. I think that was Resolution 15 and was carried by a majority, I think, of 193 to 67.

Q. We might as well, Mr. Summerhayes, put on record what the Lambeth Conference represents.

A. The Lambeth Conference is a conference held every 10 years of all bishops of the Anglican Church throughout the world.

Q. Including the Episcopal?

A. Including the Episcopal bishops of the United States.

Q. will you tell us to what extent its findings are mandatory?

A. They are not binding legally; that is, it doesn't legislate, but it expresses opinions which, coming from our whole body of bishops, are highly authoritative.

Q. How much experience have you had in this social service work, Mr. Summerhayes?

A. Well, I have been ordained over 30 years and a parish priest for about 15 and a member of the Council for about 15 and secretary for about 10 of the 15.

Q. Now, I want to ask you to measure what you have heard of Miss Palmer's activities here alongside of your experience in social service work and say what, if any, part of Miss Palmer's activities were outside the bounds of propriety, outside the

bounds of what you, as a man, experienced in social service work would recommend?

A. That is rather a large proposition.

Q. Yes, but I thought it would be simpler in that large form?

A. Speaking quite generally, I would say, with one exception, I don't think there is anything I have heard Miss Palmer did or said that I would say was beyond our idea of what was proper under the circumstances.

Q. You will have to let us know what that exception is?

A. It is possibly in connection with the woman who admitted she wasn't married.

Q. You saw that woman in the box?

A. Yes.

Q. She had had one child?

A. Yes.

Q. I put it to you whether you would say that Miss Palmer did something that wasn't for the benefit of the community here in letting that woman be put in the way of getting the pamphlet?

A. No, I wouldn't say she hadn't done what was right if either she was misled or even if the woman wasn't married, there might be a benefit in the community in preventing or allowing to be prevented the birth of an illegitimate child with a heredity of that sort.

Q. Now, what do you say of the obligation of a wife to have children if her husband wishes it?

A. If you mean whenever a husband wishes it and under any circumstances, I very distinctly don't.

Q. Would you mind saying under what circumstances a wife would be right in refusing to have children or using contraceptives even if the husband is not in agreement?

A. There are two questions there. First of all, as far as the wife is concerned, I am clearly of my own opinion the wife is justified in refusing to have children if her physical or

nervous health isn't sufficient or if the family circumstances are such, she can't bring up children properly.

Q. You said "she" and I think my learned friend will take you up on that. What do you say as to her right to decide?

A. I wouldn't say the wife has the sole right to decide; I certainly think the husband has an equal right and both should settle it together.

Q. If both can't settle it together?

A. I would not like to lay down a hard and fast rule; circumstances alter cases, and I would say each case would have to be judged on its merits.

Q. You wouldn't offhand condemn a woman for using a veto?

A. Not without knowing the circumstances.

Q. Now, I want you to say anything further, Mr. Summerhayes, that you think will assist His Worship in this case. I am not in a position to ask specific questions, but if you have anything in

mind which will illustrate or support what you have already said, I wish you would let His Worship have the benefit of it?

A. You mean as regards husband and wife or Miss Palmer's activities?

Q. Both, because after all, we are dealing with Miss Palmer's activities in this?

A. First of all, as between husband and wife, I myself personally think it comes well within the ruling of the Lambeth Conference that a wife may use contraceptives for either the fact of her own health, the family circumstances or the future child's sake who I think has a right to be well born, well nourished, well educated and well trained.

If the husband is not the kind that can be trusted to deal with his wife properly; that is, with that consideration that an affectionate husband ought to have for his wife, then I feel that is one of the moral circumstances that would justify her in using a contraceptive and I have had cases in my own experience where I would have advised the wife, for the sake not only of

her own health and the family's, but to keep peace in the house, to use one.

So far as the other half of the question is concerned, about Miss Palmer, we feel in our Council and I feel -- and we have a woman worker in our Council -- that in the first instance, a woman is the best one to go into the home. She can size up both the woman and the home and the children and the way they are dressed and speak to their mother and the way she deals with them —- that is, if she is fit to be a worker or visitor at all —- and a woman will often say things to another woman she will not say to a man.

Q. Just on that, Mr. Summerhayes, may I ask you about the method of approach? It has been suggested that since this is a matter that is very important, there ought to be very great care taken by the social worker not to take chances of any description (sic) in family life by starting talking about something the husband might not approve. Now, you are a social worker; I want to ask you what, in your opinion, would be the proper method of approach for a social worker, let us say, in a French Catholic home in Eastview?

A. Something would depend on whether she was invited or not.

Q. Take that and the case where not invited, one where invited, one where referred by someone else and where she would go on her own?

A. If invited, the natural way would be for her to say, "what do you want" or "how can I help you". If referred, it would be much the same; she would say, "one of the neighbours told me you were inquiring," or however it came about and it would proceed that way. She would find out the family's ages, the number, spacing, family circumstance and so on; things that are normal routine of a visitor.

Mr. Wegenast: Your Worship, may I see one of those application forms? (receives form from His Worship).

To Mr. Wegenast:

Q. This is Exhibit 24-B. By the way, you have seen some of the work of Mr. Kaufman in Toronto?

A. Yes.

Q. Have you seen his clinic?

A. Yes.

Q. Have you had occasion to go there?

A. I haven't personally, but our social worker has.

Q. I might ask you a stock question, whether the work Miss Palmer was doing is social service work?

A. Yes, preparatory, not final.

Q. I put in your hands Exhibit 24-B, which is a form of blank Miss Palmer uses to send in to the headquarters at Kitchener, containing an application for contraceptives on the one side, with some remarks by the nurse and on the other side, some information. Now, just take a look over that and let us have your view or opinion as to the propriety and adequacy of the information asked for on that form?

A. Without going over every word of it, it appears to me to be similar to the application form and history cards given me in Toronto as part of our inspection and speaking at the time not as a doctor and nurse, but as a social worker, I think these are very adequate for the purpose.

Q. Now, I put this to you; we have several witnesses ---

The Court: I rather follow up; there are three possibilities in the method of approach: one, invited; another, referred, and the third?

To Mr. Wegenast:

Q. Use her own judgment?

A. You are quite right, Your Worship.

Q. Yes?

A. In that case, it would require more care in approaching a stranger about a delicate matter of this kind, especially under the circumstances I have heard in the Town of Eastview, and it

seems to me also both a moral and medical necessity that any such woman approached should have an idea of what the subject of the conversation were about. But I see no reason why

such an approach should not be made.

Q. Who is to decide whether the approach is to be made or not?

A. I suppose in the first instance, the worker decides whether she will make the approach, but obviously the woman in the house decides whether she will permit her to continue.

Q. You have this document, Mr. Summerhayes?

A. I have an unmarked copy.

The Court: Do you want to put it in

Mr. Wegenast: It is an expression of his Grace, the Archbishop of Toronto.

The Court: It is in Exhibit 78-B, "Education for Marriage in the light of the Lambeth Conference."

To Mr. Wegenast:

Q. That is all.

A. Did you want me to ask about the authorization of that pamphlet?

A. No, it is in.

CROSS EXAMINATION

To Mr. Mercier:

Q. Now, sir, you have stated at the beginning of your evidence that birth control in certain cases –- now, if I am in any way, or you feel my questions are unfair, I want you to draw my attention to it. I want to be fair as far as I possibly can and if anything sounds to you unfair, it is not any fault of mine -- that birth control could be practiced in any circumstances according to the Christian principles?

A. Yes.

Q. Would you mind telling me what you mean by that?

A. Give an example, you mean?

Q. Yes, or the general meaning?

A. A case within my own experience: a woman worked for me

and my wife. She was eight months pregnant. She had a large family. The husband was shiftless, good hearted, used to drink a bit, but as I say, he had begotten a large family. This was just before the depression. There was no relief at the time and she had to go out working in order to eke out a scanty income for a large family. She was very poorly clad and her circumstances were such I would say it was entirely in accordance with Christian principles that she should use a contraceptive not only to delimit further family, but also because if she refused her husband what theologians call the marriage bed, he would have gone possibly to another woman and cause unhappiness, disease and so forth in the home.

Q. As a member of the Anglican Church, what are the Christian principles as related to birth control; I suppose they would be according to the laws laid down by the master of all Christian religions, Christ?

A. Yes, I agree with that, any principles or teachings laid down in the New Testament.

First of all, I would see is self-control and that I and all our church teach ,of course, as the chief principle in this regard.

Q. Would you at that point tell me if that would be the ideal?

A. Yes, and we strive to make it.

Q. And would you add to this evidence, if it is fair for me to ask you, that before people are advised to use some sort of contraceptives that method should be taught them?

A. Most decidedly.

Q. Would you go as far as saying before they are approached about the use of contraceptives?

A. I don't know; I would say exactly before.

Q. You wouldn't go that far?

A. No, not under all the circumstances.

Q. Now, in certain circumstances connected with Miss Palmer's work, do you think a woman should receive these things if she would want them only out of curiosity?

A. If she really wanted to know what it was for, I see no reason why she shouldn't have them and learn about them.

Q. What would you say about this woman who said, "I thought it was a free sample and I thought I would get them"?

A. I think that is going a little afield.

Q. You wouldn't entirely approve of people getting them for that reason?

A. Not unless they had a reason for finding out.

Q. As a father of the church and a social worker, lots of people in certain circumstances are glad to receive samples provided they are free?

A. Yes.

Q. They might accept dangerous things if they are free?

A. Oh, yes.

Q. Now, sir, as to both husband and wife agreeing together, would it be putting the question fairly to you putting it this way; to say that first of all in the use of contraceptives, one should make sure what use would be discussed between the husband and wife and that in the event of the husband not wishing to use them and the wife wishing to use them for what you call good Christian principles, would you say either of them should use them without first obtaining spiritual and medical advice?

A. I don't think you can lay down a hard and fast rule because circumstances differ so greatly in different households between the husband and the wife.

Q. If the wife has what she thinks are good reasons on Christian principles and wants to use contraception and the husband doesn't, do you think that the woman should find out spiritually whether she should use them without the consent of her husband? A. I think she should find out from someone who is skilled in giving such advice. That is the advice given by our bishops.

Q. From someone skilled in giving the information?

A. Yes.

Canon Summerhayes

Q. In any event, you say the wife should not use contraceptives until the wife consulted the husband?

A. If the husband is anything like what he should be, I would certainly suggest she should, but in the case I mentioned, I would certainly say she would be justified in doing it without asking.

Q. In that case, yes, but the majority of husbands?

A. They ought to be.

Q. They should be decent enough to be approached on that subject?

A. I should think so.

Q. And then I take it, also, sir, that a woman going into a home, a social worker, where not invited, it would require, I believe you said, more care about a delicate matter?

A. It should.

Q. You consider this a very delicate matter?

A. Yes, and important.

Q. Even the fact of whether a person should use them or not?

A. Yes.

Q. And they should be brought up very delicately?

A. Yes.

Q. During the Lambeth Conference, if you were here during the cross examination of the last witness?

A. Part of it.

Q. At the Lambeth Conference, the Church of England has surrounded its findings on the matter of birth control with the utmost care. The reverend gentlemen who came to these conclusions more or less told these people, “you may use these under certain circumstances. We beg to ask you to use self-control than use these methods or we would rather not that you should use them”?

A. If you had stopped short before and not said, “we

would rather you wouldn’t”.

The Lambeth Conference did not find only for the weakened brother, but it has a value in the marriage altogether apart from the purpose of procreation of children and where children are not desired, the husband and wife are permitted by this moral right to enjoy the marital relationship by using contraceptives.

Q. Why do you stress the self-control?

A. Insofar as the weaker brethren are concerned, most certainly. That is the primary principle, if not the only one.

Q. You also stated in the case where the social worker was not invited?

A. Yes, sir.

Q. And there would be a medical and moral necessity that woman should have an idea what the subject conversation was about?

A. Yes.

Q. What would you mean by the moral and medical necessity; always you are taking, I presume, this is a delicate subject?

A. Moral, if any one is going to use artificial contraceptives, they must know what they are and why they are doing it and know if they are acting right.

The medical necessity is that they shall know their own condition; physical, nervous, heredity and that kind of thing, before using it to see whether it is right or not.

Q. You believe that should be the method of approach?

A. I believe that should be included in the approach.

Q. Taking the present case, for example, and knowing that the majority –- half the number of the people who were witnesses in this case -- I don't say all -– who might have been approached, but those who were witnesses in this case were French Catholics and the majority I think were French Catholics –- I am fair in saying that they had a more or less adequate knowledge of the English language?

A. (No reply).

Canon Summerhayes

Mr. Beament: I would agree they did have a more or less adequate knowledge of the English language.

Mr. Mercier: A more or less adequate knowledge of the French language.

Mr. Beament: It is more or less.

The Court: A slight knowledge.

To Mr. Mercier:

Q. A slight knowledge of the English language, and taking it for granted these people for generations have been…

A. (No reply).

Mr. Wegenast: My learned friend is treading on dangerous ground on this side of the Ottawa River.

Mr. Beament: An analysis of the actual evidence ---

To Mr. Mercier:

Q. It has been brought up by my learned friend, a few moments ago, there were French Catholics in Eastview?

A. (No reply).

Mr. Wegenast: That was the moral side, not language.

To Mr. Mercier:

Q. And an uninvited person calls on them and I would like to know on what grounds -- what difference there is on this side of the river?

A. (No reply).

Q. That was not my ground; I didn't wish to go into it?

A. (No reply).

Mr. Wegenast: I am assuming primarily, first, everyone on this side of the river speaks English as a matter of course.

The Court: What is the objection

Mr. Beament: I have made a careful analysis and only six of the women examined were examined in French; one spoke through an interpreter and another gave French completely and two didn't

recognize the accused.

Mr. Mercier: One or two.

The Court: I count it one or two.

Mr. Beament: If it is confined to one or two, my objection is to the saying, "the majority of them"; the majority statement.

To Mr. Mercier:

Q. I believe you have understood enough of my question. Answer that; it was a case of approach where the person was not invited. Let us say in the case of a French Catholic person approached in the Town of Eastview with a slight knowledge of the English language and the person is known as a Roman Catholic. I believe I can take that for granted.

A. (No reply).

Mr. Beament: Most of them said they were in any event.

To Mr. Mercier:

Q. Having always in view it is a delicate thing and most important matter, what do you say as to the approach in a case like that?

A. One is language and the other religion; might I answer that?

To the Court:

Q. Answer any way you see fit?

A. As far as language is concerned, I was here during all or almost all and even in the cases speaking through an interpreter, I am not satisfied they didn't understand English. I have had

quite a bit to do with families in Toronto and where they couldn't speak English fully, in 9 out of 10 cases, they could understand me and I wouldn't have to speak through an interpreter.

To Mr. Mercier:

Q. Take the other side; supposing they couldn't speak English fully?

A. They should understand fairly well.

Q. It should be explained to them delicately and importantly?

A. The evidence was rather sketchy; I myself don't feel you have heard all the story.

To the Court:

Q. Take it as it stands?

A. (No reply).

To Mr. Mercier:

Q. Yes, take the evidence as it stands?

A. (No reply).

The Court: That is understood.

The Witness:

A. On the religious approach, if it were a similar case among my own people, I would feel very apprehensive about such an approach being made on something I was teaching my people on something I thought was wrong, but I don't think the way to meet new facts is to stifle them, but to meet them in the light of other facts and the light of reason.

Mr. Wegenast: This is a religious education.

Mr. Mercier: A most thorough instruction on the subject?

The Witness:

A. I always believe whatever is being done should be done properly.

To Mr. Mercier:

Q. I am satisfied with that. Now, at the last Lambeth Conference, will you say they treated the matter very delicately?

A. Yes.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. But by acknowledging it is a delicate subject, do you

mean to say Miss Palmer should start talking theology?

A. No.

Q. Is it necessary to talk morality and religion at all?

A. Well, I have said that the social workers' approach is the beginning and not the end and it is to find out all the women of the house can tell them.

Mr. Mercier: My learned friend is re-examining on a matter brought out in examination in chief and I have cross examined on it and he is re-examining on it.

Mr. Beament: He is entitled to re-examine on anything brought out in cross examination?

The Court: No, on new matter in cross examination.

Mr. Beament: It is the whole essence of re-examination to clear up any misunderstanding brought up in cross examination.

The Court: If any misunderstanding?

To Mr. Wegenast:

Q. If the moral and spiritual end of the story be gone into, who is the right one to discuss it with?

A. Their own person is the person I should think.

Q. Now, is it the policy of your church to build a fence around your people and warn all others off on religious propaganda matters?

A. (No reply).

Mr. Mercier: That, I suppose, is a matter brought out in cross examination?

Mr. Wegenast: It is all pertinent.

The Court: In the last part of cross examination, the point was raised as to what or whether he would feel apprehensive about anybody approaching his own flock.

Mr. Wegenast: Yes.

To Mr. Wegenast:

Q. When you say it is delicate and important, you say a

a social worker, English speaking, has no right to go to a Catholic home and talk to them?

A. No, I didn't say that.

Q. Whose business is it if it is a matter of teaching self-control, the social worker or the spiritual adviser?

A. There is there primarily the duty of the spiritual adviser, but I see no reason why the social worker shouldn't mention it. Our own social workers would be expected to do so, she being a church worker.

Q. Would you say that a social worker who wouldn't bring out that phase of it was doing something that was wrong, assuming she wasn't an Anglican?

A. No, I don't consider it her primary duty to mention the moral angle; she is there for the social purposes.

Q. That is all.

RE-CROSS EXAMINATION

To Mr. Mercier:

Q. I understood you clearly to say your own social workers would be permitted to approach people on the moral side?

A. Yes, because specifically she is a church worker.

(Witness retired)

Mr. Wegenast: I would like to ask your indulgence to recall Mr. Zeidman to ask him a question I overlooked before?

Mr. Mercier: I have the right to cross examine?

The Court: On anything arising out of this.

Mr. Zeidman

MORRIS ZEIDMAN, already sworn, recalled, deposed:

To Mr. Wegenast:

Q. What I wanted to ask you, Mr. Zeidman, you are up there in the ward at Elizabeth and Elm; isn't it?

Mr. Zeidman

A. Yes.

Q. And that is where the Scott Institute centres its operations?

A. Yes, sir.

Q. How do you get along with the languages; do you find it necessary to use an interpreter or how do your social workers get their message across?

A. (No reply).

Mr. Mercier: I might tell my learned friend he might be opening a very wide field if there is rebuttal there too.

Mr. Wegenast: My friend opened the question too.

Mr. Mercier: There are hundreds of witnesses might say that they know a little.

The Court: I think it has been raised already.

To Mr. Wegenast:

Q. All right, Mr. Zeidman, what do you say?

A. We have no interpreter.

Q. How do you get along?

A. We depend mostly on the good sense of the workers and then we find that it is really a help to the worker and others who will visit; that is, the people being visited are anxious to hear the English language and the worker who does the visiting picks up here and there a little bit of French and it tends to good will and unless a person wants to delve into theology or philosophy or an argument on their fine points, I don't think it is necessary for them to have the English language.

It is necessary for the worker to have a pleasant disposition and there is such a thing as a universal language of kindness.

A worker comes in with a smile and the person visited is likely to receive the visitor with open arms. The same thing can be applied to missionaries who have gone out to foreign fields. I think the best work is done in the first few years when they can't talk the language and they just go about and through

conversation, by and by, they learn a little bit and the best thinking is done.

The same thing happened with the soldiers overseas. Some of them brought home French wives.

CROSS EXAMINATION

To Mr. Mercier:

Q. Do you think proposing the subject to a woman is a delicate and important matter?

A. I think so.

Q. I suppose you might have seen where a person could not understand very well and might be made to sign a contract to buy and sewing machine or washing machine?

A. Not very many do that.

Q. Some of them might do that or sign a card without knowing what they are doing: a worker with a smile and the milk of human kindness —- a lot of people buy motor cars on that?

A. Yes.

(Witness retired)

The Court: Adjourn (at 4:30) to 10 o'clock tomorrow morning (4th November, 1936).

Press item

(Court resumed at 10:00 a.m., November 4th, 1936).

(Press item re Kemp's evidence re Eastview infant mortality).

Mr. Mercier: Before Court continues, there is an item in the press; a statement attributed to Professor Kemp:

> "If proper medical attention and advice had been available in the town, 175 of the 373 children who died over a 10-year period should have been saved, the witness said."

(Reporter: "Evening Citizen" of Ottawa, issue of November 3rd, 1936).

Press item

Mr. Mercier: It is possible one or two of these doctors here in Eastview might be incensed over this report; the evidence might be looked up.

The Court: As I recall it, he put some questions to Professor Kemp on that point and my recollection of the answers is that they were if social welfare and public health had been extended to the extent it might have been in Eastview, the lives of some of these children might have been saved. The reporter might read his notes.

Mr. Wegenast: After all, this isn't like the House of Commons; it is a bit unusual for a private individual to come here and complain.

The Court: Really it should be to the paper.

Mr. Beament: Yes, he should sue the newspaper.

The Court: It may arise half a dozen times on either side.

Mr. Beament: If the newspaper hasn't reported it right, it is their libel.

Mr. Mercier: I just raised it to rectify what is a wrong impression.

The Court: That is true, but I don't think it is the purview of this Court to review it, although there might be discretion.

Mr. Mercier: Then I submit that portion of the evidence ---

The Court: Strike it out.

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

Volume V (of 9 volumes)

Pages J-1 to J-125

Dr. Scott

DR. WILLIAM ALBERT SCOTT, sworn, deposed:

To the Court:

Q. Your address, doctor?

A. Medical Arts Building, Toronto.

To Mr. Wegenast:

Q. Dr. Scott, we must put you through the usual third degree about your standing in the profession, and let me ask, first, what your training has been?

A. I am a graduate in arts and medicine of the University of Toronto.

Q. What position do you occupy now?

A. Professor of Obstetrics and Gynecology of the University

Dr. Scott

of Toronto.

Q. Then, by way of showing what the profession thinks of you, let us know what positions you have held in the society?

A. Fellow of the College of Obstetricians and Gynecologists of England. Fellow of the Royal College of Surgeons of Canada. Fellow of the American College of Surgeons. Member of the American Gynecological Society and the American Society of Obstetricians and Gynecologists and Surgeons.

Q. I think we can gather from that you have specialized in Gynecology and Obstetrics?

A. Yes, exclusively.

Q. You are in charge of the department at Toronto University?

A. Yes, I control it and give all lectures on obstetrics and gynecology at the University of Toronto. I have been practicing obstetrics and gynecology since 1913 and have been connected with the department at the university and Toronto General Hospital since 1914 in those departments.

Q. By the way, you might tell us how to pronounce gynecology; is it ---

A. It depends on whether American or Canadian.

To the Court:

Q. What is the Canadian pronunciation?

A. I think gynecology is correct (as in "in").

To Mr. Wegenast:

Q. That is the third time I have had to change my pronunciation.

We have Miss Palmer here charged with advertising contraceptives by means of a pamphlet. We assume this to be a copy of Exhibit 5-B. You, like all doctors, have some occasion to consider the subject of advertising. Now, I would like you, first, to look over that to see if there is anything in that that suggests advertising?

A. I am not familiar with the legal meaning of advertising.

Q. Assuming it has the popular meaning?

A. I would say there is nothing in this pamphlet could be interpreted, in my point of view, as advertising. This is information.

Q. Let us have your view of this doctor: looking this document through, and having regard to the literature on the subject with which you are, no doubt, familiar, would you care to characterize that with reference to the method of treatment; would you say it was popular, erotic, decent or let us have one or two adjectives to describe the methods treated in this pamphlet?

A. I would say the methods described in this pamphlet are the most efficient and least harmful of any of the methods with which I am familiar.

Q. I am thinking of the literary method of treatment?

The Court: The manner in which the pamphlet is drawn up?

Mr. Wegenast: Yes.

The Witness:

A. Oh, I see. There is nothing that would pamper to morbid curiosity or licentiousness in the manner in which this pamphlet is drawn up.

To Mr. Wegenast:

Q. Now, you have read the pamphlet and the methods of medical treatment described in it?

A. The methods discussed in that pamphlet are the methods which today are the accepted and best methods with which we are familiar.

Q. You say "today"?

A. "Today".

Q. Would you mind opening up on that a little?

A. I feel the methods we have today of contraceptives are very superior to those we had 20 years ago. I feel the ideal contraceptive method today is yet to be discovered, just as the ideal anaesthetic is yet to be discovered, so we have to use the best we know of.

Q. Taking the methods described in the pamphlet, which, if any of them, would or might be harmful?

A. I believe that coitus interruptus, which is discussed here, might have deleterious effects in certain cases.

Q. What about the chemical methods?

A. The chemical and mechanical methods described here are harmless.

Q. It has been suggested here, in the first place, that all contraceptives –- that there is no such thing as a harmless contraceptive; what do you say?

A. I would not hold that view that there is no such thing as a harmless contraceptive, but I think the chemical contraceptive mentioned here is harmless.

Q. Now, it has been said some of these methods are conducive to cancer?

A. I would say such an opinion is entirely erroneous and as to cancer of the female genital organs; the vulva, vagina, cervix and uterus, cancer of the vulva could not be related to anything placed in the vagina.

Cancer of the vagina is an exceedingly rare condition. I have been connected with the cancer clinic of the Toronto General Hospital for some years and in that time, I have seen only three

cases of primary carcinoma of the vagina. If it were caused by a rubber pessary, much more would it be caused by a pessary for retrovisation (sic) or prolapses in which it has been used in thousands of cases.

Cancer of the body of the uterus: it is quite true a woman who has not had a child is more liable to have cancer in the body of the uterus than those who have had children. On the contrary, cancer of the cervix arises almost entirely in women who have had children. In every case of cancer of the body of the uterus, there are at least ten cases of cancer of the cervix.

Q. That is to say the prevention of pregnancy would have ten times the effect in preventing cancer then?

Dr. Scott

A. It would in causing it.

Q. What about sterility; it is said the use of contraceptives might cause sterility; what do you say to that?

A. You are referring to these methods of contraception?

A. Well?

A. I am answering ingenuously. There have been certain methods of contraception proposed that might cause sterility as well as serious lesions. Those methods are not proposed here and are not methods commonly proposed today. They are methods in which some appliance is placed in the cervix or uterus and left there permanently. Such appliances might not only cause sterility, but widespread pathological lesions.

Q. The ring?

A. The gold ring and Gothenburg pessary. The methods proposed here, in my mind, under no circumstances could cause sterility and, in some cases, they might have a beneficial effect. Some causes of sterility are diseases and some of these mild lubricants might have a beneficial effect on some types of cervicitis.

Q. Sterility is not always incurable?

A. No, it depends on the cause.

Q. There are people who make the dividing line as to what is permissible as a contraceptive and what is not permissible. The question is whether it is natural or something other than natural. I want to put this to you, whether you would say that the cure of sterility was a natural thing or was not natural?

Dr. Scott

A. The cure of sterility is undoubtedly interfering with a natural law, in that instance, in a patient who is naturally sterile.

Q. The Lord has made him that way?

A. The Lord has made him that way and if we correct the cause of that, we interfere with natural law.

Q. What do you say as to that method of dividing therapeutic agencies between natural and unnatural?

A. The question of interfering with natural law, of course, is very fallacious to my mind. Perhaps the best authenticated example is the law of survival of the fittest.

Q. And forceps?

A. Yes, we invented them to help natural law.

To the Court:

Q. Do you think the law of the survival of the fittest has been entirely circumvented?

A. Not quite.

To Mr. Wegenast:

Q. Perhaps there is a law of the survival of the unfittest. From a therapeutic standpoint, is there ever a reason to advise contraception?

A. There are medical reasons: when a medical man has only one of three alternatives; the employment of contraceptive measures, the sterilization of the patient or therapeutic abortion. The last is repugnant to medical man.

Dr. Scott

Q. It is necessary sometimes?

A. Yes, when the others are not employed. Do you wish the indications?

A. Yes, in what cases do you have these alternatives?

A. The three main groups of cases. There are others not so well marked. Certain types of heart disease, progressive rheumatism, mitral-stenosis. Secondly, in active pulmonary tuberculosis and thirdly, in cases of certain chronic kidney disease where the lesion has already progressed so far that there is insufficient kidney function to carry on with the added burden of pregnancy.

Q. So in those three cases, if I might put it in my own words, you must really go to prevention of the woman becoming pregnant or conceiving or having an abortion?

A. Or you have the other alternatives -- I didn't mention it –- and that is let the patient die.

Q. And the only other is sterilization, which is a measure of contraception?

A. Yes.

Q. Now, to what extent do you go into these matters with your students?

A. I lecture sixth-year medical students every year and I group these three subjects; contraception, sterilization and therapeutic abortion. I lecture to them every year and the second two phases; sterilization and therapeutic abortion, require little time, so the main instruction is contraception and I give them all the knowledge I have.

Dr. Scott

To the Court:

Q. How many lectures would that cover?

A. I usually give two; one is mostly demonstration.

To Mr. Wegenast:

Q. It has been said here that many doctors know nothing about contraception and that is why you must have others than doctors?

A. It is difficult to answer. Contraceptive measures have been known to a certain percentage of the scientifically minded for many years, if not thousands of years. That now has been gradually reaching a greater number, first, of the scientifically minded, and, then, the lay public. One cannot answer dogmatically.

There always have been individuals with a full knowledge of contraceptive measures. The profession, as a whole, certainly has not, however, had it put to them in an instructive manner; they have picked up the information themselves.

Q. Just like the rest of us?

A. Yes.

To the Court:

Q. How long have these been a part of the lecture course?

A. I have lectured on them three years and previous to that, there was no instruction on contraception and, as far as I know, no instruction in any other Canadian medical college.

In the University of Toronto, as far as I know, there was no instruction until three years ago.

Dr. Scott

Q. How about other Canadian colleges?

A. I haven't been able to write them all, but in some, it isn't carried on yet.

To Mr. Wegenast:

Q. Getting down to brass tacks, what objection is there to the teaching of contraceptives?

A. On the part of the medical profession?

A. On the part of anybody?

A. I don't believe it is fair for you to ask me regarding the position outside the medical profession.

The Court: A very fair answer.

To Mr. Wegenast:

Q. Will you say this, doctor; whether there is or is not opposition outside the medical profession?

A. Yes.

Q. And will you say this; whether it is sometimes effective?

A. The opposition effective, I see your point. The opposition outside the medical profession is effective as far as it applies to the individual, yes.

Q. I will go further; is there similar opposition to the use of anaesthetics in childbirth?

A. Oh, decidedly. The controversy was when Sir James Simpson first used chloroform for labour, and there was much

more widespread opposition to it then than there is to contraception today.

Q. And we might as well have a reference from you, doctor, because we might as well know how it was met with in the Royal family in England?

A. When Queen Victoria agreed to have chloroform administered, the opposition in England immediately died down and after that, there was little opposition in respect to it in the rest of the world after a few of the older men had died.

Q. Queen Victoria had eight children?

A. I couldn't tell you.

Q. That was still in the good old days. Now, it wasn't with her first child?

A. No. Anyway, Queen Victoria had chloroform employed in the last confinement and maybe the last two confinements.

Q. So even Queen Victoria could advance with the times?

A. (No reply).

Q. I point out to you, doctor, that in this pamphlet, what is called coitus interruptus is mentioned only to be condemned; have you observed that?

A. Yes.

Q. So you agree with what the pamphlet says?

A. Yes, I quite agree coitus interruptus isn't a sane method of contraception.

Q. You spoke of opposition in the medical profession. I

Dr. Scott

would like you to make some observations, doctor, on this if you will; whether the older men or the older practice is reflected or employed in the writings to which reference was made?

A. Yes, the older ideas are embodied in the writings to some extent. If the Court will allow me, I might go a little further.

Q. I was going to ask you to mention names and if you don't want the responsibility, I will mention Dr. Kelly of Johns Hopkins, Dr. Sutherland and Dr. Dame McIlroy?

A. Might I, at first, make a somewhat general observation? I am personally acquainted with the great majority of the leading gynecologists and obstetricians of this country and with a fair number in the British Isles. But to say the great majority of these men hold the ideas regarding contraception I have voiced morning, some do not. Of those who do not, the great majority hold their opinion not on medical, but on theological grounds.

Q. Amongst which classes do you find these?

A. You mentioned three and I hate to discuss them from the witness stand.

Q. Unfortunately, they may be mentioned as authorities?

A. Dr. Kelly was, at one time, one of the greatest gynecologists in the world; at the same time, throughout his life, he has been a lay preacher with theological views that to me would not seem intelligent, but I am no authority on theology. Dr. Kelly had certain views that were medical and theological ideas comingled and I think in order to strengthen

Dr. Scott

his theological views, he tried to adduce scientific evidence.

With regard to Sutherland, he was a medical man, not a gynecologist of note, but he was better known as a novelist than as a medical practitioner. His statements, as I have read them, are without authority. He makes dogmatic statements without adducing evidence.

McIlroy is undoubtedly an obstetrician and gynecologist of note. She is an opponent of widespread dissemination of contraceptive knowledge, but she herself was interested in heart disease and pregnancy as I was for some years. We both published some writings on that subject. I knew her personally and certainly her views as regards heart disease are certainly identical with mine.

Q. That is?

A. She opposed the widespread dissemination of knowledge of contraceptives, but in medical cases, did not hesitate to use them.

Q. Did she advise sterilization?

A. Yes.

Q. Did she advise other contraceptive methods?

A. I don't know, but she did advise sterilization which is the soundest method of contraception I know.

To the Court:

Q. The only safe method.

A. Yes.

To Mr. Wegenast:

Dr. Scott

Q. Dr. Kelly had one particular hobby that is well known in the medical profession which should be on the record?

A. I think you do him an injustice if you refer to his belief in parthenogenesis. It is perhaps unfair to say it was a hobby. It was part of his religious belief. In order, again, to back up a theological belief, he tried to adduce evidence of parthenogenesis not only in the lower forms of life and on up, but believed it quite possible in the human.

Q. In order to support the doctrine of the Virgin birth?

A. Yes.

Q. Parthenogenesis means?

A. It means the birth of an individual without fertilization.

Q. Without the intervention of the male?

A. Yes.

Q. About spacing children, and whether it is desirable from the standpoint, first, of the mother, —- you know perfectly well what I mean —- I would like to have your opinion?

A. From the medical standpoint, I would like to make it clear to the Court my views are medical. There is no question in my mind that a reasonable spacing of children is to be desired. By reasonable spacing, one has to consider many concomitant circumstances. What might be a reasonable interval for one might not be a reasonable interval for another.

Q. Do you think nature can take care of that herself?

A. I don't know whether she can, but she doesn't.

Q. I suppose continence would do it?

A. Yes, continence would do it, but unfortunately, in my experience, people are not continent.

Q. Now, is there any question at all there are cases where something should be done to prevent children coming too fast?

A. We have accepted that in saying spacing is desirable.

Q. I said from the standpoint of the mother; what about from the standpoint of the children, the effect as far as the children are concerned?

A. I don't know just what you have in mind.

Q. We have had figures, graphs and statistics showing the effect of spacing or the lack of spacing, first, on the health of the mother and, second, on the health of the child?

A. You mean infant mortality?

Q. Yes?

A. I wouldn't express a dogmatic opinion on that because infant mortality depends on many things: first, the health of the mother. That will depend on the rapidity with which she has children. It also depends on the social factors and so on.

One cannot dogmatize on the relation of infant mortality and the rapidity of childbirth. One can only point out that in those families where children follow rapidly in large numbers, one usually finds the percentage of children who do not reach the age of one year is greater than in families with a smaller number. I haven't the figures, but I think it would be interesting to know just what the infant mortality was among

those individuals trying for the Millar prize.

Q. We have some figures here prepared for evidence. Will you give us the indications, as you call them, of too rapid childbearing?

A. As I pointed out, in a general way, one cannot lay down a dogmatic rule as to how often it is desirable for a woman to have children. It depends on the woman's health and her strength; upon the difficulty and invalidism that followed previous pregnancies; the amount of work she has and the economic and social conditions of the family. All these must be considered when advising when to have another child. Only two individuals can answer that question and they are the two concerned.

Q. Who are they?

A. The husband and the wife.

Q. I thought you would say the wife and the doctor?

A. No, I wouldn't say that; I don't think it is for me to postulate when the mother should have children. I think my function is to say when it would be dangerous for a mother to have another child, and to tell her what is in my mind.

Q. What are the indications?

A. First of all, I would consider the indications when she should not have another child. Others, I would lay down in a general way.

Q. What are the effects of a too rapid succession of children on the woman?

A. That question is too general. It depends on the woman and on the circumstances. One couldn't answer that question.

Q. You mentioned the condition of the heart and kidneys; what other adverse conditions might result from too rapid childbirth?

A. Heart disease, kidney and tubercular diseases do not result from too rapid childbearing. Now, there might be a definite danger to the mother from which it will take a long period to recover.

Q. For example, what sort of danger?

A. Bad tears with prolapses. Pelvic infection, not fatal but chronic. General debility of the patient from the strain of rapid childbirth and trying to care for the family at the same time.

Q. Is there any similarity between major operations and childbearing?

A. Some, yes, but an easy, normal confinement doesn't compare with a major operation. Difficult instrumental or operative delivery, yes; it is quite comparable to a major operation.

To the Court:

Q. Doctor, a woman who through childbirth suffers some of these symptoms you say might render it dangerous for her to have another child very soon; would she know she had that condition?

A. She might not or might; it would depend on her condition.

Q. On the average?

A. She would certainly know whether she is over-burdened at home.

Q. I am thinking of her own condition?

A. If she had prolapses, she would be aware of it. If she had chronic pelvic inflammation, she might be.

Q. If she had tears?

A. She would be.

To Mr. Wegenast:

Q. What about the effect on the nerves, doctor, or is that a secondary matter?

A. I am not an authority on that.

Q. Yes.

To the Court:

Q. You said she might be aware of it; would she know it might be dangerous?

A. No, she might know about it, but have no knowledge it was dangerous.

Q. Lots of us have internal aches and pains and regard them lightly and they might be dangerous?

A. Yes, a woman with kidney disease, chronic heart disease and pulmonary tuberculosis –- a woman often doesn't know until told.

To Mr. Wegenast:

Q. We have this from Dr. DeHaitre, a previous witness: he said contraceptives might be all right after examination by a doctor; what do you say about an examination by a doctor?

A. I would put it in a reverse way: after an examination by a doctor, they might well be advised, but in my opinion, there are cases where contraceptives are properly advised without examination. I tried to make that clear; I am not competent on economic and social conditions in the woman's home. It is for the wife and husband.

Q. From the medical point of view, is there anything wrong about a woman using the nozzle and jelly mentioned in the pamphlet?

A. Any harm in it?

Q. Yes?

A. Oh, no harm.

To the Court:

Q. With that contraceptive jelly, there goes the use of the douche?

A. You mean afterwards?

Q. Yes, for cleansing purposes?

A. Of course, the douche: a very large number of married women, apart from contraceptive reasons, use a vaginal douche without harm.

Q. But is it necessary for a woman to use a douche after the contraceptive jelly?

A. Not necessarily.

Dr. Scott

To Mr. Wegenast:

Q. It is a starch jelly soluble in water?

A. Yes.

Q. Now, we have had a number of witnesses who came here and said Miss Palmer recommended and demonstrated a contraceptive jelly consisting of jelly with a starch base, boracic acid and lactic acid. I want you to say, doctor, if there is any chance of anything untoward resulting from the use of that measure or means?

A. No, that jelly is perfectly harmless.

Q. Now, you come across in your practice, doctor, no doubt, the sort of persons known as social workers?

A. Yes.

Q. I want you to give His Worship the benefit of your opinion on this; whether, as is alleged in this case, a social worker going out from place to place on recommendations or otherwise and demonstrating to a woman the use of this article ---

The Court: Out of Exhibit ---

Mr. Beament: It happens to be 18-B. I don't know if it is proved against Miss Palmer; I picked it at random; it is entirely typical.

Mr. Mercier: It is part of Exhibit 18-B.

To Mr. Wegenast:

Q. Is it harmful for a woman to use this; from a medical standpoint, is it expedient?

Dr. Scott

A. I don't see that it concerns medicine at all.

Q. Then your answer is "no"?

A. "No".

Q. Why do you say that?

A. Because I am making clear to the Court the division between my duties as a medical man and any duties a social worker may have.

Q. Assuming, if we may, that prevention of injury to the woman were a desiderata?

A. Are you asking me again is the patient apt to injure herself with this?

Q. Yes?

A. Not if she has any reasonable intelligence.

CROSS EXAMINATION

To Mr. Mercier:

Q. I believe you stated, at the beginning of your evidence, the methods of treatment in Exhibit 5-B, of which you have a copy, are most efficient and least harmful of all methods?

A. I made that statement.

Q. Would you mean they are harmful at all?

A. That there are harmful methods or that these are?

Q. These?

A. These are harmless.

Q. Why did you use the qualification, "least"?

Dr. Scott

A. There are two methods suggested which would be harmful; one the gold stem and the other the Grafenberg ring and they, in my opinion, are decidedly harmful.

Q. You mean besides those two methods, these mentioned in the pamphlet are least harmful, or are those mentioned in that pamphlet harmless in all cases?

A. Except coitus interruptus.

Q. With the exception of those, the others are absolutely harmless; there is no case you know of where the use of the methods described in this pamphlet could possibly be harmful?

A. No, I wouldn't say that because cleaning your teeth in certain circumstances might be harmful

Q. In the beginning of this pamphlet, on the very first page, there is a statement there made to mothers in general:

> "At this very moment, the appealing and often desperate cry is going up from actually millions of sick and suffering mothers."

Could anybody say that?

A. Yes, I think that is quite true.

Q.

> "For information that will bring them relief from the intolerable burden of bringing into the world more children than they can care for properly. Hundreds of thousands of mothers die yearly because of their unfitness for childbearing. Millions of infants under one year of age die annually because of overcrowding

Dr. Scott

> or malnutrition due to poverty or to lack of vitality inherited from weak and overburdened mothers. Such conditions as these ought not to exist.
>
> Every child has the right to be wanted and to be born into a world of love and care and sufficiency."

Now, do you think that is very good advice or knowledge to give to all mothers?

A. Yes, I think that is quite sound.

Q. Then there is the method described there as withdrawal; the medical profession calls it coitus interruptus. Why should this be mentioned except to condemn it; why should it be suggested?

A. I didn't write the book; I don't know why.

Q. Do you see any valid reason why it should be mentioned?

A. Except that it has a certain danger and it is the oldest method of contraception and possibly one of the commonest methods employed by thousands who know of no other method. It is the method most used by ward patients who have no other knowledge. It is not employed by other patients. In this pamphlet, they are pointing out what is possibly the commonest method to condemn it.

Q. And there are no other methods in the pamphlet mentioned which may possibly be hard on the nerves or health and might frequently fail?

A. What do you mean "frequently"?

Q. I see at the end of the first paragraph on page 5,

Dr. Scott

talking about coitus interruptus:

> "It is a process that is hard on the nerves and health, and frequently fails."

I would like you to tell me if you see anything in this pamphlet which might be hard on the nerves and health and frequently fails?

A. Any method might fail. Coitus interruptus might fail in a larger number of cases than the methods mentioned here. There are no other methods here mentioned which are hard on the nerves.

Q. Or on the health?

A. No.

Q. Let us go to "the use of the douche bag frequently fails". The douche bag isn't harmful, but the use of the nozzle in some cases, might that not be injurious to health in some cases by people who might not be the most intelligent?

A. A patient might injure herself not only with the douche nozzle, but with a tooth brush; but apart from contraception, the great majority of married women take douches, sometimes at very frequent intervals, and sometimes rarely. It is an ordinary method of hygiene. They use the same nozzle and personally, I have never seen a case of injury from the use of a douche nozzle.

Q. The formula for suppositories recommended by Dr. Marie Stopes, that you see on page 6?

A. Yes.

Dr. Scott

To the Court:

Q. You say a large majority of married women use douches; the solution they use would be what?

A. A variety of things; the commonest is one-half per cent Lysol or something related to it, but one finds boracic acid, ordinary soap and water, hot water and baking soda and potash permanganate and bichloride of mercury.

To Mr. Mercier:

Q. They advise here against bichloride of mercury and other things, except on a doctor's orders. What do you say about vinegar?

A. You mean as a contraceptive?

Q. Would it be used in an ordinary douche?

A. Oh, yes, they have a great variety.

Q. It says here, "two quarts of warm water with two tablespoonfuls of household vinegar"; is that harmful?

A. Harmless.

Q. If that got into the uterus, is it harmful?

A. Except that anything inserted in the uterus might be dangerous by infection; it might be anything. It is not possible to douche the uterus. If a woman took a douche immediately after confinement and the cervix was open, then the fluid might find its way in.

Q. Even if some would get in, it would be harmless?

A. We use pure tincture of iodine after curetting.

Dr. Scott

Q. Should a woman unknowingly or by mistake use a double solution of that?

A. It would do no harm. If I had a sterile solution of vinegar 10 times as strong and were doing a curettage, I wouldn't hesitate to use that solution if it was sterile.

Q. In that case, doctor, would you do it every day?

A. Do what every day?

Q. Using that solution?

A. I wouldn't be using it every day.

Q. It could be used every day?

A. Two tablespoonsful in two quarts of warm water?

Q. Yes?

A. No.

Q. You wouldn't recommend 10 times that solution for use every day?

A. No.

Q. That would be harmful?

A. Quite.

Q. Doctor, take:

> "Vinegar tampon. Take a piece of cotton batting about three inches long, one and one-half inches wide, and about one-half inch thick. Tie a double thread, preferably silk, around the middle of this piece of cotton, and leave the thread long enough so that about

Dr. Scott

> nine inches double will hang free. Soak the cotton in a solution of equal parts of vinegar and water and then squeeze out gently," (and insert).

Now, do you see anything where this might be possibly dangerous for a woman to use?

A. I could conceive of certain circumstances; that is, equal parts of vinegar and water. The essential thing in vinegar is the acid and the strength of the acid varies.

Q. The average wife buying vinegar –- it might be strong or weak?

A. If she didn't dilute it enough, but soaked it and put it in the vagina and left it there for some time, she might cause an irritation of the vagina and if she did, she would know it and the probabilities are she would not use it again.

Q. Would you advise, as a contraceptive, this method to be used daily?

A. This is not a method I advise.

Q. You are against it?

A. No, but I would advise an occlusive pessary with the contraceptive jelly.

Q. That is what you advise?

A. Yes, personally.

Q. Do you not think the daily use of the vinegar tampon might be injurious to her health?

A. Not to her health, but it might cause irritations and she would stop it.

Dr. Scott

Q. If she didn't stop it?

A. It would go on irritating her.

Q. Could that irritation possibly cause disease or ill health to that woman?

A. I suppose local irritation is ill health which would be uncomfortable.

Q. Would you advise the use of this to a woman who might suffer an irritation of the vagina on using it?

A. (No reply).

To the Court:

Q. By local irritation, doctor, do you mean irritation as long as the stimulant is there and it goes on only while it is there?

A. They might have it after.

Q. And if it stopped then, say after a month, it might disappear?

A. Yes.

Q. Without any lasting effects?

A. Yes.

To Mr. Mercier:

Q. Doctor, in the case, for instance, of a woman having a beginning or ending of a venereal disease?

A. Which type?

Q. You know more about those than I do?

Dr. Scott

A. There are two common ones and my answer will depend very much on what you have in mind?

Q. Gonorrhoea?

A. And where, in the cervix or urethra?

A. Either, or in each?

A. The commonest place for gonorrhoea is in the urethra, so if you wish to take that one –- what is the question?

Q. The use of vinegar tampon might be dangerous?

A. No, on the contrary, the urethra is a different channel from the vagina and therefore your tampon isn't where the infection is. Although vinegar is a spermicide and to that extent it kills sperms, it is also an antiseptic or germicide and to the extent it is antiseptic it kills protoplasmic poison and it would have a curative effect on the gonorrhoea.

Q. And, in your opinion, there is nothing in this pamphlet that would lead to morbid curiosity or licentiousness at all?

A. No.

Q. Do you believe that or advise it as a medical man generally?

A. I think you must allow me this distinction; that I feel as a medical man I have certain duties and privileges inherent in that license to practice. Above and beyond that, I have views I may hold as an ordinary citizen of the state and they are not more important than yours.

To the Court:

Q. Or mine?

Dr. Scott

A. And answering that I am speaking as a citizen, not as a professor of gynecology and obstetrics, and I would say a widespread dissemination of birth control is desirable.

To Mr. Mercier:

Q. Even to young girls?

A. I say a widespread dissemination of birth control is desirable.

Q. And as a medical man, what do you believe?

A. As a medical man, do I see any harm in the widespread dissemination of birth control information?

Q. Have you as a medical practitioner any objections, or can you make any possible objections on the part of the medical profession to the widespread dissemination of this literature?

A. No.

Q. You do not?

A. No.

Q. Now, would you say, doctor, that all the methods advised in this pamphlet could be used by any woman, clean, dirty, sick, healthy, and without proper medical advice?

A. Clean or dirty —- I must take it up seriatim. As far as douching is concerned, it would help if she were dirty. As far as suppositories are concerned, it would have an antiseptic value and be good if she were dirty. Condoms, I think if she were dirty would be advisable for the husband's safety. The occlusive pessary, as long as it is removed and not left there, would not be dangerous.

Dr. Scott

To Mr. Beament:

Q. And the contraceptive jelly on page 7?

A. If dirty, it would be of some value. Vinegar, I have mentioned. The safe period doesn't need an answer.

To Mr. Mercier:

Q. And sick or healthy?

A. I think it would be all right.

Q. Doctor, you stated, "pregnancy has 10 times more chances of creating cancer than childless marriage"?

A. I didn't say any such thing.

Q. What did you say?

A. I said that cancer of the body of the uterus —- a woman who has not been pregnant sometimes has more chance of having cancer of the body of the uterus than a patient who has been pregnant. Second, cancer of the neck of the womb occurs almost entirely among women

who have been pregnant, and cancer of the neck of the womb is 10 times more prevalent than cancer of the body of the womb.

Q. Cancer is very serious?

A. Very.

Q. And you wouldn't go so far as to suggest that all pregnancies should be stopped because of that?

A. Oh, no.

Q. And you wouldn't ---

Dr. Scott

A. I do not point to any connection between cancer and pregnancy; I merely mention the facts.

Q. And you counsel some of your students about some of the diseases that suggest contraceptives?

A. Heart and kidney.

Q. And only in these cases?

A. No.

Q. Generally?

A. I lay the whole story before them just as I have laid it before you.

Q. And in those cases, you hold they should advise their patients?

A. No, may I make myself clear again?

Q. Yes?

A. There are certain conditions where it is imperative that contraception be adopted, by sterilization or therapeutic abortion or the patient allowed to die. There are other cases where it is desirable that contraceptives be used in implication. In the first case, she is told if she goes through the pregnancy again, she cannot go through it and live.

To the Court:

Q. Those are the imperative cases?

A. Yes, the imperative cases.

To Mr. Mercier:

Dr. Scott

Q. And do you advise in any other cases?

A. Yes, my advice is sought every week in other cases by patients themselves.

Q. This science of the use of contraceptives, as you call it, is not the most perfect as it is now?

A. As I stated, the perfect contraceptive has yet to be discovered.

Q. Now, talking about McIlroy and Kelly who had a certain hobby?

A. Yes, I corrected that.

Q. I put it fairly this way; birth control is a hobby with a lot of people these days?

A. Is that a question or your statement?

Q. A question?

A. I suppose that every question affecting any change in the social, economic, religious life of the community is a hobby with somebody or some group of people.

Q. And of spacing children, you said reasonable spacing is desirable and one must consider certain circumstances and you have mentioned some of them. That they concern each individual?

A. What is reasonable for one might not be reasonable for another.

Q. And the health of the mother depended on many factors?

A. Yes.

Q. And no dogmatic rule can be laid down?

A. That is correct.

Q. The doctor may be very useful in cases of that kind?

A. Useful?

Q. More than his advice should be obtained; for instance, from the point of view of the health of the woman, should the advice of a doctor not be sought?

A. If her health is broken down, but from economic points of view and on social conditions, the doctor might know nothing about it.

Q. Taking it: the husband and wife should decide?

A. One or the other.

Q. I put down “and”. Now, doctor, could the too frequent use of contraceptives have, at any time, any effect of ill health?

A. What kind?

Q. Those mentioned in this?

A. The use of condoms is harmless.

Q. The too frequent use of them couldn't cause any ill effects?

A. I wonder if you have in mind too frequent sexual intercourse?

Q. I suppose that is an implication; the too frequent use of contraceptives might permit too frequent sexual intercourse?

A. I don't think that follows at all.

Dr. Scott

Q. Would the permanent use of contraceptives by a couple have any ill effects?

A. The permanent use?

Q. I said before, "the too frequent use" and now, I want to know about the continuous use of contraceptives; would they have an ill effects on a couple?

A. I believe if the husband and wife continuously use contraceptives throughout their married life, it might have an ill effect.

Q. These contraceptives?

A. Any contraceptive and it is not due to the contraceptive.

Q. Due to what?

A. A married couple going through life without children.

Q. Why?

A. Because later on in life, there is a sense of frustration that they have no children.

To the Court:

Q. That is dangerously close to psychology?

A. Yes, I am sorry.

To Mr. Mercier:

Q. Of course my medical knowledge is very limited.

To Mr. Beament:

Q. The same result would follow from continued continence,

Dr. Scott

wouldn't it, doctor?

A. (No reply).

The Court: Adjourn for five minutes.

(Upon resumption of hearing)

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. There are only one or two questions I want to ask, doctor. The first is about this Rhythm theory, which in its eclectic phase; this booklet is mentioned in the pamphlet?

The Court: Is this something forgotten in examination in chief?

Mr. Wegenast: No, it is in the pamphlet. It is approved by the Catholic Church.

The Witness:

A. I am familiar with the literature and I am familiar in my own practice with attempts to carry it out and I am not impressed at all, particularly, with its success in practice. In theoretical cases, it should be satisfactory.

The most recent work, however, has shown that ovulation doesn't depend so much on the previous menstruation as on the one that is going to occur; therefore, the safe period is one extremely hard to judge.

To Mr. Wegenast:

Q. That is kind of new in this trial and perhaps it is new in science?

A. There has been work recently that quite definitely

Dr. Scott

tended to show that ovulation, rather depending on any certain length of time from any previous period, depends on the time it is next to occur.

Q. What do you say as to the efficiency of that method?

A. It is so slight I have little practical faith in it.

Q. You say the perfect contraceptive is still to be discovered. When saying that, doctor, is it from inefficiency or harmlessness?

A. I would say the perfect contraceptive would be one that is one hundred per cent effective and would not, to any extent at all, interfere with the satisfaction of sexual intercourse on the part of either husband or wife.

Q. And I suppose it would be cheap?

A. Cheap and safe.

Q. And easy to use?

A. You have all those factors.

Q. There is at least one method that is one hundred per cent effective?

A. Abstinence?

Q. Sterilization?

A. No, unfortunately there is no method of sterilization that is one hundred per cent effective. There is an article published last month by a professor of obstetrics and gynecology in Johns Hopkins in which it is stated the only perfect method is the removal of both ovaries. I have an article appearing

Dr. Scott

next month, "Full Time Pregnancy Following Removal of Both Ovaries."

Q. It begins to look as if there was nothing one hundred per cent?

A. Not yet, except abstinence.

Q. If Dr. Kelly is right even that might not work?

A. (No reply).

Q. I think that is all.

To the Court:

Q. The use of this nozzle: if something extraneous enters into any part of the anatomy, wouldn't you recommend some kind of sterilization of that before use? Take a person in humble circumstances, not very clean in their habits or in the home, maybe a great deal of dust and germs, and it might be left lying around in the open and they use it without washing or cleaning it; might there not be danger in using it in the vagina and uterus?

A. Theoretically there might be, but not keeping in mind the vagina is never very sterile itself, and a patient in such circumstances will have a less than average amount of sterility.

Q. So you don't think it is advisable to recommend that its cleanliness is advisable?

A. I think any individual who is so unclean in her habits should be taught cleanliness not only in this, but in other things. A woman meticulous in her habits will keep it clean.

Q. But there are cases where danger of infection might

Dr. Scott

occur?

A. I think that is a theoretical question. Practically, I think it is of too little significance. It is too far fetched from a practical point of view.

To Mr. Wegenast:

Q. Arising out of what Your Worship brought out: which would be the most dangerous, the nozzle or act of intercourse itself?

A. The act of sexual intercourse might cause some infection.

Q. No less than the nozzle?

A. And childbirth would carry a greater danger in fact.

Mr. Mercier: I take it that Your Worship asked about the danger of using an unsterilized nozzle entering the body.

Mr. Wegenast: And again, what I think we have in mind, I don't think would be left lying around in the dust.

(Witness retired)

Mr. Wegenast

REX vs. PALMER

Dr. Hutton

pages J-36 to J-108

Dr. Hutton

DR. WILLIAM LORNE HUTTON, sworn, deposed:

To Mr. Wegenast:

Q. Doctor, you are from Brantford, I believe?

A. Yes, sir.

Q. You are the medical officer of health of Brantford?

A. Yes, sir.

Q. Tell us about your professional qualifications and experience; you are a graduate of Toronto University?

A. Nineteen eleven (1911).

Q. And you were to the war in what capacity?

A. Major in the medical corps.

Q. Then tell us about some of your other experiences?

A. After the war, I cam back to Brantford as medical officer of health.

Q. That would be?

A. Nineteen nineteen (1919).

Q. What have you done outside of your work in Branford? I am going to come to what you have done in Brantford.

A. I don't understand.

Q. You are connected with the medical council?

A. Yes, I am one of the examiners for the Medical Council of Canada.

Dr. Hutton

Q. In what?

A. Hygiene.

Q. And you have done some writing, I believe?

A. Yes, I have contributed some articles to medical journals.

Q. And besides being places, you have done things in Brantford?

A. (No reply).

Q. If your modesty will permit, what about your work in diphtheria?

A. As health officer, I am responsible for the fact that Brantford, along with the City of Hamilton, were the first cities probably in the world to become free of diphtheria. There has been no case of diphtheria among the school children of Brantford for a period now of over six years, and that is a unique record in public health achievement.

Q. Now, without leading, I want to get an expression from you on this, -- and you are in a position to say –- as to what extent you take your work as health officer seriously and get somewhere? That is sufficiently leading, I think?

A. (No reply).

Mr. Mercier: It is.

To Mr. Wegenast:

Dr. Hutton

Q. Do your employers, The Board of Health, know you are here?

A. They do; I have in my bag here a certified resolution asking me to come here because they thought it was in the public good that I should come here and give evidence on Miss Palmer's behalf.

Q. Coming down to the case we have before us, I want to ask a number of questions. What do you say as to this work Miss Palmer was said to have been doing being a matter of social service work?

A. I believe the work Miss Palmer has been doing is of great value from the sociological and medical standpoint.

Mr. Mercier: Is the doctor qualified as a sociologist also?

Mr. Wegenast: We will see in a moment.

To Mr. Wegenast:

Q. Are you doing any of this work yourself, doctor?

A. Yes, I have under my control in the health department in Brantford a birth control clinic authorized by the City of Brantford.

Q. That is under your control?

A. Yes, that is under my control.

Q. Tell us about your department generally; what does it consist of?

A. In the City of Brantford, we have a full-time health department; we conduct clinics for tuberculosis, venereal disease, a well baby clinic and a birth control clinic. We have a school medical service with three full-time nurses, with a half-time physician who spends his mornings in the physical examination of school children.

Q. In connection with the venereal disease clinic?

A. We have two part-time doctors. In connection with the tuberculosis clinic, we have the medical superintendent of the sanitarium, Brant Sanitarium. He is a full-time man and gives his services also to that clinic. We have a full-time veterinary surgeon who is inspector of foods, meats and food prices. We have a full-time plumbing inspector, a full-time sanitary inspector and another full-time nurse who devotes her time to following up venereal disease and tuberculosis.

Q. I guess we are safe in guessing, doctor, that puts you somewhat in the lead for cities in Canada?

A. Oh, yes, the health department in Brantford is recognized as one of the things a community should have as a necessary service to the people.

Q. Have you had any of Mr. Kaufman's workers in Brantford?

A. Yes.

Q. And you say you are carrying on some of the work yourself?

A. Yes.

Dr. Hutton

Q. You say you are in a position to give us your opinion as to how the work carried on by Miss Palmer sizes up for efficiency and desirability all around as compared to other methods. I would like to hear you express yourself on that?

A. I think the type of work Miss Palmer was doing in Eastview is an absolutely essential work where you can get it done. It should be adopted in all communities. I think the type of information she was giving was the most efficient type of information that might be given by such a service as Miss Palmer conducted.

Miss Palmer is carrying on birth control work from the social angle. She was using or giving contraceptive advise medically approved, which such a worker could give to such a community as Eastview.

That might be the opportunity for me to dilate a little on that, sir, and say as to the relation of the medical profession and the place of the medical profession in birth control.

Q. I was coming to that, doctor, and I was going to ask you what you thought of Dr. DeHaitre's evidence?

A. That it should be under medical control?

A. Yes. You are in control of your clinic?

A. Yes.

Q. What do you think of Dr. DeHaitre's evidence?

A. I have the highest respect for him, and I thought it was the natural reaction of all doctors when you mention birth

Dr. Hutton

control; "that is all right, but it should be under medical inspection."

I don't think any profound reasoning or thought has been given to statements made in that casual manner. Will I go on?

Q. Yes?

A. What I would say Miss Palmer was doing was disseminating information on hygiene as applied to birth control and I think she was a highly proper person to give that information. She is a woman; she understands the exact details of what she was explaining to these women, and I don't think that the doctor has given any place for the work in the type of progress Miss Palmer was carrying out.

Now, the place of the doctor in this birth control comes out here, sir; all these methods of birth control should be and must be, if carried on correctly, medically approved.

The place of the doctor comes in; there is one particular method which is probably the best method of birth control and in order to have that best method given to the people, it is essential they should go to doctors to receive that best method.

Q. What do you refer to?

A. The douche pessary as it is commonly called. The reason why a woman should go to a doctor for that is this; if all women were of the same size and made to the same pattern, then 50 per cent of the reason for women going to doctors would be abolished for the reason they would all get a standard size of pessary. Women vary; some are large, some small, some tall, some short.

To be fitted with a pessary, it is essential she should go to a doctor and find out the size of the pessary to fit her properly.

Q. That is what the pamphlet says?

A. Yes, and as she goes to the doctor and is fitted, then she is instructed by the doctor how to fit the pessary, how to insert it and how to remove it. But I would say this, were it not for the fact that a woman has to be fitted, then I believe that the type of information would be much better given to a woman by a social worker such as Miss Palmer, instead of having the woman going to doctors, because a woman will talk to another woman and will accept advice from another woman.

Q. On that, you have heard the witnesses speak of unwillingness of women going to clinics?

A. Yes.

Q. Have you had experience on that?

A. Yes. Women, if they don't know anything about it, they might want such information, but there are certain inhibitions which keep them from seeking it out and they will not go to a clinic because of those inhibitions.

Q. What about going to a male doctor?

A. There is something, but nothing much; women look upon doctors as emasculated individuals when they go to doctors for that purpose.

Q. Now, as to the methods Miss Palmer is said to be employing; what do you say as a whole? I am speaking now of the

method of approach and way in general the work was going on, and would you give her a job in Brantford?

A. Absolutely, I think she carried on properly. There hasn't been the slightest suggestion of anything indecent or improper.

Q. What about the case of the unmarried mother?

A. I think Miss Palmer was perfectly justified in approaching this unmarried mother and the unmarried mother, if we are to credit her evidence, seemed to want the information.

Q. She said at first she was married?

A. Yes, and denied it later.

Q. Taking if Miss Palmer had known from the first she was unmarried?

A. She told Miss Palmer at first she was married and it was perfectly all right to give it to her. Then she says she is unmarried and Miss Palmer in her own mind said, "she is unreliable and it is probable she will have more children and it is proper to give it to her," and I think it was perfectly proper for her to give it to her.

Q. Something has been said about giving it to women who wanted it only from curiosity; of course, Miss Palmer could know nothing about that. Supposing some did want it from curiosity, what was the effect of Miss Palmer putting it in their hands?

A. Well, curiosity is the beginning of wisdom: I think it was very wise to put it in their hands.

Q. What about giving it to women generally?

A. I think it should be and they should know about it; I don't think it is possible to keep women pure by keeping them ignorant.

Q. Your experience shows they were ignorant?

A. No, I don't think women are ignorant; oh, no.

To the Court:

Q. Speaking generally, or in reference to this subject?

A. In reference to this, I think every woman has desired to have some knowledge about this and most women have some.

To Mr. Wegenast:

Q. Where do they get it?

A. From other women.

Q. Why should they get it from Miss Palmer?

A. Because the information they get from other women is unsound and they have no way of knowing whether it is correct, and it is only through workers like Miss Palmer they can get information which has the stamp on it of being correct.

Q. We have had some evidence of the purchase of large quantities of contraceptives in drug and stationery stores; have you any idea if that is general or is it confined to Eastview?

A. That is one of the phenomena of everyday life, that it

is general.

Q. Even in Brantford?

A. Yes, even in Brantford.

Q. Have you anything to say, based on experience, as to the prevalence of the use of contraceptives?

A. There is a study being made at the present moment which bears directly on that question. It is the first attempt to answer that question. It is being made by Professor Raymond Pearl, I think, of Colgate University.

Q. It is not concluded?

A. No.

Q. So you are not in a position to state what the results are?

A. No.

Q. As to the prevalence of abortion?

A. Yes.

Q. What can you tell us about that?

A. I would like to make a general observation there, when we come to that question of abortion.

I remember that in the evidence before this Court something was said about seven hundred thousand abortions per year in the United States and if I remember correctly, there was some

question whether that was an authentic type of information or not, and I would like to make general observations about that.

There is only one possible way of getting information of any fact for everybody in any country, and that is through the national census. If you want information you can't find in the national census, it becomes necessary to adopt what is called the sampling method in sociology and that sampling method is a well-recognized and scientific method of arriving at definite facts.

Q. How do you use it?

A. You go into the bag and pull out what you think is a representative sample and from that you proceed to draw general conclusions.

Now, the greatest authority on abortion —- I think I will have to introduce a book.

The Court: It is a long time since we have had one.

The Witness:

A. It is in Taussig.

To Mr. Wegenast:

Q. Do you know if that is the last word?

A. Yes, and Taussig is the greatest authority in the world on abortion.

The Court: Exhibit 91-B, isn't it?

To Mr. Beament:

Q. What is the title?

A. “Abortion, Spontaneous and Induced,” by Taussig, 1936.

To Mr. Wegenast:

Q. He is in Washington University, I believe?

A. He is, like Dr. Scott, a professor of clinical obstetrics and clinical gynecology, Washington University School of Medicine, St. Louis. And I want to put in this ---

Q. Dr. Marie Kopp?

A. Yes, “Birth Control in Practice,” first published in 1934.

The Court: Exhibit 92-B.

To Mr. Wegenast:

Q. What do you consider out of this?

A. In the birth control clinic in New York in which Marie Kopp, the editor of this book, works, they got this sample of amount of abortions and this is a report on 10,000 cases. I am not going to read a lot. I am going to put in table XXII.

To the Court:

Q. What page of the book?

A. Page 234, but the page is not marked. So these first

10,000 they gave birth control information to -- they had a card system with information like here, in court, and from those this information emerges.

These 10,000 women had 38,985 pregnancies and of that number of pregnancies, 11,172 were ended by abortions.

Now, those abortions are subdivided into spontaneous, therapeutic, induced by physician, induced by midwife, self-induced and agent unknown.

Q. Over what period of time?

A. It is over a period from –- 10,000 cases from January, 1925 to July, 1929, sir.

Q. That is, the cases were investigated over that period of time?

A. This is women who came in numerical order.

Q. From January, 1925?

A. Yes.

Q. And when did the actual abortions take place?

A. They were ---

Q. Extended over 5 or 10 years?

A. The actual time ---

To Mr. Wegenast:

Q. During which the information was given?

A. Yes. The total percentage of abortions was 28.7 per cent of all pregnancies. Those were pregnancies terminated by abortions. Eight point one (8.1) per cent were spontaneous abortions.

Q. In other words, miscarriages?

A. Yes. Zero point nine (0.9) per cent were therapeutic, such as Dr. Scott said were imperative. Induced by a physician, 11.2 per cent. Induced by midwife, 2.9 per cent. Self-induced, 4.8 per cent.

Q. What proportion would come under the head of abortions ---

A. Self-induced and those induced by physicians? In the medical profession, there is no more terrible brand can be placed on a doctor than to say he is an abortionist. But there are in every community professional abortionists known to the people, and I would say while 11.2 per cent were induced by physicians in this study, there is no way of knowing in what way they were induced, whether bona fide or deliberately induced. The only ones you are sure are criminal are the 4.8 per cent self-induced.

Q. There is a distinction there between those and therapeutic?

A. Yes, therapeutic, 0.9 per cent.

Q. That, I take it, were those that were bona fide?

A. Yes.

To the Court:

Q. Imperative?

A. Yes, and the others, I have no means –- no, perhaps there were reasons, but they weren't imperative.

To Mr. Wegenast:

Q. Doctor, just on that point, what is your experience in this respect; do women when they admit abortions count in the cases where they have gone over the month, perhaps two, three or four weeks and have taken some medicine?

A. I thought you were going to say something else.

Q. In admitting abortions, a woman admitting how many, does she usually count in cases where she has gone six or seven weeks and has brought on menstruation by taking some medicine?

A. Some pill?

Q. Yes?

A. No, she wouldn't.

Q. So?

A. I think in this study in New York, it would be included; they were very thorough in the investigation.

Q. There were certain descriptions of abortions in this case, or what looked like abortions. A certain number of abortions having been reported by Miss Palmer, and a smaller

number being reported by the women in the box; have you anything to account for that?

A. Yes, certainly I have, and in Taussig's book, he deals especially with that.

Q. His Worship, should he hear about that?

A. Yes, and I think Taussig should be heard on that. I should like to read this.

To the Court:

Q. What page?

A. Twenty-five (25), sir. "In 1910, in the first edition of my monograph…" (page 24) –- I have read something not pertinent to give continuity:

> "In 1910, in the first edition of my monograph, then called 'The Prevention and Treatment of Abortion,' I included a very meager report based on the histories obtained from 600 gynecological patients regarding their previous conceptions. Following 1,241 conceptions, they reported 870 full-term confinements and 371 abortions, or a ratio of one abortion to 2.3 confinements. The figures obtained similarly by Macomber, in Boston, from the records of 250 married women showed 128 abortions to 440 confinements, a ratio of 1:3.4.
>
> These ratios are, of course, made on too small a basis to have more than a tentative value, but they
>
> Dr. Hutton
>
> coincide remarkably with the findings made on the very extensive data reported by Dr. Kopp in her monograph 'Birth Control in Practice'. In a study of 10,000 case histories in the New York clinic, she found a record of 11,172 abortions as compared with 27,813 confinements in a total of 38,985 pregnancies. This makes the ratio of one abortion to 2.5 confinements. The reason why figures obtained from clinical records are so much more reliable than those derived by other methods is the simple psychological fact that people do not hesitate to tell the truth if they are no longer in danger of being punished or otherwise exposed to censure for their actions. Every practitioner has been impressed with the frankness with which patients will discuss past induced abortions, and with their subterfuges when an immediate one is under consideration. The truth can therefore be obtained only through such tabulations of past events.
>
> That the material obtained through maternal health clinics gives a reasonably accurate picture of conditions in our large cities is hardly open to question. Whether the same figures apply to the provincial sections of the country is, however, more than doubtful. All our evidence, both in this country and abroad, points to a markedly lower incidence of abortion in rural and small-town practice. I wish there were available at present more data relating to this subject, but unfortunately there is only one
>
> Dr. Hutton
>
> report; that of Plass, from the rural districts of Iowa. His figures were obtained from 81 physicians with country practice who gave their estimate as to the

proportion of abortions to confinements. This indicated a ratio of one abortion to five confinements in country practice, or about half the city ratio." (Ex. 91-B)

Mr. Mercier: Although I do not object to the point of view of what was on these cards, I must put myself on record as objecting because the evidence is going into a far field. I fail to understand what the number of abortions in New York for five years has to do with this case. The question of public good has great latitude.

The Court: You are going far afield.

Mr. Mercier: The number of abortions that are possible in New York and that might be possible in Eastview —- I don't want to object too much, but we can't admit everything.

Mr. Wegenast: The point was what people saying one thing at one place and another thing at another place.

The Court: He answered it.

Mr. Wegenast: And the prevalence of abortion.

Mr. Mercier: In New York.

Mr. Wegenast: It is similar and we have no studies made in Canada. My submission is that conditions are somewhat similar.

Mr. Beament: My learned friend tried to put in "American

Dr. Hutton

Mercury".

Mr. Wegenast: We had a very good example set by my learned friend.

The Court: It is an isolated case of 250.

Mr. Wegenast: But this is Taussig, the latest word by the greatest.

The Court: Is that all he can give?

Mr. Wegenast: He apologizes and says it is the best he can get.

To Mr. Wegenast:

Q. What else is there, doctor; how far did you read?

A. I think I could clear it up.

Q. If you could clear it up without so much argument?

A. Yes, I think human nature in New York is much the same as human nature in Eastview and I believe what is admitted in private in New York would be denied in public in New York and what is admitted in private in Eastview would be denied in public in Eastview.

As far as showing the size of the abortion problem, I wanted to point out it is on this type of information in Marie Kopp's work and that doctor in the Iowa place who obtained his figures from 81 physicians: Taussig applies that to birth control of the entire United States and he says of this study in New York City: "We found out that one in every 2.5 pregnancies was terminated in abortion."

In rural communities, it was one against five and in the United States, he draws the conclusion there were 403,200 urban abortions and 278,400 rural abortions making a total of 681,600 abortions annually in the United States.

To the Court:

Q. Is that in a year's period?

A. Yes, in a year's period.

Q. That first one was over the whole married period?

A. He says so many births and pregnancies in a year.

As to the value of this, I won't put this in evidence; it is a book from the White House Conference and they accept Taussig's figures. If they accept that as the most reliable, I will accept it, too, and present it as the most reliable data on the subject.

To Mr. Wegenast:

Q. What about the relation between abortion and contraception; to what extent would contraception do away with abortion?

A. Taussig, in his book, lists 10 and he says of those 10, the most important is contraception.

Q. By way of prevention of abortion?

A. Yes, by way of prevention of abortion.

Q. Tell us others, doctor, so we can form our judgment

ourselves?

A. On page 446, there is a very intensive study of the control of abortion:

> "(1) Intensive study of the underlying causes of spontaneous abortion and its prevention.
>
> (2) Better training of physicians in the prevention and treatment of abortion.
>
> (3) Better hospital facilities for abortion patients.
>
> (4) Improvement in home and working conditions for the pregnant mother.
>
> (5) Broader and more humane indications for medical interruption of pregnancy."

Q. What does that mean?

A. He admits our laws are archaic in relation to abortions.

Q. That is for His Worship to decide?

A. It is regarding abortions; I think they are.

> "(6) A change in our laws permitting medical intervention in place of the prevalent resort to personal manipulations, or to induction by a professional abortionist or midwife."

Q. You agree with Dr. DeHaitre there?

A. Yes.

Dr. Hutton

> "(7) Education of women concerning the dangers of abortion.
>
> (8) Improved economic and housing conditions among the poor to decrease the necessity for restoring (sic) to abortion.
>
> (9) Sterilization of those who for medical reasons should not have more children, or any children at all.
>
> (10) Widespread establishment of maternal clinics under medical control to teach women safe and harmless methods of contraception."

Q. Yes?

A. And if I might read some more on page 451. He sums up the role of contraception in the prevention of abortion and says this:

> "Of all the measures suggested for the control of abortion, none equals in importance the widespread establishment of clinics for contraceptive advice and provision for the free distribution of contraceptive materials among the poor. It is self-evident that by the prevention of the undesired or undesirable pregnancy, we can reduce the number of cases requiring abortion to a relatively small number.
>
> Concerning 'Abortion and Contraception,' a Committee on Maternal Welfare of the League of Nations has made the following impressive statement:"

Dr. Hutton

Q. We had that; I think?

A. I don't need to read that?

Q. Yes?

A. I will read the concluding paragraph.

> "No problem in preventive medicine gives greater promise of definite beneficial results. The medical profession must assume full responsibility for the appalling frequency of abortion and its high death-rate if it fails to attempt correction of these fundamental evils. For this reason, it is my hope that this work will not merely serve as a source of information upon the subject of abortion, but that it will stimulate my fellow practitioners to realize their diligation (sic) and opportunity of aiding in its control.

Q. Obligation and opportunity?

A. Yes.

Q. We will ask your opinion, doctor, as to whether the community and the world at large ought to wait for this information until the doctors have their obligations brought home to them. They are "inspired"; is that the word used there?

A. On page 451 or 452.

Q. "Stimulated," shall we wait until the doctors are sufficiently stimulated to take advantage of their opportunities; what do you say yourself and what does Taussig

Dr. Hutton

say?

A. I think the medical profession as a body is rightly conservative. They feel things have to be proved pretty well before they start accepting them, and the whole history of science shows that.

Pasteur's work was ridiculed when he said infectious diseases were caused by germs and a great many laughs went up from the medical profession and it took a great number of years to convince them.

Dr. Scott mentioned the same thing about anaesthetics.

Q. What about Dr. Jenner?

A. He was considered to be entirely off the track when he said vaccination prevented smallpox.

Q. Now, you have told us about those; what about the vaccination furor?

A. When vaccination was first mentioned –- I have in my possession a French medical work published a few years after Jenner announced vaccination for smallpox and this work illustrates a man who has been vaccinated growing horns and tails and cloven hooves.

Mr. Mercier: What about monkey glands?

To Mr. Wegenast:

Q. We have that to look forward to. Now, what do you say about the safe period?

A. I say it is not safe. I might elaborate on that. The physiology of the descent of the ovum from the ovary to the uterus has just been worked out in the last few years and going back 25 years, the opinion of the medical profession was that at the time of menstruation, the ovum came down at that time and the period during which it was safe for intercourse and children would not result was the menstruum. We know now it is towards the middle, but when you rely on it, you may be wrong.

Q. What would you say about Father O'Brien's statement, it was 99 per cent effective?

A. I would say it was 99 per cent wrong.

Q. Then we have had this from some other witnesses, but not from you, doctor. We want your opinion as to the value and reliability as to the writings and methods taught, let us say, 10 years ago, or more than 10 years ago?

A. The birth control movement, like other movements, has a lot of theories which time has swept away. There were birth control practices tried out by physicians hoping to find the ideal method and they ran into difficulties and those methods have been discarded today.

Q. I have reference: I would like you to make an observation, doctor, if you will, and I think you are competent to do so: from the medical standpoint as to the history of contraception and the present period in history of it. We have had it from Mr. Silcox. Now, you are a doctor; what is the authority on the history of the whole movement?

A. Himes' book on the history of contraception. I believe it has been referred to before.

The Court: It is in as an exhibit.

Mr. Wegenast: I think Your Worship ought to have that: "Himes' Medical History of Contraception".

To Mr. Wegenast:

Q. How far does Himes go back?

A. Thirty-five hundred (3500) years ago to show a lactic acid was used in Egypt as a contraceptive in those days.

The Court: It is Exhibit 93-B.

To Mr. Wegenast:

Q. What about more recently?

A. I would say this: after the Bradlaw trial in England, birth control started on its way. Its first effect was to attract the interest and study of a few –- a very few –- doctors.

The vast majority of the medical profession remained indifferent: it was just a new fad, nothing to be investigated or considered seriously.

Then, there was another small minority of doctors who had an emotional reaction to it, to birth control proposals, and considered it was a terrible thing, and from that emotional attitude of mind, they jumped to the conclusion from a medical standpoint, it must be something terrible and something to be

condemned.

Q. Even lawyers do that, doctor?

A. Yes. The birth control movement has been such that the literature is full of medical writers who have condemned birth control.

Now, when you condemn a subject which is under investigation by people of scientific minds, you can condemn it on some false ground and that will carry weight for a little time, but if the ground is false, it will be discovered.

When it is discovered, you cannot repeat those false assertions. That has happened in the past.

I will come down to this fact: I think Himes gives the history of it: about 1904 or 1909, there was a Lambeth Conference and at that Lambeth Conference, the subject of birth control was considered and on the evidence of certain doctors, they condemned birth control and refused to have anything to do with it.

Q. What was the evidence of those doctors?

A. That it was medically harmful –- all contraceptives were medically harmful –- that there was no safe methods and the church should have nothing to do with it.

Q. And so?

A. The church had nothing to do with it.

Q. And?

A. At the last Lambeth Conference in 1929 ---

Q. Nineteen thirty (1930)?

A. It came out and approved it and there was one man more than any other responsible. That was the health officer in England, Dr. Killick Millard. He did not say contraception was harmful. He did not believe the whole subject should be condemned because of some harmful methods -- methods found to be harmful, and he did not believe the medical men of England believed that and therefore that the first Lambeth Conference had been misled by medical evidence. And then he adopted the sampling method and he said, “I will write to a whole list of English physicians and it will be a fair sample,” and he did that and he got the replies and they are given by Himes at page 305.

I just say that the vast majority of doctors in England said that they believed in contraception and that the methods were generally harmless. Then he wrote to a selected group of medical men and that was a group of gynecologists -- and there was no group getter qualified to speak on the subject -- and he asked their opinion and asked them to name the methods they

considered safest and best and whether there were any harmful methods. The replies are given in Himes' book.

Q. If His Worship wants them, he can look at them?

A. He does not condemn all methods, but he does say the condom is harmless and the jelly is a harmless method and that the medical men believe that birth control information should be given according to those methods.

Q. What was the result?

A. Killick Millard approached the leaders of the English church and the Lambeth Conference of 1930 issued the report they did issue.

Q. Now, I think we better have from you, doctor, the different kinds of contraceptives, not necessarily to be read out here, but give His worship a reference to them.

The Court: Did not Dr. DeHaitre answer on one?

Mr. Wegenast: I don't think it is in as an exhibit; it is Dr. Rosenau on "Preventive Medicine".

The Court: Exhibit 94-B, page?

Mr. Wegenast: Five hundred (500).

The Witness:

A. This is the health officer's bible and I would like to have it back.

Mr. Wegenast: You will get it back.

The Court: We cannot tell how long the case will last, but eventually it will be returned.

To Mr. Wegenast:

Q. Go over it and tell which are the effective methods.

A. (No reply).

The Court: This case will go on for some time and there may be

appeals.

The Witness:

A. If I get it back sometime.

Q. All right?

A. Rosenau divides them into three classes.

Q. We have been through those; is there something new?

A. (No reply).

To Mr. Wegenast:

Q. On cross examination?

A. Number 1 is vaginal diaphragm with contraceptive jelly. That is the method Dr. Scott uses and is used in the birth control clinic in New York.

Q. That is headed?

A. "Methods of Contraception: I-Those found most practical and effective."

Q. Go over that list: I think you said the first one was recommended by Dr. Scott?

A. I had not got to the second. The second of Rosenau's —- No. 2, Cervical cap with contraceptive jelly. I might explain to the Court the cervix of the uterus projects a little into the vagina (illustration shown to the Court).

I would like to make an observation about that, sir: that this

method had a great deal to do in that English prosecution of Sutherland versus Stopes and Dr. Louise McIlroy linked that method up with one considered unsafe; the uterine stem, and condemned both methods. She linked up a safe method with an unsafe method.

Q. Do you think a court of justice could go wrong on that?

A. In my opinion the court did. And the third method recommended by Roosevelt (sic) was the same thing.

Q. Rosenau?

A. Yes, the condom sheath. Regarding that, I would like to make an observation. It is perfectly ridiculous to suggest that medical advice would be required on how to use the condom.

Q. Just a moment: it might be left lying around in the dust, as my learned friend ---

Mr. Mercier: I did not.

The Court: It was about the nozzle.

To Mr. Wegenast: And as to the antiseptic qualities, it is the same as the condom?

A. Yes.

Q. And if the method is the same by ordinary intercourse?

A. It is the same. If I might make another observation: that there is the tendency to think of the vagina as some extremely sensitive part of the human anatomy and a part of the anatomy which requires careful consideration. From the

Dr. Hutton

historological (sic) standpoint, the vagina and the human mouth are both lined with surasitcide (sic) squamous epithelium. Translating that into everyday English, it is air cells flat and laid one on top of the other and are like where you have a series of cement pavements one on top of the other.

Q. Like shingles?

A. Yes, that is a better illustration. The same considerations of danger of infection to the surface of the vagina is absolutely comparable in the mouth, like the toothbrush.

Q. Or an apple or grape?

A. Yes, or a knife or fork. There is no more danger in one than the other. If the housewife allows spoons to accumulate filth, it will cause infection in the mouth and if that nozzle is permitted to accumulate dirt, it will cause infection in the vagina, but to suggest any inherent danger in that nozzle is ridiculous.

Q. Would you go so far as to say, or suggest there is any inherent delicacy of the epithelium of the vagina as compared with the mouth?

A. No, they are tissues of the same character.

To the Court:

Q. Both are pretty tough parts of the body?

A. Yes.

Dr. Hutton

To Mr. Wegenast:

Q. And No. 4?

A. It is, “chemicals alone: suppositories, powders and jellies,” and that is the first list of things found most practical and effective and they include the exact methods Miss Palmer was advising for use.

Q. Now, take this formula in Exhibit 5: a contraceptive jelly consisting of lactic acid 2 per cent; boracic acid 10 per cent; glycerite of starch —- starch jelly soluble in water, 88 per cent?

A. In the first place, I would like to say regarding lactic acid, it is a very mild and gentle spermicide and that will be realized at once when it is known that lactic acid is the acid you find in sour milk. It makes milk go sour and no one would suggest drinking sour milk would make a mouth infection and just the same, the use of it in the vagina has no injurious effect.

Q. Three thousand years ago what did they derive it from?

A. From Acacia tips.

Q. I understand gum arabic entered into it?

A. Yes.

Q. There is a relation there?

A. Yes.

Q. What is the chemical principle?

A. Lactic acid is the spermicide.

Q. But the Acacia tips and the gum arabic?

A. Lactic acid.

Q. If I am correct about the formula, it is said to be 1 per cent and 4 per cent?

A. If 2 per cent, it would not be harmful either.

Q. Now, let us look at the formula in the pamphlet: “cocoa butter (best grade) ¼ lb., Borax 5 drams, Salicylic acid 1 dram, Quinine bi-sulphate, 1 ½ drams”.

A. It is harmless.

Q. Then we have a second group in Rosenau?

A. Yes, it is sometimes known as the Maxner group.

Q. Is he an authority?

A. Probably one of the greatest of the day on birth control.

Q. This second group?

A. Those found to be impractical for general use, uncertain and questionable: No. 1 is abstinence. No. 2 is coitus interruptus (withdrawal alone). No. 3 is coitus reservatus. No. 4 is douching or lathering alone. No. 5 is lactation. No. 6 is foam tablets and No. 7 is stems (cervical and intrauterine).

Q. I do not think you need to go through them. Would you say to His Worship where he can find a discussion on coitus interruptus and coitus reservatus?

A. It is on page 508, sir.

Q. Now, we have douching or lathering alone; let us have your opinion about douching, whether there is any danger in introducing a douche nozzle into the vagina?

A. I think not.

Q. What are these foam tablets spoken of there?

A. They are foam tablets containing carbon dioxide and make something like soap suds in front of the cervix and so deny entrance to the sperm.

Q. Any oil or fatty substance there?

A. It is beginning to be considered; it is not so much the lactic acid, but the jelly itself.

Q. That forms a barrier?

A. Yes, of the sperm into the cervix.

Q. And water?

A. Water itself is probably the best spermicide we know. Once introduced into water, sperm dies. They cannot live unless they are in the secretion of the vaginal membranes. Water is a spermicide.

Q. How od you distinguish between an antiseptic and a

spermicide?

A. A spermicide kills sperm and a germicide is a protoplasmic poison. A spermicide kills sperm only, but a germicide kills all protoplasmic cells.

Q. Would a spermicide kill other bugs?

A. No, if there were bacteria there, they would be unaffected by the spermicide.

Q. And we have a third group?

A. Those needing further experimental and developmental research before being prescribed for general use; Dr. Scott condemned them and I agree.

Q. Yes?

A. No. 1, intrauterine silver rings or silkworm gut.

Q. Yes?

A. Then No. 2, the safe period; it is condemned.

Q. Yes?

A. No. 3, hormones which are internal secretions which float in the blood.

Q. Yes, the next?

A. No. 4, spermatoxins, which would result in killing the sperm.

Q. Yes?

A. No. 5, irradiation to ovary or uterus, to testicle; that is the X-ray.

Q. Yes?

A. And finally, No. 6, reversible operations.

Q. Now, I would like you to tell His Worship who among the authorities is the last word, first on the technique of contraception?

A. There isn't any doubt, Dr. R.L. Dickinson, who is the greatest authority on birth control, and almost on a level with him is Dr. James Cooper. I have both pamphlets.

To the Court:

Q. Isn't there something in by Dickinson already?

A. I think we have referred to it.

To Mr. Wegenast:

Q. I am quite sure we have referred to Dickinson. Now, what are the editions? Cooper's is 1928 and Dickinson is 1931, reprinted in 1932?

A. Yes.

The Court: Do you wish to put them both in?

Mr. Wegenast: Yes.

The Court: Exhibit 95-B: "Technique of Contraception," by James F. Cooper, M.D. Exhibit 96-B: "Control of Conception," by Dickinson and Bryant.

To Mr. Wegenast:

Dr. Hutton

Q. Now, you might as well, if you are talking about Dickinson, give what you regard as the indications of the necessity for birth control if that is the way you would say it?

A. Indications for the use of contraceptives.

Q. But this word "indications" puzzles me?

A. That is the way we put it.

Q. "Indications" means something showing the need of it?

A. Yes.

Q. Very well, will you be good enough to tell us what are the symptoms or indications for contraception?

A. I have a little difficulty answering that for this reason; I feel that is something that should be answered by a gynecologist and I think I can speak with the greatest authority as a public health officer and ---

Q. From that standpoint?

A. From that standpoint as to the need of spacing. On those grounds alone, I believe in the widespread dissemination of this knowledge.

Q. How widespread?

A. Absolutely, I think every woman is entitled to this information. I think she should be taught and educated in the necessity of her spacing her children in the interest of her own health and the interest of the child.

Q. Then I thought you would start with the medical side; you heard what Dr. Scott said?

Dr. Hutton

A. Yes, of course I agree with what he said. I recognize him as an authority on that and I agree with what he said.

Q. And on the point of public health and municipal health, on those lines you can qualify?

A. I think so.

Q. What you have said has no reference to economics when you speak of spacing?

A. No.

Q. As a medical health officer, what would you say as to the economic side of the matter?

A. I would say this about the economic side; it is intimately related to public health and the bearing of more children than parents can support is, in my opinion, comparable to the glutton who overeats. It is also a glutton who produces more children than he can give a fair show to in this world.

Q. That brings us to this, perhaps; between the two, husband and wife, who in your opinion should have the last word as to whether children should be brought into the world or not?

A. The wife, absolutely.

Q. Why do you say that?

A. She is the one who must bear the child.

Q. We come to this; my learned friend has suggested the wife taking it into her head to use contraceptives without consulting the husband?

A. I think the friction that results in a household when the husband wants and the wife does not want would be a more

tremendous friction that that caused by the wife when she says, “I desire to use contraceptives,” and the husband who says, “I don’t want you to use them”.

I would set one off against the other and would say one is better than the other.

Q. Now, you have heard what Dr. Scott said about the probability or improbability of any of these means of contraception causing disease. I suppose you would defer to Dr. Scott in what he said, but I am coming now to your own experience.

Have you anything that did not check up with what Dr. Scott said?

A. No, the three dangers which medical men have investigated and which I have personally investigated have been the dangers of sterility, cancer and infection.

Those are the obvious dangers and anybody who wants to conduct a birth control clinic, as I do in Brantford, has to satisfy himself as to the facts, if any, as to those three claims.

Q. What have you found?

A. Nothing to it. It does not cause sterility.

You will find assertions it does cause sterility. This is what happens; you have a sterile man or woman and they adopt contraceptive practices. Later on, they decide now is the time to have a child and they throw away their protective measures, and they jump to the conclusion and doctors jump to the conclusion that sterility is caused by contraceptives. It shows a prostitution of human reasoning and to show contraceptives

cause sterilization, it would have to be done and it never has been done.

Q. How?

A. By taking a large group practicing contraceptives and another large group not practicing contraceptives and you would have to find whether one group is more sterile than the other and if you found the group using contraceptives were more sterile than the others, that would not prove it and you would have to investigate it further. No such work has ever been done.

Q. You have made some studies along that line and I want you to tell His Worship the result of those studies?

A. The tendency of human fertility?

Q. The tendency of fertility among different classes of humans?

A. Yes.

Q. Will you take the reins and tell His worship what you have worked out?

A. In 1933, Your Worship, I made a study of 3348 married people listed in Green's "Who's Who" for 1931.

To the Court:

Q. For?

A. Green's "Who's Who" for Canada, 1931.

Q. For all Canada?

A. Yes, for all Canada.

To Mr. Wegenast:

Q. You started with "Who's Who" in Canada?

A. Yes, and I found married people in "Who's Who" had on an average 2.42 children per family. Then I approached the students of Western University and 320 of them filled out my questionnaire and I found those students came from families who had 3.41 children per family. Then I approached Mount Allison University in Sackville, New Brunswick, and Professor Roy

Fraser conducted this, and 221 students gave the average number of children in their families as 3.5.

Through the cooperation of Dr. Overholt of the Collegiate Institute in Brantford, there are 1,066 families sending a pupil there and I studied them and I found they had on an average 3.7 children per family.

Then Mr. Fetterley, now dead, at that time superintendent of the school for the deaf at Belleville, they had 352 children whose families averaged 4.37 children.

Then we took into account a thousand patients who had attended mental health clinics throughout Ontario. We found they had 4.44 children per family.

Then we took the school for the blind at Brantford; -- Dr. Lass was superintendent – they had 115 pupils and they came from families which had 5.1 children per family.

Then through the cooperation of the provincial government, I studied the size of families of 1,000 patients at the Ontario Hospital for the Feeble-Minded in Orillia and they had on the average 4.4 living children per family.

Dr. Hutton

To the Court:

Q. These are all living children?

A. Yes, except "Who's Who" because there is no possibility of making an investigation there. That is all included in that particular study, but before this was printed or just after, but too late to be included, I completed another study which I think would be interesting in view of what is to follow.

To Mr. Wegenast:

Q. Yes?

A. I looked around and said, "where will I find the finest physical set of men or people in Canada? Where can I find a group that are rigorously selected for intelligence," and I decided I should find such a body in the Toronto Police Force.

So with the assistance of Brigadier General Draper, I sent a questionnaire to all those policemen as to how many children they had and what their age was so as to see if they had completed their age of sterility and the average age of the Toronto police in 1933 was 39.7 and the average number of children per family was 2.07.

That is typical of Canada and all the western civilization; that wherever you have selected a group either for intelligence or physical fitness, there you find the tendency is for them to produce less and less children.

Q. Fewer than those who are not so selected?

A. That is correct.

Q. Now, we have another study?

Dr. Hutton

A. For the last six or seven months at the request of the Board of Health of the City of Brantford, I have been making a very exhaustive study into the relation between relief and socially inadequate families in Brantford.

Q. What do you mean by socially inadequate families?

A. In order to determine the socially inadequate families in Brantford, I called a meeting of the police, Children's Aid, school inspectors, nurses and all organizations engaged in social welfare work in Brantford and I said, "I want the names of all families you know of in Brantford who under normal circumstances and in good times –- no relation to the depression at all, who were socially inadequate". What I mean is that they were unable to achieve a standard of living achieved by the ordinary working man in Brantford.

I got a whole list of names and started investigating those families. As a result of that investigation –- it was of course in relation to the relief problem. Probably the most notorious socially inadequate family in Brantford ---

Q. You are not giving any names?

A. Oh no, but this publication here contains that particular family, and that particular family group of grandfather, three married daughters and all their children in six years cost Brantford $10,680.

Q. Put that in, and perhaps His Worship wants some explanation of it. I suggest if that goes into the record, anything giving identity to the family should be omitted.

A. There is no clue.

Dr. Hutton

To the Court:

Q. That is a fictitious name?

A. Yes, it is not the name at all, but everybody in Brantford knows.

To Mr. Wegenast:

Q. Do you vouch for the correctness of that?

A. Yes.

The Court: That will take a bit of study. It will be Exhibit 97-B.

Mr. Wegenast: One of the points of the influence of heredity.

The Court: It is a brief for the sterilization of the feeble-minded.

Mr. Wegenast: But we are only referring to the graph in the middle of the pamphlet.

To the Court:

Q. Are there any particulars you would like to call my attention to?

A. The I.Q.'s have been obtained through the mental health clinic and it shows without exception all these children tested were feeble-minded and from this one grandfather, we had 23 children through those three feeble-minded daughters.

To Mr. Wegenast:

Q. He is a male moron?

A. Yes, and the size of the family and its relation to

relief.

Q. That is a natural condition found in Brantford?

A. Yes.

Q. Well now then, have you anything else to tie that up with?

A. Yes, I certainly have. There is just one more observation about that study we are making. That list boiled itself down to 50 socially inadequate families on relief for study purposes.

Q. Yes?

A. They have 254 living children at the present time, which gives an average of 5 to the family. I went back to Brantford over the weekend and found on my desk there had just arrived from England, the Eugenics Review, just arrived from England, for October, 1936.

Q. Yes?

A. I find a most pregnant article by Raymond B. Cattell.

Q. What is the heading?

A. "Is National Intelligence Declining?"

Q. Yes?

A. This is a study on the relation between intelligence and the size of the family.

I like that approach to the question because where you approach it from the side of occupational classes, there is an emotional bias, but that emotional bias is dissipated when it is

approached from the viewpoint of intelligence and size of family.

Q. Doctor, do you assume all of us know what I.Q.'s are?

A. I will come to that. Raymond B. Cattell, Master of Arts, Bachelor of Science, Doctor of Physiology, Leonard Darwin Research Fellow, one of the recognized psychologists of Great Britain ---

Q. Psychology is his line?

A. Yes, psychology is his line. And he decided the best sort of sample he could take was a city and he took the City of Leicester with over 200,000 people, and he took all the children over 10 years of age that he found in school; he got the cooperation of the educational authorities and he put them through these psychology tests to determine their intelligence quotient. He found what you would expect; that some of the children were extremely low, some a little higher, some of them were dull-norms. The majority were normal and a few of them were of a very high grade of intelligence as shown by the intelligence test. There is a diagram which shows.

Q. On page 184?

A. (No reply).

To the Court:

Q. Not all psychologists are agreed as to the value of psychology tests?

A. I will come to that in a few minutes. This is a chart of what he found. This is the I.Q.'s and the feeble-minded are below 70.

Dr. Hutton

Q. One hundred (100) being normal?

A. Yes, and the vast majority come between 90 and 100 which is normal. Now, having got that information, Cattell then went backwards and said, "We will find out the size of the families from which each of those groups comes". This is the result of that.

To Mr. Wegenast:

Q. What page?

A. (No reply).

The Court: Exhibit 98-B, page 184, I.Q. chart and page 187, age chart.

The Witness:

A. And as expected, that shows high I.Q.'s for the fewest children and as we get into the low I.Q.'s below 80, you commence to have your large families.

To Mr. Wegenast:

Q. That is the same as what I said a moment ago about the poor having the largest families? Should that be revised?

A. Absolutely.

Q. It should not differ with respect to Brantford?

A. No.

Q. It is not the poor; it is the ignorant that have large families?

A. There is low intelligence to consider in large families. That is the tendency. That is not to say most intelligent

people do not come from large families, but the tendency is for people of low intelligence to have large families and that has been proven to my satisfaction in this study.

These intelligence tests are valuable and should be recognized. I would like to speak to that question.

Q. What can you say about the reliability of these intelligence tests?

A. (No reply).

To the Court:

Q. Are you a psychologist?

A. No, I am not a psychologist; I must rely on what Cattell says on page 189 (Exhibit 98-B).

Here is what Cattell says -- first, from my experience as M.H.O., I can give my knowledge of the reliability of intelligence tests because to my knowledge before I can get a patient admitted to a mental hospital, I must have this I.Q.

To Mr. Wegenast:

Q. That has government recognition?

A. Yes, so I submit what Cattell says:

> "I take at random, from my card index, Arthur J., tested at 8 years of age by my predecessor in office, and found to have an I.Q. of 65. He was sent to a special school, and is now about to leave at 15 years of age. His I.Q., recently measured, without awareness on my part of the previous result, was 67."

He goes on with examples of that. Years ago, a test was taken

and now it has been taken again and it is the same.

In Alex. Carrol's recent book, "Man The Unknown," he makes the most profound observation I have known regarding these intelligence tests; if you are about to chose a manager for a big firm and you rely on intelligence tests, they will fail you, but if you want a janitor for the same concern, you will find the tests are reliable. In other words, I believe the tests are reliable on the low grades and I have not much faith in them when you get into the normal group of people.

I think that is probably enough on that line.

To the Court:

Q. You are not a psychologist? These intelligence tests lay too much stress on memory and concentration?

A. May I refer to Swisher, who was considered the greatest authority. She lists 300 tests; many of them discarded, but we know today tests are used to test pure intelligence which might be called natural wit, but psychologists now believe they have tests which are reliable and they are non-verbal, but questions of natural wit.

I submit again on page 190 of this (Exhibit 98-B) a further table and that table shows that the intelligence of the child is closely related to the intelligence of the parent.

In concluding, Cattell presents the relation between the size of the family and intelligence and then he shows from the collected data that the size of families among the most intelligent are going down and there is a definite decline in the national intelligence taking place in Great Britain.

Dr. Hutton

He says –- and I agree with that opinion –- if that decline is to be halted, there must be wide-spread birth control information to those classes of society as yet unaware of the movement.

Q. That is another question which is very wide. Some might argue motor cars and movies are the cause of that?

A. But he shows in every part of the result where the size of the family is reduced, there is a higher grade of intelligence.

To Mr. Wegenast:

Q. What do you say as to His Worship's suggestion as to the effect of the auto and moving picture show? We want to get to the bottom of this if we can.

A. On the question of fertility?

Q. Yes?

The Court: The decline of national intelligence.

To Mr. Wegenast:

Q. I come to that?

A. There is the whole trend of civilization, the desire behind the motor car, and there you are; it is the striving for material comfort. Of course that is leading to the restriction of births among the higher intelligence.

Q. I don't know if that is what is in the mind of His Worship.

The Court: No, I just said some people argue that people spend

time and pleasure on the motor car and movies rather than training the mind.

Mr. Wegenast: The question is, has that anything to do with the I.Q.?

The Court: It might be a factor.

To Mr. Wegenast:

Q. What would you say as to the effect on the I.Q. of succeeding generations; does heredity and training get in its work or do training and education overtake them?

A. Heredity is the fundamental basis.

To the Court:

Q. That again is a stamping ground for the psychologist as to the relative values of heredity and environment?

A. Many psychologists will agree you cannot alter the intelligent quotient by education and environment by more than a few points of the I.Q. I have read many and have found many who say that education and environment will not greatly affect the intelligence quotient.

Q. Doctor, you have a great example of that on that island?

A. Pitcairn Island.

Q. I think His Worship would find that very interesting; –- here we are –- it is general and not intended to prove anything, least of all our case. It is a general discussion on heredity.

Mr. Mercier: If the defence brings in any more material to help their case ---

The Court: We are getting a complete college education in this case as it is.

Mr. Mercier: I don't want to hold out anything on that point or on anything else.

The Witness:

A. I would like to point out in this latest study, “Dynamics of Population” by Frank Lorimer and Frederic Osborn; -- they are recognized authorities on the subject in the United States –- they arrived at the same conclusion from an entirely different study.

To Mr. Wegenast:

Q. What is their angle?

A. An intellectual study of school children from different occupational classes. And here again it is a question of the I.Q.

> “The three largest surveys that have been made in this country of the intelligence of elementary school children classified according to the occupation of the father are: the Madison (Wisconsin) survey by Dexter, the Ohio city survey by Collins, and the New York village survey by Haggerty and Nash.”

The last is the important one; it has never been disputed by psychologists. In this study, he studied 6,688 children and the I.Q. of the professional group was 116; business and clerical 107; of the skilled and semi-skilled wage earner 97, and of the unskilled wage earner 91.

To the Court:

Dr. Hutton

Q. Exhibit 99-B: Dynamics of Population by Frank Lorimer and Frederick Osborn?

A. And again on page 190, here is a study showing that the differential reproduction of occupational class is lowering the general intelligence of the people of the United States. If I could make that clear, I will repeat: this is what Lorimer does; he repeats the I.Q. table of occupational classes by Haggerty and Nash and applies it to the first generation. That is absolutely the number of births attributed to fathers in occupational classes by the birth statistics.

On this page 190, the conclusion is that differential fertility is leading to a lowering of the national intelligence of the United States at the rate of -0.89 per I.Q. per generation.

Now, sir, all of this may seem unrelated, but it is not unrelated to the subject before this Court and furthermore, the implications from these two studies are so great in their importance that I think with Cattell that the governments of the countries should investigate these facts to find out if these things are true because all these studies indicate a gradual decline in the average heredity capacity for intellectual development such as is taking place in our civilization.

To Mr. Wegenast:

Q. Doctor, if I am not interrupting you, how does this particular period of ours compare with the past?

A. The question has been made that we always had these different fertility rates. Hardly any sociologist will disagree with what I have said and furthermore, it can be proved from

Dr. Hutton

another angle that this differential fertility situation is the outgrowth of something that did not exist in the past.

We are living in the days of a biological revolution. We are also living in the days of an economic revolution. Both go back to the same cause, the industrial revolution which started about the time of Watts.

Previous to that time, and as far as we know, for all previous history, four-fifths of the people of all the civilized countries lived in the country. Most of them lived as peasants; they lived on that level and their fertility rates were high. They had to be high.

In the 14th century, one-quarter of the population was wiped out by the Black Death —- 25,000,000 people died —- only by high fertility could the race have survived.

Then we have the industrial revolution and what has happened today is that people are flocking from the country to the cities until people today in western civilization —- the majority of civilized people live in the cities.

That is true in Canada. It is due to various factors; I believe it is due to striving for comfort; it tends towards sterility and it has become a most momentous factor in modern civilization. If that tendency is allowed to continue, it can only result in a degradation of national intelligence.

I am not submitting any new statistics, but on page 19 of "Dynamics of Population," you will find that chart. I have had it enlarged.

Q. Show His Worship how that works out?

Dr. Hutton

A. It is arithmetical; it does not apply to any given set of circumstances. But there are the facts: some people are increasing at the rate of 25 per cent per generation; others are just maintaining themselves. You can pick them out among your friends and mine. Other sections are decreasing at the rate of 23 per cent per generation and if we as a group are to carry on, we must have 3.2 children —- as it is we are decreasing. Now there are one-quarter of the people increasing, one-quarter maintaining their present number and one-half are decreasing. At the end of a century, conditions are such that the size of the population will be the same as the population at the beginning, but your distribution of people who composed the original population has entirely changed: the 25 per cent has become 50 per cent and 50 per cent has become 21 per cent. It is an exact reproduction of page 190 of Dynamics of Population.

How does that link up with the birth control movement?

Q. I want you to develop that and I want you to deal with this biological crisis and see if you can support that by any other authorities?

A. This is a biological crisis. Black, in his book "Birth Control and Civilization," refers to the biological crisis which is going on today. He says on page 77, "human…ethical unification".

Q. What do you understand by that?

A. There is not the sense of the common brotherhood of man; yet, our faith is bound up one in the other.

Q. And we have different ideas of birth control?

Dr. Hutton

A. And if we allow people with the lowest intelligence to outbreed us, it will.

Q. Read the rest of that paragraph?

A. "…biological…" Birth control is not only an economical necessity, but it is biologically necessary and birth control is common among all the higher classes of society and that can only lead to this general lowering of average intelligence unless we give the same information to the other classes.

Now I know, sir –- probably Mr. Mercier will bring it out.

The Court: Adjourned for five minutes

(Upon the Court being resumed)

CROSS EXAMINATION

To Mr. Mercier:

Q. Doctor, I had expected to relieve you very quickly on the medical point of view, but a much larger scope has been taken and much to my regret. I suppose we will have to go ahead for a little while.

You gave some statistics on abortions; am I correct in stating the municipal council of the City of Brantford thought it would be a good thing for you to come and give evidence on the situation in Eastview?

A. No, that is not a correct statement.

Q. Correct it?

A. It would be correct to state the Board of Health instructed me to come down and give evidence for Miss Palmer.

Dr. Hutton

To the Court:

Q. The Board of Health?

A. Yes, the Board of Health.

To Mr. Mercier:

Q. Now, you have 25 years of experience as a medical practitioner?

A. Yes.

Q. And you are a confirmed birth control advocate?

A. Yes, I believe in it.

Q. And in order to shorten a long list of questions, do you believe everything Miss Palmer did in Eastview is absolutely correct?

A. I do.

Q. And in no way could anything wrong have been done, and the public good was served, and there was no excess?

A. Right.

Q. That is very categorical and there is no necessity of cross examining you on that?

A. Yes.

Q. You have given certain figures from Taussig on abortions?

A. Yes.

Q. Have you the proportions of those figures –- that was in New York?

A. Yes, those figures have been adopted for Canada by the publication of the Child Welfare Council, “Need Our Mothers Die” and they make the statement that the proportion of abortions is at that rate and they do that on the work of Taussig.

Mr. Wegenast: Is that in, Your Worship?

The Court: Yes.

The Witness:

A. It is page 43 of “Need Our Mothers Die”.

To Mr. Mercier:

Q. Is there any proportion in the figures to show married women and unmarried women?

A. In Taussig?

Q. Anywhere?

A. May I see Marie Kopp's book?

The Court: The question was Taussig.

To Mr. Mercier:

Q. Anywhere?

A. You mean married or unmarried, comparing the two?

Q. Yes.

A. I have no authority; all these are married women attending birth control clinics.

Q. Ten thousand (10,000) in five years?

The Court: In 10 years.

The Witness:

A. No, five years, 1925 to 1929.

To Mr. Mercier:

Q. You have no figures as to the number of abortions of married and unmarried women?

A. No.

Q. And all these people were frequenting birth control clinics?

A. Yes.

Q. And you have no figures as to the number of abortions in Eastview?

A. No.

Q. Or the proportions of abortions in Eastview compared to births?

A. No.

Q. I see that Taussig also states:

> "Widespread establishment of maternal health clinics under medical control to teach women safe and harmless methods of contraception."

He is in favour of medical control?

A. It is not a book for public consumption; it is for the medical profession and he is trying to arouse the medical profession to the seriousness of contraception.

Q. As a matter of fact, the majority of doctors do advise

clinics for contraceptives under medical supervision?

A. Yes, because the best method is the douche pessary and jelly and the pessary must be fitted by a medical man and that does not say there are not other good methods which do not require technical instructions, and Miss Palmer was in that position.

Q. That does not prevent the doctors in these books advising medically controlled clinics?

A. They can advise what they wish.

Q. Is excessive sexual intercourse injurious to the health, doctor?

A. No.

Q. It is not?

A. No.

Q. Never?

A. I would not say never; some of the strongest and healthiest men I know of have been addicted to excess.

Q. Some especially strong men?

A. Yes.

Q. In the majority of cases?

A. It is a self-limited thing.

Q. For those who wish to impose self-limitation?

A. No, there is a natural limitation. I don't think it is harmful.

Dr. Hutton

Q. Don't you think the use of contraceptives might be an incentive to excess?

A. No, taking the sum total, it will not alter that.

Q. Did you hear of the conference of doctors in Holland?

A. No, I did not.

Q. Now, the dangers that could be avoided were the ones; sterility, cancer and infections?

A. Yes.

Q. One must satisfy himself that there is any danger?

A. Medical men must, yes, before they can advocate it and because I do not think there is any danger, I do advocate it.

Q. No test has been made yet of sterility?

A. Yes.

Q. And one would have to take a group of men and women using contraceptives and test them for sterilization?

A. I wouldn't say that would prove it.

Q. It might indicate something?

A. Yes, but maybe not prove it.

Q. Don't you think you are taking a chance: there is the danger of sterility –- that those tests should be conducted before advocating these methods?

A. I don't think it would; I only brought it up because others raised it as an objection.

Q. You stated large families are the result of ignorance?

A. No, I know many intelligent people with large families. Often it is the result of the fact the wife is extremely fertile.

Q. Would you say in the majority of cases large families are the result of ignorance?

A. No.

Q. What did you say about ignorance?

A. I said the tendency is there.

Q. In what proportion?

A. I can't give any proportion.

Q. Yet some very intelligent people fall in line with the ignorant people?

A. Yes, excessive fertility in one or the other or where one of (sic) the other is uncontrollable.

Q. You stated some tests were made in 1936. Do you know of an experience (sic) held in Yale University in 1927?

A. An experiment made there?

Q. Yes, 1700 students graduated from 1922 to 1926 and an experiment was conducted on them. Do you know of that?

A. I might.

Q. The conclusion was that a numerous family was really a factor of success?

A. Yes.

Q. Because the unique child was unquestionably the most

unfit in arts, sports and other activities and the successful child came from large families.

That is a study on 1700 students?

A. I am not in favour of the one-child family.

Q. Taking that experiment on 1700 and the conclusion that children of numerous families showed greater success ---

A. I would be very glad to study such a report if I had it.

Q. It is in the New York Herald Tribune, November 28th, 1927.

Mr. Wegenast: Could we have a copy?

Mr. Mercier: I have only a citation; it is hypothetical.

Mr. Wegenast: I do not think my learned friend has really put it into the hands of the witness or mentioned an authority.

The Court: The witness says he is not familiar with it and he asks for further facts.

To Mr. Mercier:

Q. Do you know of a Doctor Brownlee?

A. Where from?

Q. I do not know; you do not know that name?

A. No.

Q. Would you bear with me if I give you an example that the unique child has been the cause of the opening of clinics?

A. (No reply).

The Court: You mean one child?

A. Yes, one child.

The Witness:

A. In all large families ---

To Mr. Mercier:

Q. And a child's intelligence is relative to the intelligence of his father?

A. Yes.

Q. Therefore, if he is the son of a large family, would you admit that in the majority of large families, the father is ignorant?

A. No, there is a relation between the size of families and intelligence and taking it as a whole in this particular city without an emotional bias, the fact was that the fathers of large families had a lower intelligence than the fathers of small families. That was shown by the studies.

Q. In that place?

A. Yes, but I do think that study should be repeated by governments in every country and by the government in Canada and if we find it true, it is an important fact —- one of the most important that could be placed before governments.

Q. About where there is only one child in the family?

A. Very often there is not the proper atmosphere for that child. Take for instance the majority of people with only one child; the parents would be going out often and the child might not receive the home atmosphere.

I think birth promotion should be practised on families with one

child instead of birth control.

Q. Do you know Holmes of the University of California?

A. Yes, very well.

Q. And he is one of the legions who oppose birth control?

A. I can't say as to that.

Q. I will file this: "The Eugenic Predicament" by S.J. Holmes in 1933. Therefore, it is after 1926?

A. (No reply).

The Court: Exhibit 100-B

Mr. Wegenast: Might I see it now, or does Your Worship want it?

Mr. Mercier: I want it now.

To Mr. Mercier:

Q. I may be wrong, but here is what he says on page 161:

> "The birth control movement was primarily inspired by the humanitarian motives of mitigating poverty and relieving overworked mothers from the burdens of frequent childbearing. These are obviously worthy aims, but as

matters worked out, the limitation of offspring came to be practiced not so much where it would do the most good, but among the more educated and well-to-do. Whatever may be said for birth control on humanitarian grounds, it must be conceded that, up to now, its influence has been chiefly dysgenic. It is quite evidence (sic) that birth control has great possibilities as a means of racial improvement, but, as Mr. Wiggam has remarked, it is a

two-edged sword. Is it likely that this powerful instrument will come to be used so as to promote the progressive development of human kind?

The proponents of birth control explain that it is one of their chief objects (sic) to extend the blessings of family limitation among the lower social and economic classes where it is most needed, and thus to correct the evils of the differential birth rate. It is certainly true that the practice of contraception has filtered downward through the ranks of society, and this movement has been considerably accelerated in certain parts of Europe since the World War. Edin finds that among the industrial workers of the City of Stockholm, the birth rate is lower than it is among the bourgeoisie. According to Grotjahn, in the City of Bremen, which is one of the few cities of Germany in which births are tabulated for occupational groups, there has been a relatively greater decline in the birth rate in the laboring population than in the wealthy and middle classes, so that the differences are not nearly so great as they were a generation ago. It would be of much interest to learn how far the same phenomenon is characteristic of other cities, both in Germany and elsewhere. So far as evidence is at present available, there is not sufficient ground for concluding that the condition is very widespread. Where the birth rates of the different social classes have been nearly equalized, the total birth rate has fallen below what is required to perpetuate a stabilized population. If this condition were to

continue, all classes would eventually become extinct together.

There is more or less danger that the practice of contraception among the proletariat will be employed most by those who are the most intelligent and enterprising, and that this class will lose more of the fine hereditary stock that it still contains. What we want to get rid of most of all is the miserable social problem group, which is a fertile source of so much of our human wreckage and failure."

Although the majority of his book agrees with birth control, he speaks of its bad results?

A. Yes, I want to agree with you; it states the position in

the best form possible.

Q. What I would like to get at, at this point, is that

there is a danger in birth control of causing a certain

instability in the population?

A. I want to reply to that in this way, Mr. Mercier: first, I was opposed to birth control and opposed to it for just the reason stated by S.J. Holmes there, that the tendency was for the most intelligent elements of every class to get hold of birth control and use it and leave the least intelligent to outbreed them and I was opposed to birth control because of that dysgenic tendency.

Now, the position I take today is this: that we have first reality, and the reality is that the most intelligent members of the community are using birth control and you cannot stop them because the appeal to human selfishness or human desire for the

Dr. Hutton

bright life is so tremendous -– you cannot stop it.

Now, where that goes on as it is going on now, it spells disaster and that is the eugenic predicament and I see no way out unless you take the entire public into our confidence and spread birth control so that all may take part.

Q. And when the lower classes take the same advantage as the higher classes?

A. The possibilities of human reproduction are so tremendous, you need not worry.

Q. That is your answer?

A. Yes. A brake is needed on it.

Q. Do you not think those of higher intelligence might stick to their ideas and those of lower intelligence learning the idea might not replenish the population?

A. I have no fear of replenishing the next generation. Human power can be too unleashed; it needs to be held in check sometime.

Q. I have here a book of John Rathbone Oliver?

A. Who is he?

Q. M.D., Ph.D.; Associate in the History of Medicine at the Johns Hopkins University, Baltimore; Author of “Foursquare,” “Victim and Victor,” and “Four”?

A. He is an authority on medical history.

Q. Do you recognize him as a psychiatrist -– this is what this book says; it is published by Charles Scribner's Sons -– I

Dr. Hutton

put it in as a book, Exhibit 101-B; it is Pastoral Psychiatry and Mental Health?

A. He is an authority on medical history.

Mr. Wegenast: Does he recognize it as an authority?

Mr. Beament: On medical history.

Mr. Mercier: If I am going to be curtailed for three or four books after my learned friends have put in so many.

Mr. Beament: My learned friend cannot put in a book on plumping with regard to something else.

The Court: He does not recognize him except as an authority on medical history. Is there any medical history in that book?

Mr. Mercier: It gives the mental health view.

The Court: This witness does not apparently recognize the author as an authority on birth control and mental health.

Mr. Mercier: Did not Your Worship rule that the history of medicine has something to do with medical science?

The Court: It is the history of the development of medical science.

Mr. Mercier: My learned friend claimed all along in the trial that birth control was part of medical science and history.

The Court: The witness recognizes that author as an authority on medial history. Now, should you read any opinion of that author on mental cases or birth control, this witness does not recognize it as an authority, so where is the value of the book?

To Mr. Mercier:

Dr. Hutton

Q. Do you believe birth control in its present stage is one of the latest developments of medical history?

A. I think more so in sociological history.

Q. Not medically?

A. Oh yes, but mainly sociological.

Q. It is medical history?

A. Yes, it goes back to the Pharaohs.

The Court: If the witness goes that far, there may be history on the subject.

Mr. Wegenast: On that point, I would like to present the book.

Mr. Mercier: I have been giving every latitude and I expected a little in return.

Mr. Wegenast: I don't like my learned friend to say that.

The Court: I think he could have objected a great deal more if he saw fit.

Mr. Wegenast: He did not because it was not objectionable; I think I could have satisfied Your Worship on that.

Mr. Mercier: There have been passages read out of books.

Mr. Wegenast: The law as to the production of books and the examination of witnesses on them is perhaps best laid down in Alberta Court, five judges.

I have a copy for Your Worship and one for my learned friend. I do not want to labor the question at all. It is "Rex versus Anderson, judgment of Chief Justice Harvey," page 459: "I agree…stated by him."

Dr. Hutton

That is the position we are in. The witness says he will agree with counsel and take his word as to the authority of this man in the field of medical history, but when it comes to birth control, he says nothing.

Mr. Mercier: I see in reading this case I have been very wrong in permitting exhibits to go in.

The Court: We may have to strike out some of the exhibits.

Mr. Wegenast: A medical witness especially has been ---

The Court: I will admit this book as a medical history –- any of its contents.

Mr. Mercier: As related to any subject treated from an historical point of view.

Mr. Beament: Excerpts may be used.

The Court: Yes.

Mr. Mercier: Medical history includes every subject.

Mr. Wegenast: We have not a jury here and Your Worship's mind will not be poisoned by it and we do not wish to object, but it is better now to make our submissions and objections than later on.

To Mr. Mercier:

Q. At page 208:

> "It is the same thing with birth control. Those two words have come to have a meaning altogether different from the signification that was originally attached to them. To one woman, worn out by bearing too many children and afraid of another pregnancy, they mean

Dr. Hutton

> scientific 'contraceptive method'. But to thousands and tens of thousands of other men and women, to the everyday man in the street or the woman in the house, they mean something entirely different. They mean, the way to make promiscuous sex relationship easy. They mean, how to make fornication safe for everybody. Thanks to all this modern agitation about contraceptive methods, which in themselves are at least debatable, any young girl or young man can buy in the nearest drugstore a 'safe preparation' or instrument that will not 'control birth,' but that will make it possible for them to indulge their sexual desires in complete disregard for any physical consequences of an unpleasant kind. Thanks, partially at least, to the hesitating approval that our own Communion has extended --"

I believe that was first mentioned at the Lambeth Conference.

> "-- blessing birth control with the little finger of the left hand –- our country, although it may not have been made entirely safe for democracy, is rapidly being made safe for fornication."

What do you think of that aspect?

A. I have too high an opinion of the women of this country to think anything like that.

Q. It talks about the young people of the country?

A. I think it is terrible to label them with such a statement as that.

Dr. Hutton

Q. How about putting the means in front of them?

A. I have already said that if they are ignorant, teaching them does not make them more ignorant.

Q. You do not agree with this author?

A. No, I do not.

Mr. Wegenast: Is that in English?

Mr. Mercier: Yes. He is from the Johns Hopkins University at Baltimore. It is published by Charles Scribner's Sons, New York and London, 1932.

To Mr. Mercier:

Q. Further on he says:

> "Believe me, I do not overstate the case. In discussing the subject, you must not let yourself wander into loose definitions of your terms.
>
> Contraceptive methods are one thing. Every physician recognizes situations in which it is necessary to interrupt a pregnancy. But even he will not take upon himself to interrupt it without protecting himself be securing the opinion of reputable Bureaus of Contraceptive Advice. The women who go to such a bureau are in the hands of able obstetricians; they are carefully examined; they are protected from their own ignorance, and all the results of the advice given are carefully tabulated and published?"

A. I think that type of writing makes medical men steer off the subject and it links up abortion and all doctors think

abortion is something they will keep their hands out of. It is not a proper subject; it is something women should not do and to link that up with birth control is trying to tar birth control with the same brush abortion is tarred with.

Q. At page 210:

> "But birth control does not mean contraceptive clinics to the average man or woman today. It means, as I have already said, certain definite medicinal preparations, certain manufactured articles that are on sale openly in drugstores, and that are as openly advertised."

Mr. Wegenast: Perhaps now we know enough from what my learned friend has read; perhaps we can make the point that it is not medical evidence.

The Court: Let me see the first part you read.

Mr. Mercier: If that is not medical history, I will make proper objections too.

Mr. Beament: He makes a threat now when we make a point against the admission of this book.

The Court: It seems to me he makes a point on medical history:

> "It is the same thing with birth control. Those two words have come to have a meaning altogether different from the signification that was originally attached to them."

Mr. Wegenast: I take it that is the occasion of entering a diatribe that is anathematous, (sic) but not only does his word fail as an historian, but ---

The Court: The witness says he disagrees with it entirely.

Mr. Mercier: Is it being withdrawn?

The Court: No, it is Exhibit 101-B.

To Mr. Mercier:

Q. Do you agree with everything contained in Exhibit 5-B?

A. Yes.

Q. "Birth-Control and Some of its Simplest Methods"?

A. Yes.

Q. You believe that and those methods can be given to any woman at any time?

A. To any intelligent woman at any time.

Q. In whatever condition she may be?

A. I do not know what you have in mind. I think it is a valuable document and should be in the hands of women.

Q. Now, would you correct the first impression you gave me of "every intelligent woman"?

A. Of every woman who has enough intelligence to make use of it. If she hasn't the intelligence, there is no harm in her having it in her possession as she won't use it intelligently.

Q. What is the standard of intelligence required by women to use this intelligently?

A. I can't answer that.

Q. You have heard the evidence of several witnesses who testified here –- the women –- were they intelligent enough to

use it according to the evidence you heard?

A. Yes, I would say all the women who accepted the information were intelligent enough to use it, in my opinion. There were some who did not accept it.

Q. All those who did accept it were intelligent enough to use it?

A. Yes.

RE-DIRECT EXAMINATION

To Mr. Beament:

Q. Mr. Mercier read you a page from Mr. Oliver's book with which you disagreed and I think the essence of the passage was, "birth control rather than being placed in the hands of women entitled to limit the size of their families was too frequently placed in the hands of those not entitled."

Now is not Miss Palmer's work exactly what Dr. Oliver says should be done?

A. Yes.

Q. And are not drugstores doing what he says should not be done?

A. Yes.

To Mr. Mercier:

Q. And in that light, you agree with the author of that book?

A. Yes, sir, that much.

(The Witness retired)

Dr. Hutton

The Court: Adjourn. (4:20 p.m.)

Mr. Mercier: I have taken some of the pamphlets out of Exhibit 22-B to give to experts.

The Court: I will expect them back when I consider the evidence.

(The Court adjourned at 4:20, November 4th, 1936 to 10 a.m. next morning)

Mr. Wegenast

REX VS. PALMER

Dr. Batt

Pages J-109 to J-125

(The Court resumed at 10 a.m., 5th November, 1936)

DR. MARGARET FRANCES BATT, duly sworn, deposed.

To the Court:

Q. Your full name?

A. Margaret Frances Batt.

Q. Address?

A. Medical Arts Building, Toronto.

To Mr. Wegenast:

Q. Dr. Batt, you have a good deal of interest in Mr. Kaufman's clinic in Toronto?

A. I have.

Q. In what capacity?

A. I am medical director of the clinic.

Q. You are a regular medical doctor?

A. Yes, I am a graduate of medicine of the University of Toronto.

Q. Tell us something about the extent of your experience in connection with contraceptives?

A. Well, I have been medical director of the clinic for three years.

Q. How many cases have you handled?

A. About 6,000 through the clinic, and through my own hands, probably 2,000.

Q. With reference to the question whether a doctor is necessary in the administration of contraceptives, what do you say as to the necessity of the intervention of a doctor?

A. It depends entirely upon the contraceptive to be used.

Q. Rather than the woman?

A. Yes. The pessary, as has been explained previously, it is absolutely necessary for a woman to be measured and fitted.

Q. Yes?

A. As for the contraceptives shown here, the condom and jelly, an examination is not necessary. We do not insist on it in the clinic; we use the same method in the clinic.

Q. The same method as Miss Palmer used here?

A. Yes, the same method.

Q. In how many cases would you omit the examination?

A. I could not give any figures. From the public health point of view, we do a physical examination as a routine matter of the clinic, but we do not insist on it in this type of contraceptive.

Q. A woman comes into the clinic and can have an examination, and if she doesn't want to have an examination?

A. If she does not want an examination, we do not insist on it.

Q. That means she cannot have a pessary?

A. That means she cannot have a pessary, no.

Q. Now, we have stripped this fairly well and I don't

Dr. Batt

propose to ask you as medial witness the same questions as the others.

The Court: It is not necessary.

Mr. Wegenast: I must take my chances; perhaps my learned friend will bring something against us.

To Mr. Wegenast:

Q. But I do want your experience, doctor, with reference to this question: whether there is anything about these contraceptives, the three we have mentioned; pessary, condom and jelly, to induce cancer?

A. No, absolutely not.

Q. What about sterility?

A. In our experience in the clinic, we find if the patient omits to use the pessary just on one occasion, she becomes pregnant. We have patients coming quite frequently with the story that they run out of supplies and they become pregnant and they come back after the baby is born —- they come back for supplies.

In the poorer classes, they haven't carfare frequently to come and get supplies.

Q. And there is another baby?

A. Yes, that is why we use workers like Miss Palmer.

Q. You have them in Toronto?

A. Yes.

Q. So that even a clinic, as a clinic, needs workers like

Dr. Batt

Miss Palmer?

A. Yes, for the poorer class of patient.

Q. After all, doctor, do you recognize with your limited experience in the clinic -– you may have a broad enough basis to come to a conclusion as to sterility, but I believe you have made other studies on that?

A. Yes.

Q. Do they ---

A. Dr. Meaker, of Boston, has just brought out a book on fertility and sterility of the human race.

Q. Who is this Dr. Meaker?

A. He is a famous gynecologist.

The Court: I am interested more in what this witness has to say; I have enough authorities for a while in the way of opinions of text-book experts.

Mr. Wegenast: I think, Your Worship, it is not a sign of weakness on the part of the doctor if he or she relies on what others cite as well as their own.

The Court: If he adopts them himself. But you ask her about her experience and she quotes an authority; I thought she had made some studies?

To Mr. Wegenast:

Q. The women come back for supplies?

The Court: Not what some other doctor has said who isn't here.

Mr. Wegenast: I don't want to press it because, after all,

Dr. Batt

human patience has its limits, but as a matter of court procedure, I am entitled to ask any expert witness on what he bases his opinion.

That is what Dr. Batt is proceeding to do; she bases her opinions on the studies of Dr. Meaker.

The Court: I want a limitation as far as possible on matters of text from now on.

Mr. Wegenast: It is supporting the witness' opinion. It is set out in the authorities.

The Court: It is not quite my understanding of the authorities you cited.

Mr. Wegenast: We may have to go into it; I did not read all of it.

The Court: As I read your authority (Harvey's typewritten memo).

Mr. Wegenast: It was cross examination.

The Court: No, direct examination: "The witness having…as his own."

Mr. Wegenast: I don't know if that is the case or not.

The Court: But the basic principle is that text books cannot be considered as evidence. She is entitled to name the writers and read such parts of the text as she adopts as her own opinion. That is quite clear.

Mr. Wegenast: I am willing to work within that without further argument.

To Mr. Wegenast:

Dr. Batt

Q. Now, Dr. Batt, we must not weary His Worship with these text books; tell His Worship in your opinion, in your own words if you can, the result of Dr. Meaker's –- or put it this way, tell His Worship what is the result of Dr. Meaker's study and to what extent do you adopt it

A. He says there is absolutely no foundation for the statement made that ---

To the Court:

Q. How do you spell "Meaker"?

A. M-E-A-K-E-R.

To Mr. Mercier:

Q. Who is he?

A. Professor of Gynecology, Boston School of Medicine; Gynecologist, Massachusetts Memorial Hospital; Chairman, Sub-committee on Sterility; National Committee on Maternal Health, etc.

To Mr. Wegenast:

Q. He is the last word on sterility?

A. Yes.

Q. I think we can be given credit for bringing all these authorities. Is there anything further can be said about him?

A. No.

Q. Now, putting these contraceptives in people's hands, is it likely to result in excessive indulgence in sexual intercourse?

Dr. Batt

A. From experience, we find that excessive indulgence in sexual intercourse is due to the whetting of desire and if we give individuals proper contraceptives, they obtain greater satisfaction from sexual intercourse and the frequency diminishes. That is substantiated by other doctors.

Q. Have you any substantiation on that here?

A. Yes, Dr. Griffith of England makes that statement in his book, "Modern Marriage and Birth Control".

Q. Now, there is another branch on that, the extent to which contraceptives may lead to promiscuity? I would like your opinion on that.

A. Among the younger generation, which we are chiefly worried about, contraceptives are available and we seem to have no control over them and I think promiscuity among this group is due to the lack of foresight and lack of knowledge and our duty with that group is to teach them about what they are doing and what the results will be and appeal to them from that point of view.

I don't think it is married people, who need this information and should have it, ought to be denied the information because a few irresponsible people are going to use it for illicit purposes.

Q. I suppose they use other things?

A. I don't think it will influence that group because they have the information anyway.

Q. Now, I will pass rapidly over the rest of the material. I think about all I have for you now is this graph, doctor,

Dr. Batt

which I think you prepared, which may be of some help. You prepared this?

A. Yes.

Q. On what basis?

A. It is taken from Woodbury's statistics on child labour to the Department of Labour in Washington. It shows that after the third pregnancy the maternal death rate rises considerably, very markedly in fact. The maternal death rate for the first pregnancy is always high. It gradually comes down until after the third and it goes up until after the eighth.

To the Court:

Q. This is taken from page 30 of Bromley's book; it is made from the figures?

A. (No reply).

Mr. Wegenast: Yes, the graph is in the book by the figures. This is another graph on the spacing and its effect.

The Court: Based on Bromley?

Mr. Wegenast: Well, on Woodbury, as Bromley gets his facts from Woodbury.

To the Court:

Q. What is your conclusion that you draw from these two graphs?

A. Spacing children has a great influence on infant mortality and if there is only one year allowed between the birth of infants, 146.7 of these children fail to reach the

first year; whereas, if two years is allowed between the birth of children that drops to 98.6 and from that, most observers have agreed there should be about two years between births; in some case more, but a minimum of two years.

The Court: Exhibit 102-B, a graph of infant mortality rates and Exhibit 103-B, a graph of maternal deaths.

To Mr. Wegenast:

Q. Now, doctor, coming especially to the case of Miss Palmer and the evidence of the women given here, I want you to give His Worship your opinion as to the propriety, viewed through the spectacles of a medical doctor, of Miss Palmer's activities?

A. I think Miss Palmer's work was in order and she was doing it in the way it should be done.

Q. I have particularly in mind the case of the unmarried mother; you saw her here in the box?

A. Yes.

Q. What about the propriety of giving her contraceptives?

A. Taking everything into consideration, I think that woman should have been given contraceptive advice.

Q. Why?

A. Judging from the evidence, her statements are probably unreliable and she probably is the type of woman who will go on having illegitimate children and, in such a case, I think that it was right to give her contraceptive advice and prevent this.

Q. Now, I do want to have your opinion, doctor, on the

general question —- I suppose this is not medical, but after all, you are a woman and you have been the first woman doctor we have had -- as to the veto power on the part of the husband. My learned friend seems to think when it comes to a question of having babies, the man and wife should agree and if they are not both satisfied, they should have them?

A. (No reply).

Mr. Mercier: I have not said that.

Mr. Beament: It is clear in the cross examination.

Mr. Mercier: The question should be put properly. My question is, before deciding on the use of contraceptives, the husband and wife should be consulted. I did not say they should have a baby; I never said anything like that.

Mr. Wegenast: I am glad to have that because I must apprehend my friend's position. I am glad to go on that basis. It appears to me a little harder than the position I thought my learned friend took.

Mr. Mercier: That is why I said it.

To Mr. Wegenast:

Q. What do you say as to the husband or wife making up their minds?

A. As a rule, we bring both parties into consultation, but after all, it is the woman who bears the child and I think she should have the final say as to whether she should bear the child or not.

Q. That is all.

CROSS EXAMINATION

To Mr. Mercier:

Q. When did you graduate from medical school?

A. In 1929.

Q. When did you start working for the clinic; three years ago?

Q. Yes, in 1933.

Q. What did you do in the meantime?

A. Post graduate work and general medical practice and I am still in medical practice.

Q. Doctor, in your opinion, for what kind of contraceptives is a physical examination necessary besides the pessary?

A. The pessary is the only method that needs the physical examination.

Q. Of the three mentioned: the condom; jelly and pessary, it appears the pessary is the only one that requires a physical examination?

A. Yes.

Q. You know the pamphlet sent out by the Parents' Information Bureau?

A. Yes.

Q. Do you know any method there that might require at any time a medical examination before it is used?

A. No, I don't.

Q. Under no circumstances would a medical examination be required in any of the methods in the pamphlet?

A. Except the pessary.

Q. And your opinion is that there are no circumstances in the woman's life or in her physical state that would require at any time any kind of a medical examination for any of these contraceptives except the pessary?

A. No, not for the use of contraceptives.

Q. That is your opinion?

A. Yes.

Q. Would you think the continuous use of contraceptives would be harmful?

A. No.

Q. Even if used by couples all their lives?

A. No, not from a physical point of view.

Q. From a moral point of view?

A. (No reply).

The Court: She is medical, not theological.

The Witness:

A. That is psychological; it is out of my field.

To Mr. Mercier:

Q. You have said from the point of intelligence that people obtained greater satisfaction with the use of contraceptives; would it not be logical to assume, doctor, that if people get

greater satisfaction out of the use of contraceptives, they might use them a little more?

A. No.

Q. It might in other things –- if a person finds in eating certain things greater satisfaction, they might eat more of them?

A. Well ---

Q. You mean if it gives greater satisfaction, they will not use it more?

A. No, from my experience in the clinic, it has proven otherwise.

Q. And that work of Miss Palmer was done perfectly according to the best traditions and there was nothing wrong with it at all?

A. I think in the circumstances in which she found herself, she did her work well.

Q. It was done according to the proper spirit of the distribution of birth control information?

A. Yes.

Q. And it was for the public good?

A. Yes.

Q. And there was no excess?

A. No.

Q. I thought as much. Should a pregnant woman be given contraceptives under any circumstances?

A. It won't hurt her.

Q. Should she be given one?

A. It is a waste of material.

Q. That is the only reason?

A. Yes.

Q. Is that the reason why on these cards you want the date of the last menstrual period of the woman in order she should not get contraceptives?

A. I can only speak for my clinical cards; I have nothing to do with the way she carries on her work. We have similar application cards and we ask similar information for that reason.

Q. And there is no instruction in that pamphlet, 5-B, which might be harmful in any circumstances?

A. No, in fact, in the clinic, we sometimes give it to a woman who is pregnant. If there is any doubt, we give it to them and say, "if you find you are pregnant, let us know".

Q. You are a confirmed advocate of birth control?

A. I am.

Q. And everything Miss Palmer did was perfect?

A. She did it to the best of her ability and I think under all the circumstances, she did it as well as it could be done. We all work towards an ideal; we do our best towards that ideal.

Q. And Miss Palmer did it the best it could be done under any circumstances?

A. (No reply).

To the Court:

Q. Even under those same circumstances, do you think any improvements in the method used could be made?

A. After all, that is hardly a question I can answer; I was not in these women's homes.

Q. Based entirely on the evidence you hae heard in court as to Miss Palmer's methods, could you suggest any improvements in the method; you are supposed to be an experienced director in this type of work?

A. No, I think it would be hard to suggest any different approach.

Mr. Mercier: Thank you, doctor.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. In other words, after everything that has happened in the courtroom, would you give her any instructions to do differently?

A. No, I would not.

Q. I want to press that a little if I may. There was one woman washing windows; I think it was said, and Miss Palmer sees children around and starts to talk to her, and the woman invites her into the house; would you tell Miss Palmer not to do that?

A. No., social workers –- although I am not a sociologist ---

Mr. Mercier: My learned friend is not cross examining the witness; she said she blessed her work.

The Court: Could it not be improved upon?

Mr. Wegenast: Except on the implication of my learned friend's words such as "blessing" and "wholesale approval". I wanted to take it in detail.

Mr. Mercier: The witness said she knew what was done.

The Court: She said she could not suggest any different approach.

To Mr. Wegenast:

Q. In the use of quinine bi-sulphate, take a look at what it says in B-5 –- whether that would do any harm?

A. No, it is a well-recognized contraceptive used by women for years.

Q. In the case of a pregnant woman, would that do any harm?

A. No.

Q. You have in mind the contents of that?

A. Yes.

Q. And you are giving your opinion of that pamphlet wholesale, although informed in detail of it?

A. Yes.

Q. Anyway, Mr. Kaufman would not issue a pamphlet like that

Dr. Batt

without consulting you?

A. No, he has another physician in Kitchener advising him on that.

Q. That is all. Thank you.

(The Witness retired)

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

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RABBI SAMUEL SACHS, duly sworn, deposed:

To the Court:

Q. What is your name?

A. Samuel Sachs.

Q. Address?

A. Three hundred and fifteen Palmerston Boulevard, Toronto.

To Mr. Wegenast:

Q. You are rabbi in charge of the University Avenue synagogue, Toronto?

A. Yes.

Q. If Your Worship is satisfied to let me do it, you are Chairman, under the Industrial Standards Act, of the Advisory Board for the Cloak and Suit Industry for Ontario?

A. Yes.

Q. You are appointed by the government?

A. Yes.

Q. You are Chairman of the Zionist executive, Toronto?

A. Yes.

Q. You are Chairman of the Board of Education of the Toronto Hebrew Free School, Toronto?

A. Yes.

Q. You are Chaplain of the Jewish Big Brother Movement, Toronto?

A. Yes.

Q. You are chaplain of Branch 256, Canadian Legion, Toronto?

A. Yes.

Q. You are honourary chaplain of the Ontario Command, Canadian Legion of the British Empire Service League?

A. Yes.

Q. “B.E.S.L.” is the British Empire Service League?

A. Yes.

Q. You are chaplain of the Imperial Veterans of Ontario?

A. Yes.

Q. And member of the Board of Directors of the Community Welfare Council of Ontario?

A. Yes.

Q. And member of the Board of Governors of the Federation of Jewish philanthropies, Toronto?

A. Yes.

Q. Member of the Jewish Family Welfare Bureau and Case Committee, Toronto?

A. Yes.

Q. Member of the Board of Directors of the Jewish Boys’ Club, Toronto?

A. Yes.

Q. And you had an appointment under the Toronto Board of Control to serve on the Civic Welfare Survey Commission?

A. Yes, in 1934.

Q. Tell us about that welfare survey?

A. That was a commission appointed by Mayor Stewart and the Board of Control of Toronto to investigate all relief problems in the City of Toronto. We sat on that commission for about five months.

We went into every branch of relief work in Toronto on indigent families and we sent in our report to the Board of Control, part of which was accepted.

Q. You know what you are talking about?

A. Oh, yes.

Q. Is it the kind of work Miss Palmer was doing?

A. It is a recognized item of social welfare work.

Q. And you served on the Toronto Centennial Committee, 1934, by appointment of the then mayor, William J. Stewart, to represent the Jewish community?

A. Yes.

Q. Now, you have heard some of the evidence at the beginning of this trial and I want to put this to you generally, whether Miss Palmer's method of approaching her work –- take it generally -– is in accordance with your ideas of what the social welfare worker ought to do?

A. It is.

Q. What about the need for this sort of contraceptives?

A. From my experience in various branches of my work, -- and especially I forgot to mention I am vice-president of the Citizens' League of Toronto created by Mayor Stewart -- we receive annually about fifteen thousand cards of people on relief and we have hundreds of workers and I came in contact with hundreds of families, Jewish and non-Jewish, and as the days passed, I became convinced of how necessary this sort of work is among this sort of people.

Q. Now, Rabbi, you know something about the Jewish law and I want you to give His Worship your views as a rabbi and as a Jewish lawyer?

A. Yes.

Q. Your opinion as to the propriety, morally and from a religious standpoint, of the dissemination of this kind of information?

A. May I say before starting we have no law against the dissemination of birth control information; it is the practice.

Q. Yes?

A. I represent the orthodox and the great masses of Jewry are orthodox and we base our thought on an interpretation of the Bible in the Talmud and our life is based on that; that interpretation of the Bible literally, and when we are in doubt about various practices, we go to the Talmud. It is a big work and composed not only of argument three hundred years in Babylonia; it is other things, and so we have a code of decisions of rabbis on the Talmud.

Rabbi Sachs

The one we refer to is known as the set table composed of four parts which contains all decisions of the Talmud on Jewish life and practice.

Now, if I want to know what we say on birth control, I would go to the Code. In the section dealing with marital relations and women in general, there we have the following law. It says women have the right at any time to drink some medicine in order to sterilize herself, so that she should not conceive and give birth to a child. What that meant by "medicine," we don't know, but the idea is that they are allowed to use such things to sterilize herself without consulting her husband.

Q. Would you make the legal deduction from that it would include the use of such contraceptives as the jelly?

A. Yes, mechanical or artificial means like those. I will refer to a page in the Talmud; it runs something like this: there are three classes of women use abortient material to prevent contraception. There are three classes: the minor, where pregnancy might injure her; the nursing mother and the pregnant woman.

Now, there is a difference of opinion on the interpretation of this. One interpreter says a woman may use it; another says she mustn't. There is a blanket permit there for all women to use contraceptives and these three women should in order to save the life of herself or the baby.

Q. How far does this go back in history?

A. The closing of the Talmud was 500 A.D. This goes back about 1500 years, this passage.

Rabbi Sachs

Q. Go on?

A. In a matter of a difference of opinion, maybe you have it definitely shown in rabbinical law it is not against the use of contraceptives by the woman.

To the Court:

Q. What is your opinion?

A. I find the position that these three classes of women should and others may use contraceptives. Of course, one is influenced by what one sees in life and the need for it.

To Mr. Wegenast:

Q. Is there anything in your church –- do you call it a church?

A. It covers everything, but we call it a synagogue.

Q. Is there anything in your church corresponding to the tendencies we have in a number of churches such as the Roman Catholic or the old conservatives who won't have organs and only singing psalms; is that the case in your church?

A. Yes, as a matter of fact, we have three sects: the orthodox, conservative and reformed. The reformed are the ultra-modern. The orthodox are the great masses.

Q. To what extent do the orthodox agree with your views?

A. The fact that they base their views on the Talmud, as I have given, indicates that.

Q. It is said that there is something in human nature that recoils at the use of contraceptives?

A. Personally, I don't think it is unnatural or irrational when necessary.

Q. I was thinking rather of the sense of decency. What do you say about that?

A. Speaking again within the frame of my law, since we are permitted under many circumstances to use them, we are trained in that way; we do not consider it indecent and consider it for the good of the people who are using those contraceptives.

Q. Now, I want to come to this: this Ogino-Knaus theory explored in books like "Rhythm" and others, how does that square with your practices?

A. The theory of periods of sterility and fertility as against the spirit of our law: we believe in hygiene. It says one of the periods of sterility is 10 days after the beginning of the menstruation; in other words, cohabitation could safely take place during that period. According to our law, there is no permission for sexual intercourse during menstruation and seven days after; that makes it five days menstruation and seven clean days after.

CROSS EXAMINATION

To Mr. Mercier:

Q. I hope there is nothing understood in the "Rhythm" as to intercourse during menstrual period?

A. No, our period is five days menstruation and seven days after and there are about two days after that the woman is sterile. I could give a reason scientifically. It has been proven there are very few cases of cancer of the uterus in

Jewish women, perhaps one in two thousand. Among non-Jewish women, there is one in one hundred and thirty. The reason is that there is no cohabitation for seven days after the throwing off of the mucosa of the woman. It is thrown off during menstruation and regrows in seven days and if there is cohabitation during that seven days, there is irritation and irritation causes cancer.

Q. Personally may I take it you are a confirmed believer in birth control?

A. Yes.

Q. And you give your general blessing to the work done by Miss Palmer in Eastview?

A. In the way she worked with the women.

Q. You do the same thing in Toronto?

A. Yes.

Q. Am I correct in saying according to the Jewish religion a man acts against your code if he marries a sterile woman?

A. No, if he marries a sterile woman, he can live with her throughout life.

Q. Isn't it the law to have children?

A. Yes, a man should have two children, a boy and a girl, and he is not obliged to have more. A man is not allowed to practice contraception, but a woman is.

Q. According to your religion?

A. Yes.

Q. Do you believe your views are the man should practice birth control?

A. No, not the man.

To the Court:

Q. What is the reason for that?

A. Our interpretation again of our Talmud, speaking of the first woman, “increase and multiply”. This was directed only to the man, not the woman, and the woman has no obligation to marry, but a man must have two children, strange as it may seem.

Mr. Mercier: According to the march of science, it may be a long time before we arrive at that.

To Mr. Mercier:

Q. In your orthodox community, do you think someone might resent being sent or being advertised condoms; do you think that should be done among your people?

A. I admit some might resent it, some coming from the old country, Europe, not learned in these regulations, having the idea perhaps it is not right to use contraceptives, but once they are taught it is their own law, they realize it is all right.

Q. You as an orthodox rabbi, do you approve of the distributing of these things among your people?

A. Yes, I think it is a good thing.

Q. Even condoms?

A. There is no reason –- I approve of Miss Palmer’s work and the reason is that she approaches the woman only.

Rabbi Sachs

Q. And if she approaches the man?

A. I would disapprove.

Q. And if the man gets condoms?

A. I have nothing against giving information about contraceptives to the man, but I am against his using it. He should know the law and follow it.

Q. That is the principle?

A. Yes.

Q. You are speaking of your orthodox and conservative people, Rabbi?

A. Yes.

Q. You teach him about certain things and not to do certain things?

A. Yes.

Q. Your duty as an adviser then is through?

A. Yes.

Q. Anybody might interfere with it?

A. Yes.

Q. Do all orthodox rabbis hold your views?

A. So far as the United Synagogue of America and Canada is concerned, they passed a resolution at a convention at Atlantic City approving of it. All agreed in cases of sickness and other necessities, a woman has the right to use it without consulting anyone.

Q. What do you mean, "other necessities"?

A. If the family means are not sufficient to support a family and the woman may decide to space her children.

Q. And from what you know of it, you give your general blessing to the work of Miss Palmer?

A. Yes.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. Has the effect of what my learned friend has said –- has it had the effect of keeping Jewish people from having children?

A. The effect of what?

Q. Giving them information about spacing?

A. Keeping the birth rate down?

Q. I wasn't going to speak of that; -- you know the Jewish birth rate is less than Eastview -- has it any effect on the number of children?

A. I think it has. All people I know that I come in contact with –- it never comes up as a problem. People don't keep away from having children because of a knowledge of contraceptive methods.

Q. You say your law requires the family to have two children?

A. The man.

Q. Yes, a boy and a girl. Does the knowledge of contraceptives keep them from obeying that law?

A. Not at all.

Q. No?

A. The Jewish law says the man should have two children and in no time, they have more than two.

(Witness retired)

Mr. Buckley

JOHN WARDEN BUCKLEY, duly sworn, deposed:

To the Court:

Q. Your full name?

A. John Warden Buckley.

Q. Address?

A. Seven Victoria Boulevard, Mount Denis.

Q. Where is Mount Denis?

A. A suburb of Toronto.

Mr. Wegenast: Between Toronto and Weston.

To Mr. Wegenast:

Q. Mr. Buckley, you are secretary of the Toronto District Labour Council?

A. Yes, sir.

Q. And you are a labour leader of experience and note?

A. I presume to be so.

Mr. Buckley

Q. How long have you been a labour official?

A. About 24 years.

Q. Was that all in Toronto?

A. Yes.

Q. And now I want to put it to you generally, Mr. Buckley, first, whether your people know whether you are here and approve of it or what is their attitude?

A. The executive of the Trades Council approve of it, but the labour movement as a whole have not discussed it probably because, from what has already been given in evidence, we have not been given sufficient information to discuss it intelligently.

Q. You, yourself, have you considered it and for how long?

A. For many years before I left the old country, Manchester, I have recognized the dangers of over population if impossible to maintain them. That would be about the year 1900.

Q. By the way, have you any knowledge of what the United States labour department take as the unit in the family?

A. The assumption would be from the latest statistics of the labour department of the United States, it would be a little over two.

Q. Children?

A. Yes.

Mr. Mercier: What they recommend or what it is?

To Mr. Wegenast:

Q. What it is?

A. It is there, Your Worship (indicating papers).

To the Court:

Q. That is what the average is, not what it should be?

A. It says under nourishment of American children is based on man, wife and two children.

To Mr. Wegenast:

Q. Is there any calculation on the basis of man, wife and three children?

A. Up to recent times, I have always based my calculations on a family of five. That is the old country calculation.

Mr. Beament: Man, wife and three children?

Mr. Wegenast: Yes, man, wife and three children.

To Mr. Wegenast:

Q. I want you to give His Worship the benefit of your views as a labour department official on the effect of Miss Palmer's work, whether it would or would not have been advisable in its effect from the standpoint of the labour unions?

A. I may say in opening, in the year 1919, the government of this country set up what was known as a mothers' commission, immediately after the great war. There were two labour representatives and the commission stated the chief cause of industrial unrest was due to unremployment (sic) and fear of unemployment. Later the minister of justice reporting on the findings of the royal commission which related to the question of unemployment insurance and national health in order to take

care of the surplus of population that could not be absorbed into industry stated in his opinion that unemployment insurance for unemployment, which is the chief cause of industrial unrest, referred to by the mothers' commission, it was competent to dominion legislation under the peace, order and good government act.

Mr. Mercier: That is hearsay.

The Court: Is the witness going to read his evidence?

The Witness:

A. No, I wanted to point out the question of unemployment is largely dependent on surplus of population in the Dominion of Canada and the surplus of population cannot be absorbed back into industry. It is estimated today we are within 10 per cent of normalcy of production as of the year 1929. We find today in this country unemployment is increasing and there is every tendency it will continue to increase. We have increased productive power since 1919 by 71 per cent.

To Mr. Wegenast:

Q. Due to what?

A. Labour saving devices and it is estimated if a dictator was to demand 100 per cent more production, it would simply mean 50 per cent more workers in industry.

In other words, we can feel assured that the present industrial population is more than adequate to meet the needs of society today. In fact, they will never be re-absorbed back into industry. The increase in productive power of labour is equivalent to 4,000 per cent since the introduction of machinery. It would take 4,000,000,000 people in Canada to produce without machinery what we now produce with machinery. It is known that there are scientific devices for industry which if placed on the labour market would displace so many workers you would not only have an industrial revolution, but a violent revolution in labour.

Q. In what class of labour would that be mostly felt; skilled, unskilled or manual labour?

A. As far as that is concerned, it applies to all classes and to clerical workers. There is no class of worker today who

does not benefit in some manner by either the telephone, motor car or others.

To Mr. Wegenast:

Q. Who are going to be displaced first?

A. The labouring classes.

Q. In other words, if it is a matter of sparing some of these people, whom can we spare best?

A. I would say we could –- if you are speaking of producing, I would say the least productive classes.

Q. Go ahead?

A. What I want to say is that there is no solution for unemployment. In fact, due to our competitive system; due to the fact we are competitors in the world's markets, it is necessary and essential that the employers shall employ their labour saving devices without regard to the workers he displaces.

Further than that, I may say that the relief statistics of the Dominion of Canada are not criterion of the unemployed in this dominion. There are no reliable statistics in the Dominion of Canada in view of the fact that those on relief are not necessarily the surplus population who are unemployed.

Q. Can you give instances of that?

A. Yes, as in the case of the railroad worker –- many of our men previous to going on relief have mortgaged their homes, sold their insurance policies, raised money by every means they can because they cannot receive relief while in possession of property and who have a small bank account.

Further than that, I would say so far as men are concerned ---

Q. Men in the railway industry?

A. Men in the railway industry. In the year 1920, the railroads of the United States employed 2,160,000 men and in 1930, they employed 1,300,000 men.

Q. Is there a similar condition in Canada?

A. The same applies in this country.

Mr. Buckley

Q. What is the effect on the individual railroad man's hours?

A. Freight in 1930 was seven per cent greater than in 1920 –- freight carried.

Q. The reason is that one locomotive today will…?

A. Locomotives, cars, equipment; all are larger. The rule of railroad law is that it takes an engineer, fireman, conductor and two trainmen to make a train crew. The law does not state the size of the engine or the number of cars in transit in one train.

Q. So what?

A. To make up a train?

Q. If only an engine and caboose?

A. It would take five men. In the case of a large train today, the same applies.

Q. What happens?

A. Larger locomotives and larger trains and we find men on the reserve list with practically 20 years' service.

Mr. Mercier: I hate to object, but what has this to do with Eastview? I don't know if there are any railway men in Eastview. This is a wonderful oration.

To the Court:

Q. Please cut it down?

A. (No reply).

To Mr. Wegenast:

Q. About reducing hours?

A. As a result, the railroads in 1932 –- the men in the railway shop classes decided to accept a 16-day month in order to retain men in employment.

Q. They have not only thrown men out of work, but cut down the hours of those employed?

A. Absolutely.

Mr. Buckley

Q. That makes their economic condition so much worse?

A. Yes.

Q. As a labour man, what would you say as to the prevalence of those conditions generally?

A. Throughout all industry?

Q. You are speaking as a railway man?

A. No, as secretary of the Toronto Labour Council.

Q. As a matter of fact, you are a railway worker?

A. Yes, in the shops at Leaside. I would not like it, in the press, to have the railroads brought into it.

Q. You have heard about the work of Miss Palmer; what would the attitude of the labour unions be towards work of that kind?

A. It would be favourable to that class of work.

Q. You have heard these women in the box?

A. Yes.

Q. I want to know what you thought of the evidence of these women about what Miss Palmer did?

A. All right.

Mr. Wegenast: This witness has given evidence as to population. The obvious implication is that it has something to do with Miss Palmer's activities and I take it his view as to families, that they should be smaller ---

The Court: This witness?

Mr. Wegenast: Yes?

The Court: I think that is clear; he says a great percentage of the unemployed today will never get back into industry.

To Mr. Wegenast:

Q. I was going to ask your opinion of the desirability of this work and the auspices under which it should be carried on?

A. If it was legalized -- I want to be fair.

Q. I think it is legal?

A. (No reply).

The Court: That is why the case is before the Court, to find that out.

The Witness:

A. If it were legal, I think it might have a beneficial effect. As far as workers are concerned, like I am, they are somewhat ignorant of contraceptives; although, I raised a family myself.

To Mr. Wegenast:

Q. How many?

A. Four. I am somewhat above the average, I think.

Q. What do you think about contraceptives?

A. I think they are a proper method for the general good, in my opinion, and general public welfare.

Q. Did you see anything in what Miss Palmer did that might not be for the public welfare?

A. Nothing at all.

Q. My friend thinks, I believe, it isn't a good thing for the public if you get outsiders like Miss Palmer going into people's homes and getting them started on something new?

A. (No reply).

Mr. Mercier: It is not what I think; I am trying to impress the Magistrate with that.

To Mr. Wegenast:

Q. That the public should not be made dissatisfied from their old notions and religion?

A. I have said it is a good thing to get people dissatisfied, especially with old out-worn notions. In fact, it is my opinion we should live up to date irrespective of what our ancestors considered right.

Q. What about the sense of decency?

A. I think it would be more relevant to a small family than

a large family.

Q. Something has been said there is something repellent in the use of contraceptives, something from which people would shrink?

A. I don't think there is anything repellent if a worker like Miss Palmer approaches a woman like she did and I think working class women are perfectly able to take care of themselves.

The Court: Adjourn five minutes (11:35 a.m. to 11:45 a.m.).

(Upon the Court resuming)

CROSS EXAMINATION

To Mr. Mercier:

Q. You said labour people didn't have enough information to discuss it intelligently?

A. Yes.

Q. What do you mean?

A. Even from the evidence disclosed on the floor of this court, it has been brought out this information has been withheld from the working class and it is undoubtedly true so far as I am concerned. Even with those I have met in everyday life, I have never heard the subject broached except once or twice in an ordinary life.

Q. As to surplus population in Canada, do you believe there is a surplus population in Canada?

A. I mean a surplus population in the sense that they cannot be reabsorbed into industry.

Q. Why?

A. Because -- under the present system, because machinery can always be produced quicker than the workers can be absorbed.

Q. Too many machines, not too many children?

A. No, I believe in labour saving machinery, but there should be more leisure for the working classes.

Q. Do you believe that birth control is good for the

the working classes?

A. Yes, every child born is a potential worker and competitor in the labour market. Further, wages are not based on the number of dependents of the head of the family, but based on the productive power in the competitive market of the worker. Therefore, no matter if he has 20 children or 1, he receives the same wages to maintain them.

Q. Do you believe the soil of Canada could produce enough to maintain this population or an increased population?

A. I believe with Sir Wilfried Laurier, Canada could maintain 200,000,000 people instead of 10,000,000.

Q. I am glad of that admission?

A. Not under the present system.

Q. Why not try to improve the present system and let nature take its course?

A. To the best of my ability, I have tried to do so, but the factors are that those who control our economic and political systems are opposed to it.

Q. Therefore, the best manner to improve conditions is to decrease births?

A. Absolutely, when they have a shortage of potential labour power, they will realize the labour classes are of some benefit.

Q. As far as Eastview is concerned, with 242 families on relief, wouldn't 1 factory improve conditions?

A. Today, we can run a factory with robot labour.

Q. Don't you think one good factory in Eastview would remedy conditions here?

A. In the boiler room of our large Atlantic liners, 3 men are employed where previously there were 120, but the work has increased 1200 per cent.

Q. Don't you think 1 one of 2 industries would absorb the heads of 242 families?

A. You can put a factory in the district, but will people

here be employed there?

Q. But 1, 2 or 3 industries here could absorb the heads of 242 families?

A. It is possible.

Q. And you stated there is no solution for unemployment and there can be none?

A. Absolutely, I studied unemployment insurance in England in 1931. I said it then and I still say it today; we are not eliminating unemployment because every year we are taking out of our schools, children of working age and there is no provision for them.

Q. Even with the possibilities of the soil, and you believe with Laurier there is room for 200,000,000 in Canada?

A. Yes.

Q. And with the possibilities and natural resources, we could have 20,000?

A. This country's potential resources, according to the Bureau of Statistics, is thirty-three billions of dollars; that is $3300 for every person.

Q. And large families ---

A. I do not object to large families, but Canada is not supporting its population now.

Q. And there is no solution for unemployment, does that mean you have quit trying?

A. If I did, I would drop the labour movement immediately.

Q. You are still trying, for one?

A. Yes, and when I drop it, someone else will try. As a matter of fact, we might as well have the Russian experiment where there is no unemployment.

Q. You don't want the authorities to stop trying?

A. No, I suggested more than once we are prepared to assist the government, but it appears we do not have sufficient intelligence or influence to assist the government.

Q. Do you believe with the authorities there will be a solution for unemployment?

A. I believe that those actually engaged in industry and actually engaged studying unemployment are better fitted to solve the problem of unemployment than members of parliament who are elected on their local popularity.

Q. Do you believe this; it might be better to centre on movements and finance towards the ultimate end of solving unemployment rather than trying birth control and prevent larger families?

A. Say it again?

Q. Do you not think it might be better to centre on movements and finance towards the ultimate end of solving unemployment rather than trying birth control and preventing larger families?

A. That reminds me of Sir Joseph Flavelle when he stated labour and capital should sit around a common table with a view to reducing wages and salaries. My reply was that if you took the watered stock out of industry, there would be no need for decreasing the wages.

Q. That is your answer to that?

A. Yes, if they take the watered stock out of industry. While -- on the other hand, while we have increased production since 1868, we have not increased wages in proportion.

To the Court:

Q. Give a generalization?

A. From 1868 to 1920: in 1968, for $1,200.00 he produced, he received about $278.00. This is according to a financial paper, the Washington Post. His productive capacity today is about $4,700.00, for which he receives the equivalent of about $1,200.00. In other words, for every raise the worker receives of $1 in wages, production increased $4.

To Mr. Mercier:

Q. I take it now there is a solution for unemployment?

A. Yes, but not under our present economic system. I do

not believe the Almighty put us here without brains to solve our economic conditions.

Q. Between improving economic conditions and birth control, which would you choose?

A. Both of them.

Q. You were talking, sir, about the railroads; do you know how many retired railroad men are affected in Eastview?

A. No, I don't know even if there is a railway centre here.

Q. And you stated also you did not wish the railroads to be involved in this?

A. I would not wish my name to appear as a railroad employee; I think if my officers are kind enough to allow me to appear here, I shouldn't involve my employers in this.

Q. You stated also the labour unions; do you believe they would be favourable?

A. If they had sufficient information.

Q. You don't speak for them?

A. My own and I am executive representative on the legislative.

Q. And you have no idea what labour unions in Eastview think?

A. No, I speak for the Toronto executive.

Q. Now, supposing birth control had the effect of the drowning out of the labouring classes by the others?

A. I believe it would be applicable to all classes.

Q. But if as a result of birth control, getting a knowledge of it, getting the benefits, the people of the working classes began to like it and began to have fewer children and the capitalists and wealthier and bourgeoisie would out-drown them?

A. I don't think there is any fear of that. In fact, Senator Meighen said the better classes were not breeding enough children to have an intelligentsia. He said ---

Q. If the working classes do the same thing?

A. Why not?

Q. And if they are out-drowned by the other classes?

A. I am not afraid of that.

Q. Why?

A. We must recognize economic facts and under the present system today, people of the wealthier classes are being forced gradually into the ranks of the proletariat. We can only maintain as a working class only so many of the higher strats and the higher strats are gradually coming down to the lower.

Q. And birth control will remedy that?

A. Absolutely. Why raise a nation of paupers?

Q. And in view of your experience of labouring men and in this movement in Toronto you have answered, I believe, in response to a question by my learned friend, Miss Palmer's work was in no way objectionable and it was for the public good and there was no excess?

A. Absolutely, I believe that.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. There is only one question: one of the witnesses here said that there was a choice of two or three alternatives; one, that we had to cut down the population?

A. Yes.

Q. That now is on relief?

A. Yes.

Q. And I don't know what his -- the other alternative was, but his third alternative was to adopt the Russian system. Now, what would you say to that; how would you put it?

A. Personally, to be honest, I do not wish to adopt the Russian system. I believe there is much to learn from the Russian system and they have much to learn from us.

I believe we have it in our power as a democracy, which they never had in Russia, to solve our own problems and the problem

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of production is so large we have solved it 100 years ago by Malthus who stated why there were ethics and plans to reduce the population. Since 1913, we have solved the problem of production and now we have only to solve the problem of distribution. That is my position.

Q. I think the other alternative was to lower the standard of living?

A. To lower the standard of living would be –- you would create a condition which would be far better not to exist.

Q. Granted the present system and not the Russian system; do you see any way out of the present unemployment and relief situation than birth control?

A. Yes, I do.

Q. What?

A. I see the socialization of industry and production for use and not for profit.

Q. Do you see that coming?

A. Absolutely, your government has been compelled to take over the private railroads of this country because of their insolvency. We have the Hydro-Electric, Toronto Transportation commission and we are gradually extending our experiment of socialization of public utilities and we are getting a better and cheaper product and better terms of employment.

Q. And this laying off of workers on the railways is going on even by the government railway?

A. Yes, but not to the same extent. I was sitting in at Montreal with Sir Henry Thornton on that. I visited Mexico and the Baltimore and Ohio, and we made findings that Sir Henry Thornton said saved millions of dollars to the railroads of this country.

Q. Would you say, then, that would indicate we do not need birth control?

A. No, as I have already stated, machinery is so available and so productive, that we can produce machinery in such abundance; we can do it overnight, but to absorb labour will take 16 or 20 years.

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Q. And it would take longer to get rid of them?

A. Yes, unless we reduce the relief.

Q. And that would?

A. Eliminate themselves.

RE-CROSS EXAMINATION

To Mr. Mercier:

Q. You say there is no hope then because of machinery?

A. No, I say with the reduction in hours and increase in wages, as a result of labour saving machinery, and with increased education, we can support a far greater population.

Q. There is room for a greater population?

A. Yes, absolutely.

Q. There is room for more people in Canada?

A. Yes.

Q. And there is room for economic improvement?

A. Absolutely.

(Witness retired)

Rev. Dr. Coburn

REV. DR. JOHN COBURN, duly sworn, deposed:

To the Court:

Q. Your full name?

A. John Coburn.

Q. Address?

A. Sixty Indian Road Crescent, Toronto.

To Mr. Wegenast:

Q. Doctor, you are a doctor of divinity?

A. Yes, sir.

Rev. Dr. Coburn

Q. You are secretary of the social service activities of the United Church?

A. I am field secretary of the Board of Evangelism and Social Service.

Q. How long have you been in this position?

A. Sixteen years.

Q. You have covered the whole of Canada?

A. Yes, and Newfoundland and Bermuda.

Q. Now, we haven't heard anything about the sociological said for a while, doctor. I want you to add your testimony on the position of sociology in the scheme of things. You heard what Dr. Silcox said?

A. Yes.

Q. Just tell us briefly as you can what position your science of sociology holds in the general scheme of things?

A. Of course, sociology is the science of social relations.

Q. What are you aiming at?

A. Human welfare; physical, mental and moral, and the welfare of society as a whole.

Q. We always have in mind here; Miss Palmer is accused of doing something not for the public good?

A. Yes.

Q. That is what your job is?

A. Yes, I might say for 20 years before becoming secretary, I was a missionary in the hinterlands and in town, city and slum areas and with the better off people up the hill, and I have been a student of people and my task is to study social problems and give leadership to the church, and one of the important things of my church in the last 16 years is that ministers and workers bring problems to me.

Q. You are a sort of trouble man?

A. Yes, I am more on the practical side. My friend Mr.

Silcox is a man on the theoretical side. I study authorities when necessary to carry on my work properly.

Q. You heard the evidence of what Miss Palmer was doing?

A. Yes, I heard the evidence of what Miss Palmer was doing.

Q. What do you think of it?

A. First of all, I came down here a believer in birth control. The evidence I heard the first two days turned me into an ardent advocate.

I may say taking all the circumstances into consideration, looking into the matter from every angle; I thought it over very carefully, and my position is that I wouldn't stand here for you or anybody else and say other than that Miss Palmer's work was valuable socially, was in the public interest and was being done along proper lines.

Q. My learned friend may ask that; he thinks Miss Palmer couldn't do anything wrong?

A. (No reply).

Mr. Mercier: I wish my learned friend would stop saying what he thinks I think. I have tried to restrain myself from saying all that I think.

To Mr. Wegenast:

Q. I would not care to say all my learned friend thinks with his forensic mind, but Doctor, I might say perhaps it has been suggested you and others came here with the idea of white-washing Miss Palmer?

A. I dare not do anything of the kind; my conscience will not let me.

I listened to the evidence impartially. If I had thought there was anything I could not endorse, I would have notified you and gone home.

Q. You heard Mr. Summerhayes give evidence about the unmarried woman?

A. No.

Q. He said, although he hesitated a bit, but Miss Palmer

did what was right?

A. If you admit as I do the righteousness of preventing the birth of legitimate children, it would be curious to prevent the birth of illegitimate children. I have listened to that case with great interest because she presents the matter of one of the most baffling problems we have

today. Social workers hate to do anything that might condone immorality or illicit sex relations. On the other hand, if a woman is living in illicit sex relations, living immorally and that immorality is likely to result in illegitimacy, now you have one evil to start with and I don't see anything she could have done would have interfered with that and now there is the possibility of a second evil: of that woman giving birth to another child; that possibility was so great I would say it was not in the public interest that woman should give birth to another child.

It was in the public interest that should be prevented. There are three ways of dealing with that: confinement in an institution; they are over-filled. Second is sterilization and I think if we had a law for sterilization -- and I hope to see one –- that is the type of case I would recommend. The third is contraceptives.

The first two of those methods were not open to Miss Palmer. She couldn't confine that woman in an institution. She could not have her sterilized. And in order to prevent the evil of bringing another unfortunate illegitimate child into the world, she took the only method open to her and doing that, under all the circumstances, I am not prepared to say she did wrong and in fact, I believe what she did was in the public good. Which was, when you size it all up, more in the public good than in the case of some of those married women, merely because of the peculiar situation.

Q. What about the woman who was washing windows? Miss Palmer said, "I am a nurse for the birth control," or words to that effect, and the woman said, "I am interested in that; come in"; what about that way of going about things; do you couple that with the protestations of my friend against people from Ottawa coming into Eastview and telling these good people what they ought to do?

A. My answer to that would be in this way: I believe with

all my heart that if any woman, minister or anyone else were going visiting women in their homes, house to house, and sharing with them the knowledge that at last science had provided safe, harmless and effective means of permitting them to space their children that would be preaching that gospel: that would be in the public interest.

From the sociological point of view, the woman has been in this position: she has been compelled to submit to the sex demands of her husband. That means she has had to bear children just whenever they came whether she wanted them or not; whether physically fit for them or not, the conjugal rights of the huntsman had to be met.

Now, common sense convinces me these methods are harmless and effective. Then I think when it is possible for someone to go to thousands of women and share that knowledge with their sisters, it is in the public interest.

Q. Dr. Silcox said every woman was entitled to this information by virtue of being a woman?

A. I do and I think the ideal situation would be comprehensive sex education for every person of marriageable age and they would be able to start their family and bring children into the world properly. What that woman does with the information then becomes her own moral responsibility.

Q. What about this, Doctor; have you come across cases where ignorance of marriage relations and functions has caused unhappiness quite apart from this?

A. Yes, my work is full of that. It is estimated at least 50 per cent of divorces are caused by maladjustment of sex relations between husband and the wife.

Q. I am talking about a girl before married?

A. About the ignorance?

Q. Yes?

A. That is, if a case of a girl who has gone wrong and got into trouble simply because she wasn't aware of the facts of life?

Q. You are not talking about contraception?

A. No, general sex knowledge.

Q. What about giving this information to unmarried people?

A. As things are now, I would have to deal with each case separately, but as I said a moment ago, I believe in the ideal condition of the state giving comprehensive sex education in which birth control would have its place and when people come to the age of marriage, they would have that information.

I think the rearing of children is the greatest enterprise of the people and it is made with the greatest amount of ignorance of any enterprise.

Q. You mean that people haven't the means of contraception available?

A. No, I was talking about the facts of life.

Q. I am passing from that to the question whether the public generally know about condoms; do they know what a French safe is?

A. The exhibits in court here show that.

Q. What do you think?

A. An individual case sometimes takes me into a community and I have found in several of the towns of Ontario where these things were being sold indiscriminately to boys and girls in high school.

Q. Putting that beside Miss Palmer's method of going around discriminately and with a certain selectiveness, I want you to compare the two methods?

A. There is no comparison; there is a tremendous contrast. One thing is an evil. I can find no justification for druggists and tobacco stores selling these things to 16- and 18-year old boys; whereas, Miss Palmer's work, in my judgment, was constructive and socially helpful.

Q. I will ask you to go into that a little further, Doctor; what distinction is there between the distribution of condoms to high school boys and girls in the way you found it and the method of the social workers?

A. Anyone who sells these to high school boys and girls

knows it is being done for immoral purposes and knows it is for them to indulge in illicit sexual intercourse.

Q. What about Miss Palmer's work?

A. Miss Palmer's work was directed to giving these women information whereby they might space their children -- have their children at such times and in such numbers as would be useful and helpful for them.

Q. Would you adopt this expression on the cover of "Rhythm," (indicating) ("Babies when parents are ready")?

A. You are not asking me to endorse "Rhythm"?

Q. No, would you endorse this on the cover, "Babies when parents are ready"?

A. I would endorse that. The greatest tragedy is to bring an unwanted child into the world; it is a tragedy for it and for society and one of the roots of all evil.

Q. The position of your own church body: Dr. Silcox said something about it, but I want you to give us the inside dope?

A. At the general council, 1934, at the City of Kingston, a report was received from a commission on the meaning and responsibility of marriage. In that report, the question of birth control was referred to and while the board did not come out in advocacy of it, it left it to the people in the exercise of their conscience, that they would not be doing wrong in exercising birth control.

Q. Could I interrupt you to ask you your attitude towards the people and the attitude of the people towards you, and the attitude of the Roman Catholic Church towards its people and the attitude of the people towards the Roman Catholic Church?

A. I don't know that you should ask me to explain the Roman Catholic Church.

Q. You talked about conscience?

A. As I understand it, of course, the loyal Roman Catholic is taught that the voice of the church is the voice of God.

Q. What about the Protestant?

A. It leaves it to the private judgement; that is one of

the fundamental principles of Protestantism.

Q. Proceed?

A. At the Kingston conference in 1934, the Maritime conference memorialized the general council to issue a declaration as to the church's position on birth control and sterilization. The council decided that the question was too big for the council to give any snap judgment. Instead of that, they ordered that board of which I am secretary to study and report two years hence. That commission was set up of physicians, male and female, and of the older generation, as well as the younger.

Q. You have the same sort of thing I put to Rabbi Sachs this morning, the old element and the new?

A. Yes.

Q. Yes?

A. Now, it was thought to make this commission not a partisan commission. There were also social workers and pastors and members of the staff.

Q. What staff?

A. Of our board, -- Dr. McLaughlin, who is chief secretary, and Dr. Ernest Thomas and Douglas in Vancouver.

Q. These men are sociologists?

A. Yes, they are recognized as students of sociology and the church thinks we are competent.

Q. Now, that commission after long study?

A. They prepared a report. It was brought to the general council in Ottawa in September.

That commission reported, first, to the Board of Evangelism and Social Work. That board is chosen from a group of men throughout the church.

That commission's report was unanimously adopted by that board and ordered to be forwarded to the general council. It was introduced at the general council and received with unbounded enthusiasm.

Q. At Ottawa here?

A. Yes, I am sure if a full vote had been taken it would have been voted four to one. It was sent to a committee for consideration and after careful study, unanimously recommended its adoption.

Q. Yes?

A. The council on the recommendation of that committee adopted that report and that is now the official voice of the United Church of Canada on that subject.

Q. My friend points out the vote was 53 to 51?

A. (No reply).

Mr. Mercier: I gave that as my information. Ask the witness that.

To Mr. Wegenast:

Q. Yes?

A. The committee was 100 per cent. When it went to the council, I would say from the enthusiasm that 75 per cent of that council at least were in favour.

By the time it had come back from the committee, it was the last day of the council; men had gone home and it so happened that the very conservative brethren stayed on the job better than the progressives.

There were some other reports we had considerable difficulty with which we would not have had in full council.

Not one single statement or proposition of this report was challenged by the council.

Q. The whole council?

A. Yes, the whole council, and even by those not in favour of it formally, it was spoken of in most laudatory terms. But there are some timid souls in all churches.

Q. Mr. Zeidman told us about those?

A. Yes, the question wasn't birth control, but in the minds of some whether, the United Church should bother with this.

They were men who had not studied the matter.

Q. Like some of us here?

A. There is another fact; I suppose I must tell the whole truth as I am sworn to?

Q. Yes?

A. I don't like to say that I haven't conversed on this in council, but I do know there is a body in the church that has a fear that the pretty steady increase of the Roman Catholic population, especially the French, and the exceedingly high birth rate in the Province of Quebec creates a fear in the minds of some of the United Church, and Protestants generally, that if our Protestant people become confirmed on this birth control method, our Roman Catholic friends will soon outbreed us and be in possession of the country. I am not reflecting on any other church.

Q. But you are giving the facts?

A. I know that the fear exists and perhaps that had something to do with some of the things at the general council. The council voted that the report be received and made available for the general opinion of the church; that was voted 53 to 50.

The question then came on adoption of the report and it was adopted by a substantial majority.

Before leaving Toronto last night, Mr. Silcox called me up and he made inquiries at the office of the secretary, and the position of the United Church is that it doesn't record votes for and against unless demanded and when a matter receives a majority of votes, it then becomes the law of the church as a whole.

I hope I have not transgressed in explaining so much.

Q. Of course, we have our own laws in court, as well as you have them in your church.

Now, I see I have pretty well exhausted my notes on this.

There was the question of the relation of birth control to mental happiness. I need only mention the subject. Would you give us your opinion as to that relation: whether birth control

makes for marital happiness; whether it is necessary and desirable and so on?

A. I have no hesitation in saying that a rational system of birth control would relieve the tensions that exist in many homes. I could give you instances where birth control in the nick of time has prevented the breakup of the family and the separation of the man and wife. I could give you one instance in the City of Toronto about which I was consulted: A young man visiting for the church found himself up against a stone wall. His wife was a cultured lady and had made a study of these problems.

Here is the situation: The family was poor; the man was working for very low wages. One room was the parlour, dining room and kitchen. The other was the bedroom with a bed for the man and wife and a cot for the child. The man was strong, healthy; perhaps not over-sexed, but fully sexed and the woman's position was that it takes "all I can ever do to keep this family decently

and give this child a chance. Until my husband is able to earn more money, the bringing of another child with all the expenses of confinement and also it would mean this other child would not get a fair chance, and for the sake of that child…" -- she decided to take that child away and leave him.

This man's wife got the story out of her and took her to the corner drug store and provided her with certain contraceptive devices -- It was before Mr. Kaufman started his work -- and she sent her home and I know that family, husband and wife, are very grateful.

I know of other cases of strain and trouble and I wish I had known 30 years ago what I know today because I could have saved many situations.

Q. You heard Colonel Sims?

A. Yes.

Q. What do you say?

A. I thoroughly agree; like him, I was early against it, but I have been driven to it, but especially through what I have passed. My experiences are similar to his.

Q. Since decency comes down to this: those opposed are

opposed on one of three grounds: first, the divine commandment of the church?

A. Yes.

Q. Second, it is unnatural?

A. Yes.

Q. Third, it offends against the sense of decency. I want you to give your opinion apposite to what you have said whether this thing of distributing contraceptives does offend against something we will call a sense of decency?

A. Of course, I can well imagine it being done in a way it wasn't decent, like in using language to describe it to a woman that would be extremely offensive, but I must say I have heard in the evidence nothing in this court that way that strikes me as indecent or to any sense of decency I have.

Q. I am concerned with the thing itself; is there anything that offends against the sense of decency and what about it?

A. I can't see it does offend against a sense of decency. I can't find that and I don't believe it does; that is, the use of contraceptive devices which have been passed on by the doctors.

Q. I don't know if a doctor will have anything to do with the decency. Supposing you found a family all using the same toothbrush, it would be rather shocking to some people. Say along that line what the validity of objecting to that is?

A. Of course, I don't see where there would be any connection between a woman and her husband using contraceptives in their intimate relations and the use by all of the family of the same toothbrush. I see nothing indecent about it.

Q. Apparently, there isn't enough there to make my question worthwhile?

A. There might be some people with different ideas. Peoples' ideas of decency differ.

Q. I thought you had said so?

A. I thought 30 years ago it wouldn't be along the line of decency. I was brought up in a good old-fashioned home where I

was told to believe the Lord sent all these children directly and it would be wrong to interfere.

Q. Is that idea prevalent in your church?

A. There are some people have that idea. I know some people in my church think I am a terrible heretic because I believe in birth control.

Q. But you are holding your job?

A. Yes, with the church behind me.

Q. Now, we are talking about the dilemma of persons who are married. What about persons not married and the possibilities of their getting married?

A. I have had some instances of that. I was at a summer school of the church lecturing on social problems and I lectured on the economic situation and the frustration of youth, that young people were not able to marry, that young people demanded a home and family and because of economic conditions, they could have them.

The next day a young girl came to me and said, "you have struck the nail on the head". She said, "for four years a young man and I have been engaged and a few days ago, we broke the engagement, not because we don't love each other but because we see no way of marrying and bringing children into the world."

I said, "get married and use contraceptives until able to afford a family." I could see the agony in that girl's soul.

Another case: a man getting married, the boss said his chances were poor and the wedding was put off.

Another: a young man consulted the doctor and he said, “the thing for you to do is get married”. He said, “there is nothing wrong, but there is the cry of nature in both for a home.” I married them and they used contraceptives to postpone their parenthood until better days, and I was with that couple when they planned their first baby and it came nearly to the day and they named it after me.

Now, if you can find anything happier than that home and the beautiful, lovely baby that came as a deliberate choice when they wanted it…

Rev. Dr. Coburn

Q. Now, Doctor, we come to this: our good friends the Roman Catholics, through the mouth of my learned friend ---

Mr. Mercier: I object; it is most unfair.

The Court: I hardly think that is fair. Mr. Mercier is acting for the Crown.

Mr. Wegenast: He has taken it upon himself to say to witness after witness ---

The Court: But don’t refer to him as a mouthpiece.

Mr. Wegenast: My learned friend asked, “is it in the interest, is it in the public good of the people here being Roman Catholics and not believing in contraceptives, that they should have this information made available to them.” He has put that question over and over to the witnesses.

The Court: I would fear it is a rather unfortunate wording.

Mr. Wegenast: Then, in the words put to the witnesses.

Mr. Mercier: Speech is the expression of thought and my learned friend has thought that all the time.

Mr. Wegenast: I had no idea that to express the views of the church involved any insinuation.

The Court: I think we can let the matter drop at this point.

Adjourn (at 1:00 p.m.) to 2:15 p.m.

(Upon the court resuming at 2:20 p.m.)

Mr. Wegenast: I would ask if it is too much to ask Your Worship to strike out my blundering question that I asked before adjournment and get a fresh start?

The Court: I think so; it was unfortunately made and wasn’t called for in any sense.

Mr. Wegenast: It was unfortunate.

The Court: I do feel Mr. Mercier has conducted the case in a very fair manner; he has been very fair.

The Witness:

A. I want to make a correction in my evidence of this

Rev. Dr. Coburn

morning.

This report to the church was amended very slightly to “voluntary parenthood” instead of “birth control”. It was thought that was less open to ambiguous interpretation than “birth control”. With that correction, what I said stands.

To Mr. Wegenast:

Q. Putting to you again the question on which we adjourned: we have this position presented to a number of witnesses: whether it was for the public good, I think we should take it, in Eastview, as far as this question is concerned: that Miss Palmer should go into the homes of people who were or might be opposed to birth control on religious grounds and whether she should incur the danger of creating discontent between the persons visited and their spiritual advisers and with that question in mind, I want to put to you what is the essential difference between the Protestant churches and the Roman Catholic church —- I think you have a word in your dictionary called “sheep stealing”?

A. It is not in the official dictionary.

Q. And that is only a thing the clergymen are accused of?

A. I have seen some laymen at it too.

Q. If there were such a term, I want you to address yourself to the question of the propriety of a nurse like Miss Palmer going into houses that she knows or might have reason to know are opposed on religious grounds to this dissemination of this information?

A. The Protestant church view is that the dissemination of truth in regard to any matter is valuable and proper and the dissemination of new truth is apt to create discord.

When the truth was given that the earth was round and revolved around the sun, there was discord.

When vaccination was proposed, it was opposed on religious grounds as opposing the laws of God.

The world would make no progress at all if you refused to go to the people with new ideas. You must run the risk of discord.

Q. It is said and my friend has not said this: let him

Rev. Dr. Coburn

just be patient until I get it out?

A. (No reply).

Mr. Mercier: I am exceedingly patient.

To Mr. Wegenast:

Q. It is said it is not in the interest of the people of Eastview that they should have the ties between them and their spiritual advisers opened, and I put it to you whether in the case of you yourself and your flock or flocks, that relation of pastor and flock is or is not a valuable thing?

A. The relation of the pastor and flock is valuable; it is a relation if it is proper doesn't need to be maintained by law.

Q. Then what do you say about disturbing that relationship?

A. What I have already said; I would disturb any relationship if it is in the interest of truth.

Q. Would you claim that if someone came along and disturbed the relationship between you and your flock?

A. If I had a flock and people; Roman Catholics, Russellites or any others came in and talked to my people -- if I couldn't fortify their faith against any assaults so that they could maintain their faith and stand on their own feet, I wouldn't think their faith of much value. I would not put any restriction in the way. I would be glad to have my people study all faiths and points of view and they would understand their own better.

Q. From the point of view of Miss Palmer, was what she did for the public good and not more than you would say she was justified in doing?

A. I would say she was and in view of the fact the Roman Catholic church has come a long way towards the birth control position –- the books put in here which I have read very carefully, "Rhythm" and "Legitimate Birth Control" show the church is with us except on the manner or nature of the method.

In the spacing of children and regulation of birth, it has the approval of some of the bishops and I wouldn't consider Miss Palmer was attacking any doctrine of the Catholic church. I have hopes that our good Roman Catholic brethren will be at one with

us. They have on some other matters come part way and I hope they will on this.

I have read "Legitimate Birth Control" and the arguments put up by Archbishop O'Brien and the dissemination of birth control and they have come a long way.

Mr. Mercier: May I interrupt? I believe that section of the Code, 207, sub-section 3 –- I think it should be for the Court to decide whether it was in the public good or not.

I have not so far objected very strenuously to anything of that kind, but I believe Your Worship has been given considerable advice as to what the public good was.

With all due respect to my learned friend, I would like him to keep his questions within the scope of asking certain questions and leaving it for Your Worship to decide what the public good is.

I don't suppose any of the reverend gentlemen of any faith have anything to do with the judicial matter of public good.

Mr. Wegenast: Of course, Your Worship has to decide on the evidence.

The Court: But not the opinions of the witnesses.

Mr. Wegenast: I would submit that the opinions of sociologists, moralists and others is proper evidence to bring before Your Worhship.

The Court: But in their opinions, it is for the Court to decide, just as you don't ask whether or not if there has been negligence or not.

Mr. Wegenast: No, that is just as wrong as to ask the witness if he committed murder, but there are two schools of thought on that: first, that you must not ask the witness questions the Court must decide. There is another side, whether it will do the Court any good or not. My suggestion is that it was of some help to the Court to know that Rabbi Sachs and others think it is good.

Of course, I can work within other grounds in order to avoid further argument.

The Court: It might be just as well.

Rev. Dr. Coburn

To Mr. Wegenast:

Q. So we got to this, Doctor: that there is an essential difference between the views you represent and the views represented by Roman Catholics, but it gets down to a very narrow line?

A. As I see it.

Q. On the one hand, it is a difference of method and on the other hand, it is authoritarian against individual judgment?

A. That is right.

Mr. Mercier: Of course, Your Worship, that is not leading at all. It doesn't give much leeway for the witness to answer.

The Court: It is summing up. The doctor has already expressed his opinion on that point.

To Mr. Wegenast:

Q. Now, I think we have a copy of the report in ---

A. (No reply).

Mr. Mercier: Exhibit 84-B.

To Mr. Wegenast:

Q. You say instead of the words, "birth control," there ought to be inserted the words ---

A. Yes, "voluntary parenthood," to be inserted instead.

Q. On page 5:

> "In view of the facts and considerations here submitted, we recommend the General Council to record its approval of the establishment of birth control clinics under public control and supervision according to standards and regulations prescribed by the provincial departments of public health, these regulations to be drawn up in the light of experimental work already done in Canada and of more permanent enterprises conducted in other countries."

By the way, did your council have anything in mind in the light of work already done?

Rev. Dr. Coburn

A. I know that from one member of the commission they referred to the work Mr. Kaufman was doing and the work done in other countries.

Q. That was intended to supplant or supercede the work Miss Palmer was doing?

A. No, but the council is setting forth there an ideal condition which is that this work is so important it shouldn't rest on any individual or group of individuals; it is of such importance and value the state ought to carry it on.

Q. What obstacle is in the way of that?

A. Again, I must say something I hope won't be misunderstood.

It is already understood, as brought out, that our friends of the Roman Catholic church are strictly opposed to this method. They constitute something about 40 per cent of the population and that is increasing. Because of the organization, the Roman Catholic church is able to rally a larger number of its members at an election than the rest of us simply because we don't have the same hold on our people. Politicians have their ears to the ground. Consequently, with a strong Roman Catholic vote, if they vote solidly against this, the politicians will be very loth to aggravate 40 per cent of the electoral strength of Canada and it is difficult and, in fact, seems to be almost hopeless a task to try to get birth control clinics established. If it is to be done, at all, private clinics must do it, but the churches set up that idea and recognize the experimental work done by private individuals.

Q. Have you any objection to the work done by Dr. Hutton under municipal auspices?

A. I have no objection to Mr. Kaufman's work either.

Q. Your report seems to visualize birth control clinics under government supervision of the provincial departments of public health?

A. (No reply).

Q. Dr. Hutton conducts his under municipal authority; does that comply with what your church has in mind?

Rev. Dr. Coburn

A. It would in spirit. Dr. Hutton's work applies only to the City of Brantford and it would be better if they applied it to the whole of Ontario. Dr. Hutton's work is fine.

Q. Here we have Mr. Kaufman employing 53 nurses throughout the country doing this work and I want an expression from you as to whether everything about that is in order and if anything might be done differently?

A. So far as I know and I am able to judge as a social worker, I think the arrangement is about as fine as could be had under the circumstances. He has two experienced nurses selecting workers in the communities. They take applications and send them to the board in Kitchener to pass on the applications. I don't know of any more I can suggest.

Q. From a sociological or physiological standpoint, is it desirable that the individual undertaking this thing is distinct from the government?

A. I entirely agree with Mr. Silcox when he said the other day that every great enterprise has been started by private individuals. Government are slow to move and some individual must take it up himself, start it and he is a public benefactor in doing so and the community that laughed it to scorn at first, finally takes it up and goes for the whole thing.

Q. You have seen something of Mr. Kaufman's work in Toronto?

A. I have inspected it several times.

Q. Have you ever sent anyone there?

A. Not directly, my work is nationwide.

Q. You are one of those fellows sit in an office high in the sky?

A. No, my work is national, but I am not an armchair worker; I am on the job.

Q. What about Mr. Kaufman's efforts as a business enterprise?

A. Pardon?

Q. It has been suggested that as a rubber manufacturer —-

he does manufacture the pessary?

A. I have inspected the clinics and I was amazed at the amount of money he puts into it. There is absolutely no sign of profit.

Q. How about profit in the future from this as a potential business?

A. I think he would have to make up for considerable.

To the Court:

Q. You are called as a theologian?

A. Yes.

Q. Not a business man?

A. No.

Mr. Wegenast: But he has examined them.

To the Court:

Q. From the point of view of a theologian, not a business man?

A. Of course, we have to deal with cases of exploitation and men come to my office and getting to the bottom of it, I find some mercenary sign.

To Mr. Wegenast:

Q. What do you see here of this being a business enterprise?

A. None at all.

Q. If the question arises as to whether the man or woman should decide as to babies or not, who should be the boss?

A. I don't like that, that word "boss" at all in a relationship. I don't believe either should be boss; I believe that marriage is a relationship.

Q. You are a married man yourself?

A. Yes, for a good many years. What you want to get from me is whether the husband should consent to the use of contraceptives?

Q. Yes, it is a partnership, as you say, and if they cannot agree, is the man to give into the woman or the woman give in to the man?

A. I put it this way; it is not a case of agreeing on contraceptives. The greatest enterprise two human beings can enter upon is bringing into the world of human life. In that way God shares his creative power.

They shouldn't enter into that unless both are agreed. Man may say he wants even more children than he can take care of; the woman may say she wants even more children than she can take care of. If either party objects to the coming into life of that child, there should be no child.

The greatest tragedy is to bring an unwanted child into the world. I make this qualification: no two people should get married and decide right from the beginning they should have no children unless there is some hereditary strain or other reason.

If a woman should say, "I am going to have no children," I think that wholesale denying of parenthood is wrong unless there is a legitimate reason. But where they decide to have a child, if the woman must take it for better or worse, I can't see any decent man forcing a pregnancy on any woman

I would like to read from the report here, what expresses my view:

> "Seeing that maternity always involves an expedition down to the very gates of death, the Christian man will recognize that the wife, by virtue of her personality, has a right to determine in fellowship with her husband the occasions and frequency of such experiences. And the same considerations also indicate a right to determine by voluntary and conscientious choice rather than by accident, the occasions when marital privilege shall find a sequence in procreation."

Because of two reasons: first of all, it is a crime to bring an unwanted child into the home; second, because a woman must bare the pain and risk her life if it should come to that, and the husband wanted a child and she felt she didn't want one, in that case, I think the woman's word should go.

Rev. Dr. Coburn

Q. Sociology, we found, is very much interested in the preventive side, and there are books on it; what do you say as to this work as a moral preventive; doctors deal with it from the medical side?

A. I was considerably struck by the evidence of a woman here, and it raised laughter in court. She said Miss Palmer was a little late; she had had 9 children and was in her 30s. Society has prevented that woman from spacing her children. I think every bride and young married couple should have this information. I don't think it rests on the fact these people are in economic distress that these women should have it. I believe in prevention. I believe in building a fence around a precipice rather than running an ambulance service at the foot of it.

Q. Prevention rather than cure?

A. Yes, prevention rather than alleviation.

Q. We have heard some cases in the reports from Miss Palmer of numbers of abortions by women: that is they do not agree with them when in the box. Now, is there anything that arises in your experience that would help us figure out any discrepancy there?

A. Only this general fact that I do not know, but that women are generally reluctant to let it known they have had abortions. They look upon it as a shameful thing. Possibly people in a private conversation might admit what they wouldn't admit in public.

To the Court:

Q. To a total stranger?

A. Yes, to a total stranger. The worker can sometimes get in and win the sympathy of a woman and win her confidence.

Q. Can that capacity of getting things out of people be cultivated?

A. Yes, it can.

Q. Is it any part of the equipment of a social service worker?

A. Yes, you must learn facts and sometimes it is a

tremendous job to get beneath the surface. I have had some of these mothers who would tell us quite a fairy story and I would say, "now, that is a nice fairy story; let us get the truth".

Q. You have had that experience?

A. Yes, at first it is a fairy story and looks nice and beautiful and when you get underneath the surface, you must get their confidence and sometimes, you must get rather stern.

Q. And take them by the scruff of the neck?

A. No, we don't get tough with the ladies.

Q. We lawyers have to do that sometimes?

A. You are a tough crowd.

Q. That is all.

CROSS EXAMINATION

To Mr. Mercier:

Q. Now, sir, I generally end with this question, but I will start with it here; you were not a believer in birth control, but you have since become a sincere advocate of it?

A. Yes, I have been confirmed in its faith.

Q. Have you recommended these contraceptives to any of your parishioners or flock without spiritual advice from you or your brother advisers?

A. They would get it from me whether about contraceptives or not.

Q. Would you advise your flock to use them or do you believe it might be better that before using them if they should ask you whether spiritually, they should ask you about it?

A. I wouldn't say it was necessary for any person in my flock to ask me abut the spiritual part of using contraceptives.

Q. In any circumstances?

A. Not necessarily.

Q. Do you think it is an important matter, the use of contraceptives?

A. Of course, the intimate relations of husband and wife in marriage are very delicate.

Q. The use of them is exceedingly important from a marriage point of view and moral point of view, or should you say in any old way, use contraceptives or don't use them?

A. I said this morning there ought to be an ideal condition of comprehensive sex education, of all the facts of life from a social, moral and physical point of view, and that system of sex education should include the teaching of the use of contraceptives; that is, to people of marriageable age.

Q. And to people who are married?

A. Yes.

Q. There you give the matter great attention and great importance; you believe it is a delicate and important question?

A. Yes, I believe it is.

Q. And you believe they should be educated first, in sex knowledge and secondly, whether they should use it or not?

A. I didn't say nobody should give information regarding contraceptives excepting those thoroughly educated in sex. I am giving you what I think is the ideal condition as a social worker and minister of the gospel. When that sex education isn't given, and it isn't, there is a lamentable ignorance on the part of our young people on the facts of life, but the fact they are ignorant on that shouldn't prevent their getting the other information.

Q. Therefore, in cases where there is no sex knowledge —- no, I don't think that is putting it right; but in cases where particular attention isn't paid to sex knowledge, there is no objection to people getting this knowledge in any old way?

A. I didn't say "any old way".

Q. In what way?

A. If women could be persuaded to go to clinics, that is the good way. Knowing many will not go, the visit to the home of a kind of woman who would share with her sisters this new knowledge in a kindly and friendly way and preach the gospel of the wisdom of spacing their children and give them the

information as to how that might be done without harm to themselves…

Q. And you believe that would be the way to approach them -- failing clinics, it would be better that the social worker should approach people and go into the matter as thoroughly as you have suggested?

A. As thoroughly as circumstances would make it possible; I must correct you again.

Q. You may correct yourself?

A. You are putting it in a way I didn't and I am giving the evidence.

Q. That is what I want?

A. If the women could be persuaded to go to clinics, but the women who need it the most won't go to the doctor or to the clinic; hence the necessity for the kindly visit to the home.

Q. Now, I would like you to tell me as a social worker and as a man with some experience in morals and religion what would be your opinion of the approach to these people, you having admitted it is a delicate and important matter?

A. It is an important matter and there is an element of delicacy in it.

Q. What would be your mode of approach or one you would advise?

A. It would be like approaching a man on religion. My opinion and experience is that you can't lay down a hard and fast rule. People are so different. The approach for one case might not suit another at all and workers must use their common sense and best judgment.

Q. In each and every case?

A. In each and every case.

Q. And if 100 or 200 cases are alike, she should treat all the same way?

A. Even God hasn't made any two people alike.

Q. Therefore, there wouldn't be the same method of

approaching people in this delicate matter in the same way?

A. She might find it wise to vary the exact approach. It should be friendly as one woman to another.

Q. And there should be a little friendly talk; a friendly and delicate conversation or interview before entering upon this subject, and it should be explained thoroughly and delicately in order that the person receiving it should be fully aware of what she is getting and the consequences?

A. The social worker should use her best judgment as to the method of explanation. I think some people know the explanation; they might be just waiting. You can't lay down any hard and fast rule.

Q. Do you believe that with certain people on relief that in going into certain homes and representing herself as a nurse that people on relief accustomed to being visited by nurses -- do you think that would have a certain effect on them as to whether they should sign an application for something or not?

A. I don't see it would have any particularly injurious effect.

Q. Of course, you, as a student of human nature, have seen women, especially of the poorer classes, sign almost anything, getting a free sample?

A. I have never gone around with samples to test that out; that is hearsay evidence.

Q. Is that right?

A. It is hearsay.

To the Court:

Q. All your evidence today is hearsay?

A. (No reply).

To Mr. Mercier:

Q. Is that so?

A. I have heard of women sighing cards for book agents and others; I have heard of getting women to sign cards for that, certainly.

Q. Now, sir, you have given us some very illuminating information about the way this decision was arrived at, very illuminating indeed. As I read the report in Exhibit 84-B, on page 5, I take it that the written word there is that:

> "It is believed by some" –- not everybody –- "that the programme of birth control clinics can not become effective without some modification of the Section 225 of the Criminal Code."

How can you reconcile that with the fact that the visitation is from place to place –- or would you say this visitation is recommended by this resolution?

A. (No reply).

Mr. Wegenast: This objection should be taken: Dr. Coburn is here as a theologian and not as a lawyer and if my learned friend is not satisfied with his exposition of the law ---

The Court: I think he is asking for the circumstances under which this arose.

Mr. Mercier: He has given quite an explanation.

Mr. Wegenast: Not on the legal features.

Mr. Beament: What has Section 225 to do with the subject?

Mr. Mercier: My learned friends are misconstruing my question.

To Mr. Mercier:

Q. I have read the question: (Exhibit 84-B, p. 5):

> "It is believed by some that the programe of birth control clinics can not become effective without some modification of the Section 225 of the Criminal Code."?

A. "Voluntary parenthood clinics," write that in.

Q. Does that include visiting homes?

A. That might be, yes; I could see where it could include that. It says, "it is believed by some." The council doesn't state that. It is stating objections that it couldn't be operated without amendment to the Criminal Code. Then it goes on to say that the justification of public good relieves that.

Q. Could I say there is no suggestion in this report except of clinics?

A. It is in the light of experimental work already done. Now, the members of the commission who drew that were thoroughly familiar with the work of Mr. Kaufman and three of the members inspected the clinics.

Q. There is nothing mentioned in the report?

A. It is intended to be there.

Q. Take the last few lines:

"In view of the facts and considerations here submitted, we recommend the general council to record its approval of the establishment of birth control clinics."?

A. "Voluntary parenthood."

Q.

"Voluntary parenthood clinics under public control and supervision according to standards and regulations prescribed by the provincial departments of public health."?

A. (No reply).

Mr. Beament: Go on?

Mr. Mercier: We have had that.

The Witness:

A. That is what ought to be done.

To Mr. Mercier:

Q. There is nothing there to suggest visits from place to place?

A. Except the contents of that were drawn up in the light of experimental work already done and I know at least three members had visited that clinic and had that in their minds.

Q. But it is not in the report?

A. I think it is implied in that experimental work, sir.

Q. Anybody who hasn't been there wouldn't know that?

A. They might ask us to explain and we would.

Q. Then, sir, I think you agree with me the United Church of Canada is not unanimous on this subject?

A. No, it is unanimous on very few subjects.

Q. This opinion is not unanimous, even in your church, among your flock?

A. You misunderstood, Mr. Mercier. I have no church; I am one of the church secretaries and my territory is Canada, Newfoundland and Bermuda, so my church is the whole church.

Q. I take it you said you were considered a heretic by some of the folks in your own religion?

A. Yes.

Q. And a heretic by some of your own colleagues?

A. I don't think so.

Q. Because you hold these views?

A. On birth control?

Q. Oh, no, I wouldn't say they would consider you a heretic all along the line, but on this particular subject?

A. There are four secretaries of us and we were all at the board at which the officers unanimously passed this report.

Q. All your colleagues, not only the officers?

A. Oh, yes, there are some who disagree, but I know the church, that the overwhelming majority, especially those who made sociological studies along this line, are in favour.

Q. But some do not agree?

A. That is perfectly true.

Q. As much as I loath this, it has been brought up and it is my duty to bring out everything. You are the second witness who has mentioned there was a certain fear in certain centres of this French avalanche of population; can you tell me if you know that fear exists, giving a few reasons why?

A. One reason is the very high birth rate in Quebec and the other is the over-enthusiastic statements made by some good men of the French race. For instance, I remember some years ago, perhaps 20 years ago, at Toronto, I was a pastor -— I don't say this represents the whole French race -- but a certain man said in the press Ontario would soon become as French as Quebec. That created a fear.

Q. That, of course, would be a typical thing?

A. Of course, you understand we Anglo-Saxons have the same self-respect for our race and I fancy the French people have some respect for themselves. Now, if an Anglo-Saxon thinks in 20 years Ontario will be as French as Quebec?

Q. Then it might be better to centralize these birth control centres in the French parts of Ontario?

A. No, I don't think only in the French parts of Ontario because I think it is for the good of all married women and their children. I don't think birth control should be used as a way of combatting any possible domination of the French population. What I said was that some of our members thought when passing this report, -- they looked at the high birth rate in Quebec -- "we might soon be swamped".

Q. Do you not think it would be a good thing first to tell them not to use it?

A. I know there is that fear.

Q. This is not a personal feeling, at all, but it is something from one born and bred in Ontario and being one of the descendants of 10 generations of Canadians, considering myself a true British subject ---

A Voice: Hear, hear.

To Mr. Mercier:

Q. --- and not knowing any French in this province who are not loyal British subjects, I cannot understand this attitude and I think it is very important it should be defined, the cause and reason of that fear?

A. I am not here to discuss that.

The Court: It would be hearsay on his part.

Rev. Dr. Coburn

To Mr. Mercier:

Q. You know there is that fear, but not why it exists?

A. I gave two reasons: one, the high birth rate in Quebec and the other, statements attributed to gentlemen in Quebec. Those are two reason I know.

Q. I suppose other people may take statements from Toronto as fearful?

A. I am not saying it is so, but I know there are some people of our community who do and I combat it; I do not sympathize with it, except you would not believe I do not.

Q. No, but I think if certain people met certain others a few times oftener, they might have better ideas?

A. We agree to that.

Q. You have visited several people and seen people very unhappy?

A. Yes, I have seen them in distress.

Q. And you have seen large families who were very happy?

A. Yes, that is true.

Q. So the test of unhappiness would not be in the fact of having a large family?

A. There, in some cases I would say that one of the major causes of unhappiness would be the size of the family. I have summed that up before now.

Q. There are some cases where large families are happy and they get along wonderfully well?

A. That is quite true; I agree.

Q. Am I correct in stating you have given in your evidence: marriage is a partnership?

A. Yes.

Q. And part of the aim of that partnership is procreation?

A. Yes, normally.

Q. Do you believe the enterprise to use contraceptives

should be undertaken without consultation between husband and wife?

A. It all depends; there are cases where it would be almost inevitable.

Q. In certain cases?

A. Yes.

Q. In the majority of cases?

A. I wouldn't say that, but there are brutal husbands, syphilitics and drunks and without consideration for the woman.

Q. Except in extreme cases, you believe the husband and wife should consult before using these?

A. I think they should consult about everything, especially about having a new baby.

Q. And about using contraceptives or not?

A. Yes, that would be part of the conversation.

Q. You also mentioned the case of a certain young woman who struck you very much when she said the social worker was a little late?

A. Yes.

Q. Because she came in after her ninth child?

A. Yes.

Q. Supposing that woman –- she appeared to me to be an especially intelligent woman?

A. Yes.

Q. As compared to the others?

A. Yes.

Q. Do you not think that remark was a witticism?

A. There was an element of humour, but it struck deep into her soul.

Q. Do you not think that with a wide distribution of contraceptives today that this woman wouldn't need to have this

visit?

A. There is a wide knowledge of contraceptives, but there are many people who are afraid. They know there are contraceptives that are dangerous and unreliable and they are not in a position to decide. You would be surprised at the ignorance of some intelligent people on that point.

Q. Wouldn't you agree that type of woman would not be ignorant on that?

A. I wouldn't say that, but I would say if that woman had known of reliable contraceptives, I believe she would have used them and I don't think she would have had nine children.

Q. Even if a maid in the house and the husband getting a good salary?

A. I don't believe that. I don't think the economic side is the most important. It is a matter of spacing; it is not a question of being on relief.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. There is, of course, nothing in the report (Exhibit 84-B) against personal visits?

A. Oh, no.

Q. Now, my learned friend has placed some weight on the woman getting a personal signature; are you or are you not going on the assumption the woman ought to sign for the contraceptives or would it have been proper for Miss Palmer to give contraceptives without the application?

A. I think Mr. Kaufman has been very wise in safe-guarding his work the way he has, but apart from that, believing the medical evidence I have heard that these were harmless, I believe that no harm would have ensued if they were handed out.

Q. Now, what do you think about Mr. Kaufman's policy not to give it to unmarried mothers?

A. As a general policy, especially for a private institution like that, it is not wise, but there are cases like the one we had in the box where an exception might be made.

Q. Now, I think you said everyone should have these things?

A. (No reply).

The Court: Everyone of marriageable age?

The Witness:

A. Yes, everyone of marriageable age.

To Mr. Wegenast:

Q. The general rather cancels that?

A. If given to every woman, I would want them given a thorough teaching of sex. I wouldn't be in favour, Mr. Wegenast, of Mr. Kaufman or anyone else handing this out indiscriminately, but there are cases here where you weigh the evidence and possible alternatives, and decide it is the right thing to do.

Q. Is it your experience married women know something about contraceptives?

A. Some do and some don't.

Q. You have heard witnesses say women talk over the back fence and give each other information?

A. Yes, and a lot of that information is of a bad kind and that is the reason why right information should be given.

Q. And isn't that in favour of Miss Palmer going around giving right advice?

A. Yes, I saw a metal contraceptive device used by a woman that would make you shudder. There is a lot of vicious information circulated; that is all the more reason for the truth to be given.

Q. And the woman being crudely informed and getting information the best they can and having a certain amount of instruction from their church about it: what do you say on the whole of the propriety of letting a nurse like Miss Palmer go into the home, let us say, even unsolicited and giving the information contained in that pamphlet?

A. I think that the good I would expect to see from work of

that kind is so great as to absolutely overshadow any possible harm it might cause.

I can't see how putting that information in the hands of a woman, with those appliances, possibly could do harm.

Q. The suggestion is that this thing is so very delicate there ought to be a basis of education laid down first by somebody, perhaps not a nurse, before the information is imparted; what do you say?

A. Taking a married woman: the two things needed to be taught her would be the wisdom or social value on her part of properly spacing her children, and information how she might do that wisely and safely, and if those two items of information are given, I think that is all that is necessary.

Q. What about giving education on the moral side; do you think it ought to be discussed at all?

A. Of course, it wouldn't do any harm and if the woman raised it, then it could be discussed.

Q. The question is in making the approach, you enter into a discussion as to the moral phase, the propriety of it?

A. As to the propriety, I think it would be proper to point out if she had children with spacing of one year, it would be difficult for her to perform her moral duty to herself, her children and to society.

Q. Whether you think it would be advisable for Miss Palmer to say to the prospects here in Eastview, "I know you are French and Catholic, but I don't think the views of the Catholic church are right and I am here to tell you what is right"?

A. I think that would be creating unnecessary trouble. If the woman raised that issue, they might discuss it, but it is not the social worker who should raise it.

Q. Having in view it is so important and delicate a thing, it should be brought up?

A. No, it might raise prejudices which might prevent the social worker taking advantage of what is a wise and useful thing for the woman.

Q. Let us be fair, Doctor; would you like somebody to come

into your home with a new idea that would be against your old-fashioned prejudices and try to sell it without exploiting all the moral and theological phases of it?

A. I would be glad to have anyone come in and try to sell my wife anything they wanted; I think she would be able to take care of herself on that proposition.

Q. There is an essential difference of view behind this?

A. Yes.

Q. What is it?

A. That we believe that the more completely the truth is known the better and if the truth is known, error will fall down before it. If it is not true, it will die.

Mr. Mercier: In many of these re-direct examinations he repeats very much what was said in examination in chief.

The Court: I do not think there is anything ambiguous in that point in cross examination to have it resumed now.

(Witness retired)

The Court: Five minutes adjournment.

(The Court resumed at 3:50 p.m.)

(page L-1 follows)

REVEREND CALBRAITH G. HEPBURN, duly sworn, deposed:

To Mr. Beament:

Q. Mr. Hepburn, you are a priest of the Church of England in Canada?

A. Correct.

Q. You are rector of All Saints Church, Ottawa?

A. Yes, Sandy Hill.

Q. How long have you been a priest?

A. Twenty-four years.

Q. What has been your experience apart from the natural experience of a priest in the church; what other experience have you had in social work?

A. On the coast of British Columbia in the mission field, we had a medical mission. I was there for two years. Then, the war part would hardly be called social work. After that, a year in Montreal and 16 years in Ottawa.

Q. What position do you occupy in Ottawa apart from your incumbency of All Saints Church?

A. I am a member of what is called the Social Service Council of this diocese of Ottawa.

Q. Yes?

A. The Church of England Council for Social Service, the C.E.S.S.

To the Court:

Q. Anglican?

A. Yes.

To Mr. Beament:

Q. During your incumbency of your parish you have come in contact with social work?

A. Yes.

Q. What has been your experience as to the propriety of

birth control or the use of contraceptives?

A. In my early ministry, I was opposed, but it was before I knew much about it, but as soon as I came in contact with social problems involved in the welfare of the family, the health of the mother and children and the good of the community, I thought there should be some way that could be conscientiously adopted, but it wasn't until after the pronouncement of our own Lambeth Council that my position was clarified because I thought the Lambeth Conference representing the Anglican church through the world –- I felt different about the matter and I am not an expert now, but I am a convert.

Q. That is, the Lambeth Conference of 1930?

A. Yes.

Q. And you believe in birth control work?

A. Under careful supervision.

A. Yes.

Q. To what extent do you believe in birth control work?

A. I believe the medical profession should prepare information to be disseminated by those prepared to do it.

Q. It should be disseminated under general medical supervision by persons qualified to disseminate it?

A. Correct.

Q. Is it a part of a social worker's duty to instruct persons in the moral side of it?

A. It is pretty difficult to distinguish between morals, religion and social service, but I feel workers, clergy, ministers of the gospel and others can give advice according to their conscience and the social worker should be prepared to give his or her assistance.

Q. The suggestion has been made to some witnesses that the spread of birth control information may lead to that information being used for improper purposes; that is to say, the removal of the fear of consequences may lead to the spread of immorality; what do you think of that as a proper reason for not disseminating birth control information?

A. I don't think this is a valid reason for not disseminating this or any other information. It is the truth and it is in the abuse and not the use of the knowledge where danger arises, and if the information is scientifically and carefully prepared, it should be made available, and if there are some who abuse it, that should not be an objection.

Q. And in your opinion, where should the duty lie to disseminate it?

A. The doctor and social worker.

Q. The social worker should instruct as to technique?

A. Yes.

Q. And whose duty is it to instruct as to the moral side?

A. Every social worker who is a Christian, every social worker with a religious background and high motive and scientific knowledge, and the motive should be elevated to the highest plane.

Q. What is the function of the church in respect to birth control?

A. The Church of England?

Q. The church generally, any organized church?

A. I feel important, but not important enough to speak on that.

Q. What is the function of the church, not its views?

A. With regard to the morality of birth control?

Q. Yes?

A. I believe it now to be the function of the church to endorse it.

Q. There must be some dividing line between it –- you have told me you do not consider the fact of this birth control -— the fact it can be abused is a valid objection to its dissemination?

A. No.

Q. The technique of the knowledge is a physiological

question primarily?

A. Correct.

Q. I am asking where is the dividing line between right and wrong; whose duty is it to teach that?

A. (No reply).

Q. The social worker or the churches?

A. The churches.

Q. It is the duty of the churches to teach the dividing line between right and wrong?

A. Yes, I would think so.

Q. In other words, the worker should give out the knowledge if it is true?

A. Yes.

Q. And the church should instruct how to use that knowledge?

A. Certainly.

Q. You didn't hear the evidence of the 20-odd women?

A. No, I was in court only one morning.

Q. There was one of them, Mr. Hepburn –- my learned friend will correct me if I don't synopsise her evidence properly –- she said Miss Palmer called on her and she told Miss Palmer she was married; she told Miss Palmer she had a child –- that she had had a child; she signed a card showing she had a child and the card described her as a married woman and also that she had had three or four abortions, but she says at the time Miss Palmer left, she told Miss Palmer she was unmarried and in fact today she is unmarried?

A. (No reply).

Mr. Mercier: And the girl denied having the abortions.

The Court: Yes.

Mr. Beament: Yes, she denies now having had the abortions.

The Court: And she signed as a married woman.

Mr. Mercier: But the social worker knew she was unmarried.

The Court: Yes.

To Mr. Beament:

Q. And she told the social worker she was unmarried before the worker left, although she doesn't recede from the position she has a child?

A. Yes.

Q. Now, you in your evidence have said in describing the extent to which the dissemination of this knowledge was proper to married people?

A. Yes.

Q. What do you say as the type of case I have referred to?

A. I would say it is the lesser of two evils. Wrongdoing cannot be condoned from a moral point of view whatever the law may say, but as a Christian minister, may I say it is quite proper that information should be given rather than that further children be born without a proper name, children in the eyes of the law beyond wedlock.

Q. The evidence discloses in each case Miss Palmer spoke to the wife and in each case, an application for birth control assistance was filed by the wife and in each case, appliances which were subsequently sent were addressed to the wife, and there is no evidence Miss Palmer spoke to any of the husbands of these women, and there is no evidence of the husbands being consulted by her and there is no evidence of the wives having consulted the husbands ---

A. (No reply).

The Court: There is no evidence they knew.

To Mr. Beament:

Q. There is no evidence they concurred and none that they objected?

A. Yes.

Q. Some of the questions carry the suggestion the husbands

should be consulted; what do you think is right of the husband and wife consulting regarding bringing children into the world?

A. I certainly do agree with the previous witness.

Q. Mr. Coburn?

A. Yes, it is a partnership.

Q. What do you think of a conference between the husband and wife; should the female social worker consult with the husband?

A. I wouldn't think so; I think the wife should consult with the husband.

Q. Let us put another case: let us assume the wife does not want to have a child and the husband does want to have a child; of course, the ideal case is where both want a child?

A. The last witness brought that out.

Q. Where only one wants a child, where does the veto rest?

A. I think the woman who has to bring the child into the world.

Q. Why?

A. She has to suffer more and the mother is more closely identified with the prenatal care of the child.

Q. Have you any views as to the unwanted child in the home?

A. I may have views; I don't know if I can express them as a member of the Social Service Council of the Anglican Church. I could express my private views.

Q. Your own views?

A. The unwanted child?

Q. You heard Mr. Coburn express his views as to the unwanted child?

A. I don't think it is fair to the child or society, generally, and certainly if one of the partners does not want the child, or both, it is wrong.

Q. Mr. Coburn's position was, it is not contraception —- it

is due to both parents wanting a child; do you agree with that?

A. Certainly.

To the Court:

Q. There are many instances, Mr. Hepburn, where a child arrives and it is not necessarily a wanted child, but it becomes a wanted child?

A. Yes, little orphan Annie, but what I had in mind was the case where a child is humanly handicapped by being brought into a home where it is not a wanted child, but it is quite true it is possible and we can thank God for it; there are compensations sometimes.

CROSS EXAMINATION

To Mr. Mercier:

Q. Have you seen the pamphlet which was distributed in connection with information for birth control?

A. I haven't seen that actual one; I have seen others.

Q. I would like you to glance over it. If you would like to make a careful study of it, we will give you time?

A. I could read it and come back another time, but I have read other pamphlets.

Q. That is the one we are interested in.

A. That is so.

Q. You wouldn't care to express an opinion on it now?

A. No, but I would be glad to return it to you.

Q. It would be unfair to ask your opinion on it now?

A. Yes.

Q. There might be a danger of the spread of this information leading to its improper use?

A. It is possible but reading the Lambeth Conference our leaders pointed out that, but they felt the other danger was so much greater.

Q. Might not there be a danger in these articles or

pamphlets similar to this containing birth control information lying around the house there (sic) there are daughters 16, 18 or 19 years of age, and that might happen in large families especially?

A. Yes, but the careful mother wouldn't leave iodine lying around.

Q. If the mothers of very large families expect to be shown this information, it is because people believe they should have it and they cannot look after themselves in that manner, so they might not be able to look after themselves in others ways?

A. Yes.

Q. So there might be the possibility of this lying around in houses where there are large families?

A. Yes, like other literature.

Q. You have been in social work for some time?

A. Yes, in my parish work, but only in the beginning as a minister of the gospel.

Q. But in a case –- hypothetical -- of a mother with a large family who generally leaves her purse in her drawer in her bedroom and if the grocer comes along, –- and she might leave all her precious belongings there -— the mother might send a daughter up for it and the daughter see it and when the mother is out the next time, the daughter sees it and reads it?

A. It is possible and there are other places they can get such information.

Q. You are convinced it is not for young people?

A. No.

Q. And don't you think the social worker should be extremely careful and very cautious in the way this information is distributed?

A. The social worker should use her best judgment.

Q. This work should be done by a Christian social worker with a religious background?

A. That is my opinion.

Rev. Hepburn

Q. What exactly do you mean by work being done by a Christian social worker with a religious background?

A. I suppose one word, conscience, would cover that.

Q. But why would you say a Christian worker with a religious background to distribute or make the distribution of this literature, you would want her to be of a high moral standard and a good Christian person with a good religious background?

A. Yes, for all social workers in all fields.

Q. I would like to confine it to this particular social work; why lay such importance on that?

A. I feel our church and others represented here would not concern themselves if it did not affect the moral well-being of the family.

Q. Why do you state you would want this Christian social worker with a religious background to go into these homes?

A. That is the ideal; a trained worker giving scientific information is not necessary a minister of the gospel.

Q. I believe you stated you would want a Christian worker with a religious background, why?

A. That is why I am here today; it is because I feel it is too important to people and the social worker should have a religious background.

Q. Why do you say a social worker going into the home is important?

A. I am not an expert; I am a convert, but I think it is of tremendous importance if the worker is trained and if she is efficient and of the highest character.

Q. My learned friend has referred to this girl who had given birth to a child?

A. This girl also stated readily in her evidence she had enough of one.

Q. Now, may I make this point; is it not possible a girl who has had a child may become a very good girl?

A. That is quite possible.

Q. And might not wish to have any more?

A. Out of wedlock?

Q. Out of wedlock?

A. That is possible.

Q. On this point, as to consultation between husband and wife, I put this case to you: what do you say as to the wife using contraceptives without the knowledge of her husband and without consulting him as to whether she should use them or not; do you think that would be quite proper?

A. Of course, that is not part of the partnership of an ideal married life. I suppose she should have the right to protect her own health and space her children.

Q. Taking it for granted most married men are decent, do you not believe before the use of these contraceptives the woman should consult with her husband unless she has a brute?

A. That is the ideal married state that they should consult on all matters.

Q. Don't you think or consider it dangerous if a couple who got along wonderfully for a number of years and all at once the husband finds the wife using contraceptives without consulting him?

A. It might cause a barrier.

Q. Do you believe the husband ---

A. I wasn't just sure; I don't see what that has to do with giving out the information. I can't answer for the husband and wife's opinion.

Mr. Beament: This is purely hypothetical; it is without relation to the evidence whatever.

Mr. Mercier: That might be my learned friend's opinion about it.

Mr. Beament: It is not opinion; there is not one word in evidence about it.

Mr. Mercier: We are not in argument yet.

To Mr. Mercier:

Q. Do you think it is proper for the husband to be consulted before the social worker gives it to the wife?

A. I think a social worker consults with the wife and the wife should consult with the husband.

Q. The social worker needn't worry about the husband being consulted by the wife?

A. It is hardly in her province.

Q. After speaking to the wife about it, do you think she should say, "before using this, you should consult your husband"?

A. She might, but not necessarily. It is not injurious information; it is beneficial.

Q. Talking about the unwanted child: a lot of people wouldn't give that child for a big amount of money and then they might not give a nickel to have another one and still, if that other one came along, there might be a very big chance for it to be beloved like the first?

A. It is possible.

Q. In view of the Lambeth Conference of 1930, which I believe you take as the basis of your own attitude?

A. Yes.

Q. What in view of that conference do you think of the house-to-house calls to volunteer birth control information, in view of the Lambeth Conference?

A. Of course the Lambeth Conference expresses the view of birth control, not the methods.

Q. That birth control might be applied?

A. Certainly.

Q. But in view of the principles they have laid down -- do you think in view of the principles laid down in the Lambeth Conference, would it approve of house-to-house calls to give

this information to everybody?

A. I would venture to say they would approve of birth control clinics prepared by the medical profession to citizens entitled to receive it.

Q. What do you mean by "citizens"?

A. Married people.

To the Court:

Q. By means of social workers?

A. Yes. Of course, it would take considerable money.

To Mr. Mercier:

Q. I would like to discuss this Lambeth Conference. I take it this Lambeth Conference was exceptionally careful and reported its finding on birth control in very careful words?

A. That is true.

Q. And speaking of it, I believe you are familiar with it?

A. With all that report, yes.

Q. Referring to page 8, Exhibit 77-B, there is an excerpt:

A. (No reply).

Mr. Beament: No, refer to the report exhibited in court.

To Mr. Mercier:

Q.

> "They have been frequently used to avoid the responsibilities of parenthood and as a means of escaping from the self-control which should be exercised in married as well as in single life. They have become a danger to many civilized nations by a disproportionate reduction of their best stocks. We think that some of those who are most active in the advocacy of birth control do not give sufficient weight to these considerations."?

A. Yes.

Q. Do you think that would give less approval to door-to-

door canvassing?

A. I don't like the word "canvassing".

Q. Let us say house-to-house calls?

A. Yes, by a trained worker.

Q. What should she do?

A. Look at the paragraph on the other page. Great bodies move slowly and cautiously and much as I respect my headquarters, they must be very careful as they represent the Anglican communion throughout the world and this was the first time they pronounced on this important question and they did advise birth control under proper medical and spiritual control.

Q. But the methods employed in this particular case are not the methods advocated there?

A. I would say these are almost better. Again, I can't read into the mind of the bishops, but what they are denouncing in that paragraph is what they get in the drugstores and other places; I don't say all.

Q. The majority of them?

A. I would rather you would say that than I; we have some drugstores in the parish.

Q. I take it that the whole Lambeth Conference expresses, although admitting the principle of birth control, a fear that too many people might use it?

A. They express rather a warning; after all, the Lambeth Conference is simply issuing material for the guidance of its own communion and others who wish to follow it and it is given in this way, that the clergy, myself and others, may have some official guidance to help them in their own parish work and the members generally of the church should know where the church stands in this. Many people think it didn't go far enough.

Q. And as an official of the church, you subscribe to that?

A. Oh, yes, or I might lose my job.

Q. That is the only reason you subscribe to it?

A. Oh, no, but you might give me a job as a sociologist.

Rev. Hepburn

Q. They subscribe to many things, even total abstinence for long periods?

A. Yes, it is there.

Q.

> "Each couple must decide for themselves, as in the sight of God, after the most careful and conscientious thought, and, if perplexed in mind, after taking competent advice, both medical and spiritual."

I take it there again the Lambeth Conference lays very much importance on the subject which seems to be a very delicate one, although my learned friend doesn't like me to say it?

A. (No reply).

Mr. Wegenast: Oh, yes, I like it.

To Mr. Mercier:

Q.

> "Each couple must decide for themselves, as in the sight of God, after the most careful and conscientious thought, and, if perplexed in mind, after taking competent advice, both medical and spiritual."

How does that refer to house-to-house calls?

A. This is in a general sense; read from "homes with large families".

Q. But in cases of small families?

A. You are asking what the Lambeth Conference pronouncement is as to method; they say be careful and prayerful.

Q. Hypothetically, in your parish there is a young couple with two or three children. The father does not want any more and the mother claims she might have one or two more; one of that couple decide they shouldn't have and the other wants more; do you believe in your own parish and according to your convictions wouldn't it be highly desirable for that person before deciding to use contraceptives to ask spiritual advice?

A. Yes, and follow this report and get medical advice. But the information supplied is prepared by the medical profession.

Rev. Hepburn

Q. Yes. I take it as a whole you believe as I do this Lambeth report was prepared very carefully, and in birth control work nothing can be done too carefully by the social worker?

A. Yes.

Q. It is an important and delicate matter to introduce this into a home?

A. It is important not only to the home, but the well-being of the church and community.

Q. And would you bear with me if I say in the distribution of information concerning birth control, that the principles as laid down in the Lambeth Conference, in your view, should be applied?

A. The principles should be a guide, but the Lambeth Conference has no authority.

Q. The principles laid down are how it should be done properly?

A. Yes, that is my own expression or opinion.

Q. Do you agree with me it might be a very delicate matter for a social worker to go into Catholic families with this information?

A. I would rather not –- to express my opinion, it is a question of religion of the family or the father of the family and it is a question of the well-being of the community and family from their conscientious point of view. If they have something they honestly and conscientiously think might help that family, she might be an atheist or Buddhist. It might be delicate for me to enter a Catholic home without thinking of the reason I was there. I wouldn't be stealing any black sheep. I wasn't thinking of you.

Q. That might be because of my complexion?

A. Well ---

Q. Talking not altogether about your own parish, but would you like to see people going into your own parish and giving certain information against those which you hold absolutely dear to you and to your parishioners?

Rev. Hepburn

A. If someone came into my parish quite sincerely for no material gain and came conscientiously to help the people of my parish, I should at least appreciate the honesty of their intention.

Q. But not appreciate the quality of the work they were doing?

A. No, it is the intention.

Q. I hear the road to hell is paved with good intentions?

A. I have never been there.

Q. That is hearsay, but you have heard it?

A. Yes, in the army and out of the army.

Q. But many bad things have been done with the best of intentions?

A. Yes, but I would appreciate their effort. To my mind, it is something different if someone comes into my parish for their own personal gain or profit or if someone coming in giving information carefully and scientifically prepared and which has the endorsation (sic) of the medical profession.

Q. But you would believe this information should be distributed according to the way you have expressed it, everywhere, not only to people of a certain religion?

A. Yes, that is my interpretation.

Q. If it is distributed to one?

A. It is good for the other.

Q. And if calls are made at all, they should be made to everybody?

A. Yes, but of course it may be a long time before we arrive at that social condition.

Q. Isn't it your opinion all should be called on?

A. Yes, it is my opinion; there are a few in Eastern Canada and some in the West.

Q. And you believe it might be a better way to open a clinic rather than the door-to-door calls?

Rev. Hepburn

A. Both might be necessary until the clinic is established and known.

Q. When a clinic is opened, it is opened to everybody to know a clinic is there and by going from door to door, it isn't the same thing?

A. No, house-to-house work is pioneering and the clinic comes later.

RE-DIRECT EXAMINATION

To Mr. Beament:

Q. Is there anything in the Lambeth Conference where the social worker after proper medical advice cannot spread this information?

A. Not that I am aware of.

Q. Is there any?

A. Not that I know of.

Q. You have said she was at least consistent with the Lambeth Conference?

A. I take it she was an accredited worker.

Q. Yes, assuming that: now, do you think it is any part of the duty of a nurse doing field work of that nature as an accredited representative of a social welfare organization -- do you think it any part of her work to discuss religion?

A. Not necessarily.

Q. I will come back to the part about the unmarried mother. I suppose to shorten it, there are two divisions of unmarried mothers: one is the unfortunate girl, not consistently sinful, but has the misfortune to get caught?

A. Yes.

Q. The other is the subnormal mental case, a low-grade moron, or high-grade moron with strong sex instincts and loses control?

A. Yes.

Q. Are there those two classes?

A. Yes.

Q. By the way, was it a fine type of girl was examined here?

A. Well ---

Q. Anyone can form a general opinion by looking at the girl?

A. Yes.

Q. And forming an opinion as to her general attitude towards life as a whole?

A. Yes.

(Witness retired)

The Court: Ten o'clock tomorrow morning (6th Nov., 1936).

Mr. Wegenast

REX vs. PALMER

Essex Pages L-23 to L-42

(Court resumed at 10:00 a.m., 6th Nov., 1936)

LLOYD ESSEX, duly sworn, deposed:

To the Court:

Q. Your name?

A. Lloyd Essex.

Q. Address?

A. Sixty-three Watson Avenue, Toronto.

To Mr. Wegenast:

Q. Mr. Essex, you are a Baptist?

A. Yes.

Q. And you are in charge of a mission and settlement house in Toronto?

A. Yes.

Q. For the Baptist church?

A. Yes.

Q. You are a minister?

A. Yes.

Q. Regularly ordained?

A. Yes.

Q. And you have had some experience in social service work, I believe?

A. Yes, over a period of 10 years.

Mr. Essex

Q. Starting in the old country?

A. Yes, in London. I was connected with the London city mission in London, England and Cambridge University settlement house and various interdenominational projects in London. When I came to Canada, I was appointed to the Memorial Institute as their director in charge of the institute's activities and the social service work of that district for the Baptist denomination.

Q. And that is where you are now?

A. Yes, for six years.

Q. Now, I want you to tell His Worship in your experience what the benefit this work has been in advising on contraception?

A. One of the greatest difficulties I experienced, Your Worship, in my work in that section is caused by the very large family problem which the majority of people cannot possibly bear; large families, six to a dozen, in homes of the very poorest kind and juvenile delinquency mounting to a very high rate. As a matter of fact, in that lower section of Ward 5, I am told juvenile delinquency is the highest in the City of Toronto.

Q. What has juvenile delinquency to do with birth control?

A. In most cases, in my experience, juvenile delinquency is traceable to the acute family problem caused by over-crowding, lack of parental control and care and lack of discipline in the home, and, in many cases, direct enmity between the parents and children because the parents are continually pregnant and the

Mr. Essex

children are unwanted. When they come, they are driven from pillar to post and a child gets the idea he is not wanted in society and he becomes a little rebel, gets into trouble and the juvenile court, which sends him to me.

Q. Do you make any use of the facilities in Toronto?

A. I have on a large number of occasions both by direct personal introduction to the birth control clinic on Dundonald Street and by sending patients for consultation. On every occasion,

I have received the utmost cooperation and it is marvelous to see the way family life has been transformed after a consultation with the experts in this particular line and field.

Q. Now, you send them to the clinic as much as possible, I believe?

A. If they will go. I find it very difficult to get a response that they will go anyway. It has always been my policy to visit as much as possible. Among these people, the mothers do not seem to be responsive to any collective organization. If you invite them out, you almost have to drag them. If we send them to a clinic, the chances are they won't go. I have sent them and, in most cases, I have taken them.

Q. There has been some evidence here that the proper way to deal with this, instead of the way Miss Palmer did, through Mr. Kaufman's organization, would be to establish a clinic here in Ottawa?

A. I would say as to the ideal, it would be a good thing to do, but practically, it is almost impossible. In my experience, the establishment of a clinic or organization such as you have

been dealing with and Miss Palmer has been dealing with —- there is very great difficulty getting the people to come to the clinic. You must go to them; if you expect them to come, you must do a lot of spade work first.

Q. You said the effect on family relations: will you elaborate on that, Mr. Essex; what has birth control to do with the effect on family relations?

A. My cases are confidential.

Q. We don't want names or anything of that kind?

A. I do remember the case of a young woman in her early twenties, had four children and she was living in constant fear of pregnancy; her husband was a brutish kind of fellow and was determined at all costs to have his rights, as he called them, and this little girl was terrified beyond reason almost. She came to my office and said she was going to commit suicide.

I talked about the situation and found it was almost entirely due to the abnormal sex situation in the home. I took her to the clinic on Dundonald Street, had a consultation for her. She was given advice on sex relations, given expert help and the girl's life conditions have been altered and she is a happy contented wife now and the husband isn't half the brute he used to be and the home is entirely changed and I attribute it directly to the work of this clinic with this particular family.

Q. It has been suggested here that one result of giving people the means of contraception would be to induce them to have more sexual intercourse, and in fact, brutalize them?

A. (No reply).

Mr. Mercier: I wouldn't say it has been put that strong.

The Court: I haven't that idea.

Mr. Wegenast: Excessive, I think.

The Court: Excessive promiscuity.

Mr. Beament: Maritally and extramaritally.

The Court: Which way are you dealing with it?

Mr. Wegenast: Maritally.

To Mr. Wegenast:

Q. What do you say as to that -- from your experience, what would you say the effect of the use of contraceptives was; to promote excessive intercourse?

A. I would say if there was any tendency to excessive sexual intercourse, the mere fact of pregnancy or non-pregnancy hardly enters in. The demand is nearly always made whether the consequences of pregnancy follow or not. I would hardly imagine that would have any effect one way or the other, although I may not be an expert.

Q. What would be the effect on promiscuity or extramarital excess?

A. I don't see how that would have any effect on promiscuity as the policy of the clinic has been to guard against any advice being given people outside the marital state.

One of the questions I ask when I call in the home –- I don't represent the clinic officially, but I am a sort of representative when I sent people, one question I always fill in is, "are you married".

I am quite sure no information is every (sic) given through my agency or me to people outside the married state.

Q. Miss Palmer is accused here of giving contraceptive information to a woman who represented herself as being married and had a child and signed as a married woman; what would you say as to the propriety of giving this information to a woman who passed herself off as a married woman and signed the card as one and had had a child?

A. (No reply).

The Court: And who said before the interview was over, she was not married.

Mr. Wegenast: This is not in the case I am putting.

The Court: Is it hypothetical?

Mr. Mercier: No, he said, “there is a case.”

The Court: If it is hypothetical.

To Mr. Wegenast:

Q. What do you say?

A. I do not think it is desirable to give information to people of that type on this method, especially where the person is obviously or presumably living a life of immorality; however, it seems to me since listening to the evidence that it was fair for Miss Palmer to think the woman was married. I would presume on her statement she was married; if she corrected the statement afterwards, it was unfortunate.

To the Court:

Q. Did you hear the evidence?

A. Yes.

Q. Did you hear her state she had told Miss Palmer she was married and later she told her she didn’t lie and said she wasn’t married.

A. It seems to me the girl spoke rather flippantly about the whole thing and confessed after the information being given and in consequence, you could hardly retract the information; you might blot this out of your mind, but it would hardly be feasible. It seems to me Miss Palmer was deceived.

To Mr. Wegenast:

Q. Would you -- in the case of what is called the common-law wife, a man and woman living together with one or more children, would you let them have the information or wouldn’t you?

A. It would depend on the circumstances; of course, if there were a problem in the home. If no problem, it probably wouldn’t be necessary to give information, but if there were a domestic situation which was acute and attributable to mal-adjustment on sex matters, I think the situation, which is one we must accept these days even more or less reluctantly, -- I think it should be given to the woman.

To the Court:

Q. In this case, the information was given to Miss Palmer before she found out the woman was unmarried and the information was given on the assumption she was married. Later, finding out she was unmarried, she went ahead and completed arrangements to send the box. Do you think the information having been given,

she should go ahead?

A. It seems to me to give part of the information and restrict the rest would be a more dangerous thing.

To Mr. Wegenast:

Q. What about this, Mr. Essex; do you know anything about the availability of this information elsewhere than from a social worker?

A. Unfortunately, it is available on every street corner and of the wrong kind.

Q. What do you say about the work of Miss Palmer on the one hand and the drugstore and filling station on the other?

A. These rats which infest modern society are very sordid and have no medical background. They care little or nothing for the health, wealth and happiness of the family concerned. They do their work in an underhand method. I don't say drugstores necessarily do that; they are a part -- the ones that do this kind of thing do it to reap the profit of any sale. Others are not only unscientific, but definitely harmful. They don't take into consideration any medical background or consultation, no knowledge of whether the person is married or single and there is nothing to prove or indicate whether the person is of age or sufficient mental intelligence to carry through the instructions.

Q. Then if it is commercialized?

A. If it is from a commercial angle, it becomes an abuse.

Q. You know something of Mr. Kaufman's work; is it commercialized?

A. If it is, I wouldn't want to be in the business. You go there and get expensive equipment for as little as you can pay; sometimes, five or ten cents. I am told nothing at all or anything is enough and the entire case rests on the need of the family, not the commercial angle. From what I have seen of the instruments and articles, they would be quite expensive, more than twenty-five or fifty cents, and what they pay would be merely a donation. Any of the families I have sent have never given even a donation. In some cases, they have been given actual cash and car fare and help of that sort.

Q. The theory has been propounded here that marriage being a partnership and the end of marriage being procreation -- there is something improper about a woman undertaking to use contraceptives without her husband's consent and without consulting her husband?

A. That is a matter of personal ethics and if the woman feels it is improper and obviously wrong, she shouldn't do it, but if she doesn't feel it improper, she, in my opinion, should have

the last word to say on that. I don't see how it can be definite (sic) described as being unethical.

Q. It has been suggested that for Miss Palmer to go into homes of people in Eastview who have religious views or instructions contrary to the use of contraceptives is calculated to unsettle these people's minds and do harm in that way?

A. In my opinion, it is always unwise to strangle or retard truth in whatever field you may find it. If we discover a fresh fact or fresh truth, surely, we are men enough and intelligent enough in these days to examine it. If it isn't true, throw it

Mr. Essex

out and if it is true, use it. Surely, we are progressive enough in these days to use the information available.

Q. Then as a sociological worker, what do you say as to the advisability of undertaking this as social service word (sic) instead of letting the doctors do it?

A. I don't think you can entirely disassociate this work from the medical profession because it is based largely on medical advice. I think the social worker should have a good deal of say as to who should receive the benefit, but in the last analysis, I am quite sure the medical profession should have the last say as to the method employed and time and place and practice of the whole thing.

The social worker and medical practitioner should, of course, work in very close harmony on this.

Q. Taking this process as you have heard it exemplified here: Miss Palmer goes into a home, fills out a blank, gets an application signed by the woman, sends it to a clinic at Kitchener where it is dealt with, -- take the whole process -— I want a general expression from you as to whether you know of anything about it that has been or is improper?

A. It is pretty hard to make me a judge on these things.

To the Court:

Q. I don't think Mr. Wegenast is trying to do that?

A. I think it is highly desirable that a medical practitioner should be consulted and it is highly desirable that the social worker should make it perfectly clear that a doctor, especially one who understands the work of the clinic, should be

Mr. Essex

consulted.

To Mr. Wegenast:

Q. Are you thinking of the condom and jelly or pessary; you know the different kinds?

A. Yes, I have seen them.

Q. Would you say in every case where the condom is supplied and the jelly a doctor should be consulted?

A. As I understand it, one of the articles isn't sufficient without them all and to get the proper effect, you have to use everything that is supplied.

Q. All that is supplied is the condom and jelly: for a pessary, the woman must go to the doctor to be fitted and examined, but for the jelly and condom, they are supplied without consultation with the physician and you know they have been advised by physicians?

A. As I have been informed, the other two are of little value.

Q. I don't know if I ought to correct you in this examination, but the condom and jelly are not anything like 100 per cent effective, but the pessary is?

A. I always understood the complete outfit has to be used or nothing can be guaranteed.

Q. What you mean is that when the pessary is advisable, a medical examination must be given?

A. Yes.

Mr. Essex

CROSS EXAMINATION

To Mr. Mercier:

Q. What is the method of birth control actually in vogue in England?

A. I couldn't tell you now; I have been away six years -– eight years.

Q. Were there clinics then?

A. No, not when I was in the district where I was working. I was a good deal younger and more or less of a student and that particular field didn't come under my attention and I am unable to give an expert opinion on that.

Q. Now, you have stated large families caused juvenile delinquency?

A. In my experience, yes.

Q. There are other causes?

A. Yes.

Q. Would you say the motion picture and reading certain magazines might cause juvenile delinquency?

A. Certain types, yes.

Q. And lack of religion?

A. Yes, there are literally thousands of causes.

Q. So large families are not the only reason?

A. Large families in my district seems to be the cause which brings them to my notice.

Mr. Essex

Q. But there are several large families without delinquents and all delinquents do not come from large families?

A. Large families with which I deal do contain the most delinquents. The better educated families in the higher strata, I have nothing to do with.

Q. Families of the lower strata, as you call them: it isn't primarily a cause that if a child belongs to a large family, he becomes a delinquent?

A. In my district where I find there are a large number of children, the individual child ofttimes becomes rebellious because he is one of the large number and he receives scant attention and it is his general impression he is not wanted.

To the Court:

Q. I am not quite sure as to the extent of your work; is it fair to say you come in contact with large families in your work in your district because of the fact of juvenile delinquency in those families?

A. Yes.

Q. Your work is juvenile delinquency?

A. It is preventive; the family problem, but with families, I necessarily come in contact with the children.

Q. I think the point Mr. Mercier is trying to make is: do you come in contact in your work with large families in which there is no delinquent?

A. I haven't in any family of any size -- I wouldn't say 4 children is a large family. In my group, it is 6 to 10, and

Mr. Essex

where it runs into that number, the juvenile delinquent problem is highest, especially among new Canadians. I am dealing with Polish and Ukrainians. It is a similar situation to this; only the language is different.

To Mr. Mercier:

Q. Now, what occasion, if any, have you had to judge the mentality in Eastview; you stated it is almost like that in your district that you are dealing with?

A. I have been present at several sessions of this court and I have not been impressed with the mentality of many of the witnesses in the early part of the case.

Q. So you have drawn certain conclusions, like some Englishmen and some Frenchmen come from England or France and travel two months here and go back and write books?

A. Oh, no.

Q. You have judged the situation at a glance?

A. No, I thought these women were a fair cross section of the people Miss Palmer was dealing with.

Q. You are a firm believer in birth control?

A. I have an open mind.

Q. What do you mean?

A. I am willing to accept open truth as I find it, and I find this work is bringing beneficial results in the homes in Toronto.

Q. You are a firm believer, now, in birth control?

A. I am a firm believer of the things I see done in my district.

Q. In your own district?

A. Yes, which is the same as Miss Palmer has been doing.

Q. You will admit birth control will not reduce a large family?

A. No, there is no subtraction.

Q. And do you not think people will indulge more in sexual intercourse if getting this advice?

A. (No reply).

The Court: Married or unmarried?

To Mr. Mercier:

Q. Married?

A. That is a personal matter for every man and woman to decide for themselves; I couldn't judge that.

Q. Have you ever heard of an unmarried mother with one child thought the lesson was sufficient and after having one led a chaste life?

A. I have met people who said they did.

Q. Have you any reason to believe they did not do so?

A. They started with every good intention, but it didn't always work out.

Q. Did it work out in any case?

A. I have passed my mind over a large number of cases. You

Mr. Essex

will lose track of a large number of people who move off into other districts. My district is a transitory district to a large extent; when they get work, they move and I lose track of them.

Q. In Toronto, does the social welfare bureau pay for these contraceptives?

A. The welfare bureau pays for nothing of that sort. They hardly pay rent.

Q. I believe you stated in the marriage relation it is personal ethics?

A. Yes.

Q. And the woman has the last word?

A. Yes.

Q. Do you believe that before a woman uses this, unless she has to deal with what is known as a brutal or over-sexed husband, –- granted the majority of husbands are decent –- the husband should be consulted?

A. Yes.

Q. Before these contraceptives are used?

A. Absolutely.

Q. And don't you think the social worker should make sure before leaving these contraceptives to suggest the husband should be consulted or advice given to that effect?

A. It seems to me extremely bad when there is a barrier, and it seems to me when it is necessary to call in a social

Mr. Essex

worker that barrier nearly always is existing. In a normal family ---

Q. Yes, but when the social worker is not called in, but went of her own free will?

A. I never heard of a social worker who had time to go of her own free will and I never have done it.

Q. Do you believe a social worker like Miss Palmer should go into a private home with this kind of propaganda without being called or requested?

A. If she has time and she feels there is a need, I suppose it is all right, but I never met a social worker who had time or was inclined to go into a home that hadn't a social problem. Most of us have too little time to do that.

Q. Granted that the social worker has time and calls uninvited, and granted the husband is decent, shouldn't the social worker advise the mother to consult the husband?

A. She must call.

Q. I am asking in your opinion what should be done, -- You are put in the box as an expert in social work -- whether you know or you do not know; if you do, I want your opinion?

A. Under the circumstances, I think Miss Palmer was justified.

Q. Do you believe the social worker, granted she has the time?

A. Yes.

Q. And granted a majority of husbands are decent; should

Mr. Essex

she advise the use of these contraceptives without at least advising the woman to ask him –- advising the woman with whom she is dealing to consult her husband before using them?

A. As a general principle, no.

Q. Why?

A. Because it seems to me the work would be unnecessary.

Q. Why?

A. Because it seems to me the work would be unnecessary; if the home is a normal one and there is no problem, why create or seek to deal with it before presented?

Q. Your opinion is that the social worker going into a home should never advise the wife to consult the husband about this before using it?

A. Oh, yes, I think the social worker should always seek to cement the relation between husband and the wife.

Q. And you believe if the wife uses these without the husband's knowledge and he finds out later on, it will cause dissension in the home?

A. Any friction will cause dissension in the home.

Q. The social worker should advise the wife to consult the husband before using these?

A. Oh, yes.

Q. From the point of view of consultation with the doctor, —- I will not lead you in any way —- what is your view of the importance of the consultation with a medical man before using any of these contraceptives?

Mr. Essex

A. I would say it is of paramount importance.

Mr. Mercier: I hope my learned friend will not, as he has done before, cross examine his own witness.

Mr. Wegenast: So as to take away the effect of any answer my learned friend got.

The Court: He may re-examine the witness on any ambiguities or anything new in the evidence brought out in cross examination.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. Do you think, Mr. Essex, it is the duty of the social service worker to assure herself that the husband is willing before she gives the wife any advice on contraceptives?

A. That the social worker should assure herself that the husband is willing before she gives the wife any advice on contraceptives?

Q. Yes?

A. That the husband is willing?

Q. Before giving the advice?

A. (No reply).

The Court: I don't think Mr. Mercier went that far.

Mr. Mercier: And that was brought out in examination in chief.

The Court: And that the wife should consult the husband.

Mr. Wegenast: He stopped very abruptly and significantly there. I have the right to ask this witness what it was?

Mr. Essex

Mr. Mercier: The examination has been conducted in such a way as to try to make the witnesses change their minds.

Mr. Wegenast: That is what re-direct examination is for, to clear up anything.

To Mr. Wegenast:

Q. Do you think a social worker should make sure before going (sic) advice on contraceptives that the husband should know the wife has it?

A. I think the worker should find out if the husband is willing, and if the husband is inconsiderate of the wife's welfare and health then action should be taken in spite of the husband's attitude, but only in cases where it is in the definite welfare of the individual it is brought out.

Q. When you say the welfare, you are not talking about welfare from the medical standpoint alone?

A. I am talking about the happily married state of a couple who should be leading the normally happily married life.

Q. Yes?

A. In too many cases, husbands are utterly inconsiderate of the wife's regard.

Q. Yes

A. When you meet a normal case, of course ---

RE-CROSS EXAMINATION

To Mr. Mercier:

Q. And that is the majority?

Mr. Essex

A. Yes.

(Witness retired)

(page M-1 follows)

Mr. Wegenast

REX vs. PALMER

Dover Pages M-1 to M-3

DR. HARRY DOVER, duly sworn, deposed.

To Mr. Beament:

Q. Doctor, you are a physician and surgeon practising in the City of Ottawa?

A. Yes, sir.

To the Court:

Q. Your address?

A. Three thirty-four Kent Street.

To Mr. Beament:

Q. You are a graduate of medicine?

A. L914.

Q. From where?

A. McGill.

Q. And you have practised ever since in Ottawa?

A. Outside post-graduate work.

Q. What is your experience in gynecology?

A. I have been attending the public wards in the City of Ottawa in women's diseases and I have come across a number of cases which I thought should have some advice on birth control.

Q. By the way, you are a coroner too?

A. Yes, for the City of Ottawa.

Q. Yes?

A. During the war, I had considerable experience with

psychiatry and as a result, I have taken an interest in the subject and I am doing it as a sideline for the Department of Pensions and National Health, and I have come across a number of cases incidental to the gynecological conditions. I have noticed patients I have been dealing with were feeble-minded or morons, and I have, on a number of occasions, got in touch with Miss Palmer.

Q. You know her?

A. Yes.

Q. For how long?

A. Since last summer.

Q. And you knew the work she was engaged in?

A. Yes, and there was another girl doing the same work, Miss Todd.

Q. Is she a representative of the Parents' Information Bureau?

A. Yes.

Q. I am leading to make it short

Mr. Mercier: Go ahead; it would not matter.

To Mr. Beament:

Q. And as a matter of fact, the Parents' Information Bureau did supply contraceptive jelly and condoms to persons not in a position to afford them after the intervention of the social field workers?

A. Yes.

Q. After that what did you do?

A. I picked out these particular women I thought —- several of them came in with miscarriages and quite a history of having had a large family —- one something like thirteen children -— and obviously feeble-minded —- and I phoned Miss Palmer —- I got in touch with her, gave her the name and address, told her to go down and give this woman contraceptive devices.

Q. You referred patients to Miss Palmer?

A. Yes.

Q. So that they would get advice?

A. Yes.

Q. So that in the end, they would receive contraceptive devices?

A. Yes.

Q. So you took it Miss Palmer was competent to give that advice?

A. Yes.

CROSS EXAMINATION

To Mr. Mercier:

Q. Those were cases where you thought your patients needed contraceptives?

A. Yes, on account of observations of mental deficiency and they were producing, I judged, feeble-minded offspring.

Q. You would not send everybody who had a family to get it?

A. Yes, just those cases.

Q. You picked out certain cases?

A. Yes.

Q. To send to Miss Palmer?

A. Yes.

Q. Because of advice she had at her disposal?

A. Yes.

Q. That is all.

(Witness retired)

Mr. Wegenast

REX vs. PALMER

Chisholm Pages N-1 to N-51

Dr. Chisholm

DR. GEORGE BROCK CHISHOLM, duly sworn, deposed.

To the Court:

Q. Your address?

A. Medical Arts Building, Toronto.

To Mr. Wegenast:

Q. Doctor, will you give us as is usual in these cases, all that is favourable about yourself so as to make a good impression on His Worship?

A. I am a graduate of medicine of the University of Toronto, 1924. I have done psychiatric and sociological work in London, England, working in the Tavistock Institute for Nervous and Mental Diseases and neurotic conditions under Dr. Minner.

I worked in the gynecological and outpatient department of the Middlesex Hospital in London. Genito-urinary work –- I was six months in London in All Saints Hospital, Oxbridge Road.

I did six years' general practice in Oakville, Ontario, and then was on the staff of Yale University in the department of psychiatry and therapy and mental hygiene and human relations and since then in psychiatry work at the University of Toronto and the department of social science.

Q. Under Professor Irving?

A. Yes.

Q. Is that the lot?

A. Yes.

Q. I wish you would tell us something, Doctor, about the

practice of psychiatry; –- I get a little mixed on my pronunciations –- what does it consist of?

A. The study and treatment of abnormal mentation, or abnormal behavior.

Q. What is the relation between psychiatry and psychology?

A. Psychology is the study of normal mental behavior and processes.

Q. You know something about psychology?

A. Yes.

Q. That comes to bear when you take a patient in hand?

A. Yes.

Q. That runs into psychoanalysis?

A. Yes.

Q. You are familiar with the problems of psychoanalysis?

A. Yes.

Q. We have had before us in the exhibits in this case some studies put in by Dr. Hutton. We had in the first place a study which Dr. Hutton had made for himself starting with Green's "Who's Who" and he ascertained how many children those eminent enough to be in "Who's Who" had and he took the pupils in Brantford Collegiate and found out how large their families were.

He took a variety of families of that kind ending up with the inmates of the hospital for the feeble-minded and it produced this result: that the feeble-minded and the lower – if one may

Dr. Chisholm

use that term –- intelligence classes has the largest families.

Then, he put in a book called, "Dynamics of Population" by Oliver in which the same conclusion is reached by a system of measurements of intelligence in which people are classified with relation to their number of I.Q.'s, intelligence quotients, and you correct me if I am wrong; I think that is used in your science -- something like the R.P.M.'s, revolutions per minute, and so on?

A. Yes.

Q. I want you to tell His Worship what basis there is, if any, for a belief in that practice of getting down to I.Q.'s. And if you don't mind, you might have reference to this exhibit which is in because we do not want to go too far afield?

A. Your Worship, I have hardly time to go through this book, but I think the recommendations given and the references to particular examinations made –- one must have some confidence in the result. That is, in an age of psychologies making intelligence tests, they would use an appropriate battery of tests for the people intended to be tested, depending particularly upon their backgrounds.

In this case, he will use definite tests, for instance, Haggarty and Nash; Delta, too, which is an adaptation of Oates' test which was developed on American recruits during the war when these tests were tried on large masses of men.

All these tests are recognized, and their limitations are recognized. They can be governed in their facts; they can now be fairly well regulated, so in large numbers of cases, errors are almost eliminated or are most slight.

Dr. Chisholm

Generally speaking, a person going to the University of Toronto and having tests done there in the Department of Psychology would have almost the same rating if he went to Montreal and had the tests made at McGill. There may be very slight differences, but in most cases, they do produce reliable results.

Q. You say there are a variety of kinds of tests and the tests mentioned here are all known to you?

A. Yes, they are known and generally accepted and used in the Department of Psychology at the University of Toronto and are used on patients I receive, referred by the social service agencies in Toronto to the department in the university, and these tests are thoroughly standardized.

Q. Tell His Worship to what extent these are used: you referred to the American army; were they used throughout the American army?

A. Yes, on the whole personnel.

Q. What for?

A. To find out the ability of the men being tested; that is, the field in which they would be most valuable to the army organization.

Q. For example?

A. A man showing an intelligence level of 90 would not be given an orderly room job; he is on the laborers' level. He could not do work expected of him in the orderly room and it would be a waste of work to try to make him do it.

Q. What about its application in ordinary life in Canada; what examples have you?

A. These are used very frequently. I refer quite frequently children to the University of Toronto and also adults for intelligence tests. If they are found in difficulty in life, unless you have an intelligence test -— unless they have proven their ability —- that is, if a person has passed their matriculation without failure two or three times, it is unnecessary to have an intelligence test unless there is brain damage later on so that he is now incapable of passing the examination he passed a few years ago, in which case one definitely diagnoses brain damage.

Q. You refer them to the University of Toronto?

A. Yes.

Q. I thought they would refer them to you?

A. I stopped some time ago. It is part of my training to learn that, but it is taken over by people trained to make them and make statistical records.

Q. So when you want the lowdown on a case, you send it to the University of Toronto?

A. Yes, for a basis to work on, to have an intelligence test.

Q. To what extent is it practiced?

A. Every social service agency I ever worked with has habitually sent patients for tests. In New Haven, Connecticut ---

Q. You did not tell us about that?

A. I was on the staff of Yale University.

Dr. Chisholm

Q. Tell us about that?

A. I was in the psychotherapy treatment department and was consultant in social service agency work and I was director of handling emotional cases that came there.

Q. How long were you there?

A. Two years. For instance, in an agency looking after unmarried mothers in the community, it was routine to have an intelligence test and get the I.Q. rating and the patient would be referred to a psychiatrist for advice as to what to do about it.

One would take the intelligence quotient as a basic method; that is, to give it some appreciation of the materials available and what might be done with this person.

Q. What does the psychiatrist do?

A. They try to make people behave, to make them fit in ways that fit their circumstances and put them in touch with reality.

Q. You would not try to make an ordinary laborer behave like a university professor?

A. If you got him young enough, you might make him become one if he had the ability and equipment, but you do not ordinary (sic) attempt that; you attempt to make them comfortable.

Q. I am trying to put it on a basis of mental behavior?

A. (No reply).

The Court: This is very interesting, but is it relevant?

Mr. Mercier: In Eastview.

Dr. Chisholm

Mr. Wegenast: It is as to the validity of this test.

The Court: Oh, I see; this witness is mainly to substantiate the validity of I.Q.'s?

A. Yes.

To Mr. Wegenast:

Q. It is used in mental hospitals by the government?

A. Yes, generally wherever there seems to be any indication; that is, if a child is an everyday imbecile, one does not go to the trouble of making a mental test.

Q. Now, this book on "Dynamics of Population," Exhibit 99-B –- this 98-B, "Eugenics Review," which contains an article by Cattell, have you any idea Cattell knows anything about that?

A. He is a person I have read about and read of. I have not any personal extensive knowledge of the detail of his work, but he is undoubtedly an earnest worker who is trying to learn the truth.

Q. You have not had the opportunity of reading the article?

A. I have read a number of them.

Q. I want to ask you not about an article, but your own observations; do they tally with what Dr. Hutton said was supported by these articles; namely, that the less intelligent people are breeding faster than those more intelligent?

A. That is definitely my impression. I have never made statistical studies myself, but I would back that up from clinical experience.

Q. Doctor, put it this way: we are really faced with a

biological crisis; what do you say as to that?

A. I think that is perfectly true, not only on the point the less intelligent people are breeding faster, but the more intelligent people are using very generally birth control measures which tend to sterilize them or their children. I do not mean in a physical sense, but emotionally. They are using birth control measures which upset their lives and their children have difficulty.

Q. What, particularly?

A. Coitus interruptus, withdrawal before emission.

Mr. Wegenast: The doctor had no idea of being called as a witness until last night.

Mr. Mercier: I am glad to see there is one witness who has not been ready for six months.

To Mr. Wegenast:

Q. The pamphlet which this young lady is accused of having circulated says about different methods of birth control:

> "Withdrawal: This is a quite common practice, but it is mentioned here only to condemn it."

You agree with that?

A. Quite.

Q. I would like you to say a little more about that, Doctor, and its effects?

A. Yesterday, for instance, I saw two typical cases of coitus interruptus or withdrawal.

Q. You did not make it up for this case?

A. No, one was that of a woman of 30, husband 34, under difficult circumstances for the last year and a half and practicing during the last six months habitual withdrawal. The woman presents a perfectly typical picture of such results when it is used over a period of from three to nine months. She presented it in the usual period of six months.

She was unable to carry on her usual housework. She was crying at the least thing, quarreling with her husband for no reason, suffering from insomnia, palpitation of the heart, nervous indigestion, pain in the back, headaches, and probably more; I cannot remember at the moment, but those symptoms that she indicated, or some of them, are the usual results of the practice of coitus interruptus over a period of as little as two months and some such things are almost always produced within a year.

Q. This is not a new thing to you?

A. No, it is a large part of one's practice and part of proper instruction of methods of birth control, and in general practice, most doctors are doing it for their patients.

Q. Doctor, as to the generality of the practice of withdrawal?

A. It is an extremely common thing among the more intelligent people, not necessarily of high intelligence, but of careful upbringing; men who are more careful of their wives' feelings, and don't want to go on having unwanted children and not willing to go on relief and make their children a charge on the community –- the very common method is withdrawal when they

want to satisfy themselves, and it is usually the people with a social conscience who suffer in this way.

Q. What are the untoward effects of that method?

A. Outside the case I have mentioned, one finds the same thing in men.

Q. It is harmful to men?

A. Quite. I saw a few days ago, the secretary of a large industrial organization who had been practicing coitus interruptus for nine months. He had been laid off, having become incapable of carrying on, and it was suggested he take a holiday and see a psychiatrist because he thought he was going insane.

The man was incapable of doing any work. He broke down and cried in my office and was in a serious emotional condition through the fear of losing his employment.

The establishment of normal sexual intercourse restored the patient's health in 10 days. He was back at work in 10 days, quite well.

Q. This is quite interesting; go on?

Mr. Mercier: Yes, I agree with what the doctor says and I believe we have enough evidence on that point to convince the Court.

The Witness:

A. May I go on to the emotional side with which I deal mostly, than the physical side, as my patients are usually sent because of that and mental defects and fights in the family?

Dr. Chisholm

To Mr. Wegenast:

Q. Yes?

A. One finds, in many cases, it is tension and fear of the possibility of pregnancy that is behind the trouble these people present. They may not know the reason or cause, –- they may only complain of each other's selfishness –- but completely satisfying sexual relations between the man and woman is the most stabilizing force in marriage and to hold men and women together in sympathy, and any method of engaging in sexual relationships which produces fear on either side or a feeling of frustration or antagonism is definitely contrary to stabilizing the marriage contract.

Q. What do you do with these patients when you diagnose the difficulty in that way?

A. During the years I was in general practice, I would examine a woman, usually after consultation both with the husband and wife. But in that connection, very frequently, indeed, the husband will not have anything to do with it; not on a moral basis, but he is shy. He won't go to the doctor. He says to the woman, "that is your affair," so one deals almost exclusively with the wife.

Then a physical examination finds what method of birth control would be most adequate and if necessary, the fitting of the most appropriate device to control conception.

Q. You have reference to the pessary?

A. Yes, of one type or another.

Q. What do you say as to the effectiveness of these?

Dr. Chisholm

A. It depends on the particular physiology of the woman concerned. A woman who has had several babies –- certainly the type of pessary which best fits her is the most appropriate thing.

In women who have had none, one or two, other things may be used which are equally effective. Generally speaking, the condom while effective is not as emotionally satisfactory as the use of the pessary.

Q. This pamphlet even makes a distinction between women who have had none, one or two, and those who have had more?

A. There is another feature: women who have not had the best of medical care during childbirth or immediately after very often have some physiological condition. The condom can be used perfectly safely in any condition.

Q. This is what the pamphlet Miss Palmer is accused of circulating says:

> "Rubber Caps or Pessaries: are intended chiefly for mothers who have had several children, and must be fitted by a doctor, but can easily be placed in position by the wife alone after receiving instructions from the doctor. See your family physician or some other doctor who can give the necessary instructions. Pessaries fitted properly and used properly with contraceptive jelly are almost 100 per cent efficient."

What do you say to that?

A. I quite agree with that.

Dr. Chisholm

Q. I may as well ask you about the methods in this pamphlet. It starts off with withdrawal. We have discussed that; now, here is the douche recommended:

> "(a) Two quarts of warm weak soapy water made with cocoanut oil soap or some other good soap or
>
> (b) Two quarts of warm water in which a teaspoonful of powdered Alum has been dissolved or
>
> (c) Two quarts of warm water with two tablespoonfuls of household vinegar."?

A. Those are all fairly effective methods. They are not 100 per cent, but they are fairly useful.

Q. You are something of a gynecologist?

A. I was a junior in a hospital for four months in London.

Q. I am asking you from that standpoint as to the effectiveness and harmlessness. This would be reasonably effective?

A. Yes, with the possibilities of it depending largely on the time used; if used immediately after sexual intercourse, the effectiveness is high and they are harmless.

Q. The pamphlet goes on:

> "DO NOT USE STRONG GERMICIDES LIKE BICHLORIDE OF MERCURY, CARBOLIC ACID OR LYSOL, EXCEPT ON A DOCTOR'S ORDERS. THEY ARE NOT SAFE FOR GENERAL USE."?

A. Perfectly true. The tendency is, after these things are suggested, generally a woman under the influence of fear —- there may be some slip or tendency to use stronger solutions,

and afterwards particularly, especially with the use of bichloride of mercury and Lysol, they will destroy the membrane of the vagina and start irritations.

Q. Now for suppositories:

> "SUPPOSITORIES which contain a spermicide (something that kills the male sperm) and which are introduced into the vagina before intercourse are a very common form of contraceptives, but should not be used if found irritating."

A formula recommended by Dr. Marie C. Stopes is as follows:

> "Cocoa butter (best grade) ¼ lb., Borax 5 drams, Salicylic acid 1 dram, Quinine bi-sulphate 1 ½ drams"?

A. That is quite an effective prescription; it is suggested in cases where there is any aesthetic difficulty and the husband does not take proper measures.

It is not suggested in the case of a woman with a serious heart lesion. Where pregnancy would be serious or other cases where pregnancy would be dangerous because their efficiency is not good enough.

Q. There are some documents I will not mention; they are lengthy. We come now to contraceptive jellies:

> "CONTRACEPTIVE JELLIES: These are obtainable in many drugstores where they are sold under a variety of names ostensibly for the treatment of certain disorders of the vaginal passage such as leucorrhea. The jelly comes in tubes with a glass or hard rubbery nozzle in a box. A 2 oz. tube costs about $1.00 and

> has about 20 applications. Most tubes have a key at the end which when turned presses out the jelly."

I show you the tube and nozzle in Exhibit 20-B. Here is the tube and here is the nozzle. Now, what do you say as to the effectiveness of this, let us say first, without anything else?

A. The use of that alone is very much the same as the use of any other chemical means. Many people for years use only a lactic acid jelly of some sort. One cannot depend on it alone, but in combination with other means.

Q. Would women be liable to injure themselves with this nozzle?

A. It would be almost impossible unless it were an insane woman. I have never heard of it happening.

Q. Now, the formula of the jelly in this tube is said to be lactic acid, boracic acid and a jelly with a starch base; what do you think of that?

A. It is perfectly harmless. It is useful to kill sperm cells. It is very mildly effective to deal with infections, but very mildly so.

Q. We had a horrible picture held out to us by a local doctor who admitted he was not quite up in the matter, but he thought it was extremely dangerous to put this in the hands of a woman; it might cause cancer of sterility; what do you say as to that?

A. I cannot imagine any way in which it could. It is not an irritant. It does not cause any irritation of the mucous membranes either of the cervix or the vagina and I am quite sure

it would be impossible.

Q. And the condom, there is no chance of its causing harm?

A. No.

Q. And it is not 100 per cent?

A. No, but with the lactic acid jelly, it would be.

Q. This jelly sold in drugstores and the jelly here, have you had any experience with jellies sold in drugstores?

A. Yes, and found them to be much the same; there are variations, like in concentrations, but I know of none that is harmful.

Q. We have covered several of these which now come in order: the condom, rubber cap or pessary. Now there is a vinegar tampon, cotton batting in a solution of vinegar:

> "VINEGAR TAMPON: Take a piece of cotton batting about 3 inches long, 1 ½ inches wide, and about ½ inch thick. Tie a double thread, preferably silk, around the middle of this piece of cotton and leave the thread long enough so that about 9 inches double will hang free. Soak the cotton in a solution of equal parts

of vinegar and water and then squeeze out gently. It may be easier to insert the cotton tampon if a little Vaseline is spread over it. In case a tampon soaked in vinegar and water is found irritating, a paste made by whipping together two parts lard and one-part vinegar can be used on the tampon instead of vinegar and water. Hold the wet cotton between finger and thumb and push it up into

the vagina as far as you can place it with your fingers. Allow the end of the 9-inch double thread to hang out of the vagina so that cotton batting can easily be removed. The cotton should be inserted just before intercourse, and should be left in place at least 8 hours thereafter. Do not use a tampon a second time. Vinegar tampons are not as efficient as pessaries or contraceptive jelly. When cotton batting is not available, a piece of perfectly clean soft linen or cotton rag seven- or eight-inches square, crumpled up, could be used instead. The tampon cannot be lost in the vagina and can be removed with fingers if necessary."?

Is that safe?

A. Perfectly safe.

Q. The next:

"RUBBER SPONGE PESSARIES"?

A. Yes, in the hands of careful persons, they are quite effective.

Q. You see an illustration of a sponge here?

A. Yes.

Q. Anything harmful in that?

A. No.

Q. Then, this pamphlet comes to the safe period, according to the book called "Rhythm" by Dr. Latz; do you know about that?

A. Yes, I do.

Q. The pamphlet proceeds:

"This information is likely of uncertain value to the average woman and less reliable for women whose menstrual periods are irregular. Anyone interested in the 'safe period' can obtain more detailed information be securing a copy of 'The Rhythm' from the Catholic Truth Society, 67 Bond St., Toronto, or by ordering same from almost any bookstore."?

What do you say to that?

A. So far as a method of birth control is concerned, rhythm is very far indeed from safe. It is not yet by any means safe and I have known cases where women thought they had found the rhythm, but they had not. There are very few people in my experience able to avoid the tension in the situation.

Q. Will you explain what you mean by tension?

A. If I had a blackboard, I could do better.

By the fact of living, man is functioning in ways that call for the satisfaction of his urges as they are being made.

To the Court:

Q. I think you have explained that already. What you mean is the fear of possible pregnancy, which is not wanted through economic or other reasons, is the basis of the majority of mental problems?

A. By being afraid to have sexual intercourse regularly or frequently enough, they control themselves and very frequently do not have sufficient sexual intercourse for their particular amount of pressure. They build up this pressure and the effect

is like –- to make an analogy –- something built to function on 100 volts and made to function on 200 volts.

To Mr. Wegenast:

Q. Burn out a fuse?

A. We haven't any.

To the Court:

Q. Steam valves?

A. And there is the effect of pressure trying to find some way of getting out and it gets out in increasing the blood pressure. That is not so much from fear; it is piling up of unsatisfied instinctual necessity.

To Mr. Wegenast:

Q. It may result in anything up to insanity?

A. I wouldn't go that far; we don't know. But it does bring on breakdowns and inability to carry on in the social structure and emotional states like insanity, but in which they may be committed to mental institutions but temporarily.

Q. We have touched this several times: whether the satisfaction of the sexual instinct, coupled with the use of contraceptives and the ridding of a fear, is a cure for that condition?

A. In almost every case, it is a cure.

Q. Then is the cure in any sense comparable to the disease? Has it after effects or attendant effects bad in themselves or worse than the disease itself; what do you say?

Dr. Chisholm

A. The only disability I know of is in the bother concerned –- the aesthetic effect –- it is a little nuisance –- but it is incomparably less important than the things it deals with. The other question is the conscience difficulty which does arise from direction received previously.

Q. This is impromptu, Doctor; I have not had time to discuss this with you?

A. (No reply).

Mr. Mercier: I will have to get my learned friend in the box if he speaks like that.

To Mr. Wegenast:

Q. I am speaking of the method of approach. We have had some evidence here whether the use of contraceptives is an offence against decency, something that nice people don't desire; what have you to say to that? It is said to be wrong because of that?

A. The question of decency is entirely one of time and place and the ideals people have. One is decent in one civilization at one time; others are decent in another civilization at another time. There is not permanency in our ideas of decency.

Q. Is there anything common in decency and the ethics of morality?

A. yes.

To the Court:

Q. And you are a psychiatrist?

Dr. Chisholm

A. Yes.

To Mr. Wegenast:

Q. And if there is nothing wrong from the standpoint of decency, there is nothing wrong morally?

A. Morality varies like decency. Both one hundred years ago were vastly different than now.

Q. And about other things?

A. Burning witches and burning wizards –- the best people were cooperating in burning them, with the sanction of the religious system of the moment –- was the practice a few hundred years ago. Quite obviously these things change.

At a time in Athens, homosexuality was common among the highest social developments and heterosexuality was considered to be on an animal plane. Homosexuality was a highly-developed cultural activity. We have ideas today that may be disproved or given up in another hundred years. Most of our ideas are those developed in childhood.

Q. Do you know of any other moral decency or ethical factor about this than the ones you have mentioned?

A. Unless a person has been taught that any such practices or any such concern is an immorality, or is indecent –- I have never known anyone who has developed the idea himself as a result of the practice himself.

The Court: Five minutes adjournment.

(Upon the court resuming)

CROSS EXAMINATION

Dr. Chisholm

To Mr. Mercier:

Q. Doctor, at the beginning of your remarks, you told us something about your specialty; you might give people ideas on how to do things in order they might have a different mentality on different subjects?

A. May I correct that?

Q. That is what I want?

A. It is to make people look at things themselves and make up their minds as to their behavior.

Q. I am not serious, but there is a great fear about out-breeding on the part of certain people in Toronto; is it in your line to investigate that?

A. I have not looked into that yet.

Q. It might be worth investigating?

A. (No reply).

Q. Are there any other methods of contraception, Doctor, that might cause the same effects as coitus interruptus?

A. There is the practice of coitus reservatus: having sexual intercourse except that the man does not have any termination. When that is completely used, the effects are much the same,

but it is rarely completely used; in the vast majority of cases, after coitus reservatus, the man will complete the emission in a dream or by masturbation because the tension has been raised to such an extent it cannot be controlled.

Q. That is one of the safety valves of nature?

A. Except that it is unnatural.

Dr. Chisholm

Q. You said in coitus interruptus there is a lack of satisfaction?

A. By degrees: for some people, the use of the condom is not as satisfactory because of the lack of intimate contact as in some of the other methods.

Q. What would you advise before the use of the condom; would you advise a person to see a doctor?

A. Not necessarily so at all. Quite frequently they are even advised by a doctor to go ahead and use the condom and if that is quite satisfactory, they will go on doing it and if they find that not sufficient satisfaction, they come back and I will try some other method.

Q. Doctor, you stated any method producing a fear or frustration might have an effect on the mentality of the persons?

A. Yes.

Q. Are there any other methods than coitus interruptus which might cause this fear or frustration?

A. Coitus reservatus.

Q. Besides those two?

A. Certainly I can't think of any that would have that effect, not in the same degree.

Q. And none of these methods of contraception that are under discussion, I take it, are absolutely foolproof?

A. Not absolute, but so nearly so.

Q. Some people merely by using them still have some fear?

Dr. Chisholm

A. Not unless they have been mis-instructed in some way first.

Q. And who should give the instructions?

A. Any person who has acquired sufficient knowledge to deal with the particular method suggested. That is, definitely only a medical man should suggest and fit some methods which require fitting to the patient personally.

Q. And you said that the medical consultation was advisable in order to obtain the more effective method for each individual case, or did you say that?

A. If I did, I should have qualified it a little.

Q. Did you, Doctor?

A. I think the actual ideal would be a medical examination in every case, but it is not necessary in every case.

Q. And there is an objection referred to that people cannot go to doctors because the doctors may charge them a fee?

A. Yes.

Q. But in cities like Toronto and Ottawa, there are things called clinics where patients are welcome at any time, and there are some very well-qualified doctors there to give information and advice freely?

A. Yes.

Q. And before people are advised to use contraceptives, might it not be well for them to take advantage of this and consult a duly qualified medical practitioner?

A. Perhaps in a rare case it might be advisable, but not in

every case -- the clinics would not last a day -- they would be swamped, and the equipment is not there.

Q. How is the social worker who goes into a home going to know whether a patient should require medical attendance or not?

A. A child would know about that, but the woman should take care of that in presenting her advice of methods that have nothing to do with that.

Q. Do you not think medical advice would be required in all cases?

A. No.

Q. Given a certain set of facts, the worker goes to the home, asks the name of the mother, father, the number of children, how they are spaced, and the number of abortions, if any, and the religion, and whether the father is working or not and general questions like that, and as a result of this information, this mother receives a tube of jelly and three condoms free of charge together with the booklet which has been produced to you by my learned friend. Do you think that is sufficient in all cases?

A. It is perfectly safe in all cases. It may not be completely effective in all cases; I don't mean in allowing conception to occur, but it is quite probable in some few cases another method would be better.

Q. And that could be obtained only?

A. By an examination.

Q. Doctor, do you think it would be safe for a pregnant woman to receive this information?

Dr. Chisholm

A. Perfectly safe, none of these will do any harm in pregnancy.

Q. The tampon, Doctor: vinegar, can that induce labour?

A. I know of no cases where it has. Any irritant induced into the body of the uterus might, but it isn't possible to induce it into the uterus by a woman without an instrument.

Q. What about if pressed against the cervix?

A. No, there is an internal os and an external os, and in between, there is a mucous that will not permit entry to the uterus.

Q. What about Dr. Stopes' formula for suppositories:

> "Cocoa butter (best grade) ¼ lb., Borax 5 drams, Salicylic acid 1 dram, Quinine bi-sulphate 1 ½ drams"?

It is in Exhibit B-5?

A. Introduced in the form of a pessary?

To Mr. Wegenast:

Q. Suppository?

A. I have never known a case where it induced abortion.

To Mr. Mercier:

Q. But the frequent use of it?

A. The only thing we know is if it is frequently used over a number of years, it might reduce the sensitivity of the membrane of the vagina so women would not enjoy sexual intercourse so much.

Dr. Chisholm

Q. Now, you don't believe a doctor should be consulted at any time before using a suppository?

A. I think if a woman had an acute leucorrhoea or medical evidence was needed, I think the social worker should advise consulting a doctor. In practically every case, the woman tells her.

Q. Do women always know?

A. Yes.

Q. Right at the beginning?

A. Before it is of any importance because there is a profuse white and yellow discharge.

Q. But supposing no questions are asked about that and the woman in question does not think of saying it to the social worker; do you not think that should be asked and gone into?

A. Yes, but it would have nothing to do with the contraceptive question at all.

Q. I come to this point, Doctor: that most likely the average so-called social worker might not ask from the woman very important questions, questions that might be required before the use of these contraceptives?

A. I don't think that applies in this, but only to fitted pessaries on the cervix. In other words, it would be the same as if the social worker inquired if she had infected tonsils; it has nothing to do with it.

Q. I understand that in birth control information it has been said that one could advise it as well as another, such as

the use of the toothbrush, but I don't think the tonsils have much to do with the particular part of the anatomy we are dealing with.

Are there not some cases with some conditions where the doctor should be consulted? I know you are not prejudiced in the slightest way.

A. Yes, I can imagine a case where harm might be done, say in the case of advanced cancer –- not of the cervix, but advanced cancer of the wall of the vagina –- which conceivably might be ruptured in time. There might be one or two such cases in Canada, and actually, the woman's own feelings would protect her.

Q. On that: you have only four months in gynecology?

A. Yes, but I had six years in general practice dealing with it every day.

Q. Doctor, do you think a woman who would sleep with this cotton batting tampon would feel perfectly at ease?

A. Most women, I believe, are not affected.

Q. With this string hanging down from it?

A. The sensitivity is not sufficient for a woman to know if the string is there or not.

Q. What about the rubber sponge method?

A. It is not an ideal method, but it is used and found effective by many.

Q. Why do you say it is not ideal?

A. It is not sure enough.

Q. And women using this might be disappointed?

A. Yes.

Q. And lose confidence?

A. In that particular contraceptive, but not in contraceptives.

Q. But it might be possible

A. Yes.

Q. About this danger of sterility, -- you have talked about it -- would the constant use or the frequent use of contraceptives such as described here possibly lead to sterility?

A. There is one method not so far suggested which does lead to sterility -- the gold stem pessary.

The Court: Confine it to these methods.

To Mr. Mercier:

Q. Confine yourself to these methods?

A. There are none that I know will cause sterility.

Q. Will continuous or frequent use of these methods of contraception have any effect on the nervous system?

A. Conceivably if the act is experienced unsatisfactorily and if people experience more satisfactory pleasure before the use of the condom, then there might be some fear or dissatisfaction arise, and in that case, they should go on and try some other method.

Q. And if any other method in this is constantly used?

A. No nervousness will result.

Q. The act of sexual intercourse is something natural and occasionally it must be done in a natural manner or it will affect the nervous system?

A. Nothing we do is natural.

Q. The act itself is natural?

A. Quite.

Q. Without contraceptives, it is considered a natural act?

A. Quite.

Q. And I believe that primarily everyone should think it should be done naturally –- to be done as naturally as possible?

A. As naturally as possible. As far as the sexual act is concerned, the biological side, there is nothing unnatural in using these contraceptives. The natural principle is that of relieving the biological pressure.

Q. Might there not be in any of these contraceptives any diminution of the enjoyment?

A. Possibly some little diminution of sexual feeling.

Q. And the constant or frequent use of that would not cause something which would be contrary to the health of the person one way or another?

A. Only in the presence of misunderstanding or mis-instruction.

Q. Then there should be some instruction?

A. Quite.

Dr. Chisholm

Q. According to the individual?

A. Quite.

Q. One individual may use one method?

A. The contraceptives should be perfectly agreeable.

Q. It might not agree with 10 others?

A. Quite.

Q. What would be those instructions and where would they come from?

A. Instructions in the methods advised are extremely simple and should be quite adequate for anyone who is capable of thinking, even to that extent. It does not matter much. The intelligence to understand the method in these things -- they are advised, I think, how to use them and that is quite adequate instruction.

Q. Is the constant use of these things by a person with whom they would not agree harmful?

A. I have never known it to be.

Q. Could it happen: you said a few moments ago under proper instruction: do you believe the social worker going into a place and asking how many children, how many abortions, spacing and sending a pamphlet: it would agree with each and every one in each and every case?

A. I think it will agree with them enough to keep them emotionally safe.

Q. And if they are not?

Dr. Chisholm

A. What?

Q. Emotionally safe?

A. Then they would show symptoms, but not as a result of the contraceptive methods. They will have had to be in trouble before. There is nothing in those things themselves that will produce emotional difficulties.

Q. Then, Doctor, there is no case where it might possibly cause harm to the nervous system by the use of these contraceptives –- if they interfere with the sexual satisfaction of the individual?

A. There is no case in my opinion where biological or physiological harm can result.

Q. Any other harm?

A. Where guilt can arise, but only in a case of previous mis-instruction.

Q. Grant that there is previous mis-instruction and feeling; what do you get; what is the reaction?

A. It depends on the degree of guilt and the kind of previous instruction.

Q. Then, let us take a case now of people who have been brought up in their certain religion for generations?

A. (No reply).

Mr. Beament: There is no evidence of generations in the case at bar.

To Mr. Mercier:

Mr. Chisholm

Q. Let us put it as a hypothetical case: people brought up in one faith for generations and believe the use of contraceptives morally wrong in one way or another –- if they do get them and use them and after that if they have a sense of quilt, what is the possible reaction there?

A. It is that such a person will go to confession and receive absolution or a promise ordinarily of not repeating the offence, and repentance. Then, the woman usually or very frequently at least will try other methods that are available like coitus interruptus or coitus reservatus.

Q. They are available?

A. That she can think of, which very commonly is done. Then, she will go to a doctor with some sort of pelvic symptoms complaining of discharge, and the doctor will prescribe a douche after intercourse as a medical procedure, and in that case, she can get around the difficulty without danger to her conscience.

Q. So that is your explanation of your last statement in examination in chief: it might be dangerous from certain points of view if a person has been taught it is indecent and immoral —- it may have some effect of sending them to confession?

A. No, if they don't go to confession and get absolution, they develop inferiority and get feelings.

Q. And what can that do?

A. Nerves, but very often, they do go to confession or keep away from their religion.

Q. If they keep on having that feeling, or they get it, it might have some reaction on them?

A. Quite possibly.

Q. Now, Doctor, do you know an authority by the name of John Rathbone Oliver, M.D., Ph.D., Associate in the History of Medicine at the Johns Hopkins University, Baltimore, author of "Foursquare," "Victim and Victor," and "Four"?

A. I know him; I met him only once.

Q. Do you know him as the author of "Pastoral Psychiatry and Mental Health"?

A. Yes, but he is regarded in many synagogues as at least prejudiced.

To the Court:

Q. What is the name of the author?

A. John Rathbone Oliver.

To Mr. Mercier:

Q. He is the author of "Foursquare," "Victim and Victor," and "Four"?

A. I know of him. He has certainly done very good work for years. His work is prejudiced by his religious convictions.

Q. What is his religion?

A. I don't know.

Q. I take it he is an Anglican?

A. I don't know.

Q. Some of his views are not yours?

A. Some are not.

Q. Do you recognize him as an authority on psychiatry and mental health?

A. He has done a great deal of work, but is somewhat prejudiced.

He starts off with original points of view which he makes into premises and he builds up on those premises.

Q. I don't know if that is enough to qualify this doctor?

A. (No reply).

To the Court:

Q. With that reservation as to prejudice on some premises, just to what extent is he recognized as an authority in the work?

A. With medical history and social service work, he has been very successful and he is recognized generally as a man with a great deal of experience and he has ability in those fields, but wherever his observations or conclusions from his experiences come to ethical fields influenced by his original premises, he tends not to disturb his original premises.

To Mr. Mercier:

Q. It might be interesting to see how far his views agree with yours on birth control?

A. (No reply).

The Court: I think that book can be admitted.

Mr. Mercier: It is already in evidence.

The Court: This witness recognizes this authority as an author

on social service work.

Mr. Beament: This is not a book on social service work; it is "Pastoral Psychiatry and Mental Health". The witness recognizes the authority of Dr. John Rathbone Oliver insofar as medical history is concerned and his experience as a social service worker, but not in the conclusion he draws because he says his conclusions are biased.

The Court: If any conclusions.

Mr. Mercier: He says he is a hard-working man and prejudiced.

Mr. Beament: Somebody said something about the book going in.

Mr. Mercier: It is in as an exhibit already.

The Court: It is not like these other exhibits insofar as the witness adopts an opinion or disagrees.

Mr. Wegenast: On that point, I was stopped several times in reading passages from this on the ground it was not in and we could not use it and perhaps we might as well mention this subject again.

My submission was that if Lord Wrenbury could look at the "Times" on such a broad subject as this, Your Worship's eyes should not be blinded and the boundaries of human patience will prevent Your Worship reading all this material –- and I suggest it would be open to argument in one way or another.

We can always get these things in by saying, "I adopt so-and-so as argument". I did not read it because I understood ---

The Court: It appeared to me you were reading passages at great length without asking the witness' opinion.

Mr. Wegenast: It is a matter of how often to stop –- it is all pertinent and it was simply a matter of technique.

The Court: Go ahead and read passages.

To Mr. Mercier:

Q. Page 208 and 209, the last paragraph on page 208:

> "It is the same thing with birth control. Those two words have come to have a meaning altogether different from the signification that was originally attached to the. To one woman, worn out by bearing too many children and afraid of another pregnancy, they may mean scientific 'contraceptive methods'. But to thousands and ten thousands of other men and women, to the every-day man in the street or the woman in the house, they mean something entirely different. They mean, the way to make promiscuous sex relationships easy. They mean, how to make fornication safe for everybody. Thanks to all this modern agitation about contraceptive methods –- which in themselves are at least debatable –- any young girl or young man can buy in the nearest drugstore a 'safe preparation' or instrument that will not 'control birth' but that will make it

possible for them to indulge their sexual desires in complete disregard for any physical consequences of an unpleasant kind. Thanks partially, at least, to the hesitating approval that our own Communion has extended."

Further on he refers to the Lambeth Conference:

"blessing birth control with the little finger of

Dr. Chisholm

the left hand —- our country, although it may not have been made entirely safe for democracy, is rapidly being made safe for fornication."

What is your reaction to that?

A. To the doctor's point of view?

Q. Yes?

A. I think there is undoubtedly some danger of sexual relations being made easier outside of marriage, but first let us improve them —- the other desirable effects.

Actually, it is the difficulty inside marriage with no effective means of contraception that produces prostitution than would any dissemination of such knowledge ---

Q. You believe, Doctor, then that the use of contraceptives by married people even at the risk of endangering the morality of youth —- it would still be better for married people to have dissemination of birth control information at the risk of corrupting modern youth?

A. There is a little danger of that.

Q.

"Believe me, I do not overstate the case. In discussing the subject, you must not let yourself wander into loose definitions of your terms. Contraceptive methods are one thing. Every physician recognizes situations in which it is necessary to interrupt a pregnancy. But even he will not take upon himself to interrupt it without protecting himself by securing the opinion of some colleague."

Dr. Chisholm

That is referring to abortion?

A. Yes.

Q.

"And I have no quarrel with the activity of reputable Bureaus for Contraceptive Advice. The women who go to such bureaus are in the hands of able obstetricians; they are carefully examined; they are protected from their own

ignorance, and all the results of the advice given are carefully tabulated and published."

He seems to take this matter of birth control very seriously?

A. Yes.

Q. Do you believe that?

A. Yes, and I have opinions on that: that the very people who need it the most are the very people who won't go. You have to take it to them if it is to be any good.

Q. Page 210:

"But birth control does not mean contraceptive clinics to the average man or woman of today. It means, as I have already said, certain definite medicinal preparations, certain manufactured articles that are on sale openly in drugstores, and that are as openly advertised. I have collected a great many of these advertisements. They appear in publications that pride themselves on their high 'moral standards'. And every physician's mail is filled with new suggestions about 'feminine hygiene'. Not long ago, in a big medial clinic, I was looking through some of the new

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'literature' that had come in and that dealt with birth control. A colleague of mine knew that I was collecting choice specimens. He told me that he had saved an especially choice one for me. But he could not find it. One of his assistants, when asked where this printed matter was said, 'Oh, it was so filthy that I simply couldn't stand it, wouldn't have it on my desk. I threw it into the waste-basked'. Physicians are not especially queasy, nor are they supposed to be easily shocked. And yet this man was so offended by the tone of the matter of an advertisement of 'feminine hygiene' that he would not allow it near him.

The development of feminine hygiene still goes on. I suppose that, within a few years, when a young man and his adored one start out for an evening's entertainment, they will stop at a drugstore on their way, where she will get something that she can drink in a glass of soda water, while he will buy something else that he can put in his billfold, and then they will be able to go on their way completely happy, and completely safe. Safe, thanks to birth control."

What is your reaction to that?

A. There seems to be a lot in it and a lot in it is untrue; that is, it gives a wrong impression because I do not think in this country birth control means anything wrong to most people. To

most people, it means a clinic or social service worker or a doctor's advice. That is what birth control means to the vast number of people in this country now.

Dr. Chisholm

Q.

> "If you think that I am overstating the case, ask some mothers what unexpected objects they have sometimes found in the purses or handbags of the 18-year-old daughters. Better still, ask some of the girls themselves. They will often admit quite freely their more or less promiscuous sex relationships, which are all the more promiscuous because nowadays 'the woman is protected'. If you say, 'Yes, but you intend to marry someday; do you not? You look forward to a devoted husband, to children?' And the girl will answer, 'Of course I intend to marry. And I want children, too. But when I marry, I shall really give myself to my husband.' That is the outstanding element in all the temporary sex relationships of so many young people. None of these relationships are perfect. The woman holds something back, so does the man. And an intimate relationship in which there is always some sort of a wall between the two people who share it can have very little to do with love in its highest, most ideal and Christian sense. Because of this, I cannot but feel, as I have already said, that these sex relationships, made safe by birth control, are not heteroerotic reactions."?

A. The same thing —- emotional relation between the man and woman —- between the two sexes.

Q.

> "…intimate relationship in which there is always some sort of wall between the two people who share it can

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> have very little to do with love in its highest, most ideal and Christian sense. Because of this, I cannot but feel, as I have already said, that these sex relationships, made safe by birth control, are not heteroerotic reactions at all."?

A. (No reply).

To Mr. Wegenast:

Q. That is extra-marital?

A. I think that is perfectly true in extra-marital relations but not because of birth control measures but because of feelings of youth and danger.

To Mr. Mercier:

Q. In the case where the wife uses these contraceptives and the husband does not like it?

A. The obvious thing for the wife to do is to use a contraceptive that has no effect at all on the husband. He cannot tell if she is wearing a pessary.

Q. I take the case of a husband who knows his wife is using contraceptive devices and does not like it?

A. He wants to have children?

Q. No, from the reactional viewpoint?

A. On a decency basis?

Q. Yes

A. I think if a man regards his wife as being indecent then his opinion should be completely disregarded. I think an

attempt should be made to educate him until he can see things the way they are.

Q. If a man uses contraceptives and the wife does not like it?

A. The condom for instance?

Q. There are now, today, in our society very decent women who believe in the use of contraceptives and there are today in our society very decent women who do not believe in them and who believe marriage relation ought not to exist with them –- what effect has it on the woman?

A. Then, of course, she is dissatisfied. The ordinary thing the husband would do would be to try to get his wife educated and get her to learn if he can't do it himself –- he ought to refer her to someone who can.

Q.

> "The man is used by the woman as a mere temporary instrument in the attainment of certain physical sensations. When neither partner gives him or herself, but only uses the other as a physical machine for relaxing sexual tension, there can be no real unity, no sinking of both individuals in the creating of a new life."

A. That is perfectly true when it occurs, but it is likely to occur one way or the other. The use of contraceptives has nothing to do with it. A man is likely to use a woman purely as a receptacle whether contraceptives are used or not.

Q.

> "The Roman Church is not far wrong when she calls all ordinary methods of birth control, purus putus Onanismus. It does seem not only unfair, but exegetically unsound to make poor old Onan responsible for all autoerotic reactions. As I understand the story of Onan, he was punished, not because 'he spilled his seed upon the ground,' but because he did not love his brother or his brother's wife and did not want to 'raise up seed' to that dead brother as the law of Moses compelled him to do. The incidental fact of his spilling his seed has for centuries unjustly made of Onan the founder of autoerotism. Indeed, autoerotism is still, in old medical and theological books, called Onanism. But if the decision of the Roman 'Congregation Poenitentiae,' that I have quoted above, had said that most acts of 'protected' sex intercourse were purus putus autoerotismus, nothing but simple, rotten masturbation (forgive the word, this once), I should be inclined to agree."

A. I think he is completely wrong on the basis of plenty of evidence on that statement. I think he is defending his emotional convictions on his original premises. One has only to look at a man and woman married and in love and having sexual relations under the influence of fear, and then see them after when using contraceptives, to disprove that.

Q. What is your opinion on the use of contraceptives, as to the method of approach. Do you grant that the majority of husbands are decent fellows just as in rare cases you will find a brutal and over-sexed husband?

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A. The majority of men are decent according to their ideals of women. The majority of men have no idea how women function, how their emotional systems are put together, and what their demands are.

Q. A husband or wife might use contraceptives without consent, but the majority of decent husbands and decent wives who have got along well for years –- do you believe the woman should use contraceptives in any case without consulting the husband?

A. Yes, if her husband is a normally decent sort of person and they do get along comfortably, she always will consult him. I don't think the question can arise in such circumstances.

Q. Suppose it does arise. They have got along wonderfully and in every stage of life, they are comfortable and the wife says, "I am not going to tell him," but a month or so after he finds out –- maybe he won't object, but all at once he finds out that most intimate thing?

A. I think the normal husband would find he did not know his wife as well as he thought he did, that she had fears he did not know.

Q. I respect very much your medical science, but I do not think there is anything I could say that would make you admit Miss Palmer did wrong?

A. I know of nothing of what Miss Palmer said or did excepting a little garbled report in the newspapers.

RE-DIRECT EXAMINATION

To Mr. Wegenast:

Q. I am looking for the passage -– where they got this passage about the drugstore, Page 208 or 209. I want you to say if it is quite clear in your mind that what he has in mind is promiscuous distribution by drugstores?

A. It is quite the way these contraceptives have been built up.

Q. Here we have a condition of things referred to in that book, where you can buy them. We have a large box of them bought right here in Eastview. We have a sort of museum of them here?

A. They are commercialized products nearly in every case at four to five times the commercial value.

Q. We have a pessary marked "$10.00" and it was bought for 85 cents?

A. That is about the normal value.

Q. That is one picture before your eyes and we have another of a girl going with references and introducing herself as a nurse saying, "I am sent by the Parents' Information Bureau and I am willing to give you information about birth control if you want it" -- and I want you to say doctor: compare the two methods on the decency of public interest –- I think, Your Worship, if I may put it that way: of the ethical considerations and finally of your psychiatric considerations: the effect on a person who might take one or the other?

A. In my opinion, at least, the method of dissemination of

birth control information through social service organizations is inestimably better than commercialization of inadequate products without adequate instruction or no instructions -- without any consideration of the individual -– without any suggestion of going to a doctor, and then the very frequent effect that the persons who get their information in these ways go back to the same places and get information about treating venereal disease –- and the same people who sell these things will sell specifics for venereal disease and the whole thing tends to be bad. But that is not birth control.

Q. What about the medical profession?

A. It has suffered from a neglect of instruction on the question and, generally speaking, in many medical schools, the instruction is inadequate.

Q. Is there any?

A. There is some. It is learned in out-patient clinics by doctors. I am not qualified to speak for all medical schools, naturally, but the ones I have come in contact with ---

Q. What about this solution of the matter: teach women to go to their own doctors: suppose this social worker instead of giving pamphlets: Miss Palmer is supposed to take from these women an application after certain investigations and forward this blank to the head office and the clinic at Kitchener where on examination and after consideration the box might or might not have been sent to the people concerned –- things as I showed you. Now, I want to ask you: whether going at the thing that way –- there being no clinic here in Ottawa –- where the information could be obtained – was it or was it not proper to

go to the local doctor?

A. I don't know the local doctors and I think my opinion would hinge on that point.

Q. Take them by and large; you know something about doctors?

A. Generally speaking, the suggestion of an adequate method of birth control by a competent social worker is at least as satisfactory as sending them to a doctor –- very often the doctor will sell one of these things at $10.00, having himself gone to the drugstore and bought it –- which is admittedly a defect in our medical education.

Q. I want your opinion on this, Doctor. Here we have the clinic letting the doctors have the pessaries –- I think for a dollar –- for 40 cents; how does that compare with the method you have spoken of?

A. (No reply).

Mr. Mercier: There is no evidence of that.

Mr. Wegenast: I was going to put it in. I thought Mr. Kaufman gave it.

Mr. Beament: That is so long ago.

To Mr. Wegenast:

Q. On this slip, "1 Highest Grade Pessary…50 Cents": what is 10 cents between us, Doctor: this clinic of Kaufman's, compared with the condition you have mentioned: the practice of a doctor going to the drugstore?

A. I think obviously it is much more reasonable. Quite

obviously, there is no excuse for a bit of rubber costing $10.00.

Q. What do you think of a clinic as a commercial proposition selling them at that rate?

A. I should not think they would flourish as a commercial proposition at all.

Q. You said the people had to have the service brought to them -- I think we have your idea already. What is your idea as to by whom or how this information which we gather is very readily made available; how should it be distributed?

A. By anyone who has a social conscience and is happy: by a minister, social service worker, doctor, anyone concerned with people's concerns and their happiness.

Q. And, Doctor, is it not ordinarily the man who does not speak out unless called?

A. No, but very usually the doctor will bring up the subject.

Q. When you say they have to have it brought to them, do you leave any room for those who do not ask for it?

A. Yes, after the doctor goes to a home and is at all not narrow minded, he will suggest birth control methods without being asked. If a person comes to me with nervous symptoms from bad sex adjustments, I advise birth control, and they did not come for that.

Q. And who must suggest it?

A. If it is inevitable and they have no method that is

within the scope of their economic means ---

Q. She would be justified?

A. Perfectly.

Q. My learned friend spoke of generations and generations of people having certain prejudices or beliefs; would you indicate how many generations back the prejudices will go?

A. Not so long as it was one.

Mr. Mercier: My learned friend might say belief.

Mr. Wegenast: I said it.

The Witness:

A. A prejudice is something prejudged and believed, but to be strongly present, it would have to be present from one complete generation.

Q. And the word “prejudiced” is what you used. Now which would be more likely to cause harm to a woman who had cancer or a cancerous condition or another pathological condition of the generative organs; the tube and nozzle or having a baby?

A. Having a baby.

RE-CROSS EXAMINATION

Mr. Mercier: Of course. The witness has stated one thing in re-examination on which I would like to re-examine. I will ask my question and Your Worship can see if it arises out of re-examination.

To Mr. Mercier:

Q. It was stated when my learned friend showed you

contraceptives from drugstores, there was objection because people went to drugstores and do go to them without first seeing a doctor. They could get jellies and condoms and they are harmless?

A. (No reply).

The Court: What is the question?

To Mr. Mercier:

Q. People can get contraceptives at the drugstore without consulting the doctor and you object to that?

A. I did not really say not to consult a doctor, but —- it is the commercialization of something that should be a public service. I have no brief for a doctor charging $10.00 for it or a drugstore.

Q. But you stated one of the reasons you object to their having them in a drugstore was that the doctor was not consulted?

A. Quite so and I elaborated to say that drugstores who do sell them are often giving medical advice in connection with venereal diseases. If these things were available through the government or through a social service agency, people will go back there for further help.

To Mr. Wegenast:

Q. On this question of prejudice or belief my learned friend raised in re-examination: do you know of a conference of doctors in Holland in 1930?

A. No.

Q. We have heard a lot about Holland about birth control?

A. It is well organized.

To Mr. Mercier:

Q. Would you be surprised, Doctor, if you knew they passed a resolution, being a majority of protestant doctors, asking all doctors morally ---

The Court: If the witness has never heard of the conference, it is a matter beyond his knowledge.

Adjourn until 2:30 p.m.

(Witness retired)

Mr. Wegenast

REX vs. PALMER

Brant Pages N-52 to N-68

Halkins Pages N-69 to N-84

(Court resumed at 2:30 p.m. same date)

MISS GLADYS BRANT, duly sworn, deposed:

To the Court:

Q. Your name?

A. Gladys Brant.

Q. Address?

A. Twelve Dundonald Street, Toronto.

To Mr. Wegenast:

Q. Miss Brant, you are a nurse?

A. Yes, sir.

Q. And you have been connected with Mr. Kaufman's work for some time, I believe?

A. Yes, sir.

Q. Will you tell us what your experience has been and what your status as a nurse is: you graduated as a nurse where?

A. Toronto General Hospital, 1921.

Q. And what have you been doing since?

A. In the following year, I was in bed with tuberculosis. After that, I did private duty nursing throughout the western continent.

Q. Where?

A. In Calgary and Vernon, B.C. and while at Vernon, I relieved as night floor supervisor through the typhoid epidemic and while there took my first position as assistant

superintendent of nurses at Utica, New York and was assistant instructor of the hospital there for one year and went to Rome for three years as superintendent and returned to my home city and was superintendent of Wellesley Hospital Toronto under the supervision of Dr. Bruce. From there, I took over the educational directorship of a hospital at Albany and was educational director there for four years.

Q. What has been the nature of your work for Mr. Kaufman?

A. I made a survey for about two weeks in the clinic before deciding whether I would take up this work, and I was asked to go to Windsor and take over the Windsor clinic.

Q. For Mr.?

A. Kaufman.

Q. And what has happened the Windsor clinic?

A. At the end of seven months, we had probably about 150 mothers coming to us, and we had the nucleus organized for a second health league in Ontario, and they organized and called themselves the Essex County Health League, and that did us out of a job.

Q. That was taken over by the Essex County League?

A. Yes.

Q. What is your position in Toronto now?

A. Mr. Kaufman asked me to take over the Toronto clinic and I have been there almost two years.

Q. Just on that point, Miss Brant, you say you worked yourself out of a job; what is your principal work now in

connection with this work?

A. It is to get our public-spirited-minded people and our educational groups to take the clinics from us and place them on a public health basis in charge of the departments.

Q. That is your work now?

A. Yes, and I might say we have organized our third league, which is known tentatively as the Toronto council for parental guidance and its race betterment, and the provisional committee is still in existence.

Q. What are you working at in Toronto now?

A. Myself, I am out of another job.

Q. I come to the suggestion this is a commercial enterprise on the part of Mr. Kaufman; what do you say?

A. Anyone working for Mr. Kaufman and knowing his philanthropy would never say that. There has never been any indication of it being a commercial enterprise.

Q. I have in view -- I may say frankly -- the fact that Mr. Kaufman is a manufacturer of rubber footwear and does manufacture pessaries; will you tell us how that comes about?

A. In clinical experience, we found the ones imported from Europe and ones purchased at tremendous cost from the United States were both inferior and too expensive.

Q. So what?

A. He thought he would make his own. I think he makes eight at a time.

Q. And I think we have already heard he doesn't make all

sizes?

A. No, we purchase some of the sizes.

Q. Now, you have another lady associated with you in this work of working yourself out of a job?

A. Yes, sir.

Q. I want you to give His Worship, without leading you, the exact nature of the work you are doing personally. You are in charge of the clinic in Toronto?

A. Yes.

Q. How much time do you spend on that?

A. The clinic has grown to such an extent, along with the educational work throughout the city; sometimes, I would get a call from five clubs to address them in two days. My work

became so heavy with the clinic and our organization —- I think my biggest day was contacting 148 mothers from two in the afternoon until ten at night.

I asked for an assistant and Miss Grace Orde, also a social service worker, was given me and both of us are kept up almost until twelve midnight every night; we don't get a minute for anything else.

Q. The organization's work: what do you do?

A. Every Tuesday morning at 11 o'clock, we have a round table conference for people in Toronto interested in the new movement who care to come to the clinic to learn. The evidence given here has been a revelation to me; I thought I knew a little, but I didn't know much.

Miss Brant

We educate our groups. It should be a part of the health programme and economic programme. We addressed four divinity schools.

I have addressed graduates from hospitals. The clinic has had probably hundreds of thinking men and women from the City of Toronto. It was all new to them, a revelation to them, the work done at the clinic, and eventually the organization decided to take an interest in it and eventually take over the clinic.

Q. Have you any organization now in Toronto?

A. Yes, the provisional committee has been formed, and as I have said, the constitution is in the making.

Q. May I assume from that, Miss Brant, you think somebody alone like Mr. Kaufman has been doing this work ---

A. I think he is anxious to get rid of this. He is a man of vision. He offered a scholarship at Toronto University 18 years ago on town planning.

Q. We mustn't get into that. What I have in mind for the moment is the case of Miss Palmer. We have Miss Palmer going around here and being paid by Mr. Kaufman: what is that necessary; what is your view of the propriety of it?

A. I think it is a splendid idea that social service workers are paid. In Toronto, we have them co-operating with the hospitals, doctors and social organizations.

Q. The suggestion has been made in evidence that the right way to handle this would be a clinic?

A. Not always.

Miss Brant

Q. What do you say to that, having particular reference to Miss Palmer's activities?

A. A great many mothers haven't shoes or stockings and the nurse gives them a dress and street car fare and they have a sort of a gala day. We have a great many social agencies where it is impossible to send the mother. We have cases of women confined to bed with broken legs, and so on, and they want the information. There was one case of a woman with cancer of the leg. The social service asked us to take birth control information to her. In many cases, it is important to have social workers.

Q. What about clothes?

A. They haven't been out of their backyards for so long, they don't know how to get off the street cars, and we requested the T.T.C., and now you should hear the conductors call out, "Dundonald Street, for mothers".

Q. You are giving us a picture of very poor people and the difficulties they have getting to the clinic. To what extent does your clinic administer to the poor?

A. You mean the percentage?

Q. Yes, any way you like?

A. We have 50 per cent so poor it is almost pathetic. We have 30 per cent probably on a salary below $60 per month; they are really worse off than families on relief. We get the majority of the poor people in Toronto.

Q. There has been a suggestion that there is a sort of a special effort being made here in Eastview. I want you to tell

His Worship about the general extent of this work?

A. What is the question?

Q. There has been a suggestion that there is a sort of special effort being made here in Eastview. I want you to tell His Worship about the general extent of this work. It seems to be the idea we are making a dead set here in Eastview?

A. No, this work is going on throughout the Dominion, from coast to coast.

Q. You have heard there are 53 nurses?

A. They are scattered throughout the Dominion from Vancouver, Calgary, Edmonton, Lethbridge, Winnipeg -- all the principal cities from coast to coast; St. John, N.B., Toronto, and so on.

Q. Another thing, Miss Brant, as to the work, is it confined to any particular class, race or creed of people?

A. No.

Q. To what extent have Roman Catholics availed themselves of it?

A. In Windsor, with thickly populated Roman Catholic groups, we found about one-third of the mothers were Roman Catholics.

Q. What about Toronto?

A. It is not so high, but we do get a great many.

Q. What about this question you have heard discussed here, of having the social worker make an approach to a family which

she might have reason to think are Roman Catholics; would it make any difference?

A. No, they are mothers to us; we leave it to their own conscience.

Q. Have you ever discussed it with them?

A. Not unless they discussed it first.

Q. What do you say about it?

A. The fact never really entered my mind. Mothers accept it and were glad to get it.

Q. What about the idea of discussing this with husbands first?

A. Most mothers that come to our clinics don't discuss anything about this work. The husbands send them in sometimes; they don't object.

Q. Who does send in your patients?

A. Usually social services, other mothers and the clinics.

Q. Have you ever had any difficulty with other agencies?

A. No.

Q. Where do the patients get a knowledge of your clinic?

A. I think our social service agencies have been educated in the last few years that it is there, and they were treating it as part of their work.

Q. What other social service agencies are included in that?

A. I would rather not mention that.

Q. Are the Toronto relief authorities interested?

A. Yes.

Q. Do they pay you anything for it?

A. Not at all.

Q. Will you tell His Worship what they do and how they know?

A. How I know mothers don't pay anything?

Q. I asked if the Toronto relief authorities sent them?

A. Yes, but they never think of paying a penny; they would rather pay for an extra baby.

Q. To what extent do they take an interest in it?

A. Not very great.

Q. What about the hospital authorities?

A. I think everybody is thoroughly convinced of the necessity for this new movement; I think the boards as a whole need education.

Q. What boards?

A. Of councils and groups.

Q. We are speaking of hospitals?

A. In my own hospital, a lawyer's wife telephoned and asked for the address of the clinic; the girl at the phone raised her voice and said, "we have nothing to do with it," and at the same time, the superintendents of nurses and instructors know and approve of our work.

Q. What about doctors?

A. A great many doctors refer patients.

Q. Have you anything further to say as to how you get your people to the clinic; where do they find out about your work?

A. I have already said social service agencies, doctors, ministers and others.

Q. You said you didn't want to name any agencies?

A. No.

Q. Now, what is the cause of your hesitancy there?

A. That is why we are organizing leagues.

Q. Explain further?

A. We explain it is just an educational programme because we feel it should be part of a health programme.

Q. What do you mean by a "health programme"?

A. (No reply).

The Court: That doesn't answer the question.

Mr. Wegenast: No, but I don't want to press the witness.

To Mr. Wegenast: You say you don't want to give the names of these people, and you feel it is part of the health programme, and you are organizing towards it; I would like to get to the bottom of it, but I don't want to press you?

A. I would just as soon say nothing more.

Q. I will not press you.

A. (No reply).

Miss Brant

Q. How many people have you treated in the clinic?

A. I think the number is 6,300 treated with 17,000 visits.

Q. And the visits are rounding up in the Parents' Information Bureau?

A. Where the clinic would reach 6,300, I think the Parents' Information Bureau in less time has reached over 40,000.

Q. You have heard Dr. DeHaitre's evidence as to the possibility or probability of a woman contracting cancer or receiving an injury if she had a cancer; what do you say as to that in the light of your experience in the clinic?

A. I am not a medical man.

The Court: I was thinking that.

Mr. Wegenast: After all, Miss Brant is a nurse and runs the clinic.

The Court: Has she come across any instances in her clinical work?

To Mr. Wegenast:

Q. Yes?

A. No.

Q. In the 6,300 cases, you haven't come across anyone injured in that way?

A. No.

Q. What about the question whether sterility is likely to result from any of these things?

Miss Brant

A. No, we haven't any complaints. Mothers who don't use the contraceptive have children, and, in fact, they come in and say they are planning a new Ford car or another child, and usually it is another child.

Q. And what about sterility?

A. There is no doubt about it that if the husband has a holiday in August, the mother arranges her confinement so that they can all go off for a holiday.

Q. Now, what about abortions; we have some statistics, I think, or we have accumulated some knowledge that would put you in a position to give an opinion as to the prevalence of abortions?

A. I have been a nurse a good number of years and I think the most appalling thing I have discovered in my clinical work is the number of abortions mothers have had. They will never find their way into the statistics. They don't tell about it.

Q. We have had some experience here and would like some observations. We have Miss Palmer, a worker, reporting a certain number of abortions and the women saying they had not as many; what do you say as to that?

A. I have had a mother come in; we took her history; she was reticent about details, and before the examination was over, she would come back and say she wouldn't lie to me.

The Court: What about the situation here?

To Mr. Wegenast: Yes, about the women here in court?

A. A woman might often tell another woman in confidence and might not like to discuss it in public.

Q. And they have different names they apply to abortions anyway?

A. Yes.

Q. We have miscarriages, abortions; any other terms?

A. No, not to my knowledge.

Q. When you classify abortions, Miss Brant, would you call a menstrual period delayed six weeks -— would you call that an abortion?

A. Usually they have symptoms that go with them. We have women go over the menstrual period and they are not pregnant, but, usually, with an abortion, there are symptoms; they know.

Q. This question of unmarried mothers; what do you do with them; do you make any distinction between them and the married patient?

A. I think our social service agencies found that was one great problem, especially common-law wives, and social service agencies bring these mothers to us recommending them, and we have given common-law wives this information. We have one woman living with a men 11 years and 9 children, and he has both hands amputated, and we feel it is better to give them that information than have further children thrust onto the community.

Q. Now, we have heard another feature suggested here; namely, that Miss Palmer should have taken an interpreter or translator around with her or be able to talk French herself. Have you made an investigation into that or what have you done?

A. We approached some of these mothers and in a

conversation of about five minutes, they understand what we were talking about and we understood what they were talking about.

Q. Who?

A. Mrs. Groulx and Mrs. Maheux.

To Mr. Mercier:

Q. When was this?

A. This morning.

Mr. Mercier: That is hearsay.

The Court: That is hearsay evidence of the worst kind.

Mr. Wegenast: It is not what was said.

Mr. Mercier: If my learned friend is prepared to allow the same kind of hearsay on my rebuttal, I will allow it to go in gladly.

Mr. Wegenast: This witness is perfectly competent to say she carried on a conversation in English. We always go this far: "you had a conversation in English?"

The Court: That is all.

To Mr. Wegenast: In what language did you hold this conversation?

A. English.

Mr. Mercier: It should be struck out. I claim the same privilege.

CROSS EXAMINATION

To Mr. Mercier:

Q. Of course you are also a sincere and ardent believer in

birth control and the Parents' Information Bureau?

Q. Yes, sir.

And you do not believe there is anything wrong in the methods of the Parents' Information Bureau or Miss Palmer?

A. No, sir.

Q. In every way, shape and form, the work was perfect?

A. I think the amount of good that was being done, seeing there is no clinic in Ottawa or Eastview, it was the least she could do.

Q. I mean, holus bolus, everything was done perfectly and properly?

A. Yes, sir.

Q. You give a sort of general blessing to the work?

A. Yes.

Q. How is the work done in Windsor?

A. We had a clinic there.

Q. That is what you began doing there?

A. Yes.

Q. You had no social workers calling from door to door in Windsor?

A. No.

Q. And in Toronto, there is a clinic there?

A. Yes.

Q. And Brantford?

A. I don't know about that.

Q. And western places?

A. They have their workers there working with the Parents' Information Bureau.

Q. Similar to Miss Palmer here?

A. Yes.

Q. In these other clinics, people are sent there by the social service workers?

A. Yes.

Q. And in places where you have no clinic, you send your workers there?

A. Yes.

Q. Where there are no social service workers to do your work, you send your own?

A. I think throughout the western provinces the social service workers are co-operating and we get a great many calls from them.

Q. But where you are not getting the co-operation of the local social service workers, you send your own?

A. Yes, of the Parents' Information Bureau.

Q. And all the organizations, I think you said, do not co-operate with you?

A. The individuals of the organizations do co-operate.

Q. Therefore the boards do not?

A. The boards?

To the Court:

Q. Individuals compose the boards?

A. The individuals are the workers in the fields and know the conditions and send the patients.

To Mr. Mercier:

Q. The boards do not approve?

A. They do not come out with it.

Q. I believe anyone with a principle will come out with it?

A. That is the trouble.

Q. That is a sure sign everybody doesn't approve either of birth control or the methods?

A. I wouldn't say that.

Q. You believe everybody believes it?

A. They should.

Q. I took that for granted a while ago; in fact, every witness in that box –- that everyone who does not believe in birth control and Miss Palmer's work is suffering from a bug, religious or other?

A. I think certain boards and others are taking a microscopic view instead of a telescopic view; they are meeting present needs instead of the future.

Q. Everything connected with this work and everyone

Miss Brant

believing in those things: everyone else who doesn't believe in it has something wrong with them?

A. I wouldn't think so.

Q. You have been here day after day; isn't that the attitude you would take that anyone else not thinking with you is suffering from not being advanced, although the lactic acid, at any rate, one of the components of the jelly, has been known since the time of the Egyptians and everybody not believing in that day is behind the times?

A. That could be.

Q. Well, couldn't there be a return to those times, a promotion of it now?

A. (No reply).

Mr. Beament: See Exhibit 89-B.

To Mr. Mercier:

Q. We might get one of the Egyptian kings here. Anyway, you are a convinced and confirmed believer in this and Miss Palmer's work was perfect in every way, shape and form and couldn't be improved on?

A. I just wish there could be hundreds more.

Q. That is your opinion, -- your wish --there were hundreds more?

A. Yes.

(Witness retired)

Mrs. Halkins

MRS. MARY HALKINS, sworn, deposed:

To Mr. Wegenast:

Q. Mrs. Halkins, you are not connected with Mr. Kaufman's organization?

A. Not at all.

To the Court:

Q. What is your address?

A. Three forty-seven Queen Street South, Hamilton.

To Mr. Wegenast:

Q. But you have something to do with a similar work in Hamilton?

A. Yes.

Q. In fact, I think you are at the head of it?

A. Yes.

Q. That is not in a professional capacity?

A. I am not paid for it?

A. Why are you doing it?

A. Because I think it is badly needed to be done.

Q. Let us see your background a bit, Mrs. Halkins. In the first place, I believe you are a mother?

A. Yes, and a grandmother too.

Mr. Wegenast: This witness has the distinction of being the first mother to appear?

Mr. Mercier: I thought we had 22 at least?

A. The first grandmother, at all events.

To the Court:

Q. You are head of the birth control clinic in Hamilton?

A. Yes.

To Mr. Wegenast:

Q. Could you tell His Worship what sort of activities you were engaged in apart from being a mother and grandmother before you took on this birth control clinic in Hamilton?

A. I graduated from Vassar with the degree of A.B. and married and had children, and after I came from where I resided, I joined the board of the infants' home, which is an organization which takes care of unmarried mothers and children that are unwanted, left on doorsteps and in railway stations. I have been on that board for 30 years.

I was also appointed to a delegation to go before the government, at the time Mr. Whitney was premier, to ask the government for the segregation of feeble-minded women of child-bearing age. I think at that time there were 125 illegitimate children registered in Ontario. This was refused.

After that, I helped to organize playgrounds for children in the poorer sections of the city. Then I helped organize a bureau of family welfare which goes into the homes and studies problems of the poorer families.

Q. Then you had something to do with relief?

A. In connection with that, we were with the poor.

Then I sat with the committee founded on the budget committee which allots money spent on this enterprise.

Then, in 1931, I helped organize the first birth control system in Canada and shortly after that, we opened the clinic which has been going ever since.

Q. What moved you to do that?

A. I went a good deal myself into the homes of the poor and it seemed to me that in order to bring real relief, we must do one of two things: we must either increase the financial resources of these families, which is a long story, or we must assist them adjust the burden to what the family is able to carry with dependants.

Also, my sympathy was aroused for these mothers and I came to the conclusion when someone said that the public welfare is none other than the sum totals of the individuals who compose the public. So I thought the direct application of birth control help to these individual mothers who composed the pubic welfare an immediate and fundamental help.

Q. Now then, you are obviously taking the situation as it is?

A. Yes, and not an ideal condition.

Q. Now, we have had some matters brought up here in evidence on which I think you can give His worship an opinion worthwhile, coming from a woman of your experience.

First, about giving contraceptives to unmarried mothers?

A. Thirty years' experience on the board of the infants' home and part of that time on the administration committee and

talking to these women and going into their homes and seeing these women go out and come back with a second child and come back a third time, it seemed to me, from the point of view of those little children and the difficult way of life that was ahead of them, it was only right to prevent her bringing further children along as an adjunct to her sin.

So until we have sterilization for the mentally unfit, I myself feel, as the lesser of two evils, it is better to give these women the knowledge.

Q. Is that the practice of your clinic?

A. I regret to say no, because —- I don't know that I should say why.

Q. On whom do you depend for the support of your work in your clinic?

A. On the public goodwill and the educated opinion of the city and also somewhat on our mothers because we expect mothers to pay if they can, and some of our supplies we get from Mr. Kaufman at cost and he pays the transportation.

Q. Now then, you have heard the evidence as to how Miss Palmer is said to have gone about things. She visited these mothers and took their applications, which were forwarded to Kitchener, and in due time, the box was or was not sent.

I want you to lay that with its adjuncts alongside the clinical method and give me your opinion as to its propriety?

A. (No reply).

Mr. Mercier: I believe my learned friend may have without

intention said it, but there is no evidence of a box having been sent.

Mr. Wegenast: I thought there was.

The Court: I assume it is a hypothetical question. There is no evidence of a case where no box was sent, but there is evidence of the general practice.

Mr. Wegenast: I am putting the general plan of the work.

The Court: Right.

To Mr. Wegenast:

Q. Take a hypothetical case of people coming to your clinic, and here is Miss Palmer working here; compare those and give the advantages or disadvantages of each?

A. I think a clinic is a very excellent thing for a number of reasons, one being that it commands more support from what you might call the intelligentsia in a locality, but I do not think a clinic is by any means the only method.

In a community where there is no clinic possibly I think the right thing to do is send someone there to explain the subject to those women and find out those receptive and would like it.

We do not have visitors in our clinic because we can't afford it. We haven't Mr. Kaufman.

Q. What about having a visiting staff?

A. I think it is most desirable. We find a great many of these women will not come. Some of the women will come in and say, "why not go and see Mrs. so-and-so". These women are afraid of anything that is unknown.

Q. What about the necessity of consulting the husband before taking a step of this kind; you have heard the evidence?

A. I was very much surprised this matter was brought up over and over because Miss Palmer only recommended one method, which was that of the jelly and condoms; how that method could be used without the knowledge of the husband, I can't see. It isn't funny. I have dealt with families where the husband was absolutely unreasonable and didn't co-operate in any method, and in that case, I feel the wife is entitled to the information.

Q. Where the condom is used, it couldn't be used without consulting the husband?

A. (No reply).

Mr. Mercier: I hope I didn't insinuate that it could be?

Mr. Wegenast: Why all this asking the witnesses?

Mr. Mercier: As to asking the witnesses questions, my learned friend has been doing that continuously, trying to impress Your Worship with whether it was for the public good and should be done or not.

The Court: It is the whole pamphlet; it is far beyond the condom and jelly. That all enters into Mr. Mercier's argument.

To Mr. Wegenast:

Q. Now, you do have your clinic conducted under the supervision of a doctor?

A. Yes, sir.

Q. Having that in view, I want to know whether it was right for a social worker like Miss Palmer to advertise these means of

contraception without having a doctor examine and advise the woman?

A. In my opinion, yes.

Mr. Mercier: I suppose that will entitle me to bring 100 witnesses to say no.

Mr. Wegenast: I must anticipate that, so I bring a greater number than if I knew.

The Court: It is not the numerical quantity; it is the quality.

Mr. Mercier: I will try to equal it.

To Mr. Wegenast:

Q. What have you found in the opinions of the medical profession?

A. A tremendous variety. The younger men of the medical profession who have had a discussion of this, even though a very few, have had instruction except what they saw themselves, but they have been extremely helpful. They send patients and offer to conduct the clinic.

It was through their advice that we opened classes to interns in the hospitals as they had no instruction in their classes.

Some of the older doctors resented it and refused to back us up. When we brought cases to them like in the case of Dr. DeHaitre -- a woman was brought who because of her health should not become pregnant again and they would say, "the condom". About birth control generally they said, "we will come to it," but among the younger doctors, we got great help.

Q. Have you had any experience where doctors associate

birth control with abortion?

A. Just one, and I think he was making a test to see if we were making recommendations for it.

Q. You have heard so much of this I needn't go over these various methods?

A. Yes.

Q. Which of these do you regard on the whole as the most desirable?

A. Well, between the pessary, condom and jelly, I believe it is a matter of circumstances; both are very good. I think in the case where no doctor is available or clinic available or a case where they just won't go to the doctor, the condom and jelly are very adequate.

Mr. Mercier: I wonder from what method my learned friend has qualified this woman to be an expert.

The Witness:

A. We have had 150 cases, and we have had wonderful success.

To the Court:

Q. You are not speaking from a medical point of view, but from handing them out?

A. Yes.

To Mr. Mercier:

Q. From the point of view of a person asked to hand them out?

A. (No reply).

To Mr. Wegenast:

Q. Of course, for the pessary, the doctor is always consulted before the pessary is recommended?

A. Always.

Q. And the nozzle and condom?

A. No.

Q. You think it is not necessary?

A. No.

Q. In your experience, do you know of any injury that occurred through the use of the nozzle and jelly?

A. None.

Q. Speaking as a mother, do you think it is in order that a woman should be given this information whether the husband wants it or not?

A. I certainly do think any woman who has borne children, who has known the illness, despairs and suffering of nine months' time and the agony of labour will not have to agree that a woman should be forced into this when she is unwilling. Not only that, but no woman goes through pregnancy without the risk of her life, and I think when we look at the maternal mortality statistics of Canada, about which there has been little stress laid here, and we are told a great deal of this could be prevented by the better training of doctors in prenatal care; but when a great many of these could be saved it is the woman should be at least given the right to say whether they will risk

their lives at that time.

Q. Then we have the woman who believes or is supposed to believe there is something wrong about this: the woman following the teachings of the Catholic church; what do you say as to the propriety of giving contraceptive knowledge to them without the husband's knowledge?

A. I think those women above all other women should be given this information because one of the teachings or rules of the Roman Catholic church is that the mother's life may not be saved at the expense of the unborn child and it seems to me it should be known to these women that this is one of the risks which they go through.

Q. How do you know that is the teaching of the church?

A. I have known it for a long time and through hearsay and through doctors, but I took the trouble to look it up in "Moral and Pastoral Theology" by Davis, page 140. Shall I read the sentence?

To the Court:

Q. Please?

A. This is in a case of labour:

> "It may be possible in certain situations, speaking of hydroneal cases –- it may be possible to drain off somewhat –- pregnancy." (Not filed as exhibit).

If I am wrong about that, then my attitude that Roman Catholic mothers should have it is wrong, but I think they are entitled to the same consideration as any other mother.

Mr. Mercier: There may be other witnesses who may not put the same interpretation on that.

The Court: Quite so.

To Mr. Wegenast:

Q. You heard Dr. Silcox?

A. Yes.

Q. He said every woman should have this information by virtue of her being a woman?

A. Yes.

Q. What do you think of that?

A. I think it is quite true.

Q. What about this "rhythm" method; have you had any experience?

Mr. Mercier: Your Worship, I think my learned friend is going far; I don't mind him asking evidence of experts, but there is a limit.

The Court: On what basis a director of a clinic is expected to give evidence on a book like on a clinic?

Mr. Wegenast: I will not press it because we have had so much evidence; she is a mother and grandmother. You have heard so much of this I needn't go over these various methods?

The Witness:

A. We only had one woman at the clinic who used the "rhythm" and it failed.

The Court: That is not exactly the point; it is her opinion on the method of "rhythm".

Mr. Wegenast: I am so impressed with Your Worship's patience that any question, unless vital, I am glad to drop it.

To the Court:

Q. You had only one case?

A. That I know of.

Q. And the result of her trying "rhythm" was?

A. It failed.

Mr. Mercier: A bit on the hypothetical, Your Worship.

Mr. Wegenast: She is giving it as her reason.

The Court: For what?

Mr. Wegenast: Her insistence on giving the information to the Roman Catholic mothers.

The Court: You just hand her a book and she reads it.

Mr. Mercier: She is not competent to discuss that because she read something.

The Court: There is no evidence whether this book is accepted by her as an authority.

Mr. Mercier: Does she know its authority?

Mr. Beament: She has been asked why certain classes of women should have certain information and she says "because I have been brought up to believe so-and-so and the source of my evidence is so-and-so".

The Court: Before she can use a textbook as a basis for her opinion, surely, we must have ---

Mr. Beament: It is not opinion evidence on theology; she is giving the mainspring of her belief, the basis of the belief, not the truth of the belief, which is quite a different thing. What she reads from and her belief may be quite wrong.

The Court: It is her belief I am interested in.

Mr. Mercier: Absolutely, and I submit my learned friend is bringing it through this witness because he has forgotten to bring it through someone else.

The Court: We don't want all the grounds on which she forms her opinions.

Mr. Beament: We have tried to keep this on a high plane, but if counsel touches our competency, we must retaliate.

The Court: She can express her opinion quite capably and it is that I am interested in.

The Witness:

A. I have had this opinion for a long time, but it was hearsay from the doctors, and it was confirmed recently by what I read in this book, which I think is a recognized authority, and I read that as confirming it.

To the Court:

Q. Let us have your opinion again?

A. My opinion is that a Roman Catholic mother's life may be sacrificed: that her life cannot be saved at the expense of the life of an unborn child.

Mrs. Halkins

To Mr. Wegenast:

Q. That is your opinion?

A. Yes.

Q. That that is Catholic belief?

A. Yes.

The Court: What book is that?

Mr. Wegenast: "Moral and Pastoral Theology" by Davis, S.J., in four volumes. This is Volume No. 2, Page 140.

To the Court:

Q. Do you know the authority of it?

A. No, I know of him.

Q. Do you know his works?

A. No.

Q. You don't know whether you recognize this author as an authority on what he is talking about?

A. I do recognize him as an authority on the type of book it is.

Q. On what subject?

A. A Roman Catholic authority on moral and pastoral theology.

Q. You recognize him on that?

A. Yes.

Q. You may read the portion of the book that coincides with

your opinion?

A. (No reply).

Mr. Mercier: Over my objection that she is not qualified to read that book.

The Court: "I have adopted it as my own opinion."

Mr. Mercier: Then everybody going into that box will have the same privilege of reading their opinions.

Mr. Wegenast: She stated she had the opinion and it is confirmed by the book.

The Court: She recognizes it.

Mr. Mercier: I don't object to it going in, but I do object to it coming from this witness.

The Witness:

A.

> "It is never allowed directly, i.e., by direct means, nor intentionally, i.e., with deliberate intent, to kill the human product in utero, nor on emergence from the uterus, however undeveloped it may be, for any reason whatever, nor to procure abortion of the living foetus with the deliberate intent to do so, or by using means that have abortion for their natural and inevitable result. No motive can justify these two actions, not even the motive of saving the life of the mother, for evil may never be done that good may ensue, the moral evil in the case being the deliberate extinction of an unoffending life."

To Mr. Wegenast:

Q. Is it judging abortions?

A. That answers the question why I thought they should be given to Catholic mothers.

CROSS EXAMINATION

To Mr. Mercier:

Q. Then, Madame, I believe you were here all through the evidence?

A. Yes.

Q. And you believe from what evidence you have heard all the work of Miss Palmer was perfect in every way?

A. "Perfect" is an extreme word; I believe it was excellent and as good as could be done under the circumstances.

Q. And then you have no fault to find with it whatsoever?

A. None.

Q. And I believe you told me about these larger families, either to stop having more or increase the financial resources?

A. Yes.

Q. And you believe, I suppose, with me, if there were financial resources everyone would have children as they wish and love to have?

A. It is a case of how many they can bring up. I think there is a distinct limit to a mother's ability to bring them up.

Mrs. Halkins

(Witness retired)

(page O-1 follows)

Mr. Wegenast

REX vs. PALMER

Kaufman Pages O-1 to O-4

Defence closes Pages O-5 to O-6

Mr. Kaufman

ALVIN R. KAUFMAN, already sworn, recalled, deposed:

To the Court:

Q. You are already sworn, Mr. Kaufman?

A. Yes.

To Mr. Wegenast:

Q. To clear up this matter of what you said of pessaries you sell to the profession?

A. We sell at two prices; the sample box of four pessaries and jelly tube, we sell to doctors at $1, which is an average of 20 cents per article. Later sales to doctors: pessaries are 40 cents and jelly tubes 25 cents.

Q. How does that compare with the retail price?

A. I think pessaries here were exhibited as high as $3.

Q. Why do you sell these so cheap?

A. To encourage the doctors to use pessaries for the benefit of their patients.

Q. Is there any commercial element in this?

A. From my standpoint?

A. Yes?

A. None whatever. I would be glad to turn it over to any charitable organization Mr. Mercier may indicate.

Mr. Mercier: Why me?

The Witness:

A. Or anybody else.

Mr. Kaufman

Mr. Mercier: I don't see why I have anything to do with it.

The Witness:

A. To any charitable organization and I won't deduct my losses in the meantime.

To Mr. Wegenast:

Q. I want you to say in what definite terms you can whether this is a commercial enterprise or a philanthropic enterprise?

A. It is an expensive philanthropic enterprise that I hope some day will be taken over by the government or some organization that I think should accept this responsibility.

Mr. Mercier: That was already said in examination in chief.

CROSS EXAMINATION

To Mr. Mercier:

Q. Mr. Kaufman, do you know how many of Miss Palmer's applications were rejected?

A. No.

Q. You have no means of telling if any were rejected or if all accepted?

A. I have the means, but not here.

Q. Do you know what was her average salary or commission?

A. No, we pay on a case basis and I didn't count the cases.

Q. Do you know how many cases she has had?

A. I don't know.

Q. When did she start with you?

A. I don't know that, but I think in May of this year.

Q. You don't know if she had many applications or just a few?

A. I don't know, but offhand, I don't think she averaged as high as the average.

Q. What is the average?

A. I don't know that either.

Q. How do you know she doesn't average as high as the average?

A. I am only guessing.

Q. There is some part of the evidence where you said you were very well satisfied with her work?

A. I don't think I commented on her work.

Q. In Miss Palmer's statement to the police, she stated you were very well satisfied with her work?

A. I don't know what she said.

Q. Why not open a clinic in Eastview rather than have these door-to-door calls?

A. I opened one in Windsor before I realized it wasn't the best method to contact the most needy people. I learned my mistake and wouldn't repeat it.

Q. Why?

A. Because you can't get the most needy people to the clinic.

Q. And you opened your Toronto clinic before the Windsor clinic?

A. Yes.

Q. You didn't find it out then?

A. That is difficult there too.

Q. Why open the Windsor clinic if you had that experience in the Toronto clinic?

A. I opened the Windsor clinic too soon after the Toronto clinic or it wouldn't have been done.

Q. How soon after did you open it?

A. Maybe a year or more.

Q. And in one year you would find out that the methods in Toronto might not do in Windsor?

A. The methods used in Toronto were used in Windsor, but I hadn't gained sufficient experience in Kitchener with my method there to make an intelligent comparison until later on.

Q. May I take it you opened your clinic in Toronto later on, and conditions were not satisfactory there, and one year later, you opened one in Windsor?

A. Toronto conditions are satisfactory, but I learned from Toronto and Windsor that the clinics will not reach a good percentage of the very needy people.

Q. Couldn't you find that out in Toronto in one year before opening the Windsor clinic?

A. I didn't want to come to conclusions too rapidly.

Mr. Kaufman

(Witness retired)

Defence closes

Mr. Wegenast: That, Your Worship, is the defence in the meantime.

Mr. Mercier: What does my learned friend mean, "the defence in the meantime"?

The Court: Outside of argument.

Mr. Wegenast: I don't think yet we have had occasion to deal with the question of whether or not there might not be something arise on what Mr. Mercier brings out.

The Court: I think I made myself quite clear at the beginning, that is, there will be no reply to reply, that the Crown has the opportunity of rebuttal and I think you realized that when you said that you had to anticipate everything Mr. Mercier might bring out.

Mr. Wegenast: I realized the risk I was running: if Your Worship will take this little caveat that I am not wanting to raise the question again.

It is a peculiar situation: I don't think there is anything in the Criminal Code just like it, but I may have occasion to rely on my legal rights and put it up to Your Worship to refuse them.

Mr. Mercier: We always rely on the well-known principle: the Crown has the last word.

The Court: I don't think the last word will ever be said on this subject.

Defence closes

Mr. Mercier: The Crown in this case is ---

The Court: Adjournment will be until Monday morning, to be formally adjourned until Friday morning, to be again adjourned to Monday morning.

(page P-1 follows)

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

Volume VII (of 9 volumes)

Pages P-1 to P-146

Mr. Wegenast

REX vs. PALMER

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Mrs. DesLauriers Pages P-1 to P-9

Dr. Lajoie Pages P-10 to P-143

Argument Pages P-144 to P-146

(The hearing was resumed at 10:00 a.m., 8th December, 1936)

Mr. Mercier: I want to call Mrs. DesLauriers.

Mr. Wegenast: I have here a reporter just to take down notes for me.

MRS. ANNETTE DESLAURIERS, duly sworn, deposed:

To the Court:

Q. Your full name?

A. Mrs. Annette DesLauriers.

To Mr. Mercier:

Q. Where do you live?

A. Ten and a half Beechwood.

Q. Do you know Miss Palmer?

A. Yes.

Q. Do you remember meeting her?

A. Yes.

Mr. Wegenast: I don't know how this comes in rebuttal. Perhaps I am a little ahead of time.

The Court: I don't know what the witness is called to prove.

Mr. Mercier: I might go along a little bit.

To Mr. Mercier:

Q. When did you meet Miss Palmer?

A. In August.

Q. Under what circumstances did you meet her?

A. She came to my home; she said she was a nurse.

To Mr. Beament:

Q. Would you mind speaking up a little bit?

A. (No reply).

Mr. Wegenast: I object to this, Your Worship.

Mr. Mercier: In Mr. Kaufman's evidence, it was given it was against the principles of the Parents' Information Bureau to send any of these exhibits to any woman who was at the time pregnant, and it is in rebuttal of that I am bringing Mrs. DesLauriers.

Mr. Wegenast: I don't know, Your Worship, whether the policies of the Parents' Information Bureau are in question here.

Mr. Mercier: I believe they are.

Mr. Wegenast: Mr. Kaufman did say in cross examination to my friend it wasn't the policy of the Parents' Information Bureau to do certain things; I don't know if that opens up anything.

The Court: I think it comes under the question of public good. It all enters into various angles of the policy of the Parents' Information Bureau and whether or not the methods are for the public good and so on.

Mr. Wegenast: I think Your Worship has indicated to my friend what we are trying is Miss Palmer, and I don't know if the policy of the Parents' Information Bureau is in question; it was in cross examination my learned friend asked it or I would have objected then.

The Court: I think the evidence I have heard submitted has gone far beyond Miss Palmer, and as far as I can size up the evidence, it has been the general and then the more particular.

Mr. Wegenast: It would be difficult to divide the joint from the marrow, but I think Your Worship will find I have not attempted to enter anything on the question of the public good, but we must take Miss Palmer's acts as a part of a process.

I propose to argue that when Miss Palmer takes an application for a contraceptive, that is only one step or link in the chain and Miss Palmer's actions must be judged by the whole chain, but I submit still there must be some limit, and Miss Palmer's actions can't be determined by what is in the mind of Mr. Kaufman and what his actions are.

Mr. Beament: I don't know ---

Mr. Mercier: I haven't objected before; I have been dealing with two very able solicitors, and I would like them to talk one at a time.

Mr. Wegenast: If Your Worship has the patience.

Mr. Mercier: This evidence can be entered subject to the objection of my learned friend.

The Court: I want to get the objection stated.

Mr. Wegenast: This is the point, Your Worship: my friend isn't entitled to ask a question in cross examination and then make that the basis for evidence on his part.

Mr. Mercier: I can't see it that way. The witness is there for the purpose of giving evidence and if there is something there to be rebutted, I have the right to rebut it.

Mr. Wegenast: This arose in cross examination, and my friend asked Mr. Kaufman certain things, and he said, "that is not my policy," and that is the basis on which this arises.

There is another point, Your Worship: we gave no evidence whatever of the policy or what the policy was.

Mr. Mercier: I submit there was plenty, such as Miss Palmer was the duly authorized agent of the Parents' Information Bureau, acting under instructions from them.

Mr. Wegenast: We gave no evidence on the facts; they were brought out by the Crown.

Mr. Mercier: Mrs. DesLauriers' name was called, and she was in the hospital, if I remember, and Mr. Beament said, "is she having another baby?".

Mr. Wegenast: Because this lady was so unfortunate as to be in the hospital is no reason she should be here in rebuttal.

Mr. Mercier: She is called to rebut the assumption, and I submit I have a prefect right to call that witness in.

The Court: Mr. Kaufman's examination in chief stated that where applications were dated more than four weeks after the last menstrual period, it is not the practice of the Parents' Information Bureau to send these sample boxes. That was in examination in chief, not cross examination, I think.

Mr. Beament: If that is so, then I submit as the application was dated more than four weeks ---

Mr. Mercier: That is what I want to get: when she received the box and went to the hospital to have a child.

Mrs. DesLauriers

The Court: I will admit the evidence subject to the objections made.

To Mr. Mercier:

Q. You met Miss Palmer in August, and while you were with Miss Palmer, did you have any conversation with her?

A. Yes.

Q. What was that conversation?

A. She asked me if I wanted a box, and she told me what it was for, and I said, "yes".

Q. Then, was there any discussion about the state of your health at the time?

A. Yes.

Q. What did you tell Miss Palmer about the state of your health?

A. I told her I was pregnant.

Q. And you signed an application which I have not got, but you received a box?

A. Yes.

To the Court:

Q. Did you sign an application?

A. Yes.

Mr. Mercier: In order to save time, I might put in any other box?

Mr. Wegenast: Certainly.

Mrs. DesLauriers

Mr. Mercier: I produce box Exhibit 19, Your Worship.

To Mr. Mercier:

Q. Was the box you received similar to this?

A. Yes.

Q. With its contents?

A. Yes.

Q. Tube and nozzle?

A. Yes.

Q. And papers?

A. Yes.

Q. When did you receive this box?

A. About two weeks after.

Q. Still in the month of August when you received the box?

A. I think so.

Q. And you afterwards gave birth to a child?

A. Yes.

Q. At what hospital?

A. Grace.

Q. When did you give birth to that child?

A. October 13th.

Q. About two months after?

A. Yes.

Mr. Mercier: That is all I want to ask for the purpose of rebuttal, Your Worship.

CROSS EXAMINATION

Mr. Wegenast: I am waiting to get this lady's application: I may say that instead of installing the library here, we have installed it in the hotel across the street, which will save Your Worship some confusion. I had no thought ---

Mr. Beament: What is this lady's address?

The Court: Ten and a half Beechwood.

Mr. Mercier: May we let Mrs. DesLauriers stand aside?

The Court: How long is it going to take to get this?

Mr. Wegenast: One doesn't know.

Mr. Beament: Unfortunately, we didn't know one of these women would be called.

Mr. Mercier: I heard a lot of things which I didn't expect.

Mr. Wegenast: This is only a copy; we haven't the original yet.

The Court: I can hardly admit a copy as an exhibit.

Mr. Wegenast: I suppose not unless my friend will facilitate me.

Mr. Mercier: I haven't any objection, Your Worship, as long as it is filed.

The Court: Do you undertake to file the original?

Mr. Wegenast: If I can.

The Court: If there is an original from which that is made, you

Mrs. DesLauriers

must have it?

Mr. Mercier: I am willing to have that go in as an exhibit.

The Court: All right.

Mr. Wegenast: I am reading it first. No questions, Your Worship.

Mr. Mercier: That is all, thank you, Mrs. DesLauriers.

(Witness retired)

Dr. Lajoie

DR. LEON GERIN-LAJOIE, duly sworn, deposed:

To the Court:

Q. Your full name?

A. Leon Gerin-Lajoie.

To Mr. Mercier:

Q. Your first name?

A. Leon. It is a hyphenated name, the last two.

Mr. Mercier: Your Worship, before examining the doctor, may I say this: I am putting evidence in rebuttal to rebut the medical evidence only as to what happened in the Town of Eastview and everything that was going on there.

I am putting my witnesses in the box subject to the objections I raised at the beginning of the defence, that it was not for the Crown to make a case for or against birth control, but as to the advertising of contraceptives in Eastview. I don't know if I

Dr. Lajoie

should endeavor to attempt to rebut everything alleged by the defence.

Mr. Wegenast: As to the point of order, I hope my friend will forgive me if I commit an impertinence, but I had reason to think the prosecution proposes calling more than four witnesses, which I submit he is precluded doing. I stated at a former stage of the trial I was prepared to argue there might be more than five witnesses on the subject; the matter might be divided and there might be, for example, five medical witnesses, five sociological, and so on.

Your Worship relieved me of arguing that and I mention it to show I haven't forgotten it, but I am free to say after saying that I would rather have the other side of the argument, and I would submit now my friend is not entitled to call more than four witnesses, he having already called Dr. DeHaitre as one expert.

I already see no escape from the imperativeness of the provision. I may say I am rather sorry it is so. If there were any way I could relieve my friend –- if that is not an impertinence –- I should be glad to do so, perhaps on terms or something of that kind, but I know the provisions of the statute are explicit, unless there was something I was going to put up when I was in my friend's place.

Mr. Mercier: Your Worship, the Crown does not bargain and refuses to, but I submit as to the question which my friend has raised, the statutes state not more than five witnesses can be called except with the permission of the Court.

When my friend proposed to call more than five witnesses, I

Dr. Lajoie

agreed and it was done with Your Worship's consent, if I remember. If that is not so, what is the section?

Mr. Wegenast: The section explicitly provides it must be asked before any witnesses are called, and my friend has not done so.

I would be glad to give Your Worship authorities, but the statute is so clear.

Mr. Beament: Page 1490, section 7 of the statute.

Mr. Mercier: Sub-section 2 of section 7 of the Canada Evidence Act, Your Worship:

> "Such leave shall be applied for before the examination of any of the experts who may be examined without such leave."

Mr. Beament: Dr. DeHaitre was called and gave expert medical evidence before an application was made for leave by the Crown to call more than five.

It was held in "French Complex Ore Reduction Company vs. Electrolytic Single Process Company," Canada Supreme Court Law Reports, 1930, page 462, at 466-467 –- that is a case ---

Mr. Mercier: My learned friend Mr. Wegenast started to deal with this and now my learned friend Mr. Beament is dealing further with it. I submit the proper procedure is for one solicitor to deal with one witness.

The Court: It is the proper method for counsel to divide the work where one or more counsel on a case, either one to start and the other to finish it.

Mr. Beament: I can turn it over to my learned friend if the

Crown Attorney is so concerned about it.

Mr. Mercier: We have been going all over the world from a medical and sociological point of view, and I am going to limit it legally.

The Court: You have been raising technical points and the Crown may do so.

Mr. Wegenast: I hope Your Worship doesn't think I am raising one: I ventured to mention it, and I plead for my learned friend. It is not technical; it is my duty.

The Court: It is based on a technicality.

Mr. Wegenast: If it is a technicality, I will waive it.

The Court: I think it is. There are some technicalities in law cannot be waived. They still remain technicalities.

Mr. Wegenast: I suppose there are technicalities and technicalities, but I thought it was in accordance with what is sometimes called the golden rule.

The Court: Start the argument.

Mr. Wegenast: On Page 456, Justice Rinfret says this: "…counsel for plaintiff."

Perhaps I had better read the next two paragraphs. "In Canada North Western Railway Company against Moore," 53 Canada Supreme Court Law Reports: "…set aside awards…and so on." There is the situation; I needn't say any more.

Mr. Mercier: At one stage of these proceedings –- it is unfortunate we cannot have all the evidence –- my learned friend made the suggestion he might have to call more than five

witnesses, and I personally agreed, of course, subject to the fact the Crown might have the privilege of doing the same thing, and I submit the way this section reads:

> "Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called upon either side without the leave of the Court of Judge or person presiding.
>
> Such leave shall be applied for before the examination of any of the experts who may be examined without such leave."

The Court: Yes, but you have not applied for leave, Mr. Mercier.

Mr. Mercier: I understood it was perfectly agreed with Your Worship's consent the defence would have the right to bring in more than five and that the Crown might have the same privilege.

Mr. Wegenast: It may have been in my friend's mind.

Mr. Mercier: I am perfectly satisfied to go ahead with argument without calling rebuttal. I must tell His Worship –- and I submit it most respectfully; it is not a threat –- I do intend to raise from now on every possible objection.

I have been trying to be as good a fellow as I could, and I have been allowing all latitude in true British justice to my learned

friend, but now I will stand on my technical rights.

The Court: I must rule that inasmuch as application for leave to call more than five experts was not made before Dr. DeHaitre, the first Crown witness, I am bound by the Canada Evidence Act to restrict to five witnesses the Crown, one of which has been already called.

Mr. Mercier: We will go ahead on that.

To Mr. Mercier:

Q. Doctor, you are a duly qualified medical practitioner?

A. Yes, sir.

Q. Have you any special degrees?

A. I am a fellow of the Royal College of Surgeons of Canada. Professor of gynecology of the University of Montreal. Professor of clinical gynecology, Notre Dame Hospital. Former foreign assistant to l'Hopital de Vaugirard, Paris, France. Corresponding member to La Societe

Anatomique de Paris. President of medical relief committee of the City of Montreal. Vice-president of La Societe Medicale de Montreal. Member of the executive of the Canadian Medical Association representing the Province of Quebec. General Secretary of the Province of Quebec Medical Association. General Secretary of La Societe de Chirurgie de Montreal. Secretary of the editorial board of l'Union Medicale du Canada. Director of Le Cercle Universitaire de Montreal.

Q. I guess, Doctor, that might qualify you as an expert, and you have specialized in certain things?

A. Gynecology and obstetrics.

To the Court:

Q. For how long?

A. Nineteen years last April.

Q. You have specialized in that work ever since?

A. Yes, except for, say, a year and a half when I was in the army.

To Mr. Mercier:

Q. You have also done some medical work in the army?

A. Oh, yes.

Q. Doctor, I will show you Exhibit 5-B and I would like to ask from a medical point of view what you think of that pamphlet? I want my learned friend to check me right now if I am wrong.

A. (No reply).

Mr. Wegenast: We wouldn't do that.

To Mr. Mercier:

Q. There was defence evidence there wasn't anything at any time, way, matter, shape or form to harm a patient, and there was no need for medical examination of any patients in any case?

A. (No reply).

The Court: Except the pessary.

Mr. Wegenast: I don't think it was said there was no need for medical examination.

Mr. Mercier: That it would be the ideal: everything could be

used in that pamphlet without the necessity of medical examination. I submit to your Worship that statement is correct?

Mr. Wegenast: I don't think it is correct in that broad way because it was qualified here and there by questions whether if a woman had certain conditions, she wouldn't know it, and that sort of thing.

The Court: Certainly, as far as the condom and jelly, it is definitely stated there is no question there whatever of any need of medical examination.

Mr. Wegenast: If using the vinegar, it might be used too strong, generally speaking.

The Court: Dr. Scott said he didn't recommend the vinegar tampon.

To Mr. Mercier:

Q. Doctor, let us limit it to practically everything?

A. (No reply).

The Court: Dr. Scott said there are a number of other methods here hard on the nerves or the health.

Mr. Wegenast: That is so, but it might cause local discomfort.

Mr. Mercier: I believe Dr. Chisholm tied himself down on that. Dr. Hutton also was positive.

The Court: Dr. Scott said the vinegar tampon didn't hurt the health, but might cause local irritation that would last only as long as she used it.

Mr. Wegenast: That is so.

To Mr. Mercier:

Q. With that in view, would the distribution of this pamphlet to every woman who requested it —- I will show you a form of application later on, but you may go ahead and analyze the pamphlet now, Doctor?

A. My opinion as to the relative value of the pamphlet, taking it solely on the medial point of view?

To the Court:

Q. Please do, Doctor?

A. (No reply).

Mr. Mercier: That will certainly meet with the approval of the Court and myself, in any event.

The Witness:

A. It seems to me if the distribution is in the hands of average people, they might do themselves lots of harm if they would practice the recommendations in this pamphlet. The means which are suggested, and that is the only point I want to press upon –- I am not dealing with premises or conclusions, but as to the means they suggest. I read the French text, but I suppose the English text is about the same.

The first suggestion, withdrawal, is condemned in the pamphlet. I will not deal further with it.

The douche is the second means: a douche in itself may cause lots of harm. I have seen cases of heart failure immediately following a douche. Of course, a douche is a treatment, and what I mean to say is the douche being given in an inconsiderate

way may do lots of harm, just even with plain water.

To Mr. Mercier:

Q. Do you believe in that pamphlet there is enough information therein contained to leave it within the hands of the average woman to use it herself just with the explanation given there?

A. Not at all, but my experience is that the average woman and perhaps a little above the average, to whom we prescribe, to which, say for instance, a young married woman who hasn't social work experience or hospital work experience like some young girls have when they attend hospitals as social workers –- the unlearned married woman douches and does not know a thing about it, and when we prescribe a douche I always insist on asking: "do you know how to give yourself a douche?". Some say, "I think I do," and if we go into details, we find the woman doesn't know a word on the way of giving herself a douche, and we have to insist on the details.

These are not included in the pamphlet, and I think any douche given inconsiderately may do harm, even with ordinary water.

Q. And you have had experience in that, Doctor?

A. I have had that experience because I have seen some women who have done some harm to themselves, who have given the douche in the wrong way.

Apart from being a professor at the University of Montreal, I also give lectures to nurses in hospitals, and this is a point of technique I insist upon: very seriously, because I believe that if the nurse is not instructed in the right way into giving

the douche: if the technique is not perfect when and after the patient has left the hospital, and we say to the patient, "now, at home you will have to give yourself a douche," she will know

how, and this is the point I wish to take: it is not the douche in itself which is harmful, but I maintain there is no information in this pamphlet which indicates the way of giving the douche.

Now, they claim: "give the douche with some soap and water; not harmful as an antiseptic."

I think I will take the English text, and I can translate it better: "two quarts of warm water in which a teaspoonful of powdered alum has been dissolved."

Warm water should never be used in a douche: I will give a technique on douches after a while, but a hot douche is never prescribed to a patient when it is not a positively qualifiedly given douche. Mostly it is in very special cases warm douches are given and actually in instructing a patient to give a douche with warm water some harm will be had from the use of the warm water if the water is too warm and here again, there is no indication of what the temperature the water should have in giving the douche.

I believe even if the temperature is given, how many people to whom these pamphlets have been given have a thermometer to put in their water.

Alum as a chemical substance is in itself inoffensive, but if put in in too great a quantity, it might cause constriction and possibly do lots of harm to the patient.

Then, there is the question of household vinegar; it is not

always of the same quality. We buy it from grocers and we do not always know how it was prepared. I do claim in itself it might be an antiseptic, but as it is prepared in large quantities, I consider that given in the directions of two tablespoonfuls in two quarts of hot water might not again be harmful in itself except when the bottle comes to the end when the vinegar is stronger than at the beginning when the bottle was full.

Suppositories: suppositories contain, from the formula, cocoa butter, borax, salicylic acid and quinine bi-sulphate. Salicylic acid is very irritant, and I believe prolonged use of suppositories might produce in a person some trouble of the mucosa vagina.

As to the jellies, there is no formula of the jelly and of course as to this, if it is just Vaseline ---

The Court: Couldn't that be supplied to the doctor?

Mr. Mercier: I think we admit the jelly is harmless, from a chemical point of view.

The Witness:

A. Then, the jelly is harmless, but the jelly must be applied, and as I was shown this morning, only the instrument with which the jelly is to be applied I believe that it might be the cause of some infection.

If –- there is always some "if"; if the patient has not the precaution of handling the canule in the same way ---

To Mr. Mercier:

Q. The nozzle?

A. --- the nozzle in the correct way –- in sterilizing it and in disinfecting it often enough and leaving it on the table where anybody can use it for other purposes, sometimes, and there, as to the jelly in itself, while it might not cause any harm, I am of opinion the instrument used to introduce the jelly may cause some harm.

Take condoms: I don't believe they are harmful to the woman. I claim they might do some harm to the man, and I believe there is another question which has to be considered. My opinion is –- I think I better finish with the book.

Q. That is from practical experience, and I will deal with the ensemble afterwards?

A. We were at condoms. I claim they might do some harm to the man to use condoms continuously.

Rubber caps or pessaries: pessaries must be placed by a doctor. There I believe we can rely on the ability and science of the doctor to place the pessary correctly. Of course, after a little while, the patient might want to place the pessary herself, and infection might set in if the pessary is not disinfected correctly.

Then I think we are at the vinegar tampons, which may be very injurious, as has been told already, in bringing on irritation of the vagina and post-vaginitis and burns of the vagina which are very painful.

Apart from that, these tampons have a string or thread coming out of the vagina and actually lots of harm may come to a man just on account of these little threads protruding from the

vagina. There may be cuts or bruises and possible entrance of some infection to the man.

As to the rubber sponge pessaries, I haven't got it in the French text.

Q. I have got that one?

A. It appears to me that, as all others, if they were not properly sterilized, they are a source of infection, especially when applied offhand: "rubber sponge pessaries can be made by hand out of any fine texture rubber tissue sponge that can be purchased in a drug or department store."

This sponge might be bought in a department store, but when the woman will want to use it, she might have used it previously to wash her floor.

There is no laughing at that at all.

Mr. Mercier: I should like Your Worship to believe and the other experts here to believe that all experts do not hold the same opinions, and there should be no hilarity.

The Witness:

A. I had an experience of taking some of these out about two weeks ago in the hospital from behind a cancer which had set on the cervix of the woman. The pessary had been left there, and cancer had entirely and completely set in the gutty sacs of the vagina, and it was a very sad proposition for the poor women to think she had a cancer, but my opinion was that the cancer was brought on by irritation of the pessary.

The medical profession does not claim we have the immediate

cause of cancer, but we know it is brought on by continuous and gradual irritations of some organism.

Taking these methods as suggested in this booklet: in the ensemble, I claim the use of them may cause lots of harm, not only locally, but physically; I am of the opinion, and I am not the only one to believe it, but the use of these contraceptives or any of the contraceptives is liable to affect the nervous system.

Here, may I quote just one quotation: " a man…"

Mr. Wegenast: May we know where this quotation is from?

The Witness:

A. Yes.

Mr. Wegenast: If it is a quotation from a book, I would like to have the whole of it. I had no idea we might put in excerpts.

The Witness:

A. I will not put it in.

To Mr. Mercier:

Q. Put in your own personal opinion?

A. My opinion on the contraceptives proposed or any others proposed in these booklets is that they are not just to the men inasmuch as it may affect their potency. They may be for some time less potent or even impotent totally. This is not new; it is knowledge which is known and written quite often.

Q. Have you any personal experience with that, Doctor?

A. The experience I have had is that women who are taking

methods of preventing birth often claim that their husbands are not –- if I may take a common word for it, not so hot as they used to be. That is the word they generally use.

That would appear to be the consequence of the application of these mechanical or chemical devices.

To the woman herself, my opinion is that at the beginning a certain degree of satisfaction comes with the certainty or possible certainty because all of these contraceptives are not absolutely sure in the way we claim, and the woman at the start has a certain satisfaction in knowing she may not be in the family way.

After a little while, especially when the man has gradually diminished his affections from the use –- I claim it from the use of these things – the woman wishes urgently to have a child and what happens –- what often happens is that the woman has become sterilized.

She has become sterilized because there are some changes in the genital organs of the female due to the constant use of these contraceptives and these changes may bring on sterility, and this is the point I wish to stress upon: that apart from the immediate effects of contraceptives, they may bring on sterility due to the changes in the genital organs of the female.

Q. Now, Doctor, may I submit this to you: the fact of distributing this pamphlet more or less indiscriminately to many people: one might think that the people distributing it would consider all women are normal?

A. They claim they are all normal.

Q. But distributing this pamphlet indiscriminately, all women must be normal?

A. If they claim all women to whom they distribute this pamphlet are normal. They cannot by general questionnaire judge the health of the patient and claim the patient is normal, especially a woman, and the most regular woman is regular because she is irregular.

Q. Now, Doctor, have you had any experience: I take it people using contraceptives are people who do not want children, and following that, if the methods fail, could that possibly induce a woman to cause an abortion?

A. (No reply).

Q. If some of the methods of contraception fail?

A. Some women who do not wish babies and do use these methods sometimes become pregnant, of course. Some of them carry on their pregnancy –- some of them –- for what reason I do not wish to discuss here. Others may have an abortion.

My personal experience is that some want an abortion and others take them as they come. I could not put any figures of the proportions, 10 per cent, 50 per cent, 90 per cent. I was not prepared for that question, but I can say some do have abortions and others carry on their pregnancy and are not the worse for it.

Q. Now, Doctor, what would you say as to the question: are all these methods harmful in all cases or harmful in some cases to the individual who is to use them?

A. I could answer that question if you would put it to me,

sir, in another way: if the directions of the use of these contraceptives were given by medical men to intelligent persons, I believe they would not be as harmful as I have said, but I claim that the giving of a pamphlet to a woman who receives it and reads it: she might do herself lots of harm and perhaps more harm than good.

Q. I will show you Exhibit 24-B, the card of Mrs. L. Maheux. I am not keenly interested in your considering all that is written on it, but it is the form. The evidence is that the social worker in this case goes to the certain place, asks the woman how many children and if she is satisfied she has enough, and according to the evidence and getting the information –- most of which is on that card –- the contraceptives are sent: I would like you to look over that card and say if sufficient information is there to send them the contraceptives?

A. May I put a question first?

Q. You may?

A. Is this filled in by the patient or the social worker?

Q. I believe it is filled in by the worker and signed by the patient.

Mr. Wegenast: One side is the application signed by the social worker and the other is the information obtained.

The Court: As I understand from the tenor of the evidence, a person who signs a card simply signs the name and the rest is information entered by the worker.

Mr. Wegenast: No, Your Worship will see where the signature is; the back is for information for which the social worker is

responsible.

The Court: There are also remarks on the front.

Mr. Mercier: Which according to the evidence was obtained on this visit.

Mr. Wegenast: And signed. The information may be obtained here, there and anywhere; it is the best the worker knows; it may have been got from the neighbours.

Mr. Mercier: What I want to know is the information obtained on the application and ---

The Court: The history.

Mr. Mercier: And the history.

To Mr. Mercier:

Q. Would it be advisable to let people use these contraceptives just on the information contained on that card?

A. It is the first time I have seen these cards. There are contradictory statements here, Your Honour.

Q. For example?

A. It says, "miscarriages and abortion"; what is the difference?

Q. We have had a number of opinions on it?

A. Miscarriages is the common name, like in French, faux miscouche, and abortion is a technical term. I am sorry; perhaps I might learn something by coming here.

Q. You might have learned a lot if you had been here, Doctor?

A. I hope not. You are asking me if I find in this paper enough information to give a contraceptive or suggest a contraceptive to a person?

Q. Yes?

A. They have got reasons here: "economic, physical, desires proper spacing of children and other reasons," but I understand these questions may be asked to the neighbor.

Q. Yes?

A. And contraceptives chosen by the batch, whichever she wishes.

Q. In most cases –- in all cases -– I don't know if that is one, but a box, nozzle and three condoms were sent together with the pamphlet here seen. I mean, by the signing of this application the woman received ---

A. (No reply).

Mr. Wegenast: Not correct.

Mr. Mercier: The proof of the pudding is in the eating.

The Court: The social worker calls at a house, obtains information, has a card made out; the answers are on the card, asks the woman to sign the card, and it is sent then by the social worker to the Parents' Information Bureau in Kitchener, and the staff of the Parents' Information Bureau examines the card, and before the box is sent, they have to approve the card. That is, on the card they have to decide if it is a case to which it would be sent.

Mr. Wegenast: That is correct.

There is no evidence any application was ever refused.

Mr. Wegenast: Yes, there was.

Mr. Mercier: There is no evidence any application was ever refused in the Town of Eastview.

Mr. Wegenast: Oh, in the Town of Eastview.

Mr. Mercier: I am interested in the Town of Eastview.

The Witness:

A. Will you put your question again?

To Mr. Mercier:

Q. As to the information on the card, is that sufficient to send all this information to the woman and those concerned?

A. Actually, on this information from a medical point of view, no contraceptive methods should be sent; I am speaking only medically.

Q. That is what I want?

A. There is no reason on that paper for which a contraceptive should be sent, medically speaking. That is the question you put to me?

Q. That is the question. Are you through with the pamphlet –- do you know of the American Medical Association, Doctor?

A. Oh, yes, sir.

Q. What do you say about the American Medical Association; do you recognize them as a learned body of men?

A. It is the body of the United States.

Q. In Canada?

A. It is very much recognized, and our national association is associated with it by writing, not affiliated, but it is closely associated with the American Medical Association.

Q. Of course, Doctor, I don't like to ask this question, but I must in view of what has been brought out in defence: the American Medical Association is not a body of Catholic doctors?

A. Oh, Lord, no.

Q. Do you know of their publishing a weekly?

A. It is a monthly.

Q. This is a weekly?

A. I thought it was the Journal of Gynecology and Obstetrics. The Journal of the American Medical Association is the journal of the United States, no doubt.

Q. And when these doctors discuss matters?

A. I have attended once, not the council, but I am a member of the council of the Canadian Medical Association for the last 11 years and our problems are often very much the same as in the United States.

Mr. Wegenast: These of course are not in Eastview.

The Court: The Lambeth Conference was not held in Eastview.

Mr. Wegenast: Quite so. I have never made an objection.

The Court: Recess a few minutes.

(Following resumption of the hearing)

Dr. Lajoie

To Mr. Mercier:

Q. Doctor, do you know of the Kansas City Convention held in May, 1936?

A. I heard about it.

Q. There is a resolution of these learned medical men, "Report of Committee to Study Contraceptive Practices and Related Problems". I will file this as an exhibit.

A. (No reply).

The Court:

Exhibit 104-B.

Mr. Wegenast: Just like that?

Mr. Mercier: Just like that.

Mr. Wegenast: I don't think my learned friend has such control over this Court he can file it like that; if it is one of the authorities on which this man relies, all right.

The Court: He says it is the Journal of the American Medical Association, on which he replies.

Mr. Wegenast: That is the point.

Mr. Mercier: If my learned friend was listening when I questioned the witness, he would know.

Mr. Wegenast: Is that nice?

Mr. Mercier: I have heard things worse.

Mr. Wegenast: Questioning the doctor on what happened at the convention: if he wants to put in that report, what is it, the

report of the American Medical Association?

Mr. Mercier: Yes.

Mr. Wegenast: That is all right.

The Court: Several articles were put in to which you referred, Mr. Wegenast?

Mr. Wegenast: If he files it as to the article, very good.

The Court: Exhibit 104-B.

Mr. Mercier: In order not to clutter the record, it will be filed.

The Court: Regarding the whole magazine?

Mr. Mercier: No, the article.

Mr. Beament: Can you give the details of it?

Mr. Mercier: May 30, 1936; volume 106, number 22; I believe Mr. Wegenast has a copy. "Report of the Committee to Study Contraceptive Practices and Related Problems."

The Witness:

A. I have read it; it is absolutely in accordance with my ideas.

To Mr. Mercier:

Q. It is in accordance with your ideas?

A. Yes, what I read.

Q. For the benefit of the Court, I will read at page 1911:

"There has been an extensive development of preparations and devices for preventing pregnancy. Some of these are more or less

physically harmless, some are relatively effective when used intelligently, others have little or no value. All mechanical devices which are introduced into the cervix or corpus uteri are potentially dangerous to the life and health of the woman. Many deaths and an even larger number of serious pelvic complications have been reported in the literature, and the members of the committee have knowledge of many unreported cases of serious illness from the use of intrauterine devices. There are available several publications offering scientific evaluation of the effectiveness of various contraceptives. No contraceptive technic other than actual continence is intrinsically 100 per cent safe. The efficiency of all present methods depends on intelligent use. None are dependable for couples who are intoxicated, subnormal or lacking in self-control. There is evidence that many women who have abortions performed are familiar with contraceptive measures, but seek an abortion when the method fails.

The committee has been unable to find evidence that existing laws, federal or state, have interfered with any medical

advice which a physician has felt called on to furnish his patients. Clarification of such laws, however, is desirable. The committee suggests the advisability of legislation to standardize and control the manufacture and distribution of contraceptive materials.

The members of your committee do not favour independent so-called birth control clinics, believing that needed contraceptive advice should be a matter for proper medical decision in the care of individual women. Furthermore, a physician who for other than medical reasons considers it improper to give any information or advice that might aid his patient to practice contraception should not be criticized because he refuses to furnish such information or advice even when from a medical standpoint pregnancy is contraindicated. In the opinion of your committee, however, such a physician should not dissuade a patient from obtaining contraceptive advice. When a medical reason for avoiding pregnancy exists, in the opinion of the committee, it is the duty of the attending physician, regardless of his personal beliefs, to inform the patient of her physical condition and the hazard of pregnancy.

Your committee is of the opinion that the medical profession should be familiar with the many problems associated with birth control. Contraceptive practices are only an incident in the broader problem. In view of the fact that many marriages are childless, physicians should inform themselves regarding the entire subject of fertility. It is suggested that more complete education in this particular field be given to medical students. A survey recently published shows that the actual teaching of this subject is ignored in the curriculum of many medical schools.

The committee considers that this is necessarily an incomplete report and from its study to date makes the following recommendations:

1. That a committee be appointed to continue a study of birth control and to report further to the House of Delegates.

2. Steps should be taken by some responsible group to develop standards for judging contraceptive materials.

3. Your committee desires to record its disapproval of propaganda directed to the public by lay bodies, organized solely for the purpose of disseminating (without consideration or restraint) contraceptive

information. Your committee deplores the support of such agencies by members of the medical profession. We feel that an entirely false sense of values with respect to the important function of childbearing and of parenthood has been created by the activities of such organizations."

And you say, Doctor, you hold with the American Medical Association on this?

A. One hundred per cent.

To the Court:

Q. What?

A. One hundred per cent.

To Mr. Mercier:

Q. On Page 1912, on the motion of Dr. Mongan, the recommendations of the committee were adopted. Now, Doctor, you stated the American Medical Association is recognized as an able body of men, and they have condemned these birth control sources of information such as I submit are the ones in the case at bar. Do you believe a social worker or one called a social worker can have sufficient knowledge of the use of these materials to go about from place to place asking questions such as you have seen on this card, Exhibit 24-B, I have shown to you, and that would have as much strength and power as the recommendations of the American Medical Association?

A. I didn't quite get the end of it.

Q. Do you believe the social worker has sufficient

knowledge of the subject when the American Medical Association themselves claim they do not know enough about birth control methods to broadcast them in the way done here; do you think the social service worker would have enough knowledge?

A. Certainly not.

Q. You are a member of the Canadian Medical Association?

A. Yes.

Q. Have they ever recommended them?

A. No, the question was brought up in a letter from a doctor in the west protesting, but the letter was filed and discussion was not brought up at all on account of the lack of information upon the particular case and lack of information on the whole question itself.

Q. So the people who mooted this –- although it is not 100 per cent sure; in 100 per cent of the cases where anyone wants them it should be given –- are going directly opposite to the views of the doctors?

A. I believe doctors agree as a whole; there are always some who differ.

Q. What as a medical man do you think, Doctor, of the method of going from door to door?

A. Socially speaking?

To the Court:

Q. As a medical man, Doctor?

A. (No reply).

Mr. Mercier: Of course, we heard a lot of medical men who terminated their evidence as learned sociologists.

Mr. Wegenast: That is another technical point; if Your Worship wishes me to give way to him?

Mr. Mercier: I would like to spend Christmas at home; let it go at that.

To Mr. Mercier:

Q. As a medical man, Doctor?

A. I claim in the hands of the average people these pamphlets will do more harm than good. That is, physically and medically speaking.

Q. Thank you, Doctor.

CROSS EXAMINATION

Mr. Wegenast: Has Your Worship any questions?

The Court: No.

To Mr. Wegenast:

Q. They might do some good?

A. In some particular cases.

Q. Yes. You are not opposed to what might be called therapeutic contraception?

A. What do you mean by "therapeutic contraception"?

Q. Perhaps I will withdraw; you wouldn't say from a medical standpoint contraceptive measures are not sometimes indicated?

A. Yes, will you repeat it again?

Q. You would not say contraception is not indicated in any case?

A. (No reply).

The Court: Put your question affirmatively instead of negatively.

The Witness:

A. I do not understand English terms.

To Mr. Wegenast:

Q. Are contraceptive methods ever desirable?

A. No.

Q. That pretty well settles the question. That isn't what the American Medical Journal says, of course?

A. It says –- the question is not sufficiently to the point.

Q. But you have approved this 100 per cent?

A. The American Medical Journal says the information isn't to the point to take a position.

Q. It says other things?

A. Oh, no.

Q. I will read what you said about being 100 per cent:

> "Your committee recognizes that voluntary limitation of conception may be necessary to safeguard the health of some women."?

A. Certainly.

Dr. Lajoie

Q. That is what I asked you?

A. You said "therapeutic".

To the Court:

Q. He left that?

A. (No reply).

To Mr. Wegenast:

Q. I stated that, but then changed and said, "is it ever desirable to use contraceptive means in any case?".

A. Certainly.

Q. There are some cases you would not only approve, but prescribe contraceptive measures?

A. Yes.

Q. Would you confine it to this "Rhythm" method in some cases?

A. Yes.

Q. Not necessarily?

A. Yes.

Q. You would feel free to prescribe the condom?

A. No.

Q. What would you prescribe?

A. Give me an example. Put up a case and I will tell you what I think.

Q. Would you ever advise the pessary, condom, jelly or

douche or any one of the contraceptive means or measures you have discussed; would you ever advise them?

A. It depends; I can't answer that question.

Q. Surely putting it in that form you can?

A. Each individual case has to be studied separately.

Q. You would feel yourself free to advise them sometimes?

A. Yes, I would.

Q. I am wondering now whether there is anything else would prevent your doing it outside your medical knowledge?

A. (No reply).

Mr. Mercier: Your Worship, the doctor is not here except as a medical man. I am going to insist on every technical point I can dream of from now on.

Mr. Wegenast: It may be necessary now, if Your Worship thinks so, to show by this witness that professional conduct or

practice is controlled or influenced; it is called control by the rules which are prescribed and observed in practice.

Mr. Mercier: I don't think that is relevant. The doctor said in certain individual cases, but it depends on the individual cases.

The Court: How does that affect his status of medical practitioner giving expert medical evidence?

Mr. Wegenast: I have the right to ask his qualifications.

The Court: Restrict it to medical testimony.

Mr. Mercier: I will insist, if necessary, all afternoon -- my learned friend has been allowed to roam all over the country, but I am going to insist that the witnesses remain within their field. The doctor has stated he is a medical man. I never asked any other witnesses what their religious principles were; this isn't the case, but the witness has said in certain individual cases, he would recommend some of these methods in the pamphlet, and that should be sufficient for Your Worship.

Mr. Wegenast: I have been interrupted several times, but I submit I am entitled in cross examination to put any question to the witness which might affect his credibility or show bias.

The Court: As long as there is no theological or sociological argument; I will not allow you to attack his credibility on such grounds.

Mr. Wegenast: I will be anxious to follow that, but the rules that prescribe the rules for doctors prescribe moral rules and are posted in hospitals, and in cases, there are resident priests in hospitals to see they are observed.

Mr. Mercier: I don't see how that affects the credibility of this witness.

The Court: I don't see how that affects this witness, what other doctors do.

Mr. Wegenast: I don't know if there are resident priests in the hospital where Dr. Lajoie operates, but I would like to know and my learned friend objects.

Mr. Mercier: I want to object before it is too late, and if I had known a few weeks ago your attitude today, I would not have

Dr. Lajoie

allowed more than five experts in.

The Court: Subject to the Court's discretion.

Mr. Mercier: Certainly, I am sorry if –- Your Worship knows my respect for the bench.

He has said in certain individual cases he would prescribe some of the methods in that book, and that being said, I submit most respectfully to Your Worship the learned counsel can't go further.

The Court: He can question this witness' credibility.

Mr. Mercier: But only as a medical expert and not ramble all over hospitals and other doctors. The question has been raised and answered.

To Mr. Wegenast:

Q. Then I think I will read this report from the Kansas City convention:

> "Your committee recognizes that voluntary limitation of conception may be necessary to safeguard the health of some women."

You agree to that?

A. Certainly.

Q.

> "Pregnancy is medically undesirable, and may be actually dangerous, for the woman who has active tuberculosis."?

A. Yes.

Q. “Acute or chronic nephritis”?

A. Yes.

Q. “Some types of heart disease”?

A. Some.

Q. “Some psychopathic conditions including recurring puerperal insanity”?

A. Not entirely on the whole; I might –- it would be in individual cases.

Q. This wouldn’t be 100 per cent; we would be chiseling now?

A. Maybe, but on the whole 100 per cent. We take the age of the case; in particular, in psychopathic cases, it would depend on the environments to be considered. And in puerperal insanity, it is often due to environment, and if we could get the patient in a medical centre instead of staying at home, we

might have cases that could go through pregnancy and childbearing without trouble.

Q. It might be in cases of puerperal insanity you would advise contraceptives?

A. What do you mean, “contraceptives”?

Q. The condom and pessary?

A. No, no contraceptive measures.

Q. What measures, continence?

A. Partial continence.

Q. What do you mean by that?

A. Continence during the fertility period.

Q. We have called that, doctor, in the course of this trial, “Rhythm” method; are you satisfied to take that?

A. Yes.

Q. Anything else?

A. Complete continence, self-control.

Q. Anything else?

A. No.

Q. Doesn't that pretty well settle it; you are not like some other doctors in this matter of advising contraceptives?

A. Certainly.

Q. Might I put it this way, that like Dr. DeHaitre, you have certain principles you go by?

A. All doctors have certain principles they go by.

Q. You have general principles you go by?

A. We?

Q. Not "we," you?

A. Yes.

Q. Your principles would stand in the way of your prescribing a condom?

A. To prevent contraception?

Q. Yes?

A. Yes.

Q. Those principles have their basis in your religion?

A. Yes.

Q. That is that. Now, doctor, there is this in the report: well, in the first place, may I call your attention to the fact that this report is signed by five doctors and I believe there were nine doctors on the committee; do you know that?

A. Yes, I heard that.

Q. Have you any idea why the other four didn't sign it?

A. Not at all.

Q. It might be ---

A. (No reply).

The Court: He doesn't know. He knows the report was signed only by five out of nine.

Mr. Wegenast: This man has some connection with the association?

The Witness: No.

The Court: He says he doesn't know.

Mr. Wegenast: There is no use pushing it.

To Mr. Wegenast:

Q. I quote this to you:

> "In the opinion of your committee, however, such a physician should not dissuade a

> patient from obtaining contraceptive advice."

Would you chisel that out?

A. Not at all.

Mr. Mercier: Your Worship, I submit this word "chiseling," especially coming from the lips of my learned friend, should not be used so much. This man is widely known in the life of the country.

To Mr. Wegenast:

Q. I will put it this way: there must be deducted off the 100 per cent:

> "In the opinion of your committee, however, such a physician should not dissuade a patient from obtaining contraceptive advice."

In your opinion, it isn't part of your duty to ask the patient

to get contraceptive advice from another doctor?

A. Put it again?

Q. You don't consider it any part of your duty as a doctor where you think contraceptive advice is indicated to dissuade a patient from seeing another doctor?

A. I leave my patients absolutely free. I know what you want: On those lines, if a patient comes to my office and that patient is anxious to have advice on contraceptive measures, I give her my advice, and she is free to use it. If she comes to ask me about the use of those particular contraceptive

mechanical and chemical agents, I give her the advice that I gave you today.

Q. And if she wants to go to another doctor, would you advise her not to?

A. I have no authority on that line.

Q. I wanted to know if this sentence expressed your idea on what should be done. Now, I believe –- I am not through with that yet. Do you agree with this:

"Voluntary limitation of conception may be necessary to safeguard the health of some women. Pregnancy is medically undesirable and may be actually dangerous for the woman who has active tuberculosis, acute or chronic nephritis, some types of heart disease, some psychopathic conditions including recurring puerperal insanity, arteriolar sclerosis."?

A. I am not so sure of that. In some cases, if the blood pressure indicated it might be.

Q. "Chorea"?

A. Sometimes.

Q. "Some types of anemia"?

A. Sometimes.

Q. "Especially pernicious anemia"?

A. Yes.

Q. "Malignant diseases (including the hematopoietic)"?

A. Yes.

Q. "Polyneuritis"?

A. Yes, to a certain degree.

Q. If after "recent major surgical or obstetric operations"?

A. Certainly.

Q. "Recent serious illnesses, phlebitis"; would you include that?

A. I am not sure I would include it 100 per cent. I would like to point out that when a medical committee reports and names a certain number of diseases, it is impossible for the committee to include a general outline; in fact, it is not a disease we are treating, but a patient, which is quite different. It isn't the malady; it is the patient and each has a different one whether it is the same name; there are different types, and it is impossible to have a report and not include the names of maladies like this, and to say every case of arteriolar sclerosis shouldn't become pregnant because there is some ---

Q. I didn't make this report?

A. I know, but I am letting you know how I understand it.

Mr. Mercier: It is said, "in some cases".

Mr. Wegenast: Yes, I will read it again:

"Your committee recognizes that voluntary limitation of conception may be necessary to safeguard the health of some women. Pregnancy is medically undesirable, and may

be actually dangerous for the woman who has active tuberculosis, acute or chronic nephritis, some types of heart disease, some psychopathic conditions including recurring puerperal insanity, arteriolar sclerosis, chorea, some types of anemia; especially pernicious anemia, malignant diseases (including the hematopoietic), polyneuritis, recent major surgical or obstetric operations, recent serious illness, phlebitis, recent pelvic infection."?

What do you say there?

A. They are general maladies which might be limited to a certain degree in pregnancy.

Q. "Recent pelvic infection"?

A. If the patient has a recent pelvic infection, she won't become pregnant anyway, hardly.

Q. There might be a chance?

A. I would rather suggest continence entirely for the woman and man.

Q. You suggested that already?

A. In these cases.

Q. "Pyelitis"?

A. Yes.

Q. "Traumatic rupture of the symphysis or pelvis which has not healed"?

A. Yes.

Q. "And possibly a few other conditions in women who may not be naturally physically capable"; we need not discuss that?

A. No.

Q. You wouldn't deny, Doctor, I suppose, from a purely medical standpoint, a man not having the same principles might advise the use of the condom?

A. (No reply).

Mr. Mercier: That is very unfairly putting it in that way; it might mean the witness is unprincipled.

To Mr. Wegenast:

Q. A man without scruples?

A. A medical man?

Q. Yes, competent without those scruples; do you think from a medical point of view he might advise the condom?

A. (No reply).

Mr. Mercier: I object, "with the same religious scruples".

Mr. Beament: He didn't say that.

Mr. Wegenast: No.

The Court: Does he think any medical man.

Mr. Wegenast: I want principles and my friend wants scruples.

Mr. Mercier: A man without scruples.

The Court: If a doctor who doesn't hold the same, or holds different principles or scruples.

Mr. Wegenast: Scruples according to the moral theology of the doctor's church are bad things. The man unscrupulous is right. They are severely proscribed.

Mr. Mercier: My learned friend may have to go into the box and give evidence.

Mr. Wegenast: If a medical man had no inhibitions, shall I say; any objection to that?

Mr. Mercier: I am not quite sure; I don't know what it means.

To Mr. Wegenast:

Q. If a medical man had no inhibitions, would you think the doctor would be in order to prescribe a condom?

A. Your question is exactly the same as the one you put at first.

Q. I am glad; it is sterilized now?

A. I am glad Mr. Mercier didn't stop it, but you should get that man and make him answer.

Q. I am asking you to give an opinion as a medical man; is it ever allowable from a medical standpoint to prescribe contraceptives like the pessary or the condom?

A. I believe it is.

Q. It took a long time to get it?

A. (No reply)

Mr. Mercier: If my learned friend had asked that 15 minutes ago.

To Mr. Wegenast:

Dr. Lajoie

Q. Now, if people ask a medical man lacking these inhibitions, are they deprived?

A. No.

Q. Can they use the condom?

A. They can.

The Court: "Use" or "advise the use."

To Mr. Wegenast:

Q. Patients of doctors who have these inhibitions are then, so long as they abide by the advice of those doctors who have these inhibitions, deprived of valuable medical means?

A. (No reply).

Mr. Mercier: The doctor says they can't.

The Court: He says it is allowable from a medical standpoint.

Mr. Mercier: And the patient can use them if they want.

The Court: This witness says they are free to go to another

doctor.

To Mr. Wegenast: I put it this way: so far as this doctor's practice is concerned?

A. (No reply).

The Court: So far as this doctor's practice is concerned, he doesn't recommend anything except partial or complete continence.

Mr. Wegenast: I submit with all deference I am in cross examination, and I am entitled to draw him out.

Dr. Lajoie

To Mr. Wegenast:

Q. I am cross examining this man and I put it to him: whether his patients are not deprived of valuable therapeutic agents?

A. My patients are not deprived.

Q. So long as they are under your care?

A. Certainly, they come for advice and can do what they want.

Q. If they want that kind of therapeutic advice, they must go elsewhere?

A. I don't know.

Q. I want you to answer whether it is not the fact that on your advice nobody would use a condom or a pessary?

A. Everybody is free from taking my advice.

To the Court:

Q. If the patient followed your advice?

A. They wouldn't use it.

To Mr. Wegenast:

Q. You wouldn't say from a medical standpoint contraceptives are valueless?

A. Like those there?

A. You wouldn't say they are valueless?

A. Not useless, but they are not all absolutely safe.

Q. I didn't ask that; you would say they are useless?

A. No.

Q. They are useful sometimes?

A. They are useful sometimes.

Q. Useful from the standpoint of the health of the mother, particularly?

A. Perhaps.

Q. Do we have to go into all that again?

A. It depends on cases; it might be the man needed it.

Q. It might?

A. It might.

Q. I thought so. Now, then, Doctor, you have undertaken at the request of the Crown in this case to come here as an expert and give evidence, and you have given us a list of qualifications that look rather imposing, and you must forgive me, Doctor; this hurts me more than you if I

ask you a few questions just as important as the degrees you have. Have you ever taught the use of pessaries or condoms?

A. Taught?

Q. Yes, have you ever taught the use of pessaries or condoms?

A. No.

Q. Does the medical school in which you are a lecturer give lectures on contraceptives?

A. No.

Q. Tell us what studies you have made in the field of contraceptives, of the pessary and condom?

A. Practically the use, not more than some of them I have seen on some of my patients and taken out because of the harm.

Q. You have never undertaken to fit pessaries yourself?

A. No.

Q. Do you know how it is done?

A. Yes.

Q. How it depends what kind of pessary?

A. The Mensinga?

Q. Do you know the Mensinga?

A. I don't know the names.

Q. Do you know the Ramses?

A. No, I know they are contraceptives.

Q. Do you know the difference between the cervical cap and the Mensinga?

A. No.

Q. You are not an expert in that, then, Doctor?

A. No.

Q. What studies have you made in books of contraceptive technique?

A. What has been published in different books and the birth commission of 1925 and reports of the American Medical

Association and reports or articles published in reviews and magazines.

Q. By what authors?

A. The National Birth Rate Commission. I would not know the names of the members of the committee.

Q. In what year?

A. Nineteen twenty-four (1924).

Q. What country?

A. England.

Mr. Mercier: It was said none of these were worth anything unless written after 1926.

Mr. Wegenast: My learned friend isn't giving evidence and he shouldn't give it to the witness in that fashion.

Mr. Mercier: I shouldn't want the witness to give anything worthless.

Mr. Wegenast: You have had your chance.

To Mr. Wegenast:

Q. Do you know if that commission sat more than once?

A. For years before.

Q. Do you mean it sat for years or is sitting for years?

A. Sat.

Q. Did it sit once, twice or did it make one or two reports?

A. As far as I could gather, they made at least two

reports.

Q. Correct, do you know when they made the second report?

A. The first one was in 1925; I am sorry to say 1924.

Q. Correct, what about the second?

A. I didn't get the data on the second.

Q. Of course, Doctor, it is a rule in court never to use a memo in court without letting counsel see it?

A. (No reply).

Mr. Mercier: To refresh his memory.

The Witness:

A. They are only notes.

To Mr. Wegenast: Testing your memory; what authors?

A. (No reply).

The Court: Testing his memory?

Mr. Wegenast: His knowledge.

The Court: Test his credibility.

Mr. Wegenast: His knowledge.

The Court: He has been proven as an expert; are you trying to prove he is not?

Mr. Wegenast: Yes, Your Worship.

The Court: I have admitted him.

Mr. Mercier: We haven't had a memory test in this case yet; we might as well have it now.

Dr. Lajoie

Mr. Wegenast: I would like to know what authorities Dr. Lajoie has studied on contraceptives?

The Witness:

A. I couldn't give the names off that way.

To Mr. Wegenast:

Q. Do you know a book called "Rosenau"?

A. I know there is a book.

Q. Do you know it?

A. The names of authors I don't remember very well, but when I read something ---

Q. Here is Rosenau on preventive medicine; are you familiar with that?

A. Not at all.

Q. Do you recognize it as an authority?

A. I would have to inquire. If you would let me see his titles which are generally sufficient to give credit to a man:

> "Professor of preventive medicine and hygiene, Harvard Medical School; professor of epidemiology, Harvard School of Public Health; formerly director of the school of public health of Harvard University and the Massachusetts Institute of Technology;

formerly director of the hygienic laboratory, U. S. Public Health Service."

I suppose he must be a very good man; I rely on his titles.

Dr. Lajoie

Q. He is supposed to be the best?

A. I am glad you tell me that.

Q. Did you ever hear of a man named Matsner?

A. No.

Q. Cooper?

A. Fenimore Cooper?

Q. No, contraceptive Cooper?

A. No, I don't know.

Q. Dickinson and Bryant?

A. No.

Q. Are you familiar with their work?

A. The name is familiar, but I don't know them.

Q. What about Himes on the medical history of contraception?

A. No. I would like you to bring some French books; I might know some.

Q. That is only fair, Doctor. Now, do you know any of the authorities in France or Belgium on this subject?

A. I could furnish you a list; I haven't got it.

Mr. Mercier: The doctor came here to give knowledge form his own practical experience and not his knowledge of what somebody else says for the doctor to confirm. He gives his knowledge from eighteen years' experience.

Mr. Wegenast: We would like to know what his background of

Dr. Lajoie

authority is.

To Mr. Wegenast:

Q. Here is Himes on the medical history of contraception; he gives a history of contraception from early times? Do you know any similar familiar French works?

A. He has no titles.

Q. This man has titles?

A. American College of Surgeons.

Q. Don't you think anything of it?

A. I don't know; medical history could be written by a layman.

Q. DeGuchteneere?

A. No.

Q. Holliday-Sutherland?

A. I have heard ---

Q. He is a chest specialist and writes on contraceptives and novels.

A. That is why I heard his name.

Q. Schmulder? In Dutch and German?

A. I don't know him.

Q. Then there is Dr. Dame McIlroy; have you heard of her?

A. I have heard of her.

Q. Have you heard of Stopes?

A. So, too.

Q. Sangster?

A. So, too.

Q. Those are the only ones you have heard of?

A. Sir Charles Hackenbury.

Q. That is a new one on me; and Moore?

A. Mostly on committee reports; a body of men can better make a study of a question which is not yet to the point, and I have more faith in five or nine individuals than one.

Q. You have been on committees, Doctor?

A. Yes.

Q. You know it is usually a one-man proposition as far as drafting their report?

A. I don't know how your committees in law work, but in medical committees, it can't be a one-man report because we are too much concerned with every-day problems to have time all alone to put up the question. The study is divided to different members of the committee, and each comes in with his share; it is all then set up.

Q. By whom?

A. Members of the committee. It is reconsidered under all aspects; suggestions are made; it is corrected, and finally, the committee as a whole adopts or rejects the final draft.

Q. That is the theory?

A. That is the practice; I would like you to come to some

of our meetings.

Q. By the way, we haven't mentioned the author of this book?

A. "Rhythm."

Q. Do you know the author?

A. No, as I told you, I don't remember names, but I have seen it in French. If it isn't that one, it is similar.

Q. Would you advocate having a French translation of this book and circulating it in Eastview?

A. No.

Q. I thought not; well, why?

A. Because I don't think this book should go into public libraries.

Q. But discreetly in Eastview?

A. No, I don't believe this book should be in the layman's hands.

Q. Let me see "America"; I will show you something I think you will agree with, Doctor?

A. (No reply).

Mr. Mercier: The doctor apparently has an opinion of his own.

Mr. Wegenast: Certainly.

To Mr. Wegenast:

Q. Here is an article in "America"; I want to read you a few passages from it because they fall right in with what you

say, and if you will excuse my attempt to shorten it, I will just plunge right in?

A. (No reply).

The Court: You are reading from what?

Mr. Wegenast: It is an exhibit.

The Court: Yes, but how do you refer it to this witness; who is it by?

Mr. Wegenast: This is an article by Wilfrid Parsons, S.J., a Jesuit priest, in "America," a Catholic review of the week.

The Court: Does the witness know who Parsons is?

Mr. Wegenast: I don't know. I want to ask if this agrees with his opinion.

The Court: I think you will have to qualify if he knows who wrote it.

To Mr. Wegenast:

Q. Here is an article on "Rhythm" by Wilfrid Parsons, a Jesuit priest, in "America"; do you think that is something you should listen to?

A. Oh, maybe, but I am listening to it, but it doesn't mean everything in "America" is approved by me.

To the Court:

Q. Your opinion might not agree, but do you recognize the author as an authority?

A. No, I don't know it, Your Worship; if it is to be approved or disapproved, I don't know.

To Mr. Wegenast:

Q. Do you know this paper?

A. No, it is the first time I see the paper.

Q. And you don't think you care to recognize the writing of a Jesuit priest has a certain authority?

A. I don't say that I don't know Parsons.

Mr. Wegenast: Well, have I Your Worship's ruling; I am asking this witness whether he agrees with this, and it is from a medical standpoint?

The Court: I think first of all you must establish the authority.

The Witness:

A. I don't know Parsons.

To Mr. Wegenast:

Q. Here is a Jesuit priest writing in an accredited American review?

A. I don't know at all its value.

Q. There is this about it: it is as an exhibit, and it is relied on by our people as an authority?

A. (No reply).

The Court: But if this witness doesn't agree?

Mr. Wegenast: But it is an exhibit, in like other books I bring along; it is in now, and this is before Your Worship to be read, and I have a right to ask this witness what he thinks of it.

Mr. Mercier: I might suggest if my learned friend relies on that point because it is recognized by their witnesses as an authority it is not necessarily required of our witnesses it should be the same. There has been a lot said approved by certain witnesses that would not be approved by others.

Mr. Wegenast: Before reading the article, may I establish ---

The Court: I think you must first establish this witness recognizes some authority.

Mr. Mercier: He has been established as a medical witness and kept very well in it.

The Court: Is there anything medical in it?

The Witness:

A. That is what I wanted to say: I will not recognize Parsons as a medical authority.

Mr. Wegenast: He has undertaken to give an opinion.

The Court: On a medical point of view.

Mr. Wegenast: And also expressed his views as to the propriety.

The Court: It must be as a medical expert. You can attack his credibility on medical testimony.

Mr. Wegenast: He has said this should not be circulated, and I will ask if on medical grounds it should be stricken out?

The Witness:

A. Absolutely on medical grounds.

Mr. Mercier: I realize my learned friend's plight, and the witnesses I might have been allowed to call cannot be called

now, and perhaps, he is trying to drag theological matters out of medical witnesses.

Mr. Wegenast: That is not very nice either.

Mr. Mercier: I have had three weeks to consider being nasty too.

Mr. Wegenast: "Too." I don't want to prolong this discussion at the present time if it may be understood I am not giving in to Your Worship's decision should it come up again. I have my rights on cross examination.

The Court: I will make myself perfectly clear: the witness has been called for examination on medical grounds and I will not allow him to be questioned on theological and sociological grounds.

Mr. Wegenast: That ends my right of cross examination.

The Court: I don't know how you can call on a medical expert to give evidence on sociological and theological grounds; he is not an individual witness; he is an expert witness called for medical evidence.

Mr. Wegenast: In this matter of the use of contraceptives, it is impossible to draw the line. One thing draws the other into it. My learned friend objected at the beginning when I asked a witness, "are you a Catholic," and nothing is clearer than that the doctor says now on medical grounds it can't be circulated. I have the right to go into psychological serenity or other things from which you can't disassociate medicine.

The Court: You have already established the principles of this witness have a basis in his religion and affect the advice he

Dr. Lajoie

gives on contraception.

Mr. Wegenast: I want to ask him on that.

The Court: Ask him point blank.

Mr. Wegenast: I don't want to ask him point blank.

The Court: I don't want to hear a detour into morality, theology and sociology.

Mr. Wegenast: I want to ask it my own way, so the witness will not know the direction in which I am going.

The Court: That is all right, but I have made myself clear, and if you will guide your cross examination along that line, proceed.

Mr. Wegenast: Am I entitled to proceed and ask the doctor's opinion on this?

The Court: I don't see what value I can put on it if he doesn't recognize it as an authority.

Mr. Wegenast: This gets out of the necessity of evidence and constitutes argument. This doctor thinks this book should not have been published.

The Court: I am not interested in this man Parsons' opinion, but the doctor's opinion.

To Mr. Wegenast:

Q. You are not the only one thinks this should not have been published here?

A. I don't know.

Q. Why not publish it?

Dr. Lajoie

A. Medically speaking, it might be published, but not to put it on the bookshelves of editors or the general public because medically speaking, those women who have read the book have just brought to themselves a little knowledge that is absolutely incorrect of their genital organs and menstrual cycles, and it has done more harm than good, and more than once it has come that these women would not understand "Rhythm," and becoming pregnant did some harm to the medical profession, and that is why I think already there are too many medical notions given people in Canada gratuitously.

Q. You would fly in the face of the opinion given by Dr. Hutton and others: every woman is entitled to this?

A. Not by a book, but by a doctor. Let the doctor interpret the book. Dr. Hutton, I believe, is a hygienist; I would like him to go into general practice and see what happens.

Q. How do you know he isn't in general practice?

A. He is a hygienist; I don't think so.

Q. Tell us about those things you think Dr. Hutton doesn't know?

A. (No reply).

Mr. Mercier: We might have to get a lot of books.

To Mr. Wegenast:

Q. What did you refer to Dr. Hutton doesn't know he should know?

A. I would like to state here I don't want Dr. Hutton to believe I don't agree with his work and all that sort of thing,

Dr. Lajoie

but what I say is that a man who has a position on a medical board of health, who is a full timer and devoting his life very admirably to the health of his people might err sometimes in giving

advice to some patients which should have been given by a general practitioner. That is what I mean: the general practitioner of patients who knows everything of his patients.

Q. Knows everything?

A. (No reply).

Mr. Mercier: Of his patients.

To Mr. Wegenast:

Q. There is something about knowing medicine as well?

A. Certainly.

Q. It wouldn't matter how much I knew the patient if I didn't know medicine?

A. Certainly.

Q. You must remember you started in by saying you didn't know anything about these contraceptives?

A. They are not medical things.

Q. Some people say that?

A. They are an ensemble of medical things.

Q. You are starting something by dragging me all over the place. The douche isn't medical?

A. It is a medical act.

Q. It isn't a medical instrument?

A. You say it is an instrument, giving a douche?

Q. It isn't a medical instrument?

A. I don't know. I really wouldn't know. I know we can buy them in a grocery store.

Q. True, and there are lots of things you can buy in a drugstore?

A. Yes, but in France, we have the drugstores or pharmacies who dispense drugs, and they have what they call the elobes (?) to sell douches, syringes and these things.

Q. I don't know if what is done in France binds us here?

A. It is a medical apparatus necessarily; I can say that because you cannot use a douche for anything else except perhaps

to give an enema.

Q. You would call an enema necessarily a medical instrument?

A. It is a treatment; apparatus gives the treatment.

Q. You wouldn't call it a medical treatment?

A. Yes.

Q. I suppose a toothpick is one at that: I put it to you, Doctor: a douche in one aspect is an ordinary toilet article; it is used like soap and the washcloth and shower bath and so on.

A. No, that is, not in my opinion.

Q. You wouldn't call a toothbrush a medical instrument?

A. Neither.

Q. I don't see myself, Doctor, what difference there is from that standpoint -- there is between a toothbrush and some of the other things we have mentioned?

A. Everybody has to take a bath; everybody hasn't a vagina.

Q. I will leave it at that, if that is the best you can put it. I needn't press you further, Doctor. The medical school you are connected with is the Montreal medical school?

A. University of Montreal.

Q. You have already said they don't give instruction in contraceptives?

A. Measures or instruments: you always stop at contraceptives; I would like to have this very well defined by you: what you mean, contraceptive measures, instruments or drugs?

Q. All?

A. Yes and no.

Q. When do you state yes and when do you state no?

A. (No reply).

The Court: Three things.

Mr. Wegenast: I don't have to ask him every question unless he is unwilling to answer.

To Mr. Wegenast:

Q. Let us take the pessary and condom; you don't teach the use of that?

A. No.

Q. I suppose you do teach the use of "Rhythm"?

A. I would suggest I teach not to use that; is that a difference?

A. Oh, yes. How many lectures do you give?

A. It is all clinics, and I wouldn't give it in lecture rooms; it is more practical than theoretical.

Q. I understand in 50 or 55 of the class "A" medical schools in America instruction is given in the lectures on contraceptives, by which I mean condoms and pessaries?

A. I don't know what it is.

Q. Do you know the class "B" schools?

A. No, I don't know the classifications.

Q. Is your school "A" or "B"?

A. It is class "A".

Q. That surprises me, but it doesn't matter?

A. (No reply).

Mr. Mercier: I don't know but that that remark should be withdrawn, and Mr. Wegenast is surprised it is not in class "B".

To Mr. Wegenast:

Q. How was it classed?

A. It was begun in the University of Montreal in 1920; before that it was Laval, and the Rockefeller Institute sent some men to inspect the school, and it was classed "A," if that

is the classification you mean or the classification of the American College of Surgeons: I think it is on the same grounds.

Q. But the American Medical Association standards, or has it been classified?

A. It has been as far as my memory goes, and it has been classed "A" and not "B"; I know that.

Q. Now, I want to ask you whether, in your opinion, as a lecturer on medicine connected with the staff of the university, it is or is not in order or wise to give instructions on the use of contraceptives?

A. I am not prepared to answer that question, sir, before submitting the question to the board of studies of the faculty of medicine who decide what is going to be taught and what is not going to be taught.

Q. We haven't the board here on oath?

A. I am not prepared to answer that. If you want a personal opinion?

Q. I would want that; that is all I wanted to ask?

A. Personally?

Q. Yes?

A. I am telling you we do teach not to use them.

Q. I didn't ask you that; I asked whether you thought it in order or wise to teach contraceptives, your personal opinion?

A. (No reply).

The Court: To medical students?

Mr. Wegenast: Yes.

The Witness:

A. These contraceptive instruments?

To Mr. Wegenast:

Q. Yes?

A. I like you to put it that way because I am of opinion abstention is not a contraceptive measure.

Q. Your writers Latz and O'Brian call it contraception?

A. It is because I have always gone on birth control on the definition of Mrs. Sangster.

Q. I happen to be boss now, and you are my witness subject to His Worship, and I ask whether it wouldn't be wise to teach the use of contraceptives to your medical students in your opinion?

A. I am not ready to answer that; I would like to have a discussion with other medical men.

Q. You beg leave of the Court not to answer that?

A. Yes.

Q. I could ask His Worship to press you?

A. (No reply).

The Court: It is 1 o'clock, Mr. Wegenast.

Mr. Wegenast: All right.

The Court: Two fifteen.

(Upon the Court resuming at 2:15 p.m. same date)

Mr. Mercier: Before further cross examination, the Crown, in statement of its case, offered one expert witness in preparation of its case.

I must say the Crown could not anticipate the defence and when the defence asked a larger number than allowed, the Crown agreed without the permission of the Court. I have not had time to look up the point, but in rebuttal it might be different.

The section of the Code which refers to that is in the Canada Evidence Act, section ---

The Court: Seven (7).

Mr. Mercier: It says:

> "Where, in any trial or other proceeding, criminal or civil, it is intended by the prosecution or the defence, or by any party, to examine as witnesses professional or other experts entitled according to the law or practice to give opinion evidence, not more than five of such witnesses may be called upon either side without the leave of the Court of Judge or person presiding."

I say to Your Worship the Crown did not intend to bring any evidence in rebuttal because the Crown did not know at the time ---

The Court: Let the Crown protect itself by asking for leave, if necessary.

Mr. Mercier: But the Crown cannot anticipate any defence, and

on that ground, I submit, Your Worship, the Crown may have the right, although I will keep myself within Your Worship's ruling of this morning; I don't intend to force any witnesses on Your Worship, but I would like Your Worship to render a decision on that point before we are through with presenting any evidence we have in rebuttal.

I may also say that at the time, with chances of success or not, the Crown would certainly have raised objections to bringing more than five witnesses, but the objection was not raised at that time.

Now, Your Worship, as a matter of record, I wish to state the impression the Crown has had of this case so far as the said questions have been raised: as a matter of record, subpoenas have been issued by the Crown to two doctors; one Catholic and one Protestant, two priests, and two gentlemen of the Protestant faith. In case Your Worship rules not more than five witnesses, I wish that on the record.

Mr. Wegenast: Your Worship, I don't know as my friend wants me to express even appreciation of his position, but I would like to be understood, Your Worship, as being

sympathetic to anything my friend would say on this score. I wish to add this, Your Worship; however: Your Worship will remember I may not have made it very clear, but I raised the question not once, but several times whether in view of the provisions of Section 207, we were not placed virtually in the position of plaintiff. It is all very well to say that proving for the public good is a matter for the defence; it is a form of speech and a way of setting up a defence, but in saying we are setting up the public good, it places us not in the position of proving our defence,

Dr. Lajoie

but as plaintiff.

The Court: Proving your defence; your excuse.

Mr. Wegenast: We part company there, Your Worship. I think subsection 2 of 207 gives us something wider than lawful justification.

The Court: Or excuse. There is a distinction there in one of the cases between lawful justification and excuse.

Mr. Wegenast: My contention is that subsection 2 gives us something more and gives us something we should prove affirmatively. I was in the position of plaintiff with the right to reply.

The Court: That was your submission.

Mr. Wegenast: Yes, but that being decided against me, I can't argue now that this is a sort of opening again. This rebuttal gives me a new deal. Your worship having decided –- my friend wished to argue my rights in cross examination. I reserved the right this morning.

Mr. Beament: It was suggested, as I understood it, of the cross examination of a professional witness who qualifies as a medical man, it must be confined to his evidence as a medical man. I suggest that ruling, if it is a ruling, is fundamentally unsound.

If a witness is put in the box, he is a witness for all purposes and cross examination can extend to one or two broad heads: any question going to discredit him with relation to this case and by discredit, I don't suggest he is an improper person, but to discredit his testimony, lack of reason, bias or any other

Dr. Lajoie

reason. Lack of observation is a very common type of question in discrediting a witness.

Another branch on which he can be examined is any other matter relevant to the issue. Thus, if a doctor is put in and qualified as a medical witness, we can ask him –- I don't suggest it is desirable –- sociological or other questions.

The Court: You can't expect much weight to be given his evidence on that.

Mr. Beament: It is exactly that: a question of weight, but also relevancy, and any opinion that that evidence cannot be considered is erroneous; nevertheless, the question is a proper one and can be put and must be accepted if put and the witness has the knowledge to answer.

I refer Your Worship to a statement made by Dr. McRae in his article on evidence in the Canada Encyclopedic Digest dealing with cross examination.

The Court: What page?

Mr. Beament: Six hundred and ninety (690), volume 4. It has been taken out and put in book form, but that is the situation in the Digest itself:

"Witnesses may be asked…occasion."

That is founded, amongst other things, in a judgment of the Appellate Court of Upper Canada, Lamb and Ward, which is reported in 18 Upper Canada Queen's Bench reports at page 304.

I refer to the judgment of Mr. Justice McLean at page 309. There are similar expressions from the other judges.

Dr. Lajoie

Referring to a case in England in Taylor on Evidence:

"Authority for dictum of witness…entire defence."

And he goes on to prove that rule.

Now, I have called to Your Worship's attention anything relevant to impeaching a witness' evidence is relevant, but there is a further statement here:

"…and if he denies…contradict him."

That is another point, but bias is clearly recognized as affecting the credibility of a witness. In fact, it is one of the most important on which you are entitled to attack the credibility of a witness, although not relevant of the evidence itself.

Also, in Halsbury ---

Mr. Mercier: As Your Worship wisely stated, the Court was let in for a lot of evidence not considered relevant at the time, but a man cannot be examined as to his religious belief so he can be shown to be biased in his religious belief. When a man of science is called in, there must be some scope to it.

Mr. Beament: When I use the word bias, there is nothing morally wrong in it at all, but I would point especially to the point it must be admitted the approach to any scientific problem requires an open mind. That, when a person approaches a purely scientific problem with preconceived ideas implanted since childhood and he believes them, –- I am not attacking him

for it –- his approach to the scientific problem is swayed, and therefore, his approach cannot be the same objectively honest

Dr. Lajoie

approach as a person with no preconceived idea and no bias.

Mr. Mercier: One must prove first the theory advanced, but not supposed to have been proved, that he is wrong and all others right.

Mr. Beament: Affecting his credibility?

Mr. Wegenast: I must admit I was not prepared to argue so elementary a point, but Your Worship will assume those were my rights.

Now, I want to defer as long as I can any clash on that point, but I won't go further.

The Court: Better proceed.

Mr. Wegenast: And we will say "good morning" when we meet them.

Mr. Mercier: And always subject to my objection, it my may rise again.

Dr. Lajoie would like, if at all possible, to take the 5:30 train to Montreal, where he has two important patients.

Mr. Wegenast: And have him back in the morning?

Mr. Mercier: In two days.

Mr. Wegenast: I expected two days.

Mr. Mercier: It is at the discretion of the Court. I made it clear any specialists called who had patients awaiting might be made free to be called back later.

The Court: I would like to accommodate as far as possible.

Mr. Wegenast: When Mrs. Deslauriers was in the box and Your Worship asked about putting in a slip of which I had a copy, I

Dr. Lajoie

observed what I thought was a clerical error, and on that account, I didn't want to put the slip in and did not examine the lady and I wanted to reserve the right.

The Court: You said you had no questions to ask.

Mr. Wegenast: I see now from the original it was obviously a clerical error, and I would like to put the slip in in spite of the bitterest objections my friend can raise and ask Mrs. Deslauriers a question.

Mr. Mercier: I object to both and I hope I am right.

The Court: You didn't reserve the right.

Mr. Wegenast: I didn't expect to have the slips here.

Mr. Mercier: I didn't expect my friend to object to more than five witnesses.

Mr. Wegenast: Justice Riddell ---

Mr. Mercier: My learned friend should know the law.

Mr. Wegenast: God help any man who knows all the law. I would like to have Mrs. Deslauriers brought back.

The Court: I am not certain at the moment I will allow that.

(Dr. Lajoie still in witness box)

Mr. Wegenast:

Q. Now, Doctor, you said you don't approve of "Rhythm"; is it the work itself or when we see it published by ecclesiastical approbation and approved by other authorities, it is worthy of other consideration?

A. (No reply).

The Court: I might as well state right now that what this witness has to say on moral or theological grounds doesn't carry much weight.

Mr. Wegenast: I am not on it now.

The Court: Sometimes you are examining for half an hour before I know what you are putting in.

To Mr. Wegenast: I want to know if he thinks it worthwhile reading this book, if it is worthy of examination and credence?

A. Certainly.

Q. I see here on Page 67 of "Rhythm" and there are several other references; there is one to Dr. Smulders: he is one of the men in this literature; he comes into the picture more or less frequently, and I have his book which is referred to in "Rhythm" and this book is published also with ecclesiastic authority, and Smulders is a doctor. How is your German?

A. Fairly good.

To the Court:

Q. He says he doesn't know this man. Do you know him?

A. Only by this particular book.

Q. You know that book?

A. Yes, as a book; I can't say I have read it through.

Q. Do you recognize that book as being authoritative?

A. Medically speaking?

Q. Yes.

A. Yes, probably.

The Court: What is the name of the book?

Mr. Wegenast: Smulders. Will I give the translation of the German: "periodic continence in marriage" would be a literal translation, from which I want to read at Page 125; I have made a rough translation and:

To Mr. Wegenast:

Q. Would you like to watch the original; this would be my translation?

A. (No reply).

The Court: The book is written in German?

The Witness:

A. Yes.

Mr. Wegenast:

> "By neo-Malthusianism, we understand the sin of married people uniting themselves in such a manner that the propagation of life is excluded. We distinguish then carefully the end and means. The end is limitation of children. This is in itself not yet blameworthy."

He quotes from the Pope:

> "In so many words the Pope explains, 'many go so far…as to give the advice that married people should not by matrimonial continence (which with reciprocal understanding is also

> allowed in marriage) but by inversion of the natural act avoid children'."

Mr. Mercier: I object; this author mentions what the Pope says.

The Court: I can't see where it is going to.

Mr. Wegenast:

> "Exactly the inversion of the act is the morally objectionable means by which one wishes to attain the in itself unobjectionable end; and on that ground, neo-Malthusianism is objectionable, not because of the end itself."

To Mr. Wegenast:

Q. Now, Doctor, the end is to prevent pregnancy. Smulders says it is not the end, but the means that does matter; is that your position that it is all right to do it by "Rhythm" or periodical continence, but it is not right to use other means, a condom or pessary?

A. Yes.

Q. That is your position?

A. Yes.

Q. That is what I wanted to know. Then I can trace that with a passage from a book already in evidence; you referred to the birth rate commission in England?

A. Yes.

Q. In 1924, Lord Dawson of Penn gave evidence before that commission. I have it here in Silcox' evidence; it is paraphrased a little?

A. (No reply).

Mr. Mercier: It is examining this witness on Silcox' evidence.

To Mr. Wegenast:

Q. This is on Dr. Dawson of Penn; you know of him?

A. Yes, I made a trip with him.

The Court: Where is it from?

Mr. Wegenast: Page F-52 (of the evidence). He is quoting from the national birth rate commission and he gave this in evidence (Mr. Silcox).

The Court: Make it clear to the witness those are not Lord Dawson's words; they are Silcox'. In fairness to this witness you should specify.

Mr. Wegenast: I thought you would prefer to use the evidence.

To Mr. Wegenast:

Q.

> "I submit he says rightness or wrongness of contraceptives must not be judged by the rightness or wrongness of these methods."

Do you agree with that?

A. No, I don't.

Q.

Dr. Lajoie

> "What the committee has primarily to decide is whether the use of contraceptives is right in principle. If 'yes,' the methods concern the medical profession."

What do you think of that?

A. It is Lord Dawson's opinion.

Q. Not yours?

A. No.

Q. You say whether to prevent pregnancy is right or wrong should be left to the church and what the means are should be left to the doctors?

A. The question is too long.

Q. Lord Dawson says:

> "You decide whether it is right or wrong and when you decide it, the means should be left to the doctors."

Do you agree with that?

A. Yes, but not what is written there. He speaks of the merits and demerits.

Q.

> "I submit that the rightness or wrongness of contraceptives must not be judged by the merits or demerits of this or that device."?

A. I see.

Q.

Dr. Lajoie

> "What this birth rate committee has to decide is whether it is right in principle."?

A. Yes.

Q. If right, the merits concern the medical profession. That is a doctor's job:

"You decide first whether you want to control pregnancy and then it is for the doctors to decide the means."?

A. If you put it that way.

Q. Isn't that the exact opposite of what Smulders says?

A. That isn't what you asked me; I didn't say I approved of everything he said.

Q. He says:

"We distinguish then carefully the end and the means."

Between the object or purpose and the means, between the end and the means. The end is to prevent children; that is not blameworthy?

A. I don't agree with that.

Q.

"But when you come to means there are certain means that are used."?

A. Those four words to "blameworthy" are not right?

Q. I think it is. You think it is blameworthy to prevent

pregnancy?

A. Generally speaking, yes.

Q. You say "generally speaking"; may I pursue this, Doctor: you seem to assume there may be cases where contraceptives would be indicated?

A. Measures?

Q. Assuming that, even, if you want to go back on that, then whose job is it to say whose means should be used?

A. The doctors'.

Q. I didn't think you were answering that?

A. Yes.

Q. It is the doctors' job?

A. Exclusively.

Q. Smulders says "no" if the doctor says "use the condom, pessary or douche"?

A. I don't care what Smulders says; I am not here to analyze his views.

Q. But expressing briefly the two views: if you don't agree with Smulders that the end doesn't matter?

A. I don't agree with that.

Q. And it is for the priests to say, not the doctors?

A. Once more, I don't say so.

Q. Is it for the priests to choose that?

A. I don't know; I am not a priest.

Q. Don't they tell you what to do?

A. No.

Q. Don't they post instructions in your hospitals to do this and that?

A. No. Yes, pardon me; what is it, so-and-so?

Q. Did you ever see this in hospitals?

A. Yes.

Q. This is from the Association of Catholic Hospitals of the United States and Canada, and we find:

> "It is strictly forbidden to surgeons, physicians or nurses to teach in this hospital or advise some method of anti-conception whatever."?

A. (No reply).

Q. Any method of contraception?

A. Yes.

Q. And that is observed in the hospital where you practice?

A. I don't know; I haven't checked up.

Q. But it is there to be observed?

A. Yes.

Q. That of course goes according to Smulders' "Rhythm"?

A. (No reply).

The Court:

Exhibit 105-B.

To Mr. Wegenast:

Q. That follows Smulders rather than Dawson of Penn; doesn't it?

A. I can't say just by reading a few lines of the book we can judge.

Q. Doctor, I will not take any narrow advantage of you. I am trying to concentrate this and make it brief. There are two views: one that the end doesn't make much difference, but the means do and the other of Dawson of Penn; once you agree it is right, it is up to the doctors for the means, and of those two, you choose Smulders?

A. No, he says anybody; I would have to take a little bit of each to be right.

Q. If you took the right bits?

A. I must take the parts that suit me.

Mr. Mercier: I think this witness took a course in answering questions in Toronto, Your Worship.

To Mr. Wegenast:

Q. I will put this to you also, in the interests of brevity and not with any offensive implication. You will excuse me if it appears rather offensive. Why do you come along here as an expert to advise on means of contraception?

A. (No reply).

Mr. Mercier: That is incorrect, Your Worship; the doctor is not here to advise on means of contraception.

Mr. Wegenast: He is called here on the advisability of contraception.

Mr. Mercier: On the advisability of not using the contraceptive means in this pamphlet.

To Mr. Wegenast:

Q. When you know so little about it?

A. Why I was called?

Q. Why should we regard your opinion as expert when you have never put in a pessary and do not and would not advise any of these means; how can you advise how injurious they are?

A. By things I have taken out.

Q. Now, what was it you took out in the case of the woman with cancer?

A. A pessary.

Q. What was the name?

A. I can't say now.

Q. That is of importance; perhaps you will describe it?

A. It was a sort of round rubber thing to which had been attached some other thing –- there is no blackboard here; I know it is not a lecture room –- to which had been attached some sort of ---

Q. Diaphragm?

A. Yes, and the diaphragm had been perforated.

Q. We have several varieties here?

A. It wouldn't be that one.

The Court: Refer to them as exhibits.

To Mr. Wegenast:

Q. Exhibit 30-B: like this?

A. The same principle.

Q. Was the ring as heavy as that?

A. A little heavier.

Q. Would you be surprised to learn that isn't used in regular practice in this country?

A. I would be surprised and very glad.

Q. I believe they call that the Mizpah check pessary or cervical cap?

A. To tell the truth, I believe the other one was homemade.

Q. What can you tell us about the history of the case; what account did the patient give of when the thing was put in?

A. She had had it six months.

Q. Had she menstruated?

A. Yes, apparently the first time she menstruated, it broke out and she left it there. There was a fault there on the part of the patient.

Q. You can't make anything foolproof to women with no brains?

A. No.

Q. That is one where the thing broke and the woman left it

there, and if the woman is dumb, that is liable to happen?

A. Yes, especially when the doctor is not checking on it.

Q. As to that, I started on the question before: you are teaching students there who are not all Catholics?

A. No, Protestants and Jews.

Q. And you give them no instructions on the use of contraceptives?

A. No.

Q. And yet you seem to be critical of people, anybody but doctors showing them how to use them?

A. I don't say that in the clinical lectures we don't talk about them; I admit there is nothing very special in the curriculum or programme of the gynecological theoretical course on contraception.

Q. Yes?

A. But a patient which is being presented at a clinic is the subject of study by the doctor before the students, and we discuss the cases before them, and there and then, it often happens questions are asked: what about contraceptives? We do tell them when it is relevant to the case we have in hand and that often happens.

Q. I will show you something here if my friend will permit?

A. (No reply).

Mr. Mercier: Don't ask me any permission.

Mr. Wegenast: If, Your Worship, I have here my learned friend's

permission:

To Mr. Wegenast:

Q. This is Matsner and that part of Rosenau dealing with contraception: you will see who the authorities are, and I want to ask you if these people know what they are talking about?

A. I don't know.

Q. I show you some diagrams showing what is called the Mensinga pessary as put into position. That is on pages 16 and 17 of this pamphlet. I want to ask you whether you teach your students anything like that?

A. No.

Q. That shows the exact method of manipulation and putting the pessary in place?

A. Apparently.

Q. Do you know how the Mensinga and Ramses pessaries are held in place?

A. I don't know the names of the pessaries.

Q. The occlusive pessary is the generic name, I believe. Of them, do you know how they are held in place?

A. No.

Q. The cervical cap, the one I showed you there?

A. Yes.

Q. It is liable to get out of place and it is not practical; it only fits over the cervix and that is all holds it in place in the positive wall. Now, the Mensinga and Ramses

pessaries cover not only the cervix, but a considerable part of the wall of the vagina above the cervix, but you can't tell me how it is kept in place?

A. By suction, I suppose.

Q. No, it isn't. It is put in behind the posterior fornix and behind the pubic bone and the operations you see here on this diagram; is it injurious in that position?

A. Yes.

Q. Now, how could a student of the Montreal medical school tell anybody how that should be done?

A. I don't have to.

Q. Why criticize then people going to anybody other than doctors?

A. They go to see people other than doctors for their ailments.

Q. Here is Miss Palmer who told the women, and she knew how, I think?

A. (No reply).

Mr. Mercier: There is no evidence on that, none whatever.

Mr. Beament: Dr. Dover had known Miss Palmer for some time and she was a thoroughly competent person.

The Court: There is no evidence she knew how to fit the pessary.

Mr. Beament: No.

To Mr. Wegenast:

Dr. Lajoie

Q. Let us go further back: the evidence is that before the work in this Kitchener clinic was begun, this Parents' Information Bureau –- Mr. Kaufman –- sent a Dr. R. Latz of Kitchener to New York to find out about methods. He spent his time there learning measures. He came up and set at work the clinic under the supervision of Miss Weber, who gave evidence here, and the work broadened out until we find Miss Palmer here was working for the branch at Kitchener –- not the fitting of pessaries, but the use of the nozzle and tube?

A. Yes.

Q. Now then, I am broadening my question: how can you expect people to come to you doctors for information how to use the nozzle, say, if you don't show your graduates or students how to use it?

A. I haven't got any use for it.

Q. I show you, by the way, another page, the illustration of how to use the nozzle, on Page 28?

A. Yes.

Q. And this is obviously in the nature of a manual how to use it and you don't use it?

A. No.

Q. Have you observed this in the pamphlet, Exhibit 5-B: you notice on Page 9:

> "Rubber caps of pessaries are intended chiefly for mothers who have had several children, and must be fitted by a doctor, but can easily be placed in position by the
>
> Dr. Lajoie
>
> wife alone after receiving instructions from the doctor. See your family physician or some other doctor who can give the necessary instructions. Pessaries fitted properly and used properly with contraceptive jelly are almost 100% efficient."

Purely as a medical question and quite aside from questions of conscience or principle, you wouldn't have any objection to that part of the pamphlet, would you? You wouldn't object to having Miss Palmer advise people to go to their doctors for a pessary?

A. Yes.

Q. Apart from matters of conscience and principle?

A. Absolutely.

Q. Do you mean to say you are against almost the whole medical profession and take the position these things shouldn't be used?

A. (No reply).

Mr. Mercier: There is no evidence about the whole of the medical profession.

The Court: No.

Mr. Mercier: And there is certain evidence in about the American Medical Association to the contrary.

To Mr. Wegenast:

Q. You have already subscribed 100 per cent to this?

A. (No reply).

Dr. Lajoie

The Court: The report of the American Medical Association doesn't say every member is of that opinion.

Mr. Wegenast: No, I am sorry, Your Worship.

To Mr. Wegenast:

Q. But reading:

> "There has been an extensive development preparations and devices for preventing pregnancy. Some of these are more or less physically harmless, some are relatively effective when used intelligently, others have little or no value. All mechanical devices which are introduced into the cervix or corpus uteri are potentially dangerous to the life and health of the woman."

We haven't been talking about that?

A. I don't know.

Q. You haven't heard any idea about putting these into the uterus?

A. Not yet.

Q.

> "The efficiency of all present methods depends on intelligent use."?

A. I think so.

The Court: Mr. Wegenast, don't take silence as consent.

Mr. Wegenast: I thought he had answered.

Dr. Lajoie

To Mr. Wegenast:

Q.

> "No 2. Steps should be taken by some responsible group to develop standards for judging contraceptive materials."?

A. I am clearly in favour of that, judging the materials.

Q. And: "…develop standards for judging contraceptive materials"; you mean to say you regard this report ---

A. Steps should be taken by some intelligent group to judge standards; it doesn't necessarily mean they are going to accept it.

Q. You take this report to be condemnation or potential condemnation of birth control?

A. I wouldn't say that.

Mr. Mercier: I don't think that is a fair question; if my learned friend asked about the methods in Eastview, it might be different.

To Mr. Wegenast:

Q. Take Dr. Scott: lay aside all professional ethics, if you like, professional ethics and practice, and give us your candid opinion as to whether Dr. Scott was, as they say on the street, "all wet" when he expressed those opinions, and I want to ask from the beginning: he says in the first place ---

A. (No reply).

Mr. Mercier: What page?

Dr. Lajoie

Mr. Wegenast: J-2 of Dr. Scott. Well, let us start at the beginning:

To Mr. Wegenast:

Q.

> "We have Miss Palmer here charged with advertising contraceptives by means of a pamphlet. We assume this to be a copy of Exhibit 5-B. You, like all doctors, have some occasion to consider the subject of advertising. Now, I would like you first to

look over that to see if there is anything in that that suggests advertising?"

Mr. Mercier: I submit, Your Worship ---

The Court: It is a matter for the Court to decide.

To Mr. Wegenast:

Q. (Continues reading from Page J-2, evidence of Dr. Scott):

"A. I am not familiar with the legal meaning of advertising.

Q. Assuming it has the popular meaning?

A. I would say there is nothing in this pamphlet could be interpreted in my point of view as advertising. This is information.

Q. Let us have your view of this, Doctor: looking this document through, and having regard to the literature on the subject,

Dr. Lajoie

with which you are no doubt familiar, would you care to characterize that with reference to the method of treatment; would you say it was popular, erotic, decent or let us have one or two adjectives to describe the methods treated in this pamphlet?"

Then on Page 3, he said, apparently not understanding my questions, he says:

"A. I would say the methods described in this pamphlet are the most efficient and least harmful of any of the methods with which I am familiar."?

A. Being familiar with only these, I can't say as to the others.

Q. Then I went back, of course, as Your Worship will see, as to whether there was anything to raise licentiousness and morbidity. He says:

"A. Oh, I see. There is nothing that would pamper to morbid curiosity or licentiousness in the manner in which this pamphlet is drawn up.

Q. Now, you have read the pamphlet and the methods of medical treatment described in it?

A. The methods discussed in that pamphlet are the methods which today are the accepted and best methods with which we are familiar."

Would you undertake to differ with Dr. Scott on that?

A. Those are the only methods I know.

Q. Has Dr. Scott, in your opinion, a standing which entitles him to his opinion in that respect?

A. I suppose.

Q. You suppose?

A. I can't say anything else.

Q. Dr. Scott is head of the Department of Gynecology?

A. And obstetrics at the University of Toronto.

Q. That is what he says?

A. Yes, but we are entitled to different opinions.

Q. But his opinion is entitled to respect.

A. No doubt.

Q. I said:

> "Q. You say 'today'?
>
> A. 'Today.'
>
> Q. Would you mind opening up on that a little?
>
> A. I feel the methods we have today of contraceptives are very superior to those we had 20 years ago. I feel the ideal contraceptive method today is yet to be discovered, just as the ideal anaesthetic is yet to be discovered, so we have to use the best we know of."?

A. That is the view of everybody.

Q.

> "A. I feel the ideal contraceptive method today is yet to be discovered, just as the ideal anaesthetic is yet to be discovered."?

A. I don't know why that is there.

Q. But he says inferentially that is no reason we shouldn't use them?

A. Yes.

Q. If medical schools do not turn out people who can instruct on the art of contraception ---

A. (No reply).

Mr. Mercier: I don't think it has quite been defined as an art.

Mr. Wegenast: I am calling it an art with His Worship's permission; it is a question.

Mr. Mercier: "I am calling it an art."?

The Court: Call it any name.

Mr. Mercier: A rose by any other name would smell as sweet.

To Mr. Wegenast:

Q. Do you think the community should do without something which we will say for the sake of argument would be beneficial until doctors get around to study it?

A. Your questions are too long and too slow.

Q. The reporter will read the question:

> "Do you think the community should do
>
> Dr. Lajoie
>
> without something which we will say for the sake of argument would be beneficial until doctors get around to study it?"

A. I suppose it would have to be proved beneficial before doctors would be taught it.

Q. Isn't that what Taussig says and the American Medical report which says:

> "Your committee desires to record its disapproval of propaganda directed to the public by lay bodies, organized solely for the purpose of disseminating (without consideration or restraint) contraceptive information. Your committee deplores the support of such agencies by members of the medical profession."?

A. (No reply).

Q. Let us look at Taussig: (Continues reading Ex. 104-B):

> "Your committee is of opinion the medical profession should be familiar with the many problems associated with birth control."

Do you agree with that?

A. One hundred (100) per cent.

Q.

> "Contraceptive practices are only an incident in the broader problem. In view of the fact that many marriages are childless,

physicians should inform themselves regarding the entire subject of fertility."?

A. (No reply).

The Court: I think this is the first time Taussig has come into this.

Mr. Wegenast: No, it is an exhibit.

The Court: But with this witness?

To Mr. Wegenast:

Q. My friend points out I have still left out the most direct sentence:

"It is suggested that more complete education in this particular field be given to medical students."?

A. Yes, that is my personal opinion.

Mr. Wegenast: I have an idea, Your Worship; the book I was thinking of was not Taussig, but Rosinau. There are statements in both.

The Court: When through with an exhibit, will you kindly put it back in the pile here?

Mr. Wegenast: Has Your Worship the journal of the American Medical Association?

The Court: I marked it this morning.

Mr. Mercier: It hasn't been used since.

Mr. Wegenast: Your Worship will appreciate my difficulty in finding what I want.

To Mr. Wegenast:

Q. What is your opinion of the authority of this work by Dr. Taussig on abortion?

A. He is a very good man.

Q. You are prepared to listen to him?

A. Yes.

Q. That is my way of recognizing him as an authority on this subject?

A. Yes.

The Court: What exhibit?

Mr. Wegenast: Ninety-one-B (91-B).

To Mr. Wegenast:

Q. He recommends the widespread establishment of maternal health clinics under medical control to teach women safe methods of contraception; do you agree with that?

A. I don't know that I am ready to answer that right off the bat.

Q. Leave it there then. What I am suggesting to you, Doctor, is that if there is anything good in this birth control, we can't just wait until the doctors get around to it?

A. How can you judge of the question?

A. I am assuming something?

A. From the medical point of view, you assume it is a good thing. Before you, the medical profession will have its eyes

open for the day and it will be ready to do it. That is my opinion.

Q. His Worship doesn't want me to get into the sociological side and I am reserving that, and in order to get around that ---

A. (No reply).

The Court: If it will shorten matters up, proceed on any line you see fit, but it will not have much weight coming from a medical expert.

Mr. Wegenast: I have that in mind.

To Mr. Wegenast:

Q. It wouldn’t be conducive to the health of mothers to space their children?

A. Very definitely, yes, in some cases.

Q. Assuming there is something good about birth control, all mothers should go on having a baby every year until doctors get around to study this?

A. I should like to have the evidence proved mothers are having children every year. The average is every two years, and lots of marriages are sterile and, therefore, to supplement those sterile marriages, some may have one every year.

Mr. Wegenast: I haven’t asked the witness for this, and I don’t know whether to stop him.

The Witness:

A. It is post-medical.

Mr. Wegenast: I was afraid of getting into an argument with His Worship.

Mr. Mercier: My learned friend has an unholy fear of His Worship.

To Mr. Wegenast:

Q. Twenty-four (24) mothers stood where you are standing; one had children aged 1, 2, 3 and 4; then 5, 6, 7 and so on?

A. (No reply).

Mr. Mercier: Not the majority.

Mr. Wegenast: I can take out any one of them.

Mr. Mercier: And one woman had only one child; the others had spacing.

Mr. Wegenast: I wouldn't say that.

Mr. Mercier: Say all if anything.

To Mr. Wegenast:

Q. Do you think the mother should wait until doctors study this out to get unanimous and when doctors have established it, a clinic can come along; is that your idea?

A. No.

Q. What will the poor mother do in the meantime?

A. See her doctor.

Q. Not you?

A. Yes, on the contrary; you would be surprised.

Q. Going on with Dr. Scott, I asked him:

Dr. Lajoie

"Q. Taking the methods described in the pamphlet, which, if any of them, would or might be harmful?"

He answered:

"A. I believe that coitus interruptus, which is discussed here, might have deleterious effects in certain cases."

I think you will agree with that?

A. No doubt about that.

Q.

"Q. What about the chemical methods?

A. The chemical and mechanical methods described here are harmless."?

A. I think I studied the methods in the pamphlet and I condemned every one of them, in my opinion.

Q. I am trying to show His Worship –- now, frankly and boldly, Dr. Scott's opinion ought to be better than yours because he has taught this, lectured on it and you haven't; what do you say to that?

A. The very same to that.

Q. Yes?

A. I respect what Dr. Scott says, but I have given my own ideas; I am here to testify on what I know and think and this is what I am doing.

Q.

Dr. Lajoie

> "Q. It has been suggested here in the first place that all contraceptives –- that there is no such thing as a harmless contraceptive; what do you say?
>
> A. I would not hold that view that there is no such thing as a harmless contraceptive, but I think the chemical contraceptive mentioned here is harmless.
>
> Q. Now, it has been said some of these methods are conducive to cancer?
>
> A. I would say such an opinion is entirely erroneous and as to cancer of the female genital organs: the vulva; vagina; cervix and uterus, cancer of the vulva could not be related to anything placed in the vagina."

Do you agree with that?

A. I am quite in accordance with that because there is always the chemicals and the apparatus; the nozzle has to pass the vulva before reaching the vagina, and continuous irritation on one spot may cause irritation.

Q. No, cause cancer?

A. No, but we know cancer often succeeds irritation.

Q. Would you say that a non-irritating substance would cause cancer, say, the lipstick on the lips, assuming it is non-irritating; would that cause cancer?

A. I don't suppose if used correctly.

Dr. Lajoie

Q. Take the contents of the chemical first, the jelly, you remember what they were?

A. Yes, yes.

Q. What do you see in that that would act as an irritant, having regard to the proportions and the method; would you mind looking at that?

A. The formula isn't in it, but I was told about it, and I don't think there is any irritating substance in the jelly.

Q. You spoke of salicylic acid?

A. My suggestion is, in the quantity used, there isn't a chance in the world of harm coming from that in the quantity used. In the suppository, I might say one formula there might be harmless, but when it goes on sale, or this may be made at home.

Q. The suppository?

A. What will happen: the woman will not make one; she will make a dozen or two dozen, and she will get the ingredients.

It says:

"Mix the last three ingredients together very intimately."

What does the average person know of mixing of pharmaceutical products? I think it is absolutely wrong in professional ethics to ask a person to do their own mixing.

Q. That is not the question?

A. Then, if not done well, one might contain much of the salicylic acid and the other, the cocoa butter.

Dr. Lajoie

Q. I suggest to you there is no class in the community who will make fewer mistakes than the housewife. If she makes biscuits ---

A. Beg pardon, I would like you to go into the drugstore to see how they have been mixed. It isn't an ordinary affair; they have apparatus to mix them properly. I may be wrong.

Q. If not mixed right, it isn't right, and we have already agreed there is no substitute for brains in these things?

A. No.

Q. Borax is one of the ingredients?

A. Yes.

Q. That is often used in the mouth as a gargle?

A. Yes.

Q. On that, what is the texture of the mucous membrane of the vagina; what do you call it?

A. A kind of epithelium.

Q. Yes?

A. I couldn't get the English term.

Q. It is built up like shingles?

A. Yes.

Q. Of squamous cells?

A. Yes.

Q. Similar to the epithelium of the mouth?

A. In its texture, yes.

Dr. Lajoie

Q. Is it more reasonable to think it would be not injurious to the vagina than the mouth?

A. I don't suppose so.

Q. Squire's Companion gives doses for the mouth up to 20 grams?

A. Yes.

Q. Would you ever get 20 grams in one of those by any process you can think of?

A. Yes, and you will laugh.

Q. Yes?

A. If ever these methods come to be generalized, you will have factories making them the size of this room and you will find suppositories not properly dosed.

Q. Twenty (20) grams is a large amount?

A. Yes, but if made up in a large quantity like some of the chemical products on the market now.

Q. Can you give any idea what one of those suppositories would weigh? You know how large they are?

A. They make 30 out of that.

Q. How much would one weigh?

A. One hundred and twenty (120) ---

Q. What is 120?

A. About that –- apothecary's weight?

Q. Is that apothecary's weight; have you got it figured out

yet?

A. One hundred and twenty (120) ---

Q. You can figure it out better than I can?

A. In apothecary's weight, 12 ounces, one-tenth of an ounce.

Dr. Hutton: Four (4) drams to each one.

To Mr. Wegenast:

Q. I have had it figured out, Doctor. You check me if I am wrong?

A. Yes.

Q. In this, there is 3 grains of cocoa butter, 30 grains borax, 2 of salicylic acid and quinine bi-sulphate, 3 grains.

Q. Supposing there was 10 times more salicylic acid, there wouldn't be as much as Squire's Companion advises?

A. Not in one suppository, it is the prolonged use.

Q. If too much in one, there would be less in the others?

A. Supposing one was short and the other was over, the prolonged use would bring on irritation.

Q. Two grains?

A. Yes.

Q. That is your opinion; you couldn't say there is any evidence of that?

A. No, but I have proof of other things.

Q. What about the other ingredients, the cocoa butter

wouldn't hurt?

A. No.

Q. The other ingredients, quinine?

A. I don't think it would hurt.

Q. Now, we will go on with Doctor Scott?

A. (No reply).

The Court: Five minutes adjournment.

(The hearing resumed at 4:10 p.m., same date.)

Mr. Wegenast: I would submit that the original German from Smulders might be copied into the record by the reporter.

The Court: All right. (See at conclusion this witness' evidence, Page P-143.)

To Mr. Wegenast:

Q. I have found a passage from Taussig which I would like to submit to you?

A. (No reply).

Mr. Wegenast: Your Worship, I don't know if we have established Taussig?

The Court: Yes.

To Mr. Wegenast:

Q. It is at the bottom of Page 29; it runs like this; it is Taussig talking on abortions:

> "The needless wreckage of human lives that comes as a result of this scourge of
>
> Dr. Lajoie
>
> abortion is a problem of the first magnitude and the chief responsibility for its correction lies at the door of the medical profession. If the ridiculous and contradictory laws at present on our statute books are to be corrected, if governmental agencies are to be made to realize their failure properly to provide maternal care and suitable home conditions for poor mothers with large families, if a more humane attitude is to be taken regarding the limitation of offspring and the medical indications for abortion, it is the duty of the doctor to blaze the path of reform. Every day evidence of the misery and ill health that follows upon abortion comes to our attention. No other group is in a position to appreciate as we do the damage it inflicts upon the integrity of the family. If we as physicians wish to retain public confidence and respect, we must assume our obligations in this matter. The prevention and control of abortion vitally concerns the health of the community, and while the actual carrying out of the necessary changes must be left largely to governmental agencies, to law makers and to social workers, the

direction and control should be placed in the hands of the medical profession. It is my hope therefore that by

Dr. Lajoie

presenting the subject from its wider medical and social aspects, this monograph may prove of some value in stimulating thought and furnishing data that may serve as a basis for a program of revision."

What do you think of that?

A. I can't approve abortion.

Q. Well, now, can you make this division in your mind: let us leave abortion aside; can you approve of that if it dealt with birth control alone?

A. (No reply).

Q. Do you think it is the business of the doctors; look it over carefully?

A. (No reply).

Mr. Mercier: I submit it is most unfair to ask the doctor his opinion on a passage of a book. There might be in the book other things entirely different.

The Court: I think it is proper to read a passage. He can either "I don't agree with it" or "I do agree with it".

Mr. Wegenast: This man says the doctors should get busy and I want to ask this doctor if they should or not.

To Mr. Wegenast:

Q. Would you allow me to inject this; if we had birth control, there wouldn't be so many abortions?

A. Possibly, yes.

Dr. Lajoie

Q. He says the doctors should get busy and stop them; do you approve of that?

A. No, I don't approve of it because if he blames governmental agencies -- that they had made a failure to properly provide maternal care and suitable home conditions -- therefore, let the government provide for these and let birth control be limited to what I always claim it should be.

Q. Doctor, I think you have overlooked something; that is, an argument to make home conditions such as they can bring up large families, build up big houses and so on, but he says

governmental agencies ought to be made realize and provide for them, and this is a third "if": if a more humane attitude is to be taken to provide them?

A. That would be a start and if we succeed on the third, the other two "ifs" are useless.

Q. In the meantime, you say these mothers are to go on having babies every year?

A. Not at all, let them go see their doctors and he will give them advice.

Q. Okay, let them see their doctors. Here is an extract from the bulletin of the New York Society of Medicine, 1931. I have this in the pamphlet already shown, and I don't know what my friend will say about reading it out of this?

A. (No reply).

Mr. Mercier: In order to save time, your learned friend will put in objections to everything.

The Court: What is it from?

Dr. Lajoie

Mr. Wegenast: The pamphlet I showed the doctor the pictures.

The Court: This is an article from Matsner and he doesn't recognize him as an authority.

Mr. Wegenast: This is the 1931 bulletin of the New York Society of Medicine. I presume it is honest.

The Court: All right, go ahead and read it.

To Mr. Wegenast:

Q.

> "The public is entitled to expert counsel and information by the medical profession on the important and intimate matter of contraceptive advice… Recent research in contraceptive technique now demands recognition on the part of the profession of medicine… A movement should be begun to include in the curriculum of medical schools' instruction in modern contraceptive measures and in the indications therefore. Hospital clinics should likewise be asked to offer similar instruction to practicing physicians… The absence of education of the public in sexual matters by the medical profession is mediaeval; it is to be deplored, and efforts should be made to change the present attitude of physicians."

What do you think?

A. I am not a member of the New York Academy of Medicine.

Q. You don't agree with that?

A. No.

Mr. Mercier: He is a medical man.

Mr. Wegenast: Yes, and his duty is to elaborate on that.

Mr. Mercier: The doctor has given his answer, Your Worship.

Mr. Wegenast: I would like the doctor to say why he doesn't agree with that statement.

The Witness:

A. I will have to read it over again. There is only one thing upon which I disagree, perhaps two:

> "Recent research in contraceptive technique now demands recognition on the part of the profession of medicine."

This I don't agree with.

To Mr. Wegenast:

Q. Why?

A. Because I still maintain that contraceptive technique of chemical and instrument agents are wrong.

Q. Why?

A. Because they are wrong in themselves.

Q. You keep saying it, but why?

A. Just because they are wrong.

Q. Just because?

A. And ---

Q. Just a moment: because I am speaking emphatically doesn't mean I want to be brusque, sometimes?

A. Yes.

Q. If there has been an advance in technique or I suppose you don't admit that or do you or do you know anything about it?

A. No.

Q. We will follow that up; you go on?

A. Then:

> "A movement should be begun to include in the curriculum of medical schools' instruction in modern contraceptive measures."

To this, I agree and to the rest and the indications, no.

Q. You agree when it comes to the teaching of those methods, it should be rhythm or continence?

A. No, I instruct my students not to use them.

Q. You wouldn't advise to them the fitting of pessaries?

A. No.

Q. He says you should instruct them?

A. To instruct them in modern contraceptive measures, not necessarily the technique of it.

Q. But surely you are splitting hairs?

A. All right, I don't agree at all on the first part I told

Dr. Lajoie

you about:

> "A movement should be begun to include in the curriculum of medical schools' instruction in modern contraceptive measures."

If you wish to stop there.

Q. You would not do it?

A. I would not do it.

Q. And you say these mothers have got to go on having babies?

A. No.

Q. What can they do?

A. Let them go see their doctors.

Q. And the doctors' advice will be not to do it?

A. Yes, and then they can have continence.

Q. Oh?

A. The only thing I can admit is continence, partial or total.

Q. Well, that is fairly clear and you think that the University of Toronto is all wrong in teaching the technique?

A. It is up to the University of Toronto to decide.

Q. You are under oath, Doctor, and you are the one giving opinions?

A. I am telling you: the teaching staff of the University

of Toronto is very good; I can't say anything else; I can't say it is all wrong.

Q. According to your opinion, it is all wrong or is there a difference of opinion between Montreal and Toronto and one is right and the other wrong?

A. I suppose there would be a difference.

Q. What might be all right on the shores of Lake Ontario might not be so hot along the lower shore of the Ottawa River?

A. It depends on what it is.

Q. It is up to you?

A. We divert from the medical question and it becomes a moral question.

Q. And as His Worship won't let you follow that, I won't run counter to His Worship's wishes, but you say there might be a difference in teaching between the University of Toronto in ---

A. Teaching contraceptive measures.

Q. Yes?

A. Not only might be, but there is.

Q. What might be right in Toronto might not be right in Montreal?

A. According to law or medically speaking?

Q. Medically speaking?

A. Medically speaking on the matter of contraceptives exclusively?

Q. Yes.

A. To any other thing?

Q. Yes?

A. As there is no teaching of contraceptives at the University of Montreal, there can be no comparison.

Q. You can't beat me that way; no, no, just ---

A. (No reply).

The Court: It is a terribly broad question.

Mr. Wegenast: But it arose out of Taussig; we had it narrowed down before to what Taussig said; it is clear enough to be embarrassing, but that is not my fault.

The Witness:

A. I still claim that what is wrong somewhere is wrong everywhere.

To Mr. Wegenast:

Q. And what would be wrong in Eastview?

A. For the individuals?

Q. What would be wrong for individuals in Eastview would be wrong for individuals in Toronto?

A. It depends if the Eastview people have the same views as people in Toronto. It is there that principle comes in, the moral side.

Q. I am on the medical side, Doctor; a scientist would say that what is wrong in Eastview as is suggested here would be

wrong in Toronto?

A. (No reply).

The Court: Are you referring to the acts alleged to have been done by Miss Palmer?

Mr. Wegenast: Taussig. The witness has said he thought it would be medically wrong to teach contraceptives. I have had him compare the ideas in Montreal where they won't teach contraceptives and I have in mind Toronto where Dr. Scott does, and I am asking is there one practice right in one place and that practice wrong in another place.

The Witness:

A. I don't claim it is a medical, but it is a social question.

To Mr. Wegenast:

Q. Don't get off on the sociological or moral grounds, medicine?

A. You want my answer to the question?

To the Court:

Q. As to the teaching of contraceptives?

A. The teaching of contraceptives in Toronto would not be permitted in the University of Montreal.

To Mr. Wegenast:

Q. I am asking you why, Doctor?

A. There is a ruling no contraceptives should be taught in the University of Montreal.

Dr. Lajoie

Q. You broke into the theological and I asked you is that on medical grounds?

A. (No reply).

Mr. Mercier: No, he has answered and stated his medical grounds in his practice in several cases.

Mr. Wegenast: I don't thank my learned friend for putting words in the witness' mouth. I want an answer in medicine?

The Witness:

A. In medicine, I can't answer. I have no experience; I will admit it.

To Mr. Wegenast:

Q. But you have ventured an opinion?

A. I have ventured an opinion from the accidents I have seen.

Q. You ventured an opinion it is bad —- contraceptives are bad; haven't you?

A. I am not so sure of that. I don't think I said contraceptives are bad; I said contraceptive measures, instruments, chemicals, literature given inconsiderately may do more harm than good. That is my opinion.

Q. We have gone a long way since then; let me recall one or two steps: whether these women -- while doctors are making up their minds, are these women to go on with their babies unspaced?

A. No.

Dr. Lajoie

Q. Then I put it up to you: Taussig said and the New York Academy of Medicine said, and I read a passage out of Rosenau, it is up to the doctors to get busy and find some way to give these women means of spacing their babies, and you said you didn't believe it and I asked you why and that is what I want?

A. (No reply).

Q. You tried to get out of it. You said, perhaps so and so might be right and I asked what might be right in Toronto might not be right in Montreal?

It is for the individuals, not medicine.

Q. Surely, they have the same internal apparatus?

A. (No reply).

Mr. Mercier: From the evidence going on before, that is about all they have the same.

To Mr. Wegenast:

Q. Surely, you won't say it is right in one place and not in another; seriously, I think I have you into a corner, I think?

A. (No reply).

The Court: I want this matter treated seriously.

Mr. Wegenast: I want to see if there is any way out, myself.

The Witness:

A. I think I answered the question. If Professor Scott was coming to teach it at the University of Montreal at Montreal what he teaches at the University of Toronto at Toronto, he

would be expulsed; I can't say anything else.

To Mr. Wegenast:

Q. Would that be on any scientific basis?

A. No, it would be on a moral question.

Q. You will admit people in Montreal are constructed the same as people in Toronto?

A. Presumably.

Q. And for all you know, contraceptive methods would work in both cases?

A. Presumably.

Q. And for all you know, they have as much brains in Toronto to learn contraceptives; is it not possible?

A. It is possible.

Q. The only thing is that in one place they don't believe in teaching them?

A. Possibly, what do you mean, "believe"?

Q. You say it isn't right?

A. It isn't right.

Q. That is your opinion?

A. Yes.

Q. That is the difference?

A. Yes.

Q. Now, we were at cancer; I was at Dr. Scott's answer:

Dr. Lajoie

> "A. I would say such an opinion is entirely erroneous and as to cancer of the female genital organs: the vulva; vagina; cervix and uterus, cancer of the vulva could not be related to anything placed in the vagina."

It is an exceedingly rare condition?

A. Yes, but it exists.

Q. He goes on further:

> "I have been connected with the cancer clinic of the Toronto General Hospital for some years and in that time, I have seen only three cases of primary carcinoma of the vagina."?

A. For how many years?

Q. About the same?

A. (No reply).

Q.

> "If it were caused by a rubber pessary, much more would it be caused by a pessary for retrovisation (sic)."

You would describe it as that?

A. I wouldn't compare a pessary for prolapses to one for birth control because the one for prolapses hasn't the little ring to obstruct the cervix.

Q. You know so little?

Dr. Lajoie

A. I know if secretions from the womb cannot get out, it will be more or less injurious.

Q. Who says they can't get out; how long do you think they leave these things in?

A. The time they want to.

Q. For how long?

A. Inasmuch as they are going to use them again.

Q. How long?

A. It depends on the individuals again.

Q. In ordinary practice?

A. Each individual differs.

Q. How often would you advise a woman to leave the pessary there then; I thought you wouldn't advise it at all?

A. I wouldn't advise it.

Q. How often do you advise –- do doctors advise them to take them out?

A. I don't know.

Q. Do you know if they advise them to take them out every day?

A. Then it would be less dangerous.

Q. Those for prolapses stay in for some time?

A. Fifteen (15) days or two weeks.

Q. If you had a pessary in for contraceptive purposes and it was not in longer than 15 days, you don't think there would

be any serious damage?

A. I don't get that.

Q. If you had a pessary in for contraceptive purposes and it was not in longer than 15 days, you don't think there would be any serious damage?

A. Oh, yes, I disagree.

Q. That is different?

A. Yes.

Q. How?

A. It is a different pessary.

Q. Worse?

A. Much worse.

Q. How?

A. It isn't the same instrument; I said it obstructed the cervix; the other is hard and it is in the vagina and doesn't touch the cervix, and even then, it is a desperate method where an operation can't be performed.

Q. Dr. Scott says:

> "Cancer of the body of the uterus: it is quite true a woman who has not had a child is more liable to have cancer in the body of the uterus than those who have had children."

A. That is what all the books say.

Dr. Lajoie

Q.

> "In every case of cancer of the body of the uterus, there are at least 10 cases of cancer of the cervix"?

A. I couldn't say the proportion.

Q. Are there more?

A. Oh, yes, no doubt.

Q.

> "Q. That is to say the prevention of pregnancy would have 10 times the effect in preventing cancer, then?"?

A. No.

Q.

> "A. It would in causing it."?

A. (No reply).

Q. I hadn't quite figured that out –- Doctor, have you any figures, studies or do you know of any books or anywhere that prove even tentatively that the use of a pessary is liable to cause cancer?

A. No.

Q. Let me finish about cancer: we will go on to sterility. He answers:

> "There have been certain methods of contraception proposed that might cause

Dr. Lajoie

> sterility as well as serious lesions. Those methods are not proposed here."

You know the intrauterine stems; those are old stuff?

A. Some are still using them; they go to New York to get them fitted.

Q. Are they still using the Grafenberg ring?

A. It is a little spring that goes into the uterus.

Q. You don't know about them?

A. I took one out of a woman last week and it is too bad.

Q.

> "Those methods are not proposed here and are not methods commonly proposed today."

Do you agree with that?

A. (No reply).

Q.

> "They are methods in which some appliance is placed in the cervix or uterus and left there permanently. Such appliances might not only cause sterility, but widespread pathological lesions.
>
> Q. The ring?
>
> A. The gold ring and Gottenburg pessary. The methods proposed here, in my mind, under no circumstances could cause sterility, and in some cases, they might have a beneficial

> effect. Some causes of sterility are diseases, and some of these mild lubrications might have a beneficial effect on some types of cervicitis."

Now, Doctor, have I been too strenuous in my questions to ask you just to lay aside any what-you-may-call-it and tell me if you think there is any chance that jelly would have a harmful effect?

A. The jelly?

Q. Yes?

A. I don't think so.

Q. He says a mild lubricant might do good?

A. Perhaps the jelly itself.

Q.

> "Q. Sterility is not always incurable?
>
> A. No, it depends on the cause.
>
> Q. There are people who make the dividing line as to what is permissible as a contraceptive and what is not permissible. The question is whether it is natural or something other than natural. I want to put this to you: whether you would say that the cure of sterility was a natural thing or was not natural?"

Do you get the point?

A. Yes.

Dr. Lajoie

Q. Aren't you interfering with nature?

A. Not as much as when you try to interfere with nature by contraceptives.

Q.

> "A. The cure of sterility is undoubtedly interfering with a natural law in that instance, in a patient who is naturally sterile.
>
> Q. The Lord has made him that way?
>
> A. The Lord has made him that way, and if we correct the cause of that, we interfere with natural law."

You wouldn't differ with that?

A. I believe he has the right in that I believe all women were made by God the way they are, but some are made with infirmities and there is no reason these should not be corrected and sterility is one of them and as to sterility, there is no reason why it should not be cured; diseases are given to us by God and we cure them.

Q. I think that is a fair answer. I still think it is interfering with nature?

A. What?

Q. The Lord made some sterile and it isn't right to interfere now –- obstetrical forceps?

A. It helps.

Q. If nature intended her to have that kind of instrument,

Dr. Lajoie

wouldn't a woman be provided with them?

A. (No reply).

Mr. Mercier: Read Dr. Scott's answer:

"A. Yes, we invented them to help natural law."

The doctor didn't say they were natural; he said they were made to help nature.

Mr. Wegenast: We know what the doctor said, and he knows too; we don't need our learned friend to tell him.

Mr. Mercier: I don't want my learned friend to turn over the questions of the witness.

The Court: I will be reading the evidence and will decide whether it is an interpretation or the evidence.

To Mr. Wegenast:

Q. You divide between natural and unnatural?

A. No.

Q. Isn't the reason given for objection to the use of pessaries and condoms they are unnatural?

A. Unnatural.

Q. On the other hand, rhythm is natural?

A. It is natural.

Q. That is the dividing line?

A. Who?

Q. He is holding this?

A. (No reply).

Mr. Mercier: There is no authority for saying that?

The Witness:

A. I don't quite see if you put a dividing line between chemical and instrumental contraception and contraception by abstention.

To Mr. Wegenast:

Q. Yes?

A. That is the dividing line.

Q. What is the dividing line?

A. What is the question?

To the Court:

Q. What is the dividing line?

A. What is?

Q. What segregates them?

A. One is natural and the other is not.

To Mr. Wegenast:

Q. We would agree oftener if you were not so suspicious of me. You are not so suspicious of His Worship and he gets a direct answer?

A. (No reply).

The Court: I think the reason is that I put a direct question and you go around the corner.

To Mr. Wegenast:

Q. On which side of the line, natural or artificial, is an operation for appendicitis?

A. (No reply).

The Court: What has that got to do with this case, Mr. Wegenast?

Mr. Wegenast: Surely ---

The Court: If you are going into a lot of examples?

Mr. Wegenast: This man says one is wrong because it is unnatural and the other is right because it is natural, and I am putting it to him he doesn't apply the rule in other things.

To Mr. Wegenast:

Q. Now, you know what we are after?

A. Put your question.

Q. On which side of the line, natural or artificial, does an operation for appendicitis fall?

A. Unnatural.

Q. Artificial?

A. Yes.

Q. So you think it is all right?

A. Yes.

Q. So we have made a point. What about the use of the toothbrush?

A. Very good.

Dr. Lajoie

Q. What is it?

A. It is artificial.

Q. What about cutting hair; cutting your nails?

A. Is that a question? I am sorry; I thought you were splitting hairs.

Q. What about cutting hair or cutting nails?

A. Yes, it is all artificial.

Q. Yes, that is all right. What about propelling yourself at 60 miles per hour in an automobile?

A. I think it is foolish.

Q. Then, what about ---

A. (No reply).

Mr. Mercier: Of course, Your Worship, I object very much to these questions. I must say Your Worship must believe they are all to the point and it is necessary to keep the doctor here with these questions.

The Court: I can't quite see the point; I hope to soon.

Mr. Wegenast: I have already shown that the doctor is inconsistent.

To Mr. Wegenast:

Q. You don't say riding in an automobile at 60 miles per hour is wrong?

A. It isn't natural.

Q. At 20 miles per hour?

Dr. Lajoie

A. It is natural.

Q. In an automobile?

A. It is natural.

Q. An automobile isn't a natural thing any more than a toothbrush?

A. You mean the act of riding in an automobile or the speed?

Q. Riding?

A. I am sorry.

The Court: Before dashing off on a wrong tangent, it might be better to have the witness define “natural” or “unnatural”.

Mr. Wegenast: Of course, one way of testing it is to put it to the witness, but I will go back.

Mr. Mercier: If all the witnesses I am going to call are offered all these questions, which I call foolish, I don’t see any use in bringing expert witnesses to this court. This is not a showroom, Your Worship.

The Court: You are trying my patience, Mr. Wegenast.

Mr. Wegenast: There is no more sense in drawing a line as between artificial and natural as in the case of contraception than in the case of the toothbrush.

The Court: I think there is a simpler and more direct method, without prejudicing your client, of getting at it.

Mr. Wegenast: I am very stupid, then, Your Worship. If he says the toothbrush is and riding in an automobile is not and cutting

hair is, I don’t think he can call contraceptives both.

To the Court:

Q. You do that?

A. (No reply).

To Mr. Wegenast:

Q. How can you come to taking exception to contraceptives and not to cutting hair?

A. What do you mean, “taking exception”?

To the Court:

Q. These other things are natural?

A. I wouldn’t take appendicitis because I claim we have there a pathological state which has to be cleared or cured. In the question of contraception, we are interfering with the physiological act, which is quite different, so in that respect, I believe appendectomy is a natural thing in an acute crisis or a case of appendicitis, but I would rather have it put: is it a physiological aspect or a pathological aspect of being natural or unnatural?

To Mr. Wegenast:

Q. You are one used to those words; I am backing you down to them. Now, as His Worship has put it, if using the toothbrush or operation for appendicitis or cutting hair is artificial and not objectionable, why object to contraceptives on that ground no less?

A. Give me others.

Dr. Lajoie

To the Court:

Q. Why not stick to the toothbrush?

A. It is artificial to clean the teeth, but it is necessary to clean the teeth.

To Mr. Wegenast:

Q. It is necessary to use a condom or pessary to save a person's life?

A. No, if you have other methods as efficient.

Q. But you claim the other methods are bad because they are artificial and I claim one of the things like cleaning the teeth is artificial; what do you say?

A. I claim the other methods are bad.

Q. You made that distinction, natural and artificial; I want you to justify it?

A. You want me to compare natural and artificial?

Q. I want you to justify why some things are natural and others are artificial?

A. Because it interferes with the physiological aspect of the female organs; that is what I mean.

Q. Doesn't cutting hair?

A. (No reply).

Mr. Mercier: I don't think it would.

Mr. Wegenast: It would make a physical difference in my learned friend.

Dr. Lajoie

The Witness:

A. Not the physical, but in the physiological.

To Mr. Wegenast:

Q. And contraceptives here is a pathological question which is quite different, what about spectacles?

A. It is the same as forceps; it helps.

Q. And vaccination

A. It is natural.

Q. It is physical?

A. But doesn't interfere with the physiological aspects.

Q. Does the pessary?

A. Yes, it interferes with pregnancy.

Q. One interferes with a child growing and the other with bugs growing?

A. (No reply).

Mr. Mercier: The distinction is admirable.

The Witness:

A. What do you mean by bugs?

To Mr. Wegenast:

Q. Bacteria. Isn't that physiological?

A. Yes, but bugs are pathological.

Q. With some cases, children are pathological; pregnancy is pathological?

A. In some people, pregnancy may become a pathological condition; in some cases, very limited cases, and we start again on individuals.

Q. Certainly, we have to get to individuals; each of us is one. Dr. Scott says:

> "A. The question of interfering with natural law, of course, is very fallacious to my mind. Perhaps the best authenticated example is the law of the survival of the fittest."

Do you believe in that?

A. What do you mean, "the survival of the fittest"?

Q. There is a natural law most people believe in nowadays; most people got to the way they are in the animal world survived by the law of the survival of the fittest?

A. I have no opinion on that.

Q. You wouldn't differ with Dr. Scott on that?

A. No, I have no opinion on that.

Q. I will go on -- I leave a portion out. Now, this:

"Is it necessary sometimes" --

On Page J-6:

"Q. Perhaps there is a law of the survival of the unfittest. From a therapeutic standpoint, is there ever a reason to advise contraception?

Dr. Lajoie

A. There are medical reasons when a medical man has only one of three alternatives: the employment of contraceptive measures; the sterilization of the patient or therapeutic abortion. The last is repugnant to medical men."?

A. Yes, like the second.

Q. Then, we are driven to the first?

A. Natural ones.

Q.

"Q. It is necessary sometimes?

A. Yes, when the others are not employed. Do you wish the indications?

Q. Yes, in what cases do you have these alternatives?

A. The three main groups of cases. There are others not so well marked. Certain types of heart disease, progressive rheumatism, mitral stenosis."?

A. Mitral stenosis, no.

Q.

"Secondly, in active pulmonary tuberculosis and thirdly, in cases of certain chronic kidney disease."

Do you agree with that?

Dr. Lajoie

A. (No reply).

Q.

"Where the lesion has already progressed so far that there is insufficient kidney function to carry on with the added burden of pregnancy."

Do you agree with that?

A. (No reply).

Q.

> "Q. So in those three cases, if I might put it in my own words, you must really go to prevention of the woman becoming pregnant or conceiving or having an abortion"
>
> A. Or you have the other alternative —- I didn't mention it —- and that is, let the patient die."

A. Which is absolutely false because we can never tell when a patient should die because she has a child. There are cases to whom doctors have said, "Madame, you should never have another child; it will be your death," and still these women have borne children and are still alive and have gone to the funeral of their doctor, and I am prepared to state that is a very faulty position Dr. Scott has taken on that point, which reflects very strongly on the treatments he gives his patients.

Q. And you are afraid to take a chance in the case of a kidney lesion?

A. I wouldn't say that.

Q. What would you say?

A. It depends on the individual, and I believe this is a case for each and every individual doctor to examine each and every one of his patients, and he alone can consider all the aspects of the question, can consider whether the patient can have a child or not.

Q. If you get a patient who ought not to have another child, would you advise the pessary?

A. No.

Q. What would you advise, continence?

A. Partial or total. If she is sick enough not to bear another child, she is sick enough not to have intercourse.

Q. And she might bear a child?

A. If she thinks so.

Q. The other remedy, sterilization, we don't need to consider that?

> "Now, to what extent do you go into these matters with your students?"

We will leave that out; we have covered it.

"It has been said here that many doctors know nothing about contraception and that is why you must have others than doctors?

A. It is difficult to answer. Contraceptive measures have been known to a certain

percentage of the scientifically minded for many years, if not thousands of years. That now has been gradually reaching a greater number, first, of the scientifically minded and then the lay public. One cannot answer dogmatically.

There always have been individuals with a full knowledge of contraceptive measures. The profession as a whole certainly have not, however, had it put to them in an instructive manner; they have picked up the information themselves."?

A. I believe it is quite right.

Q. Largely from the salesmen of supply houses?

A. Yes, for businessmen making more money.

Q. That is where the education of the average doctor comes from?

A. Most of them.

Q. And that is where it has come from in Montreal?

A. It depends; we have two universities in Montreal.

Q. I forgot you have two, McGill. If they go to you, they will have to take the advice of salesmen?

A. Not necessarily, they won't need it.

Q. Would you say chloroform is helpful in childbirth, like forceps?

A. If doesn't help labour; it helps divert the pain of the

mother for some time, and it perhaps allows the doctor to put the forceps in to help labour.

Q. Would you consider the avoidance of pain is of some importance?

A. Yes.

Q. Coming to the medical standpoint, is it something in favour of contraceptives whatever, saying rhythm and so on, that it does relieve the mother to some considerable extent from pain and anxiety?

A. No, I wouldn't take it that way at all. I don't think there is one woman in the whole world who would not have another child because it is too painful.

Q. I am not thinking of the pain of childbirth?

A. I am sorry.

Q. But the pain of childbirth ---

A. The more they have the easier –- there are times the doctor doesn't need to come over.

Q. We have cogent figures; the more children, the more it is?

A. No, I wouldn't agree.

Q. That wouldn't be your idea?

A. Of course, figures are submitted, but generally speaking, it is easier for a woman having later children. Sometimes there is malposition making it difficult for labour, but generally speaking, the youngest have come easier than the oldest, especially since prenatal care and baby clinics.

Dr. Lajoie

Mr. Mercier: Pardon me, the witness would like to catch the five thirty train to Montreal, but if Mr. Wegenast could finish tonight, he could take the early train tomorrow morning.

The Court: It is up to Mr. Wegenast.

Mr. Wegenast: It is up to the doctor.

The Court: He always comes back to the same point; it depends on you. If you think you can't finish tonight, adjourn now as far as this witness is concerned.

The Witness:

A. I have two confinements to attend and we haven't birth control.

To Mr. Wegenast:

Q. You don't control birth?

A. (No reply).

To the Court:

Q. You don't know, Doctor, how long until you are free?

A. They are due the tenth of this week.

Q. Is it the first?

A. At 43 years, and one is the third.

Mr. Wegenast: I do favour this: We should sit as long as possible tonight on a chance we might get through. I don't think I will, but I would like to go on.

The Court: I wouldn't like to go on tonight if we are not sure. In that case, we release the doctor until such time as he can

Dr. Lajoie

come back.

The Witness:

A. I will wire Mr. Mercier the moment I will be able to come.

To Mr. Wegenast:

Q. Will that be this week?

A. I can't any more answer than you could a few minutes ago, sir; it might be at the end of this week.

To the Court:

Q. Keep in touch with Mr. Mercier and let him know how soon you can return?

A. Yes.

(Witness temporarily retired. (Not recalled).

Excerpt from "Periodische Enthaltung in der Ehe" by Von J. N. J. Smulders (admitted to record by the Court, see Page P-112):

> "Unter Neomalthusianismus verstehen wir die Sünde, bei der die Eheleute sich so vereinigen, daB durch die Art and Weise der Handlung an sich Fort-pflanzung des Lebens ausgeschlossen ist. Unterscheiden wir nun sorgfältig Zweck und Mittel. Zweck ist Kinderbeschränkung. Dies ist an sich noch nicht tadelnswert. Mit ebensovielen Worten erklärt der Papst: 'viele gehen so weit… den Rat zu geben, die Eheleute sollten das Kind nicht durch ehrbare Enthaltsamkeit (die mit beiderseitigem Einverständnis auch in der Ehe erlaubt ist), sondern durch Verkehrung des natürlichen Aktes fernhalten.'
>
> Grade die Verkehrung des Aktes ist das sittlich unzulässige Mittel, wodurch man den an sich gleichgültigen Zweck erreichen will, und

aus diesem Grunde ist der Neomalthusianismus verwerflich, nicht wegen des Zweckes an sich."

Argument re cross examination

Mr. Mercier: If questions in cross examination are going to have the same wide scope as they have been –- I think they have been submitting some very ridiculous questions. If this is the case, it would be my duty to leave the case stand where it is. I can't afford to be put at the disposal of people who, to my mind, are trying to make a case for birth control at the expense of the Crown Attorney for this country who has other work.

I repeat again: a lot of these questions are objectionable and irrelevant, and I have objected, and Your Worship has agreed, and I learned council has been permitted to carry on.

Although it might be to the detriment of the Crown, I may not bring in any more evidence in rebuttal, but if the Defence is going to ask questions to witnesses, questions absolutely irrelevant to what happened in Eastview on a certain date -— I bring this up with all due respect, and I know Your Worship's difficulties, and I think that should be determined at once and for all.

If that is going to be allowed for the next 10 days, I do not intend to proceed.

Mr. Wegenast: Mr. Beament will deal with that.

Mr. Beament: It is a most astounding suggestion the learned crown attorney has made.

The principles of cross examination are, I submit, well-determined, and I mentioned them to Your Worship this afternoon. Within those general principles, the Defence is entitled to raise any question on the points raised.

If the question doesn't fall into one of the classes of cross examination, I expect him and you to reject the question, but for him to get up now and say that he may not proceed because the Defence may ask some question he doesn't want asked, and if my friend is gong to produce some Defence apart from the duty of the Crown to produce all the evidence, whether it hurts the accused or not, and if he thinks it is going to assist the Defence, and not lean on Your Worship.

Your duty is to decide on each question and my friend has no right to make a general threat or immediate threat: "if the Defence is not restricted, I will not call more witnesses".

I do not suggest we can ask any questions not within cross examination, but for him to object on such a wide field has nothing to do with the case.

The Court: I will give a ruling tomorrow morning on that, Mr. Mercier.

Mr. Beament: It is covered in Halsbury.

Mr. Mercier: There has been a very broad latitude in cross examination, but surely there must be some limit.

The Court: It is not the usual type of case I am handling, don't forget.

Adjourn to tomorrow morning, 10 o'clock.

(The Court thereupon adjourned).

F. W. Wegenast, Esq., K.C.

REX vs. PALMER

Eastview Police Court,

1936

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Mr. Wegenast

REX vs. PALMER

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Ruling

(The hearing resumed at 10:00 a.m., 9th December, 1936)

The Court: There is a certain ruling, gentlemen, you wanted me to give this morning:

First of all, as to Section 7 of the Canada Evidence Act: it seems to me the wording of the section is quite clear, and the cases bear out that any application for leave to call more than five expert witnesses must be made before the first of any such witnesses is examined.

If the prosecution or defence are doubtful if it is necessary to call more than five, at the time they are calling the first one, I think the wording of the section is so clear that they must protect themselves against such an eventuality before calling the first witness. I therefore rule the Crown is limited to five expert witnesses in this case.

Mr. Mercier: Would Your Worship add to that, "even when it is not intended for the Crown to call expert witnesses"?

The Court: Yes, in the case, Mr. Mercier called his first witness, a medical witness, and he states at the time it was not his intention to call more than one. He apparently now, after

hearing the defence, has the intention of calling more than one, and I hold his leave should have been applied for before he proceeded to examine Dr. DeHaitre.

Mr. Wegenast: Your Worship, I want to state once more, if in order, if Your Worship sees any way of getting over the objection, so far as I am concerned, I am willing.

The Court: I spent all last night on this point and I can't see a way.

Ruling

Mr. Mercier: It would have been much easier for Your worship to go over the objection if it was not raised.

The Court: The second question raised was as to the cross examination of expert witnesses. The general rule, of course, is that any witness called to the stand to prove the simplest fact or point at issue in the case may be cross examined on any matter whether relevant or not to the issue tending to show whether his mind is impartial to the issue.

This cross examination need not be restricted to the issue and the questions are for the purpose of testing credibility.

The second rule is that once a witness is called to prove the simplest matter of the case, then, the opposing party may examine him on every material issue relevant to the case.

I can find no rule which puts an expert witness in a different category from an ordinary witness in this regard.

I will state this; however, it is only reasonable for the Court to take the view that not very much weight can be attached, say, to the evidence of a medical expert who is examined on theological, moral, and other issues in the case.

After all, he is no more qualified on these matters than any layman called to the box. You would not expect a handwriting expert called could give very weighty evidence on a question of ballistics; that is, he is not an expert on that, and my view holds in this case: the cross examining of a medical witness on matters outside the medical field is to a great extent wasting the time of the Court.

On the other question raised as to the breadth of cross

Ruling

examination by Mr. Wegenast, I have not so far limited him in his efforts to prove the defence, public good. I have not limited him to the community of Eastview in that regard. I do not propose to do so now.

Then, the wording of Section 207 is peculiar in that it places upon the accused the definite onus of proving the public good as her defence, and I do not propose in this case to place any unreasonable limits on the accused in her efforts to substantiate this defence.

The fourth point: Mr. Wegenast asked leave to recall Mrs. Deslauriers for cross examination. She was called as a witness yesterday morning, was examined in chief by Mr. Mercier, and turned over to Mr. Wegenast for cross examination. He endeavoured to find among his papers the application card from Mrs. Deslauriers. He found a typewritten copy, and after perusing it said he had no questions to ask.

Apparently, during the noon recess yesterday, he located the original card, and asks leave now to recall Mrs. DesLauriers on the grounds there is a clerical error in the typewritten copy, and having the original, he now wishes to proceed with the examination.

It is a matter entirely in the discretion of the Court. I will allow that and I will allow it for one purpose solely, as to the application card and any matters connected therewith, and outside of that, I will not permit any cross examination.

Mr. Wegenast: As a matter of fact, it will be sufficient if I can get her to identify the car (sic) and not leave Your Worship under any misapprehension. The clerical error appears in both

copy and original, and I wanted to see the original before putting the copy in. That is all I want: to put the card in.

The Court: Any re-examination will be limited to the card only.

Mr. Wegenast: If my friend is willing to let the card in without the lady being in attendance?

The Court: I don't think so.

Mr. Mercier: That is subject to my objection and on the third ruling that it stands notwithstanding that Section 207, sub-section 2, which reads:

> "2. No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged…"

(Note by reporter: taken from Crankshaw's fifth edition)

The Court: I have taken that thoroughly into consideration.

Mr. Mercier: Will Your Worship add ---

The Court: Notwithstanding the wording of sub-section 2.

Dr. Couture

DR. ERNEST COUTURE, duly sworn, deposed:

Mr. Mercier: He is called subject to my objections. I am bringing him in rebuttal of medical evidence, subject to the general objections I have made regarding cross examination.

Mr. Wegenast: I don't apprehend.

The Court: He is crossing a bridge before he comes to it.

Mr. Mercier: Not exactly, I believe I have plenty of precedents. To make it plain, it is this the Crown alleges: this is not a case for or against birth control; it is a case against the accused, Miss Palmer, under Section 207, on what happened in Eastview, and that is the only thing the Court is entitled to consider, and that is why I put the witness in the box subject to that objection.

To Mr. Mercier:

Q. Doctor, you are a duly qualified medical practitioner for the Province of Ontario?

A. Yes, sir.

Q. Where did you graduate?

A. McGill, 1916.

Q. Now, Doctor, you specialized, I understand, in what?

A. Obstetrics and gynecology, mostly obstetrics.

Q. For how long?

A. Since 1920-21.

Q. Will you tell the Court what experience and qualifications you have as an expert witness?

Dr. Couture

A. After graduation, I had one-year internship in the General Hospital. Post-graduate in New York Misericordia under Dr. Kosmak. In general practice a couple of years and went back for post-graduate at the Lying-In in New York. Then, charge of Misericordia, Ottawa maternity, for 10 years and 2 years in charge of the obstetrical department at the Civic. I am in charge of the obstetrical department at Water Street Hospital, consultant to Hull hospital and adviser to the local Victorian order, member of the Canadian Welfare Council, Ottawa.

Mr. Mercier: Does that satisfy Your Worship as to the qualifications of the witness?

The Court: I think that certainly establishes you should know something about it.

To Mr. Mercier:

Q. Now, Doctor, in order to avoid my learned friend asking a question which is always very painful to him, do you mind stating you are a Roman Catholic?

A. Yes, sir.

Q. And also a medical doctor?

A. Yes, sir.

Q. And you come here as a man of science?

A. Yes, sir. May I be allowed to express or make an analysis of what guides me in my decisions on contraception? I may have to go outside the frame of a doctor or medical science to do that.

Q. That may be surprising?

A. I say that to protect myself, which is to state I am prepared for that by wishing to say, as a Catholic, I am not stampeded to follow certain doctrines because of scruples or any other emotional feelings. My feelings on that are based on science, philosophy or common sense, but this is what I base my ideas on. If you will allow me to use this memo to follow my ideas?

Q. You may use the memo to refresh your memory?

A. These are my ideas: I have no criticism against anyone who differs with me, but I believe as strenuously what they believe counter.

Q. Those things come from experience in your practice?

A. No, they are reasons I don't believe in contraceptives, not because of experience, but reasoning.

Q. Yes?

A. We are under biological laws as far as our body is concerned. We cannot decide what our eyes do. They do what they are meant to do. We can't make them do anything else.

Mr. Beament: I am not sure what question the doctor is answering.

The Witness:

A. I am explaining why I don't believe in contraception, because yesterday and the day before, it has been presented by the defence, and the men in the box were naturally limited in their questions because of sticking to the medical.

Mr. Beament: The doctor is acting as counsel.

The Court: The doctor is explaining the basis for his views later on.

The Witness:

A. I think that will shorten the evidence in future.

To Mr. Mercier:

Q. And not referring to the toothbrush?

A. I will go through a little biological study. Excuse the form; I am not prepared as my friends have been. I will give it the best I can.

I was on the biology of the different organs. We are not able to change what they are meant to do. It is not man's law to go above the biological order. If we interfere with the biological order for each organ, we must pay the penalty and suffer some pathology in that.

If you submit your eyes to something dysgenic, you will have a pathology there. If you study the other organs the same, you will have a pathology and the genital organs the same; if not treated in the way intended, some pathology will occur.

It stands for rhythm if persisted in and sterility no matter what the cause -- the cycle if not completed, there will be a pathology.

But in regard to the sexual organs, two things must be taken into consideration. There is sociology, and I must get outside the medical science to explain my views.

Mr. Wegenast: My friend has raised the point, Your Worship.

Mr. Mercier: No, sir, I am going to raise it now. But I have

no particular objection; I am willing, but the point having been raised so often, it is there, that inevitable collusion between the two, but Your Worship has tried to separate them, but the doctors themselves think it isn't possible to separate them, and the point having been raised, I feel it my duty to raise it now.

To the Court:

Q. Doctor, make it brief?

A. All I am trying to do -- Mr. Wegenast has tried to get an answer all afternoon, the answer I want to give.

Q. It might shorten the matter to let you proceed?

A. I can't go very well on this unless I am allowed freedom.

Q. For the sake of brevity?

A. Now, the consequences of the sexual act is not only to the individual himself, but there are social consequences, so how can a law not man-made be interfered with by man and not have some consequences either on the individual or on society? You have made me lose the thread of my ideas.

To Mr. Wegenast:

Q. I am sorry. I wanted to hear that argument?

A. Am I going too far, Your Worship; I thought I was answering a question.

Mr. Mercier: I hope Your Worship will not curtail any of my witnesses in view of the latitude given in cross examination and the narrowing of the number of my experts.

The Court: I haven't so far.

Mr. Mercier: No, Your Worship, and with respect to my learned friend…

The Witness:

A. In treating a patient, we are in duty to treat that patient and also to see that treatment isn't going to interfere with society. I am treating, for instance, a case of lues. I must treat that patient as an individual, and at the same time, give such treatment as is beneficial to the rest of society.

You can't limit it to one patient, and you can't answer many questions for that reason. That is a much more scholarized way of answering the question, and I feel not at liberty now -— I thought I would be given more liberty.

To Mr. Mercier:

Q. I may assure you you will get all the freedom you want in cross examination. I guarantee that to you?

A. From what I have said, I have dwelt on the sociological side of the studies I have given here in obstetrics and gynecology qualifications, so I am willing to answer Mr. Wegenast as far as I can in other spheres, but so far as the sociological and economics -- I will answer questions as well as I can.

Q. I believe I will have a few questions to ask you, Doctor. I guess we will begin by requesting you to examine this Exhibit 5-B, which is the pamphlet which was distributed, as you know, to the women who had several children and were on relief, to women who had several children and were not on relief and to women whose health was not very good and to a woman with one

child, and in other circumstances?

A. May I have the French version?

Mr. Wegenast: I notice a mistranslation which apparently misled Dr. Gerin-Lajoie: the words "warm water for the douche," is translated "chaud," which I think is severe; I think it means "hot". I don't ---

Mr. Mercier: I stated it was a fairly bad translation, and having been written in French and being a matter of some importance, it should have been given to somebody competent.

Mr. Wegenast: I am sorry; it was intended to be accurate.

Mr. Mercier: That is not my worry.

To Mr. Mercier:

Q. Go ahead?

A. The first line, "the appealing cry of mothers," it sounds very much like Fletcher's Castoria, "babies cry for it".

> "Hundreds of thousands of mothers die yearly because of their unfitness for pregnancy."

That, as Dr. Scott said, is true, but we are concerned with statistics; when we give figures like that, we should be exact; it may be for the world, but in Canada, hundreds of thousands of mothers don't die annually.

We are concerned with the mental attitude of mothers in pregnancy. She has a hair-raising experience, and if told hundreds of thousands of mothers die in pregnancy, can you imagine the shock she goes through? It is a mental condition that is unhealthy to say the least.

Dr. Couture

Q. As I understand, Doctor, specialists in obstetrics generally advise the husband to show as many beautiful things to the new mother and take infinite care of the mother; take every care?

A. That is our hygiene.

Q. Do you think from that pamphlet a newly married mother might think she might be one of those hundreds of thousands who die?

A. Yes. As far as the rest is concerned, I concur with Dr. Lajoie, only I wish to elaborate on some points.

Q. Doctor, you are not, of course, a professor in any university, but you have had several cases of confinement in your practice and considerable experience, and it is from your experience and knowledge you are giving this evidence as to these things

Now, if my learned friend is not satisfied, I am wondering if they want the doctor to go through the pamphlet from point to point. This doctor says he concurs and will elaborate. Go ahead, Doctor; there is no objection?

A. The first thing is withdrawal; we all agree on that.

Q. Take each in detail?

A. As to withdrawal, it is accepted generally it is deleterious. Douching and washing the vagina immediately after intercourse has some value. There is nothing there except as to the strong solutions in some instances.

Q. Is there anything mentioned there of the danger of using too strong a solution?

A. (No reply).

Mr. Wegenast: It is in capital letters.

The Witness:

A. They don't give any warning as far as alum or vinegar are concerned.

To Mr. Wegenast:

Q. But Lysol?

A. They don't recommend that only in very dark characters there, and it is quite proper to do it, but this should have been mentioned.

To Mr. Mercier:

Q. What do you mean, "this should have been mentioned"?

A. As far as alum, acetic acid or vinegar are concerned, people won't be absolutely sure of the results: the first time, they might follow the routine; the second time they haven't a spoon or measure and they go according to what they think is the dose and wanting to be absolutely sure of the results, they increase the dose and it is very possible they would use an overdose.

In this regard, I see bichloride of mercury. I have seen a patient use bichloride tablets and keep one in the vagina the whole night.

Q. With what result?

A. She burnt the vagina right through to the bladder.

Mr. Wegenast: There is nothing in the pamphlet about bichloride

of mercury being used that way?

The Witness:

A. I cite that because it was said before in Court if something is used that will irritate, she will stop. In this case, she nearly burnt her vagina through.

The Stopes formula: There is the danger of the formula not being prepared properly. If you have the quinine in a larger dose than presented and salicylic acid, which is very, very irritating -- if that is not in the proper dose, it would be very irritating.

To Mr. Mercier:

Q. Is there any warning about an overdosage causing damage?

A. I don't see any.

Q. They just use the prescription and find out about it this way, and they don't warn about an overdosage?

A. It has been stated by witnesses here before where it was causing some numbness in the vagina. That is important because if there is numbness, there will not be satisfaction, and a lot of neuroses may develop.

Then, we use quinine as an abortive to induce labour. If enough quinine is used, it will gradually absorb into the system.

It has been said it is impossible for it to go up the cervix; it might go for a non-para, no children, and multi-para, and the cervix is quite close (open)? and not much might be needed.

Q. At the beginning of pregnancy, it might be dangerous?

A. Yes, because the tissues are quite oedematous even in

the squamous epithelium because there is absorption there and the tissues are more active.

Q. Yes, Doctor?

A. Quinine being absorbed constantly is a depressant on the soft cardiac muscles. Using it once or twice is all right, but some might not want children for years, and she might use it at intervals, and there is the constant absorption, and it might cause some depressive muscular weakness. There is a ringing in the ears, of course, that is a well-known toxic effect of quinine; that is a possible thing to develop.

The contraceptive jelly, I can't object to that very much; I don't see anything there really deleterious. It has been recommended even for a little soothing effect, and the application of it by a canula ---

Mr. Wegenast: What?

Mr. Mercier: The nozzle.

The Witness:

A. The nozzle. I don't object very much because usually the human being won't resist pain if it doesn't happen to go right, but the application of this contraceptive jelly is so unreliable, I don't think any doctor has recommended it. It is recommended with something else, but I don't see any recommendation of it exclusively and because of the uncertainty of it.

To Mr. Mercier:

Q. All the experts said nothing was 100 per cent, and my

learned friend thought sterilization might be, and Dr. Scott said he was not so sure; is there any method 100 per cent?

A. It is generally accepted nothing is perfect.

Q. Are you through with the pamphlet?

A. Continence and condoms: I know it has been reported by some patients if they have used that all the time, they discard it sometimes; they go somewhere else. It is not very satisfactory.

Q. What do you mean, "they discard it sometimes"?

A. Those men get tired of using it and go where they can do without it, and the patients complain to me of that experience at home.

Rubber caps and pessaries: That is also something intervening between the man and wife, and it should certainly tend to reduce the satisfaction in this sexual act for one or the other, and as a consequence of the prolonged use of that, it might affect the nerves of those patients dissatisfied with the consequences. We all know it and it is unfortunate as Dr. Scott admitted. It is a very hard thing to apply right.

Then, there is mentioned here the tampon. Just the gauze alone against the cervix of a woman pregnant is dangerous. We use that to induce labour. That is one means, if the patient uses that against the cervix when a few weeks pregnant, a woman tending to have abortions will have one, and if you add the irritants, it will be doubly effective. I have seen cases where the tampons have been forgotten.

I don't think there is reason for levity, Your Worship.

Mr. Mercier: I said yesterday there seems to be some people who, not thinking as other do, they think the others are suffering from a bug or something.

The Court: I have said I would clear the court room and if this is not stopped, I will have to do so.

Mr. Mercier: If all the American and other medical associations don't believe what some people who came here believed and if they did there might be some way to give intelligent consideration -- the monopoly of intelligence is not in Toronto.

Mr. Wegenast: Because I come from Toronto -- after all I am a member of the bar –- I don't think remarks like that are called for.

Mr. Mercier: Nothing personal.

Mr. Wegenast: One of the newspapers spoke about "l'offensive Torontonienne".

Mr. Mercier: That is not so bad.

Mr. Wegenast: I think it is unfair of my learned friend.

To the Court:

Q. Go ahead?

A. Tampons: I have one experience in mind; one was forgotten, and as doctors, we know foreign tissues like that pressing against the cervix will eventually develop some serious trouble. I will not go into the whole pathology of it.

Regarding the sponge, there is the possibility of saturating that sponge with too strong a solution.

To Mr. Mercier:

Q. The rubber sponge"

A. The rubber sponge.

Q. It was stated before, and you have heard, none of these methods were 100 per cent safe?

A. Yes, sir.

Q. Doctor, will you tell me this; why should a doctor prescribe to a woman who shouldn't have any more children for reasons of health –- why should that doctor prescribe a contraceptive method which according to the best medical authorities is not 100 per cent safe?

A. I think I cannot very well answer that question; I would have to be facing a case; it is individual.

As far as I am concerned, personally, I am against contraceptives being advised for those reasons. As far as other doctors presenting them, it is up to their consideration of the merits of the case.

Q. If it is dangerous for a woman to become pregnant for health reasons, would it be just as dangerous to advise contraceptives not 100 per cent safe?

A. There sometimes is reason, if a woman is unable to carry on the birth of a child, because of some pathological condition like tuberculosis, kidney trouble, cardiac conditions, if that woman bears children, and we give her means which we suggest will prevent her having children, that a patient who is already suffering from some pathology the sexual act might become dangerous and if she did become pregnant it would be dangerous and she would be in any case taking chances. If no

contraceptives are advised, she wouldn't take chances.

Q. There is as much danger advising contraceptives to a woman in such health it would be unwise for her to have a child as in not advising contraceptives?

A. Yes.

Q. In other words, wouldn't it be advisable to wait until such time, until a safe, sure, 100-per-cent method has been found instead of risking the life of the woman, advising some cont4raceptive which might not work?

A. I do not follow?

Q. Wouldn't it be advisable for doctors to wait until such time as a safe, sure, 100-per-cent method has been found in order not to cause that danger, so I put this to you doctor: if there is one chance of saving the life of one woman, if there is danger of her suffering or dying because she becomes pregnant, is it not serious enough not to advise the use of any contraceptives unless they are proven 100 per cent sure?

A. Medically speaking, so far as all are agreed, all are uncertain; some are dangerous, some less than others. I don't know if I am going out of my latitude.

To the Court:

Q. Answer the question?

A. I said we haven't found a contraceptive that is certain, and some are dangerous, some less dangerous.

To Mr. Mercier:

Q. Wouldn't it be better before prescribing any

Contraceptives -- if it is dangerous for the woman to bear children, surely it is just as dangerous to become pregnant when the contraceptive fails as when it is done in the way our ancestors, let us say, learned to do that act?

A. That is only, I would say, common sense.

Q. I suppose that by this question, if there is a real danger in the woman becoming pregnant, is that danger not such as to advise the woman not to use contraception at all, even if saving one life?

A. That is what I have said before.

Q. From the medical point of view, would you say any of these methods may be harmless in themselves if applied after proper medical instruction in individual cases?

A. The word "harmless" cannot be used because you cannot go against pathology. You are intervening with the usual cycle and no matter what is used -- any contraceptive, anything interfering with physiological laws will produce a pathology.

I wouldn't say that would happen in two or three years. Some have spent two or three years in clinics and not observed it; they may have missed it. I don't say it doesn't exist; I say, generally speaking, they can't be called harmless.

Q. You take this general attitude: in your opinion, no contraceptive method can be harmless because they are interfering with a biological condition?

A. I will answer the question another way. This would be a man who believed in it and believed there would be no harm. I would say, "use your judgement," and I would say –- and I think

he would agree with me –- in consulting about the type, the doctor should advise if it is used, and if meant for a patient whose health isn't good, he must be seen by the doctor. If you would avoid disastrous effects from pregnancy, the patient should be seen by the doctor.

And you will agree the social worker can't tell at a glance?

A. Whether the patient should have one or the other kind of contraceptive? It is difficult for the doctors sometimes.

Q. And most of these women chose the jelly, and the pamphlet was sent with all these instructions. The pamphlet methods –- taking it for granted all women are normal physically?

A. The ideal physically fit woman in appearance and everything is hard to find. Physiologically, physical organs would vary from the percentage of what we see from the outside. The proportion would be the same, of course. It is understood by everyone no one is 100 per cent.

Q. The methods in that book should be given only under competent medical advice.

I don't know that I will ask you about this card.

Now, the American Medical Society is well-recognized?

A. Yes, we don't accept all their ideas, but we certainly have there a body of men we look up to.

Q. You have a great deal of respect for their science?

A. Yes.

Q. Now, Doctor, you have heard of their Kansas City

session?

A. Yes.

Q. Held in May of this year. Would you agree with their recommendations:

> "The committee considers that this is necessarily an incomplete report and from its study to date makes the following recommendations:
>
> 1. That a committee be appointed to continue a study of birth control and to report further to the House of Delegates."

Do you agree with that, Doctor?

A. Yes.

Q.

> "2. Steps should be taken by some responsible group to develop standards for judging contraceptive materials."?

A. Yes.

Q.

> "3. Your committee desires to record its disapproval of propaganda directed to the public by lay bodies organized solely for the purpose of disseminating (without consideration or restraint) contraceptive information. Your committee deplores the support of such agencies by members of the

> medical profession. We feel that an entirely false sense of values with respect to the important function of childbearing and of parenthood has been created by the activities of such organizations."

Do you agree with that?

A. Yes, I agree with that.

Q. They seem to attach considerable importance to the function of childbearing?

A. It is quite an important subject.

Q. Would you say it would be one, in your opinion, which should not be interfered with lightly?

A. I have expressed my views on that at the opening.

Q. Doctor, what do you say as to this woman who is using contraceptives, who undoubtedly does not want a child, and the idea the contraceptive might fail and this woman become pregnant; she might very easily resort to the use of abortives?

A. (No reply).

Mr. Wegenast: That is a little questionable in form.

Mr. Mercier: That finding is in the American Medical Association Kansas City convention; they have found that.

Mr. Wegenast: Put it that way.

Mr. Mercier: It is very clear. Of course, they may err.

To Mr. Mercier:

Q. At page 1911, the two last sentences of the first

paragraph in the second column:

> "The efficiency of all present methods depends on intelligent use. None are dependable for couples who are intoxicated, subnormal or lacking in self-control. There is evidence that many women who have abortions performed are familiar with contraceptive measures, but seek an abortion when the method fails."

Do you agree with that?

A. Of course a woman who is anxious will not seek abortion. A woman who is not anxious might stand it but if she has taken means her mind is set and she is liable to find the means.

Q. And if these contraceptives fail, she is more likely to resort to abortives.

Now, doctor, will you tell some of our experiences in your practice?

A. In what way?

Q. Any of your patients who might have used contraceptives?

A. The question is pretty broad. If a patient is using contraceptives for a certain time and we are called, we know she is using them; she has some vaginitis or some neuroses. I can't say she has those because of that; it is difficult to make a diagnosis, and there is no tag indicating what contraceptive was used or what was done, but we often suspect those conditions result from some contraceptive means.

The history from those patients is difficult to obtain. I have

seen vaginitis trauma, very acute; there is no infection to account for it excepting the using of contraceptives because of the extent of the lesions.

For instance, using a very strong antiseptic. You would have vaginitis irritation from using strong antiseptics; the whole vagina is affected and not much trauma, but it is difficult to get a history and get the patient to admit what she can.

Q. The functions of parenthood, and it is important, being what they are; do you believe sending a young lady who is called a social worker calling on people without an introduction, asking if the woman has enough babies, asking a few questions on this card, if there is a sufficient interval in those important functions, and by asking these few questions, having contraceptives and information sent?

A. I will answer medically only. We would advise whoever has faith in contraceptives that is their own business; they are entitled to have their own ideas in that respect, and the objection of the doctor to the use of contraceptives would be medical reasons and very occasionally may be social.

The doctor is not altogether interested in that patient, but also the consequences to society, but medically speaking, we would not advise a woman to become pregnant with such as heart, kidney and lung diseases. That would tend to reduce the possibility of mothers becoming pregnant, but as Mr. Wegenast said, it is cutting off the head to cure the headache.

But medically speaking, I don't think it advisable to go from house to house to give advice that might be no good or dangerous.

In "Need our Mothers Die," it is said it is possible to reduce the maternal mortality by hygiene, so I don't think this distribution, medically speaking, is advisable.

Q. Again, a woman suffering from a heart condition or any other condition which might impair her health, it might be just as dangerous for her to become pregnant if she used a number of contraceptives or became pregnant using contraceptives that didn't work?

A. (No reply).

Mr. Wegenast: I will admit that.

To Mr. Mercier:

Q. It would be just as dangerous for a woman suffering from a cardiac condition and dangerous for her to become pregnant -- it would be just as dangerous for her to become pregnant in what we might call the natural way or she became pregnant because the contraceptive failed?

A. There is no difference there.

Q. I submit to you: contraceptives not being yet 100 per cent, it is still an enormous chance to take to use them in those cases?

A. That is absolutely the case. That is why I would hesitate to use it, especially on that ground, also besides the other reasons given.

Q. You are undoubtedly going to be cross examined, but from a medical and scientific point of view, you say now, medically speaking, in a case where ---

A. (No reply).

Mr. Beament: Isn't that leading; you are putting a lot of things in the doctor's mouth?

Mr. Mercier: He is an expert witness.

The Court: You can't lead an expert.

Mr. Mercier: It is a hypothetical question.

The Court: Make it clear.

To Mr. Mercier:

Q. A hypothetical case of a woman going to see you, leaving your religion aside or your belief alone, if the woman goes to you suffering from a cardiac condition and you decide her condition warrants her not having children, would you advise her to use a contraceptive not 100 per cent safe?

A. (No reply).

Mr. Beament: What would you advise her; surely, my learned friend knows?

The Court: Better ask what he would advise.

To Mr. Mercier:

Q. Doctor, a woman goes over to you: from a medical point of view, for medical advice, and you are requested to leave your religion aside and inhibitions alone for the moment, what

would you advise her to do if she had cardiac, kidney or other trouble that would make pregnancy dangerous? What would you advise her to do?

A. A question like that is so personal.

To the Court:

Q. Doctor, I think you can take a hypothetical case: a woman with cardiac condition, which would be highly dangerous if not probably ---

A. I would not under those conditions advise a measure which would be uncertain.

Mr. Beament: The doctor must answer the question put, not what he would advise.

The Witness:

A. I said I would not advise them.

To Mr. Beament:

Q. Is that all the advice you would give, Doctor?

A. That is all I was asked to answer.

To Mr. Mercier:

Q. That is sufficient.

CROSS EXAMINATION

Mr. Wegenast:

Q. Doctor, you remember where we left off; you told my friend what you would not advise. I ask you now to tell me what you would advise?

A. I would advise continence, if possible, or partial. If you wish me to answer that question completely, I will.

Q. I would like you to, yes?

A. As far as partial continence is concerned, if I had

results worth considering.

Q. What do you mean by continence, periodical continence?

A. Yes

Q. And by that you mean systematic periodical continence based on the theory of Ogino and Knaus?

A. Yes.

Q. Go on?

A. That would apply to cases where I fear it is the only alternative. My experience is that it is like other contraceptives; it is unreliable. Just recently, two patients engaged me who were without pregnancy for three years, and in one instance, made a trip and forgot and became pregnant, and the other was anxious for one and became pregnant, but to my mind, it is an uncertain thing.

Q. Yes?

A. But it is worth developing and studying.

Q. You have studied many cases?

A. About three dozen and I had two failures that reported to me, and because of those two failures, I can't tell if the use of rhythm is certain or not.

Where they get instructions from real studies of cases, it has been very successful.

Q. You wouldn't say it is 100 per cent?

A. Oh, no.

Q. You would agree with Dr. Lajoie that one of the most

regular things about a woman is irregularity?

A. Yes, absolutely.

Q. That, of course, is the cause of the ineffectiveness of the Ogino-Knaus theory?

A. I think the word ineffectiveness is too strong; I would say "unreliableness"; "ineffectiveness" goes too far.

Q. Yes, I consider your word –- it is perhaps better than the one I used, but it is occasionally ineffective, I suppose?

A. Yes, it is occasionally ineffective.

Q. Therefore unreliable?

A. Is that a definition of ineffectiveness?

A. I don't know if it is or not; it is not worth proceeding with. But you don't hesitate, then, prescribing a remedy even if not 100 per cent effective?

A. I do not hesitate advising the best I can for that patient.

Q. There are few remedies 100 per cent effective?

A. (No reply).

Q. Whether in hygiene or medicine?

A. I don't think a doctor can guarantee a cure; pathology is very unreliable.

Q. In anemia, liver won't; if diabetes, insulin won't, and if pregnant, contraceptives won't do the job; now, is that anything against contraceptives because not effective in every case?

Dr. Couture

A. No, but I use, as I said, periodic continence because it is on a par with contraceptives. Why not use a physiological one?

Q. That is an argument, but that is your reason for not doing it?

A. Yes, that is my reason for not doing it.

Q. Would you disagree with Dr. Scott that a pessary and jelly, between them, and condom and jelly, between them, are very effective?

A. Yes, very effective; it doesn't mean it possibly is reliable, and maybe partial continence to my mind is more reliable. Dr. Scott may think the other is just as good; I am justified in thinking periodic continence is just as effective.

Q. Without beating about the bush, Doctor, I am going to put it to you; there is no comparison in the effectiveness of rhythm, Ogino-Knaus, on the one hand, and the pessary with jelly on the other: we have evidence to the effect that the rhythm method is certainly not 99 per cent effective?

A. No.

Q. And we have it down; somebody brought it down as low as 50 per cent?

A. It is possible, but not in my experience.

Q. Taking somewhere between 99 per cent and 50 per cent, you wouldn't say a pessary with jelly wouldn't be more effective than that?

A. No, I wouldn't say that.

Dr. Couture

Q. I thought no?

A. I know what you are leading me to.

Q. I am not leading you?

A. I am taking a man who testified on that, and Dr. Scott said they are unreliable, and I am taking him; he is qualified to speak, and I am being guided by that man who is a good man.

Q. Don't you think Dr. Scott was a bit scrupulous in a theological sense?

A. He didn't seem to be very scrupulous in other things.

Q. We are both using scruples in the theological sense?

A. I am using your words.

Q. He quoted a case of a woman who had a birth after the ovaries had been taken out?

A. I had a patient who had a double oophorectomy and became pregnant.

Q. It is an extraordinary thing?

A. Yes, some little ovarian tissue may be left behind, not seen by the surgeon.

Q. There is the corresponding possibility in the case of the man?

A. Yes.

Q. Yes?

A. Not a case so marked.

Q. But it is possible?

A. It is possible.

Q. Those are very special cases?

A. Yes.

Q. Dr. Scott wanted to be scrupulously exact, using scrupulously in the ordinary sense?

A. I understand.

Q. And give the whole truth when giving that instance, but generally speaking, the pessary and jelly was very nearly perfectly effective?

A. What you want me to say is that Dr. Scott minimized his opinion to be agreeable to certain people.

Q. No?

A. What he said: it was uncertain, at the best, and we haven't the ideal contraceptive. He compared it to an anaesthetic.

Q. I am not so sure if it was Dr. Scott or Dr. Chisholm said what was wrong with both, and in that sense, the ideal contraceptive hasn't been discovered?

A. Dr. Scott made it unreliable and uncertain.

Q. We must not weary His Worship with that. What you would advise is continence, although not as effective as some of the other contraceptives?

A. I wouldn't admit that.

Q. Oh?

A. Both are on a par.

Dr. Couture

Q. You mean to say?

A. I know what you are going to say.

Mr. Beament: The doctor is a mind reader.

The Witness:

A. It is very easy to read his mind.

Mr. Wegenast:

Q. You say the condom and jelly or the pessary and jelly is not more reliable than the Ogino-Knaus?

A. No, it is very possible for that pessary to spring out of place; it is very difficult for a woman with a condition of the cervix to apply it right because the cervix is back, and if pressure is in front, it presses it out of place and as a result, you would have a pregnancy resulting.

Q. In the case of an abnormal condition like a bad tear?

A. It would be abnormal in that case, but in most cases where the uterus is retro-flexed, the cervix is away back and any pressure would displace the pessary.

Q. That is an abnormal case?

A. There are lots.

Q. How many?

A. I would say 10 per cent.

Q. Retroversion of the uterus?

A. I am not quoting figures with what I am struck with, but what I remember in practice.

Dr. Couture

Q. Doctor, before going further, I want to ask some questions, being quite frank, to find out how much you know about this thing. Now, what kind of pessary would you use –- but you wouldn't use one, so what kind of pessary would a doctor without scruples to using them use in an ordinary normal woman to be effective?

A. I don't doubt but what you have would be ideal. I am sure you wouldn't recommend anything but the best.

Q. What one?

A. The pessary with the diaphragm, it is, in my estimation.

Q. But there are a number with diaphragms?

A. I am not an expert in contraceptives.

Q. Oh?

A. I have said that from the beginning. In using them, I can't claim to be an expert, and I can have opinions on them. In 20 years, you can have some scientific opinions without using them.

Q. I thought you were being listened to as an expert?

A. (No reply).

Mr. Mercier: The Crown is not bringing in experts on contraceptives, not one.

Mr. Wegenast: I am asking the doctor as an expert in ---

Mr. Mercier: Contraceptives.

Mr. Wegenast: I am asking the doctor as a medical expert entirely to express his opinions on contraceptives as he has

done.

The Witness:

A. From what I have said so far, I think I am qualified to answer from my scientific experience of 20 years without actually using them.

To Mr. Wegenast:

Q. You have undertaken to say certain kinds of contraceptives wouldn't work in certain kinds of cases?

A. Yes.

Q. I want to find out what you know?

A. I have given you horse sense, the action of that pessary.

Q. We want an expert opinion, not horse sense. We want educated horse sense, expert horse sense, if you like, and I will ask you again?

A. That is not very nice, to use your expression.

Mr. Mercier: Of course, I may call the attention of the witness: the learned counsel seems to think the only expert medical witnesses are those who have a thorough knowledge in contraceptive use.

The Court: It is relative.

Mr. Wegenast: He used the expression, “horse sense”. We needn’t ask the question, then, except in this form:

To Mr. Wegenast:

Q. You haven’t made any studies in the use of the different

kinds of pessaries?

A. There may be a lot of reading.

Q. Anyway you like?

A. I have done quite a bit of studying.

Q. On the effectiveness and use of pessaries?

A. Yes.

Q. Tell me the different kinds?

A. I wouldn’t say that; I had those in my mind a short time ago, but I am suffering today from what you might call contraceptivitis; it is very hard for me to think.

It is hard for a man to come here and give names if not using them; I have given reasons for not using them, and there is a lot in my science I would rather study.

Q. More profitable to you?

A. Yes.

Q. You have thrown that off?

A. No, but I like to have as much knowledge as I can.

Q. If you cannot give me the names, give me some general description of the different varieties and the advantages and disadvantages of each?

A. I told you before I don’t know the names; I wouldn’t be very capable in giving descriptions by words.

Q. You don’t know the difference between the Mensinga and the Ramzes?

A. I did a few weeks ago, but I have forgotten.

Q. It isn’t an intimate part of your working knowledge?

A. No.

Q. If you have forgotten those now, haven't you forgotten your opinions?

A. It is an ugly question; you say I am not qualified to answer your questions?

Q. No, I said, give a general description of pessaries and the advantages and disadvantages of the different kinds; you say a few weeks ago you know them?

A. Yes.

Q. And still you come here and venture an opinion what kind of pessaries would fail in each case?

A. I am not here to give an opinion on each, but as to the general use and what to do where I wouldn't use them. I think I have covered that ground so far; I needn't go into every kind of pessary that exists.

Q. But I am putting it -- you gave an opinion a certain kind wouldn't work in a certain kind of woman; I am asking if you are entitled to give an opinion without quoting the kinds?

A. I think I can give an opinion as well as any medical man who was here on pessaries, not the particular kind you want.

Q. Can you give me the conditions under which a doctor would prescribe a pessary at all?

A. (No reply).

Dr. Couture

Q. In a certain type of woman, you said it wouldn't fit?

A. I don't know all the techniques.

Q. I am not going to repeat your words, but taking a woman in a certain condition, would you know whether a doctor would prescribe a pessary?

A. Well, you know very well that not knowing any more than I do about the different types of pessaries, that question is simply useless.

Q. All right, Doctor.

Would you mind telling us, Doctor, about those two failures you had in the application of the Ogino-Knaus theory; would they go to full time?

A. Oh, yes.

Q. Did the woman live?

A. Yes.

Q. Did the children live?

A. Yes, there was nothing unusual happened all through pregnancy; there was some conditions there that warranted the use of it.

Q. I don't quite get the picture, Doctor; those women came and asked you not to have babies, and you told them that?

A. Yes.

Q. Is that part of your regular practice?

A. Where they need it.

Dr. Couture

Q. You consider a doctor in his practice is not confined strictly to medical considerations?

A. Absolutely.

Q. You have in mind sociological and possibly economic considerations?

A. Yes.

Q. That gets a bit dangerous, Doctor; you have been sitting here listening; there is the old saying about the shoemaker sticking to his last?

A. Yes.

Q. I am going to put this to you: whether a doctor doesn't get a bit embarrassed as a doctor when he begins to have regard to considerations of that kind?

A. (No reply).

Q. I mean, should you ---

A. I know what you mean.

Q. Yes?

A. You are a good chess player.

Q. Yes?

A. You mean to say I was not acting towards society in a proper way by doing that?

Q. No?

A. (No reply).

The Court: No.

Dr. Couture

Mr. Wegenast: It is part of it.

To Mr. Wegenast:

Q. I mean, aren't you liable to get your fingers burnt as a doctor when you allow considerations other than medical?

A. In those things, they are medical.

Q. Not exclusively, and you wouldn't give advice exclusively on medical lines?

A. Absolutely.

Q. I am going to put up Smulders and Lord Dawson of Penn again; you remember the one's idea?

A. Yes.

Q. Smulders' idea was that the method was everything and the reasons for it didn't make any difference. Dawson of Penn said that the theologians and sociologists or whoever are concerned ought to decide whether the people should have contraceptives and the doctors should say what contraceptives?

A. Smulders said the method, not the results?

A. No, the means is the all-important thing?

A. Yes.

Q. And Lord Dawson of Penn says:

> "You tell us whether it is right or wrong and we will look after the means as doctors."?

A. It takes a little study to answer that.

Dr. Couture

Q. It does?

A. I don't think it fair for me to stand here and answer that immediately.

Q. All right. In the case where the Ogino-Knaus theory failed, were the reasons for advising Ogino-Knaus medical or sociological?

A. Medical.

Q. Medical in both cases?

A. Yes.

Q. I will ask you to tie this on as a little corollary to my other question: if there were medical considerations for contraception, I am going to put it to you whether the woman in question were not entitled to the best the medical profession had to offer: the surest thing, apart from any religious scruples?

A. Yes.

Q. It is a consideration apart from medical ethics?

A. Well, of course, we should always be within the etiquette of practice.

Q. It is different; it is ethics?

A. I will take ethics.

Mr. Mercier: In French, we say, “ethique professionelle”.

To Mr. Wegenast:

Q. Isn’t a patient entitled to the best from a doctor

Dr. Couture

without having your scruples or whatever you call them interfere?

A. Yes.

Q. Then, this, Doctor: if there were medical reasons why these two women shouldn’t have babies, would the question of abortion come up at all?

A. No.

Q. Your idea was, once the Ogino-Knaus theory failed, there was no alternative but to go on?

A. That goes very far; if I answer that question now, I will have to develop that question as far as I can. As far as inducing an abortion is concerned, that is very individual. In some cases, the doctor might think abortion is indicated.

Q. Allow me to interrupt you there with this: if you are going to end up by saying you never advise abortion, we needn’t go further, but if you are going to say you advise therapeutic abortion in some cases, go ahead with your answers?

A. I hold with certain experts; in tuberculosis, for instance, opinions are divided 50-50 on induction in tuberculosis.

Q. Among all doctors or Catholic doctors?

A. Forget the Catholics. I told you I am not stampeded by certain reasoning, and I am not speaking as a Catholic.

Q. Yes?

A. Those questions are uncertain on abortion, so my opinion on the induction of abortion should be as good as another who

Dr. Couture

thinks abortion is good. In 20 years’ experience, I haven’t seen a case where abortion was absolutely necessary.

Q. I thought you would get around to saying you would never advise therapeutic abortion?

A. Give me an instance and I will answer in a scientific way, but answering in an opinion way is not scientific. You want me to say something –- your idea is you want to show I am prejudiced in my opinions. I am going to stick to my science.

Mr. Mercier: I think the witness is quite proper there in asking for a specific case.

The Court: He is not forced to answer any questions at the moment.

Mr. Wegenast: Your Worship, I don't want to go on on this point and waste your time and the witness's if there is no possibility of his advising therapeutic abortion. I can go on and put case after case and exhaust all the cases.

To Mr. Wegenast:

Q. Frankly, Doctor, there is nothing would advise you to induce therapeutic abortion?

A. (No reply).

Mr. Mercier: The witness stated in 20 years' experience, he hasn't seen a case where abortion was absolutely necessary.

Mr. Wegenast: My learned friend comes to his witness's assistance.

The Witness:

A. You can't answer that in a universal way: try to prove

to me an occasion where it is necessary and I will answer.

To Mr. Wegenast:

Q. There are some cases where it might be necessary: you are a doctor?

A. Those cases where the indications are to induce labour and abortion: among scientific men, we don't agree, and my opinion might be as good as anybody else's, and I have not seen a case where it was necessary; give me a case?

Q. You prefer not to answer my question?

A. I have answered your question and rightly.

Q. Are there not cases where a therapeutic abortion might be necessary?

A. (No reply).

To the Court:

Q. Might there not possibly be a case, and your answer, Doctor, is "show me a case and I will advise you"?

A. Is that a complete answer?

Q. Not quite complete?

A. I disagree with lots of cases of induced abortion.

Q. You say there are two schools of thought and your opinion is as good as the next man's. Mr. Wegenast is not apparently quoting you an exact case, but supposing there was a case which medically indicated abortion?

A. Have I got to answer supposititious questions like that? Show me an indication and I will answer in a scientific way, but

can't answer in a scientific way what you ask there.

To Mr. Wegenast:

Q. In a lot of words, you say you don't want to answer?

A. I am here as a scientific man, not to give answers on imaginary suppositions.

Q. Will you describe a case in which you would prescribe abortion?

A. That is the same question.

Q. It is, and I ask you to answer it?

A. I would say, no, I can't describe any case.

Q. Not even in what is ordinarily called a "vomiting pregnancy"?

A. I say no.

Q. Toxemia?

A. No.

Q. With acute nephritis?

A. I will answer this way ---

Q. And acute convulsions?

A. It appears at four, five or six months; that baby is dead.

Q. I have seen cases myself ---

A. (No reply).

Mr. Mercier: If my learned friend wants to give evidence on

toxemia.

To Mr. Wegenast:

Q. Toxemia with noxemia (sic) and acute convulsions?

A. I saw one case in my experience at six months and the baby was dead. You will get a case of premature in seven months and that rules out abortion; you usually can carry them from there.

Q. Have you ever heard a story like this: A woman —- this is a hypothetical case: A doctor who is not a Catholic is called up by a husband. The husband says "my wife has a bad spell of vomiting and is pregnant. She was in the hospital, but the doctor let her come home today." The doctor asks "who was her doctor" and learns his name is that of a certain Catholic doctor. The husband says, "the Catholic doctor is out of town or on another case," and says, "I would like you to look after my wife." I have heard of cases like that?

A. Yes.

Q. What do you mean?

A. Which doctor?

Q. Why?

A. You didn't tell me what the doctor did before to cure that vomiting.

Q. I am stating the circumstances; do they not indicate the Catholic doctor is at the end of his rope and the husband wants the non-Catholic doctor?

A. It doesn't indicate that at all. The treatment in that

case is what would affect the patient.

Q. I will go on with the hypothetical case: and the husband told the second doctor the first doctor said it was a case of toxemia of pregnancy, and the woman had reached the stage of five months?

A. Yes.

Q. Now, what would you say?

A. Pernicious vomiting of pregnancy is usually towards the last three months, and there is a lot of attention we can give to a patient before she can be given up, and I haven't had one die yet.

Q. Take the case where the child is actually alive?

A. Yes.

Q. Then what?

A. She is not toxic enough to warrant an intervention yet.

Q. Vomiting?

A. Of pregnancy?

Q. Yes?

A. You see that towards the end. You can carry on with medication, and in seven months, induce labour.

Q. And if the baby is dead, you can operate?

A. It would be harmful not to; that is why I do.

Q. It wouldn't be harmful if the baby is alive?

A. Not in every case, that is too general.

Q. We leave it there.

You would not, in any case, Doctor perform or have anything to do with a therapeutic abortion if there is any chance the child is alive?

A. I told you to cite me all the cases you wish and I will answer in a scientific way.

Q. And your answer is back to what it was before?

A. And I will stick to science.

Q. In this instance?

A. (No reply).

Mr. Mercier: In all instances.

To Mr. Wegenast:

Q. Take this, Doctor: whether I can put up something to induce you to perform a therapeutic abortion; say, a pregnancy two months after a Caesarian operation?

A. That happens often; they go through their term and deliver. I have had five Caesarians in one patient.

Q. That is rather extraordinary?

A. She is living well and has all her babies.

Q. That is still more remarkable; if a chance is to be taken, the mother must take them?

A. You are trying to make a big thing out of that, particularly for the poor Catholic woman. I heard it in court here; it was particularly recommended for the poor woman who can't be helped by their doctors.

Mr. Wegenast: I don't want to take the responsibility for this witness or of stopping him. I don't know that we are pitying the Catholic woman, particularly; we are of opinion they are entitled to the same treatment as the others or just as good.

To Mr. Wegenast:

Q. Do you ever sacrifice the mother for the child?

A. Give me an instance; you have medical men here.

Q. Isn't that another way of saying you prefer not to give an answer?

A. The question is not right; it is not fair.

Q. I am going to show you Exhibit 105-B, put up in hospitals; you have seen this before?

A. No, I can't say I have. I know what to do; I don't have to be told.

Q. You have seen things like this?

A. Yes, sure.

Q. I read you this:

> "Tout avortement provoqué directement, même dans un but thérapeutique, et sous peine d'excommunication réservée à l'Évêque du lieu."
>
> "All abortions advocated directly, even if therapeutic, are absolutely."

The Witness:

A. (No reply).

The Court: "Absolutely" what?

Mr. Wegenast:

> "All abortions advocated directly, even for therapeutic reasons, and under pain of excommunication, are reserved to the bishop of the diocese."?

The Witness:

A. Yes.

Q. Now, talk about mixing medicine and religion?

A. That is based on the principles I have given you a while ago: you are not concerned with directing the life of the people. It is not the doctor's duty to decide whether one child should live or the mother; it is up above.

Mr. Beament: My friend was referring to 105?

Mr. Wegenast: One zero five (105-B).

The Witness:

A. It is derived from that particular principle. That is not an order simply because it is an order; it is reason.

To Mr. Wegenast:

Q. On this is cited "Canon 2350"?

A. That is the philosophical principle. That has been enunciated on.

Q. Promulgated?

A. Yes, because of certain biological laws on which I spoke

at the beginning. Here is what happened: in practice, it is being abused very often, and that has been reason, and in 20 years, I have never had need for therapeutic abortion, and I have had a dozen cases where I was consulted, and it was not performed.

Q. Put a little attention on this and answer the question you are evading; we know perfectly well what your answer should be?

A. I think I have answered the question as much as I can in a scientific way.

Q. I am asking is there any case in which you would advise a therapeutic abortion?

A. I have never seen one yet I would advise; don't take a book.

Q. Any you have seen or ever will see as long as you are a Catholic?

A. Show me an instance. I will give you this; you might think it a case where I might be very badly stuck: The patient is bleeding. I will help, if you won't help me. The patient is bleeding; the baby is living. I can stop that bleeding; it will induce labour and abortion. It is not intended to induce labour, but to cure bleeding.

Take any other possibility you wish and I can find a way out, so there is no occasion to be wrong in our principles.

Q. I thought I would have great difficulty bringing that out, and now, you have given me the whole story. You can find a way out somehow in any case where your principles are or seem to

be in conflict with the general practice?

A. The principle is this: you cannot go right at the baby with the hope of removing it to help the mother, but you can treat the mother, and if that child comes and doesn't live, it isn't your fault. The Catholic doctor in that is badly known.

I met an obstetrician from the Royal Victoria in Montreal. I said, "I have never had trouble with the clergy or my doctrines." The doctor said, "I have a case in view, and I asked the clergyman what to do, and he forbade me. The case had two or three Caesarians. After each, she nearly died from bleeding. She had another, and it was a question whether she would die, and the priest was at home." He couldn't do it, but I could easily have done it, but finally, he did; that uterus was diseased, and nobody could stop him from a uterectomy.

There is no occasion where you sacrifice the mother.

Q. You have got right to the heart of the matter. Here is the trouble we lawyers have ---

A. (No reply).

To Mr. Wegenast:

Q. --- I venture to say, including Your Worship.

Mr. Mercier: Why complain to His Worship?

Mr. Wegenast: Having an objection to sophistry in reasoning, we think it is a remnant of scholasticism, of medievalism.

To Mr. Wegenast:

Q. Do you know what sophistry is?

A. (No reply).

Mr. Mercier: If I may be considered as a lawyer after that?

Mr. Wegenast: He might not.

The Court: I might not agree it is sophistry.

Mr. Mercier: That is just it.

The Witness:

A. Give me the meaning of the word.

The Court: Is this a philosophical discussion as to the derivation of sophistry?

Mr. Wegenast: I would rise to a charge of being sophistical.

The Witness:

A. That is why I want a definition.

Mr. Mercier: I don't think my learned friend lets the witness answer.

The Witness:

A. I am willing to have those medical men who are here get up and tell me if I am right or wrong.

The Court: We have considerable difficulty as it is.

To Mr. Wegenast:

Q. I want to ask this, and I think it is harder than any: in a case of a tubal pregnancy?

A. Yes.

Q. In the middle ovarian tube, you know that is difficult?

A. It is very simple.

Q. What is that?

A. You can take it out right away as soon as you have diagnosed it.

Q. Hasn't that foetus –- isn't it supposed to have a soul too?

A. That treatment is directed at the disease.

Q. A diseased tube?

A. Yes.

Q. And you baptize the foetus and that is all right?

A. Don't be sarcastic.

Mr. Mercier: Yes.

The Court: No, don't ask that.

To Mr. Wegenast:

Q. Show me the section about baptism?

A. That is a misunderstanding; we can remove the tube as soon as the diagnosis is made.

Q. Whether there isn't the same objection because there is life there?

A. When you are treating a patient, if the treatment indirectly results in a miscarriage you can't help it but you are allowed to treat the patient. If the patient is bleeding, you will not allow her to bleed to death; we pack it, and the same thing for your case, we take out the tube.

Q. In other cases, therapeutic abortion?

A. I said, give me an instance?

Q. I thought you made a distinction where the foetus was living or dead?

A. In some cases.

Q. Why not in all cases?

A. Because the treatment is different there; we don't know in toxemia what the cause is.

Q. We don't want to go into that?

A. I have to.

Q. Can you tell me generally whether the foetus is alive or dead is important or not?

A. I answered it a dozen times.

Q. What is the answer?

A. There is nothing preventing the treating of the patient as long as it is to treat pathology, even at the expense of the child.

Q. The dividing line is whether there is a pathological condition to which you can appear to direct your attention?

A. That is our principle. That is why I say there are very few cases where one is tied down, and in 20 years, I have never had occasion to lose a life because of that.

Q. That is not the way non-Catholic doctors think in the matter?

A. That is their business; they may have good ideas for their judgment.

To the Court: That is not the question, not the reasons for their views, but do not other doctors think differently?

A. That has been admitted, we all know.

To Mr. Wegenast:

Q. Other doctors don't go at it that way?

A. Yes.

Q. Is it fair to put it that way: in cases of doctors who are non-Catholic, the view is purely medical, and in your case, there is the added consideration of obeying the church's laws?

A. No, not obeying the church's laws, but obeying the physiological or biological laws.

Q. Of the church?

A. They are physiological or biological laws; very many non-Catholics believe the same thing exactly.

Q. What you go by is not what non-Catholics think, but what is written down in the canon law?

A. I said before I am not stampeded by the laws of any church, but by philosophy and judgment.

Q. And you go by reason?

A. Yes.

Q. And you believe reason is behind these canonical precepts?

A. Laws, yes.

Q. That is why you obey them?

A. Yes, because they wouldn't order something illogical.

To the Court:

Q. As distinguished from the irrational?

A. Yes, others have their philosophy and we have ours.

To Mr. Wegenast:

Q. You used the word "philosophy," and this appeal to reason is put in all the books, recta ratio -- the right reason?

A. Yes.

Q. It is, after all, the fundamental sanction?

A. My reason coincides with what I am ordered, so why try to fight it?

Q. Do you or do you not recognize reason or right reason as in theological works is the fundamental basis of your actions?

A. I am not here to say if the Catholic Church is right; I am here to answer as an expert in medicine. The church uses those terms; ask them.

Mr. Mercier: My learned friend doesn't seem to like the doctor's answers. He said in certain conditions existing in the mother, she could be treated, and if as a result the child died –- he doesn't seem to like the answer.

Mr. Wegenast: I stumbled on a bit of luck to have the doctor tell me frankly. This is a bit of luck, too: my learned friend doesn't like my direction either.

Mr. Mercier: I certainly do not.

Mr. Wegenast: I was going to get someone among my learned

friend's witnesses, say, among the theological witnesses, if the basis of the church's laws is reason or recta ratio.

Mr. Mercier: The witness is not a theologian.

To Mr. Wegenast:

Q. Am I right in understanding you; the reason you obey the church's laws is because they appeal to your reason?

A. What an intelligent person should do is follow his judgment.

Q. You wouldn't by any chance say "yes"?

A. (No reply).

Mr. Mercier: The doctor has been here to hear all the other evidence.

The Court: I can remember some of your witnesses giving the same difficulty.

The Witness:

A. Yes.

To Mr. Wegenast:

Q. And you agree with this from Father Slater, an authorized writer on moral theology ---

A. (No reply).

The Court: Does he know him? You must qualify if the witness knows the writer or the authority.

Mr. Wegenast: I didn't mean to browbeat the witness.

The Court: Qualify Slater before reading any excerpt from him.

Mr. Wegenast: May I ask for a ruling or I will put my question and you can rule:

To Mr. Wegenast:

Q. Would you be surprised to find St. Thomas Aquinas agrees with your viewpoint?

A. Is that a question to me?

Q. Yes?

A. You are expecting a lot.

Mr. Mercier: Your Worship has made a ruling giving a lot of latitude to the defence, but I wonder if this is falling within the scope ---

Mr. Wegenast: I was going to put the point: "do you agree with the point expressed by St. Thomas Aquinas," and then I thought I might as well do it by putting it in a form that improves it; I don't think Your Worship can object to putting it that way.

Mr. Mercier: Perhaps St. Thomas Aquinas would not be an authority on contraception.

The Court: You are getting into theology with the witness.

Mr. Wegenast: He started it.

Mr. Mercier: The dread field of theology.

Mr. Wegenast: Shall I ask it?

The Witness:

A. I don't object to answering the question, but it is leading too far; it is going too far.

Dr. Couture

The Court: A little closer home, Mr. Wegenast.

Mr. Wegenast: I appreciate that, and at the same time, Your Worship will recognize I have been placed in this position by the witness. He started off with a little speech showing his motivations and says he is not panic stricken and says he is not under the thumb of the church, something like that. I have the right to examine on that.

Mr. Mercier: Oh, no, the witness hasn't said anything like that; my learned friend would like the witness to say that.

Mr. Wegenast: I put it that way, shortly, but he wanted to give Your Worship the impression that as a medical man, he wasn't bound by anything.

The Court: He thought things out for himself.

Mr. Wegenast: Something like that.

The Court: Based on reason. Now, you show canonical laws are consistent on that?

Mr. Wegenast: Yes.

The Court: Why go back to St. Thomas Aquinas on it?

Mr. Wegenast: He is the greatest authority, the last word on it. It is of the same nature as Exhibit 105-B. For example, we find the doctor is governed or influenced by the pronouncements of the church.

Mr. Mercier: No, it doesn't prevent him being a Roman Catholic.

The Court: The dogma there coincides with what the doctor believes from his rational investigation of the subject.

Mr. Wegenast: Is this what Your Worship has in mind: the

Dr. Couture

doctor has succeeded in establishing himself on a basis quite apart from any commands from the church?

The Court: That is what he says.

Mr. Wegenast: That is what he says?

The Court: From his opening remarks, that is the impression I got.

Mr. Wegenast: He says he can get the same practical results by using the same reason?

The Court: Yes.

Mr. Wegenast: And Your Worship says, after saying that it is cruel to jerk him back to St. Thomas Aquinas. If he has succeeded in convincing Your Worship –- but reserve it for argument.

To the Court:

Q. I think that is a fair expression of our opinion?

A. Yes.

Mr. Wegenast: It is a fair sporting proposition to leave it at that.

The Court: Not a "sporting proposition".

Mr. Wegenast: I will not try to break it down.

Mr. Mercier: What is the use.

To Mr. Wegenast:

Q. Now, Doctor, let us take some odds and ends of things to shorten it. Oh, by the way, allow me to interrupt myself. This

Dr. Couture

pamphlet, would you like the French or the English?

A. It doesn't matter.

Q. What would you say this pamphlet, as you find it there, was intended to do; how would you describe it in general terms?

A. (No reply).

Q. I am going to suggest, so as not to embarrass you: is it intended for information or advertising somebody's products?

A. (No reply).

The Court: That is for the Court to decide. The witness can't decide if it is advertising; it is for the Court to decide on the evidence.

Mr. Wegenast: I want to get the evidence from him.

The Court: You are asking the doctor to decide.

To Mr. Wegenast:

Q. What is it intended for; it isn't a novel?

A. We use the general term "pamphlet".

Q. It is not a religious pamphlet, not a novel, treatise or textbook; what do you call it?

A. It seems to be an enumeration of certain measures which you think should be adopted and insisting on the public in some ways, making it strong and urgent to the public, because it says, "hundred of thousands of mothers die yearly because of their unfitness for childbearing."

Q. Would you say it is directed towards a condition or directed towards any particular means?

A. Well, I don't know if I can answer before thinking a little more. You see, from what I have learned from your birth control literature, there are a lot of things, social, economic, medical, and you are trying to correct those three things in your mind.

Q. What I am trying to get at: is it intended to have something like that purpose or intended to insist that certain methods be used?

A. It is an enumeration of methods.

Q. And is the Ogino-Knaus method there too?

A. Yes, you give people the choice.

Q. Would you say the pamphlet was gotten out for the purpose of selling anything in particular?

A. That is a question outside.

The Court: Again, that is not a matter for this witness.

Mr. Mercier: Show this witness what went along with the pamphlet.

Mr. Wegenast: I got away from the word.

The Court: Now, from the spirit.

Mr. Wegenast: But I thought Your Worship wouldn't want to leave it there. If Your Worship rules there is that essential thing there.

The Court: It is for a jury to interpret what that pamphlet is intended to represent, but do not ask this witness to give his opinion about that pamphlet.

Dr. Couture

Mr. Wegenast: I have the right to ask this witness if this is the same type of document as a circular advertising Ortho-Gynol. Your Worship can only go on the evidence.

To Mr. Wegenast:

Q. Is this the same class of literature as literature advertising chemical products?

A. (No reply).

The Court: I still think it is for the Court to decide. He cannot answer; the evidence is in the facts of the case, not what opinion the witness has on what this pamphlet may mean.

Mr. Wegenast: Which is?

The Court: I know which.

Mr. Mercier: The doctor is not an advertising expert, and even if he were, it is in the section a matter to be left to the Court.

The Court: That is my opinion.

The Witness:

A. May I answer that?

To Mr. Wegenast:

Q. Don't answer until His Worship rules; wait until the lawyers get through?

A. I am not an expert in court procedure.

To Mr. Wegenast:

Q. I am not either, but I know that much?

Dr. Couture

A. (No reply).

The Court: Supposing this witness does say it is similar to a circular advertising Ortho-Gynol?

Mr. Wegenast: Or dissimilar?

The Court: Yes, you are asking if it is advertising.

Mr. Mercier: It is a waste of time, Your Worship.

The Court: To ask this witness' opinion on it.

Mr. Wegenast: I want to ask this, then:

To Mr. Wegenast:

Q. Have you ever seen material like this, Doctor?

A. (No reply).

Mr. Wegenast: Your Worship, might I have that little museum, the box of contraceptives?

The Court: Yes.

To Mr. Wegenast:

Q. And I show you a pamphlet I have taken out of Exhibit 42-B?

A. (No reply).

Mr. Mercier: The witness is answering that question subject to my objection. I don't think he is qualified to answer as to the similarity of pamphlets of that nature.

The Court: Exhibit what?

Mr. Wegenast: Exhibit 42-B, about a product mentioned in the other two documents I submitted as exhibits.

The Court: Which is which?

Mr. Wegenast: I have shown them to the doctor and he has seen them before.

The Witness:

A. Yes.

To the Court:

Q. Where do they come from; have you seen documents exactly like these before?

A. Like those.

To Mr. Wegenast:

Q. Now, I show you this, whether you would say that these documents I have shown you are of the same character as the pamphlet?

A. (No reply).

The Court: I don't know where you got these. You just show a couple of documents; are you going to prove them?

Mr. Wegenast: I have shown them to the witness.

The Court: But you are not proving them?

Mr. Wegenast: Those, the doctor has seen, or something like them.

Mr. Mercier: The witness hasn't got to answer that question; it isn't within his scope.

Mr. Wegenast: Taking something out of an exhibit.

The Court: I won't admit those two.

Mr. Wegenast: I reserve my right to argue should a similar situation arise because I don't try to do anything before Your Worship I can't satisfy.

To Mr. Wegenast:

Q. I show you this taken out of Exhibit 42-B and I ask you to look it over?

A. In what sense?

Q. Is it of the same general character as this pamphlet?

A. (No reply).

Q. You have already told us what you think of the pamphlet?

A. No, I have not said what I thought of the pamphlet very much.

Q. You just said it is urging people or pointing out to people?

A. Don't ask me to repeat what I said this morning.

Q. Yes, but it was a good one you referred to, the plea in the first part, the desperate cry going up from millions?

A. Yes, it may be scientific, as well as otherwise.

Q. Was this document of the same general character?

A. We get a lot of literature, half scientific and half advertising. I don't see any particular price marked on the thing.

Q. It is to bring it to your mind, Doctor, or to whoever reads it?

A. It is advertising, yes.

Q. May I ask if it is of the nature of this document?

A. (No reply).

The Court: That it is advertising, which is for me to decide.

Mr. Mercier: His worship has had plenty of advice on how to decide; give him a little leeway on advertising.

Mr. Wegenast: Yes, but on the evidence.

The Court: Better put that in as a separate exhibit.

Mr. Wegenast: Yes.

The Court:

Exhibit 106-B, pamphlet from Exhibit 42-B

To Mr. Wegenast:

Q. We come to this: we are looking at Exhibit 5-B, Doctor, and looking at the formula quoted from Dr. Marie Stopes of a suppository, and I think I am right in saying you thought there might be some danger from the quinine bisulphate of that suppository. Now, can you calculate how many grams of quinine bisulphate in the whole 30 of those suppositories?

A. I can figure it on paper.

Q. I think for the whole 30 suppositories they would contain?

A. (No reply).

The Court: I don't want that to happen again.

Mr. Wegenast: What?

The Court: Dr. Hutton to come up and speak to this witness.

Mr. Wegenast: I didn't notice it.

Dr. Hutton: I am sorry.

To Mr. Wegenast:

Q. I think it is 90 grams?

A. Three grains each suppository, I suppose.

Q. Is it 90 grains for the whole lot?

A. Yes.

Q. Could that bring on an abortion if swallowed, the whole lot?

A. Yes.

Q. You could bring on an abortion by swallowing that amount?

A. Yes, we give 10 grains with castor oil to induce abortion.

Q. How

A. The technique is variable.

Q. How often?

A. We might use it every hour, sometimes only once; I never use it more than once with castor oil, and I don't rely on that altogether.

Q. In a single suppository, there would be three grains?

A. Yes.

Dr. Couture

Q. How much do you think in the ordinary course might be absorbed?

A. I haven't objected so much on the ordinary standard of a three-grain suppository; unless used for a very long time, it might produce numbness and a little absorption of the quinine.

Q. How much, in the ordinary course, of the three grains would likely be absorbed by the vagina or anything else?

A. That is not a scientific question at all.

Q. It isn't?

A. No.

Q. Would the whole of it?

A. I can give you a medication, and how much –- say, one-fiftieth grain strychnine, and how much will be absorbed isn't scientific.

Q. You say a certain amount would be absorbed by the vagina?

I said at the top part of the vagina; it is congested in pregnancy.

Q. You said a part of the quinine bisulphate would be absorbed?

A. Yes.

Q. Would the whole of it?

A. I wouldn't say that.

Q. Would the half of it?

Dr. Couture

A. That is not scientific.

Q. The whole would not be?

A. I wouldn't think so, no.

Q. So that we haven't got three grains there?

A. No.

Q. What about elimination; how much would be eliminated in the course of 24 hours?

A. I don't think that has been held.

Q. You made a conjecture?

A. I said my ---

Q. Would there be a certain amount of elimination?

A. That is understood.

Q. How does quinine in the ordinary case eliminate; is it cumulative like strychnine?

A. You must repeat it in a short time.

Q. But not quinine?

A. It may be at half hours.

Q. And if a suppository is used one a day or one a night and there is a space of 24 hours, there would be a certain amount of elimination?

A. Yes.

Q. So nothing like three grains remain in the system?

A. No.

Q. Can you give any idea how much?

A. I don't know.

Q. I don't know that we should follow it up. You said an amount might cause abortion?

A. I said if not prepared the way it should, you will give an overdose.

Q. What, an overdose?

A. I said if not used right, one dose or half a dose.

Q. You are assuming that they get the quinine content of the whole 30 at once?

A. No, 10 or 15 grains; the size of 3 of those might be 9 grains.

Q. They might use three at once?

A. Yes.

Q. And you think you might get absorption of nine grains from a single suppository?

A. Yes.

Q. That doesn't seem very sensible?

A. Not to you; you are not a doctor.

Q. I am only a lawyer?

A. I have said it is possible for quinine to produce an abortion.

Q. I say how; you are an expert?

A. I don't know what you mean?

Dr. Couture

Q. I am trying to get you down to it. You say the amount in three suppositories –- you said nine grains, and you said there would be a certain amount of elimination; will you explain how an abortion could be brought on with that amount of quinine?

A. I will answer that the way you told me: Medical science is unreliable; you can't apply certain medicines and have exact results. You can't have a chemical analysis of the system on a little medication; I only say it is possible.

Q. You are grabbing around here trying to find a possibility somewhere?

A. No.

Q. Do you know of a single case where an abortion has been brought on by quinine suppositories?

A. It hasn't been marked on an abortion whether induced that way of not.

Q. Can you answer that?

A. It can't be answered.

Q. Do you know of a case yourself?

A. It is not marked on the history.

To the Court:

Q. Doctor, do you know whether or not you have the history of a case?

A. It goes into the system, whether by mouth or otherwise.

Q. Do you know of any case?

A. Specifically?

Dr. Couture

Q. Yes?

A. No.

To Mr. Wegenast:

Q. The doctor says he has some case histories, not complete?

A. (No reply).

To Mr. Mercier:

Q. But used for a certain purpose, a certain dose might possibly result in abortion?

A. (No reply).

Mr. Wegenast: I got past that.

The Court: And I asked him if he specifically came across a case and he says no, and that is the answer.

To Mr. Wegenast:

Q. As a scientist, you wouldn't write to medical journals if you found one case?

A. No.

Q. You would have to have a dozen or a hundred cases and check with controls and have one hundred or one thousand cases; have you any reason to come to a conclusion like that?

A. I am trying to answer the question.

Q. Have you had any experience on which you could give an answer based on numerous cases checked by controls?

A. (No reply).

The Court: The answer is that he has had no cases in his experience.

Mr. Wegenast: I think I can ask him that.

The Court: Not if he has had no experience in cases.

Adjourn to two-fifteen.

(The hearing was resumed at two-fifteen, same date)

Mr. Wegenast: The doctor wanted to be satisfied as to the meaning of the word "sophistry".

The Court: I thought we got away beyond that.

Mr. Wegenast: I got it from the Catholic encyclopaedia.

The Court: Are you anxious to go back into that again?

Mr. Mercier: What is the question?

Mr. Wegenast: The meaning of sophistry.

Mr. Mercier: It would be very important to the defence of the accused.

Mr. Wegenast: Whatever His Worship says.

The Court: Unless it is very important, I suggest we go on.

Mr. Wegenast: All right.

To Mr. Wegenast:

Q. Now, Doctor, I want to ask in the cases where you had prescribed the Ogino-Knaus system and it failed, whether in those case there was anything other than medical indications which moved you to prescribe it?

A. In those two particular cases, quite medical.

Q. Now, you said you prescribed in a few dozen cases, prescribed quinine, I think, with or without castor oil?

A. With castor oil for what we intended it for.

Q. An abortion?

A. Not an abortion, an induction of labour.

Q. You distinguish between abortion and labour?

A. Yes.

Q. What is the distinction?

A. In abortion, where the child is livable and in the other where the child is not livable. Where the child has a chance of living, it is abortion.

Q. You say in none of those cases the child had a chance of living?

A. Where we induce labour, there is a possibility of the child living.

Q. What is the shortest period?

A. From seven months on.

Q. You as a doctor use quinine and abortives before seven months?

A. No, not unless the child is dead.

Q. Can you tell absolutely whether the child is dead?

A. Yes, if we have sufficient presumption whether it is dead, we can go ahead.

Q. I am wondering if in coming to such a presumption you

come to what I said was sophistry

A. A reasonable assumption; the probabilities of the science are not certain.

Q. And if you have probabilities the child is dead, you might act on that although other opinion might think the child was alive?

A. Not if we have a feeling the child is alive.

Q. It is a matter of weighing the probabilities?

A. You would have to go by your judgement and experience in the past to decide whether the child was living or not.

Q. You would decide that by weighing both sides?

A. Yes.

Q. It would be with the weight of evidence?

A. I can't answer that way; you are going to try to get me into something I don't intend.

Q. I was trying ---

A. You are trying to prove certain things. If I said with sufficient good reasons to think the child was dead, we could induce labour anytime during pregnancy.

Q. If you have a feeling the child is alive?

A. We have no right to induce it.

Q. You take the one that is strongest?

A. No, we take the possible opinion based on scientific findings.

Q. You must be reasonably satisfied the child is dead or alive; you won't take a chance?

A. On suppositions, no.

Q. In these three dozen cases you spoke of, were the reasons –- I am saying this generally -— medical or social or how much one or how much the other?

A. I can't give statistics as to the proportions, but in some cases, it is a matter of trying to make those children more distant.

Q. Spacing?

A. Yes, that is one of the reasons.

Q. You think spacing in itself is a good thing?

A. In certain cases, sure.

Q. I think you don't agree with Dr. Gerin-Lajoie it is a thing to be allowed to go without some attention?

A. I wouldn't say that, I don't think.

Q. He said nature would do the spacing?

A. (No reply).

Mr. Mercier: I didn't understand that.

The Court: No.

The Witness:

A. I think his experience was that when children were so close, they should be so closely controlled, but he left it to nature.

Dr. Couture

To Mr. Wegenast:

Q. He didn't like Ogino-Knaus?

A. He said, in some cases, partial or total continence.

Q. I didn't get the impression he thought much of Ogino-Knaus. Let us take it your way: he at least was in favour of letting nature take its course and do its spacing?

A. I can't answer for him.

Q. You say spacing is desirable?

A. In some cases.

Q. Would you agree to this: two years is small enough for spacing?

A. You can't make a ruling.

Q. I say spacing of two years; I won't crowd you into a corner?

A. Not if you can't help it.

Q. All right?

A. That is not an answer you can give scientifically at all; it is a matter of opinion generally speaking. Some have children every two years and are not the worse for it and others can't.

Q. Dr. Gerin-Lajoie said every two years and that is close enough for him?

A. I am not answering for him.

Q. About you?

A. Put it the other way?

Q. You don't think making two years a general standard ---

A. I would say it is about the average we meet with; mothers would have that.

Q. You are trying to shift me and sometimes you succeed?

A. I don't think so.

Q. Would you make it a general standard?

A. No.

Q. Take a young woman coming to you who had had one baby and was afraid she might have another one in a year or a year and a half; if she came to you, would you undertake to advise her whenever the next baby should come or would you say, "let the Lord take care of that"?

A. That is a social question, not medical.

Q. It would depend how well off and if the husband had work?

A. That and a lot of other circumstances.

Q. That and other circumstances?

A. I don't quite ---

Q. I said if her husband wasn't well off or hadn't work, would that be one of the circumstances you would take into consideration?

A. The economic question, not certain conditions, might be reasonably good for a doctor to advise the partial continence.

Q. I am not talking about the economic question, but their circumstances?

A. It would eventually come to that.

Q. I am talking about having a baby?

A. I would advise her to follow the continence.

Q. I am not talking about that, Doctor, and I don't thank you for answering that; I am asking if a woman came to you after having had a baby and might have another one and you were asked to advise her how not to have a baby, would you take into consideration one fact: her husband was out of work?

A. Yes, I would.

Q. What other economic factors would you take into consideration

A. I would like you to suggest some.

Q. I will do that to oblige you, Doctor: if they were on relief, -- that means out of work -- and maybe more than that, you would take that into consideration?

A. Yes.

Q. And if already there were half a dozen children, would you take that into consideration?

A. Yes.

Q. And if the home conditions were not favourable?

A. Yes.

Q. A small house?

A. Yes.

Q. Then the health of the mother would be a factor?

A. Absolutely, primarily.

Q. Might the fact the husband was no good, might have a job for the time being, but addicted to drink; would that make a difference?

A. I don't know if that is a medical case or a police case.

Q. The others were not medical cases either. I am trying to find how far you go?

A. If there were good reasons like that, what you mentioned, sure.

Q. So you do admit, Doctor, there may be indications, as you call them, outside the medical indications?

A. (No reply).

Q. For the use of some kind of birth control?

A. Do you limit birth control?

Q. I will not limit you.

A. Everything you say, Mr. Wegenast, we must take the definition with regard to it.

Q. I will not put anything over?

A. (No reply).

The Court: No.

Mr. Wegenast: O'Brien's rhythm, Exhibit 83-B.

To Mr. Wegenast:

Q. I show you Exhibit 83-B; it is a book called “Legitimate Birth Control”. It has the imprimatur of Bishop Noll. I suppose you will take it; it is good Catholic literature?

A. If it is good Catholic literature, I would like to look through it.

Q. I ask you to look through the title, and if you will take my word for it, it is Ogino-Knaus?

A. (No reply).

Mr. Mercier: My learned friend’s imprimatur means permission to print. Nihil obstat means approval; there is no approval here by the Sacred College.

To Mr. Wegenast:

Q. That gives ecclesiastical approbation?

A. I don’t think it would be objectionable.

Q. I show you that in answer to your question on birth control: “Rhythm: Babies when Parents are Ready.”?

A. Yes.

Q. So there may be indications, Doctor, other than medical indications?

A. Yes.

Q. So it is simply the means to be employed?

A. Yes.

Q. So you are carefully giving indications of birth control; I will not get you into a trap about the pessary?

A. Yes.

Q. Birth control means periodic abstinence?

A. Yes.

Q. Now, I want to put this to you Doctor: the science, practice or art of sociology has some value?

A. Yes.

Q. There is a place for nurses to go around and visit homes; I am not thinking now of contraceptives?

A. (No reply).

The Court: Are you going ahead on the sociological question?

Mr. Wegenast: Not exactly.

The Court: Those are questions I would put to a sociologist?

Mr. Wegenast: The doctor has brought in sociological indications and what I am now going to put to him —- it is roundabout; I must admit, but purposely: he wouldn't use a nurse to find out economic conditions on which he would base his judgment.

The Court: All right.

To Mr. Wegenast:

Q. You see my question; perhaps you will answer?

A. It is not very difficult to answer because we have established a lot of those nurses' organizations going all over the country. It is sociological and, at the same time, medical.

Q. That clears me with His Worship, I think. Now, what I

Dr. Couture

want to put to you is this: granted for the sake of argument, if you could teach people how to use the nozzle and jelly or that it is desirable to discuss with them the possibility of going to the doctor and having the pessary fitted, isn't that properly within the functions of a nurse?

A. That is a little hard just for the moment. Would you mind repeating that question?

Q. I got it a little double-jointed myself. Perhaps the question might be repeated by the reporter.

"Now, what I want to put to you is this: granted for the sake of argument, if you could teach people how to use the nozzle and jelly or that it is desirable to discuss with them the possibility of going to the doctor and having the pessary fitted, isn't that properly within the functions of a nurse?"

A. I can't answer that directly. We have nurses going out from organizations with the purpose of helping the health of the people. Integrally, it is social work and it is hygiene.

Now, as far as having nurses go to homes directing them to the doctor, there may be possibilities that the nurse might find things to send people to the doctors; it depends on the object of the whole work.

Q. The object being the distribution of a knowledge of contraceptives?

A. To instruct them on that?

Q. Tell them about it?

A. Well, I ---

Q. Just a moment. If you get yourself into a state of mind that it might be proper, is it under those circumstances a nurse's work?

A. If she is a qualified nurse, capable of doing it, I don't think there is any objection.

Q. As far as fitting the pessary is concerned –- you will notice as far as the pamphlet is concerned, it says the intervention of a doctor?

A. Yes.

Q. You don't think anything of that?

A. It is too general.

Q. As far as the conduct of the work by a nurse is concerned, you wouldn't object to that?

A. If the object of that nurse's work is health and she is qualified to do it, I don't see any objection.

Q. And you don't see any objection, taking into consideration the economic condition of the home?

A. They do that.

Q. You don't see any objection to that?

A. No.

Q. I think I can safely ask this: whether a nurse going into a home, asking questions and getting acquainted would not be in a better position to decide whether birth control was indicated than, let us say, a patient visiting a doctor in his office?

A. It depends on what point of view; if it is health, it is for the doctors to decide and if economic and social, it is up to the social worker or not so much the social worker as the nurse.

Q. You would make a distinction between the medical part and the economic and sociological?

A. Yes.

Q. Although I must not be out or you will snap me up: you will admit sociological work has its medical department?

A. We can't separate the two.

Q. Having taken those odds and ends, I want to take my notes on your examination in chief as my test, and I find when I look them over, I have covered considerable ground already. I

noticed you had in your hand “Judgment on Birth Control” by DeGucheneere; you have read that book?

A. Yes.

Q. Are you familiar with the group of writers including DeGutcheneere in opposition to artificial contraceptives or a number of any others besides DeGutcheneere?

A. I have read many; it is hard to remember what I have read of them.

Q. Have you read Capellman?

A. I can’t say.

Q. Have you read any of Halliday-Sutherland’s?

A. No, I have heard of him.

Q. You have heard him referred to by other men?

A. Yes.

Q. Do you know “Birth Control” by Moore?

A. No, I am not familiar with it.

Q. Tell me if you are in a position to give an opinion or not: there is a group of writers in opposition to birth control, including DeGutcheneere, who quote one another as authorities and as far as I know give no authority except one another’s statements; is that a fact or not?

A. That is very hard to say; you can’t directly attribute a pathological condition to a certain cause always. One scientific man might find cancer and immediately attribute it to a contraceptive. His judgment might be off; it might not be the cause, but at the same time, he may have a good presumption, but if he has a dozen cases and considers it a problem, and the next man who believes in contraceptives does not want to believe that, how can you make him accept it?

Q. “A” quotes “B” cancer is caused by contraception?

A. Yes.

Q. “C” quotes “A” or “B” or both, and it goes around in a circle like that; what explanation have you for that?

A. That would apply to any science; you read an authority; he quotes another and that is the case of every science not fully established.

The Court: An interchange of ideas.

To Mr. Wegenast:

Q. That is a fair answer, all right as far as it goes, but it doesn't prove anything?

A. It is the only way we can come to a conclusion after repeating this experiment or that experiment; it is finally bringing some good foundation for our knowledge.

Q. But you haven't got as far as experiments; these people don't cite experiments. I will fix on one thing: I am not certain you said it, but a doctor yesterday said the use of contraceptives might cause sterility?

A. Yes.

Q. Is that your opinion?

A. In a general way, yes. I said this morning even partial continence, for instance, would do it, so I said generally.

Q. Just withdraw "would" and say "may"?

A. I wish to be corrected if my English ---

Mr. Mercier: It is different.

To Mr. Wegenast:

Q. Would or might?

A. Oh, no, it might, but universally speaking ---

Q. You are a scientist and know how the facts are proved on which you rely?

A. Yes.

Q. Isn't it a fact you rely on this: someone who has time to do it gets together information about a large number of cases; 1,000, 10,000, or something like that?

A. Yes.

Q. He gets together those cases and eliminates all the factors which may possibly lead to a different conclusion?

A. Yes.

Q. He gets those facts lined up so that there is no denying as far as a thousand or 10,000 cases are concerned: this is the case. So do you know any attempt like that to find out if contraceptives cause sterility?

A. Give me time.

Q. Take time; it is a serious question?

A. I might answer this way on that question if you will allow me: after studying human physiology common to certain possibilities and we submit those things, so it is up to the one making the experiments to prove it is possible: do you get my answer?

Q. I want you to elaborate on it?

A. I think that is my answer.

Q. I want to put it to you if I can find it in time: a passage in Dr. Scott's evidence –- Dr. Hutton's evidence, rather –- to this effect: those people, only one or two of them who have thought out artificial contraceptives might cause sterility have based their view on this sort of thing: that a young couple after getting married would use contraceptives three or four years and then when they stopped using it and made up their minds to have a baby, found they couldn't have one, and contraception was blamed.

Dr. Couture

A. Yes.

Q. And the evidence was to the effect any of the views expressed to the effect that contraceptives caused sterility were based on evidence of that sort?

A. I said we base our evidence on opinions on physiology and those things that have happened.

Q. You say "we"?

A. Scientists.

Q. Can you cite me an author or instance where you can prove sterility was caused by artificial contraception?

A. No, I can't.

Q. I think we had better wash out that latter part of your evidence, Doctor; we are not here to make guesses?

A. You are asking me and I can't.

Q. Then you shouldn't say in this court sterility is caused by contraceptives?

A. I think so.

Q. I have heard such authors ---

A. (No reply).

The Court: He is giving his opinion.

Mr. Wegenast: I am asking it and he says he hasn't any.

The Witness: I am backing my contentions on my scientific knowledge of them; I have read.

To Mr. Wegenast:

Dr. Couture

Q. Who, for instance?

A. DeGutchenerre.

Q. See if that carries any further than we have gone; see if you can find anything there: on page 143: this is what I have in mind: on page 142: you, of course, recognize this as an authority; it is approved by Arthur J. Scanlon and has the imprimatur of Cardinal J. Hayes and is a translation of the original French, but notice what he does on page 142:

"Several collaborators…sterilization."

Do you see any reference there to Dr. McElroy, who is in the group of which I speak?

A. (No reply).

Q. Then he goes on:

"Sterility…de-population."

Brownlee is another one. There is no authority there and he mentions, Doctor:

"Pathological…contraception."

Now, I put you in touch with your own most intimate authority and ask you to give me anything which in the slightest degree acts as the slightest assertion that contraception causes sterility and when they say that they have reference to modern methods, such as the pessary. They don't have in mind such things as the intrauterine stem, which I believe may cause sterility?

A. Well, the answer to that is a presumption, as I have suggested, and I am backed by a lot of authorities not on

Dr. Couture

presumption, but based on physiology. I can't cite any actual cases, but that is what happens in most cases.

Take sterility; who can go about saying what the cause is, what the diagnosis is?

Mr. Mercier: I suppose the doctor should disappoint Mr. Wegenast occasionally?

To Mr. Wegenast:

Q. This is what Dr. Hutton says in his evidence on this case, Page J-70:

> "A. No, the three dangers which medical men have investigated and which I have personally investigated have been the dangers of sterility, cancer and infection."

By the way, can you think of any others?

A. No, I don't think so.

Q. You don't think so?

A. It is not my line; it is psychological and psychiatrical (sic).

Q.

> "Those are the obvious dangers and anybody who wants to conduct a birth control clinic, as I do in Brantford, has to satisfy himself as to the facts, if any, as to these three claims.
>
> Q. What have you found?
>
> Dr. Couture
>
> A. Nothing to it. It does not cause sterility. You will find assertions it does cause sterility. This is what happens: you have a sterile man or woman and they adopt contraceptive practices. Later on, they decide now is the time to have a child and they throw away their protective measures and they jump to the conclusion and doctors jump to the conclusion that sterility is caused by contraceptives. It shows a prostitution of human reasoning, and to show contraceptives cause sterilization, it would have to be done and it never has been done."

Are you in a position to do that?

A. In this way: Dr. Hutton is a young man yet.

Q. Are you in a position to disprove Dr. Hutton's statement it has never been done?

A. It has been done.

Q. It has never been done?

A. In a study like that.

Q. Are you in a position to state Dr. Hutton is wrong when that study has never been made?

A. (No reply).

To the Court:

Q. That study of 2 or 3,000?

A. I know Dr. Hutton's works were studies and I answer on

Dr. Couture

that point.

To Mr. Wegenast:

Q. That is more than I wanted, Doctor. Have you any reason to believe Dr. Hutton was wrong when he said no such studies ever were made?

A. I have never gone into the subject deeply enough.

Q. Have you any reason to believe he is wrong?

A. I can't accept his statement without going into proof and I can't get this proof on the spur of the moment; I would have to look into the authorities.

Dr. Hutton: I am very willing to admire what he has done, but at the same time, he is expressing a personal opinion.

Q. Not on the point I am dealing with; he says no such studies have been made?

A. There must be a lot done, but not in group form like that.

To the Court:

Q. That is not what he is asking you?

A. I didn't understand the question at first.

To Mr. Wegenast:

Q. I understand how you are so suspicious?

A. I have a lot of faith in him.

Mr. Mercier: I am sure the doctor has a lot of faith in him.

Mr. Wegenast: It takes a very clever man to be a liar anyway.

Dr. Couture

To Mr. Wegenast:

Q. Now, about cancer, do you know of any conclusive study by groups or otherwise that prove that artificial contraceptives cause cancer?

A. We are there in the same position as with regard to sterilization.

Q. The reporter might read the question again:

> "Now, about cancer, do you know of any conclusive study by groups or otherwise that prove that artificial contraceptives cause cancer?"

A. No.

Q. Now, that thing you came to, the tampon that was left –- to clean up those three: would the same apply to infection; do you know of any study or statistics by group or otherwise that would go to prove that the use of artificial contraception is liable to cause infection?

A. (No reply).

Q. The answer to that would be “yes” or “no,” I think?

A. You know you are limiting it.

To the Court:

Q. It is simply a matter whether you know of any or not?

A. I must qualify: it is one particular science; there are no clinics in the world, or those few that exist, where general routine and medicine show that.

Dr. Couture

Q. He is not asking if an experiment of that kind is or is not a good one; he is asking if there is one?

A. I am sorry.

To Mr. Wegenast:

Q. Now, in this case where the tampon was found in, you said it caused cancer?

A. No.

Mr. Beament: He said it might cause abortion.

To Mr. Wegenast:

Q. You said the gauze might cause abortion?

A. Yes.

Q. And you said you put gauze in the vagina to bring on abortion; what size of tampon or gauze would you put in?

A. It is the pressure on the cervix.

Q. What size?

A. We have to fill up the cervix, five or six yards or so.

Q. Others, 20?

A. Yes.

Q. The thing is to pack the vagina tight?

A. No, the pressure on the cervix.

Q. What is the effect, stimulation on that cervix?

A. It will cause it to contract and try to throw out a foreign body.

Dr. Couture

Q. What is the pressure?

A. As long as there is a foreign body there, I can't say in pounds.

Q. It is stimulating the reflex mechanism, if you burn your fingers, to draw back?

A. Yes, or does not the eye wink?

Q. This severe pressure causes the uterus to contract?

A. (No reply).

Q. You wouldn't introduce it into the cervix?

A. Sometimes.

Q. But you do pack the vagina full?

A. Sometimes. If you do, you cause a lot of discomfort to the patient by obstructing the bladder.

Q. And you pack the upper part?

A. Yes.

Q. So there is pressure on the cervix?

A. Yes, so there is pressure on the cervix.

Q. Now, do you think this little tampon would cause enough pressure for that?

A. It is not the pressure; it is the application of a foreign body on the cervix.

Q. Why is this; you say you had to have that pressure?

A. Irritation against the cervix. Anything applied against the cervix that irritates it may cause it.

Dr. Couture

Q. Now, of course, one knows, Doctor, abortions are brought on by various methods: by taking the crochet needle and sticking it in?

A. Yes.

Q. Anything like that?

A. Yes.

Q. And that is the sort of thing you think of when thinking of this tampon?

A. Any foreign body. I don't see how gauze could be compared to the needle.

Q. That is what I am putting to you?

A. That is what I am answering.

Q. Would any woman in her senses try to cause abortion by putting that little tampon in?

A. I have seen many. It wouldn't be done to induce abortion particularly; the patient is pregnant and doesn't know it and uses this and it happens.

Mr. Mercier: That is what the doctor says in examination in chief.

The Court: Not trying to make an abortion, but it happens inadvertently.

The Witness:

A. No, it would be likely if they wanted an abortion to use that.

To Mr. Wegenast:

Q. Would a doctor do that?

A. No, it is not scientific.

Q. I asked would a doctor do that in his wildest notions: take a little tampon like that and rest it against the cervix to bring on an abortion?

A. If you want the results, you must take the means.

To the Court:

Q. Can't you answer "yes" or "no"?

A. I said, no, I didn't use it.

To Mr. Wegenast:

Q. Now, I am coming to this, Doctor, and may I guess where you got this from: when you interfere with the laws of nature and biology you pay the penalty; may I guess where you got that from?

A. A lot of places.

Q. From the group of books I told you about?

A. Not necessarily, I knew that before I studied medicine.

Q. I suggest you can't find it in other books, in medical books?

A. No, I slipped there; what I mean is philosophy; it is studied before medicine, and we have our principles and grounds. I didn't mean to mislead you.

Q. Of course, Doctor, we are men; I am a lawyer and you are a doctor; it is pretty hard to keep our knowledge in separate compartments, but I do suggest you cannot find it anywhere in

medical books except than in Halliday-Sutherland and DeGutcheneere and such a group of writers?

A. I don't know of any others.

Q. You might be surprised. As a matter of fact, did you find it there?

A. No.

Q. We are fooling nature every day and we must, to get results, pay some penalty; it is fooling nature to go in the air and fly and some pay the penalty by falling?

A. Yes.

Q. I leave the physical line of fooling nature that way and come to medicine. We fool nature by injecting something that keeps nature from giving us lockjaw?

A. That question isn't biological; it is physical failure, and if you break your neck, it is physical failure, not biological.

Then, as far as the injection of a serum or other injection or medication, we come back to a pathological condition and bring the patient back to normal. Any vaccination ---

Q. Are you through answering?

A. If you want.

Q. Vaccination?

A. You can find in physiology an ideal condition and refuse infections; still you are not making a change in the biological condition.

Q. Why give vaccination if a person is in perfect health and you scratch the arm and put in vaccine; that is fooling nature?

A. No, it is making him capable of preventing infection. You are simply helping nature develop further. That is not pathological.

Q. I thought you made that pathological condition the dividing line?

A. (No reply).

To the Court:

Q. Something like a horticulturist mixing two flowers to make a more beautiful flower?

A. As long as the thing is under biological control.

Q. As long as you are assisting nature, you are not fooling her?

A. Exactly, that answer is better.

To Mr. Wegenast:

Q. Now, as long as you are assisting nature to space children, what about it; you said spacing is desirable?

A. Yes, and I said what means to take to space them.

Q. But you are coming back to theological means?

A. (No reply).

Mr. Mercier: The doctor didn't say theological means; my learned friend loves to bring in the theological.

Dr. Couture

Mr. Wegenast: He fell back on that; he was agreed because of theological grounds those means should not be used.

The Witness:

A. "Theological," I haven't used the word since this morning.

The Court: He is basing it on reason.

Mr. Wegenast: Yes, perhaps you are right, sir. He tells us you can't fool nature and then he gives his reasons, and he says the dividing line is between what is pathological and what is not pathological, and when I crowd him with vaccination ---

Mr. Mercier: There is no evidence the doctor is crowded with vaccination.

The Witness: It was the difficulty of presentation that accounted for my not knowing.

To Mr. Wegenast:

Q. You don't require a pathological condition as a sine qua non before interfering with nature?

A. It is not interfering with nature.

Q. It is when you inject something into a man's arm?

A. It is helping nature.

Q. It is interfering with nature?

A. I say that word "interfering with nature" is not right.

Q. You don't require a pathological condition as a sine qua non before improving on nature?

Dr. Couture

A. Before improving on nature, that is right.

Q. You can't improve on nature without paying a penalty?

A. That is very wrong; you are not medical there.

Q. Give us the inside dope there?

A. (No reply).

Mr. Mercier: On improving on nature: the cross examination is broad, but my learned friend wants the inside dope on improving on nature.

Mr. Wegenast: I thought possibly the doctor might know that language.

To Mr. Wegenast:

Q. I want to know why you say that is different and you don't have to pay any penalty there?

A. I would say no, you don't have to pay any penalty there; that is the answer.

Q. Why do you have to pay a penalty for spacing?

A. I told you what means you take.

Q. Why do you have to pay a penalty if using the pessary for spacing?

A. For the reason I have given this morning, I don't know if you wish me to go all over that again.

Q. Just in a word?

A. I say that interferes with the ideal cycle of the sexual act and eventually the pathological in that respect, possibly

not only local, but general; maybe possibly not so evident as cases of coitus interruptus but I have met with patients as I said this morning: you can't find a special reason for finding a patient nervous or neurotic but that probably is the cause.

Q. The theory is this: there is a certain amount of emotional pressure set up like machines in a garage pump tires up?

A. It is a little too physical.

Q. Compare it to a battery: your generator is working too hard and the battery is overloaded?

A. The human body's reactions are too complicated for me to undertake to go over it this afternoon.

Q. Take the human body: It stores up a certain amount of force. It is called, I believe, emotional pressure; is that right?

A. You may use that term; I understand what you mean to a certain extent; that science is very difficult.

Q. If I lead you anywhere you don't want to go?

A. Will you give me a chance?

Q. You started about cycles and completing the cycles. Now sex has this: besides being good for reproducing the race, it stores up a certain amount of emotional pressure?

A. Yes.

Q. It is quite an essential thing, not simply in respect of, say, in an automobile, propulsion by the ignition; it has an effect on the intellectual development and so on?

A. Yes.

Q. Would you say the use of artificial contraception in some way or other constitutes a break in the cycle; would you put it that way?

A. Not a break.

Q. An obstruction?

A. Possibly an inhibition, that may express it.

Q. Without going away around, Doctor, let me put it this way: whether continence doesn't do something like that?

A. Continence may do something like that.

Q. Do you want me to ask you some questions, laying it out so I won't be leading you where you don't want to go, I will give you the geography: in the case of a normal man, continence is an unnatural interference of the very kind you have been talking about; now, what do you say?

A. I would say that is true.

Q. And you would include in that the practice of celibacy in the case of the man; I am not talking of women?

A. Nature takes care of that.

Q. Yes, but you and I are agreed that complete celibacy and complete continence would be a serious interference with nature?

A. Yes, it is.

Q. You see now where I am heading, Doctor?

A. Yes.

Q. If that is so, where in the world is the superiority of your kind of birth control over the kind that is set out in that pamphlet: of course, that is set out in "Rhythm" in the pamphlet, but where is the superiority of continence in "Rhythm" as against the others?

A. If you have partial continence or complete continence, nature will take care of it; pathology or physiology will take care of it. In a woman who is sterile, there is something pathological in her cycle usually. I don't say do that always, but it is not to the point.

Q. Have we got this, then: that the difference between your theory and mine for the moment, because I am only a lawyer, talking about this because I have that job for the moment?

A. You know a lot.

Q. The difference between your theory and mine is a little thin piece of rubber?

A. It doesn't take very much to make an awful difference.

Q. You say that makes all the difference between nature inflicting the penalty and nature saying it is okay: if we fool nature, you will pay a penalty?

A. Yes.

Q. And nature -- if you use that thin membrane of rubber, nature will punish you?

A. As far as that membrane is concerned it won't be a thing for a week or two weeks but it can't be otherwise if we look at all the organs, if treated normally. As I said this morning there is a biology for every organ and if you have a trauma you

have a marked physical appearance of reaction, if it is mild at first.

Q. Doctor, surely a trauma in the squamous epithelium of the mouth, by the use of the toothbrush?

A. I meant by trauma there, I was illustrating a certain point, but anything at all that is not acting on the tissues in a way —- I don't know what you mean.

Q. You have both of us up in the air?

A. Ask the question?

Q. I don't suppose nature intended children to put spoons in their mouths, the ones with the funny little handles: mother says, "don't do that; you will hurt your mouth," and the child does and hurts itself and nature herself heals it up?

A. Yes.

Q. Isn't it the same in the vagina?

A. I am speaking of hormones and endocrine secretions, and we don't know, but there is a disequilibrium created which is harmful.

Q. That is new?

A. (No reply).

Mr. Mercier: You haven't heard anything yet.

To Mr. Wegenast:

Q. You say somehow or other because of that thin membrane of rubber, there is some different operation of hormones; there is some difference in the endocrinological functioning?

A. Yes.

Q. Than there would be without it?

A. Yes.

Q. That is getting somewhere?

A. It is, as I said, a science that is in its infancy to a certain extent, but there are certain reactions, no doubt, and that cycle may be upset, but you are interfering with nature and not getting a complete reaction.

Q. You say you are interfering with nature and not getting a complete reaction: let us see how it works: there is no proof?

A. There is proof that that rubber certainly inhibits a complete reaction.

Q. It doesn't prevent the orgasm of the male?

A. That isn't all there is to it.

Q. I didn't ask that: it doesn't prevent the orgasm of the female?

A. No.

Q. What is the difference?

A. There is something lacking in the sensations for some people, some patients who use the condom, for instance.

Q. What are the reports; what do the patients say?

A. We ---

Q. What do you mean; who is "we"?

A. All doctors.

Q. Who?

A. The general profession.

Q. What do other doctors tell you that or do you read it in books?

A. My personal experience, for instance, in the profession.

Q. Not for instance, but do you drag in conversations with other doctors or drag in books or periodicals to the effect there is an interference there?

A. That there is an interference.

Q. The difference in sensation or actual working out: endocrinology: and then I want to ask your proof?

A. I am very sorry you could not get a complete analysis of the whole reaction of the human body from a man having these –- what you are trying to get.

Q. There is surely some way of finding out with certainty?

A. I said any organ not treated properly will react.

Q. And from that?

A. The rest of the body if treated in the same way will react.

Q. I haven't mentioned the jelly, Doctor; now, I want to include that in my line of questions without going all over them again. Do you assert that the introduction of the jelly has the endocrinological effect of which you speak?

A. No, I don't think so, as far as that goes; it is hard to

answer; you don't know the answer to that.

Q. You don't know if chemical or spermicidal?

A. You said it was spermicidal.

Q. No, if I said anything, I would have said it was chemical?

A. There was a distinction between germicidal and spermicidal.

Q. There is a difference between germicidal and spermicidal?

A. Yes.

Q. Spermicidal is not necessarily germicidal?

A. Yes.

Q. Water if cold?

A. Might kill those too, and if too warm ---

Q. And lukewarm?

A. Yes, if in water for a period of time, it would.

Q. Have you ever seen them under the microscope under those conditions?

A. No, but from what is said here and what I have read.

Q. You do accept the evidence heard at this trial?

A. The scientific evidence was right, yes.

Q. I don't want to carry several things with me; I am thinking of the jelly, soap suds, vinegar solution, and you can include water if you like?

A. Yes.

Q. And I am going to put it to you that in none of those is there that endocrinological interference, I call it?

A. No, but ---

Q. Should we have to pay a penalty for using those?

A. The penalty you pay –- if a patient has sterility for years, you will pay a penalty. Sterility if prolonged will cause a pathological condition.

Q. You are not on that?

A. I am on the act itself; I didn't limit myself.

Q. You were not on that subject?

A. And you will not make me answer halfway. My answer is: the reactions are local, general, or systemically. You pay the penalty to the general systemic reaction as to local reaction. It doesn't mean it would be from what you would use.

Q. I thought we were on endocrines and hormones; I thought we were talking about them?

A. You had my opinion this morning and I have covered this thing in a general way.

Q. We must have some limitation to our discussion?

A. Yes.

Q. I am thinking of endocrines and hormones, and you said to put a rubber membrane between them was dong something nature would punish you for, and I shifted to the jelly and soap suds and so on, and there, the endocrines can do what they like, and

you seem to admit I am right by passing away, if you do that, from those to something else that will happen?

A. (No reply).

Q. You are trying to get away from it.

A. No, I am not trying to get away from it.

To the Court:

Q. Your general trend is how do you pay a penalty through using those. The penalty through using the condom is through the hormones and the jelly; is that after a period of constant use?

A. (No reply).

Mr. Wegenast: I got the idea we were through with hormones and my idea was the doctor was depending on the improper action of the hormones and endocrines.

The Court: In the case of condoms.

The Witness:

A. What the Court expressed is what I had in my view.

To Mr. Wegenast:

Q. The penalty clause in this law that now is shown is that in the use of soap suds, you will find sterility come on in six months?

A. No.

Q. When?

A. There is no time in medicine. One patient may become

sterile after 10 years; another more or less than 10 years; there is no time in medicine.

Q. Doctor, I could have made up that answer easily?

A. I am not making up the answer easily.

Mr. Mercier: He is not making it up; if my learned friend will stop his sarcasm.

To Mr. Wegenast:

Q. You have already admitted you know of no studies on it?

A. I have stated certain opinions and for those reasons for my objection to those things and I cannot convert you.

Q. How would you go about trying to persuade me that sterility will ensue from any use of contraception?

A. (No reply).

Mr. Mercier: He didn't say "would"; he said "might".

Mr. Wegenast: I was trying to get his authorities; I opened books ---

The Witness:

A. Dr. Scott said a woman without children has more chance to cancer. If a woman is sterile for a certain time, there is a pathological condition; that is Dr. Scott's answer if you accept that.

To Mr. Wegenast:

Q. That is saying something and I will see if you will meet that at all. It is pointed out to me the fact that people (illegible) children doesn't prove sterility?

A. It is playing on words. You said, sterility even if no occasion for fertility. You mustn't take my word of penalty as one of punishment.

Q. We take it figuratively and you must take mine as figuratively; it relieves the monotony. I want to know how you get to the idea because a woman who is unmarried, let us say, develops cancer, how can you say somebody is punishing her by sterility?

A. That isn't what I had in mind to say. When I said sterility, I said long ago it is possible for possible pathological conditions to ensue to prolonged sterility, no matter due to "Rhythm" or what.

Q. What you mean by sterility is continence?

A. The opposite to fertility.

To the Court:

Q. Through any cause whatever?

A. Yes.

Q. Either by continence?

A. Yes.

Q. Or any means or pathological conditions?

A. Yes.

Mr. Wegenast: We have three answers.

The Court: The witness said "yes" to me.

Mr. Wegenast: He said "yes" to me.

The Witness:

A. I am objecting to that; I did not say "yes" to both.

To Mr. Wegenast:

Q. When we say sterility, we have in mind no inoculation?

A. No fertilization.

Q. That doesn't mean incapacity?

A. No.

Q. So we are entirely at cross purposes. When I say sterility, I mean incapacity. Now, I am asking you how you can prove that this woman who was unmarried, at all events, hadn't any children, developed cancer; how can you say she was incapacitated from having children?

A. I can't advance any such thing as that.

Q. So we get to this, Doctor?

A. That is only one possible case; give me the conditions of the case?

The Court: Five minutes' adjournment.

(Upon the Court resuming)

To Mr. Wegenast:

Q. Did we get to this, Doctor: that sterility, I mean in the sense of incapacity to have children on the part of the woman: it cannot be proven to have been caused or never has been proved to have been caused by mere continence?

A. I have explained my view in that it is possible.

Q. Yes, possible. I suppose all things are possible, but you seem to blame cancer or seem to think cancer of the uterus might be caused by the use of contraceptives; that is your argument?

A. I have said that, yes.

Q. And I have pointed out to you that the fact a woman**…(Page P-257 missing)**

To Mr. Wegenast:

A. Yes.

Q.

> "I have been connected with the cancer clinic of the Toronto General Hospital for some years, and in that time, I have seen only three cases of primary carcinoma of the vagina. If it were caused by a rubber pessary, much more would it be caused by a pessary for retrovisation (sic) or prolapsus."?

A. I haven't mentioned the direct cause when I made the statement this morning; I was covering all contraceptives and not only one contraceptive.

Q. Would you include, when saying that, the intrauterine stem pessary?

A. You haven't got that recommended. What I had in mind was the possibility where you have a constant irritant such as the tampon with vinegar being up against the cervix for a number of years; repeatedly you are continually irritating that vagina

and we don't know the exact cause of cancer, but we know it is sometimes resulting from some irritations and that is the right place at the cervix at the junction of the mucous membrane of the vagina and the cervix.

Q. That is not what is given us by Dr. Scott, who says:

> "If it were caused by a rubber pessary, much more would it be caused by a pessary for retrovisation (sic) or prolapsus."?

A. I hadn't that in mind.

Q. Isn't it so, if a pessary is used for correcting prolapsus, it would have to be more tightly or exactly fitted?

A. Not so close. Any one of those things are in constant contact and are irritants. We use those to correct prolapses; we can't do otherwise when we do use them, and the irritation from those wouldn't possibly cause cancer; I wouldn't support that opinion yet.

Q.

> "Cancer of the body of the uterus: it is quite true a woman who has not had a child is more liable to have cancer in the body of the uterus than those who have had children."?

A. Yes, a lot of fibroids.

Q.

"On the contrary, cancer of the cervix arises almost entirely in women who have had

Dr. Couture

children."?

A. There is more irritation.

Q.

"In every case of cancer of the body of the uterus, there are at least 10 cases of cancer of the cervix."

It should be:

"For every case of cancer of the body of the uterus, there must be 10 cases of cancer of the cervix."?

A. Of the cervix.

Q.

"Q. That is to say the prevention of pregnancy would have 10 times the effect in preventing cancer then."?

A. It is a fair indication of the conclusion.

Q.

"A. It would in causing it."

Then, I went on to sterility?

A. (No reply).

Q. You don't think a pessary as a contraceptive wouldn't be more likely to cause cancer than a pessary for prolapsus?

A. That pessary doesn't apply so near the cervix, but there is that accumulation of secretions which might stay there.

Dr. Couture

Q. You are saving me some time, Doctor?

A. I was going to do that.

Q. Have you observed in the pamphlet how often they should be removed?

A. I don't lay much stress on that.

Q. It says in the pamphlet:

> "Wash pessary with soap and water before using. While the pessary is still wet, smear the upper side and around the rim with jelly, using in all one teaspoonful."

And it says it is to be done under the instructions of a doctor. It is almost silly, I suppose, to ask you, Doctor, whether or not the use of the pessary should be supervised by a physician. I believe it was seriously suggested here, Doctor, a woman shouldn't use a pessary without medical supervision?

A. That is what you have been holding.

Q. But every use?

A. I don't see how the patient can go to the doctor every night before going to bed.

Q. It was seriously suggested?

A. That doesn't mean it would be successfully used every time.

Q. A person must take precautions even in brushing the teeth?

A. That is more than a toothbrush, certainly.

Dr. Couture

Q. I wonder if I put this to you, Doctor, but I want to put it generally, again, if you don't mind: you don't think that because any particular remedy or therapeutic agency isn't 100 per cent effective it should not be used?

A. No.

Q. So to begin with, the Ogino-Knaus practice and the jelly and the condom and the rest of them are not to be condemned in any case on the ground of mere inefficiency?

A. There is a little difference on the ground of the difference of the effects. We use a lot of drugs where we don't obtain results, but contraceptives where they fail in a serious case, it would be disastrous.

Q. Haven't you to do the best you can?

A. That is what we are doing.

Q. That isn't the point. Supposing you are finding a remedy, whether aspirin or contraceptive, if it is not 100 per cent effective, you don't condemn it on that account?

A. I just answered it.

Mr. Mercier: Maybe my learned friend should establish through the witness whether it is a remedy he compares with another remedy, whether he is establishing it?

Mr. Wegenast: My friend might point that out in argument later on.

Mr. Mercier: I am pointing it out now.

Mr. Wegenast: I thank my learned friend.

Mr. Mercier: You are entirely welcome.

Dr. Couture

To Mr. Wegenast:

Q. I don't think you will have any difficulty in saying it. I don't know what the word is for lack of pregnancy; you would say sterility?

A. Yes.

Q. That is not English and it is not continence. Where it is indicated a woman should not have another baby, I think you will admit a pessary would be a therapeutic agency, or a jelly?

A. I have told you what my treatment would be, and if somebody else wished to use that, all right. I have answered that this morning.

Q. I am asking if that would be a therapeutic agency, not whether you would use it; we know that well enough?

A. Certain things might be considered therapeutic and they are not; we use them and after a certain number of years, we find them therapeutics.

Q. Salt and water is a therapeutic used as a gargle for sore throat?

A. You might put it that way.

Q. In cases where a woman indicated medically was not to have a baby, a pessary would be a therapeutic agency?

A. I have answered that.

Q. Say yes or not?

A. I can't.

Q. Why?

Dr. Couture

A. You might think it is today and not tomorrow; it might be today for somebody and not tomorrow.

Q. It might be a therapeutic agency?

A. It might be.

Q. Then my question was, when my friend helped me, whether you should avoid a therapeutic agency on the mere ground it wasn't 100 per cent effective?

A. I choose between two therapeutic measures the one suits me and my patients, and some other may suit others.

Q. You are so suspicious?

A. I am quite fair and straight.

Q. I think you might really answer my question in the straight affirmative, and because a remedy isn't 100 per cent effective, you don't throw it away?

A. Absolutely, and there are very few 100 per cent therapeutic measures.

Q. And I put this to you on your account that your man DeGuchteneere complains querulously that anyway these contraceptive things these birth controllers are recommending are not always effective, and the woman has a baby and it causes a lot of neuroses?

A. I don't think you read in that book the expression on his face. He doesn't need to be looked upon as nobody because he doesn't agree with you. He is a man deserving of respect from anybody here, and you can't make a face like that talking about him.

Dr. Couture

Q. I may have been making a face, but is it your idea?

A. That is all right; you are normal there.

Q. You were giving me a reason, and I think it is a very fallacious argument, and I think yours is correct and I think you and DeGuchteneere part company there. He says the condom, pessary and contraceptives, none of them are 100 per cent perfect?

A. That is what you admit and I admit.

Q. Is it right?

A. I have answered that.

Q. Do you part company with Mr. DeGuchteneere on that?

A. You are not interpreting him there and you are turning there into a set phrase I don't like to accept.

Q. I wonder if I can put it this way: that the argument has been brought forward in this trial that because the artificial contraceptives are not perfect, they may cause disappointment and that may be bad for some woman's health, if you will meet that without connecting it with DeGuchteneere?

A. It may be bad for some women's health as it causes disappointment, but if a woman feels uncertainty of a certain measure, she lives under constant misapprehension and she may be unhappy and not satisfied.

Q. That is another point, if she feels that a failure once ---

A. Even if it does not fail.

Q. I am taking the case of a woman who has relied on

artificial contraceptives, and it has failed her, and I am asking whether that is reason why she should never have used it in the first place?

A. No.

Q. Then, if you say that I need not pursue that but come to it after a while. Several of the authors bring out that same idea; it was brought out by you: "women might be fooled by it."

A. Did I use that word "fool"?

Q. I put it down that way: you said women might rely on it and it fail them?

A. Yes.

Q. If they relied on continence, total or partial, it wouldn't fail; it would be better?

A. If it didn't fail, it would be better.

Q. Is that what you imply?

A. That is not what I implied at all.

Q. What did you imply?

A. A person taking "Rhythm" or periodical continence or constant continence or any other means; she takes it with a view of not becoming pregnant and she acts that way and becomes pregnant; she may have in her mind not to become pregnant because she dreads the thing and in some cases if she is so insistent on not having a pregnancy she might find out a way of not going on with it because her mind is already filled on not wanting a child and that woman is more easily converted to having an abortion.

Q. What do you imply then: that because artificial contraception failed, she might have abortion?

A. Not artificial.

Q. Any of them?

A. Yes.

Q. And that is the reason for abortion?

A. In some cases where used for the fancy of using it.

Q. Do you mean to put it as a serious argument against the use of contraceptives, either Ogino-Knaus, the pessary or condom, that they may fail and then the woman may have an abortion; is that what you mean to argue?

A. That is what I mean. I wouldn't say 100 per cent of those patients.

Q. All right, so your idea is that the use of contraceptives might increase the number of abortions?

A. I don't know how you intend to reduce abortions by contraceptives.

Q. That is putting it in a left-handed way. Let me read from "Legitimate Birth Control"?

A. (No reply).

The Court: O'Brien, Exhibit 83-B.

Mr. Wegenast:

Q. This is, as we have observed, with the imprimatur?

A. (No reply).

Dr. Couture

Mr. Mercier: Not the Nihil Obstat.

Mr. Wegenast: No, but there is a foreword by Bishop Noll. Now, if Your Worship will have a little patience with me, I will try to honeycomb my material by taking the main points of it and that will take a little picking.

To Mr. Wegenast:

Q. On page 33, Father O'Brien, the author of this book, says:

> "Not less than the good results mentioned above will be the lessening of the enormous number of criminal abortions which has grown in recent years by leaps and bounds. According to 'Abortion in Relation to Foetal and Maternal Welfare,' prepared for the White House Conference by a committee of which Dr. Hugo Ehrenfest was chairman, the number of abortions performed in the United States each year has reached the astounding total of 700,000. The total is mounting every decade. The report states that about 15,000 of the women upon whom abortion was performed in 1930 died as a result of the operation. 'The reports of doctors,' writes Dr. Peter Latz, 'allow of no doubt but that abortions among all classes have increased alarmingly and that the number of criminal abortions is more than double the number of normal births.'

> Sex –- God's Creation. In view of these facts, is it not evident that the teachings of the Church on birth control are eminently suited to attain these two great goods:"

And he goes on and includes this amongst it and he goes on and I could quote the author of "Rhythm," who is a doctor, to the same effect, that the use of methods of birth control –- I am thinking of Ogino-Knaus –- will materially reduce the number of abortions. You disagree with that?

A. Yes, I disagree this way: I don't see any sense of going around reducing the number of pregnancies to reduce abortions. If you give everybody in town contraceptives, there will be no pregnancies and no abortions. But 6 out of 10 abortions to which I am called are the unmarried. Three out of them are mothers with two or three children; the others are mothers with more. If you want to reduce the numbers of abortions, you will have to give it to unmarried girls.

Q. Your practice is abortions, Doctor?

A. No.

Mr. Mercier: That is going too far. The doctor said he was called after the abortions.

The Witness:

A. I didn't say that, no, sir; I wouldn't say that here if I was doing that.

To Mr. Wegenast:

Q. These clerics and a doctor with clerical approbation: their idea is the use of contraceptives will reduce the number

of abortions, and here is Taussig in as an exhibit already, 91-B, and I quote him.

A. (No reply).

To the Court:

Q. Do you know Taussig?

A. (No reply).

To Mr. Wegenast:

Q. Do you recognize this man as an authority?

A. Yes.

Q. It is the standard work on abortion, spontaneous and induced. At Page 451, he has a paragraph entitled "The Role of Contraception":

> "Of all the measures suggested for the control of abortion, none equals in importance the wide-spread establishment of clinics for contraceptive advice and provision for the free distribution of contraceptive materials among the poor."

Would you disagree with that; it is rather serious to disagree with Taussig?

A. He may be a serious man and he may be biased in favour of contraceptives and that may account for expressions of that opinion, but my opinion is that contraceptives should not be given to a big proportion of unmarried girls who have the abortions.

Q. Otherwise, there are other expressions of Catholic and

non-Catholic authorities and you don't agree with them?

A. I don't say I don't agree.

Mr. Mercier: These two pamphlets, "Rhythm" and "Legitimate Birth Control," have not been published with authority.

The Court: No, not with authority.

Mr. Mercier: When you say with the imprimatur of some bishop, it doesn't establish authority.

Mr. Wegenast: I don't suppose, Your Worship, a Catholic would have any authority in your Court. Your Worship wouldn't be moved one way or the other by the fact it was moved by one church or the other.

Mr. Mercier: But I don't want it referred to as a Catholic church authority.

Mr. Wegenast: It is approved by Catholic authority.

Mr. Mercier: Some bishop.

The Witness:

A. If it is what I understand, it is continence.

Mr. Wegenast: It is Ogino-Knaus.

The Court: It is periodical continence.

The Witness:

A. But I say the big majority of unmarried girls wouldn't be reduced in abortions unless given contraceptives and to reduce the abortions, you must give contraceptives to them. In this, it is continence.

To the Court:

Q. Periodical?

A. Yes.

To Mr. Wegenast:

Q. I come back to you, Doctor: you don't find most of the doctors find most of their abortions among the unmarried?

A. That is my experience, but I find no statistics on abortions because the history of abortions is very difficult to get.

Q. Now, let me see, do you or do you not approve as a doctor of circulating this book, the "Rhythm"?

A. (No reply).

Mr. Wegenast: I have forgotten the exhibit number.

Mr. Beament: Eighty-B (80-B).

To Mr. Wegenast:

Q. Generally?

A. I would not advise that; it has caused a lot of failures.

Mr. Mercier: The doctor says, "it has caused a lot of failures."

Mr. Wegenast: His Worship must stop the doctor going over old ground.

To Mr. Wegenast:

Q. Is that the only reason you disapprove of it?

A. I don't think it is proper propaganda to spread among the population; it should be hygienic and not anti-conceptional.

Q. Then, in Exhibit 83-B, "Legitimate Birth Control"?

A. (No reply).

Mr. Mercier: The doctor hasn't recognized that.

The Witness:

A. No.

To Mr. Wegenast:

Q. It is an authority?

A. (No reply).

The Court: No, you can't; the whole purpose of reading a text book is whether he can agree with something he recognizes as an authority.

Mr. Wegenast: My friend puts it this way: if I want to put the proposition to the witness and ask does he agree with it; I can do that?

The Court: No, I don't think you can do that, asking does he agree with it.

Mr. Wegenast: If I want to put the proposition to the witness and frame it in my own language.

The Court: That is not putting it up and reading from the book as an authority.

Mr. Wegenast: I haven't kind of got to the point, Your Worship; if I want to put that on a piece of paper, I can read it to the witness?

The Court: But don't read it from a book and ask his opinion.

Mr. Wegenast: In deference to that, I will have it written out. You don't agree then, Your Worship: these things have been read into the record and have been adopted by Dr. DeHaitre.

The Court: The same portions you wish to read out?

Mr. Mercier: It might shorten things.

Mr. Wegenast: As a matter of fact, I had the right to read it to Dr. DeHaitre, and I thought it would be put in as an exhibit.

The Court: I thought you deferred reading more until you got a theological witness. You know the law in the Anderson case; it is well settled.

Mr. Wegenast: I had no idea: Your Worship will remember we got denied by counsel as well as Your Worship of having these read, and we simply put in the book. Now, does that mean we can't put them in and read them?

The Court: You know the law.

Mr. Wegenast: I thought if objection would be taken.

Mr. Mercier: If I thought objection would be taken to more than five experts.

Mr. Wegenast: For the present, I might read from Dr. DeHaitre's evidence.

The Court: If the portion is already on the record.

Mr. Wegenast: But it is a distinct shock to me if I can't refer more to the exhibits. In a matter so broad, Your Worship shouldn't be confined to considering the exact material brought before you. I said that several times. If I thought it would

have gone against me, I would have taken a different course. I will take Dr. DeHaitre's evidence.

To Mr. Wegenast:

Q. I said to Dr. DeHaitre, referring to the book "Rhythm," Page D-127:

> "What good is expected to follow from the dissemination of this knowledge?"

That is the point we are on. The doctor answered:

> "A. The period of sterility and fertility during the menstrual period.
>
> Q. If the contents are practiced, there is no pregnancy?
>
> A. No, but it is not foolproof."

Then, I read:

> "Q. 'First of all, we have a right to expect that the married lives of many couples will be vastly enriched with the values; physical, psychic and moral, of married life as it was intended by the Creator.'"

That is, by the circulation of that information?

A. No, I don't agree with it.

Q.

> "'Burdens that test human endurance to the utmost limit and to which all too many succumb will be lightened. I speak of

> economic burdens, the burdens of poverty, of inadequate income, of unemployment, which make it impossible for parents to give their children and themselves the food, the clothing, the housing, the education and the recreation they are entitled to as children of God.'"?

A. We have said all that this morning.

Q.

> "'I speak of physiological burdens, the burdens of depleted physical energies and exhausted vitality resulting from a previous

> birth or miscarriage, the burden of chronically or temporarily adverse conditions of the heart, the kidneys or other organs, or of conditions that threaten the life of the mother in case of pregnancy. I refer to psychic burdens, not infrequently more difficult to bear than any I have so far mentioned, burdens of uncontrollable fear, anxiety, irritability, of rebellion against God and His Church for seeming to make demands beyond human nature, beyond human powers to endure.
>
> The greatest gain that will accrue to the human race from a judicious dissemination of this knowledge is the prevention of countless crimes against nature, especially abortions and contraception.'"
>
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What do you say to that?

A. I say those people should go to a doctor and get the information required. If their condition requires special medical instruction or education, they should go to the doctor.

Q. I put this to Dr. DeHaitre:

> "Q. Now, is there anything in this to which you take exception?
>
> A. Not at all."

A. I am not Dr. DeHaitre.

Q. You do not agree with him?

A. He was caught unprepared.

Q. He didn't have the chance you had?

A. (No reply).

Mr. Mercier: That is a very unfair statement.

To Mr. Wegenast:

Q.

> "Q. 'According to "Abortion in Relation to Fetal and Maternal Welfare" prepared for the White House Conference, committee on prenatal and maternal care…'"

That is repetition?

A. I would like a chair if you are going to read more; I like to talk standing, but listen sitting.

Q. He goes on:

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"'…subcommittee on factors and causes of fetal, early infant and maternal morbidity and mortality, Hugo Ehrenfest, M.D., of St. Louis, chairman, there are about 700,000 abortions performed in the United States annually.'?

A. I have read that before; 750,000, I am told.

Q. Do you think the conditions are the same in Canada?

A. Our population is less dense; I don't know in proportion whether more in the States.

Q. Do you think there are more in this country than in the States?

A. I can't tell you that -- what the percentage should be.

Q. Should there be a percentage of abortions?

A. Abortions are against the law of the country and the church.

Q. There are a lot of abortions in Canada?

A. Yes, I understand.

Q. 'Their number is increasing every decade. About 15,000 of the women upon whom abortion was performed died in consequence of the

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operation in 1930.' That doesn't shock you?

A. No, that is a small percentage.

Q. 'The reports of doctors allow of no doubt but that abortions among all classes have increased alarmingly and that the number of criminal abortions is more than double the number of normal births.'"?

A. (No reply).

The Court: We had that.

The Witness:

A. You read it a while ago.

To Mr. Wegenast:

Q. We didn't read this:

> "'What a ghastly story these few lines tell.'"?

A. That is true.

Q.

> "'And still, unless we are confirmed pessimists, we must hold that every last woman from whom the fruit of her womb was criminally removed would a thousand times not have had that occur.'"?

A. Right.

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Q. You don't disagree with that?

A. Oh, no.

Q.

> "'Even supposing that one-half of the abortions are performed on unmarried women, the number of crimes that still remain is enormous enough to justify every legitimate effort in trying to reduce it.'"?

A. That is what I said, the proportion; what is the remedy –- that is what I said, the proportion –- continence.

Q. Are you satisfied with Ogino-Knaus to stop abortion?

A. What I said, to come back: abortion is hygienic education.

Q. The question is whether you do or do not approve of the circulation of this Ogino-Knaus theory in order to prevent abortion?

A. It would do the same degree as any other contraceptive measure would. It will eventually, of course, cause the reduction of abortions. I didn't get your point right away.

Q. As a matter of fact, this Ogino-Knaus theory is intended as a means of preventing conception; isn't it?

A. Yes.

Q. That is what it is for?

A. Sure.

Q. And you admit that?

A. I have seen it work the other way when persons used their "Rhythm" and were anxious for pregnancy.

Q. This book: I would like you to take a look at it, "Rhythm": whether it does or does not employ the Ogino-Knaus theory?

A. That is what it is meant to do.

Q. And that is what it is represented as being?

A. It is a kind of popular form of expression of Ogino-Knaus.

Q. You have already recognized this authority of Taussig: I read another paragraph on Page 388:

> "The vast majority of all abortions equaling 90 per cent occur among married pregnant women, especially those between 25 and 35 years of age who have had several children. The recent increase in abortions has been primarily in this group."

You surprise me on this view?

A. (No reply).

Mr. Mercier: The doctor is telling you about his private practice.

The Witness:

A. Yes, I absolutely disagree with this; these may be imaginary.

To Mr. Wegenast:

Q. Do you know any greater authority on abortion?

A. He may be wrong in his statistics.

Q. Do you know anybody better on abortion?

A. I told you my experience on oath and if you doubt my word, I don't think it is fair.

Mr. Mercier: The doctor says he has given certain evidence out of his own private practice, 6 out of 10.

The Court: The doctor's private experience doesn't bear out the statistics of Taussig's.

Mr. Wegenast: The doctor doesn't have to think that is unfair.

Mr. Mercier: He is not here to give the evidence of other doctors.

To Mr. Wegenast:

Q. Did you hear Dr. Chisholm give his evidence?

A. Yes, I was here.

Q. Now, talking about cycles and not completting the cycles, you introduced the subject and I put this to you: the matter of the sexual reproduction machinery and impulse -- that goes with it – is one thing, but there is another phase: that is, the love, affection; the sort of thing that makes people want to hold hands; do you agree that is another phase of the situation?

A. I can't object to that.

Q. That is also a cycle?

A. Absolutely.

Q. You agree with that?

A. Yes.

Q. Now, you would admit we share it with other animals?

A. You cut it short.

Q. The ordinary process of reproduction is common to man and animals?

A. Yes.

Q. But the other is not; it is only found in people?

A. Yes.

Q. In the human races?

A. And there is no psychology in the animals; some have reflexes.

Q. You mean?

A. I am not going to argue on those points.

Q. We will not argue. Taking the lower animal phase: I mean, put it in your own language; there is a certain emotional pressure created?

A. Yes.

Q. Which wants an outlet?

A. Yes.

Q. And your theory is it doesn't get its proper outlet when contraception is used?

A. I don't think in that sense. I said, having a contraceptive on the cervix, secretions from the uterus would be affected, but not from the vagina. I was referring, possibly if they left a pessary on for 24 hours or so, there would be a backing up of secretions.

Q. You will admit there is a damning up or repressing?

A. Of secretions.

Q. Emotions, the nervous part?

A. Yes.

Q. Want an outlet?

A. Yes.

Q. And they normally get that outlet in the sexual act?

A. Yes.

Q. Now, this emotional cycle of love wants its outlet too?

A. Yes.

Q. Without beating about the bush, what do you say: that coitus with contraception at least furnishes an outlet for that, first?

A. Which is first?

Q. I call the first, the higher and the second, the animal; the spiritual ---

A. (No reply).

The Court: Use the word "affection"?

The Witness:

A. Yes.

To Mr. Wegenast:

Q. That cycle –- I put it to you if that cycle isn't interfered with or blocked, if there isn't a chance to get an outlet?

A. Oh, yes, sure.

Q. Then, I want to put this to you: whether celibacy, not speaking of continence, doesn't interfere with that?

A. There are physiological reactions take care of that, but celibacy is a very deep subject; it would take a long time to cover the works on it.

Q. I don't want to get you saying anything inconsistent with the general layout?

A. (No reply).

Mr. Mercier: I hope all the women in Eastview were explained all that.

Mr. Wegenast: I don't know the pertinence of that; it might be impertinence, but not pertinent.

The Court: Proceed.

To Mr. Wegenast:

Q. I am putting it to you, Doctor, in this way: if you complain the use of a contraceptive stops something, interferes with something, or is something for which nature will get even with you, won't nature punish celibacy because it blocks one of these cycles?

A. There is a lot, and the question is so vast, I think I could give you a set answer if you give me enough time. There

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is certainly in the sexual reactions a control up above your reason and if a person is bound to be that way they seem to forget more about it than some others and if their mental activity requires a lot of attention; if a person is using his brain I am sure they would forget about it and if there are certain reactions, the idea is not in this world and those human beings certainly have a lot of physiological reactions of that nature, but there are physiological reactions take care of that: that is, talking about the male.

Talking about the female, I know what you are trying to get me to say.

Q. All right?

A. We have admitted up to now that persisted unpregnancy (sic) for no infertility, we find a lot of pathological conditions resulting.

Q. Doctor, you tell me the use of contraceptives is bad because it blocks the cycle, and I say to you that celibacy, itself, seems to block the cycle, and yet, I don't think you will say celibacy was bad?

A. You don't have to use all you have so there is no obligation from anywhere or source of any kind that you must use all the organs in anyway.

Q. That is slipping out from in under again; if it is bad: what is sauce for the goose is sauce for the gander. If contraception is bad because it blocks the cycle in one case, the same argument holds good in the other?

A. How would you take care of virgins who don't find their

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man; do they get an artificial man?

A. It is a full answer?

A. That is the answer; it is your reply to what you please. I have said of your organs, you are not free to treat them as you wish, but they can be passively treated.

Q. What would you say: that passive blocking or interference would not be bad, but active blocking by a rubber membrane would be?

A. Yes, if you are doing something harmful, it is harmful; but doing nothing that is harmful, it is not harmful.

Q. I don't get that?

A. If you are doing nothing that is harmful, it is not harmful; but doing something that is harmful, it is bad.

Q. If you don't keep the physiological cycle —- you complain against keeping it by contraceptives as a normal way; then, if I complained about stopping its completion by celibacy, I think you must admit mine is an arguable position?

A. I have answered that as well as it is possible to answer it.

Mr. Mercier: The doctor has said clearly if you don't do something which is harmful, it is not harmful.

The Court: I have it all right.

Mr. Wegenast: And the doctor said some higher power will make up for the deficiency.

To Mr. Wegenast:

Dr. Couture

Q. Do I understand you?

A. No, the higher power doesn't keep everybody healthy all the time, you know.

The Court: Aren't you getting into psychology and the sublimation of instincts?

The Witness:

A. If I hadn't, you would have brought me into it just the same.

To Mr. Wegenast:

Q. I am not so sure of that. Now, reference has been made to the American Medical Association and the pronouncement of its committee, and I point out to you, Doctor, that when this committee, which is a committee of doctors, we must remember, says that?

A. I know it says a lot of things there you won't like to read, possibly.

Q. Yes, but this is one I want now. I will read:

> "Your committee desires to record its disapproval of propaganda directed to the public by lay bodies."

And it would include interference by the Y.M.C.A. and the Methodist Church and the Catholic Church; that is a lay body?

A. I don't want to answer to the first; I want to know exactly what you mean.

Q.

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"Your committee desires to record its disapproval of propaganda directed to the public by lay bodies."?

A. I suppose doctors and nurses wouldn't be there. Any health organization wouldn't be a lay body.

Q. I want to shorten it:

"Organized solely for the purpose of disseminating (without consideration or restraint) contraceptive information."?

A. Yes.

Q. But lay bodies, not medical bodies?

A. Yes.

Q. It would include religious bodies?

A. Yes.

The Court: If organized for the dissemination of birth control literature.

To Mr. Wegenast:

Q. Now, it is a strong tenet of the Catholic faith that strongly resists birth control information, and I want to ask you why the Roman Catholic Church ---

A. (No reply).

The Court: Into theological?

Mr. Wegenast: No, medicine.

To Mr. Wegenast:

Dr. Couture

Q. Why the Roman Catholic Church or any other church should interfere in this matter any more than anybody else, and why not leave it to the doctors?

A. That is not only medical; I said it this morning.

Mr. Mercier: My learned friend's feet are itching to get the witness into theological grounds. He would love to get into theological grounds. It is his own misfortune he is not going to have a chance to question some Catholic theologians.

Mr. Wegenast: Oh, now.

Mr. Mercier: It is not my fault: I subpoenaed them.

The Court: But asking this witness why church bodies don't leave it to doctors: I don't expect you to see where it will get much weight.

Mr. Wegenast: The doctor has approved of that section: he doesn't want people preaching birth control, and I am asking why the same objection doesn't apply to church bodies teaching it?

The Court: Organized for the purpose of dissemination of birth control information.

Mr. Wegenast: Yes.

The Court: There is no evidence before this Court any church is organized for the purpose of dissemination of birth control information.

Mr. Wegenast: This Exhibit 105-B is enough.

Mr. Mercier: Yes, in a certain hospital that has been hung up. If my learned friend would confine himself to asking direct questions to this witness, he would have been out of the box at

4 o'clock this afternoon.

Mr. Wegenast: I would like to ask if lay bodies should not horn in on the medical profession.

Mr. Mercier: That is why they agree with it.

Mr. Wegenast: I think my learned friend is putting it that way.

To Mr. Wegenast:

Q. The medical profession is a closed group and I ask you, Doctor, if it isn't as fair for an organization in the public good, that contraception information isn't in the public good, if it isn't as fair for them to preach their doctrine?

A. (No reply).

Mr. Mercier: Not forgetting that public good is for Your Worship to decide.

The Witness:

A. Must I answer the question?

To the Court:

Q. Don't you wish to?

A. It is not very hard: the church might interfere with moral and for sociological reasons; that is the reason for their interference; it is not medical reasons.

To Mr. Wegenast:

Q. I am glad you called my attention to it. Do you approve of their entering into eugenics and moral things in this report?

A. I think the churches can help the world a lot, and I

have heard some English churchmen ---

The Court: Just a moment, Doctor, don't open that field.

The Witness: (No reply).

To Mr. Wegenast:

Q. I am not asking the doctor to open it. I am asking if it wasn't better for the doctors to leave that out of the report?

A. Oh, that is there?

To the Court:

Q. Not in quite those words?

A. (No reply).

To Mr. Wegenast:

Q. Will you look at that report?

A. Do you want me to answer to all these things?

Q. Wouldn't it be better if the doctors kept to medicine and not the economic and sociological fields?

A. You did that with every witness in the box here.

Q. I am not talking about you, Doctor, but the American Medical Association?

A. I thought you were begrudging my stand.

To Mr. Mercier:

Q. It wasn't you, but four or five others he could have had?

A. (No reply).

To the Court:

Q. He wasn't, no?

A. The American Medical Association is, as I said this morning, a body of men we look up to, but their resolutions are not accepted altogether.

To Mr. Wegenast:

Q. You are a problem as a witness; I don't know how to put a question and get a straight answer. Don't you think doctors would be better advised to leave that out of their report?

A. I am tired of being up here, grilled since this morning. You have had a lot of time preparing these things.

Mr. Mercier: Of course, whenever an expert witness asks for time to consider, he must have the time. My learned friend might want to keep him in the box another two days.

To Mr. Wegenast:

Q. There are economic, eugenic and moral considerations and I am asking the doctor if it wouldn't be better to leave those out?

A. You can't disassociate contraceptives and those problems; you can't study the problem without bringing those questions in.

Q. You wouldn't, Doctor, study the problem without mixing it up with that?

A. No.

Q. Why not?

A. You can't limit it down to medicine. As I said this morning, his duty is to society as well as to his patient. It drags in the economic, social, sociological and philosophical sometimes.

Q. When it comes to the actual working out of contraceptive information, it is a matter of sociology, which includes medicine, economics and so on, but the medical part, I submit, is a matter which the doctor could very well deal with and leave the sociological to other authorities?

A. I think the combined medical and sociological might be advisable.

Q. The sociological must have the aid of the doctor, but I put this: whether the medical association ought to make itself a sociological association and whether you should ---

A. You can't separate the doctors from the social. You have social obligations as a doctor and an individual.

Q. Would you take those functions away from the nurse of disseminating Ogino-Knaus or whatever and concentrate it in the doctors?

A. I have answered that question this morning; you can refer back.

Q. You have got me there. I don't remember the answer?

A. We intend the doctors to use and the nurses to propound hygiene.

Q. When you say "we," you are begging the whole question.

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I am asking whether you should say "we"; I am asking if doctors should make up their minds and run the whole show or should they handle the whole sociological problem?

A. I am not organizing health clinics or guiding health nurses; I must speak in the plural.

Q. You would agree sociology is something that requires more organization and study?

A. Yes.

Q. Yes. I suggest those doctors were not competent to pronounce on those sociological questions?

A. I leave it at that; you are answering the question.

Q. Have you anything intrinsically against the nurse going to the patient instead of the patient going to the nurse?

A. (No reply).

Mr. Mercier: Qualify what kind of nurse.

To Mr. Wegenast:

Q. A social nurse?

A. What is the question?

Q. Have you anything intrinsically against the nurse going to the patient instead of the patient going to the nurse?

Mr. Mercier: Make it pretty plain what he means by "nurse".

To the Court:

Q. I think you pointed out this morning, Doctor, what you mean by a qualified nurse?

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A. A graduate nurse.

To Mr. Wegenast:

Q. Call it a sociological worker; should it be a nurse qualified in sociological work?

A. Well, those qualifications are not quite recognized; I don't know what you would call a recognized sociological nurse.

Mr. Mercier: It would be a nurse qualified by an organization calling itself a sociological organization.

The Court: I don't suppose there are any standards to qualify them.

To Mr. Wegenast:

Q. Nor for mid-wives?

A. They go through a course.

Q. In Ontario?

A. No.

Q. There are a lot in Ontario?

A. Some.

Q. And in Ottawa?

A. A few.

Q. And there is objection to a practical nurse in sophisticated Toronto?

A. Yes, but we can't control that; we are behind the times in that respect. It is admitted that the hygienic department here requires men to be more effective.

Q. And when it comes to sociological work, you will admit sociological people had the same right to demand nurses with their particular kind of qualifications?

A. Oh, no, it depends how hard you are to please sometimes. You recognize them yourself, but I can't say I would.

Q. Do you recognize the right of sociologists to make up their minds as to what sort of people they want?

A. (No reply).

Mr. Mercier: There is in the evidence of several witnesses, which is not contradicted, the accused represented herself as a nurse, not as a social worker, and in one instance, as the wife of a doctor; it is not denied.

Mr. Wegenast: Nonsense.

The Court: It is in evidence.

Mr. Mercier: It is in evidence.

Mr. Wegenast: I didn't think it was.

The Court: Adjourn to tomorrow morning at 10:00 a.m.

(The Court resumed at 10:00 a.m., 10th December, 1936)

Mr. Wegenast: Your Worship, it has occurred to me it might help in shortening the proceedings if I asked my learned friend through Your Worship whether I might proceed on certain assumptions.

I understand now, subject to correction, my learned friend doesn't propose to call any evidence on the theological side.

In examining Dr. Couture, who ventured on the theological

considerations, I am naturally, perhaps unconsciously, influenced by that understanding as to the theological, and I may say I am always influenced by the consideration of not getting Dr. Gerin-Lajoie back and perhaps taking it out on Dr. Couture, but Your Worship will see what I have in mind, but if I understand there is being no evidence on the theological end, and the defence evidence stands, I might omit some of the things I might otherwise ask Dr. Couture and confine myself to medicine.

I wonder if my learned friend will speak on that.

Mr. Mercier: As I stated, I had certain theologians subpoenaed, and it has been my opinion it was better to have as much evidence of medical importance as possible.

Having been curtailed through the objection of my learned friend, I have decided even to cut off some of my medical evidence, and the only evidence I might submit would be by Protestant divines, so I thought I might bring one in at least to show that all do not think alike on the subject. I had considered two excellent Catholic theologians to put in the box, and I would have been privileged to do that, and the proof is that they were subpoenaed, but having small choice, I thought I would choose to rebut what evidence has been given.

In questioning Dr. Couture on matters religious, I object strenuously because the doctor hasn't been put in the box as a theologian, and I think that is fair, and that is my respectful submission to Your Worship.

Mr. Wegenast: It is not a matter of fairness.

Mr. Mercier: Your Worship has ruled. I do not think my learned

friend, wide as the rules of cross examination are, will submit that a doctor can be questioned on theology.

The Court: I have ruled.

Mr. Mercier: In spite of Your Worship saying you will give little weight ---

Mr. Wegenast: My learned friend is putting up a straw man to knock down. I had no intention of asking the doctor theology, but he put up theological answers, and if the stand of my learned friend stands, there will be no theological evidence.

The Court: If I understand, Mr. Mercier intends calling one Anglican divine.

Mr. Mercier: That is my own intention, and I am put in the position now that, good a fellow as I have been, and having been innocently misled by my learned friend, I am not bargaining in any way, shape or form.

Mr. Wegenast: I object.

Mr. Mercier: "Innocently." What I mean is that I would have objected most strenuously had I known this attitude would have been taken by my learned friend. I didn't object because I didn't object to him.

Mr. Wegenast: If my learned friend knows any way of getting out of it?

Mr. Mercier: One would have been for my learned friend to object now that the harm is done.

The Court: If he hadn't objected and I allowed more than five and the case went to appeal, the extra evidence would have been

thrown out.

Mr. Wegenast: It would have been a mistrial surely; I couldn't have done it in a more innocuous way than I did.

Mr. Mercier: Take it for what it is worth.

The Court: You have Mr. Mercier's statement; he intends to call one Anglican divine.

Mr. Wegenast: Then there is the sociological aspect, Your Worship; the same goes for that. If I had my friend's assurance ---

The Court: He can only call two more, and one is a divine.

Mr. Mercier: And the other is Dr. Cargill, a non-Catholic doctor.

Mr. Wegenast: So he has no sociologist.

Mr. Mercier: It is of your own making.

Mr. Wegenast: He says it is of my own making.

Mr. Mercier: The subpoenas are there. If I am depriving you of any pleasure, it is your own doing.

Mr. Wegenast: My learned friend is gloating over it.

(Dr. Couture, still in witness box)

To Mr. Mercier:

Q. I believe you have a request to make to the Court?

A. May I be allowed to correct a statement made yesterday; it was made with a misunderstanding of the term. I always have

in mind when speaking of abortions, induced or criminal, and you considered them as miscarriages, so my statistics I gave yesterday are wrong. If considered to be criminal or induced, they would stand.

I was stating abortions were those criminal and induced; it was six to one, but coming to miscarriages, Taussig's statistics would stand; I am sure of that.

I am sure the doctors will understand my position in that because we call abortions from the first to three months, miscarriages three to seven, and premature seven to nine; the French abortion is from the first to the seventh and induced.

Mr. Beament:

Q. Induced miscarriage?

A. Yes, and that explains my position.

To Mr. Wegenast:

Q. I am glad for that; I got in trouble myself with my own people. I understood just what you tell us, and as my own people said, it was a difference in terminology. I think you will agree then there is a very large number of what in the books are called abortions?

A. Yes.

Q. And one writer says as many as live births?

A. No, that is not my experience at all; not as many as that. Of course, there are a lot of them we are not aware of.

Q. And there was considerable discussion here how you would find out?

A. Yes.

Q. And it would be difficult to find out?

A. Yes, I might go a little further if you will allow me.

Q. Very well?

A. There was one witness from whom I got permission to speak, who testified in this case, and that might show the unreliability of statistics.

That patient happened to be my patient and said she had five births in very close succession, so in my mind, she couldn't have abortions in the meantime. She became pregnant the sixth time and came to ask some way of inducing abortion. I discouraged her very strenuously, but she did obtain the means to have an abortion, and as a consequence, she nearly died, and said, "it is the first time and the last". She became pregnant, and her health became so bad, I thought she was in the last stages of tuberculosis, and now her health is back, and she is very healthy. She is reported as having four.

I am not swearing to the fact she has only had one, but she is under oath, and she allows me to say so; she only had one, so there are possible reasons to find difficulty in having reliable statistics.

Q. And they have different words they use even among the French. If it is just a matter of menstruation being delayed for three or four weeks, they call it "a slip"?

A. Yes, that is why the statistics are so unreliable.

Q. I think I can shorten things a little by putting this question to you: you are against the use of artificial

contraception first, last and all the time?

A. I have told you and given reasons.

Q. So we needn't expect you to say anything in their favour even hypothetically, I mean in putting hypothetical questions?

A. It is absolutely unreasonable that I would say absolutely out of the question; no, I would like to repeat you on terms: you would say they would be interpreted in two ways, scientifically and sociologically.

Q. Yes?

A. So in one's mind who is in favour of contraceptives to say that there is nothing in their favour for those people is a different thing.

Q. You say sociologically there is something in their favour?

A. No, in answering, you must consider the medical and sociological side.

Q. I really don't know what you mean, Doctor?

A. I can answer this way: my treatment would be such it would answer my purpose, so the other man's treatment might be different. I can't recommend another man's treatment.

Q. You are talking now as a doctor?

A. Yes.

Q. That is saying as a doctor and from a medical standpoint, you don't insist there isn't something to be said in favour of artificial contraception?

A. Contraception is a very broad word; do you mean chemical?

Q. Take it apart?

A. (No reply).

The Court: I thought we decided on "artificial" and "natural" yesterday?

To Mr. Wegenast:

Q. Let us say from artificial contraceptives: as a doctor, you would say that there might be something to be said in favour of some artificial contraceptives?

A. No, I can't say that because I say I can do something by some other means, so I can't recommend them.

To the Court:

Q. You, yourself, can produce the desired results by means other than artificial contraception; is that right?

A. The fact that I would recommend a certain thing that in my mind is as good as the other doesn't eliminate impossibilities.

To Mr. Wegenast:

Q. Assuming that another doctor who does not hold the same principles as you do and who, according to his principles, in his treatment of his own patients uses artificial contraceptives, medically speaking, are you prepared to give an opinion as to the rightness or wrongness of his treatment?

A. In answering that, you would have to have a case to decide between the two. You see, my answer wouldn't be

concerning me. What I want to say here is that I would use certain methods and if I say "yes, they would be advantageous," I want that to be taken for one who would use them.

Q. You are too suspicious?

A. You want to prove me inconsequent in my opinions and ---

Q. There is the trouble; you think I want to prove a certain thing. All I want to know is that you don't disapprove medically of some contraceptives?

A. I have said I disapprove all of them.

Q. You disapprove, but you are asking another question?

A. (No reply).

Mr. Mercier: The doctor says he is disapproving the methods in that pamphlet and gives his reasons.

To Mr. Wegenast:

Q. Well, Doctor, under any circumstances, do you approve of any contraceptive?

A. I have said yesterday many times.

Q. You would never approve of an artificial contraceptive at any time?

A. No.

Q. As a doctor?

A. As a doctor, no, personally.

Q. Let us put it this way, Doctor; —- I am going to try to prove you inconsequent as you say —- do you think artificial

contraceptives are entirely useless?

A. I am here to give a personal opinion and not to give a public opinion.

Q. I don't know what you mean medically?

A. You are repeating the same question in another form.

Q. I have the right to do that and see if you give the same answer. I am asking you if artificial contraceptives are entirely useless?

A. With the explanations I have given before, I would say yes.

Q. Entirely useless?

A. Yes.

Q. I don't see what explanations you have given before?

A. (No reply).

Q. Going to show that, perhaps you would be good enough to tell me?

A. That is a question: I made it clear from the beginning that the doctor's duty is clearly to the patient and society, and we have laws we cannot change ourselves, and I cannot claim I have been able to admit of something that might influence society; where would I get the right to admit of something that might influence the consequences on society?

Q. I begin to see?

A. I told you that from the beginning.

Q. Your evidence in the box is influenced by the fact that

you dare not or should not conscientiously make the admission I have asked for?

A. (No reply).

Mr. Mercier: I would like my learned friend to make that clear.

The Court: The doctor stated right at the beginning of his evidence what his views were based upon.

Mr. Wegenast: This is contrary to what he said.

The Witness:

A. I base my philosophy on science, and now you are trying to put it in other terms: narrowmindedness and other things.

Q. I call it "conscience" now?

A. I have tried to prove myself scientific all through and it doesn't limit it down to an individual science; it has been broad enough to society and I can't myself give an answer where you can't balance the consequences of your act, just given a little fact in Court and balancing it against the whole theory and saying I am just giving the highest ideals to my theories.

Q. Can you tell me any higher way when you put it than conscience?

A. In your own mind, I don't think you could find any terms because that is the way you class all those against it.

Q. Will you tell me what the standard is?

A. Scientific.

Q. You complain I put it on scruples?

A. Yes, that is the term you used this morning.

Q. Can you tell me any higher basis than conscience?

A. No, I am not talking about conscience; I said "scientific". Philosophy is a science. You tried to say this morning I was in theology; it was philosophy.

Q. You touched it a few minutes ago?

A. (No reply).

Mr. Mercier: My learned friend's mind is made up already.

Mr. Wegenast: I don't think my learned friend should put in his oar here.

To Mr. Wegenast:

Q. I understood you to say since it is a social question and you had been careful to note you said your answer possibly was not influenced by the fact you had these conscience scruples or principles against admitting an artificial contraceptive could be useful?

A. I never said that.

Q. What is it?

A. I told you I had objections to contraception on philosophy, which is ---

Q. Which is a principle?

A. Which is a science.

Q. What you say is that you claim the protection of philosophy as a science, and you put yourself on the double basis of medical science and philosophical science?

A. (No reply).

The Court: It was his first five statements in the box.

Mr. Mercier: And repeated 20 times since.

To Mr. Wegenast:

Q. And now, I ask you as a matter of philosophy –- I had no idea I was here. I took it to mean as moral philosophy, which is theological?

A. Oh, no.

Q. It isn't moral philosophy you are speaking of?

A. My philosophy?

Q. Yes?

A. Mine.

Q. Platonian?

A. I am not an expert; I told you my philosophical principles were those philosophical principles here.

Q. Yes?

A. And I propose sticking to them and not going outside them, and different other philosophies, I am not concerned with.

Q. Where did you get your philosophical principles?

A. You know that is a very broad question.

Q. And embarrassing?

A. Embarrassing on the streets, in books and everywhere.

Q. Where did you pick up yours?

A. I have picked it up like anybody else should, from

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college and observations.

Q. What college?

A. Don't try to bring me out to –- I have gone through schools; we got philosophy there.

Q. Did you take a course in philosophy in McGill?

A. Part of it.

Q. Yes?

A. I was there for a short time in arts.

Q. How many years?

A. One year arts, McGill.

Q. What text books did you study?

A. (No reply).

Mr. Mercier: What grammar?

The Witness:

A. That is 35 or 6 years ago; that is asking too much, and I have seen so many since.

To Mr. Wegenast:

Q. What other authors come prominently to your mind?

A. (No reply).

Mr. Mercier: Surely a man may know his grammar without learning the authors.

Mr. Wegenast: It is to test his competence.

The Witness:

Dr. Couture

A. The best way to test it is by what I have told you, not what I have studied, but what I have told you. If you are not satisfied with that ---

Mr. Wegenast:

Q. I am not satisfied?

A. I couldn't satisfy you.

Q. I am asking you in cross examination what books you have read or studied in philosophy?

A. I say it is impossible to answer; I can't.

The Court: I think that is a fair answer, and I couldn't tell you what books I studied in philosophy, and it is not so long since I was in college.

Mr. Wegenast: Perhaps Your Worship wouldn't pose as a philosopher.

The Court: Everyone of us has a philosophy based on experience, life and other things.

To Mr. Wegenast:

Q. His philosophy isn't apparently based on books, and I am going to the opposite end and ask if you picked it up on the street or in ordinary commercial life?

A. No, because I can't say the authors' names.

The Court: It isn't fair to ask authors' names.

Mr. Wegenast: But he ought to be able at least to give some general ideas.

To Mr. Wegenast:

Dr. Couture

Q. I suppose you understand something about the different branches and schools of philosophy?

A. I am not a qualified man to discuss those points.

Q. The answer is "no"?

A. I am not qualified to discuss those points; it is "no".

Q. So by reading books or picking it up on the street, you come to this conclusion: that the use of artificial contraceptives is bad?

A. (No reply).

Mr. Mercier: That is unfair.

The Witness:

A. I have my ideas made on philosophy; I have told you my philosophical principles.

To Mr. Wegenast:

Q. But what I am putting to you is, what have they to do with artificial contraceptives?

A. That is such a foolish thing to ask.

Q. I think it is a foolish thing to ask, but you have said the basis of your objections to artificial contraception is philosophy?

A. Yes.

Q. I want you to show me the connection?

A. I have showed it from the very beginning.

Q. Let me know what it was?

A. I have expressed my theory.

Q. Is it a theory?

A. Pathological theory accounts for my decisions and the extent of a medical man's duty either to a patient or to society. I have explained now how I am qualified to decide where a sociological problem is involved. I am not qualified to direct one patient to a certain thing that might affect society at large. I am not justified in doing that, and that is on what I base my principles.

Q. I don't know what you mean, "society at large"?

A. Whatever act you do that has something to do with the influencing of family life will naturally be a social problem.

Q. Yes?

A. If I touch the social problem where it is not justified ---

Q. Not justified, why?

A. The thing is so technical that to give you the whole theory of the whole thing would take quite a long time, and I can't answer such a question as that facing the public, having you

questioning, grilling, having four or five men around you: do you think my mind can be clear and do you think it fair for men to come here and given philosophical discussion, and I have given you my principles and my reasons could be supplemented in a great many ways, but I can't do it here.

Mr. Mercier: I wish to say I put the doctor in there as a medical expert, and he passes as a medical theorist on certain

philosophical principles, which are his own, and my learned friend is trying to grill him on philosophy.

The Court: I gave my ruling yesterday on that point.

Mr. Wegenast: I am not going into philosophy, but asking what his philosophy is about the use of contraceptives.

The Court: We have covered that several times.

Mr. Wegenast: I don't know what his philosophy has to do with artificial contraception.

The Court: We went through all that yesterday. His whole statement on biological principles explained it.

The Witness:

A. That is why I didn't like artificial contraceptives.

Mr. Mercier: He is not the only one.

Mr. Wegenast: Does my learned friend think it smart to make a remark like that, or is it fair, or is it to perpetuate the traditions of a Crown Attorney; is he perpetuating the traditions of his predecessor, a friend of mine, Hal Ritchie? He isn't doing that now. I want to find out from Dr. Couture.

To Mr. Wegenast:

Q. I want to know the connection between your philosophy, such as it is, in the acceptance of social responsibilities and your advising periodical continence?

A. I have answered that.

Q. Isn't that taking the social responsibilities?

A. No, a person can do or not do certain acts.

Q. Could you undertake to advise and undertake a social responsibility when you advise Ogino-Knaus?

A. No.

Q. You would take a social responsibility if you advised using a condom?

A. I suggest the use of continence, but if they wish to use it, it is their business; if they don't, it is their business. Nobody is obliged to be continent, so you are not giving something against society.

Q. Isn't that true of the use of condom: they don't have to use it; they can do what they like about it, take it or leave it?

A. One is negative and the other is positive; I find a big difference.

Q. Is that the basis on which you base your ideas about both?

A. Yes.

Q. We have said something which is a bit new?

A. I answered that yesterday. An individual may suffer from an act which he hasn't done, but he is not obliged to do it. He may suffer from something he has done and it is his responsibility.

To the Court:

Q. You went into that yesterday, Doctor?

A. (No reply).

Dr. Couture

To Mr. Wegenast:

Q. That is pretty well washed out when you think of vaccination?

A. I have explained vaccination.

Mr. Mercier: May I, Your Worship, interject something: if it is going to be a repetition of all the evidence of yesterday?

The Court: We have nothing new this morning.

Mr. Wegenast: We have this new, Your Worship, with respect that that the witness is now undertaking to justify his position, and the question is always whether he would say that artificial contraceptives are useless; he has got off on that himself, and I have to pursue him until I get some place.

To Mr. Wegenast:

Q. Let us understand, Doctor, which is positive and which is negative; perhaps we misunderstand each other on that?

A. Continence is negative and artificial contraception is positive.

Q. You mean Ogino-Knaus continence is negative?

A. Yes.

Q. And therefore good?

A. And therefore good.

Q. And to use the condom is positive and therefore bad?

A. Positive and bad don't always go together; one is off philosophy there.

Dr. Couture

Q. What I am, I am?

A. You can't make a general statement that positive and bad are the same thing.

Q. Do you say the condom and pessary are bad because they are positive?

A. I say the act resulting from using them is a positive act, and if there is any harm, it is bad.

Q. Because it is positive?

A. (No reply).

To the Court:

Q. And you claim there is harm using them?

A. Yes.

To Mr. Wegenast:

Q. And that harm is because it is positive?

A. (No reply).

The Court: We went through that thoroughly yesterday.

Mr. Wegenast: I don't know if on the same basis; we never used the word "positive".

The Witness:

A. There are a lot of ways of expressing the same ideas.

To Mr. Wegenast:

Q. Vaccination is positive, but you say it is good?

A. Yes.

Dr. Couture

The Court: We had yesterday a discussion on passive and active and negative and positive.

Mr. Wegenast: I think I am entitled to say this: if this is important enough to warrant a trial of this length, the basis on which the distinction is made, fine and silly as it may appear to some of us, it is of importance, and I don't apologize to Your Worship, but I submit it is of very great importance to find from a homemade philosophy –- now, we have books and books, and there is a man with a homemade philosophy, and I think it is of the utmost importance to find out how he gets that way.

The Court: Please don't conver (sic) what has gone before.

Mr. Wegenast: He gets before ---

The Witness:

A. I object to the words, homemade philosophy".

Mr. Beament: May I interject?

The Court: Your question has been covered many times.

Mr. Beament: The witness has no right to make objections; he can only answer. This man has taken the role of counsel and if put back in the witness box and disrobed, it might go faster. It is for the Crown Attorney to object for him.

Mr. Wegenast: I don't want to put anything in the way of getting exactly what this witness' reaction is. We pursued decency and indecency. It is not only my privilege, but my duty to get to the bottom of this, and I want the witness to say on what ground he can distinguish between or how he can distinguish between vaccination and artificial contraception on the ground.

The Witness:

A. Vaccination is being used to help the individual in society and not to hurt them.

To Mr. Wegenast:

Q. I was going to say that and you did it for me; in other words, you say artificial contraception would hurt society?

A. Yes.

Q. Now, we have something new; are you going to stick to that, Doctor?

A. I said it from the very beginning.

Q. How will it hurt society?

A. I have said that before: if I am affecting the conditions of the world by giving instructions which are not of my domain, in affecting society, I must not do it.

To the Court:

Q. He wants to know how it will affect society in giving artificial contraceptives?

A. It is a matter of consequence if you do an act as a consequence of which you keep a child from being born; it is not only the person who is going to have the child that suffers, but the whole of society will miss that child.

Mr. Wegenast: Now, we are on something new.

The Court: I don't think we have gone into reasons why society would be affected. I think this is something new.

Mr. Wegenast: I have used so much steam getting there.

Dr. Couture

To Mr. Wegenast:

Q. Now, Doctor, don't get away from that that; society is interested in having a child born?

A. Yes.

Q. And you don't think it is any part of your business to prevent that child being born?

A. Not so general as that.

Q. How general?

A. If a patient requires instructions which, as a consequence, might not result in life, I am justified in giving instructions to the extent I have told you yesterday: the continence; but just for the fancy, I can't do it.

Q. You think it is of importance and interest to society whether a child is born or not?

A. Yes.

Q. And that is the basis from which you proceed, and that is why you object to giving contraceptives?

A. One is positive and the other is negative.

Q. Which is?

A. It has the same effect.

Q. It has the same effect on society

A. Yes.

Q. The effect on society is to prevent a child being born?

A. Yes.

Dr. Couture

Q. Now, I ask you what difference can it make on society whether you use an effective or reliable method like the pessary with jelly or use an unreliable method like Ogino-Knaus?

A. You are not obliged to do it; as I said before, sometimes those ---

Q. How do you mean, obligation? You are off on something else; we are talking medicine.

A. Obligation in this sense: that you have prerogatives as a human being, and you are not under obligation to use all those, so if you don't use them, you are not doing something wrong, but if you do something that is positive and wrong, it is different. If the consequences of a negative action are harmful, it is not wrong, but if a positive action is harmful, it is wrong.

Q. I have read that before. Did you ever read the Encyclical of Pope Pius issued on the 31st of December, 1930?

A. I haven't read it.

Mr. Mercier: Is that medical, Your Worship?

To Mr. Wegenast:

Q. Does it make any difference in result whether a child is prevented by Ogino-Knaus or by a pessary?

A. Have I not answered that question?

Mr. Mercier: Sure.

The Witness:

A. I have said one is negative and one is positive.

Dr. Couture

To Mr. Wegenast:

Q. Just a moment, Doctor, is that a social question or is it a religious or moral question?

A. Medical and social.

Q. I put it to you then, Doctor, it doesn't make a bit of difference to society whether the birth of a child is prevented by Ogino-Knaus or by the pessary; you differ with me there?

A. The consequences are the same.

Q. I want you to distinguish between the consequences if you possibly can?

A. If no child, society is affected in the same way no matter what the cause.

Q. Is that the social end of it or is there another social factor of some kind there? I suggest to you the other factor you have mentioned is a moral factor; do you differ with that?

A. Moral principles are based on philosophy.

Q. I didn't ask you anything to invite that answer, Doctor?

A. (No reply).

Q. We will have the question read: Is that the social end of it or is there another social factor of some kind there? I suggest to you the other factor you have mentioned is a moral factor; do you differ with that?

A. The moral factor is part of a social problem.

Q. Let us take it in a narrow sense, if you will or can, and disassociate sociology from morality; I am taking it there

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is a difference; you will admit that?

A. There is a difference between the two, morality and sociology.

Q. Sociology is one thing and morality is another, and theology isn't the same thing as sociology?

A. Theology is the science of God.

Q. It isn't the same thing; can't you answer that "yes" or "no"?

A. They are different sciences.

Q. Is it or is it not the same thing?

A. I wish you were here to answer my questions and you wouldn't do better than I can.

To the Court:

Q. Doctor, answer the best you can?

A. (No reply). (Long silence)

Mr. Mercier: I would like Your Worship to tell this witness he can answer questions. My learned friend is asking questions on morality, theology, and philosophy, and he is put there as a medical witness.

The Court: I have expressed myself several times, but:

To the Court:

Q. Doctor, answer your questions to the best of your ability. If you can't answer, say "I can't answer"?

A. I thought I was under an obligation to answer.

Dr. Couture

To Mr. Wegenast:

Q. I am trying to get a start on something you will admit; will you admit theology isn't the same thing as sociology? Just a silly, simple question like that, I want to get a start somewhere. Now, Doctor, don't be so suspicious.

A. I am suspicious because of this: I can't afford to answer in a foolish way. It is a very difficult thing to stand here, and you are asking those very simple questions.

Q. Let me see, Doctor: is it any part of yours to answer whether foolish or wise; you are sworn to tell the truth?

A. (No reply).

Mr. Mercier: I want a ruling, Your Worship, if a medical witness in the box is supposed to say sociological is the same as theological, as a matter of fairness.

Mr. Wegenast: I have a witness here who in spite of my best efforts slips out. I have tried to meet him to place the sanctions for his views.

The Court: That is a different line of questioning; it is not directed to the material issues of the case.

Mr. Mercier: Oh, no.

The Court: But to the credibility of the witness.

Mr. Wegenast: The question is: "what objection if any have you to artificial contraception," and he has none.

The Court: That is attacking the question of his prejudice, reasons for his opinions.

Mr. Wegenast: That isn't a matter of credibility.

The Court: There are only two elements of credibility, which take in prejudice and bias and the material elements of the case.

Mr. Wegenast: I would have put it under the latter.

The Court: If the latter, putting theological questions to a witness called for medical testimony.

Mr. Wegenast: Your Worship is making a distinction I wouldn't have, and probably I stand corrected; it is a matter of discrediting the witness, and it is not medical. If I can show his views are based on grounds other than medical, I have made a point. But as to my right to bring the facts out ---

The Court: You have the right to question him on the exhibits in this case outside the medical exhibits, but I will attach very little weight to the questions if put for that purpose.

Mr. Wegenast: This witness is opposed to artificial contraceptives for considerations other than medical.

The Court: That is obvious. He is basing it on his philosophical views of life.

Mr. Wegenast: Is it Your Worship's idea?

The Court: Taking also into consideration the social questions.

Mr. Wegenast: He has put it on that ground, and I think perhaps ---

The Court: The philosophy of life which happens to coincide with certain canonical laws laid down by the Catholic Church coming to the same conclusion.

Mr. Wegenast: What I am trying to point out to the witness:

that takes some arguing to get him to that view.

The Court:

Q. How old are you, Doctor?

A. Forty-five (45).

Q. It has taken 45 years to get to that view?

A. (No reply).

Mr. Wegenast: In another 45 years, he might have another view.

Mr. Mercier: He might be carrying a harp.

Mr. Wegenast: And we got to this: if there is another soul to be, it is a social question, and I do want to know, not only the technical limits of my rights, but I want to know the human limits of Your Worship's patience?

The Court: We are long past that.

Mr. Wegenast: And I also want to know the limits of Your Worship's sizing up of probative value of certain facts. I may sometimes transgress on that, thinking some other judicial mind might size those up differently, and I would like Your Worship's statement on that.

My friend says, by my own fault, I have shut myself out from having better witnesses than the doctor.

Mr. Mercier: That isn't what I said; I would like him to quote me properly.

Mr. Wegenast: He has shown a disposition to blame me.

Mr. Mercier: I am sorry if it was blame; I will be especially delicate from now on.

Mr. Wegenast: My humour is sometimes mistaken by the expression on my face; you must judge me by my words and not my expression, but it is extremely important I should get from some witness the disquisition, the evidence I am trying to get from this witness.

Mr. Mercier: The same as saying if I can't get a Catholic theologian in the box, I will attack a Catholic doctor, and it is most unfair.

The Court: He is only one individual; he is a doctor, and he has views which are based on ---

Mr. Wegenast: Philosophy.

Mr. Mercier: Although a Catholic, he may be a very poor one.

The Court: But that doesn't necessarily mean that his views on theology and morality can be of any assistance in this case.

Mr. Wegenast: But his disquisition can be.

To Mr. Wegenast:

Q. Now, Doctor, my question still stands.

The Court: Five minutes' adjournment. (King Edward VIII abdicated)

(Following resumption of hearing after ten minutes)

To Mr. Wegenast:

Q. Now, Doctor, I am tired putting that question; I wonder if I will put my foot in it. Sociology is one thing and morality is one thing and philosophy is not the same thing?

A. That is right.

Q. And when you give a reason based on philosophy that

doesn't necessarily hold good in sociology -- take your time, Doctor?

A. There may be questions in philosophy that may not affect sociology.

Q. If you would say "yes" or "no" and qualify afterwards: the answer then to that is that what is good for sociology is not necessarily good for philosophy?

A. It is incompatible.

Q. Isn't that going too far; they have something to do with each other?

A. If something is good for society, it can't be wrong in philosophy.

Q. You put your foot in it there?

A. I may put my foot in it often.

Mr. Mercier: Once again, may I ask what all this is leading to? The doctor is a medical expert witness and it is not fair for him to have to answer to all sorts of questions on this. It is most unfair asking all these questions, and he has given us a little idea why because he has deprived himself of questioning theologians.

I say that with the utmost sincerity and respect.

Mr. Wegenast: I take that as a warning too.

To Mr. Wegenast:

Q. Doctor, take it back if you wish, but would you say the sanctions of sociology are an important influence in ---

A. (No reply).

Mr. Mercier: Is that fair?

To Mr. Wegenast:

Q. --- philosophy? It is scientific; you think if it is good in sociology, it can't be good in philosophy?

A. (No reply).

The Court: It would take an expert in sociology and philosophy.

Mr. Wegenast: The doctor has answered.

The Court: He has endeavoured to answer and that would be answered with difficulty.

Mr. Mercier: For what is the other, I wish my strongest objection to be recorded.

To Mr. Wegenast:

Q. In simpler language: do you think when a thing is good sociologically that settles it; it must be good philosophically?

A. (No reply).

Mr. Mercier: Again, is it a fair question?

The Court: It is a pretty difficult question to answer.

Mr. Wegenast: To be candid, I can't realize the importance of the question because I can't answer it myself.

The Court: I think it is a very difficult question.

Mr. Mercier: Mr. Wegenast has asked a question for a theologian.

Mr. Wegenast: No, I have asked a question and I don't want a

speech.

The Witness:

A. He is having slips of paper passed.

To the Court:

Q. Please answer the questions?

A. (No reply).

Mr. Mercier: Your Worship is entirely disregarding me?

The Witness:

A. I refuse to answer a question so broad.

The Court: I won't attempt to force the witness to answer.

Mr. Mercier: He said he can't answer it.

Mr. Wegenast: I will try to put it more simply so he can answer it.

To Mr. Wegenast:

Q. Is it your belief that there is something in philosophy against the use of contraceptives?

A. I have.

Q. Just a moment: is that belief of yours, which you have put on the record, based on the ground that from a sociological standpoint, it is more proper that children should be prevented from being born?

A. (No reply).

Mr. Mercier: That is very much clearer, I submit.

The Witness:

A. I have given that answer before.

To Mr. Wegenast:

A. Is it or is it not: if it would help any to say that another way?

A. (No reply).

To the Court:

Q. I take it so far, Doctor, your opposition to artificial contraceptives is based partly on philosophy and partly on sociology?

A. I have said that.

Q. The philosophical basis is what we covered yesterday, passive and active or positive and negative?

A. Yes.

Q. And on the sociological basis, your advice to your patient as to these contraceptives is based on the fact of society being injured in the child not being born?

A. I said yesterday contraceptives are affecting the individual directly and also society.

Q. And affecting the individual, it is based on philosophy?

A. On biology.

Q. On biology?

A. And also on philosophy and the society on philosophy. So my question has been answered before and it is asking the

same question.

Q. We have a basis for the individual on biology and sociology?

A. Yes.

Q. And society on philosophy?

A. Yes.

Mr. Wegenast: The doctor said his philosophy is based on the belief it is not good for society a child should be prevented being born. That is the question I am asking; it is not a question of one being beside the other; it is a question of one being the cause of the other.

To Mr. Wegenast:

Q. Is this correct when you say you think it may be bad for society if it is philosophically unsound?

A. If it is philosophically unsound, it is wrong.

Q. Your objections to artificial contraceptives are partly based on the undesirability of stopping children being born?

A. Didn't I answer that before? It is the same answer as before.

To Mr. Mercier:

Q. Give it?

A. That society is affected, of course, by the child not being born.

Q. I know that

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A. (No reply).

To the Court:

Q. Society is affected; it may be good or bad. Do you mean that the effect of preventing the birth of a child has an injurious effect on society at large and therefore is philosophically unsound?

A. (No reply).

Mr. Wegenast: That is my point; you have laid your finger on the spot.

The Witness:

A. No, I would say no to that.

To Mr. Wegenast:

Q. I wasn't expecting that; you couldn't do that all the time by a simple "yes" or "no"? How could it have any philosophical effect? I think you will have to go back on that. In other words, if it is not going to have a bad effect on society, preventing children being born, I don't see how philosophy will be affected?

A. I see what you want me to say; it is the meaning.

Q. I don't want to be offensive, Doctor, that is the answer: it is the way you take a certain reaction; that is the one to be qualified. I see that if voluntarily you prevent a child being born, you affect society in a way that is bad, but if involuntary, you affect society in a way that is wrong?

A. (No reply).

To the Court:

Dr. Couture

Q. Isn't that passive and active and positive and negative?

A. I said positive and negative and passive and active, and now, I must say voluntary and involuntary; they are saying those.

To Mr. Wegenast:

Q. Are they saying those: do you say there is an act of volition in using Ogino-Knaus?

A. You are starting still; it is passive.

Q. Why not stick to passive?

A. All right, passive.

Q. The effect on society is the same whether it is Ogino-Knaus or the pessary?

A. Yes.

Mr. Mercier: He said that.

Mr. Wegenast: He said his philosophical views are based on the effect on society; now, he says it is the same.

Mr. Mercier: The doctor said Ogino-Knaus and the pessary have the same aim: to prevent children being born.

Mr. Wegenast: No, socially it makes no difference whether Ogino-Knaus or the pessary.

The Witness:

A. The consequences are the same.

To Mr. Wegenast:

Q. That should make no difference in philosophy?

A. It makes a big difference in philosophy; socially, it is not different and philosophically, it is different. I have told you how I derive my philosophical ideas, and I have told you I have no right to act in a positive way. Negatively, I am free; there is no harm; that is different.

Q. I am not talking about that, Doctor?

A. (No reply).

The Court: Haven't we got to this point: sociologically, from the point of view of society, the consequences are the same whether you prevent children by passive or active, natural or artificial means. When the doctor comes to philosophical views on the matter, then the philosophical one is good and the other is bad?

Mr. Wegenast: It was the doctor who dragged the philosophical herring across the trail.

The Court: Have you got it off?

Mr. Wegenast: I think it has got off: sociology is a washout.

To Mr. Wegenast:

Q. And you admit this, Doctor: it takes more of an act of will to practice Ogino-Knaus than to be continuously continent?

A. If it is an act of will, is good.

Q. I didn't ask if good or bad?

A. I can't answer without qualifying my answers.

The Court: Wait for the answers, Mr. Wegenast.

Mr. Wegenast: Yes.

Dr. Couture

To Mr. Wegenast:

Q. I am waiting for the answer?

A. What is the question?

Q. (Question read): "And you admit this, Doctor: it takes more of an act of will to practice Ogino-Knaus than to be continuously continent?"

A. It is an act of will practically.

To the Court:

Q. The question is this: it takes more of an act of will to practice Ogino-Knaus than to be continuously continent; it takes more willpower to practice partial continence than total continence?

A. It is a matter for the individual.

Q. I think that would be my answer too?

A. (No reply).

To Mr. Wegenast:

Q. A long-suffering individual taking the shocks: let us take the average individual if there is such a thing?

A. What is the average individual's qualifications?

Q. He is just the ordinary man, a decent fellow?

A. (No reply).

The Court: You are asking a medical expert to qualify on those points: willpower?

Mr. Wegenast: Involuntary, active and passive.

Dr. Couture

Mr. Mercier: The witness should have more protection if there must be questioning this way.

To Mr. Wegenast:

Q. Do you believe in psychiatry?

A. Yes.

To the Court:

Q. Do you know much about it?

A. Not much.

To Mr. Wegenast:

Q. You have given opinions on it?

A. You would too. Excuse me, sometimes I am a little inclined ---

Q. I don't mind. You are on record.

We had a salvation army chaplain here; he said of a case:

"She is a woman; I am a man; I can't sleep under the bed."

Now, is it harder to lie in bed with wife and be continent than in a monastery?

A. It takes more willpower.

Q. I put it to you at least the Ogino-Knaus is more artificial than complete continence?

A. That is a conclusion that is too far drawn.

The Court: I don't think the doctor admits either is artificial.

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To Mr. Wegenast:

Q. I haven't gone into the distinctions with this witness of artificial and natural, but if you do a thing on purpose and will it?

A. (No reply).

The Court: We went into it thoroughly with the toothbrushes and appendicitis operations.

Mr. Wegenast: Not on this line.

To Mr. Wegenast:

Q. If you use your human intelligence to circumvent human nature -- Doctor, if there is a difference between the human animal and the ordinary four-legged animal?

A. Well, I hope so.

Q. Sexually, there is a serious difference?

A. You mean physiologically?

A. Sexually, the ordinary animal?

A. It goes by instinct.

Q. He wouldn't have sexual intercourse except at certain times?

A. Yes.

Q. That wouldn't be the case of the human?

A. No.

Q. Now, what I put to you is this: when a man makes up his mind not to have intercourse, at the very time when biologically

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he should, is he not interfering with nature?

A. I know the answer, but I want to think before I give it.

Q. I don't care how long you wait as long as you don't answer by first fishing around about the line I am going to take?

A. I have answered that question this way before: you are under no obligation to act.

Q. Possibly you are under no obligation to act to whom? You used this word, "I am not allowed"; who is stopping you doing things?

A. The word "nature" there is in one sense; you used the word "nature".

Q. Yes, I said, "aren't you interfering with nature," and aren't you? I was almost going to say (blanc culver?); it isn't very smart to interfere with nature?

A. Nature will take care of that.

Q. That is not the answer to my question. Is it or is it not interference with nature?

A. I don't want to answer that before I have plenty of time to think it over. If you wish me to come back with an answer, I will, but I will not answer right away now.

The Court: You are assuming there is a biological urge, Mr. Wegenast?

Mr. Wegenast: Yes.

The Witness:

Dr. Couture

A. I want to think it over and I should be given time.

The Court: And periodical continence: a person under certain conditions does not give free rein to that biological urge; isn't that interfering with nature's laws?

Mr. Wegenast: And that should be easily answered, and if Your Worship thinks the witness should have time to read the thing and discuss that with anybody else, far be it from me to object.

The Court: We should get the witness' views.

Mr. Wegenast: I think I am entitled to it right now.

The Witness:

A. Is that your ruling, Your Worship?

To the Court:

Q. If you can't answer it, you can't answer it?

A. I am not prepared for the moment to answer, but just for the moment, it seems very difficult for me to answer that question.

The Court: We will have to give him time, Mr. Wegenast.

Mr. Wegenast: I am at such a point I don't see how I can very well, Your Worship; what I am afraid of is the witness will get posted on the philosophical side.

Mr. Mercier: If my learned friend thinks the witness is not capable of answering? A long-suffering individual taking the shocks: let us take the average individual if there is such a thing?

The Witness:

A. I am going to answer this way ---

Mr. Wegenast:

Q. Do you consider as you stand there, it is an interference with nature?

A. I would say no and leave it at that.

Q. It is not an interference with nature?

A. (No reply).

Q. Would you care to say why; you must have some reasons why?

A. The why is this: it is a crude thing to say maybe, but before you are married, are you interfering with nature by not having a sexual intercourse?

Mr. Wegenast: You see, Your Worship, how I am led into those answers, negative and positive?

To Mr. Wegenast:

Q. I must ask the witness now whether he is thinking of psychiatric considerations?

A. The same line of thought I had before; you are not obliged to act positively.

Q. Under no obligation to whom?

A. Just a natural obligation.

Q. It is up to whoever?

A. Yes.

To the Court:

Q. You don't have to?

A. No.

To Mr. Wegenast:

Q. You don't think of some particular person you are under obligations to?

A. No.

Q. What I want to put to you is this: whether a person unmarried, living in his own home, let us say, with his father and mother and brother and sister, is under the same emotional pressure as a man lying in bed beside his wife?

A. (No reply).

The Court: Speaking as a general rule, not in exceptional cases.

Mr. Mercier: It depends on how long they have been married.

To the Court:

Q. Answer that question, Doctor?

A. Really, I don't want to answer those questions; I want to be fair to myself.

Q. What would be unfair to you?

A. If you call it contempt of Court, I am willing to go by that and not answer; put any penalties you will.

Mr. Mercier: He is called as a medical expert and asked ---

Mr. Wegenast: This is strictly a medical question.

Mr. Mercier: You might ask how long married; there may be

be different temperaments.

Mr. Wegenast: This witness says he can't give an answer except one favourable to my case and he refuses to answer.

The Court: It is putting it broadly.

Mr. Wegenast: Yes, and fairly. The witness said he will not answer and "do what you like, even if it is contempt of Court," and I ask Your Worship to instruct the witness to answer.

The Court: That is a question on psychiatric grounds.

Mr. Wegenast: He has already given me opinions on psychiatric lines.

The Court: And he is not a psychiatric expert, and I will have to ask him to answer, but I will put very little weight to it.

Mr. Wegenast: Your Worship has permitted the witness to put answer after answer on the record and if Your worship would strike it all out, all right, but I can't ask that, and I must insist on my rights.

Mr. Mercier: Begging Your Worship's pardon, the witness says he knows very little on psychiatry; surely, you will not insist on an answer.

The Court: Psychiatry is one of the issues in this case?

Mr. Mercier: Yes.

The Court: And he is entitled to examine the witness on it.

Mr. Mercier: And the witness says he knows very little about it.

The Court: The witness will have to answer to the best of his

ability.

The Witness:

A. If I answer to the best of my ability, my powers of expression are too limited.

To Mr. Wegenast:

Q. Could you do it in French?

A. It is not the question; it is the problem involved.

Mr. Mercier: If the witness can't answer, he can very well say, "I can't answer".

The Witness:

A. Am I allowed to say I can't?

Mr. Wegenast: I am sympathizing with my friend, and he has no reason to say that, for more reasons than one.

To Mr. Wegenast:

Q. The answer to the question is obvious; you are a married man?

A. Yes.

Q. So I am not presuming too much when I think that from a practical psychiatric standpoint you know the answer?

A. (No reply).

Mr. Wegenast: The answer, Your Worship, is obvious, and I have the right to have this witness give it.

The Court: He has given some answers to the best of his ability.

To Mr. Mercier:

Q. Give some answer to the best of your ability?

A. (No reply).

To Mr. Wegenast:

Q. What I want to know is this: (question read):

> "What I want to put to you is this: whether a person unmarried, living in his own home, let us say, with his father and mother and brother and sister, is under the same emotional pressure as a man lying in bed beside his wife?"

A. No, he wouldn't be under the same emotional pressure.

Q. You put to me: what about unmarried people; what about interfering with nature; do you remember that?

A. Yes.

Q. Now you admit there is a difference?

A. Yes.

Q. You brought it out yourself?

A. Yes.

Q. Now, I needn't put it to you: I suppose you will admit if there is interference with nature, it might be called unnatural?

A. I said before that was not interference with nature to resist impulses; it is helping nature.

Q. I thought you had just told us there was more emotional

pressure in the one case than in the other?

A. Yes.

Q. Isn't that an interference with nature, and I will tell you the question I will give after that: would it not lead to a pathological condition?

You are taking a long time, Doctor, and I am not only willing to take a long time, but I will suggest we now adjourn at this time if you want to look into that question; that is with respect.

A. I would rather wait and answer that later on if you will allow me. I am really tired, and it is a very hard thing.

The Court: Perhaps we better adjourn now to two fifteen.

(The hearing was resumed at two fifteen, same date)

To Mr. Wegenast:

Q. Doctor, you know what the question is, don't you?

A. Yes.

Q. Will you consider it an impertinence, Doctor, if I made this suggestion: if you just answer the question and then we see about any elaborations, but I suggest to you, just answer the question and then we will see what the elaborations will be?

A. May I have a chance to elaborate?

To the Court:

Q. Doctor, I think I can help you there; feel free to answer questions put to you in the briefest possible manner and if Mr. Wegenast is attempting to go on another matter, simply apply to me and I will help you?

A. (No reply).

To Mr. Wegenast:

Q. (Evidence read):

> "Q. What I want to know is this: what I want to put to you is this: whether a person unmarried, living in his own home, let us say, with his father and mother and brother and sister, is under the same emotional pressure as a man lying in bed beside his wife?
>
> A. No, he wouldn't be under the same emotional pressure.
>
> Q. You put to me: what about unmarried people; what about interfering with nature; do you remember that?
>
> A. Yes.

Q. Now, you admit there is a difference?

A. Yes.

Q. You brought it out yourself?

A. Yes.

Q. Now, I needn't put it to you: I suppose you will admit if there is interference with nature, it might be called unnatural?

A. I said before that was not interference with nature to resist impulses; it is helping nature.

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Q. I thought you had just told us there was more emotional pressure in the one case than in the other?

A. Yes.

Q. Isn't that an interference with nature, and I will tell you the question I will give after that: would it not lead to a pathological condition? You are taking a long time, Doctor…"

(Evidence still being read)

"Q. Will you consider it an impertinence, Doctor, if I made this suggestion: if you just answer the question and then we see about any elaborations, but I suggest to you, just answer the question and then we will see what the elaborations will be?

A. May I have a chance to elaborate?"

I would put it: instead of continence, I want abstinence?

A. (No reply).

Mr. Wegenast: Would Your Worship allow me?

The Court: You are introducing a new phrase.

Mr. Wegenast: I think it is what the doctor means; it is more exact from my standpoint.

The Court: At the moment, I can't conceive any particular difference.

To Mr. Wegenast:

Dr. Couture

Q. Then, what it refers to is periodical abstinence, whether that wouldn't be an interference with nature?

A. I would like to have my answer there, please.

(Answer read):

> "A. I said before that was not interference with nature to resist impulses; it is helping nature."

Q. You said it was an interference with nature and I said, "isn't it" -- might it not be called unnatural?

A. Oh, I see; I will answer directly. I will say, "I don't know" to that, and I will qualify my answer.

Q. I don't think we need any elaboration if we leave it at that?

A. I can say why I don't know.

Mr. Wegenast: If Your Worship wants it.

The Court: I will not limit the witness.

Mr. Wegenast: He says he doesn't know.

The Witness:

A. I can say why.

The Court: If the witness wants to elaborate.

Mr. Mercier: Maybe the Court would like to know.

The Court: I will put the question.

The Witness:

A. Will I answer the question?

To Mr. Wegenast:

Q. Yes, the Court asked you?

A. I said there are certain physiological reactions take care of that physiologically speaking. Because of that, you can't split hairs to that extent; whether you can determine whether it is natural or unnatural, I don't know.

Q. That is an extraordinary admission on your part. That is what I was heading for. I didn't think in the world you would say it.

Now, we want to get your explanation of that: this whole thing of yours, distinguishing between periodical abstinence on the one hand and the use of the condom or pessary, comes down on the basis of natural or unnatural to hairsplitting?

A. I know one is unnatural; I don't know that the other is unnatural, so there is one of which I am sure; the other, I am not sure.

Q. I am willing to leave it there and go to something else. I am going to make a desperate effort to get through with this witness by four o'clock and you can call Dr. Cargill.

Mr. Mercier: Do you think you can?

Mr. Wegenast: I believe I will; it depends on the witness.

Mr. Mercier: If it depended on the witness, he would be out of the box now.

To Mr. Wegenast:

Q. Let us see if we are clear on this, with His Worship's indulgence: this break in this cycle, in other words, a damming

up of emotional pressure may result in a pathological condition; I think you will agree with that?

A. A break in the cycle when the act is made is different from a break in the cycle with no cycle.

Q. I can't let you go at four o'clock if you answer that way?

A. Those are two cycles.

Q. There are two cycles?

A. (No reply).

The Court: I think he has told us that.

To Mr. Wegenast:

Q. I think you told us that. First, you told us of a cycle starting with affection and holding hands, and a break in that cycle might not have psychological effects, or might it?

A. I said it might have.

Q. What cycle do you mean?

A. If it was spontaneous emotion and it is left at that, it is a cycle then if the sexual act has begun or began.

Q. Begun is the past participle.

A. And not completed, it is a broken cycle.

Q. I am asking about this cycle: I don't know whether you will call it the third or what: a man is lying in bed with his wife: a cycle is started up, whether emotional or physiological: whether or not a break in that cycle may have psychological consequences?

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The Court: I think the doctor answered that yesterday.

To Mr. Wegenast:

Q. If it is "yes"?

A. (No reply).

The Court: One thing he said: using the brain or intellect, they would forget about it.

To Mr. Wegenast:

Q. Does that depend on strength of will or something of that kind?

A. It doesn't depend on will if you do something else.

Q. It would be more difficult to forget than a cycle beginning with affection?

A. If it was so easy to forget that, we wouldn't have the circumstances we see.

Q. That is maybe a smart answer?

A. I would say yes.

Q. The exercise of periodical abstinence does mean a break in the cycle?

A. Not in some individuals.

Q. And it is a break in the cycle -- this is new – just at a time when biologically it ought not to occur?

A. That is splitting hairs again.

Q. I don't think it is splitting hairs by any means. Biologically -- man and woman are supposed to function biologically

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at a certain period in the month?

A. Yes.

Q. And Ogino-Knaus fixes exactly on that period for abstinence?

A. Yes.

Q. Wouldn't that be a greater break than it would be at another time?

A. There are a lot of ways of answering the question if you will allow me to answer it. The individuals have so much to do in that, that there is no special answer you can give definitely "yes" or "no". I would say I don't know, then, under those conditions.

To the Court:

Q. It depends on each individual's makeup?

A. Yes.

To Mr. Wegenast:

Q. There would be some individuals in which that break would be more severe than when that break couldn't take place?

A. Yes, some individuals.

Q. In the case of those individuals, then, the exercise of the Ogino-Knaus methods might be pathological?

A. Yes, absolutely. I will elaborate on that answer again if you allow me.

Q. Yes?

A. It will be the same thing as some people walking on the

Street, looking at a picture and are stimulated, and that person wouldn't be considered normal, and that one you offered wouldn't be considered normal.

Q. I don't know where.

A. It is an extreme case; you do meet them.

Q. You are speaking of people who are not normal?

A. Yes.

To the Court:

Q. They are not average?

A. No.

To Mr. Wegenast:

Q. I am thinking of what Colonel Sims said:

> "I have got to sleep with my wife or sleep under the bed; I am a man and she is a woman and we are close together"?

A. Yes.

Q. Under ordinary circumstances, wouldn't the pressure be greater?

A. Just a moment: the average would be 20 days of liberty and 8 or 9 days of abstinence, and a normal individual with 8 or 9 days of abstinence, if he is not happy and satisfied and physiologically all right, there is something wrong with him.

Q. That might be or might not be. I am putting it to you generally whether abstinence during a period when biology indicates coitus would not be more difficult than at a time when

biology doesn't indicate it?

A. The biology indicating that is very variable, and I don't see why it should have to be so very strong during the fertile period than at the other time.

Q. That is your answer to that: no doubt?

A. (No reply).

To the Court:

Q. There are all manner of things can stimulate that biological urge at any time?

A. Yes.

To Mr. Wegenast:

Q. You brought out something new there; have you studied Ogino?

A. I have studied it, yes.

Q. In the original?

A. I can't say in the original.

Q. Have you studied Knaus in the original?

A. No, I have read summaries of their work here and there.

Q. You would recognize them as authorities?

A. On their physiological texts and studies, but all the conclusions they made, I don't say they are all true.

Q. But they have the right to speak with a certain authority?

A. Yes.

Q. And if I showed you Ogino or Knaus, you would recognize them as authorities?

A. Yes, for what they are intended.

Q. Not for theology or anything like that?

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To Mr. Wegenast:

Q. That settles it; your knowledge of Ogino-Knaus is obtained from "Rhythm" and certain periodicals?

A. Yes.

Q. Have you made any studies yourself?

A. To prove those theories?

The Court: Supplemental studies?

To Mr. Wegenast:

Q. Yes?

A. If you include in your experiments your patients.

Q. Yes?

A. I gave you my facts.

Q. You gave me the result of your facts?

A. That is experimentation.

Q. I am asking you if you made any study or tabulation of facts?

A. I gave them to you yesterday, my figures and proportions.

Q. Have you tabulated your results and put them down?

A. (No reply).

Q. And reckoned how many were successful and how many unsuccessful and the period of abstinence?

A. (No reply).

The Court: He did that yesterday.

Mr. Mercier: It took all day to go over that ground yesterday.

Mr. Wegenast: He said something about three dozen cases, but that wasn't Ogino-Knaus.

The Witness: Yes, "Rhythm".

To Mr. Wegenast:

Q. And in three dozen cases, you had failures in a couple of cases?

A. Yes.

Q. What is it you advise; what period of abstinence do you advise?

A. Eleven days before and where it is very urgent there should be no pregnancy, I would still cut it down to nine days, so as to make the possibility much more reliable, and that is calculated from the coming period, back.

Q. Eleven, you said, first, and you now make it nine?

A. If you make it nine, you must add up to the length of the number of days. In the average, we recommend about eight days from the eleventh day up to the day before the period. If we go to nine days, it means instead of eight days, it means ten days' abstinence.

Dr. Couture

Q. I see you have your own method of calculation, which I get you take from "Rhythm," and found in certain cases effective?

A. Yes.

Q. That depends according to the rhythm of the observation made by a woman of her menstrual periods for a period of a year or so before it is put to work?

A. It isn't necessary to do that; we can take the safest possible with a new case and deduct after a few months. You wish to get a history from the patient and that is not always reliable, but when she tells me she is always regular, 28 days, I find it possible there is a variation of 2 days of so; in a case like that, I would add 2 to 28, which is 30. That makes it 4 days safer, and those patients will look more closely and, in a few months, establish their cycle.

Q. You do take the thing in hand yourself, and for a few months, you observe the occasion quite apart from what the woman may tell you?

A. Not quite apart, but from what she tells me.

The Court: The woman tells the doctor what her cycle is from her own knowledge.

Mr. Wegenast: Yes.

The Court: And he will allow for some error on her part and allow her to go ahead and keep observing for some months.

To Mr. Wegenast:

Q. You would allow her to go ahead on the assumption those few days would protect her?

Dr. Couture

A. On the assumption –- put it in some other form; it isn't clear.

Q. A woman comes and tells about her period: says, “I am always regular, 28 days”; do you undertake to advise her right at that interview and add a couple of days for her safety, or do you say, “go back and observe for a few months more, and see if you keep regular”?

A. Is that the question?

To the Court:

Q. Do you understand?

A. Yes, I have to do the best I can under those circumstances.

Q. I think the point Mr. Wegenast wants is this: a woman comes to you and says, “my regular period is 28 days”; you add 2 or 3 days for error, and you observe for 3 or 4 months to see if she is right; do you wait until advising her having intercourse or do you go ahead immediately?

A. No, I wouldn’t wait for three or four months.

To Mr. Wegenast:

Q. That answers it; I don’t think that is what “Rhythm” advises?

A. No, that is why there are so many failures.

Q. I am reading from “Rhythm,” Page 49, Exhibit 80-B:

> “Does the rhythm remain constant? Not necessarily. The rhythm of a particular woman may vary over a period of months.”?
>
> Dr. Couture

A. Yes.

Q.

> “Hence, in order to insure the results that are expected from the application of the Ogino-Knaus theory, it is necessary to note every month the exact day (counting from midnight) when menstruation began, i.e., when the first drops of blood appeared.”?

A. Yes.

Q.

> “As changes are observed, the application of the theory must be modified in accordance with the rules laid down in question 28.” (the previous question)

Do you agree with that?

A. Yes.

Q. I call your attention to this, on Page 53, where there is given a simple formula to this effect:

> "The sterile periods of a woman with a cycle of 29 nine days are the 10 days before and the 10 days after the beginning of menstruation."?

A. That is a simple formula.

Q.

> "This simplified formula has theoretical rather than practical value since exceedingly few women menstruate regularly every 29 days.
>
> Dr. Couture
>
> Practically every woman has fluctuations in her cycles."?

A. Yes.

Q. You agree with that?

A. Yes.

Q. That is where the danger comes in?

A. Yes.

Q. Certain mental conditions may do something?

A. Yes.

Q. As a matter of fact, sexual intercourse itself may bring about a change?

A. That is possible.

Q. Of course, certain pathological conditions would do it?

A. Yes.

Q. That all goes to show in the first place that the so-called safe period isn't safe?

A. I have said that before.

Q. And I think we have got it; one said it was 50 per cent not safe?

A. Your figures of 50 per cent are just approximate; you don't know what it is.

The Court: The doctor said, "not 99 per cent, but not less than 50 per cent."

Mr. Wegenast: I didn't want to crowd him; it was somewhere between

50 and 99.

Mr. Mercier: You wouldn't think of crowding a witness.

To Mr. Wegenast:

Q. And you said that the patient must take chances?

A. Yes.

Q. I will see if I can't get a case of a woman with one kidney; you would advise her to have a baby?

A. No, but I have seen them go through pregnancy.

Q. You wouldn't advise it?

A. No.

Q. You would think it positively dangerous?

A. Yes.

Q. Do you think from a medical standpoint it would be safe to ask her to rely on Ogino-Knaus?

A. Just as much as any other method we know of.

Q. You mean to say the condom?

A. It would be just as dangerous for a patient to take a chance with any system because one possibility means so much; it means too much. I couldn't advise anything except absolute continence; anything else would be disastrous.

Q. A failure with a condom and jelly would be less likely than with Ogino-Knaus?

A. It depends on the special person; after a while, we can find that out; I can't answer now. There are no figures we can on

on rhythm; mistakes have been made; there are no statistics; that accounts for the failures.

Q. The best we have now is a considerable number of failures in rhythm, and the best we have had in evidence is that the condom with jelly is almost 100 per cent effective?

A. That is what you say.

Q. And you wouldn't say that?

A. No.

Q. And it is because you don't believe in them?

A. I will put it this way: if a thing is 98 per cent sure, it means out of 100 cases there may be 2 chances of pregnancy, so that isn't very high; at the end of the year, you will have 2 out of 98.

Q. That isn't 50 per cent?

A. No.

Q. Let us take things here without a logical case of argument you thought it might be dangerous: isn't there a limit to what water will dissolve?

A. Yes, alum will dissolve only to a certain extent; the separation is partly remedied in regard to that chemical.

Q. I won't follow that any further. I point this out doctor: how would you meet it in the case of a woman with one kidney: suppose you knew that the husband was addicted to drink or was otherwise at times not amenable to the consideration that would prompt continence; in other words, you wouldn't rely on his being continent?

A. (No reply).

The Court: Couldn't rely on his will power.

To Mr. Wegenast:

Q. That is another way of putting it. This woman has one kidney; has made up her mind to have no more children, but the husband comes home occasionally lit up?

A. Against a man in that condition, a woman has the right to object in any way she wishes.

Q. Who says she has the right?

A. (No reply).

Q. Says who?

A. I am not answering that question.

Q. You said she has the right; who said she has the right?

A. Against a man not in his right mental condition.

Q. But have you any solution to offer for that woman; what should she do; I suggest what she should do ought to be to lock herself in another room?

A. That has a solution outside medial prerogatives.

Q. You have undertaken to give advice and you think Ogino-Knaus is medical?

A. The advice I would give to a woman would be to have absolutely nothing to do with a man because it would be disastrous for conception to take place in that condition.

Q. My immediate question was: do you consider advice based

on rhythm to be medical advice?

A. It is medical advice when it is for medical reasons. It is sociological advice when it is for sociological reasons.

Q. You consider it may be medical advice and with a woman of one kidney, it would be medical advice to tell that woman how to arrange it, but in saying it certain things are sociological matters, have you any other remedy for the husband coming in lit up except for the woman to go into another room and lock the door?

A. (No reply).

To the Court:

Q. You said, Doctor, you would advise her to have nothing to do with her husband?

A. That would be my advice.

Q. And you would leave the woman to the best means she could?

A. Yes.

Mr. Wegenast:

Q. You can't give any other advice?

A. I can't give any other advice. I might put an answer to the question this way with regard to contraceptives: you would say contraceptives: how would that woman be prepared for the 20 minutes' time required before conception if a man is so drunk, she can't have him under control?

Q. I could answer that, but I am not going to?

A. (No reply).

Mr. Mercier: The doctor is giving an answer by putting a question;

the record is full of that.

Mr. Wegenast: I am getting over this pretty fast; just look at what you are missing. (turning over notes)

The Witness:

A. You can't see my smile.

To Mr. Wegenast:

Q. You might not answer this, Doctor: whether you think it is a good thing or whether you practice it: do you advise women to space their babies?

A. That was answered yesterday; it is even in the newspapers today.

Mr. Mercier: It is in the headlines of the "Globe" today, Your Worship.

To Mr. Wegenast:

Q. I didn't ask whether you advised it; do you ever advise women to space their babies?

A. That was answered yesterday.

Q. I have forgotten. I can't remember?

A. When I admitted the use of "Rhythm" -- that is the answer.

Mr. Wegenast: (Looking at "Globe"): "Merit is found in plan of spacing children."

What happened in the East Hastings election; I haven't found that out?

Mr. Mercier: I hope my learned friend isn't going to bring that

Dr. Couture

in.

To Mr. Wegenast:

Q. I want to put this to you from "Rhythm," on Page 126: he is considering this question; it is the heading:

> "Would it be more perfect for married people to observe continence than periodic abstinence?"?

A. (No reply).

Mr. Wegenast: Your Worship will see why I make the distinction:

> "Would it be more perfect for married people to observe continence than periodic abstinence?"?

To Mr. Wegenast:

Q. Do you understand the question?

A. Yes, I understand.

Q. Here is the answer:

> "For an infinitesimally small proportion of married peoples, yes; for the vast majority, no."?

A. That continence and partial abstinence for the vast majority of the people?

Q. You haven't got it: he is considering:

"Would it be more perfect for married people to observe continence than periodic abstinence?"?

Dr. Couture

A. More perfect?

Q.

"Would it be more perfect for married people to observe continence than periodic abstinence?"?

The answer:

"For an infinitesimally small proportion of married peoples, yes; for the vast majority, no."?

A. (No reply).

The Court: For the majority of couples, continence is not more perfect.

The Witness:

A. Yes, that is perfect; I agree to that.

To Mr. Wegenast:

Q.

"In the natural order of things, the exercise of marital rights is the more perfect because more in agreement with the nature of matrimony."?

A. Yes.

Mr. Mercier: Is that medical?

Mr. Wegenast: Yes.

The Witness:

Dr. Couture

A. Yes.

To the Court:

Q. I suppose pathological considerations may enter?

A. Yes.

Mr. Wegenast: Yes.

To Mr. Wegenast:

Q.

"But since complying with nature is not of absolute obligation and since it does not necessarily represent the highest values, it will be more perfect, absolutely speaking, to observe continence for supernatural motives."?

A. Yes.

Q.

"This presupposes a degree of self-restraint and Christian asceticism which is beyond the ken of most humans that are married."?

A. (No reply).

Mr. Mercier: It is not entirely medical.

The Court: It is getting away from the medical to the moral.

Mr. Wegenast: He advises continence and here is an authority says it is practically impossible.

The Court: I don't think it is medical opinion.

Dr. Couture

Mr. Wegenast: If it were not, I think I would have to ask him on his former evidence what is it?

To Mr. Wegenast:

Q. I think His Worship will let you answer that?

A. I will think.

Q. If he advises continence was impossible, it would be a point?

A. Under those conditions you mentioned of married life.

Q. You say continence, and he says continence is impossible; that would be an argument from the medical standpoint?

A. From the medical standpoint?

Q. Yes

A. (No reply).

Q. Supposing you advised an Eskimo woman living in an igloo to take a hot douche after half an hour, that would be medical advice, but it wouldn't be reasonable; a doctor should advise anything impossible?

A. I have your point now.

Q. Yes?

A. We advise it in extreme cases, but if impossible for that particular case, I have nothing to do with it.

Q. That is it; you have no remedy. I go on:

> "Is continence on the part of married people possible? For short periods of time,
>
> Dr. Couture
>
> decidedly, yes; for prolonged periods, for life, it is fraught with many difficulties."?

A. Yes.

Q. You agree with that?

A. Yes.

Q. He quotes a passage here from Halliday Sutherland:

> "'It is no answer to say that because marriage is a sacrament, its happiness should not be jeopardized by those who accept the teaching of the Church. Human nature being what it is, these difficulties do arise. Even if the man remains physically faithful to his marriage, he may become psychologically unfaithful.'"

No, I am not going to read this; he goes into the psychology.

Now, we come to Smulders; you saw the book here?

A. Yes.

Q.

> "'Continence can be observed by the celibate and becomes for them a source of character development without doing injury to the individual's physical well-being. For married people, continence is to be maintained only in exceptional cases…Intercourse in marriage is an expression and a bond of love that helps married people over many difficulties and
>
> Dr. Couture
>
> conflicts…'"

A. (No reply).

The Court: I think the doctor made it clear he only advises continence in certain cases.

Mr. Wegenast: I think continence is something a doctor can't advise consistently.

Mr. Mercier: He didn't say continence is something a doctor can't advise consistently.

To Mr. Wegenast:

Q.

> "'…and can lead them back to deeper unity. Through continence, the meaning and content of marriage is jeopardized and the health of the wife is endangered.'"

What do you say to that; this is Dr. Smulders?

A. That is true.

Q.

> "'Congestions in the abdomen, pathological secretions, irregularities of menstruation, but especially injuries of a psychic nature are the result.'"

A. That is true.

Q.

> "'The intimacy of married life represents a
>
> Dr. Couture
>
> constantly recurring conflict between the sex urge and sex control,…'"?

A. Yes.

Q.

> "'…a conflict which is not satisfactorily solved when continence is observed.'"?

A. Yes.

Q. You agree with that?

A. Yes.

Q.

"'Unconsciously a "repression" in Freud's sense develops and may lead, in the woman's case, to emotional imbalance, to fear and dread complexes and to hysteria.'"?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q.

"'Further dangers are: recourse to sexual substitutes, sexual infidelity on the part of the weaker spouse and, in consequence, possible disruption of the matrimonial ties and a blasting of the family.'"

I wouldn't have read that, although I really should ask you questions from that; you agree with that of course?

Dr. Couture

A. Yes.

Q.

"May there be an obligation in conscience for some married couples to take advantage of the rhythm of sterility and fertility."?

A. Yes.

Q. Perhaps that gets outside the medical field; I have tried to keep you off it, so I must be consistent?

A. (No reply).

Q. Now, if you have read "Rhythm" at all closely, there are references in it to Capellman. Here is Capellman, who deals with this problem of periodic abstinence?

A. (No reply).

The Court: He has been shown to be wrong.

Mr. Mercier: Tell me the date of the book?

Mr. Wegenast: Eighteen seventy-nine (1879).

Mr. Mercier: At about ---

The Court: There is lots of evidence in now; Capellman isn't what he used to be.

Mr. Wegenast: Like the old gray mare: she ain't what she used to be.

Mr. Mercier: I wonder what Mr. Silcox would think of that book.

To Mr. Wegenast:

Q. Do you admit fear of maternity is of great psychic

importance?

A. Oh, yes.

Q. And fear of pregnancy would be a fear of that kind?

A. Oh, yes.

Q. We are getting along a lot better; wouldn't it be easier on the woman from that standpoint of fear if she had the most reliable method of preventing conception?

A. As long as there is a doubt in her mind, she will not be happy no matter if you call it reliable, as long as there is uncertainty and her fear will not be alleviated at all.

Q. I will put this hypothetically: if there is a doubt in her mind, she will be unhappy?

A. If there is a doubt in her mind, she will be unhappy?

Q. This is hypothetical?

A. I will give an instance.

Q. Yes?

A. I might have to go a little ahead. Take that case I had a week or so ago; she was afraid of pregnancy "more than anything in the world". She said, "am I pregnant?" I examined her and told her she wasn't. She said, "are you sure?" She went home and said, "Doctor, are there any other methods?" I said, "send me a sample of your urine." I said I would get an analysis of it and have it checked, and she called again; she was very anxious to get the report, and I reported negative. She was calling back again; "Doctor, I would like to have that report sent to me again."

Q. Scruples?

A. No, dread of pregnancy like that, of one per cent, and they will not be happy.

Mr. Mercier: The fear of a coming pregnancy going by scruples -- now, that is enlarging scruples.

Mr. Wegenast: I dropped it.

Mr. Mercier: It is in the record.

Mr. Wegenast: If you scare me, I won't be long.

To Mr. Wegenast:

Q. If a woman was fooled once in relying on "Rhythm" after she heard of a method that was, let us say, 99 per cent effective, would have less fear of using that than using "Rhythm"; I don't think you can deny it?

A. In that case, not mine that I illustrated, if there is one per cent of fear, she is very unhappy.

Q. I make this point, Doctor: in the case of the normal woman, fear is something to be avoided too?

A. Yes.

Q. In the case of a normal woman not strung up like this woman of yours, a knowledge of and use of a method 99 per cent effective would create less fear than the use of a method so imperfect as "Rhythm"?

A. It depends from where she would get her assurance. If she happened to meet with one woman who used contraceptives and failed, she wouldn't have faith in the medium and the individual ---

Q. You are begging the question: I take it, for example, on this basis, Doctor: the woman comes to you: imagine an imaginary

case: you know the Ogino-Knaus method and the method of the pessary and jelly, and you know the method of pessary and jelly is more effective than Ogino-Knaus; am I safe in saying -- if your philosophical principles are not in the way, would you say or would you advise Ogino-Knaus?

A. There are no reliable statistics.

Q. I am putting it hypothetically?

A. I would say "Rhythm" is as safe as the other and I would say "Rhythm".

Mr. Mercier: The doctor has said it consistently.

The Witness:

A. It is not proven so far, but it is my contention.

Mr. Beament: Here is what he said: "I would say 'Rhythm' is as safe as the other."

Mr. Wegenast: It is in evidence: we don't want to worry this man unnecessarily.

To Mr. Wegenast:

Q. You agree, of course, Doctor, as to the enormous value of the “Rhythm” system if only it were perfectly safe; it would have enormous value psychologically if perfectly safe?

A. I wouldn’t admit that because if it were too sure, we would see just a reduction in population.

Q. That is psychology, and we have evidence it would increase the birth rate strange as it may seem?

A. (No reply).

Mr. Mercier: Ripley.

To Mr. Wegenast:

Q. You would rather have it as it is from a medical point of view?

A. It is too broad; the consequences of my acceptance would be too far-fetched; it is a very important thing to do.

Q. you are thinking of the consequences of your acceptance and it is evidently from your standpoint?

A. Yes.

Q. That cuts out a lot of my material to hear you taking that position. Let me ask you this, Doctor: as a scientific man, would medical science without the intervention of these principles, which you call philosophical on your part, have evolved a system of practice such as you adhere to?

A. Yes.

Q. Now, get my question?

A. Yes, is that all science?

A. Medical science without interference from the particular philosophy on which you rely, would that bring up the kind of practice you practice?

A. That is what I said from the beginning; I have been guided by my philosophy from the beginning in my practice.

Q. If it had been the result of medical practice alone, it would have been different?

A. You can’t separate the two; how can I answer the question

where no separation is possible?

Q. Not for you, but for many other doctors?

A. It is impossible to separate the two.

Q. Didn't Dr. Scott separate them; Dr. Batt; Dr. Matsner in his work: doesn't he arrive at a different conclusion?

A. There was no occasion to show them what their feelings are; they testified only as medical men.

Q. You testify only as something more than a medical man?

A. I came here knowing what you were going to try to get out of me and I came prepared to tell you why, what my medical convictions are, and I said I couldn't discuss anything in this court outside of the medical, and I asked for a moment leave of the court to get out of the frame of the medical profession, and I tried to keep within that, but ---

To the Court:

Q. That is away from the question: you may not understand it or you may: you, through your philosophical studies, come to a certain attitude of mind in your studies?

A. Yes.

Q. Mr. Wegenast's question is this: another doctor who has rejected, shall we say, the philosophical attitude you have has another attitude; would his practice be different?

A. His position might be different from my own position, sure.

To Mr. Wegenast:

Q. We come to this then: your philosophical basis having an

influence on your medical practice?

A. I told you that from the beginning, sure.

Q. You do things in your medical practice which otherwise you would not do and you avoid doing things you might otherwise do if it were not for your philosophical principles?

A. That is putting it absolutely right, yes.

Q. May I put it this way, Doctor: your practice is in some respects referable to your philosophical principles rather than to medical science?

A. Yes, they are both combined. You can't put any line of demarcation.

Q. May I make this simple: the road on which philosophical principles and medical practice travel sometimes comes to a fork?

A. (No reply).

Q. They always travel the same road?

A. Yes, always the same road.

Q. Dr. Scott's didn't?

A. He didn't have the same philosophy.

Q. We will leave it there. In the case of Simpson, who advised the anaesthetic for childbirth, the road forked: the philosophical principles of some people were against using anaesthetics in childbirth?

A. It was once upon a time thought it wasn't acceptable.

Q. By the philosophers?

A. Yes, by some thinkers.

Q. And Simpson switched off from that –- from that road?

A. Yes.

Q. He took plain medical science and switched off?

A. Yes, that is his prerogative.

Q. Nobody denies that, and by the same token, Doctor, wouldn't it be your prerogative or your token if you changed your philosophy?

A. There is no need.

Q. It was his and should be yours?

A. Yes, it is everyone's prerogative.

Q. Now, in some of your evidence, you take a different road, to use the same simile, from your eminent friend Dr. DeHaitre: here is his evidence?

A. Yes.

Q. You don't agree with him in some things?

A. No, I told you yesterday I disagreed with some of us.

Q. Now, I want to read you from his evidence and make it clear just where that road forks. On Page D-123, without reading all that goes before, he says:

> "It wouldn't be wise for a woman with cancer of the uterus or cervix to have a baby."

You would agree with that?

A. Yes.

Q. And your only remedy would be continence?

A. Do you expect a person with cancer of the uterus to have intercourse?

Q. It is a medical question?

A. Yes.

Q. I am asking medically?

A. That is my answer.

Q. What?

A. I could not consider the possibility of any human being with normal intelligence not to be continent in conditions like that.

Q. If a woman had gonorrhoea?

A. It wouldn't be in order for her to have intercourse at all.

Q. And the only remedy for her would be continence?

A. Absolutely.

Q. You needn't say "absolutely"; "yes" is enough. The doctor took this course; I think you will remember, on page D-125: he did approve of a clinic to teach women the use of contraceptives?

A. In using the word contraceptives, it might be broader in that signification; I think he had that in his mind.

Q. I don't think so.

A. Then we will have to have Dr. DeHaitre.

Q. I have it here: he said he had and would prescribe condoms;

would you do it?

A. That is his business.

Q. I didn't' ask that: would you do it?

A. No, I said so from the beginning.

Q. He says here –- my eye just falls on it, Doctor; I will read it to you:

> "As a social worker," (I asked him) "would it have been all right if she had talked the 'safe period'?"

The doctor says:

"Yes, but it wouldn't be complete."?

A. That is why -- a good many people wouldn't know how to apply it; that is why so many failures.

Q. You wouldn't have an artificial contraceptive anyway, even if Ogino-Knaus business went to pieces altogether?

A. I have told you so several times.

Q. So we needn't pursue on that. Dr. DeHaitre went all the way to say he was in favour of a clinic and in nurses, and he would help?

A. Clinic has a meaning, and you can do a lot of things.

Q. You and I know you know that a clinic such as we are talking about is one teaching contraceptives, but he said that would be all right, but not in the way Miss Palmer was doing it; you wouldn't disagree with him on that?

A. No.

Dr. Couture

Q. He says this further: I was reading right from "Rhythm" which is fair enough to quote opinions for and against:

"Where should we stand as medical men…

…medically indicated."

Do you understand that?

A. What?

Q. "To my mind…indicated."?

A. That is taken from?

Q. Don't quibble with me.

A. Tell me if it is the witness' answer to a question or are you reading?

Q. You stopped me. I am reading from Page 117 of "Rhythm". Here is what I read:

"Where should we stand as medical men? To my mind, there can be only one answer, and that is that we must give contraceptive advice whenever it is medically indicated."?

A. I asked a question: I want to know the meaning of the word "contraceptive," and you apply it there as you mean it yourself.

Q. On Page 107 of "Rhythm:"

"Have the authorities…contraceptive."

A. In this book, it means natural.

Q. No, this means others, and I read this:

Dr. Couture

"I shall quote from 'Birth Control,' hearings before the committee on the Judiciary, House of Representatives, Jan. 18-19, 1934. J. Whitridge Williams, M.D., Professor of Obstetrics at Johns Hopkins University, Obstetrician-in-Chief to the Johns Hopkins Hospital, Baltimore, Md., is quoted (P. 16) from the 'Journal of the American Medical Association,' Oct. 27, 1928, Vol. 91, P. 1241:

"'Where should we stand as medical men? To my mind, there can only be one answer, and that is that we must give contraceptive advice whenever it is medically indicated.'"

Do you agree with that?

A. I have disagreed from the beginning. You ask me the same questions since I am here yesterday morning.

Q. Then, I went on:

"'But that it must depend on our conscience as to what advice should be given under other conditions.'"?

A. He is using the word "conscience".

Q.

"When reasons are…conscience."?

A. Don't bring in "conscience".

Q. This is what I put to Dr. DeHaitre:

"'I hold that it is just as much our duty to

Dr. Couture

give such advice when medically indicated as it is to advocate the employment of any other prophylactic measure.' What do you say about that?"

Dr. DeHaitre says "yes" and you say "no"?

A. Kindly let me read that.

Q. Here is the book if you want it?

A. Why I don't like to answer: it depends on reasons other than medical.

Q. Conscience doesn't come into the picture at all?

A. This is Dr. Williams' opinion.

Q. It is Dr. DeHaitre's opinion; he says "yes"?

A. I say "no".

Q. I go on and say:

> "Q. You agree with that?
>
> A. Yes.
>
> Q. If it is a matter of curing or preventing disease, it is the business of the doctor to prescribe?
>
> A. Yes, I have done it myself in disease."?

A. That is his business.

Q. You shouldn't say that?

A. (No reply).

The Court: The doctor has made himself quite clear on that.

Mr. Wegenast: He shouldn't say it was Dr. DeHaitre's business.

Mr. Mercier: Does my learned friend ask the same questions as yesterday in case the doctor might change his mind?

Mr. Wegenast: It is his prerogative, I think.

To Mr. Wegenast:

Q. I read this, too, from Dr. DeHaitre:

> "Q. 'With hundreds of millions of these devices flooding our land, pouring into every hamlet and village, with thousands of mothers dying from the abortion of unwanted offspring every year, is it not far better to proclaim the knowledge which modern science furnishes us concerning the natural, rational and ethical means of birth control?'"

There he is speaking of Ogino-Knaus; don't you agree with that when he confines it?

A. I have given my opinion of Ogino-Knaus.

Q. You differ with Dr. DeHaitre?

A. Yes.

Q. Doctor, may I interject this just to see what your position is as a doctor: do we understand you rightly as far as therapeutic abortion is concerned: you don't think any situation could arise you couldn't cope with successfully from a purely medical standpoint without violating the rules of your philosophy?

A. (No reply).

The Court: That has been answered.

Mr. Wegenast: That is just the preface.

To Mr. Wegenast:

Q. And you would not have to send a patient to another doctor for contraceptives?

A. I have never done that. I was faced with that the other day and I asked for cases. I am faced with many doctors here and I asked for cases.

Q. You are here to tell the whole truth?

A. That is a suggestion I am not telling all that I know?

Q. I appreciate that, Doctor.

A. That is answering your suggestion then; I don't think it is a fair suggestion then.

Mr. Mercier: Let His Worship appreciate your remarks.

To Mr. Wegenast:

Q. On Page D-170, Dr. DeHaitre thought at least 50 per cent of the women were irregular; would you disagree with that?

A. As far as the figures are concerned, 50 per cent is what you have submitted on all possibilities and I have given all, but as far as 50 per cent is concerned, I give about 50 per cent.

Q. And as far as Ogino-Knaus is concerned, a woman must be continent about a year and watch herself closely; that isn't your opinion?

A. No, it is his opinion.

Q. Then, Dr. DeHaitre says this:

"Q. In general, what are the pathological or other conditions for which you would prescribe contraceptives?

A. I would prescribe for all diseases of the generative organs –- to start by the vagina, vaginitis from whatever cause; gonorrhea, tubercular; or syphilis or streptococcus. Now, going further in the generative organs, we meet the cervix. Now, any disease of the cervix –- cervicitis, ulceration; cancers, cysts, ulcers. Now, in the cervix, also, chronic endo-cervicitis and others, diseases of women."

You wouldn't prescribe contraception for any of those?

A. Those indications exist in many patients because a woman normal in her generative organs is really more rare than common.

To the Court:

Q. You didn't answer the question: you wouldn't prescribe contraception in those cases?

A. Oh, no, I am always trying to explain my ideas; I don't know if it is philosophy or what.

To Mr. Wegenast:

Q. Then I read to Dr. DeHaitre out of Taussig; do you remember Taussig?

A. Yes.

Q. I want to read a page. Reading from Taussig at 451 (as in

Dr. Couture

Dr. DeHaitre's evidence, Page D-184):

"Q. He says this, and see what you say: Page 451: under the heading of 'The Role of Contraception: Of all the measures suggested for the control of abortion, none equals in importance the widespread establishment of clinics for contraceptive advice and provision for the free distribution of contraceptive materials among the poor. It is self-evident that by the prevention of the undesired or undesirable pregnancy, we can reduce the number of cases requiring abortion to a relatively small number.'?

A. Between the two evils, you must choose the lesser, of course."

You say "no"?

A. I don't agree with that. I would like to elaborate on that answer I have given if you will allow me?

Q. Yes, I will?

A. I have said before all our statistics with regard to abortions are so unreliable you haven't got them classed as to causes, so what results you get from contraception, you don't know.

Q. I will put it briefly, broadly and inoffensively: who in the world are you to say statistics are unreliable?

A. The publishers say so themselves.

Q. Who?

Dr. Couture

A. Taussig himself would say those figures –- 6 or 700,000 in the States –- are approximate.

Q. He doesn't say "unreliable"?

A. I didn't mean to say "unreliable," but they are not accurate, and if not accurate, they are unreliable.

Q. You made a point there?

A. In that way.

Q. You think there are not a lot of abortions?

A. No.

Q. You think abortions would not be prevented by contraception?

A. I think there would be.

Q. Let it go at that; who is hairsplitting now?

A. (No reply).

Q. Then, I read this to him ---

A. (No reply).

The Court: From Taussig?

Mr. Wegenast: Yes.

To Mr. Wegenast:

Q. (As in Dr. DeHaitre's evidence, Page D-184):

> "Q. Another: 'Concerning "Abortion and Contraception," the Committee on Maternal Welfare of the League of Nations has made the following impressive statement': taking the

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paragraph at the bottom of Page 451: 'Apart from the practice of contraception for personal or economic reasons, it may be necessary to avoid pregnancy on account of the mother's own health, and in such cases, it is preferable to prevent pregnancy occurring at all rather than to interrupt it.'"

The doctor said "yes" and you say "no"?

A. I have suggested contraceptive methods where indicated.

Q. You do agree it would be better to use some contraceptive than let the thing go on and have an abortion?

A. In the broad sense of contraception or in the sense of "Rhythm"?

Q. Yes?

A. Yes, I have said that all along.

Q. Then he goes on and you disagree, but I will read it:

"Q. 'But it is not sufficient merely to tell a married woman suffering from tuberculosis or heart disease or nephritis that she should not again become pregnant. It is necessary to explain exactly what steps she and her husband should take to prevent this happening'?"

Would you agree?

A. Yes.

Q. That would be Ogino-Knaus?

A. The same thing.

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Q.

"Q. 'If the private doctor is not prepared to do this, the information can be given most appropriately at the health centre.'?"

A. Well, you are referring to just simply those methods; I can't direct patients to health centres to get contraceptives.

Q.

"Q. 'Naturally, no preventive measures can be 100 per cent successful, and it will certainly be impossible for some time to

have them applied widely enough to eliminate undesired pregnancies as a factor in abortion.'?"

I said:

"Do you agree with that?"

And Dr. DeHaitre said:

"Yes."?

A. (No reply).

Q. And:

"Q. 'Peller believes that in the next few decades birth control will materially reduce the need for abortion and that with this reduction, the public will accept the wider medico-social indications for interruption.'"

Do you agree with that, and I think you will as long as they don't go out of Ogino-Knaus?

Dr. Couture

A. There certainly would be a reduction of certain types of abortion.

Q.

"Q. 'To accomplish this end, however, we must make every effort to establish maternal health centres in all our larger cities in connection with medical schools, dispensaries, and hospitals, and to seek cooperation of state boards of health to establish similar clinics in outlying districts throughout the country.'?"

Do you agree with that?

A. Who said that?

Q. In Dr. DeHaitre's evidence: it is taken from the League of Nations report:

"Q. 'To accomplish this end, however, we must make every effort to establish maternal health centres in all our larger cities in connection with medical schools, dispensaries, and hospitals, and to seek cooperation of state boards of health to establish similar clinics in outlying districts throughout the country.'?"

For giving birth control information?

A. Well, I have given you my opinion; so far, I disagree with it; I can't agree with that.

Q.

Dr. Couture

"Q. 'The movement for the control of induced abortion is therefore directly dependent upon the success of the movement for medical contraception.' Do you agree with that?

A. Yes."?

A. That would directly depend; may I come back on the last question I answered; I am backed by the American Medical Association?

Q.

"Q. 'The movement for the control of induced abortion is therefore directly dependent upon the success of the movement for medical contraception.'"

A. Yes, sure.

Q.

"Q. He winds up at the end of the book on page 452: 'No problem in preventive medicine gives greater promise of definite beneficial results. The medical profession must assume full responsibility for the appalling frequency of abortion and its high death rate if it fails to attempt correction of these fundamental evils.'"

His answer was "yes".

Do you agree with that?

A. (No reply).

Dr. Couture

Q. Would you allow me to paraphrase it: he says if abortion is to be stopped, it is up to the doctors; they have an enormous responsibility, and he says the way to stop it is by birth control?

A. I would broaden it more than that: it is not entirely medical; there is a lot of education needed among people to reduce the number of abortions.

To the Court:

Q. You don't agree with that?

A. No.

To Mr. Wegenast:

Q. Then there is this, winding up Taussig:

"Q. 'For this reason, it is my hope that this work will not merely serve as a source of information upon the subject of abortion, but that it will stimulate my fellow practitioners to realize their obligation and opportunity of aiding in its control.' Do you agree with that?

A. Yes, good."

'Good,' he says. You would say, "no, bad"?

A. (No reply).

The Court: No, he doesn't.

Mr. Wegenast: I am putting it to him that way?

The Court: He answered in reply to the last question.

The Witness:

Dr. Couture

A. I don't see anything there: there would be no harm in that a doctor should be interested in the prevention of abortions.

To Mr. Wegenast:

Q. It is all by applying birth control, and he means artificial methods?

A. Then ---

Q. You don't like it?

A. I can't admit it.

Q. Then your answer instead of "yes, good" would be "no, bad"?

A. I would answer "no".

Mr. Mercier: Let the doctor answer for himself.

Mr. Wegenast: I think that is all I want to ask Dr. Couture.

To Mr. Wegenast:

Q. Thank you, Doctor?

A. (No reply).

The Court: Adjourn for five minutes.

(Upon the Court resuming after five minutes)

RE-DIRECT EXAMINATION

Mr. Mercier: I have just a few questions arising out of cross examination; one was:

To Mr. Mercier:

Q. With reference to the great number of abortions in the United States: Of course, you agree with that according to the

Dr. Couture

great number there?

A. Yes.

Q. You know, also, according to the medical reviews, there is a great sale of contraceptives in the United States?

A. Yes.

Q. Now, Doctor, on this point, in order to clear up a point: your science, if I understood you correctly, is practical?

A. Yes.

Q. You have taken it from theory?

A. Yes.

Q. I might suggest if you write your orthography very well, you can't write all the rules of syntax?

A. (No reply).

Mr. Wegenast: I don't know why my learned friend ought to lead the witness at this state; however, I have no strenuous objection.

The Witness:

A. I think what you are trying to get: I have some ideas in practice that I can't explain very well, in theory, at the moment. For instance, in writing: you would apply grammatical principles in writing unconsciously, but if asked why you apply them, it would be hard to explain, but you know, in practice, you practice that theory from a background.

To Mr. Mercier:

Q. Then, Doctor, although the principles you have enunciated

Dr. Couture

-– you are no less recognized today as a duly recognized medical practitioner?

A. I hope so.

Q. And have you heard of any of the American doctors being condemned for not being learned enough for the advising of the use of contraceptives?

A. I haven't heard of it.

Q. And in Dr. DeHaitre's evidence, which was extensively referred to —- since his evidence before the Court was that no contraceptives should be given or used except under proper medical supervision unless natural and in every case —- what do you say to that, Doctor, that no contraceptives of any kind or description should be given or used except under proper medical supervision?

A. Yes.

Q. You agree to that?

A. Yes, that is what I have testified.

Q. All right, Doctor?

A. (No reply).

The Court: I have no questions.

(Witness retired)

VOLUME 9

Dr. Cargill

Canon Whalley

F. W. WEGENAST ESQ., K. C.

REX vs. PALMER

Eastview Police Court,

1936

DR. CARGILL

Dr. Richard Amedee Dudley Cargill, duly sworn, deposed:

To the Court:

Q. Your full name:

A. Richard Amedee Dudley Cargill.

To Mr. Mercier:

Q. Doctor, you are a duly qualified medical practitioner?

A. Yes.

Q. A Master of Arts of Oxford?

A. Yes.

Q. Bachelor of Medicine and Hygiene of Oxford?

A. Yes.

Q. Fellow of the Royal College of Surgeons, Edinburgh?

A. Yes.

Q. Fellow of the Royal College of Surgeons, Canada?

A. Yes.

Q. Fellow of the Royal College of Surgeons, England?

A. Yes.

Q. Licentiate of the Royal College of Physicians of London?

A. Yes.

Q. Member of the British Medical Association?

A. Yes.

Q. You have been practicing how long, doctor?

A. Twelve (12) years.

Q. And you are now specializing, I believe?

A. Yes.

Q. In what?

A. Obstetrics and gynecology.

Q. How long have you been taking up that specialty?

A. About 10 years.

Q. Have you made any special studies, doctor?

A. No, except those pertaining to that particular thing.

Q. And in order to relieve my learned friend asking a lot of questions, you will not mind admitting you are a non-Catholic?

A. Yes.

Q. So you have no religious bias or inhibitions?

A. No.

Q. I will produce to you, doctor, Exhibit 5-B. Before producing this, subject to any corrections my learned friend might make; it was alleged Miss Palmer did advertise certain methods of contraceptives by going from door to door in certain cases, in twenty-two or -three cases?

A. (No reply).

Mr. Wegenast:

Not door to door, she went to people to whom she was referred.

Mr. Mercier:

No.

Mr. Wegenast:

Not door to door.

Mr. Mercier:

She went to certain places.

The Court:

To certain women in Eastview.

Mr. Mercier:

Yes, and at most of the places without an invitation.

Mr. Wegenast:

That is not correct.

Mr. Mercier:

Yes.

The Court:

I think it is; the majority of the women said they didn't know how she came to the door.

To Mr. Mercier:

Q. I show you Exhibit 24-B just to have your opinion as to the questions asked there, and whether, in your opinion, that is sufficient to supply people with birth control information?

A. (No reply).

Mr. Beament:

I understand that is shown just as to the form?

Mr. Mercier:

Yes.

To Mr. Mercier:

Miss Palmer called at certain houses, asked certain questions and made certain remarks, and after that, the evidence showed these people were supplied with contraceptive information and materials of a kind I will show to you after.

What do you say as to that form of application; I want to know whether that was sufficient to supply anybody with contraceptives after asking those questions?

A. There are certain reasons here which I think would be suitable for giving them contraceptives.

Q. Without medical supervision?

A. No, not without medical supervision.

Q. Now, I produce Exhibit 5-B, which is a pamphlet which these women received together with a tube of contraceptive jelly and three condoms.

Now, doctor, I will ask you to examine Exhibit5-B and say if any of the methods therein mentioned which might to you be objectionable from a medical point of view, having in mind most

of the medical witnesses for the defence stated there is nothing there, in any case or circumstances, would hurt the health of the women; that is, that any woman could use it without being medically examined and none of those methods would be harmless except those mentioned to be harmful.

A couple of methods are therein mentioned to warn people not to use them, but several methods there could be used by any woman?

A. Well, I wouldn't be in favour of tampons or sponges from a medical point of view.

Q. Would you be so kind, doctor, as to say why?

A. There is always the possibility of leaving the tampon in by mistake, and a thing like that is liable to be followed by consequences deleterious to a patient's health. There is the consequence of possibly not having the sponges kept clean. There is the esthetic ---

To the Court:

Q. Stick to the medical, doctor.

A. (No reply).

To Mr. Mercier:

Q. That may be medical.

What do you say shortly before a child is being born; would you advise anything as to the beauty that should surround the prospective mother?

A. No.

Q. What would you mean by an esthetic objection?

A. From the point of view of the sexual act.

Q. It is not given before that sex is beautiful; what do you think of a tube of jelly like that from the esthetic point of view and by the medical point of view; first, is it beautiful when it is spontaneous, doctor?

A. Yes.

Q. And the jelly should be put in place 20 minutes before intercourse; what do you day to that from an esthetic point of view?

A. Well, speaking narrowly, it is not esthetic.

Q. And if a couple have to wait 20 minutes before using it, it would be that far from being spontaneous?

A. (No reply).

Mr. Wegenast:

And have ugly looking children.

To Mr. Mercier:

Q. And one or the other party have an opportunity to change their minds?

A. Possibly.

Q. And from that point of view, it might be a good contraceptive?

A. (No reply).

Q. I take it you favour birth control for certain reasons?

A. Yes.

Q. And to the surprise of my learned friends, notwithstanding that I did not hesitate bringing you here as a witness.

What do you say, doctor, as to suppositories, for instance, composed of cocoa butter, borax, salicylic acid and quinine bi-sulphate?

A. Do you mean from a medical point of view or their efficiency?

Q. Medical.

A. It is not proved they are harmful.

Q. Is it proved they are harmless?

A. I think so, yes; as far as it goes; that is, no harm has been proven to be laid at the door of those suppositories.

Q. Quinine bi-sulphate in important doses might be harmful?

A. In important doses, yes.

Q. It is stated these may be made at home. In your experience of medicine, a person filling a prescription like this might make an improper dosage?

A. It might be possible if made up in bulk.

Q. And the vinegar tampon, doctor: it is stated here, “soak the cotton in a solution of equal parts of vinegar and water,” and it doesn’t state what kind or strength of vinegar; do you think, at any time, there might be danger in that?

A. In the vinegar itself?

Q. Yes, using this vinegar tampon.

A. Using the tampon, there is the potential danger by vinegar. It is hard to say; I can conceive some patients who might be irritated by vinegar of that strength.

Q. That strength?

A. Yes.

Q. Half and half, vinegar and water?

A. Yes.

Q. And there are no instructions here about the danger, and rubber pessaries might easily become dirty, doctor?

A. Yes.

Q. And now, doctor, you told us you favoured birth control and, in certain cases, contraception?

A. Yes.

Q. Would you, doctor, favour the use of any of the contraceptives mentioned in this book without advice from a duly qualified medical practitioner, according to each and every individual case?

A. Not in the vast majority, I don't think. The object of obtaining advice is to secure efficiency; I take it, and I don't think all those methods could be applied equally efficiently to a whole lot of people.

Q. It might possibly be said you advise that just because it is taking something away from your profession; what do you say to that?

A. I don't quite grasp ---

Q. Work like Miss Palmer is doing. Take that point, for example, it might possibly be said you advise women obtaining medical advice in each and every…?

A. (No reply).

Mr. Wegenast:

I don't think that was suggested.

Mr. Mercier:

More than once.

Mr. Wegenast:

It was that physicians might be interested more in having pregnancies and childbirths.

The Court:

Yes, more interested in having pregnancies and child births.

Mr. Mercier:

It was suggested if people didn’t have the money to go to a doctor and people like Miss Palmer went from door to door -- it was suggested in that sense -- doctors might think a woman called a social worker or nurse should be sent from door to door in order to see that people get this information?

The Court:

People who can’t afford to go to the doctor.

The Witness:

A. I see no objection, with qualifications, to the giving of the information, but I do not agree with sending them contraceptive material without personal medical advice and in big classes.

To Mr. Mercier:

Q. Would you say each and every individual woman in that case would require special advice in her case?

A. I think she should.

Q. And special contraceptives for her case?

A. Yes.

Q. Doctor, you know of the American Medical Association?

A. Yes.

Q. Do you recognize the American Medical Association as a body of learned medical men?

A. Yes.

Q. You have heard and are cognizant, I believe, with the Kansas City session of the American Medical Association?

A. Yes.

Q. And what do you say as to the views expressed therein on contraceptives?

A. I think, on the whole, I agree with them.

Q. Doctor, when the American Medical Association says:

> "The efficiency of all present methods depends on intelligent use."

This is from Exhibit 104-B, Page 1911, first paragraph in the second column:

> "None are dependable for couples who are intoxicated, subnormal or lacking in self-control. There is evidence that many women who have abortions performed are familiar with contraceptive measures but seek an abortion when the method fails."

Do you agree with that, doctor?

A. Yes.

Q. You agree with that.

> "The members of your committee do not favour independent so-called birth control clinics, believing that needed contraceptive advice should be a matter for proper medical decision in the care of individual women."

What do you say to that?

A. Yes, I agree to that.

Q. What do you say, doctor, as to their recommendations:

> "1. That a committee be appointed to continue a study of birth control, and to report further to the House of Delegates."?

A. Yes, they haven't achieved the ideal yet.

Q.

> "2. Steps should be taken by some responsible group to develop standards for judging contraceptive materials."?

A. Yes.

Q.

> "3. Your committee desires to record its disapproval of propaganda directed to the public by lay bodies organized solely for the purpose of disseminating (without consideration or restraint) contraceptive information. Your committee deplores the support of such agencies by

> members of the medical profession. We feel that an entirely false sense of values with respect to the important function of childbearing and of parenthood has been created by the activities of such organizations.”?

A. (No reply).

Q. Would you like me to read that over again?

A. That last sentence is involved.

Q.

> “We feel that an entirely false sense of values with respect to the important function of childbearing and of parenthood has been created by the activities of such organizations.”

They mean there?

A. (No reply).

The Court:

Lay organizations.

The Witness:

A. I don’t think I can agree with that. I don’t think a lay organization can influence a person who wants to have one, two or three children.

To Mr. Mercier:

Q. By sending contraceptives?

But if she does want contraceptives, a doctor should be consulted in each and every case?

A. Yes.

Q. And, doctor, there are no contraceptives known as one hundred per cent effective?

A. No.

Q. And in the case of a pregnancy which might be medically dangerous, there is always a chance for a woman who might use contraceptives to become pregnant just the same?

A. Yes.

Q. That is all, doctor.

A. (No reply).

Mr. Mercier:

I hope my learned friend will not cross-examine this witness on his religious bias, Your Worship.

Mr. Beament:

That is not called for.

Mr. Mercier:

Although he is subject to cross-examination on everything.

CROSS-EXAMINATION

Mr. Wegenast:

If I had my learned friend in the box, he would say why.

Mr. Mercier:

I am willing to please at any time.

To Mr. Wegenast:

Q. I put this to you, doctor; could you say whether you care to say what your particular religious persuasion is?

A. Church of England.

Q. Now, you would agree efficiency is something to be desired in contraception?

A. Yes.

Q. And that the complaint of inefficiency is a complaint against the contraceptive rather than against contraceptives?

A. Yes.

Q. So that it doesn’t appeal to you as a medical man there is anything against birth control or the use of contraceptives generally, efficiency -- some contraceptives are not as effective as others?

A. It is a pity; it is a waste.

Q. It is no argument at all against the use of contraceptives generally if the efficiency of one or more is regularly ineffective?

A. No.

Q. Now, I want to ask you, first, referring to the pamphlet, Exhibit 5-B, that has been before you, what your opinion is of the one on Page 14; namely, the safe period?

A. I have not had extensive experience with that particular form of birth control. I have had, from time to time, patients who practiced that and had fallen by the way.

Q. Would you care to express any general opinion as to its efficiency relatively?

A. I don't think I know enough of that particular form of birth control to be of value.

Q. In your experience, you found it failed sometimes?

A. Yes.

Q. Can you add anything to that for our purpose?

A. I don't think I can.

Q. I was wondering whether you made any special studies into the matter of ovulation and the period of mobility of the spermatozoa?

A. From very recent literature, ideas have shown on that ---

Q. I am cross-examining, doctor, and my business is to search for what you don't know as well as what you do know, and I wanted to find out just how up-to-date you are, to be quite frank.

Now, the recent studies -- correct me if I'm wrong -- tend to show the method isn't as safe as it was thought a few years ago to be; am I right in that or is that the way to put it?

A. (No reply).

Mr. Mercier:

Is that cross-examination? The learned counsel is giving opinions.

To the Court:

He is cross-examining.

The Witness:

A. You are referring to the safe period?

To Mr. Wegenast:

Q. Yes.

A. I haven't enough experience to say.

Q. I was thinking of your reading of periodicals.

A. I haven’t come across that in medical journals.

Q. We have a witness here to the effect it is ninety-nine per cent safe.

A. (No reply).

Q. You wouldn’t agree with that?

A. I didn’t get as far as that.

Q. And the large preponderance of evidence is that it isn’t anything like that, and some of the evidence goes as low as fifty per cent; now, shall we ask you to give an estimate now?

A. (No reply).

Mr. Mercier:

My learned friend might add what Dr. Couture said about two cases in thirty-six failing.

Mr. Wegenast:

I don’t know that my learned friend should assist me.

To the Court:

Dr. Cargill said he has had some patients tried the safe period and they fell by the wayside. Now, you are asking his experience as to its safety.

Mr. Wegenast:

Yes, and his reading, and he hasn’t found anything new recently, and I am asking about opinions about ninety-nine per cent and fifty per cent.

Mr. Mercier:

If an expression of opinion is to be gotten from the witness, it must be on all the evidence, not only the part that helps my learned friend.

To the Court:

His opinion on the safety of the safe period.

The Witness:

A. I would say it is in the percentage of the irregularity of menstruation in women.

To Mr. Wegenast:

Q. And the evidence is definite that the only thing regular about a woman is irregularity; is that right?

A. No, I wouldn’t go as far as that.

Q. About fifty per cent are irregular?

A. I mean twenty-four to forty-eight-hour irregularity, but that isn’t irregular.

Q. I am thinking of the irregularity of menstruation; they are irregular?

A. I wouldn’t say fifty per cent.

Q. But there is a very substantial proportion of irregularity?

A. Yes.

Q. And the menstrual period may be altered, from time to time, as by shock or as the previous witness said, in sexual intercourse in some cases?

A. Yes.

Q. Childbirth would have its effect?

A. Yes.

Q. And after child bearing, there is a considerable period where you don’t know where you are at?

A. Yes.

Q. Is it your experience these exponents of this method of birth control advocate observation for a period of a year before adopting it?

A. I have seen it advocated.

Q. What do you say to that; would you advise that?

A. If that method is adopted and the patient is regular, I don’t see why the patient should wait.

Q. But you would have to take the patient’s word?

A. Yes.

Q. Now, doctor, I had an idea you would condemn that method of birth control as relatively ineffective?

A. I might condemn it for Mrs. Jones and not for Mrs. Brown.

To the Court:

Q. It would depend on individual cases?

A. Yes.

To Mr. Wegenast:

Q. What would be the condition of Mrs. Jones?

A. Menstrual irregularity would be the chief thing.

Q. And I suppose we may take it the proportion of cases you would advise it and the proportion of cases you would not advise it is, again, the same proportion we are discussing?

A. I think so.

Q. Now, what would you say would be the ratio of efficiency of a condom along with the jelly of boracic acid and lactic acid, both of them?

A. (No reply).

The Court:

Compared with the safe period?

To Mr. Wegenast:

Q. Or compared with one hundred per cent.

What efficiency would you attribute to the condom with the jelly?

A. If people using it are intelligent and the condom is shown to be intact, it is of a very high efficiency.

Q. Yes, and how would it compare with the pessary and jelly?

A. Higher.

Q. You think the condom and jelly would be higher?

A. Yes.

Q. Would you care to put a figure on it in percentage; it is a little more graphic to our lay minds?

A. It would be hard to say, but it would be up in the nineties.

Q. And you have no hesitation in saying either the condom and jelly or pessary and jelly would be more efficient that the “Rhythm” method?

A. I should think it would be.

Q. In your own practice, do you use chemical or mechanical methods?

A. Yes.

Q. Which do you prefer; I know it depends on individual cases?

A. Generally, the cervical diaphragms with jelly, and more recently, there is a new type of contraceptive put out; it doesn’t give any obstruction like the cervical cap.

Q. What is that?

A. It is an oil preparation. It is very new here. It is used in England.

Q. How does the contraceptive work or which of them is a spermicide, the mechanical barrier or what?

A. (No reply).

Q. Take -- obviously, the condom and pessary are mechanical barriers?

A. Yes.

Q. And the jelly?

A. Partly each.

Q. What other agencies are there that are spermicidal besides the jelly?

A. The suppository.

Q. And?

A. Soapy water.

Q. Water, itself, is spermicidal?

A. Yes, but it wouldn’t be very efficient.

Q. In a sense, a douche would be mechanical?

A. Mechanical.

Q. But water also has a spermicidal effect?

A. Yes.

Q. Now, what about the oil?

A. There is a spermicide contained in it, but it makes a more complete film over the cervix where it is supposed to be.

Q. Now, a Dr. Scott of Toronto University said the perfect contraceptive hasn’t been found?

A. We haven’t been recommending contraceptives long enough to be able to say anything like that, but we say that.

Q. That is why you approve of the American Medical Association’s report by its committee?

A. Yes.

Q. It hasn’t been studied sufficiently?

A. Yes.

Q. Do you think as a medical man that it is in order -- it is good practice to allow the less perfect contraceptive agencies to be used and to prescribe them pending the discovery of more perfect ones?

A. (No reply).

Q. The answer is obvious?

A. Yes.

Q. You don’t think it is bad practice to prescribe the best you have for the time being?

A. No.

Q. And no therapeutic or medical agency is one hundred per cent anyway?

A. No.

Q. When you say you would like a patient to consult a doctor, you have in mind the question of efficiency?

A. Yes.

Q. And I come now to the question of the pessaries; you say, now, a pessary that will fit one woman won’t fit another, and for the application of the pessary, the doctor’s advice is necessary?

A. Yes.

Q. Would you say that as to the use of the condom?

A. No.

Q. What about the use of this jelly nozzle?

Just a moment, doctor, I will show you something. We have a pamphlet, “Technique of Contraception,” do you know him? (Eric M. Matsner, M. D.)

A. I met him this morning.

Q. Do you know his work?

A. I don’t know his work.

Q. Let us, Your Worship, see Rosenau.

Do you know this book? (Exhibit 94-B).

A. Yes.

Q. Would you recognize it as an authority?

A. Yes.

Q. I would point out to you there is a chapter in this book written by Dr. Matsner.

A. (No reply).

The Court:

Rosenau is exhibit?

Mr. Wegenast:

Ninety-four (94-B).

To Mr. Wegenast:

Q. You see that chapter written by Dr. Matsner -- and I am instructed the doctor is the last word in this thing in America; have you any reason to think otherwise?

A. No.

Q. Then, will you recognize this by Dr. Matsner as authoritative?

A. What?

Q. This little pamphlet?

A. Under those conditions, he would be.

Q. Now, in this pamphlet, used for instruction in colleges and universities, he is at considerable pains to describe and illustrate the whole process of the fitting of the pessary and also applying the douche, as you have seen?

A. Yes.

Q. Now, I want to ask you this: whether in the case of the ordinary douche with water you would consider it necessary or desirable to have a doctor prescribe when it is done?

A. Douching?

Q. Does that apply to the smaller nozzle?

A. (No reply).

The Court:

Exhibit 18-B.

To Mr. Wegenast:

Q. This, I may say, doctor, is an apparatus supplied by the Parents' Information Bureau in whose service the accused was, and you will see it corresponds exactly with the illustration on Page 28 of this pamphlet, which I will ask His Worship to admit as an exhibit.

The Court:

One hundred and seven (107-B).

To Mr. Wegenast:

Q. Then I want to ask whether you think a doctor's supervision would be necessary or desirable?

A. It might be afterwards.

Q. Why?

A. Because that might break.

Q. Somebody said there was very small chance of injury by the douche.

A. The use of the douche is all right, but I object to the nozzle.

Q. Why?

A. The possibility of its breaking.

Q. In your practice, do you ever prescribe a glass nozzle?

A. Yes, much thicker than that.

Q. You think this nozzle should be made of thicker glass?

A. Yes.

Q. You don't know about the tensile strength of it or whatever it is called. It is pointed out to me that the nozzle is made of celluloid, not glass, so that cancels what we have said.

A. Yes.

Q. We have still some things to learn, so much for that.

Going on with the pamphlet, which my friend has referred to you, do you see any harm -- no, Mr. Reporter -- do you see any practical objection on the ground of harmfulness in the formula which is attributed to Dr. Stopes there?

A. No.

The Court:

That is the jelly formula?

Mr. Wegenast:

No, on Page 6, the suppositories.

To Mr. Wegenast:

Q. You don't think there is any possibility of a woman getting enough absorption from one and one-half grains there in one suppository, but it has been suggested they might not mix the ingredients up sufficiently, but there might be enough in one to cause a woman to get enough quinine absorbed through the walls of the vagina?

A. (No reply).

Mr. Mercier:

To a woman who is a short time pregnant.

The Witness:

A. I don't think one suppository would hold enough quinine and I don't think enough would be absorbed in time, and she couldn't get it from a drug store.

To Mr. Wegenast:

Q. It was suggested that she might use it night after night?

A. (No reply).

To the Court:

Q. From the use of one suppository, she might absorb so much, and from constant accumulative use might absorb so much quinine?

A. I don't think so.

To Mr. Wegenast:

Q. By the way, doctor, what I meant was quinine along with castor oil would be required to bring on an abortion?

A. It differs.

Q. Pharmacopeias say 10, 20, 30, 40?

A. A healthy woman?

Q. Yes.

A. She would probably need enough to do damage elsewhere.

Q. How much?

A. It might be more.

Q. Ten (10) grains wouldn't?

A. No.

To the Court:

Q. I thought quinine and castor oil were used to produce labour?

A. Yes.

Q. What strength there?

A. It is different. I understand Mr. Wegenast asked to bring about abortion and not at the full time of labour.

To Mr. Wegenast:

Q. How much would it take to bring on labour at full-time?

A. We generally give 20 to 30 grains in divided doses.

Q. In an ordinary case not full-time, suppose she got the whole quinine from 30 grains?

A. It might.

Q. In the vagina?

A. Not so much as in the mouth.

Q. The mouth is more effective?

A. Yes.

Q. Now, I have said so many things in the course of this trial, I don't remember whether I asked if the jelly was harmless?

A. (No reply).

Mr. Mercier:

I don't think you did.

To Mr. Wegenast:

Q. The jelly supplied here consists of a jelly with a starch base and some boracic acid and lactic acid?

A. Yes, I would call that harmless.

Q. Now, the condom is harmless with the jelly together?

A. There are those who say if the condom is used certain secretions in the vagina do not occur; there is a certain amount of absorption.

Q. The cervix absorbs a certain amount of seminal fluid, as it is known?

A. It is more in the theoretical stage.

Q. Then we have soap and water; you have expressed your opinion.

Now, as far as the vinegar is concerned, I wonder if you would mind -- in this instance, I undertake to differ with you. It is a dangerous thing to do with a scientific man.

Would there be any serious consequence, either temporary or permanent, no matter from which batch, of putting a quantity of pure vinegar in the mouth for a while?

A. How long would you say?

Q. Let us say five minutes. You get the force of the question?

A. It is difficult to answer; I have never known of anyone doing it.

Q. It is pointed out the epithelium of the mouth is tender?

A. Yes.

Q. The squamous epithelium?

A. Yes.

Q. And it resists such things as the toothbrush and chewing tobacco at contact, as they say?

A. I don’t like a toothbrush in my mouth.

Q. It can stand for a certain amount -- let us say, half vinegar and half water, or eating pickles don’t hurt the mouth?

A. No.

Q. And half and half water and vinegar don’t hurt the vagina anymore?

A. Not a healthy vagina.

Q. Would a severe irritation be felt then?

A. I should expect that to happen.

Q. Wouldn’t an irritation be felt?

A. Not necessarily.

Q. If irritated, she would stop it?

A. Yes.

Q. In effect, that is that; she would stop using it?

A. Yes.

Q. Now, these rubber sponge pessaries; I suppose it is obvious -- and the tampon, -- it is obvious that if better means were available, one wouldn’t use them, but I put it to you, doctor, that a woman in the backwoods without the ordinary sanitary plumbing and other conveniences might be better off using one of those than having another baby?

A. No, I think if she could get the rubber sponges, she could get better contraceptive methods.

Q. You didn’t get my premise; I said if a woman in the backwoods and couldn’t get anything else, would she be better off using that than have another baby?

A. I should say it would.

Q. The safe period, we have gone over. Sterilization doesn’t come into the picture, and I think I am through with that.

I think you agree coitus interruptus is a thing not to be favoured?

A. Yes.

Q. Then there have been some jibes, if I may say that, at the opening words of this pamphlet, as being unscientific; see if you find anything important. (Exhibit 5-B, Page 3):

> “At this very moment, the appealing and often desperate cry is going up from actually millions of sick and suffering mothers for information that will bring them relief from the intolerable burden of bringing into the world more children than they can care for properly. Hundreds of thousands of mothers die yearly because of their unfitness for childbearing. Millions of infants under one year of age die annually because of overcrowding or malnutrition due to poverty or to lack of vitality inherited from weak and overburdened mothers. Such conditions as these ought not to exist.

> Every child has the right to be wanted and to be born into a world of love and care and sufficiency.
>
> Where the mother's ill-health makes her unfit for further pregnancy or where financial conditions are such as to make it impossible to feed and clothe and to bring up more children, then it is assuredly right to practice birth control. That a weak and sickly woman, unfit for pregnancy, should have to keep on bearing children adding to her own ill-health, multiplying her labours and increasing her poverty and sorrow is a positive wrong. Every woman has a right to be the mistress of her own body, and it is for her alone to determine when she shall become a mother. THE KNOWLEDGE OF BIRTH CONTROL METHODS IS A FUNDAMENTAL RIGHT OF EVERY WOMAN. Without it, she is unable to space her children, which may otherwise come so frequently as to wear her out. For lack of this knowledge, tens of thousands of women go down to untimely death, and homes are left desolate and little children motherless.
>
> This booklet tells of several methods from which parents can make their choice. The best of them…" --

Not all of them.

> "…will be found highly effective if used intelligently…"

Then in capitals:

> "…AND ALL THE TIME. CARELESSNESS ON A SINGLE OCCASION MAY RESULT IN UNDESIRED PREGNANCY. There is no contraceptive that is fool-proof. Used intelligently, however, some of the methods will come very close to one hundred per cent in effectiveness."

Now, I want to ask you whether you think there is anything improper in that or if you like, I will take the question in pieces and ask you, first, whether comparing this with other literature, perhaps, you would say there is any commercial appeal in that appeal; to sell anything, in particular?

A. Advertisements are so garbled, it is hard to say what is in the advertising.

The Court:

It is the old question.

Mr. Wegenast:

On the evidence.

The Court:

Not on the evidence.

Mr. Wegenast:

I am not so sure; if Your Worship waited for the next question…

To Mr. Wegenast:

Q. You do get circulars from various supply houses?

A. Yes.

Q. Do you?

A. (No reply).

Mr. Mercier:

Has the question been answered as to the preamble of the pamphlet?

Mr. Wegenast:

No, I wanted to get it in first.

Mr. Mercier:

And as to advertising, it isn't for an expert medical witness.

The Court:

It is for me to say that, I think.

Mr. Wegenast:

May I ask about this, Exhibit 106-B?

To Mr. Wegenast:

Q. You have seen things like this?

A. I have.

Q. What I want you to say, doctor, is whether this is in the same class. Suppose it came to your office; would you regard it in the same light as Exhibit 106-B?

A. There is a difference because this kind of thing is not sent to the laity and that is.

To the Court:

Q. That is right out of a box which the Parents' Information Bureau sent out?

A. (No reply).

Mr. Wegenast:

No, it was in a box from a drugstore.

The Witness:

A. One doctor recommends it.

To Mr. Wegenast:

Q. Here he said on the contrary -- if that isn't a fair question, we will drop it?

A. If that kind of thing is obtainable by the public without medical supervision, I would say they are in the same category.

Q. The kind of thing…?

A. If that kind of thing is sent to the ordinary house by mail and that, too, there is not much difference.

Q. This is bought in a drugstore?

A. But a person has to find the name of this from a doctor.

Q. And this' it isn't given to people without a definite recommendation?

A. (No reply).

Q. May I ask what criticism you would have to offer to what I have read at the beginning of the pamphlet?

A. (No reply).

To the Court:

Q. You have been read two pages -- it starts here -- of Exhibit 5-B, and there was objection taken to these words:

> "Hundreds of thousands of mothers die yearly because of their unfitness for child-bearing."

I think the question arose as to the propriety of sending out a pamphlet like that and raising the minds of mothers…?

A. (No reply).

Mr. Wegenast:

The fears.

The Witness:

A. I think that is rather stretching the point. Every woman knows when she is going to have a baby, she is going to have difficulty, and throughout the world, many mothers do die.

To Mr. Wegenast:

Q. In other words, the immediate danger and knowledge of it wouldn't have any appeal to the prospective mother?

A. If a woman was shown that, I think it would have some appeal to her, certainly.

Q. Does that cancel your other reply?

A. I don't think one is terrorizing women by showing them that.

Q. Would you object to that any more in a pamphlet of that kind, whatever the kind is, than you would to this in Exhibit 69-B, "Need our Mothers Die":

> It is impossible to estimate debility and similar conditions following on childbirth, and consequently, there is always a danger of overstating the case, but the application of these calculations (cited from Blair Bell --Prof. Blair Bell, 'Maternal Disablement,' The Lancet, May 30, June 12, 1931) and the comments of the English Committee's report would give us in Canada a total of approximately 23,000 women (if calculated at 20 times the number dying) who would be more or less handicapped as the result of childbirth annually. Those who would suffer some sickness or debility, minor lesions, or other impairment in health or physique but not necessarily of a permanent nature (one in ten of those bearing children) would give us another 22,000 to 23,000 who face some degree of suffering or ill health, but not to the extent of permanent handicap, as part of childbirth.
>
> Thus, over a five-year average, the complete toll of motherhood in Canada, that 230,000 children may be born, is the death of 1100 to 1400 mothers annually, the more or less permanent handicapping of another 23,000 mothers and the impairment of health to lesser or greater degree of another 22,000, and the stark, inescapable condemnation of the whole unfortunate story is that at least fifty per cent of this cost is unnecessary and preventable by means within our knowledge, control and capacity if we have but the courage and determination to apply them."

I ask you whether this is any more objectionable language than in the pamphlet?

A. No.

Q. It does represent the facts?

A. Yes.

Q. As a matter of fact, are you a member of the council which set this up?

A. No.

Q. We have a very large list of names.

A. Yes.

Q. Are you connected with any organizations in Ottawa having to do with maternal or infant welfare?

A. No.

Q. Now, doctor, you do believe in birth control?

A. Yes.

Q. Would it be too much to ask you to say why?

A. I think the paragraph you have just read out here is a very good answer to that.

Q. Now, you have heard of some of the bugaboos against birth control?

A. (No reply).

Mr. Mercier:

“Bugaboos against,” he might not be serious but for the purpose of the record, just to show the tendency of my learned friend, everybody is suffering from a bug who isn’t believing in birth control and, mostly, the religious bug.

The Court:

I think, from what Mr. Silcox said, that the advocates were the greatest of the bugs.

Mr. Mercier:

The greatest of bugs.

The Court:

He meant, I think, somebody starting something had to get a bug on it.

Mr. Wegenast:

I don’t shrink from that forensically; do you, doctor?

The Witness:

A. Every principle is a bug.

To Mr. Wegenast:

Q. Dr. Scott said that. I am going to ask you if you agree with that in a moment.

Then I thought I would ask you something, doctor, if you will, about the spacing of children; is it desirable from the standpoint of the health of the mother and that of the infant?

Would you be good enough to do that without my leading too much?

A. Well, we generally tell people to try to have their babies two years apart, and that interval is devoted to building up the patient’s condition after the strain and stress of pregnancy.

Q. Somebody asked Dr. Scott if nature wouldn’t take care of that, and he said, “nature might, but she doesn’t.”?

A. Nature is doing it, but we have got to help nature.

Q. I take it you thoroughly agree where nature brings on babies at intervals of a year, the medical profession is justified in intervening to prevent it?

A. From a purely physical point of view, yes.

Q. Would you put it this way, from the standpoint of preventive medicine or preventive pathology?

A. I understand what you mean.

Q. Would you put it like that?

A. Birth control is justified.

Q. We have had a good deal of polemics today, and it was suggested vaccination was an interference with nature and there were severe mental pains proving or, on the other hand, disproving whether it was an interference with nature or not.

Now, I put it to you whether the use of a lactic acid jelly, let us say, is an interference with nature and if so, whether it is proper?

A. I consider it is an interference with nature and I think the use of it is an interference with nature. I can give advice to people to space children and if they don't…

Q. And if the reason for spacing is non-medical, you don't shrink from giving it?

A. I would like to qualify that.

Q. Yes?

A. Providing it doesn't run contrary to their conscience.

Q. May I put the words in your mouth; a woman may go to the bad place if it is a bad thing for her, but it may be pathological and you wouldn't recommend her to do that?

A. No.

Q. But if a woman has no inhibitions and she comes to you, you wouldn't hesitate advising her the use of a pure contraceptive device?

A. No.

Q. And you do it?

A. Yes.

Q. This pamphlet, the last one, the point which has been the subject of considerable discussion, I want your opinion on it; whether or not in dealing with the subject of contraception you feel under any obligation from a medical standpoint to involve the husband or whether you feel free to deal with the wife and give the contraceptive on her request alone?

A. One pre-supposes the wife who asks for advice does so with the full advice of her husband.

Q. Do you inquire into that?

A. I can't say I do.

Q. I needn't ask whether you consider yourself under any obligation to anyone?

A. Any more than if the husband came in to ask for contraceptive advice. I wouldn't refer him to his wife.

Q. That is a fair answer. Now, if anyone is to have the final veto as to contraception, who should have the veto?

A. The wife.

Q. Why?

A. She bears ninety-nine per cent of the whole business.

To the Court:

Q. Some husbands might differ with you on that?

A. (No reply).

To Mr. Wegenast:

Q. It is an inconsiderable part?

A. Yes, an inconsiderable part.

Q. Coming to the nervous strain, I put it to Dr. DeHaitre whether the interference with the cycle which is started by promiscuity in bed in the mind -- whether the interference with that cycle in the enjoyment of the sexual act was not in the first place a considerable factor which might have pathological consequences?

A. (No reply).

Q. You understand my question?

A. I would be inclined to say yes; it might in certain people.

Q. Then, it comes to this, doctor, -- and I put it to you flatly -- whether it would be better for a man or woman or both indulge in this sexual act to have it over and relieve the pressure than to use their wills and abstain?

A. That is rather difficult to answer too.

Q. It is a fair question?

A. It is a fair question, but what might be a temptation for one person might not be for the next and it might be totally varying and it might affect one and not the other.

Q. I said it might have pathological consequences?

A. Yes.

Q. I don’t want to snap you up on your answer; you realize what the issue is?

A. Yes.

Q. On the one hand, we have a certain brand of philosophy which insists that there must be no interference with the marital act as such, that the exercise of periodic abstinence in accordance

with “Rhythm” theory is not an unnatural interference, and that there can be no harm or relatively little from the exercise of the amount of will power required by the use of the “Rhythm” system; I think that is putting it fairly?

A. (No reply).

Q. On the other hand, we have a school of thought which says there is no harm in using mechanical or chemical agencies, completing the sexual act without fear of pregnancy and having it over with, and I put it to you which of those two is the most likely to be pathologically harmless?

A. Well, I would say -- I would be inclined to say the artificial would be less likely to be attended with pathological results.

Q. This was put by one of the doctors: if the woman, particularly, had some fear she might go to the bad place to do that, that might be a factor?

A. By using artificial contraceptives?

Q. Yes.

A. Certainly.

Q. Dr. Chisholm meant if she had not been properly taught. I suppose by properly he meant, dropping those inhibitions, she might have pathological conditions?

A. Yes.

Q. So in your school of philosophy, it is called conscience, and when we find that factor entering into the matter, it also has to be considered in addition to the physiological factor?

A. Yes.

Q. I think I have put that completely and fairly or is there anything more to add?

A. I don’t think so.

Q. What is sauce for one philosophical goose is not always sauce for another philosophical…?

A. (No reply).

Mr. Mercier:

Gander.

To Mr. Wegenast:

Q. I think I need not introduce anything more on philosophy.

I take it, doctor, that you have no philosophical inhibitions on the subject?

A. No.

Q. And you will agree with me that those who have a philosophical inhibition arrive at their views of medical practice, which are well known to us, by a consideration of factors other than medical factors?

A. Yes.

Q. I don't think we will go any further with that. From a scientific standpoint alone, it would be very difficult to arrive at the conclusion the use of a pessary was not a proper therapeutic agency?

A. One of them, yes.

Q. Read it again (to reporter). I don't think we will go any further with that.

From a scientific standpoint alone, it would be very difficult to arrive at the conclusion the use of a pessary was not a proper therapeutic agency?

A. It would be difficult.

Q. Would you go so far as to say it was impossible?

A. What?

Q. The use of a pessary was not a proper therapeutic agency from a scientific standpoint alone; could one arrive at the conclusion that the use of an -- perhaps, I should put it more widely -- artificial contraceptive was bad practice?

A. Under due medical supervision.

Q. Now, here is a passage, by the way of interruption, for which I was looking. Mr. Mercier put this to Dr. Scott:

> "Q. …birth control is a hobby with a lot of people these days?
>
> A. Is that a question or your statement?
>
> Q. A question.

A. I suppose that every question affecting any change in the social, economic, religious life of the community is a hobby with somebody or some group of people." (Page J-30).

If you were advising as a medical supervisor of a clinic, would you disagree with Dr. Batt, who is in charge of the medical department of the birth control clinic in Toronto, that a contraceptive could be furnished to a woman who declined to undergo a physical examination; that is to say, a condom or condoms and a jelly? Do you get the point?

A. I get the point.

Q. I may say Dr. Batt said a considerable proportion of women who come there do not want a physical examination and they do not decline to supply them with the condoms and jelly.

Of course, they couldn't do anymore. They couldn't give a pessary; you know what the pamphlet says; the pessary must be fitted by the doctor?

A. Yes.

Q. If you were in charge of a clinic, would you put down your foot and say, "we must not give those contraceptives to a woman unless she will undergo an examination"?

A. Not those two.

Q. Now, I have a few passages in Dr. Scott's evidence I would like to read to you. You know Dr. Scott?

A. Yes.

Q. He says on Page J-4:

"A. The chemical and mechanical methods described here are harmless."

Now, you took exception to things here; would you say his opinion is arguable?

A. Yes, I would.

Q. He said some things lead to cancer?

A. I entirely agree with him there.

Q.

"Q. What about sterility; it is said the use of contraceptives might cause sterility; what do you say to that?"

There was a certain amount of discussion and he was personally of the opinion there is no evidence.

> "The methods proposed here, in my mind, under no circumstances could cause sterility, and in some cases, they might have a beneficial effect."

He was excepting the stem; what do you say to that?

A. Yes, I agree with that.

Q. He puts this, and what do you say to this; there was a discussion whether it was interfering with natural law to cure sterility, and we got into a discussion of what was natural law.

I said:

> "From a therapeutic standpoint, is there ever a reason to advise contraception?
>
> A. There are medical reasons; when a medical man has only one of three alternatives: the employment of contraceptive measures, the sterilization of the patient or therapeutic abortion. The last is repugnant to medical men.
>
> Q. It is necessary sometimes?
>
> A. Yes, when the others are not employed. Do you wish the indications?
>
> Q. Yes, in what cases do you have these alternatives?
>
> A. The three main groups of cases. There are others not so well marked. Certain types of heart disease, progressive rheumatism, mitral stenosis.
>
> Secondly, in active pulmonary tuberculosis and thirdly, in cases of certain chronic kidney disease where the lesion has already progressed so far that there is insufficient kidney function to carry on with the added burden or pregnancy.
>
> Q. So in those three cases, if I might put it in my owns words, you must really go to prevention of the woman becoming pregnant or conceiving or having an abortion?
>
> A. Or you have the other alternative, -- I didn't mention it -- and that is, let the patient die."?

A. Those are the four alternatives.

Q. The word doesn’t come for the moment, but those are the only alternatives?

A. Yes.

Q. I would say there is another one: to bring on an abortion?

A. Isn’t that mentioned there?

Mr. Mercier:

Therapeutic abortion?

The Witness:

A. Yes.

Mr. Wegenast:

Yes.

To Mr. Wegenast:

Q. Now, doctor, Dr. Scott agreed cheerfully with my suggestion that the older members of the medical profession, taken as a whole, were generally incompetent to give advice on contraception; what do you say?

A. It would be rather hard to say they were without actually talking to them.

Q. Ticking them off?

A. (No reply).

Q. You come from England, and by the way, doctor, may I ask you to what extent to your knowledge as a physician are the views you express on contraception shared by the medical profession in England?

A. I think the vast majority are in favour of medically supervised birth control.

Q. Would it be putting it fairly to say those who oppose it are largely actuated by what we have learned to call philosophical considerations?

A. I would think so.

Mr. Mercier:

My learned friend might as well say “religious bias”. My ears have hardened to the sound.

Mr. Wegenast:

It is more smooth.

Mr. Mercier:

It might not mean the same thing.

Mr. Wegenast:

I have taken it as shown by the last witness.

To Mr. Wegenast:

Q. You have a large number of birth control clinics in charge of municipal authorities?

A. Yes.

Q. Have you ever heard of Dr. Halliday Sutherland?

A. I can't say I am familiar with that name.

Q. Are you to any moderate extent familiar with the names of persons prominently associated in the medical world with the advocacy of birth control?

A. Practically every gynecologist in London would be and they will swear…

Q. Again, doctor, at the risk of being sarcastic, I would mention the name of Dame McElroy?

A. Yes.

Q. Oh, Dr. Scott said she advised contraception?

A. Yes.

Q. Dr. Scott, at Page J-10, gave this answer:

> "Q. You spoke of opposition in the medical profession. I would like you to make some observations, doctor, on this, if you will: whether the older men or the older practice is reflected or employed in the writings to which reference was made?"

That is, some of the older writers.

> "A. Yes, the older ideas are embodied in the writings to some extent. If the Court will allow me, I might go a little further.
>
> Q. I was going to ask you to mention names, and if you don't want the responsibility, I will mention Dr. Kelly of Johns Hopkins, Dr. Sutherland and Dr. Dame McElroy?

A. Might I at first make a somewhat general observation? I am personally acquainted with the great majority of the leading gynecologists and obstetricians of this country and with a fair number in the British Isles. But to say the great majority of these men hold the ideas regarding contraception I have voiced this morning, some do not. Of those who do not, the great majority hold their opinion not on medical, but on theological grounds."?

A. Yes, I agree with that.

Q.

"Q. Amongst which classes do you find these?

A. You mentioned three and I hate to discuss them from the witness stand."

Then he mentions Dr. Sutherland. I don't think I will read that; it is a little invidious.

Then Dr. McElroy, she is discussed:

"McElroy is undoubtedly an obstetrician and gynecologist of note. She is an opponent of widespread dissemination of contraceptive knowledge, but she herself was interested in heart disease and pregnancy as I was for some years. We both published some writings on the subject. I knew her personally, and certainly, her views as regards heart disease are certainly identical with mine.

Q. That is?

A. She opposed the widespread dissemination of knowledge of contraceptives, but in medical cases did not hesitate to use them."

Then I asked did she advise sterilization, and the answer was yes.

Here is about spacing; I would like to read this passage:

"Q. About spacing children and whether it is desirable from the standpoint, first, of the mother, -- you know perfectly well what I mean -- I would like your opinion.

A. From the medical standpoint, I would like to make it clear to the Court my views are medical. There is no question in my mind that a reasonable spacing of children is to be desired. By reasonable spacing, one has to

consider many concomitant circumstances. What might be a reasonable interval for one might not be a reasonable interval for another."

Q. You agree with that of course?

A. Yes.

Q.

"Q. Do you think nature can take care of that herself?

A. I don't know whether she can, but she doesn't."

A. Yes.

Q.

"Q. I suppose continence would do it.

A. Yes, continence would do it, but unfortunately, in my experience, people are not continent."

What about that?

A. Yes.

Q. You agree with that?

A. Yes.

Q. I have mentioned several times the incident of the chaplain where he quoted one man who said:

"How can I stop it; I am a man, and she is a woman, and I can't sleep under the bed."

Now, is that from your experience as a medical man true of a considerable section of the public; in other words, there is a section of the public which is so strong that continence is impracticable?

A. Yes.

Q. You agree with that?

A. Yes, I agree with that.

Mr. Mercier:

The Salvation Army gentleman has turned out to be the star witness.

To Mr. Wegenast:

Q. Then the doctor says, to put it in my own words:

> "The rapid succession of children might also have a deleterious effect on the health of the child."

A. Yes.

Mr. Mercier:

I don't want to object to my learned friend. Dr. Cargill is giving evidence here and was brought here knowing he favoured birth control, but on the book, he favoured medical supervision for the individual.

Mr. Wegenast:

I don't know why "individual" is put in.

Mr. Mercier:

I submit very respectfully to my learned friend he will mostly say why; I have had several interviews with him; there were several might cause harm and he has said that. Of course, my learned friend can cross-examine him, but the only option he has is that these things should be done by the individual under proper medical supervision.

Mr. Wegenast:

I object that he said "individual".

Mr. Mercier:

Oh, yes, I will have the reporter read it back.

Mr. Wegenast:

No.

The Court:

He said, "each one should have medical advice."

Mr. Wegenast:

We will ask the doctor what the limits are.

Mr. Mercier:

I am not seriously objecting, but I don't want to waste time. The Crown brought the doctor here.

Mr. Wegenast:

And the Crown must take the bitter with the sweet.

Mr. Mercier:

The Crown can take it out in gloating that there are no theologians in the box.

The Court:

It is six o’clock.

Mr. Wegenast:

Can the doctor be back at ten o’clock?

The Witness:

Yes.

The Court:

Can the doctor be finished by noon?

Mr. Wegenast:

One hour will do me.

Mr. Mercier:

I will have very few questions.

The Court:

About Mrs. DesLauriers?

Mr. Wegenast:

I asked her to be here at ten o’clock as I did not want to interrupt the doctor’s evidence.

The Court:

Adjourn to tomorrow morning at ten o’clock.

(Witness temporarily retired)

(Upon the Court resuming the hearing at 10:00 a.m., 11th December, 1936)

MRS. DESLAURIERS

Mrs. Annette DesLauriers, already duly sworn, recalled, deposed:

To Mr. Wegenast:

Q. You have already been sworn, Mrs. DesLauriers?

A. (No reply).

Q. I want to ask if you signed this?

A. Yes.

The Court:

Exhibit 108-B.

Mr. Mercier:

Let me see that.

Mr. Wegenast:

I thought there would be no examination or cross-examination; that is why I didn’t ask any questions.

The Court:

I said except with reference to the card.

Mr. Mercier:

I would just like to look at it, Your Worship.

CROSS-EXAMINATION

To Mr. Mercier:

Q. Mrs. DesLauriers, I see on this card that when Miss Palmer visited you, you told her you didn’t want the baby that was coming.

A. No, I didn’t say that.

Q. You didn’t say you didn’t want the baby that was coming?

A. No.

Q. That is all, Mrs. DesLauriers, thank you.

A. (No reply).

The Court:

One hundred and eight (108-B) is the number of that exhibit.

(Witness is retired)

DR. CARGILL (recalled).

Dr. Richard A. D. Cargill; already duly sworn, recalled, deposed:

To Mr. Wegenast:

Q. There are only one or two little things in Dr. Scott’s evidence I want to ask you. He deals with this matter of using vinegar; since you have expressed your opinion, I want to ask you what about Dr. Scott thought and then ask you whether you think it is arguable.

On Page J-25, in answer to my friend Mr. Mercier, the doctor said:

> "A. No, but I would advise an occlusive pessary with the contraceptive jelly.
>
> Q. That is what you advise?
>
> A. Yes, personally.
>
> Q. Do you not think the daily use of the vinegar tampon might be injurious to her health?
>
> A. Not to her health, but it might cause irritations and she would stop it."

Q. You would agree with that?

A. I would agree with that.

Q.

> "Q. If she didn't stop it?
>
> A. It would go on irritating her."

A. Right.

Q.

> "Q. Could that irritation possibly cause disease or ill health to that woman?
>
> A. I suppose local irritation is ill health which would be uncomfortable."

A. Right.

Q.

> "Q. Would you advise the use of this to a woman who might suffer an irritation of the vagina on using it?
>
> A. (No reply)."

That is where Your Worship intervened:

> "To the Court:
>
> Q. By local irritation, doctor, do you mean irritation as long as the stimulant is there and it goes on only while it is there?
>
> A. They might have it after.

Q. And if it stopped then, say after a month, it might disappear?

A. Yes.

Q. Without any lasting effects?

A. Yes."

You agree with that?

A. Yes.

Q. Then further down there was this:

"Q. The use of the vinegar tampon might be dangerous?"

The question was about gonorrhea:

"A. No, on the contrary, the urethra is a different channel from the vagina and therefore, your tampon isn't where the infection is. Although vinegar is a spermicide and to that extent, it kills sperms, it is also an antiseptic or germicide, and to the extent it is antiseptic, it kills protoplasmic poison, and it would have a curative effect on the gonorrhea."?

A. That is arguable.

Mr. Mercier:

Would you continue?

Mr. Wegenast:

That is on a different point; I don't want to ask the doctor on that.

To Mr. Wegenast:

Q. On page J-21, Mr. Mercier read to the doctor the portion of the pamphlet containing this sentence:

"Every child has the right to be wanted, and to be born into a world of love and care and sufficiency.

Now, do you think that is very good advice or knowledge to give to all mothers?

A. Yes, I think that is quite sound."?

A. I would say it is sound.

Q. Have you any objection to letting all married women have this information?

A. No.

Q. I wonder if I might go a bit further, doctor; you seem to emphasize you would like to have the intervention of a doctor, which we all do when it is possible, but I would like to put this to you now; would you go so far as to disbar a woman who is living in the outlying parts of the country where doctors are not accessible?

I give that as one example, and I give another: people who don't believe in calling in the doctor, like Christian Scientists, and there may be others you can think of; would you go so far as to say women who for some reason or other do not or are unable to consult a doctor -- would you go so far as to say that?

A. No, I would go that far.

Q. That is all, doctor -- no, excuse me, I have forgotten something.

A. (No reply).

Mr. Mercier:

I wouldn't be surprised.

To Mr. Wegenast:

Q. Take a look at this; it is written by Edward F. Griffith, member of the Royal College of Surgeons and licentiate of the Royal College of Physicians with a forward by the Right Honourable Lord Horder, K. C. V. O. M. D. F. R. C. P., and another foreword by T. W. Pym, Hon. Canon of Bristol and fellow and chaplain of Balliol College, Oxford, and one by Claud Mullins, metropolitan magistrate and author of "Marriage, Children and God".

I want to ask you this, whether you consider that book might speak with a certain authority?

A. Yes, I would.

The Court:

What is the name of the book?

Mr. Wegenast:

“Modern Marriage and Birth Control” by Edward F. Griffith, and I am sorry to disappoint my learned friend and Your Worship by asking leave to read two or three paragraphs from this.

The Court:

Unless the doctor doesn’t recognize it as an authority, you don’t have to ask leave.

Mr. Wegenast:

I don’t want even to abuse my rights.

To Mr. Wegenast:

Q. There is this.

A. (No reply).

The Court:

What page?

A. Page 80.

To Mr. Wegenast:

Q. The heading is:

> “Male Continence (Coitus Reservatus):
>
> This is a method about which a word or two should be said. Its action and results are very similar to coitus interruptus, as its principle is to allow connection and the nervous excitement which follows, but -- and here it differs from coitus interruptus -- never to permit the orgasm to take place, either in the woman or in the man. The method, if properly practiced, requires the man to withdraw but never to have an ejaculation. The importance of this method lies in the fact that it is…”

No, that gets into philosophy, unless His Worship agrees.

You agree with that, as far as I have gone?

A. Yes.

Q. It is not desirable?

A. No.

Q. Now, about the birth control movement; I suppose you know something about that in England?

A. A certain amount.

Q. And we have had brought before us the American Medical Association of the United States. I want to ask if this is a fair picture of conditions in England

> "The Birth Control Movement:
>
> Until quite recent years, there were several birth control clinics and organizations throughout the country working more or less independently of each other, and there was a committee of investigation under the chairmanship of Sir Humphrey Rolleston…"

Do you know him?

A. Yes.

Q.

> …working along purely scientific lines without being allied to any other particular body. In 1930, however, this committee, together with most of the important branches of birth control work, were united together under the National Birth Control Association, whose offices are at 26 Eccleston Street, London, S. W. I. Most of the work in the country is done under four main headings: research, private clinics for poor people, clinics run directly by local authorities, and private instructions given by general practitioners. The association has as its president Lord Horder of Ashford, and Lady Denman is the chairman of the executive committee, whilst Sir Humphrey Rolleston still remains chairman of the investigation committee. The object of the association is 'to advocate and promote the provision of facilities for scientific contraception so that married people may space or limit their family, and thus mitigate the evils of ill health and poverty'."

Now, may I ask, if we had something here like that, would it meet with your approval?

A. I think it would.

Q. Doctor, would you concede this to me because I think my learned friend would consider it a concession; somebody has started these things, and in the natural course of events, you don't expect the government to start them?

A. (No reply).

Mr. Mercier:

That is not exactly a medical question.

Mr. Wegenast:

It is the birth control movement.

The Court:

Now we have a new idea.

Mr. Beament:

I don't think it is new. Mr. Silcox stated it was in the nature of Anglo-Saxon peoples; men have to start it, and governments take it over.

Mr. Mercier:

He is not a doctor.

The Court:

He is a sociologist.

To Mr. Wegenast:

Q. Would you object to it starting under private auspices here with the ultimate aim of having it taken over by private agencies and then…?

A. (No reply).

Q.

> "The majority of the clinics in the country are supported by local contributions,…"

Do you object to that?

A. No.

Q.

> "…and it is the aim of these clinics to provide proper contraceptive methods for the very poorest women at a price which is frequently as low as is, and the appliances which are provided at these clinics are carefully chosen for the individual requirements of the patient, and are sold to her at the lowest possible price."

You wouldn't object to that?

A. No.

Q.

> "The clinics are almost invariably staffed by medical officers who are fully trained in this work. Dr. Marie Stopes is president of the Constructive Birth Control Society, which works in close cooperation with the association. This society runs the Mothers' Clinic in Whitfield Street, London, and also two travelling caravans which work in the country districts."

Now, do you see anything wrong in that?

A. No, the whole thing is run under medical supervision.

Q. Am I right in saying any looseness or slackness in the early stages has now been corrected?

A. I think so.

Q. On Page 94:

> "Private Practitioners:
>
> The medical profession is coming more and more to realize the importance of this work, and there are many doctors teaching it in a systematic manner throughout the country."

We are behind in that?

A. Yes.

Q.

> "A list of doctors who are known to be doing this work is kept at the headquarters of the association in Eccleston Street, and if anyone reading this book wishes for further information and finds that she is not living near any organized clinic, she has only to write to the secretary of the association who will probably be able to provide her with the name of a doctor who can give her the instruction she requires."

You don't think there is anything objectionable about that?

A. No.

Q. Then this, on a different point, at Page 105:

> "There is absolutely no evidence to substantiate the remark that 'nature denies children to those who at first refuse to have children'."

He is quoting from one of the early philosophers?

A. Yes.

Q.

> "Such a statement is misleading, and liable to cause considerable harm. On the contrary, there is considerable evidence to show that the normal women who have practiced suitable contraceptive methods for some years can become pregnant as soon as they stop using the methods. In one series of 50 cases investigated, 49 were found to become pregnant within a few months of giving up the method."

Is there anything in your experience inconsistent with that?

A. On the other hand, there are cases where contraception has been practiced and where they stop practicing it in order to have a baby, it didn't meet with success, but it is no proof you can blame contraception for that.

Q. We have had that in evidence, but there is no proof artificial contraceptives of the better class result in sterility?

A. No.

Q. He adds this:

> "With regard to Mr. Weatherhead's remark…" --

One of the philosophers I mentioned --

> "…that none of the means of preventing conception is certain (and he quotes Sir George Newman's report for 1929 as his authority), whilst this may have been true in 1929, it certainly is not true in 1934. Our knowledge of contraceptive technique has advanced so quickly in the past few years that it is possible to provide nearly one hundred per cent security."

What do you say to that?

A. I have seen that claim, but I don't think that here we have sufficient practical experience to be able to say yes or no to that.

Q. It has been said here -- what do you say to this -- the literature on contraceptives that is earlier than 1930 or 1931 is of relatively little value now?

A. I think so.

Mr. Mercier:

Nineteen twenty-six (1926) was the year.

The Court:

Yes.

Mr. Wegenast:

I am glad it is 1926.

Mr. Mercier:

I wanted to make that clear.

To Mr. Wegenast:

Q. Have you ever heard of the British Social Hygiene Council?

A. Yes.

Q. Would you take a book gotten out especially by a committee of that association to speak with authority?

The Court:

What is the year of that edition?

Mr. Wegenast:

I am talking now of "Modern Marriage and Birth Control"; it was first published in 1935, and this book is "Preparation for Marriage," a handbook prepared by a special committee on behalf of the British Social Hygiene Council, which was published first in 1932 with second impression in September, 1936.

I see on Page 124 they quote Disraeli to this effect:

> "Ignorance has never yet solved any problem."

To Mr. Wegenast:

Q. Would you agree with that?

A. I would.

Mr. Mercier:

That is strictly medical.

The Court:

It is a platitude, I think.

Mr. Mercier:

Yes.

To Mr. Wegenast:

Q. On Page 132, he says this -- he calls this “coitus intermenstruus”; that is what he calls the Ogino-Knaus theory of safe periods.

> “Unfortunately, coitus intermenstruus, as it has been termed, is not only an unreliable means of avoiding conception, but is highly unnatural. It allows the man to approach his wife only when she is least inclined to receive him. The sex union thus becomes for the woman something for which she has no desire. It loses all spontaneity, and instead of being consecrated by the mutual desire and emotion of the two partners, becomes an ordeal to which the one submits in order to satisfy the physical wants of the other.”

What do you say to that?

A. I don’t think I can say anything to that; I don’t know enough of that.

The Court:

It is getting into psychology.

The Witness:

A. People never confide to me to that extent.

To Mr. Wegenast:

Q. Nevertheless, we have the opinion here deliberately published by the British Social Hygiene Council, and you know nothing to the contrary?

A. To the contrary, no.

Q. On Page 134, under the heading “Chemical Methods,” he says this:

> “Three chemical methods are in general use: the suppository, the jelly, and the foam tablet. The action of all of them is to bring about the death of the spermatozoa, either by the effect of salt, acid or alkali concentrations, or else by coating the spermatozoa with a fine film of oil to immobilize and even kill them.”

That is what you had reference to in the oil preparation?

A. Yes.

Q. Then, this, on Page 140:

"It is amongst psychologists rather than amongst physiologists that different opinions on this subject are held. Some experts state that the sex urge can only be suppressed at great cost to body and mind, whilst others, equally well informed, maintain that this is not the case. What is the reason for this diversity of opinion? In the first place, it must be remembered that generalizations on this subject are difficult to make and likely to be misleading."

You have already put yourself on record to that effect?

A. Yes.

Q. "The physiological and psychological makeup of different people varies enormously…"?

A. Yes.

Q.

"…for the sex urge is an individual endowment which in a given person may be either very weak or very strong."

Do you agree with that?

A. Yes.

Q.

"Men and women differ in their hormonic activity and in their psychological equipment…"?

A. Yes.

Q.

"…and it is on these variations that the strength of their sex depends."?

A. Yes.

Q.

"Moreover, not only does the intensity of desire vary in different men and women, but so does the efficiency of the resistance to its fulfilment."?

A. I agree with that, yes.

Q.

"Whilst a given degree of sexual tension may have little effect on the social efficiency of one, in another, it may be productive of an acute anxiety neurosis."?

A. Yes.

Q.

"Physiologists as a class are prone to forget these variations in emotional stability…"?

A. Yes.

Q.

"…and moralists are no less apt to assume that willpower and idealism can do for one man or woman what they can do for another."?

A. Yes.

Q. That is the mistake that is at the bottom, but not only you but other doctors have checked us up on that?

A. Yes.

Q. One must consider resistance to sex desires and so on.

Now:

"Both these fallacies are as serious in their results as they are common in their occurrence. The actual truth is that the price that anybody is called upon to pay for continence varies from zero to a hundred."?

Q. Yes.

Q. You think that?

A. Yes.

Q.

"Doctors are continually meeting in the consulting room the casualties that mark the fight between natural instinct and the fear of doing wrong."?

A. Yes.

Q.

"It is the mind that suffers rather than the body, although since physical and mental health are mutually dependent,

the victim of a sex neurosis is as frequently ill in his body as he is in his mind.”?

A. Yes.

Q. Do you agree with that?

A. Yes.

Q. That struck me as being so well put I couldn’t afford to leave it out of the record?

A. (No reply).

Mr. Wegenast:

My attention has been called to the fact the accused is not at all well and would like an adjournment for five or ten minutes.

The Court:

Half an hour.

(Upon the Court resuming):

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Just a few questions, doctor, I wish to ask you now.

Doctor, you were saying that you had no serious objection to a social worker doing…?

A. (No reply).

Mr. Wegenast:

No, Your Worship, I had nothing to do with a social worker in my cross-examination.

Mr. Mercier:

Yes.

Mr. Wegenast:

No, I said not a word about a social worker.

Mr. Mercier:

Something about the distribution of information?

Mr. Wegenast:

No.

Mr. Mercier:

There was.

The Court:

He referred to a medical supervisor of a clinic.

Mr. Mercier:

It was much before that. Something about the way these things should be distributed; I don’t remember exactly.

The Court:

I can’t find it in my notes.

To Mr. Mercier:

Q. You stated this: it should be given by a medical practitioner in individual cases?

A. Yes.

Mr. Wegenast:

It was stated before; I don’t see why it should be brought up again.

To Mr. Mercier:

Q. Is there any other way?

A. (No reply).

Mr. Mercier:

It is arising out of cross-examination.

The Court:

I think that question is a fair one.

To Mr. Mercier:

Q. Is there any other way?

A. I have no objection to the information being given by non-medical people where necessary, providing it is given in such a way it will not lead to harmful results.

Q. What do you mean by that: “…providing steps are taken to ensure the information is confined…”?

A. (No reply).

Mr. Wegenast:

Just a moment, Your Worship, if the witness is going outside the medical field, I object.

To the Court:

Q. Go ahead, doctor.

A. Provided steps are taken to ensure it is confined to people to whom it is intended.

Mr. Wegenast:

I submit that is in direct violation of the limits Your Worship laid down. This is outside the field of medicine, and my learned friend ought to have asked the question before if that is the answer he expected.

Mr. Mercier:

I don't know what answer I expected; I haven't coached my witnesses.

The Court:

From a medical point of view, the desirability of the information is distinctly the point.

Mr. Wegenast:

I fail to see it. I don't know what Your Worship has in mind, but if the idea is it might do some other person some medical harm, but that is not the suggestion.

Mr. Mercier:

That may be it.

Mr. Wegenast:

Let us see.

The Court:

If not, it will be closed.

To Mr. Mercier:

Q. What medical harm could be done if the information didn't get into the right hands?

A. If the information got into the hands of unmarried people?

Mr. Wegenast:

Now ---

Mr. Mercier:

Let the doctor continue his answer.

The Court:

If it is a medical point of view, it is permissible.

To Mr. Mercier:

Q. Go ahead, doctor.

A. If the information got into the hands of the unmarried, it would tend to extra-marital intercourse.

To Mr. Wegenast:

Q. Biologically and medically, what is there?

A. (No reply).

To the Court:

Q. Medically?

A. And as a corollary, there would be a distinct increase of venereal disease.

To Mr. Mercier:

Q. That is what I wanted. Now, you mentioned on cross-examination the Ogino-Knaus theory from one of the books, that sexual relations might lose spontaneity by having to wait?

A. Inasmuch as control would have to be exercised.

Q. Relative to that, what do you say as to the use of the jelly, which has to be inserted in the proper place, and one has to wait 20 minutes until intercourse takes place?

A. No, there is a certain destruction of the spermatozoa in that too.

Q. On the question of willpower in sex appeal, who would be the better person to judge that; a medical practitioner after close study of the case or one known as a social worker?

A. I would say the medical man.

Q. I am prizing that?

A. As I agreed before, no two people are capable of exerting the same control, and exerting control hasn’t the same effect and that is bound with the whole subject of repressions, and in cases repressions are definitely liable to lead to neuroses.

Q. And other cases?

A. It might not have the same effect.

Q. Now, there is something. I am not sure what you said, but I have had it copied:

> "Q. And if the reason for spacing is non-medical, you don't shrink from giving it?
>
> A. I would like to qualify that.
>
> Q. Yes?
>
> A. Providing it doesn't run counter to their conscience."

Q. Would you amplify that, doctor?

A. If the patient sincerely and honestly believes artificial contraception is more or less a bad thing, I would hesitate; in fact, I would not recommend her to apply such measures.

Q. Why?

A. Because it might lead to a definite neurosis again.

Q. Thank you, doctor.

RE-CROSS-EXAMINATION

To Mr. Wegenast:

Q. And if they didn't think that?

A. (No reply).

Mr. Mercier:

There were no new things brought up.

The Court:

Anything new or needing an explanation.

Mr. Wegenast:

This very question.

Mr. Mercier:

He stated that before.

Mr. Wegenast:

Why did my learned friend ask him to amplify it?

Mr. Mercier:

From a medical point of view.

The Court:

Of course, the reason given is something new.

Mr. Mercier:

If Your Worship accepts it, all right.

The Court:

We can't go back and forth determining…

Mr. Wegenast:

If Your Worship says so, I am in your hands.

The Court:

It is difficult to decide what is new and what is not new.

Mr. Mercier:

It was stated in evidence by Dr. Cargill:

"A. Providing it doesn't run counter to their conscience."

The Court:

He gave a medical reason.

Mr. Mercier:

I asked him ---

The Court:

But the reason wasn't given before.

Mr. Wegenast:

And what he said about repressions wasn't given before.

The Court:

I think so.

Mr. Mercier:

There is plenty of evidence ---

The Court:

This question of leading to neuroses is definitely something new, the reason.

Mr. Wegenast:

It simply arose from the reading of a passage from Dr. Scott's or somebody's evidence.

Mr. Mercier:

That was cross-examination.

The Court:

You had the opportunity of extending that at that time.

Mr. Mercier:

My learned friend forgets, and I don't see that he should get more privileges than I do.

Mr. Wegenast:

That is not the only matter.

The Court:

Any matters new in re-examination, I will allow you to cross-examine, but not matters raised before.

To Mr. Wegenast:

Q. I want to ask the doctor whether he means to say whether people who hadn't these repressions and didn't think the use of artificial contraceptives was wrong, whether there was any reason in their case from withholding it from them?

A. No.

Q. That is the part. Here is another; the question of having these contraceptives available. I want to ask the doctor if he doesn't know it is a fact that these contraceptives are available at every drugstore?

A. (No reply).

Mr. Mercier:

That is new.

Mr. Wegenast:

I didn't ask this witness about that, but my learned friend did or rather the witness said -- if my friend hasn't been conferring with him about the possibilities of this getting into the hands of people.

The Court:

By non-medical people.

Mr. Wegenast:

And I will ask the doctor if these aren't available at every drugstore.

Mr. Mercier:

I am perfectly willing to agree that is the case.

The Court:

I think you have established that point with these exhibits.

Mr. Wegenast:

These were bought by a witness, and the proprietors of the drugstores had no reason to know he was married.

Mr. Mercier:

That was said by several doctors.

To Mr. Wegenast:

Q. I want to put it if those are not available at every drugstore?

A. Yes.

The Court:

And I would be very surprised if this witness would say "no" to that question.

Mr. Wegenast:

Or any witness.

To the Court:

Q. That is all. Thank you, doctor.

(Witness retired).

Mr. Wegenast

Copy No. 1

REX vs. PALMER

Canon Whalley (I)

P-464 to P-497

Reverend Canon Arthur Henry Whalley, duly sworn, deposed:

To the Court:

Q. Your name?

A. Arthur Henry Whalley.

Q. Address?

A. 169 Stewart Street.

To Mr. Mercier:

Q. Now, you are a member of the Church of England in Canada?

A. Yes.

Q. How long have you been in the ministry?

A. Forty-six (46) years.

Q. And how long in charge of a parish?

A. My present parish, I was appointed there on September 1st, 1919.

Q. You have been in Ottawa since 1919?

A. Yes.

Q. You are a graduate of what university?

A. I took the divinity course at Trinity; took orders after I was married, and before that, I was at Merton College, Oxford. I was kind of young when I came to Canada.

Q. Now, father, would you mind explaining to the Court your views on birth control?

A. As far as I go, my church doesn't recognize birth control at all. The views of my church, I understand, are expressed in the marriage service.

Q. Have you got it?

A. Yes.

Mr. Wegenast:

Unless this witness is prepared to speak for the church, I submit it must be made clear to my friend he is expressing his own opinions, and I am not so sure his reading of the marriage service ---

Mr. Mercier:

Is there any difference from reading the encyclical of Pope Pius?

Mr. Wegenast:

But not being an authority -- if my friend will qualify that as a textbook on theology?

The Court:

Or an authority on theological matters.

To Mr. Mercier:

Q. Father, where is that marriage service taken from?

A. From the Book of Common Prayer, which I had accepted under oath before I was ordained, and I am obliged to teach that. If I violate that teaching, I am liable to discipline under Canon 15 of the Diocese of Ottawa.

Mr. Wegenast:

We ought to know what book that is.

The Witness:

A. I will read the title.

Mr. Wegenast:

Is that the book on which he took his oath to maintain his teaching?

Mr. Mercier:

If my learned friend will let me establish it.

The Witness:

A. I might say the prayer book I took my oath on was the 1662 Book of Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the use of the Church of England, together with the Psalter or Psalms of David, pointed as they are to be Sung or said in churches: And the Form and Manner of Making, ordaining and Consecrating of Bishops, Priests and Deacons.

Mr. Wegenast:

File it as an exhibit.

Mr. Mercier:

Without filing it as an exhibit ---

The Witness:

A. I might say the Canadian church is self-governing and revised the book, and the revision largely consists of removing irregular expressions, and this is the prayer book under our archbishop’s synod and is used today.

To Mr. Mercier:

Q. By the way, doctor, you are a member of the synod?

A. The general synod.

Q. That is the book you follow now?

A. Yes.

Mr. Wegenast:

We should have that identified.

The Witness:

A. It was at the General Synod of 1918 this prayer book was adopted, but the date must be here.

The Court:

The 1918 Canadian revision.

Mr. Wegenast:

It should be available so I can see what the witness means when he says, “this book”.

The Witness:

A. Yes.

Mr. Wegenast:

And we ought to be able to mark it as an exhibit as long as we can identify it.

The Court:

This is the Book of Common Prayer, Canadian revision of 1918.

Mr. Wegenast:

And is there any indication of the date of publication of that book?

The Witness:

A. It was published very shortly after that. That was the General Synod adopted it in 1918, and immediately, the book was printed.

Mr. Wegenast:

Your Worship, is there any such practice in your court as marking a thing for identification only?

The Court:

I have never come across any such procedure.

Mr. Beament:

I think that can be done as in the high court where a document may be identified until it is proven.

The Court:

It is marked “R. v. P.”.

Mr. Wegenast:

I suppose something new comes up in your practice?

The Court:

Oh, yes.

Mr. Wegenast:

Might we have the other one identified; my friend was referring to him as “father”?

Mr. Mercier:

I didn’t know.

The Witness:

A. As a matter of fact, the word “father” is for a man who lives in communities; two came to Ottawa recently, Fathers Spaith and Little (?). As a matter of fact, people call me many things.

The Court:

I put “R. v. P.” on it.

To Mr. Mercier:

Q. I won’t go that far; I will call you “canon” now?

A. Yes.

Q. Will you now tell me what the prayers are you read in the marriage ceremony?

A. The service starts with an exhortation; I don’t know if I need read it all.

Q. I would rather you would.

A. At Page 338:

“The Form of Solemnization of Matrimony:

First, the Banns of all that are to be married together must be published in the Church three several Sundays, in the service of the Communion, after the Creed or immediately after the second lesson of morning or evening prayer; the curate saying after the accustomed manner:

I publish the banns of marriage between M. of – and N. of -. If any of you know cause, or just impediment, why these two persons should not be joined together in holy matrimony, ye are to declare it. This is the first (second, or third) time of asking.

And if the persons that are to be married dwell in diverse parishes, the banns must be asked in both parishes; and the curate of the one parish shall not solemnize matrimony betwixt them without a certificate of the banns being thrice asked from the curate of the other parish. Nor shall any be married without banns first asked, save when license is had from authority.

Note that no clergyman within the jurisdiction of the Church of England in Canada shall solemnize a marriage between persons either of whom shall have been divorced from one who is living at the time.

Note also that no clergyman within the jurisdiction of the Church of England in Canada shall knowingly solemnize a marriage within the degrees prohibited by the Table of Kindred and Affinity as set forth on page 337.

Before solemnizing any marriage, the priest shall make inquiry and satisfy himself that there is no impediment to the same.

At the day and time appointed for solemnization of matrimony, the persons to be married shall come into the body of the church with their friends and neighbours, and there standing together, the man on the right hand and the woman on the left, the priest shall say:

Dearly beloved, we are gathered together here in the sight of God, and in the face of this congregation, to join together this man and this woman in holy matrimony, which is an honourable estate, instituted of God in the time of man’s innocency, signifying unto us the mystical union that is betwixt Christ and his Church, which holy estate Christ

adorned and beautified with his presence, and first miracle that he wrought in Cana of Galilee, and is commended of Saint Paul to be honourable among all men: and therefore is not by any to be enterprised, nor taken in hand unadvisedly, lightly or wantonly; but reverently, discreetly, advisedly, soberly, and in the fear of God, duly considering the causes for which matrimony was ordained.

Matrimony was ordained for the hallowing of the union betwixt man and woman; for the procreation of children to be brought up in the fear and nurture of the Lord; and for the mutual society, help, and comfort that the one ought to have of the other, in both prosperity and adversity.

Into which holy estate these two persons present come now to be joined. Therefore, if any man can show any just cause why they may not lawfully be joined together, let him now speak or else forever hold his peace."

That is the way the service begins. I think the teaching of the prayer book is contained largely in prayers and acts themselves.

After the first part of the service, called the espousals, and then the one hundred and twenty-eighth psalm:

"Beati omnes. Psalm 128:

Blessed are all they that fear the Lord; and walk in his ways.

For thou shalt eat the labour of thine hands: Oh well is thee, and happy shalt thou be.

Thy wife shall be as the fruitful vine: upon the walls of thy house;

Thy children like the olive branches: round about thy table.

Lo, thus shall the man be blessed: that feareth the Lord.

The Lord from out of Sion shall so bless thee: that thou shalt see Jerusalem in prosperity all thy life long;

Yea, that thou shalt see thy children's children: and peace upon Israel."

But in the event of a woman being married past the age of child-bearing, that isn't used, but the sixty-seventh psalm:

"Deus misereatur. Psalm 67.

God be merciful unto us, and bless us: and show us the light of his countenance, and be merciful to us:

That thy way may be known upon earth: thy saving health among all nations.

Let the people praise thee, O God: yes, let all the people praise thee.

O let the nations rejoice and be glad: for thou shalt judge the folk righteously, and govern the nations upon earth.

Let the people praise thee, O God: yea, let all the people praise thee.

Then shall the earth bring forth her increase: and God, even our own God, shall give us his blessing.

God shall bless us: and all the ends of the world shall fear him."

Now, we come to the prayers on Page 345:

"O God of Abraham, God of Isaac, God of Jacob, bless these thy servants, and sow the seed of eternal life in their hearts; that whatsoever in thy holy word they shall profitably learn, they may in deed fulfil the same. Look, O Lord, mercifully upon them from heaven, and bless them. And as thou didst send thy blessing upon Abraham and Sarah, to their great comfort, so vouchsafe to send thy blessing upon these thy servants; that they obeying thy will, and always being in safety under thy protection, may abide in thy love unto their lives; and: through Jesus Christ our Lord. Amen."

"This prayer next following shall be omitted, where the woman is past child-bearing:

O merciful Lord, and heavenly father, by whose gracious gift mankind is increased: We beseech thee, assist with thy blessing these two persons, that they may both be fruitful in procreation of children, and also live together so long in godly love and honesty, that they may see their children christianly and virtuously brought up, to thy praise and honour; through Jesus Christ our Lord. Amen."

Or there is this alternative:

"Or this:

O merciful Lord, and heavenly father, by whose gracious blessing mankind is increased: Bestow, we beseech thee, on these thy servants the heritage and gift of children, and grant that they may also live together so long in godly love and honesty, that they may see their children christianly and virtuously brought up, to they praise and honour; through Jesus Christ our Lord. Amen."

Then at the end of the service, there follows an exhortation made up of passages of scripture beginning on Page 347, which contains these passages:

"After which, if there be no sermon or exhortation, declaring the duties of man and wife, the minister shall read as followeth:

All ye that are married, or that intend to take the holy estate of matrimony upon you, hear what the holy scripture doth say as touching the duty of husbands towards their wives, and wives towards their husbands.

St. Paul, in his epistle to the Ephesians, the fifth chapter, doth give this commandment to all married men: husbands, love your wives, even as Christ also loved the church, and gave himself for it, that he might sanctify and cleanse it with the washing of water, by the word; that he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy, and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself; for no man ever yet hated his own flesh, but nourisheth and cherisheth it, even as the Lord the church: for we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife; and they two shall be one flesh. This is a great mystery; but I speak concerning Christ and the church. Nevertheless, let every one of you in particular so love his wife, even as himself.

Likewise, the same Saint Paul, writing to the Colossians, speaketh thus to all men that are married: husbands, love your wives, and be not bitter against them.

Hear also what Saint Peter, the Apostle of Christ, who was himself a married man, saith unto them that are married: ye husbands, dwell with your wives according to knowledge;

giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life, that your prayers be not hindered.

Hither to ye have heard the duty of the husband toward the wife. Now, likewise, ye wives, hear and learn your duties toward your husbands…"

Mr. Wegenast:

I wonder if Canon Whalley would put me in the way of finding that in this book.

The Witness:

A. Yes.

Mr. Wegenast:

It is a long time since I had occasion to go through this: I would like you to read it from the beginning?

The Witness:

A. Certainly.

Mr. Wegenast:

That is why I couldn't find it.

The Witness:

A. At Page 347:

"After which, if there be no sermon or exhortation, declaring the duties of man and wife, the minister shall read as followeth:

All ye that are married, or that intend to take the holy estate of matrimony upon you, hear what the holy scripture doth say as touching the duty of husbands towards their wives, and wives towards their husbands.

St. Paul, in his epistle to the Ephesians, the fifth chapter, doth give this commandment to all married men: husbands, love your wives, even as Christ also loved the church, and gave himself for it, that he might sanctify and cleanse it with the washing of water, by the word; that he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy, and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth

himself; for no man ever yet hated his own flesh, but nourisheth and cherisheth it, even as the Lord the church: so we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife; and they two shall be one flesh. This is a great mystery; but I speak concerning Christ and the church. Nevertheless, let every one of you in particular so love his wife, even as himself.

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Hear also what Saint Peter, the Apostle of Christ, who was himself a married man, saith unto them that are married: ye husbands, dwell with your wives according to knowledge; giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life, that your prayers be not hindered.

Hitherto ye have heard the duty of the husband toward the wife. Now, likewise, ye wives, hear and learn your duties toward your husbands, even as it is plainly set forth in holy scripture.

Saint Paul, in the aforenamed epistle to the Ephesians, teacheth you thus: wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the Church; and he is the saviour of the body. Therefore, as the church is subject unto Christ, so let the wives be to their own husbands in everything. And again, he saith, let the wife see that she reverences her husband.

And in his epistle to the Colossians, Saint Paul giveth you this short lesson: Wives, submit yourselves unto your own husbands, as it is fit in the Lord.

Saint Peter also doth instruct you very well, thus saying: Ye wives, be in subjection to your own husbands; that, if any obey not the word, they also may without the word be won by the conversation of the wives; while they behold your chaste conversation coupled with fear. Whose adorning, let it not be that outward adorning of plaiting of hair, and of wearing of gold, or of putting on of apparel; but let it be the hidden man of the heart, in that

which is not corruptible; even the ornament of a meek and quiet spirit, which is in the sight of God of great price."

To Mr. Mercier:

Q. Where in that, father, do you find the particular words enjoining people to have children?

A. (No reply).

Mr. Wegenast:

Well, that is surely leading. I can appreciate his difficulty: he should make one or two attempts and then seek to get out of his difficulty. There has been no suggestion from anybody…

Mr. Mercier:

Q. Is there anything there?

A. Where the prayer is said that people who are married may be blessed with children; that they may be fruitful in the procreation of children.

Mr. Wegenast:

In the case of a woman not past child-bearing age.

Mr. Mercier:

That would be logical.

Mr. Wegenast:

Quite logical.

To Mr. Mercier:

Q. Are there any other books you use in your holy ministry where the people are enjoined to have children?

A. Of course there is the Book of Homilies brought out in 1662, and they can be used in the place of a sermon. They have never been used; it would take about an hour to read a homily, but in that way, it would be a quasi-document.

Mr. Wegenast:

If it is an interpretation of a document, it is for Your Worship…

To Mr. Mercier:

Q. Father, according to your ministry in the Church of England, what are your views as a minister belonging to the Church of England of the control of birth by the use of contraceptives?

A. I don’t approve of them.

Q. Would you mind telling His Worship why?

A. Because in my own opinion, it runs contrary to the whole spirit of the marriage service. I mean to say, it seems rather a farce for people to pray they maybe fruitful in the procreation of children and then use artificial means to stop it.

Q. And now, father, we have had here the Reverend Mr. Hepburn, a priest of the Church of England, rector of All Saints Church in Ottawa. The Reverend Mr. Hepburn…?

A. (No reply)

Mr. Beament:

What page?

Mr. Mercier:

L-1, at the bottom:

> “Q. What has been your experience as to the propriety of birth control or the use of contraceptives?
>
> A. In my early ministry, I was opposed, but it was before I knew much about it, but a soon as I came in contact with social problems involved in the welfare of the family, the health of the mother and children and the good of the community, I thought there should be some way that could be conscientiously adopted, but it wasn’t until after the pronouncement of our Lambeth Council that my position was clarified because I thought the Lambeth Conference representing the Anglican church through the world -- I felt different about the matter and I am not an expert now, but I am a convert.”

To Mr. Mercier:

Q. What do you say?

A. The Lambeth Conference is a synod; it can’t legislate; it can’t pass laws or canons; it is simply a voluntary association of bishops. It met in 1860, first, I think, at the call of the Archbishop of Canterbury. It is composed of Anglican bishops throughout the world.

They meet and confer, and their findings are generally published, but they haven’t got the least legislative power of any kind; it is simply the expression of opinions, and the only

way I know that the Lambeth Conference can exert any influence directly or indirectly upon the Canadian church was what took place after the Lambeth Conference that met in 1920. They then issued opinions on the matter of the reunion of Christendom. That came up at the general synod held at Toronto. I was there. The general synod passed it to the provincial synods. There are four provincial synods stretching from the Atlantic to the Pacific. They considered matters on reunion. Three rejected it in toto. The other passed it by a narrow majority in a meagre house. As a result of that, the whole findings in the Canadian church are a dead matter.

On sex matters, there have been two general synods since 1930, and this matter hasn't been considered at all.

Q. In Canada?

A. In Canada.

Q. And so far as you believe, people belonging to your communion are not entitled to use contraceptive methods for the prevention of children?

A. Certainly not, and the findings of the Lambeth Conference have no legislative power whatever, just exactly in the same way as you may know: not many years ago there was a meeting of the Pan-Pacific Conference on the Pacific coast. They issued findings which I suppose are in the hands of most scientific men on this continent, but that doesn't say that those findings affect the National Research Council in Canada or the National Research Council in the United Stated.

Q. It is alleged the information and use of artificial contraceptive methods, every woman should know about it even whether married or not. What do you say to that?

A. I would say it was disastrous; it would be giving information to promote fornication.

Q. Continuing Reverend Mr. Hepburn's examination: after reading the Lambeth Conference, he was a convert, and he was asked:

"Q. That is, the Lambeth Conference of 1930?

A. Yes.

Q. And you believe in birth control work?

A. Under careful supervision.

Q. Under careful supervision?

A. Yes.

Q. To what extent do you believe in birth control work?

A. I believe the medical profession should prepare information to be disseminated by those prepared to do it."

What do you say to that?

A. It seems to me if a person consults a medical man, it is out of my province. My province is the spiritual.

Q.

"A. I believe the medial profession should prepare information to be disseminated by those prepared to do it."

Information prepared by medical men should be disseminated by anybody prepared to do it?

A. (No reply).

The Court:

What page is that?

Mr. Mercier:

L-2, at the bottom of Page L-2.

To Mr. Mercier:

Q. On Page L-3, it was said:

"Q. The suggestion has been made to some witnesses that the spread of birth control information may lead to that information being used for improper purposes; that is to say, the removal of the fear of consequences may lead to the spread of immorality; what do you think of that as a proper reason for not disseminating birth control information?

A. I don't think that is a valid reason for not disseminating this or any other information; it is the truth, and it is in the abuse and not the use of the knowledge where danger arises, and if the information is scientifically and carefully prepared, it should be made available, and it there are some who abuse it; that should not be an objection."

What do you say to that, Canon?

A. It seems to me the use of contraceptives is either right or wrong. If it is wrong, it is wrong no matter how that information is spread; it must be wrong.

Q. And your belief is that it is right or wrong?

A. My belief is that it is wrong, quite apart from married people. That is only a small part of the question.

Q. Now, Canon, the point has been raised as to whether in the use of contraceptives it should not be made a point. If people use them, the husband and wife should consult themselves or one should make sure they should before advising them the use of contraceptives?

A. You mean consult together?

Q. Yes.

A. That would be a mutual arrangement between the husband and wife.

Q. Yes, taking your view, it is wrong in all cases, but if they are going to be used?

A. (No reply).

Mr. Wegenast:

This is hypothetical.

Mr. Mercier:

This is in evidence. In no instance was anything said by the social worker to the wife suggesting the wife consult the husband before using them.

To Mr. Mercier:

Q. Now, Canon, don’t you think if a woman is advised to use these, she should consult her husband?

A. Certainly it seems to me a woman should consult her husband about an intimate matter like that. Of course, it is a purely hypothetical case.

Q. Yes, but it was given in evidence the suggestion of doing that was not given?

A. In the words of the marriage service, “our Lord says they are no longer twin, but one flesh”. That should be applied.

Q. Now, father, there is evidence in this case that the accused, who is called a social worker or nurse, went around to certain homes?

A. (No reply).

Mr. Wegenast:

Will my learned friend pardon me a moment. This is sociological of course.

The Court:

I think it is at the moment.

Mr. Wegenast:

I think my learned friend has already established that.

The Court:

If he is explaining to the witness at the moment the facts of the case?

Mr. Mercier:

It is always time for my learned friend to object after I have put the question.

The Court:

It is quite all right for him to give Canon Whalley the facts of the case.

To Mr. Mercier:

Q. This lady, the accused, went to homes in Eastview, in the majority of cases, without an invitation; asked the mother if she had a sufficient number of children, to which, in most cases, the women answered “yes,” as any woman would answer, and after getting information as to the number of children, the occupation of the husband, requested this woman to sign a card, an application form, and this, together with certain remarks from the social worker or nurse were sent to the Parents’ Information Bureau in Kitchener, and as a result of that information being sent there, the person who had been interviewed received a box containing a tube of jelly with a nozzle, in which tube was contained some contraceptive jelly, which is admitted by the defence to be very effective in preventing conception, and together with that, in every case,

there was a pamphlet entitled, “Birth Control and some of its Simplest Methods”.

This is the pamphlet, father, and it is alleged that this pamphlet contains about all the information on some contraceptives which should not be used and the most modern types of contraceptives which are claimed to be harmless, and this, father, is distributed into these Christian homes, in most cases, without any request except a visit from the social worker?

A. (No reply).

Mr. Wegenast:

In most cases without request -- in every case with a signed request.

Mr. Mercier:

The worker goes without request in many of the cases.

Mr. Wegenast:

No, not in many of the cases.

The Court:

There is plenty of evidence of that.

Mr. Wegenast:

I have made my submission; there is no use arguing it now.

To Mr. Mercier:

Q. In most cases, without a request to call and give the information, and they signed a card, and in a few days, the woman got this pamphlet and the articles.

Now, have you any objection to that, according to the tenets of your religion?

A. Oh, yes.

Q. Why?

A. Because it is contrary to my own nature, which is what I take as the view of my church: which is contained in the marriage service; what is taught in the marriage service.

Q. Then, father, would you have any objections to the same methods being employed among your parishioners?

A. Pardon?

Q. Would you have any objections to the same methods being employed among your parishioners?

A. Yes, I would.

Q. One of my learned friends is just whispering, “do you think you could stop them?”.

A. (No reply).

Mr. Beament:

I was whispering to others.

To Mr. Mercier:

Q. Do you think you could stop them?

A. If we could stop people doing many things, the world would be a very happy place.

Q. Now, father, there has been a discussion of the Lambeth Conference here, and I would be neglecting my duty in not examining you on it because I am pretty sure you will be cross-examined on it.

Now, the Lambeth Conference in 1930, such as it is -- I have explained the methods used by the Parents’ Information Bureau in Eastview by Miss Palmer. You have read the findings of the Lambeth Conference and know them pretty well?

A. I have read them.

Q. I will read a few passages from the Lambeth Conference and if you believe -- although they might give, to use the words of an author, a blessing with the little finger of the left hand, see if the Lambeth Conference agrees with any of the methods applied.

Page 7 of Exhibit 77-B:

> “We now pass on to consider one of the most urgent and perplexing problems of our day, the decline of the birth rate throughout the civilized world. This is largely due to the increasing use of methods which are deliberately adopted to limit the size of the family. We strongly denounce the practice of abortion which has as its aim the destruction of life which has already come into being. It is contrary to the law of God and of man. We have reason to know that the sale of drugs designed to procure abortion is large. These always are, we believe, harmful to the woman and also to the child if it survives. Their use,

like all other methods of abortion, is sinful and ought to be regarded with abhorrence by all right-minded people.

There is no doubt, however, that the diminution of the birth rate in modern times by fifty per cent is mainly due to the knowledge and use of methods which prevent conception. These methods are now widely used in every class of society. There are many who advocate them as the solution of social and personal problems; there are others who condemn them as sinful; there are many who are sorely perplexed as to the legitimacy of their use. We feel, therefore, bound to give troubled consciences some guidance on this matter.

It must be recognized that there is in the Catholic Church a very strong tradition that the use of preventive methods is, in all cases, unlawful for a Christian. We acknowledge the weight of that testimony, but we are unable to accept that tradition as necessarily final. It must be admitted that it is not founded on any directions given in the New Testament. It has not behind it the authority of any Ecumenical Council of the church. Moreover, it is significant that the communion which most strongly condemns in principle all preventive methods, nevertheless, in practice, recognized that there are occasions when a rigid insistence on the principle is impossible. If our own communion is to give guidance on this problem, it must speak frankly and openly, with a full appreciation of facts and conditions which were not present in the past, but which are due to modern civilization."?

A. (No reply).

Q.

"It will be admitted by all that there are circumstances in married life which justify, and even demand, the limitation of the family by some means."

What, in your opinion, should be those means when there are circumstances in married life which would justify the limitation of family by some means?

A. The means St. Paul recommends, continence.

Q. And you say, father, that is the opinion of your church?

A. As far as I know, yes.

Q. Now:

> "The church is concerned with the moral principles which must govern all such limitation. There are certain principles which must always be axiomatic for Christians. These principles are to be discerned in loyalty to Christ, and under the guidance of the Holy Spirit, whose strength is sufficient for all human needs."

I would like to get to the point; I would say they prize marriage very, very highly all along and with wonderful Christian principles:

> "The primary and most obvious way of dealing with such circumstances as seem to make the limitation of parenthood obligatory is total abstinence from intercourse, even it may be for long periods. Such abstinence brings with it to those who claim and receive divine grace the opportunity for the highest exercise of Christian love and self-denial.
>
> Yet there exist moral situations which may make it obligatory to use other methods. To a certain extent, this obligation is affected by the advice of medical and scientific authority. But in all such cases, as in those where abstinence is the way chosen, the final decision must still be determined by reference to the spiritual ends for which marriage was ordained; and the attainment of these still calls for the same exhibition of Christian self-discipline and virtue. Each couple must decide for themselves, as in the sight of God, after the most careful and conscientious thought, and if perplexed in mind after taking competent advice, both medical and spiritual."

There is a page in the Lambeth Conference that allows the use of certain contraceptives. Now, as compared to the methods employed in Eastview by this social worker or nurse going to these homes, that even is not your opinion in accordance with the principles enunciated by the Lambeth Conference?

A. No, the doctrine given is quite plain; when the husband and wife find themselves in this position, they should pray and seek medical and spiritual advice.

Q. And be guided accordingly?

A. Yes, that is what I would think myself.

Q. Then, father, I might take this way in order to sum up your evidence; you believe according to the tenets of your religion that the use of artificial contraceptive methods is wrong?

A. Yes.

Q. And you do not recommend it to married people?

A. No.

Q. And you are opposed to it?

A. Yes.

Q. I think that will be all, father.

CROSS-EXAMINATION

To Mr. Wegenast:

A. We had Canon Summerhayes; do you know him?

A. I don't know him. I don't know his name. I don't know if his name is on the church list.

Q. He is secretary of the Social Service Council of the Diocese of Toronto?

A. I never met him; the name conveyed nothing to me.

Q. Have you a social service council in the Diocese of Ottawa?

A. Yes, I don't know that it is particularly well organized. Mr. Hepburn and Mr. Wemberley (?) are pretty active.

Q. You haven't taken an active part in it?

A. No, not at all.

Q. You don't know what they do?

A. Mr. Hepburn could tell you.

Q. He did. Now, Mr. Summerhayes, in view of his position, could speak with some amount of authority?

A. I don't know; he is speaking as an individual.

Q. It is not very likely he would retain his position very long as secretary of the Social Service Council of the Diocese of Toronto if he were not answering their purposes?

A. I know very little about him or the Diocese of Toronto; they do very strange things in Toronto. You can't expect me to endorse Summerhayes' opinions.

Q. I only point out to you, as I am going to point out in some other matters, and see if I can shake your opinions.

Here is the Diocese of Toronto letting Mr. Summerhayes represent himself and his views in this, and here is your own Mr. Hepburn doing the same thing, and here is your Lambeth Conference for whatever it is worth?

A. Not very much.

Q. Well, now, I point out to you there is, let us say, a substantial body of opinion opposed to you in your own church?

A. Yes, but the great difference…

Q. I didn't ask "but"; "yes," is your answer?

A. I must qualify; their views are purely unofficial.

Q. If you would just answer the questions I put to you without any rider of that kind, we will get along quite a bit better?

A. (No reply).

Mr. Mercier:

He would be a very strange witness in this case if he did.

Mr. Wegenast:

Yes, we have had a great deal of extended discussion in this because the witnesses were doing what I am asking this witness not to do.

To Mr. Wegenast:

Q. Now, can you account for it in any other way than that there is an intellectual difference?

A. (No reply).

Q. You wouldn't say they were sinful or violating their consciences or doing anything improper or that kind of thing, would you?

A. Conscience alone is a very unsafe guide, but conscience influenced by grace is a very different matter altogether.

Q. You have observed that conscience influences people by grace?

A. Sometimes one way and sometimes the other.

Q. One man thinks birth control is right; another thinks it is wrong; do you assume the second man has more grace than the former?

A. A man thinks it is wrong or right?

To the Court:

Q. Wrong?

A. (No reply).

To Mr. Wegenast:

Q. Do you think he is wrong?

A. No.

Q. Grace doesn't work out the same with everybody?

A. No, if grace worked automatically, we would have a very happy world.

Q. Have you any other explanation why this difference of opinion exists then than that these people just figure it out differently in their minds?

A. One of the causes would be in the way of breaking down the standards of morality going through the world today. Take the writings of a man like Bertrand Russell; you know his new morality?

Q. I know about it.

A. Those sort of writings have influence, and there is a very great breaking down in the old fashioned standards.

Q. I sympathize with you; I am getting near the sere and yellow leaf, and my daughter thinks I am old fashioned and she herself may be right and perhaps she is. As the Court said yesterday, "the old gray mare ain't what she used to be," and we have the problems in every generation of people who go ahead?

A. (No reply).

The Court:

I didn't say, "the old gray mare".

Mr. Wegenast:

Your Worship put the last of it and I added to it.

The Witness:

A. Ask me that question again?

To Mr. Wegenast:

Q. We had it brought out in evidence here when anaesthetics were first used in childbirth, there was tremendous opposition; do you remember those days?

A. I don't. I have heard of it.

Q. There was tremendous opposition to it?

A. "In sorrow shall she bring forth."

Q. It was argued by people with tremendous force; it was breaking the laws of nature if a woman should be given something to ease the pain of childbirth?

A. Yes.

Q. And you may not remember it was Dr. Simpson who prescribed and used an anaesthetic for the last and second last confinements of Queen Victoria?

A. Yes.

Q. I give you that example and also vaccination?

A. Yes.

Q. And the fact that the immediate conception of morality is violated is not an indication that it is wrong?

A. (No reply).

Q. Do you get my question?

A. I think I do. As far as I can see, there is no parallel between the two cases.

Q. You would agree with me, the fact that one generation looks askance at a thing doesn't necessarily indicate it is wrong?

A. No.

Q. Go on with your qualifications.

A. There is no parallel between vaccination or the use of anaesthetics and the procreation of children. The procreation of children is, as I understand it, on an entirely higher plane. There is no parallel between the two cases at all.

Q. That is your reason?

A. That is my reason.

Q. I will come to that later. I don't suppose, Canon Whalley, you will hold yourself out as having any expert or any other knowledge of mechanical contraceptives?

A. I know nothing about them. I have never seen them.

Q. By the way, do you give any instruction or exhortation to your parishioners in the use of contraceptives?

A. No, the point is this…

Q. Just a moment.

A. Do I ever give instructions? If asked, of course, I give it, and in preparing candidates for confirmation, boys and girls, I take them separately and speak to them.

Q. Not about contraceptives?

A. No, certainly not, but I speak to them about marriage and the only way it can be blessed is if God gives them the heritage of children.

Q. Perhaps I might now go into the question of the obligations of marriage in that respect. Is it the duty of every married couple to have as many children as is physically possible?

A. No, I wouldn't say that.

Q. I would rather welcome it if you would elaborate on that answer?

A. What I would say is this; that if they feel they shall not have more children, then they should have to practice continence.

Q. Now, let me put another question first. There has been a lot of evidence here you have missed about the desirability of spacing children; having them far enough apart so the mother can recover, and the nourishment and welfare of one child is interfered with by having another too soon?

A. Wouldn't that be a medical question?

Q. Yes, would you say it isn't a medical question?

A. I would be in favour of continence on account of what St. Paul says.

To the Court:

Q. Continence has both a medical and theological sense?

A. Yes, where St. Paul says, “practice it and come together again… -- I can’t remember the words.

To Mr. Wegenast:

Q. Let me say this; you are a clergyman, a priest?

A. Yes, in orders.

Q. In the Holy Catholic and Apostolic Church?

A. Yes.

Q. And as such, I take it you consider yourself as entitled to the heritage left by the early fathers like St. Thomas, St. Augustine?

A. Oh, yes.

Q. And I was going to point out to you and ask in part if the marriage ceremony doesn’t conflict with principles laid down in St. Augustine?

A. I can’t tell you.

Q. You will admit St. Augustine was one of the authorities of the church?

A. One of the doctors.

Q. And St. Thomas Aquinas as well?

A. Yes.

Q. And their word would command respect from you?

A. Yes.

Q. And obedience?

A. Not necessarily obedience.

Q. Yes?

A. As a matter of fact, you are asking me about something I don’t know. It may be in the back of my mind.

Q. You mentioned continence and St. Paul?

A. Yes.

Q. I am going to ask you this; whether our ideas of St. Paul’s ideas are not, to a considerable extent, coloured by St. Augustine?

A. Of course St. Augustine puts his own interpretation on St. Paul’s writings.

Q. That is another way of putting my point?

A. Yes.

Mr. Wegenast

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REX vs. PALMER

Canon Whalley II

P-498 to P-562

To the Court:

Q. I would like to get an answer to the question: “whether our ideas of St. Paul’s ideas are not, to a considerable extent, coloured by St. Augustine.

A. (No reply).

Mr. Wegenast:

I was coming to that. I wanted to clear the ground.

The Witness:

A. The point is this; people can hold all sorts of views. You may read St. Paul, you may read St. Augustine’s comments on St. Paul, and you may formulate your views accordingly, but as a priest of the Church of England, I am limited to teaching what I find in my prayer book: “Let us…”

You don’t go to the bible and pick texts; we receive our religion from the church and prove it by the bible, and for all common purposes, the church puts this Book of Common Prayer in our hands to interpret the bible, and it is my duty to teach conscientiously the teachings contained in that book.

To Mr. Wegenast:

Q. Admitting all that, in the best light of human reason…?

A. Ask the first question.

Q. I am adding to what you said.

A. What?

Q. Your job, if I may so put it, ---

A. Yes.

Q. --- is to give your people an interpretation of that prayer book and the tenets laid down in it? I am adding this.

A. Yes.

Q. And putting the words in your mouth?

A. Yes.

Q. In the light of your best reasons?

A. Yes.

Q. As I pointed out to another witness, all the tenets of St. Augustine and St. Thomas Aquinas go back to recta ratio. The ultimate sanction is right reason; you would agree to that?

A. No, the point is this; the human mind being what it is, a man can think and reason and come to his conclusion and may be perfectly conscientious in thinking his conclusion is right because human reasoning is not infallible.

Q. How are you on Latin?

A. Not so good.

Q. Recta ratio: he doesn't leave it at ratio, but adds recta…

A. Yes.

Q. Now, this all arose out of your mention of continence, and I would remind you, you have already taken it back to St. Paul. He had some vicissitudes during the ages?

A. Yes, and there are many other vicissitudes in life besides that.

Q. And certain doctrines have vicissitudes, their good days and bad days?

A. Yes.

Q. St. Augustine's idea of continence was an elaboration or development of St. Paul's, but certainly something different, but I am going to ask you whether in referring to continence you are referring to St. Paul, and you had your mind fixed on what he said; particularly, in his epistle to the Romans?

A. Yes.

Q. Or whether your mind isn't coloured like many, including Catholics and Anglicans?

A. (No reply).

Q. By the teachings of St. Augustine?

A. No, I may say I am not influenced by his teachings in that matter.

Q. Although you will admit he is an authority?

A. Yes.

Q. Now, what do you mean by continence; do you mean this new thing, -- it bowled me over, as it may you -- the Ogino-Knaus…?

A. (No reply).

The Court:

Adjourn for lunch to 2:15 p.m.

(Upon the Court resuming)

Mr. Mercier:

Dr. Couture made a statement yesterday; he said he had thirty-five years' experience, and he now wishes to make it twenty-five. Do you wish to call the doctor?

Mr. Wegenast:

No.

(Canon Whalley still in witness box)

To Mr. Wegenast:

Q. I began to ask you, when you spoke of continence, whether you included in that word by any chance the practice advocated by a book which is an exhibit…

A. (No reply).

Mr. Mercier:

Eighty (80-B).

The Court:

Eighty (80-B).

Mr. Wegenast:

Exhibit 80-B. Perhaps, I had better show Canon Whalley the original.

To Mr. Wegenast:

Q. I show you a copy. Will you look at the bottom of the cover, "Babies when parents are ready"?

The evidence is that this book advocates the method propagated by two doctors; one a Japanese, Ogino, and the other a German, Knaus, and it comes to this; married people ought to abstain from the marital act during certain periods in the month and, thereby, prevent procreation. Had you that in mind when you said continence?

A. (No reply).

Mr. Mercier:

Not, “ought to abstain,” but “may”.

Mr. Wegenast:

I don’t know of any sanction except if they don’t want to have children, they can prevent having them by abstaining during a certain period in the month.

To Mr. Wegenast:

Q. Had you that in mind?

A. No.

Q. Just the general principle of continence, then I pass that by.

I come to this, a passage in the prayer book. First, I must refer to a difference in the two editions.

A. Yes, in the English.

Q. And the Canadian revision, and even before that, I ought to refer you to a passage in the preface of the Canadian revision in 1918.

A. What number?

Q. The third paragraph of the preface.

A. Yes.

Q. I want to ask if you agree this is correct:

> “Therefore, the General Synod of the Church of England in Canada determined to make such adaptations and enrichments in the body of the book as would serve this purpose.”

What is the purpose he speaks of?

A. (No reply).

Q. In the previous paragraph he speaks of “more adequate expression,” but we needn’t linger on that.

> "But to avoid the risk of changes that might impair the character of the book, the General Synod clearly ordained the limits within which such adaptation and enrichment might be made, forbidding any change in text or rubric which would involve or imply a change of doctrine or principle of the Church of England as set forth in the Book of Common Prayer, or any other change not in accordance with the 27th resolution of the Lambeth Conference of 1908."

What I want to ask: if you think the new book, particularly the portion dealing with matrimony, complies with that requirement?

A. Of course, the principle is mentioned. The revision was made, and it is the principle that came up several times while the work of revision was going through the general synod. There was to be absolutely no change in the principle or doctrine.

Q. And do you think that aim was attained?

A. I think so, yes.

Q. And the doctrine under the older English edition upon which you took your oath is the same as in the new edition?

A. Yes, the language is more crude.

Q. Yes?

A. But as I understand it, there is no change in the principle.

Q. Now, I point out this paragraph, sir, from the older edition.

A. (No reply).

The Court:

What page?

Mr. Wegenast:

I am afraid there is no page number. Yes, it is 161. You may follow -- while I am reading the old, you may follow the new.

The Witness:

A. The new edition is paged, but the other one isn't. The new are paged, but…

To Mr. Wegenast:

Q. The English, the marked, is 161; the English edition, the marked edition. In this edition, it runs like this:

> "First, it was ordained for the procreation of children to be brought up in the fear and nurture of the Lord, and to the praise of his holy name.
>
> Secondly, it was ordained for a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry…"

That is still the doctrine of the church?

A. Yes.

Q. So we find one of the reasons for marriage is the protection of people who have not the gift of continence?

A. It refers to single people.

Q. Would there be any physical difference in their make-up after marriage?

A. Between single people, it is fornication; between married people, it is a doctrine…

Q. The doctrine here is obviously of fornication?

A. If single people have not the gift of continence, therefore, they marry and avoid fornication. It refers to single people.

Q. They would nevertheless be continent?

A. Yes.

Q. But the kind of continence you referred to was not that kind of continence?

A. No.

Q. It was within marriage?

A. Within marriage.

Q. And persons without the gift of continence, unmarried, would have it after marriage in order to avoid the sexual act?

A. The point is this; we believe marriage is a sacrament.

Q. Oh, do you?

A. We find it in the articles.

Q. Give it to me.

A. I think it is the twenty-fifth article, yes, Page 669 of this book.

Q. Just a moment; that is not in evidence.

A. Page 669 at the top:

> "Those five commonly called sacraments; that is to say, confirmation, penance, orders, matrimony, and extreme unction are not to be counted for sacraments of the gospel, being such as have grown partly of the corrupt following of the apostles, partly are states of life allowed in the scriptures; but yet have not like nature of sacraments with baptism and the Lord's supper, for that they have not any visible sign or ceremony ordained of God."

Q. Those are the only two sacraments?

A. No, they are called sacraments.

Q. There are sacraments and sacraments?

A. No.

Q. These are not to be called sacraments; confirmation, penance, orders, matrimony and extreme unction?

A. Yes.

Q.

> "Being such as have grown partly of the corrupt following of the apostles, partly are states of like allowed in the scriptures; but yet have not like nature of sacraments with the baptism and the Lord's supper, for that they have not any visible sign or ceremony ordained of God."?

A. I took that. Perhaps you will correct me, but you haven't yet. I think these five so-called sacraments are not considered under article twenty-five to be run…

Q. The reference is always to the Church of Rome?

A. Yes, but…

Q. Many of the articles are…?

A. (No reply).

Q. Would you say confirmation and penance and orders and matrimony were in that category?

A. I think the great difficulty exists in extreme unction. I think it is the practice of the Church of Rome to administer extreme unction in extremis, but according to the Church of England that apparently isn't the idea of unction. It holds the primitive idea of unction; it can be administered to a sick

person with the idea of giving that person physical and spiritual good.

Q. You save extreme unction out of the wreck and make it…?

A. Yes.

Q. But out of the wreck, it has grown out of the group following of the apostles?

A. But surely you must take:

> "…but yet have not like nature of sacraments with baptism and the Lord's supper…"

They are on a plane by themselves.

Q. They are not sacraments?

A. They are; they have outward signs and inward grace.

Q. Look at the paragraph, sir:

> "The sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should duly use them."?

A. That refers largely to the use of the eucharist, for instance, to a Corpus Christi procession of the church. That is what it is directed against.

Q. I would like to say by my submission to you, -- and His Worship may have to decide this -- amongst other things, that marriage is not a sacrament, and you can't reason from that, and I think, perhaps, without further angling, we will leave it at that?

A. I am satisfied.

Q. The words to me may mean something different to me than you?

A. But that doesn't especially change the spiritual aspect of the ordinance.

Q. But you relied on your interpretations of the ordinance. I shouldn't have let you go on and ask your reason: therefore, human nature is changed, and continence will be exercised after marriage if before; is that the idea?

A. The idea is this; that continence, either on the part of a married or single person is only possible through the help or grace of God, and would you dare limit the power of the grace of God to say an unmarried person couldn't be continent?

Q. No, but without the grace of God, it would be just as hard for a married man to be continent as the unmarried?

A. Without the grace of God, we are entirely at sea; no morality unless he is unconsciously controlled by the grace of God and by following public opinion.

Q. That may be slaying my question, by "general opinion"?

A. I would not like to do anything unkind.

Q. (Previous question read): But without the grace of God, it would be just as hard for a married man to be continent as the unmarried?

A. Yes.

Q. Now, sir, I want to read the words of St. Paul; it wasn't in the Romans?

A. One of the Corinthians, if you wish.

Q. Would you know this well enough? It is the first of the Corinthians, seventh chapter.

A. (No reply).

Q. I have here a translation which runs along in more modern language; we haven't the original here. I will ask you to look at the revised version.

A. It is Moffatt's; I know it.

Q. Yes, and I will follow the revised version:

> "7. Now, for the questions in your letter. It is indeed 'an excellent thing for a man to have no intercourse (2) with a woman'; but there is so much immorality that every man had better have a wife of his own and every woman a husband of her own.
>
> (3) The husband must give the wife her conjugal dues, and the wife in the same way must give her husband his.
>
> (4) a wife cannot do as she pleases with her body; her husband has power, and in the same way, a husband cannot do as he pleases with his body; his wife has power.
>
> (5) Do not withhold sexual intercourse from one another unless you agree to do so for a time in order to devote yourselves to prayer. Then come together again. You must not let Satan tempt you through incontinence."?

A. Yes.

Q. In other words, don't practice continence too long or you will run into sin?

A. Well, I don't speak by commandment, but by commission.

Q.

> "(6) (But what I have just said is by way of (7) concession, not command. I would like all men to be as I am. However, everyone is endowed by God in his own way; he has a gift for the one life or the other.)"

Continence is a gift?

A. Yes.

Q. And all men haven't it in the same degree?

A. No.

Q. Now, I will put you in a bit of a dilemma, sir, if you don't mind.

A. No.

Q. If you are going to make continence the only resource, it is going to be harder on some people than others?

A. Well, my dear sir, some things in life are harder on some than others.

Q. But the burden throughout life will be so great for some men that can't stand it?

A. Certainly.

Q. Should those various grades of people having the gift in varying degrees -- should they be put under the same obligation which you feel of exercising continence no matter how hard it is?

A. That is the law we are under with everything, my dear sir.

Q. But you are anticipating something ahead. Would you just say whether you do or do not -- no matter how hard for the man to be continent, he must depend on nothing but his will and grace?

A. I would say no matter how hard a man would find it to be continent, he can only be continent with God's help, and with God's help, I don't think it is impossible.

Q. That is that. I am now going to put a case of a woman who ought not for the time being or who ought never to have another

baby, and she has enough grace to be continent, and the man hasn't and perhaps doesn't care whether he has or not; would you deny that woman the right of some protection other than joint continence too?

A. That is a question, sir, something like this; it is one of those questions rarely soluble. The event happens sometimes when the woman is in labour. The doctor will come to the husband and say; you must take your choice; both can't live; save the child or the mother. It is self-control like that, and the responsibility is on the man himself.

Q. And if he doesn't exercise continence himself, the responsibility is on the woman?

A. He is taking a fearful responsibility if the man says, "save the child"; he loses the woman.

Q. And you would say the woman would have no other recourse than to submit?

A. According to the prayer book, I would say she wouldn't.

Q. And if the man was addicted to drink?

A. I don't think any man in a state of drunkenness or a state which would have ---

Q. But supposing he insists on his marital rights; do you think the woman should have any precaution against pregnancy? To save her life?

A. If a man is drunk or semi-drunk, she would be perfectly right in denying him.

Q. You are giving the answers. I am not asking you to argue with me; you can argue with yourself and give me the result?

A. (No reply.)

To the Court:

Q. Following this up, she might deny him in her own mind, but how put it in practice if the husband is a brute?

A. It is simply a case of brutality; I suppose it has been going on since marriage started.

To Mr. Wegenast:

Q. Unfortunately, yes, but we have been struggling here for weeks to find whether it is for the good of the woman to be

allowed some protection, and I don't ask you for a summation of the case. May I put it to you generally?

A. Yes.

Q. Whether you are quite convinced that there is no case where a woman is entitled to protection against pregnancy while undergoing the marital act -- don't answer too quickly; the husband has venereal disease, which has left him in that condition; in other respects, he is a normal man; is continence the only thing you can give to that woman: say she has a heart condition or has, as was mentioned here, only one kidney, which is practically ninety-nine percent sure to result in death if she has another baby?

A. Yes.

Q. The result is whether you will take the responsibility of saying -- do you say there is no case you will allow the woman no protection against the desires of her husband?

A. (No reply).

Mr. Mercier:

That is not fair if my learned friend means the protection of contraceptives.

The Court:

I think that is meant, the protection by means of artificial contraceptives.

Mr. Wegenast:

Yes.

The Witness:

A. As I understand your question ---

To Mr. Wegenast:

Q. Would you go so far as to say that you are certain there are no circumstances in which an artificial contraceptive should be available to a woman to avoid pregnancy?

A. What I would say is that I would not approve of the use of an artificial appliance of contraception. All the woman could do would be to refuse to allow the husband to have intercourse with her, and if he insisted on that, then I imagine her next recourse would be a separation.

Q. Of course, that?

A. You see, the point is this: with the use of contraceptive appliances, it is putting the whole thing in a different atmosphere altogether.

Q. We have had plenty of argument on that; I want to know on what line you stand and if you are absolutely on the other side of the line in which you would not permit the use of contraceptives?

A. I would not permit the use of contraceptives, no.

Q. Would this make any difference to you; she has a number of children and has to stay with the man?

A. (No reply).

To the Court:

Q. Or take the children along with her if she separates?

A. It would be possible, I suppose.

To Mr. Wegenast:

Q. Your disposition is to find something along that line, and you can’t find any occasion in which you would allow the woman to have contraceptives?

A. My disposition is this; where I cannot conceive of any case where mechanical ---

Q. Chemical or water?

A. (No reply).

To the Court:

Q. Artificial?

A. I can’t conceive of any recommendation for their use as it is contrary to my prayer book.

To Mr. Wegenast:

Q. To the portion you have shown?

A. Yes, it is covered.

Q. I don’t think you intentionally left out something which is important. Page 345 of the edition you have (of Canadian edition, Book of Common Prayer of the Church of England in Canada):

> "O God of Abraham, God of Isaac, God of Jacob, bless these they servants, and sow the seed of eternal life in their hearts; that whatsoever in thy Holy Word they shall profitably learn, they may indeed fulfil the same. Look, O Lord, mercifully upon them from heaven, and bless them. And as thou didst send thy blessing upon Abraham and Sarah, to their great comfort, so vouchsafe to send thy blessing upon these thy servants; that they obeying thy will, and always being in safety under thy protection, may abide in thy love unto their lives' end; through Jesus Christ our Lord. Amen."

You didn't read that; did you?

A. No.

Q. You do think it bears on the subject?

A. I did read it, but I didn't think it had any bearing on the subject. If you remember, Sarah's great grief was that she didn't have a child; she was barren, and three heavenly visitors came and a pronouncement was made of a child.

Q. Yes.

A. And Sarah laughed because she thought she was incapable of child and a child came.

Q. Yes.

A. I didn't think of the special pleading of it, but I thought it had no bearing on the case.

Q. You have the right idea of it having no bearing on the case, but I put it to you; if a more unfortunate example could be put to you than Sarah's, who was 91 before she had a child, if the idea is that they must procreate and that is the end of it?

A. As I take the meaning of that, in spite of Abraham and Sarah having no children, in spite of that great grief, they lived together faithfully and happily, and inasmuch as those two people under that handicap lived their life that way, it was to be hoped people under ordinary circumstances would have no difficulty living as Abraham and Sarah did.

Q. Now, I seem to remember that Sarah wasn't so good an example of faithfulness either, for don't you remember Abraham gave her to the king for his own ulterior purposes?

A. Excuse me, he didn’t give her to the king.

Q. No?

A. When he went with Sarah, he was afraid the king might want to take her and put her in his harem, and he said Sarah was his sister, and the king heard afterwards about it, and the king was distressed that Abraham deceived him.

Q. Now, I have one of my theological experts looking that up.

A. Add his opinion to the collection.

Q. From the fact that Sarah laughed, you couldn’t conclusively judge that she hadn’t used contraceptives?

A. No, she laughed for the very ample reason she was such an old woman, her physical condition was such she didn’t think it possible she could bear a child.

Q. But we have had already evidence here that the Jewish women were permitted to use contraceptives?

A. That is something I know nothing about. On the other hand, the state of Jewish society at the time of Our Lord’s joining our earthly ministry -- the Jewish state of society was in a low state.

Q. Abraham was a long time before?

A. Yes, I grant that, but as far as I know, if the Old Testament approves of the use of contraceptives, it is news to me.

Q. We had it from the Talmud.

A. It is not from the Bible.

Q. No, but it is Jewish religious teaching?

A. Of a kind.

Q. As some would say of the prayer book, it is of a kind?

A. Certainly.

Q. And the canon law?

A. Yes, administered under authority.

Q. You would accept an encyclical of the Pope of Rome as having authority?

A. No, because my church has no communion with the Church of Rome.

Q. But would you say that the Pope has no authority whatever as a religious teacher; I am not talking about you?

A. You mean in the world?

Q. Yes?

A. No, it wouldn't be common sense.

Q. Would you accept him as an authority for the religious teaching of the Roman Catholic Church?

A. Yes, because he is the authorized exponent of what the Roman Catholic Church shall teach and do.

Q. And if you found anything in a papal encyclical, you would take it to be the teaching of the Roman Catholic Church?

A. Yes, but I am not familiar with papal encyclicals.

Q. I want to find out if you concede what the Pope says has any authority as imposing Roman Catholic teaching?

A. Certainly, that is my opinion.

Q. We are on continence and you have already said you recognize St. Augustine as an authority. I may say I have the original Latin?

A. You read the English and I will follow in Latin, or the English suits me.

Mr. Mercier:

Will St. Augustine be filed as an exhibit?

The Court:

If read.

To Mr. Wegenast:

Q. Now, I refer to St. Augustine's treatise on marriage. I have it here, the word "good" which is sometimes translated as "blessing". I refer to Page 274 of the translation and in Latin; it is on Page 247. This is from Volume 26 of the works of St. Augustine.

A. (No reply).

Mr. Mercier:

Published in what year?

Mr. Wegenast:

This is published in Paris in 1839.

The Court:

That is not the same as this.

Mr. Wegenast:

I have the title page here. These are photostatic copies, Your Worship.

The Court:

Eighteen forty-seven (1847), I think.

Mr. Mercier:

The Latin is the only official version.

Mr. Wegenast:

If I must take the Latin, I must.

Mr. Mercier:

If the Canon will follow the Latin and accept the English, as I understand the only official version is the Latin one.

Mr. Wegenast:

I point out this; I haven't it in the translation, but there is a note in the preface of the English copy at the bottom of Page 27.

Mr. Mercier:

I haven't Page 274.

Mr. Wegenast:

There are three books; on marriage, virginity and… This work we find to have been finished about 400.

Mr. Mercier:

I have a gentleman here who knows Latin and English very well; may I call on him as a technical writer?

The Court:

Yes.

Mr. Wegenast:

Yes. I refer to Book 9 on Genesis in that volume.

Mr. Mercier:

I wonder if my learned friend agrees the Ming (?) edition is the official?

Mr. Wegenast:

It is the best I have, and I am adjured not to put it in as an exhibit.

The Court:

You are reading from it.

Mr. Wegenast:

This author in his head note, Book 9 in Genesis, Chapter 7, where he commends the good of marriage, he says:

> "Now, this is three-fold: faithfulness, offspring, and the sacrament. For faithfulness, it is…"

It is opposite Page 275.

Mr. Mercier:

Just a minute.

Mr. Wegenast:

This is not in Latin, but if there is anything wrong in the head note.

The Court:

Who prepared the head note?

Mr. Mercier:

What you are reading is not in the Latin version.

Mr. Wegenast:

No, but it shows or contains what it is. I have:

> "For faithfulness, it is observed that there be no lying with other man or woman out of the bond of wedlock: for the offspring, that it be lovingly welcomed, kindly nourished, religiously brought up: for the sacrament, that marriage be not severed."

That is all I want on that page.

The Court:

Are you just reading that and letting it go in?

Mr. Wegenast:

It will come up later. I must show the witness the passage in Latin. I am looking at Chapter 7 and the sentence is right here; it is simpler than I remembered. Here is the English translation; shall I offer it to the witness, and shall we put it in and…

To Mr. Wegenast:

Q. I ask whether you will agree with that; those are the purposes of marriage?

A. (No reply).

Q. The Latin is easy enough?

A. Yes.

Mr. Wegenast:

Your Worship has given me an idea; I will follow that out and go on to another point.

The Court:

Where do we stand now?

Mr. Wegenast:

The Canon is reading the version to the Jews at ---

The Witness:

Quite so, yes.

To Mr. Wegenast:

Q. Now, I will show you the encyclical of His Holiness Pope Pius XI, attributing it to the holy doctor, I think, St. Augustine, and you will notice how you find it there, and I ask you to note that he seems to have left out what I regard and I suppose you regard as an important item in quoting it. Here is the translation: "…in offspring, that it be lovingly welcomed".

A. "Begotten of love."

Q. "Begotten of love" is not there.

A. No.

Q. And there are no asterisks to account for the gap?

A. No.

Q. Now, I go on at Page 278. About an inch or so down from the top of Page 278, they speak of husband and wife and say:

> "…because the better they are, the earlier they have begun by mutual consent to contain from sexual intercourse with each other."

Will you allow me to start at Page 277 about two inches from the bottom?

> "Therefore, concerning the good of marriage, which the Lord also confirmed in the gospel, not only in that He forbade to put away a wife, save because of fornication, but also in that He came by invitation to a marriage, there is good ground to inquire for what reason it be a good. And this seems not to me to be merely on account of begetting of children, but also on account of the natural society itself."

You see how that ties up with Genesis: faithfulness, second, procreation and third, offspring?

A. Third, sacraments.

Q. Now, he brings in the marriage good:

> "…on account of the natural society itself in a difference of sex. Otherwise, it would not any longer be called marriage in the case of old persons, especially if either they had lost sons or had given birth to none. But now in good, although aged, marriage, albeit there had withered away the glow of full age between male and female, yet there lives in full vigour the order of charity between husband and wife because the better they are, the earlier they have begun by mutual consent to contain from sexual intercourse with each other."

A. Yes.

Q. Let that stand until you see some other passages and get his whole drift, and I will ask if you agree. He goes on about three paragraphs down:

> "Marriages have this good also, that carnal or youthful incontinence, although it be faulty, is brought unto an honest use in the begetting of children."

The next sentence:

> "In order that out of the evil of lust the marriage union may bring to pass some good. Next, in that the lust of the flesh is repressed."

Now, I ask you to go to Page 281.

A. Yes.

Q. Near the top, about an inch and a half from the top.

A. Yes.

Q.

> "Further, in the very case of the more immoderate requirement of the due of the flesh, which the apostle enjoins not on them by way of command, but allows to them by way of leave, that they have intercourse also beside the cause of begetting children; although evil habits impel them to such intercourse, yet marriage guards them from adultery or fornication. For neither is that committed because of marriage, but is pardoned because of marriage."

By way of leave to have intercourse without having children, although evil?

A. Yes.

Q. Yet marriage protects them from adulterous fornication?

A. Yes.

Q. Neither is that committed because of marriage?

A. Yes.

Q. They forgive them because they are married?

A. Yes.

Q. Go down the same page:

> "For intercourse of marriage for the sake of begetting hath not fault, but for the satisfying of lust…"

He means if for the satisfying of lust, it has fault, but:

> "…but yet with husband or wife, by reason of the faith of the bed, it hath venial fault, but adultery or fornication hath deadly fault and through this, continence from all intercourse is indeed better even than the intercourse of marriage itself."

Do you get his point of view?

A. He speaks of celibacy above marriage.

Q. Yes.

> "…which takes place for the sake of begetting. But because that continence is of larger desert, but to pay the due of marriage is no crime, but to demand it beyond the necessity of begetting is a venial fault…"

To have intercourse in marriage for any purpose other than marriage?

A. (No reply).

Q. That is his teaching?

A. That is his teaching.

Q. Now, we come to Page 285, and I start about the middle of the page -- near the middle of the page near the reference to 1 Timothy, 5:14:

> "For such is the state of the human race now that (others who contain not, not only being taken up with marriage, but many also waxing wanton through unlawful concubinages, the Good Creator working what is good out of their evils) there fails not numerous progeny, and abundant succession out of which to procure holy friendships. Whence we gather that, in the first times of the human race, chiefly for the propagation of the People of God, through whom the Prince and Saviour of all people should both be prophesied of, and be born, it was the duty of the Saints to use this good of marriage, not as to be sought for its own sake…"

In other words, propagate the race?

A. Yes.

Q.

> "…but necessary for the sake of something else: but now, whereas, in order to enter upon holy and pure fellowship, there is on all sides from out all nations an overflowing fulness of spiritual kindred, even they who wish to contract marriage only for the sake of children are to be admonished, that they use rather the larger good of continence."?

A. Yes.

Q.

> "But I am aware of some that murmur: What, say they, if all men should abstain from all sexual intercourse, whence will

> the human race exist? Would that all would this, only in charity out of a pure heart, and good conscience, and faith unfeigned; much more speedily would the City of God be filled, and the end of the world hastened."

He was obviously looking for the end of the world, and his construction was: what is the use of having children?

A. (No reply).

Q. I put it to you, Canon -- I needn't quote anymore; there is one page, 286, about two inches from the bottom:

> "But he allows, as a matter of pardon, that sexual intercourse, which takes place through incontinence, not alone for the begetting of children: and it is not that marriage forces this to take place, but that it procures pardon for it."?

A. (No reply).

Q. Now, another passage:

> "…provided, however, it be not so in excess as to hinder what ought to be set aside as seasons of prayer, nor be changed into that use which is against nature, on which the apostle could not be silent when speaking of the excessive corruptions of unclean and impious men."

You wouldn't think that was?

A. In the fourth century.

Q. I think I can show you what he did mean, but I don't want to go into that unless you insist.

A. (No reply).

Q.

> "For necessary sexual intercourse for begetting is free from blame, and itself is alone worthy of marriage."

A. (No reply).

Mr. Mercier:

Venial sin is not Ogino-Knaus.

Mr. Wegenast:

At the bottom of Page 286, he allows it as a matter of pardon.

Mr. Mercier:

That is the sentence I want you to ask: “For the sake of begetting children alone marriage would be justified,” and he might continue with the other sentence too; this witness may know of St. Augustine, but not by heart.

To Mr. Wegenast:

Q. I will admit at once with St. Augustine, there was no sin in marrying and having children, but no man can start by having sexual intercourse for any other reason?

A. It is not worthy of marriage.

Q. Yes.

> “But that which goes beyond this necessity, no longer follows reason, but lust.”?

A. (No reply).

Q. There is one on Page 292, -- he goes further -- about an inch and a half down on Page 292:

> “For there is not now necessity of begetting children, as there then was, when, even when wives bare children, it was allowed in order to a more numerous posterity, to marry other wives in addition, which now is certainly not lawful.”

In the old days, you could not have only one wife, but more?

A. Yes.

Q.

> “For the difference that separates times causes the due season to have so great force unto the justice and doing or not doing anything, that now a man does better, if he marry not even one wife, unless he be unable to contain.”

A. Yes.

Q. So now we have the teaching of St. Augustine it is best not to get married at all?

A. (No reply).

Q. The next best thing is to get married and confine the marital relation to procreation. The next best thing, although it is venial?

A. (No reply).

Mr. Mercier:

Is that all the Latin?

Mr. Wegenast:

Does your friend approve?

Mr. Mercier:

I couldn’t follow it very well, but I don’t see anything wrong.

To Mr. Wegenast:

Q. But in the marital act, intercourse for procreation is as far as man can go without sinning?

A. If I understand St. Augustine, it is a venial sin.

Q. But a venial sin?

A. It is very different from a mortal sin.

Q. Is it in your church?

A. There are the deadly sins.

Q. I don’t want to get into that, and St. Augustine had grave sins and principles, and again, we have his mortal and venial sins?

A. No, all sin is sin.

Q. So much for St. Augustine or is it Augustine?

A. I have always heard it pronounced Augustine.

Q. I was referring to St. Augustine.

A. I have always heard that ---

Q. But he was canonized?

A. He may have been, but a lot of people were called saints in the Middle Ages.

Q. But you don’t go very far with Augustine.

A. What do you mean?

Q. You don’t think Augustine was justified in saying -- in the year 400, he was saying the world was coming to an end?

A. No.

Q. Do you follow him when he says it is better not to get married at all and just remain continent?

A. No. Of course, no doubt, that was brought about by this: the idea being that a celibate state was looked upon as a state of higher chastity than the marriage state. You see, St. Augustine follows St. Paul quite closely.

Q. I am going to read the passage from St. Paul on which it is founded, and I wanted to find if St. Augustine, rather thinking he was improving on St. Paul, went the other way?

A. Yes.

Q. We have got so far: you don't think the world was coming to an end in 401, and I suppose you will agree he was wrong in thinking there was no use having any more children and he was wrong in thinking continence was the best thing?

A. I would say he was wrong only in this sense; that as I conceive it, the marriage state can be just as chaste as celibacy.

Q. Even with the marital act?

A. Yes.

Q. You don't conceive the marital act is evil?

A. Good gracious, no.

Q. St. Augustine calls it lust?

A. Yes.

Q. There is where we part company with St. Augustine?

A. Yes.

Q. And we are in good company with His Holiness?

A. Yes, very good company.

Mr. Mercier:

I don't see anything in the text says it is lust.

Mr. Wegenast:

Yes, except for procreation, but that is now Ogino-Knaus, and that confines it to the period when there can't be any procreation, and it parts Augustine with His Holiness.

Mr. Mercier:

That might mean if contraceptives were all right, Ogino-Knaus would be all right.

The Court:

Five (5) minutes adjournment.

(Upon the Court resuming after five minutes' adjournment):

To Mr. Wegenast:

Q. Continuing in St. Paul's first epistle to the Corinthians, 7th Chapter at eighth verse: "To the unmarried and to widows, I would say this…"

Would you like the St. James' version?

A. Yes.

Q.

> "It is an excellent thing if, like me, they remain as they are. Still, if they cannot restrain themselves, let them marry. Better marry than be aflame with passion!"

What do you think of that translation?

A. I think the authorized version is more seemly; everybody can understand it.

Q. It all depends on how much experience one brings to it.

> "For married people, these are my instructions (and they are the Lord's, not mine)."

He is making the distinction:

> "A wife is not to separate from her husband -- if she has separated, she must either remain single or be reconciled to him -- and a husband must not put away his wife.
>
> To other people, I would say (not the Lord), if any brother has a wife who is not a believer and she consents to live with him, he must not put her away; and if any wife has a husband who is not a believer and if he consents to live with her, she must not put her husband away.
>
> For the unbelieving husband is consecrated in the person of his wife, and the unbelieving wife is consecrated in the person of the Christian brother she has married; otherwise, of course, your children would be unholy instead of being consecrated to God."

Here is the justification for St. Augustine's idea that the world is coming to an end; -- I think I can point out to you, sir, he doesn't give that as a reason for continence except

perhaps in the encyclical, since I am not sure what you will say to that -- in Verse 26, I think, there is this:

> "Considering the imminent distress in these days, it would be an excellent plan for you to remain as you are.
>
> Are you tied to a wife? Never try to untie the knot.
>
> Are you free? Never try to get married.
>
> Of course, if you are actually married, there is no sin in that; and if a maid married, there is no sin in that.
>
> (At the same time, those who marry will have outward troubles, and I would spare you that.)
>
> I mean, brothers, the interval has been shorted, so let those who have wives live as if they had none; let mourners live as if they were not mourners; let the joyful live as if they had no joy; let buyers live as if they had no hold on their goods; let those who mix in the world live as if they were not engrossed in it, for the present phase of things is passing away.
>
> I want you to be free from all anxieties. The unmarried man is anxious about the Lord's affairs, how best to satisfy the Lord; the married man is anxious about worldly affairs, how best to satisfy his wife, so he is torn in two directions.
>
> The unmarried woman or the maid is also anxious about the Lord's affairs, how to be consecrated, body and spirit; once married, she is anxious about worldly affairs, how best to satisfy her husband.
>
> I am saying this in your own interests."

The Court:

Are you asking the witness a question?

Mr. Wegenast:

Yes.

To Mr. Wegenast:

Q. I think that is on that that St. Augustine went a little beyond the text of St. Paul?

A. Yes, of course, what I think must be borne in mind; the state in St. Paul's day, although not possibly in the fourth century

-- the church was living from day to day under great risk of prosecution, and that no doubt influenced St. Paul when he rather deprecates marriage.

Q. I suggest there wasn't the same excuse for St. Augustine?

A. No.

Q. And I suggest, subject to correction, that the practice of celibacy hadn't anything like reached its state of development in 401 A. D.?

A. (No reply).

Q. That the practice of celibacy began sometime after that or its development began sometime after that?

A. As regards religious orders and the people who are technically called religious, living in a state of celibacy, that is one of their three-fold views.

Q. That is limited to men who sat on the top of pillars and that sort of thing?

A. Yes.

Q. There were no religious orders in the sense of monasteries in 401 A. D.?

A. No.

Q. And celibate life dated later?

A. Yes, in monasteries.

Q. And that was because they couldn't remain continent very well unless in communities?

A. Yes, they were apart from the world.

Q. And continence is exercised in those circumstances?

A. No doubt.

Q. I don't want to harrow your feelings, but I referred to the colonel of the Salvation Army?

A. Not to me.

Q. But he mentioned harrowing circumstances of a man who said:

> "How can I sleep with her if I am a man and she is a woman; how can I sleep with her?"?

A. It is desperate, but…

Q. You are saying “but”?

A. But many others are desperate.

Q. It is much easier for a man to be continent in a monastery than lying in bed with his wife?

A. Yes, it is common sense.

Mr. Mercier:

My learned friend knows the only authorized version is the Latin version. (Referring to encyclical of Pius XI).

Mr. Wegenast:

Yes, but I made most desperate efforts to obtain one, and I found it was impossible to obtain one in Canada except from one of the orders in Ottawa, and I didn’t want to impose on them; I had portions in Latin.

The Court:

I think there is one of the yellow-covered ones in…

To Mr. Wegenast:

Q. See how His Holiness the Pope puts it in Exhibit 76-B?

A. (No reply).

Mr. Mercier:

I don’t think the reverend gentleman would consider himself an authority on this.

Mr. Wegenast:

He has already said he would take the Pope as an authority. It is Page 7 of this orange-coloured --- ((laughter).

Mr. Mercier:

Very appropriate.

To Mr. Wegenast:

Q. He says this:

> “When we come to explain, Venerable Brethren, what are the blessings that God has attached to true marriage, and how great they are, there occur to us the words of that illustrious doctor of the church recently made the theme of our encyclical Ad Salutem on the occasion of the fifteenth centenary of his death:”

He means St. Augustine, the illustrious doctor, and St. Thomas, the angelic doctor:

> "These," says St. Augustine, "are the blessings of matrimony on account of which matrimony itself is a blessing: offspring, conjugal fidelity, and the sacrament."

One wonders why he should transpose it; in St. Augustine, it was…?

A. (No reply).

Mr. Mercier:

That is a translation; one can't tell how it is in the original.

Mr. Wegenast:

I have three translations and it is the same.

To Mr. Wegenast:

Q.

> "Under these three heads is found a splendid summary of the whole doctrine of Christian marriage, as the holy doctor himself expressly declares when he says: 'By mutual loyalty, it is provided that there shall be no carnal intercourse outside the marriage with another man or woman;'"

He doesn't start with offspring?

A. Fertility.

Q. Just like St. Augustine:

> "'…with regard to offspring, that children shall be begotten of love, tenderly cared for…'"

He leaves out…?

A. (No reply).

The Court:

"Lovingly welcomed."

Mr. Wegenast:

Yes.

To Mr. Wegenast:

Q.

> "'…and educated in a religious atmosphere; finally in its sacramental aspect, that the marriage bond shall not be broken, and that husband or wife, if separated, shall not be joined to another even for the sake of offspring. This we regard as the law of marriage by which the fruitfulness of nature is adorned and the evil of incontinence is kept in check."

That is the end of the quotation from St. Augustine.

"Thus…" -- I wonder if I put it to you -- if my learned friend accuses me of unfairness of putting it to you this way, I shall stand corrected; he inverts the order?

A. Yes.

Q. And then he discusses the three items and goes on:

> "Thus, among the blessings of marriage, the child holds the first place."?

A. Yes.

Mr. Mercier:

Of course, Your Worship, without trying to find a way out, I don't know if it is correct.

Mr. Wegenast:

It is unfortunate.

Mr. Mercier:

It may be the same in Latin, but I know in some translations, they put the cart before the horse.

Mr. Wegenast:

This is an edition with a commentary by Father McNap, O.P; that is the Dominicans?

The Witness:

A. Yes.

Mr. Mercier:

That wouldn't make it ---

Mr. Wegenast:

It has nihil obstats and imprimaturs galore.

Mr. Mercier:

It may be right.

The Witness:

A. I don’t remember reading it before.

To Mr. Wegenast:

Q. Here it is:

> “Thus, among the blessings of marriage, the child holds first place, and indeed, the Creator of the human race Himself, who in His goodness wished to use men as His helpers in the propagation of life, taught this when, instituting marriage in Paradise, He said to our first parents, and through them to all future spouses; ‘Increase and multiply, and fill the earth’.”

And I suggest to you that is the very opposite to St. Augustine, that “increase and multiply, and fill the earth.”?

A. Yes.

Q. He gives the citation?

A. As far as I can tell, it is rather a hard question to ask me. The two statements certainly clash, but what you must take into consideration is that that is a modern doctrine and St. Augustine wrote more or less under the shadow of possible prosecution.

Q. I am not so sure at the time of St. Augustine there was much prosecution; he was fairly free of that?

A. Possibly it was over.

Q. I think it was over.

A. Of course, St. Augustine, no doubt, was influenced by St. Paul.

Q. Why?

A. And certainly, that was the condition under which St. Paul wrote.

Q. Yes, that is so, and I suggest St. Augustine was influenced by his own previous life because he had sown a copious crop of wild oats?

A. Yes.

Q. And it was a swing-over of the pendulum?

A. Yes.

Q. Against all matters of sex?

A. Yes.

Q. Now, I do put it to you, sir, -- I don't want to be unfair, but if my friend accused me of unfairness in using such an argument, he would be correct -- coupling that with "be fruitful and multiply and fill the earth," with St. Augustine's statement?

A. Do you mean does that agree with St. Augustine?

A. Yes.

A. No, I don't.

Mr. Mercier:

I don't like my learned friend referring to me; I am far from being an authority.

Mr. Wegenast:

But this is dialectic.

The Court:

It is not material; it is the manner of presentation.

Mr. Wegenast:

St. Paul adds, to bear children.

The Court:

He said, "I wish young girls might."

Mr. Wegenast:

Yes.

The Court:

This says, "young people."

Mr. Wegenast:

It is in Timothy, 5:14. No, it only gives St. Augustine's Debono Connubis (sp.) (De Bono Coniugali), Chapters 24-32; it is a double quotation.

The Court:

St. Timothy?

Mr. Wegenast:

St. Paul quoting St. Timothy. There is a note here to the treatise on marriage from which I have read. I have Page 24; I don't know what 32 means. There is something here about marriage. We will find it for Your Worship.

The Court:

I don't know if it is of great importance. I don't know if it is worth going into.

Mr. Mercier:

I don't think so, Your Worship.

Mr. Wegenast:

Page 324 of this translation.

The Court:

"Younger women" here.

Mr. Wegenast:

Well, that is still another variation. Thanks, Your Worship, for pointing that out.

To Mr. Wegenast:

Q. Then this argument certainly doesn't hold valid: resting on St. Augustine or St Paul: "be fruitful and multiply". Today, the main object of marriage is procreation?

A. Putting St. Augustine aside?

Q. Yes.

A. St. Paul wrote the way he did because he was under the shadow of prosecution and another reason he wrote the world was coming to an end ---

Q. Not they, but whether the argument in the encyclical is valid as an argument based on St. Paul and St. Augustine when it is said, "be fruitful…"

A. It is.

Q. That isn't the point, sir; he might consider it is, but my point is the man who drafted this -- I suppose there is one, and the College of Cardinals to consider it, but the draftsman of this put in an argument he shouldn't have based on either St. Paul or St. Augustine?

A. Yes.

Q. You see my point?

A. Yes, I didn’t see he went entirely different, but it is notorious.

Q. Certainly, but St. Paul said better not have any?

A. Yes.

Q. You agree, then?

A. Yes, I agree.

Q. I want to refer to this if you will not take it unkindly, sir; after all, a bishop is a bishop, and if he happens to be the bishop of Ottawa, there is no reason why you shouldn’t treat his views with respect, and if we find 193 bishops taking the same view, you would treat it with great respect?

A. Yes, but sometimes bishops speaking sometimes make mistakes like judges and lawyers.

Q. We have the opinion of 193 bishops?

A. Not unanimously.

Q. Right, but 193 bishops represent 193 dioceses, and their own people must or should respect the opinions of the bishops. I don’t know what the opinion of your bishop in Ottawa was and don’t care, but on the principle of plain common -- ordinary common sense, more weight should be given to the opinion of 193 bishops than to 67 bishops?

A. Who are they?

Q. They are the minority of the Lambeth Conference.

A. Oh, I see; I didn’t understand the reference.

Q. I don’t know so much about it, but it is good British practice to go by the majority?

A. It, unfortunately, isn’t always the majority is right and the minority wrong.

Q. But we must get along with a working rule?

A. Yes, but it purely an expression of opinion by these bishops.

Q. But it is on the basis of opinion I am putting it to you.

A. Yes.

Q. Their opinion is worthy of respect?

A. Yes, but compared to my prayer book, I would say it is not worthy of being promulgated.

Q. That would be a matter for your bishop; was this bishop one of the 193 or 67?

A. Yes.

Q. How did he?

A. He told me privately how he voted.

The Court:

It is hearsay; it isn't evidence here.

To Mr. Wegenast:

Q. Was it a secret vote?

A. No, but he told me privately.

Q. Well, we will leave that there.

We have here the report of the Lambeth Conference from which my learned friend has read a number of times, and I will get you on record as disagreeing, I suppose, to my sorrow, with these passages:

> "The Conference emphasizes the truth that the sexual instinct is a holy thing implanted by God in human nature."?

A. (No reply).

The Court:

You are reading from?

Mr. Wegenast:

The report of the Lambeth Conference, Exhibit 75-B, Page 43.

To Mr. Wegenast:

Q. You do agree with that first sentence?

A. When it is for the procreation of children, but the sexual instinct may result in lust.

Q. Are you a follower of the extreme view of St. Augustine?

A. You can't expect me to endorse the gratification of sexual instinct when it is not in the holy instinct.

Q. Isn't that a matter of lack of holy grace?

A. Instinct itself, per se, is not bad.

Q.

> "The Conference emphasizes the truth that the sexual instinct is a holy thing implanted by God in human nature. It acknowledges that intercourse between husband and wife as the consummation of marriage has a value of its own within that sacrament, and that thereby, married love is enhanced and its character strengthened. Further, seeing that the primary purpose for which marriage exists is the procreation of children, it believes that this purpose as well as the paramount importance in married life of deliberate and thoughtful self-control should be the governing considerations in that intercourse."

Could you agree with that?

A. Yes, that is common sense.

Q.

> "(b) the benefit of a family as a joy in itself, as a vital contribution to the nation's welfare, and as a means of character building for both parents and children; (c) the privilege of discipline and sacrifice to this end."

There is nothing much there different?

A. No.

Q.

> "15. Where there is a clearly-felt moral obligation to limit or avoid parenthood,…"

I think you have admitted there are times to limit it?

A. Yes.

Q.

> "…the method must be decided on Christian principles. The primary and obvious method is complete abstinence from intercourse (as far as may be necessary) in a life of discipline and self-control lived in the power of the Holy Spirit."

Do you agree with that?

A. Yes.

Q.

> "Nevertheless, in those cases where there is such a clearly-felt moral obligation to limit or avoid parenthood, and where there is a morally-sound reason for avoiding complete abstinence, the Conference agrees that other methods may be used…"

Is that where we part company?

A. Yes, that is where we part company, sir.

Q.

> "…provided that this is done in the light of the same Christian principles."

You would say it couldn't be?

A. It seems to me you are putting two things together that are different.

Q. Again?

A. The Lambeth Conference is another thing that is different.

Q. I don't know what you mean.

A. What I mean is this: what is meant by Christian principles? If the Lambeth Conference goes on and argues that the use of contraceptives is on Christian principles, I must disagree in toto. It is very difficult to see ---

Q. I will finish the paragraph:

> "The Conference records its strong condemnation of the use of any methods of contraception control from motives of selfishness, luxury or mere convenience."?

A. Yes.

Q. Now, we only disagree, then, on the one sentence, not a whole sentence at that, at the bottom of Page 43?

A. (No reply).

Q. Now, I have here a declaration. I am going to refer you now to a passage from St. Thomas Aquinas; this is in a book called "The Elements of Moral Theology," based on "The Summa Theologiae of St. Thomas Aquinas". This is a publication edited in New York by Ellendorf, S.T.D.; what does that mean?

A. Doctor of Sacred Theology.

Q. You already admitted you would take St. Thomas Aquinas as an authority, and I refer to this paragraph at the bottom of Page 453. He puts this question: "Is virginity the highest of virtues?" He said, "Yes, in that it is a kind of means to an end."

You agree with that?

A. What does he mean?

Q. "…better it is…"? (Book not available to court reporter).

A. What is it?

Q. He says if you want to obtain a certain end, then the best means is the best one, the most efficacious, that obtains that end?

A. I should say it was common sense. I don't see anything contrary in it.

Q. He says here:

"But the end…freedom for divine things."?

A. (No reply).

Q. That is to say she mustn't?

A. The idea at the end is so excellent it leaves her for divine things; she is free to do God's work; she has no home duties.

Q. That doesn't touch the statement on which we are engaged as to whether the means should be the best means to obtain the end. Obviously, if she is freest then?

A. Yes.

Q. And if, for a religious life and the cultivation of her soul, virginity is the best means to the end?

A. Yes, religion is a vocation, a call, that comes to a few people.

Q. If you care to hold that for a moment, I had in mind the statement of Lord Dawson of Penn, physician to Queen Victoria and Edward VII and George V.

A. Yes, I have heard of him.

Q. He made this statement: it was the business of theologians to decide whether contraceptives for the avoidance of procreation was right or wrong. Once it was decided it was right, if it was

so decided, it was the business of doctors to decide how it was best obtained; now, would you differ with that

I can put a hypothetical question, and you can assume for the sake of argument -- if for the sake of argument, the limitation of children was desirable, and then Lord Dawson of Penn said it is for the doctors to say how to limit children; would you differ with that?

A. I would say the limitation of births is out of the medical sphere altogether. With reference to the hypothetical case you gave me of it being impossible for a woman to bear a child or she would die?

Q. Yes?

A. Then it would seem to me that would not be a question for a doctor at all; it is in another sphere altogether. The husband surely should be continent, and surely, he would be assisted in his trial, granted it is a trial, by the grace of God.

Q. I haven't succeeded in dislodging you hypothetically from the position that contraception is wrong. Suppose it is right. Suppose some divine Lambeth Conference ---

A. I will not suppose anything of the sort.

Q. Well, if you are not, let it go. One witness said it was against his philosophy.

A. It is against my religion.

Q. You have blurted that out; I wasn't allowed to let other witnesses say it. It doesn't matter what the end is; it doesn't matter how worthy the opinion; the use of a chemical or mechanical contraceptive is wrong as a means?

A. I think it is.

Q. I think if you will allow me to suggest, that is putting it; it doesn't make sense to me to make the means more important than the end.

A. Would you say the end justifies the means?

Q. No, I wouldn't, but you seem to start, sir, by an assumption that the means somehow or other are wrong first, last, and all the time, and if that is so, and we understand each other, we needn't discuss it further?

A. Do I think the use of mechanical contraceptives is wrong; is that your question?

Q. Yes, no matter what the end.

A. (No reply).

To the Court:

Q. No matter what the end?

A. No matter what the end, do I consider applying them is wrong?

To Mr. Wegenast:

Q. Yes.

A. The answer to that is yes, I do consider it is wrong.

Q. The analogy to that is, do you think a therapeutic abortion is always wrong: take an ectopic pregnancy in the fallopian tubes, which hasn't a chance of being successful and will inevitably involve the death of the mother?

A. The point is this: if an abortion is made, murder is committed, and if you ask me to give an opinion, I can't; I have never heard of such a thing before.

Q. Leave that then. I am trying hard to get through tonight, and sometimes, the end justifies the means?

A. Maybe.

Q. I have here a leaflet headed, "The Council for Social Service of the Church of England in Canada".

A. I heard of it.

The Court:

He recognizes it?

To Mr. Wegenast:

Q. Is it authentic?

A. Yes, it is.

The Court:

An exhibit?

A. Yes.

To Mr. Wegenast:

Q. It is an official organization of the Church of England in Canada for that purpose?

A. Yes.

Q. So I needn’t hesitate assuming that the Church of England in Canada is interested in social problems officially?

A. Officially, yes.

Q. Would you admit your community is studying, amongst other things, the matter of contraceptives?

A. I don’t know anything about it; I can’t say.

Q. Are you a member of the council?

A. No.

Q. You are a member of the synod?

A. The general synod.

Q. And you are in some measure responsible for the organization and work of this council for social service?

A. The only thing is that they bring in a report and it is adopted or amended.

Q. But first of all, you would have something to do or say with their appointment, the constitution of it?

A. No, I have nothing to do with it.

The Court:

Exhibit 109-B.

To Mr. Wegenast:

Q. Wouldn’t that be brought in as a report?

A. Yes.

Q. I don’t know if you voted against it.

A. No.

Q. But you must take your share of responsibility for the existence of that council?

A. Yes.

Q. And the scope of its work?

A. Yes.

Q. So you know nothing of the scope of its work?

A. No.

Q. This is getting along fine. Here is a publication, sir, -- I don't know if you know of it or not -- called, "One God and Father of all," and it is a reply to Father Vernon who left the Anglican communion.

A. I have read it. I am not very familiar now with it.

Q. Do you think it is authentic and can be relied on to tell the truth?

A. I don't know that.

Q. But it is an authority?

A. Yes, written by two priests of the church in England.

Q. I want to call your attention to this paragraph and see if it expresses the policy and doctrine of the Anglican Church?

The Court:

Page?

Mr. Wegenast:

One hundred and eleven (111).

To Mr. Wegenast:

Q.

> "After all, if we…we do not need the authority of the church to teach us."

That is good Anglican doctrine?

A. No.

Q. You don't think it is good Anglican doctrine?

A. No, we need the church.

Q. You take your conscience?

A. I take my religion from the church and prove it by the bible. We don't get our religion by opening the Bible, picking out passages and making our religion.

Q. I will read: "…natural law."?

A. I don't agree with that.

Q. I don't suppose we will get very far with this authority?

A. Certainly not.

Q. You will not agree there are not such opinions in the Anglican Church?

A. All sorts of opinions are held by individuals, I suppose, in every religion in the world, but it is not told by the church.

Q. Notwithstanding what 193 bishops of the church have announced?

A. (No reply).

Mr. Mercier:

What evidence is there of that?

Mr. Beament:

It is in a report.

To Mr. Wegenast:

Q. That the authority of the Anglican Church was against the use of chemical or mechanical contraceptives?

A. I would say it was for the very simple reason that you can't find anywhere in any official document pertaining to the church. There may be one. You can't find it anywhere that it is permissive, and the Lambeth findings are not canon law of the church.

Q. My question was whether, notwithstanding the vote of the majority of the Lambeth Conference, the doctrine of the church was against mechanical or chemical contraceptives.

A. Against.

Q. Yes. I am putting the shoe on the other foot ---

A. As far as I know, I know of no legislation on it, and I imagine you won't find it in the Catholic church, Greek church or the old church.

Q. As a matter of fact, you are arguing with me, which a witness is not supposed to do.

A. You are very kind.

Q. You have been very helpful. Lawyers make the worst witnesses themselves, anyway, but I do say, sir, that I have just as much right, with the support of 193 bishops, to say to you that the Anglican church has no teaching or doctrine against birth control or the kind we are considering here, as you have with

the support of 67 bishops to say there is something against it. I think I have you in a box now.

A. Not at all, for the Lambeth Conference findings are simply an expression of opinion.

Q. You haven't got me right yet?

A. You have every right to think so yourself, sir.

Q. Or any other Anglican member?

A. You may hold your own opinion.

Q. But it isn't the teaching of the Anglican Church that contraceptives should not be used?

A. I would think so according to the trend of the marriage service. If the church favours the use of contraceptives, isn't it a horrible farce to say in the marriage service, "be faithful and fruitful and bear children."?

Q. You are arguing now. Are these 193 men with the rank of bishops -- pardon my language now -- foolish, unwise, unsound or lacking in grace or sliding down the slope of moral depravity; would you say that is why they were voting for contraceptives?

A. I don't think it is a fair question of you to ask me.

Q. It was you suggested it.

A. I can't say what motives actuated the bishops.

Q. It was you mentioned general depravity.

A. Yes.

Q. Are 193 bishops going with it?

A. They may or may not.

Q. Do you think the tendency shown by 193 bishops is a movement in another direction?

A. I think it was a very lamentable expression on their part in that direction.

Q. Of course it is lamentable if it is in that direction?

A. That is my opinion.

Q. This is rather conclusive: In the report of the Lambeth Conference -- I see this on Page 90, and I wonder if you agree:

> “It must be recognized that there is in the Catholic church a very strong tradition that the use of preventive methods is in all cases unlawful for a Christian. We acknowledge the weight of that testimony, but we are unable to accept that tradition as necessarily final.”

May I postulate there a moment and put to you the question whether the church has always been right in very strong inhibitions like the case of anaesthetics in childbirth?

A. Yes.

Q. And it has had to reform its opinions?

A. Yes, but the point is ---

Q. You are going to argue?

A. No, I am going to tell you what I think.

Q. Let us see.

A. I won’t say a word.

Q.

> “We acknowledge the weight of that testimony, but we are unable to accept that tradition as necessarily final.”

My allusion was fair to Simpson and anaesthetics?

A. Yes.

Q.

> “It must be admitted that it is not founded on any directions given in the New Testament.”?

A. No.

Q. And I think it is a principle of your Catholic church as well as the Roman Catholic church that the New Testament did not bring in any new moral precepts that are not to be found in the old?

A. The new took hold of the old and perfected it.

Q.

> “It has not behind it the authority of any ecumenical council of the church. Moreover, it is significant that the communion which most strongly condemns in principle all preventive methods, nevertheless, in practice recognizes

that there are occasions when a rigid insistence on the principle is impossible.”?

A. That is not my communion and I can’t express an opinion on it.

Q.

“If our own communion is to give guidance on this problem, it must speak frankly and openly, with a full appreciation of facts and conditions which were not present in the past, but which are due to modern civilization.”?

A. Yes.

Q. Now, you are a faithful servant of the church and obedient to whatever commands are expressed in whatever legislation you find which imposes an obligation on you; you will obey any obligation the church imposes on you?

A. Yes.

Q. And if the church through whatever is the proper authority should legislate to the effect that a certain kind of contraceptive was permissible, you would adopt that view?

A. It would all depend what that legislation was, but the point is this, if that was incorporated in the canon law of the church, which I would have to accept under oath, I would have to consider one of two things: either abandon my priesthood and leave the church or accept it.

Q. Which would you do?

A. I can’t say.

Q. You can’t say offhand you would disobey a law of the church which recognized chemical or mechanical methods of contraception?

A. It is too serious a question.

Mr. Mercier:

I wonder if the learned gentleman can be asked what he might do.

The Court:

If that ever occurred, this witness might have to spend many and many a weary hour thinking it over.

Mr. Mercier:

Supposing such and such a thing happens.

To Mr. Wegenast:

Q. If the proper legislative authority were enacted?

A. I don’t know.

Q. That is all; I won’t crowd you into any false position.

A. (No reply).

Mr. Wegenast:

I believe, Your Worship, that is all I want just at the moment.

To Mr. Wegenast:

Q. Now, here is what Mr. Summerhayes, a man of some consequence in the church, says: I already told you who he is, and he appeared here as a witness.

A. (No reply).

The Court:

Page?

Mr. Wegenast:

Two (2).

To Mr. Wegenast:

Q.

> “Q. We might as well, Mr. Summerhayes, put on record what the Lambeth Conference represents.
>
> A. The Lambeth Conference is a conference held every 10 years of all bishops of the Anglican church throughout the world.
>
> Q. Including the Episcopal?
>
> A. Including the Episcopal bishops of the United States.”

They are recognized as on the same plane?

A. Yes, we are in full communion.

Q.

> “Q. Will you tell us to what extent its findings are mandatory?”?

A. Yes.

Q.

> "A. They are not binding legally -- that is, it doesn't legislate, but it expresses opinions which coming from our whole body of bishops are highly authoritative."?

A. I would not say they are because they are not; they don't and cannot become authoritative until they are passed to the provincial synods and then they are authoritative and pass into the canon law.

Q. Did you notice this: In the same third paragraph in the preface to the revised Canadian prayer book, they refer to the Lambeth Conference?

A. (No reply).

Q. They say:

> "The General Synod clearly ordained the limits within which such adaptation and enrichment might be made, forbidding any change in test or rubric which would involve or imply a change of doctrine or principle of the Church of England as set forth in the Book of Common Prayer, or any other change not in accordance with the 27th Resolution of the Lambeth Conference of 1908."

What we lawyers would argue was that that constituted an implied authority on the part of the Lambeth Conference; would you say we lawyers wouldn't score in your field?

A. I can't say what that resolution is offhand. This is not evidence ---

Q. It was a resolution of the Lambeth Conference of 1908, and I take it the succeeding one wouldn't be different?

A. I suppose it is followed up by succeeding conferences, but I wouldn't put great weight on it.

Q. But this body which revised the prayer book itself, recognizes the Lambeth Conference sometimes for something?

A. Yes, we certainly recognize the standing of it for something, but a certain procedure must be put through by the provincial synods before it becomes binding on the church and is entered into the common prayer book.

Q. I say, without giving offence, you are slightly legalistic?

A. What do you mean by "legalistic"?

Q. You want to go by the strict mechanical operation of the law, and I put it to you, the Lambeth Conference does count for something, and you have admitted it?

A. It does count for something.

Q. That is all I want to ask you.

A. (No reply).

RE-DIRECT EXAMINATION

To Mr. Mercier:

Q. Speaking of the Lambeth Conference, Canon, I have read parts to you, and according to those, the Lambeth Conference does not approve of the indiscriminate distribution of contraceptive information?

A. Oh, no.

Q. Even the Lambeth Conference states ---

A. No, as far as I can remember -- and as you have the reports here you can correct it, but as far as I remember, the only way in which the Lambeth Conference says that the use of contraceptives is permissible -- I think the sentence is they can be used when it would be wrong not to use them.

To Mr. Wegenast:

Q. They left it to conscience, and I understand you have your conscience as authority?

A. (No reply).

To Mr. Mercier:

Q. They referred to your bishop, there is no objection from your bishop as to your being here?

A. No, but he is not very well, and Archdeacon Snowden is acting as his commissary doing the business. He got in touch with me and he got in touch with the bishop, and if he objected, I am quite sure through the medium of the Archdeacon ---

Mr. Wegenast:

I don’t know.

Mr. Mercier:

You questioned him about his bishop.

The Court:

No.

To Mr. Mercier:

Q. My learned friend questioned you on Ogino-Knaus, and would you, in your opinion, think if Ogino-Knaus is bad, the use of contraceptives is bad or does it make the use of contraceptives better if Ogino-Knaus is bad?

A. I can’t understand.

Q. The Ogino-Knaus theory, my learned friend alleges, is supported by the church of Rome and the use of artificial contraceptives, as distributed in the Town of Eastview, as my learned friend thought contraceptives should be -- and if Ogino-Knaus is bad, it makes artificial contraceptives better?

A. The first one is a form of continence.

Q. Yes?

A. And the use of contraceptives is not a form of continence.

Q. But granting to my learned friend Ogino-Knaus is bad, do you believe that would make the use of artificial contraceptives better?

A. No.

Q. Now, there has been the case of this poor unfortunate woman who has a drunken husband -- I believe you have replied to that -- then the wife should refuse to have anything to do with her husband, and she would be morally right in doing so?

A. Yes.

Q. Would you say this: anybody should have enough respect for a woman’s body, even with contraceptives?

A. To use all the force necessary to avoid having intercourse with a brute of that kind.

Q. That is all. Thank you, Canon.

(Witness retired).

Mr. Mercier:

That is the end of rebuttal.

Mr. Wegenast

REX vs. PALMER

Adjournment

Page-563 to Page-569

Adjournment after rebuttal

Mr. Mercier:

At this point, I might say I have under subpoena the Rev. Dean Salmond of Christ Church Cathedral; Rev. Mr. Milliken of United Church; Rev. Father Drouin; Rev. Father Caron of Ottawa University; and a doctor, a specialist in obstetrics.

I say this because I requested them before the defence took this position that Section 7 does not stand in this case.

The Court:

I have ruled against you.

Mr. Mercier:

I know; I am renewing my objection formally.

The Court:

For the reasons I have already given, I refuse to hear them.

Mr. Mercier:

In rebuttal, before the defence was in, the Crown did not intend calling any rebuttal before it knew or not.

The Court:

You must stand.

Mr. Mercier:

If one must believe all the rumours circulated about, the prosecution was accused of putting Catholic theologians in the box.

Now, my opinion was that there was certain medical evidence I couldn’t do away with and certain Protestant clergymen being called; it was due to show all Protestant clergymen were not of the same opinion, and the Catholic clergy were not called, and the Protestant clergy were called.

It was suggested: please, give us a non-Catholic doctor, and if Catholic clergy were not called, it was through no fault of mine.

Mr. Wegenast:

What about my friend Dr. Gerin-Lajoie?

Mr. Mercier:

Does he expect to meet him now? I don't wish to handicap his defence.

The Court:

If you wish him brought back, it is a matter for you?

Mr. Wegenast:

I want to be coaxed.

Mr. Mercier:

I have no intention, so my learned friend may make up his mind right away.

Mr. Wegenast:

No, I think I will let Dr. Gerin-Lajoie rest in peace.

The Court:

That then brings us to the point ---

Mr. Mercier:

It takes time to get the notes.

The Court:

I presume both of you will want a full transcription?

Mr. Mercier:

And I suggest I might speak, first, as to the approximate time I might suggest as to the date of adjournment.

With the abdication of the King, the Clerk of the Peace will have a lot of work swearing in officials, and there is the swearing in of jurors for 1937, which might take four or five days, and in the interval will be Christmas and New Year's and the days after Christmas and New Year's, and the Augustino trial which starts on the 11th, I believe.

In any event, I shall be busy on that, and it should be well near the end of January before we can start the argument, and I think it will take all that time to get a full copy.

The Court:

Can the reporter say about how long?

Mr. Wegenast:

I have been ready to argue at any time -- a few days ago, and I would be ready now.

Mr. Mercier:

In that case, I am prepared to go on with the argument tomorrow morning. Now, if Your Worship will sit tonight ---

The Court:

No, I thought it was his wish to have a copy of the evidence.

Mr. Mercier:

But if it doesn't go on now.

The Court:

It is possible Monday may be a statutory holiday.

Mr. Wegenast:

I am particularly actuated by the fact Miss Palmer is being brought here; she isn't in a good state of health, and it is with the best will in the world to oblige my friend if I can arrange that it be renewed ---

Mr. Mercier:

It is not a question of obliging me; I have other duties to perform that I can't do at night, and I can't swear officials and J.P.s who come to my office at night.

The Court:

Have you any idea, gentlemen, how lengthy the argument would be; do you think tomorrow morning would finish the argument?

Mr. Wegenast:

I expect in the ordinary course I would be four days. I think my learned friend will be two or three days.

Mr. Mercier:

Not half.

The Court:

We can't go on tomorrow morning.

Mr. Wegenast:

I am not objecting; only I am not consenting.

The Court:

And I do appreciate the situation, and I would like to have argument at the earliest possible moment if the evidence is not necessary. If there is any possibility that immediately after the New Year, we could have argument?

Mr. Wegenast:

That was in my mind, but I cannot consent.

The Court:

Might we get argument on before the murder case comes?

Mr. Wegenast:

If there must be an adjournment, -- sine die?

The Court:

The only adjournment that can be made in that way is when the court reserves judgment to a certain date and then it is not necessary to bring the accused back.

Mr. Beament:

I suggest you reserve for further argument.

Mr. Wegenast:

I admit I have done some arguing.

Mr. Beament:

With the consent of the accused, that rule can be released.

Mr. Mercier:

I looked it up; I am not sure. If we are going to delay argument more, we will need notice.

Mr. Wegenast:

Yes.

Mr. Mercier:

If it were not for those statutory duties.

The Court:

It would take the most of a week unless we could start the argument the week of the 28th of December and have four days before New Year’s and finish after.

Mr. Mercier:

And adjourn to the fourth?

The Court:

Four days: Monday, Tuesday, Wednesday and Thursday, and two days then.

Mr. Wegenast:

I wouldn’t like to go on then without notice.

Mr. Mercier:

I won’t object then, any stronger than my learned friend consent to me ---

Mr. Wegenast:

I am not prepared to consent, but my disposition is to oblige, and if you don’t want to go on now, perhaps, I would rather not go on until January, and if my learned friend can’t go on ---

Mr. Mercier:

When does he want?

Mr. Wegenast:

Start now; I am not willing physically and mentally, but the spirit is willing. I think I have said all I need to.

The Court:

And considering the convenience of the accused?

Mr. Wegenast:

If convenient for my learned friend, I would say the middle of January.

Mr. Beament:

It has been held that with consent, it was possible to postpone the hearing of argument until the shorthand notes would be ready.

The Court:

On a summary conviction? I have looked for some authority and couldn’t find it, and it might be a debatable point on the laws of jurisdiction.

Mr. Wegenast:

I wouldn’t raise the technicality.

Mr. Mercier:

We are sure of that.

The Court:

But there is no case on the indictable point. I think we will have to adjourn to your convenience, and the accused can appear in my office at the courthouse without coming here for adjournments.

Mr. Mercier:

Make it on Thursdays, and the accused could come to your office any time during the day.

The Court:

During the morning:, not necessarily 9:30, anytime Monday or Thursday. Better make it for next Thursday.

(The hearing adjourned to a future date for argument).

REX vs. PALMER

Argument

Taken on Feb. 8, 1937

VOLUME 1

Mr. F. W. Wegenast, K.C.

MR. WEGENAST: I hope Your Worship has not felt slighted in not having the matter brought before Your Worship. I have a copy of it here.

MR. MERCIER: Of course, Your Worship, that was not brought out in evidence during my learned friend's defence.

HIS WORSHIP: Well, Mr. Mercier, what has been done has been done, and it is water under the bridge, and I don't think there is any object in raising the point, Mr. Wegenast.

MR. WEGENAST: The only thing is this, Your Worship: I apprehended, rightly or wrongly, that Your Worship would not have jurisdiction to deal with the matter.

HIS WORSHIP: I suppose that is true. It is outside this court; any matter of contempt is a matter for the Supreme Court.

MR. WEGENAST: Whether Your Worship would care or would have cared to discipline any representative of that newspaper, -- he may be in the room, -- is a matter which I leave with that observation, having brought it up. The (missing word) of the offense, of course, was to decide what Your worship has, I hope, still to decide. I hope it is not decided by the article in the Le Droit.

HIS WORSHIP: I haven't even read the article. Perhaps I will read the article after I have given my judgment and see how it coincides.

MR. WEGENAST: Now, Your Worship, I must do my best to size up the present position of the case. I have not, Your Worship will have observed, cavilled at the lot being cast on me to speak first. I thought possibly it might have been otherwise, but I didn't even want to raise the point.

MR. MERCIER: I wonder why my learned friend says that? I would like to know why he thinks I should speak first?

HIS WORSHIP: Well, proceed, Mr. Wegenast.

MR. WEGENAST: I am in this position again, Your Worship, that I must exercise my imagination to the utmost degree to conjecture what is the case that I have to meet so far as the argument is concerned. My understanding of the present position of the case is this, -- and Your Worship will observe I propose to stick somewhat to a certain text in the interest of brevity. I could bring things to a point a little more clearly by following my notes more closely than if I started to use my ingenuity.

The evidence that birth control, in general, and Miss Palmer's work, in particular, served the public good from the standpoint of sociology and economics is uncontradicted. That is the first point I wish to make, Your Worship. And from the standpoint of sociology and economics, the evidence that there was no excess in Miss Palmer's acts is also uncontradicted.

Even if there could be an argument that this particular pocket in the Ottawa Valley should be treated differently from other parts of the province, it is cancelled out by the cogent evidence that conditions in Eastview are such that there is a particular need for Miss Palmer's work if, indeed, it is in order anywhere. I find difficulty, under these circumstances, in comprehending why the prosecution has not been dropped, but is apparently still to drag out. I am driven, therefore, to conjecture what my friend may seek to argue. If I make the wrong guess, I do not want to have any recrimination.

The legislature plainly contemplated that some kinds of communication of the science of contraceptives would be considered lawful and for the public good. There, of course, the law parted company with our friends, the philosophers, or Roman Catholics, and Your Worship must part company with them. The law, as I say, clearly contemplated some kinds of communication of the science of contraceptives were in order and were for the public good, and our friends, the philosophers, take issue with that at once, and I say Your Worship must part company with them immediately.

The Act contemplates and provides for cases where advertisements of contraceptives are for the public good, and the Court must decide on the evidence. It is a question of fact, which is before Your Worship, not a theory. Now the evidence, as I have said, is uncontradicted, from the sociological standpoint is uncontradicted, that it is for the good of women that they should have the information which Miss Palmer was giving. The

legislature must have intended that there is some general line of proof that the dissemination of information of this kind was for the public good. What kind of proof does my friend think would serve to justify? The legislature clearly intended there should be a line of proof on me, and I am posing the question, what line of proof my friend would consider would justify the activities of Miss Palmer or anyone else? The nearest I can gather from my learned friend's evidence is it could be justified if prescribed by a physician, although most of his witnesses would not even concede that. Perhaps not most, but at least two of them, Dr. Couture and Dr. Gerin-Lajoie, as well as some of the other witnesses for the Crown were prepared to fly in the face of Section 207 and say that under no circumstances would the use of a contraceptive be justified. But we cannot entertain their evidence on that point. The Parliament of Canada has spoken. It could hardly have been intended that doctors and or priests should have a monopoly of dealing with the matter. If that had been the intention, the Code would have said so.

It is, of course, in evidence from several witnesses and some of the exhibits that Roman Catholic priests do advise on birth control, and that the texts, "The Rhythm" and "Legitimate Birth Control" are used for that purpose and are, in fact, gotten out for that purpose.

When you come to examine the evidence of the Crown, the most outstanding feature is its incoherence, and that is what makes my task, and perhaps that of Your Worship, so difficult. Dr. DeHaitre said he would and did prescribe contraceptive appliances. Dr. Couture would have none of it. Dr. DeHaitre approved all that was said in "Rhythm" about the desirability of birth control, and Dr. Couture was against it. But Dr. Couture rather threw out a challenge that there was no situation that he could not meet within the jurisdiction of what he disingenuously called his philosophy. And he was naively ingenuous in showing us the sophistical process of reasoning, if it can be called reasoning, by which he reached his conclusions. He was driven to this ultimately: That in the case of an ectopic pregnancy he would call it a disease of the tube and remove the tube. If the foetus perished, it was nothing to him; that was secondary and incidental.

But let us take it as if Dr. DeHaitre's evidence had been uncontradicted. He thought contraceptives might be all right if

applied by a doctor. Is that the case I have to meet? That may be arguable medically, but not legally. Under the *Scott Act*, the physician is specified; it is not referred to the "public good". Section 120 of that Act specifies "a legally qualified physician" has the right to give prescriptions for alcoholic liquor. It does not refer to the "public good"; it is not a question of justifying the giving of a prescription because it is for the public good. The same legislature, dealing with contraceptives, takes an entirely different measure for what is lawful; it doesn't adopt the idea of a physician. In fact, I don't think the word "physician" is used anywhere throughout the Criminal Code; it is always "person": "No person shall do so and so," and there is no recognition of a physician as such, so that the idea of any necessity of having a physician to prescribe contraceptives must be laid aside.

Even in childbirth, it is ordinary to call in a practical nurse. Indeed, they are quite generally preferred in some districts, and I think something was said in the evidence to the effect they are preferred in this district. Doctors, of course, are shocked at the idea, and we must, in our consideration of this case, give certain leeway for professional bias of doctors. We lawyers have our own professional bias; we don't like to see country conveyancers taking the bread from our mouths, and there is something of that about the doctor, and of course, they can be pardoned for that. They can do things better than anybody else, and they are quite shocked at the idea of anybody acting as a midwife except a duly qualified medical practitioner. But that was not always so; a controversy raged for many years, possibly several centuries, between the doctors and the midwife, and parliaments had to consider whether it was a proper and decent thing for a male doctor to be called in to act as a midwife. Now, of course, the process of childbirth is quite as dangerous as the use of any contraceptive, and there is no law requiring a doctor to be called in attendance for childbirth. It is quite in order to have a practical nurse, a midwife even, and nobody can do anything about it. But now the idea apparently is to set up an argument that when it comes to the use of contraceptives, it is infinitely more dangerous than the operation of childbirth; it ought to be confined to physicians.

There is no law requiring the women of Eastview to have a doctor for childbirth.

So that there is no suggestion in Section 207 that the contraceptive information could not be given by a nurse, or at any rate, if there is to be any such rule, it will have to be laid down by Your Worship. Nothing of the kind has ever been up, so far as I know, for judicial consideration before.

Now, that would have the effect of wiping out in Ontario a large and obviously important department of social service work, or transferring it to the medical profession, which as a whole has been indifferent as well as incompetent as the evidence shows. We need not mince words about that. The doctors themselves admitted that, on the whole, they were not or the medical profession was not up on contraceptives, and in particular, the doctors who appeared for the Crown; that is to say, Dr. DeHaitre, Dr. Couture and Dr. Gerin-Lajoie were decidedly unsophisticated, let us say, as far as contraceptives were concerned. Not only that, but Dr. Gerin-Lajoie informed us if anybody undertook to teach any such thing in his medical school, he would be fired. Incidentally, if Your Worship laid down any such rule, it would prohibit the sale of any contraceptive in a drugstore and it would close the door to the clergy giving advice because the section would cover literally anything the clergy could do in that regard, advertise or publish any means or instructions. The priests of the Roman Catholic church could not advise Ogino-Knaus or rhythm because that is a means of preventing conception. The sale of “Rhythm” would be illegal, and the Catholic Truth Society would be liable to indictment and punishment under Section 207, and there would be no place for nurses in the scheme of things except as working directly under the doctors’ eyes and orders.

Any result except that programme and logical sequence of prohibition would mean this Court must adopt the knife-edge distinction which is set up by the Roman Catholic church; namely, that it doesn’t matter what the end is, that the important thing is the means. If Your Worship were to decide, for example, that the circulation of “Rhythm” was legal, it would be because Your Worship adopted the view of the philosophers, let us say, that the means is the all-important thing, and that the end doesn’t matter because the end of “Rhythm” is spacing of babies. That is exactly the thing to which the other kinds of contraceptives are directed.

MR. MERCIER: Your Worship, as much as I loathe to interrupt my learned friend, the subject has been brought up quite often, and Your Worship has been told if you take a certain attitude, Your Worship would be taking the attitude of the Roman Catholic church. I submit in argument, at any rate, my friend should stick to the evidence as it is there. There is no authority that has been submitted or recognized as an authority of the Roman Catholic church that certain things were done. There is a presumption that certain things might be the rules, laws, and regulations.

Also, there is in evidence, Your Worship, I submit, the fact that not only clergymen of the Roman Catholic church do not believe in contraceptives, but of certain other churches also, so I wish, at this point, to object most strenuously in the discussion of whether Miss Palmer did anything wrong by advertising these things in the Town of Eastview, an alleged infraction of the Criminal Code, to see it resolve into a religious controversy of any kind, and I wish to inform my learned friend right now I will make no further interruptions on any of these matters which he brings up and I will not be dragged into the discussion because, I submit, Your Worship, it has absolutely nothing to do with this case.

MR. WEGENAST: My learned friend's expression of intention is very satisfactory, and the rest we will come to presently.

HIS WORSHIP: As far as what I decide is concerned, I will decide to the best of my ability on the law and evidence, irrespective of whether it runs contrary to any sociological or religious or any other views people may have.

MR. WEGENAST: That is what I am asking Your Worship, and I am trying to draw these distinctions. I have had time to consider the matter, and I am trying to draw these distinctions exactly as they come up in this case on the evidence. Your Worship has heard the evidence, and I need not to go into that at the moment.

Are we to assume that the standard of public good is any different in Eastview from what it is in any other part of Ontario? That has been suggested over and over, and I must meet it. Does my friend imply that things which would be legitimate in a Protestant community would not be so in a Roman Catholic community? Then is there one law for Protestants and another for Roman Catholics? If so, where is the line to be drawn,

geographically or between family and family? My submission is the line, if any, is the Ottawa River.

Whether or not, as we were taught at law school, the Protestant religion is a part of the common law of Ontario, there can be no question that no Roman Catholic law, as such, is any part of the law of Ontario.

MR. MERCIER: The Code is?

MR. WEGENAST: Which Code?

MR. MERCIER: The Criminal Code.

MR. WEGENAST: Yes, but that is an expression of the -- the codification of the common law of England as I will show presently. I am prepared to establish that, Your Worship.

HIS WORSHIP: I don't think there is any suggestion this court is bound, as a matter of law ---

MR. WEGENAST: I must cut between the two things to find out where we are at. This question, whether any part of the so-called law of the Roman Catholic church is to stand out against the law of Canada arose soon after Confederation. This town of Eastview will go down in history with at least two claims to fame; it is the last resting place of Sir Wilfred Laurier and it is the scene of this trial. It is something to have it redeemed out of the class of Dayton, Tennessee.

I take it that Your Worship will take judicial notice that there was such a man as Sir Wilfred Laurier and that he had a career. It is an historical fact that his career as a statesman was based solidly on the position he took with reference to just the point which I have now to discuss; that is to say, the supremacy of the law over all of us, the law of the lawyer; its supremacy over all of us, Methodists, Baptists, Roman Catholics, Church of England, Russellites, and so on. If Your Worship cares to verify what I say and to look into the matter to any extent, I think the most convenient place of reference is "The Life of Sir Wilfred Laurier, Vol. 1, Page 287, by Sir John Willison. He cites there the issue on which Sir Wilfred Laurier's accession to popularity and power was based. There had ben an election in Charlevoix which had been protested on the grounds that the election of Mr. Langevin -- afterwards, I think Sir Hector Langevin -- had been procured by the exercise of undue influence on the part of the Roman Catholic clergy. The election was

upheld by Judge Routhier on the grounds that the actions of the clergy were justified on the grounds of the guarantee of the free exercise of the Roman Catholic religion at the conquest. The Supreme Court reversed this decision.

I do not want to say any more about it, but just point out the issue is not a new one; it is an old one, and Your Worship could also refer to a book "Rome in Canada," by Lindsay, Page 272 of that book.

Now, what I submit is that the argument of my friend as I have understood it is in reality a subtle attempt to introduce a principle which has for 200 years, perhaps 400 years, been repudiated by English lawyers and English courts, namely, that the laws, (so-called), of any church are entitled to any support by way of punishment or sanction in His Majesty's courts.

MR. MERCIER: I object to that most strenuously, Your worship. There has been no idea or suggestion of that kind at all, and my learned friend knows it well.

MR. WEGENAST: I am trying to define the issues. There was question after question asked the witnesses whether they thought it was for the public good because that was the question, whether it was in order that Miss Palmer should go to the door of people who she knew were Roman Catholics, were French.

I have already put the question whether there is one law for these people and another law for others, and I am going to show with Your Worship's permission, which I anticipate, that there is no place for that in the mouth of a lawyer in Ontario.

HIS WORSHIP: As far as arguing that in this court of law, any rules and regulations or declarations of the Roman Catholic church have no legal standing. You needn't follow that argument.

MR. WEGENAST: But what has been done here is to drag in the idea that because, forsooth, some of these people in Eastview were Roman Catholics that there was something wrong about going to their doors and preaching the gospel of contraception.

HIS WORSHIP: Not because of the point of view of law that the court recognized it to be wrong, because it is contrary to the rules of the church, but from the various angles which had been raised and the question of public policy in this case.

MR. WEGENAST: Quite so. Then I am putting this to Your Worship; whether there can be one "public good" for the "Roman Catholic

lady living in the one house and another “public good” for the Protestant lady in the house alongside of her, and I am putting it to Your Worship that giving in to my friend’s argument means adding a sanction in effect; whether it is by way of fact or by way of law, it is adding a sanction to the decrees of the Roman Catholic church.

MR. MERCIER: Of course, Your Worship, I have objected, and I put myself on record as objecting, and I still put myself on record as objecting, but I do not say I did not expect this line of argument. I would have been very much surprised if it had not been brought up, although I submit it has nothing to do with the case.

MR. WEGENAST: The cleric may give to the rules to which he bows ---

HIS WORSHIP: In giving a decision in a case of this kind, it is possible to sanction the views of an organization. It doesn’t necessarily say the intention is to sanction their views; it may happen the view of any organization coincides with the view of the court.

MR. WEGENAST: We have it here, Your Worship, in Exhibit 105-B; that is the poster.

HIS WORSHIP: That happens to be something put up in a Roman Catholic hospital.

MR. WEGENAST: But if Your Worship will remember the evidence of Dr. Couture, he relied on the Canon Law, Section 2250, I think it was, of the Canon Law, and he argued in his own characteristic way that would not have been passed by the authorities that passed the Canon Law if it hadn’t been good philosophy.

HIS WORSHIP: Granted, but as far as this case may be decided in a certain way which coincides with that Canon Law that doesn’t establish that Canon Law as the law for the country.

MR. WEGENAST: What I am asking Your Worship is, it would in effect, if anybody can come here before Your Worship in a police court and say that because the lady living in a certain house is a Roman Catholic Miss Palmer must not go to her door, that is giving a sanction. It is exactly the point Sir Wilfred Laurier had in mind. That is my argument, rightly or wrongly.

HIS WORSHIP: But not to say it is wrong because it may be giving sanction to some Canon Law.

MR. WEGENAST: That is my submission, that it would be. I want to feel free to make my submissions to Your Worship along that line, that it would have that effect. It would divide this community of Ontario into bits, whether you take the Ottawa Valley or the Town of Eastview and say, "Miss Palmer must not operate here". Or whether you divide the territory of Eastview according to lots. (Missing word) to this court, Your Worship, at the instance of Officer Martel, is an attempt to get from Your Worship a sanction for the views of the Roman Catholic church contrary to contraceptives.

MR. MERCIER: I must say my friend's line of argument so far is an attempt to try to show to Your Worship if you don't do that, you may be criticized for doing something else.

MR. WEGENAST: That may come as it will. I am trying to show that is what it comes to.

HIS WORSHIP: I will be criticized no matter how I decide this case, so I am not worrying about that.

MR. WEGENAST: Then the cleric may give to the rules to which he bows the name "law" just as the scientist speaks of the law of gravitation or Boyle's Law, but none of these is law to a lawyer or to a court. The disquisition is clearly set forth in works like Holland's Jurisprudence, 7th edition, Page 71. The assistance of this court cannot be invoked to give validity or sanction, directly or indirectly, to a proposition of Canon Law or moral theology. It would be impossible in a British Court of Justice, -- and it always was impossible -- to give a judgment such as that in the famous case of the Sincerus v. Galileo.

HIS WORSHIP: Mr. Wegenast, as I said before, I am going to decide this case on the facts and the evidence and the law as I see it, and whether my decision gives validity to a Canon Law or not that is something I do not care about; that must fall by the way.

MR. WEGENAST: Your Worship will forgive me if I claim the privilege of arguing that Your Worship should care about it; that is what I am arguing. I may argue for some length of time unconvincingly to Your Worship, but I claim the privilege of arguing it. I may be wrong, but that is my argument.

HIS WORSHIP: All right. Judging by the questions which my friend put to some of the witnesses, the idea is that there is something questionable about some of Miss Palmer's visits because, forsooth, they were to the homes of people who are French or Roman Catholics. It would have been all right for her to call on Protestants or English.

MR. MERCIER: There is no suggestion of that; that is absolutely unfair.

MR. WEGENAST: That was the direction of the questions. Or it might have been all right for her to call at homes elsewhere than in Eastview, perhaps Mimico or Leaside. I refer to the evidence of Mr. Summerhayes, Pages H-12 to H-18. Beginning at the bottom of Page H-11, my friend said to Mr. Summerhayes (reads):

> "Q. If the wife has what she thinks are good reasons on Christian principles and wants to use contraception and the husband doesn't, do you think that the woman should find out spiritually whether she should use them without the consent of her husband?
>
> A. I think she should find out from someone who is skilled in giving such advice. That is the advice given by our bishops.
>
> Q. From someone skilled in giving the information?
>
> A. Yes.
>
> Q. In any event, you say the wife should not use contraceptives until the wife consulted the husband?
>
> A. If the husband is anything like what he should be, I would certainly suggest she should, but in the case I mentioned, I would certainly say she would be justified in doing it without asking.
>
> Q. In that case, yes, but the majority of husbands?
>
> A. They ought to be.
>
> Q. They should be decent enough to be approached on that subject?
>
> A. I should think so.

Q. And then I take it also, sir, that a woman going into a home, a social worker, where not invited, it would require, I believe you said, more care about a delicate matter?

A. It should.

Q. You consider this a very delicate matter?

A. Yes, and important.

Q. Even the fact of whether a person should use them or not?

A. Yes.

Q. And they should be brought up very delicately?

A. Yes.

Q. During the Lambeth conference, if you were here during the cross-examination of the last witness?

A. Part of it.

Q. At the Lambeth Conference, the Church of England has surrounded its findings on the matter of birth control with the utmost care. The reverend gentlemen who came to these conclusions more or less told these people: 'You may use these under certain circumstances. We beg to ask you to use self-control than use these methods or we would rather not that you should use them.'"?

HIS WORSHIP: Can you find the particular point?

MR. WEGENAST: Yes, I am just looking for that at the bottom of Page H-14, (reads):

"Q. Taking the present case, for example, and knowing that the majority -- half the number of the people who were witnesses in this case, I don't say all -- who might have been approached, but those who were witnesses in this case, were French Catholics and the majority I think were French Catholics – I am fair in saying that they had a more or less adequate knowledge of the English language"?

Then there was some further discussion. Now, Mr. Mercier goes on at the bottom of Page H-15 (reads):

"Q. And an uninvited person calls on them, and I would like to know on what grounds, what difference there is on this side of the river"?

And there is no reply to that.

"Q. That was not my grounds; I didn't wish to go into it.

A. (No reply)."

Then there was some further discussion, and Mr. Mercier goes on at the bottom of Page H-16 (reads):

"Q. I believe you have understood enough of my question; answer that. It was a case of approach where the person was not invited. Let us say in the case of a French Catholic person approached in the Town of Eastview with a slight knowledge of the English language and the person is known as a Roman Catholic; I believe I can take that for granted?

A. (No reply)."

Then Mr. Mercier said something; we more or less felt that Mr. Mercier was starting into something that he might regret. At the bottom of Page H-16 Mr. Mercier says (reads):

"Q. Having always in view it is a delicate thing and most important matter, what do you say as to the approach in a case like that?

A. One is language and the other religion; might I answer that?

HIS WORSHIP: Answer any way you see fit.

A. As far as language is concerned, I was here during all or almost all, and even in the cases speaking through an interpreter, I am not satisfied they didn't understand English. I have had quite a bit to do with families in Toronto, and where they couldn't speak English fully, in nine out of ten cases, they could understand me, and I wouldn't have to speak through an interpreter."

HIS WORSHIP: You are trying to establish the point there were questions raised about the approach to Roman Catholics?

MR. WEGENAST: Yes.

HIS WORSHIP: Certainly, there were questions raised about that. The Reverend Mr. Coburn I think was questioned as to what attitude he would take if people went into his parish and started discussing things with him. There is no reason to read all that evidence.

MR. WEGENAST: Then I will leave that because there is a good deal more than that. It goes down to Page H-18.

May I refer Your Worship to the evidence of Rabbi Sachs at Page K-8, and to Canon Hepburn at Page L-19, and Your Worship has already referred to Dr. Coburn's evidence. That is exactly what I had in mind. I am afraid I am going to be blamed for a course of discussion that I didn't start. I have to take this thing as I find it, and I invoke Your Worship's sympathy.

MR. MERCIER: The only thing I will object to is my friend trying to show me in a light which I did not take. He has referred to what he called my "fairness" several times, and now he is taking an entirely different line pointing out to the Court that is the only thing I had in mind, that I was a sort of bug on that point. I want to be shown in the true light, whatever it is, but in the true light.

MR. WEGENAST: If my friend keeps on in this manner, I am going to refer Your Worship to the lines of Shakespeare, "me thinks the gentleman protests too much". My friend is arguing his case; he is too suspicious.

MR. MERCIER: That I am, undoubtedly.

HIS WORSHIP: I will assist you to shorten your argument whenever I can, Mr. Wegenast.

MR. WEGENAST: I have already referred to the case of Sincerus v. Galileo. There could be no such judgment given in a British court. Is Your Worship familiar with what was decided there?

HIS WORSHIP: No, I don't think I am familiar with that case.

MR. WEGENAST: Well, I have the judgment right here, Your Worship.

HIS WORSHIP: What year was the case?

MR. WEGENAST: In 1615, or some years after that.

HIS WORSHIP: Of what court is that a judgment?

MR. WEGENAST: I just have the judgment itself, Your Worship; it is the Holiness, the Pope sitting in council ---

HIS WORSHIP: No, I want to know where you found the case?

MR. WEGENAST: In this book; it is called Galileo Galilei and the Roman Curia, by Karl von Gebler, printed in London, Pater Noster Square, 1879.

MR. MERCIER: It is not a law book, Your Worship.

MR. WEGENAST: Well, all the reports of decisions are supposed to be of equal value. Briefly, Galileo was condemned to death, although that was commuted.

I will read a few words from the Galileo judgment (reads):

> "…We pronounce, judge, and declare that you, the said Galileo, by this writing, and which, as above, you have confessed, have rendered yourself vehemently suspected, by this Holy Office of heresy;…"

It is a decision of the Holy Office.

HIS WORSHIP: This is in Rome?

MR. WEGENAST: Yes. (reads):

> "…That is to say, that you believe and hold the false doctrine, and contrary to the Holy and Divine Scriptures; namely, that the sun is the centre of the world and that it does not move from east to west, and that the earth does move and is not the centre of the world; also that an opinion can be held and supported, as probably, after it has been declared and finally decreed contrary to the Holy Scripture, and consequently, that you have incurred all the censures and penalties enjoined and promulgated in the sacred canons and other general and particular constitutions, against delinquents of this description. From which it is our pleasure that you be absolved, provided that, with a sincere heart and unfeigned faith, in our presence, you adjure, curse, and detest the said errors and heresies and every other error and heresy, contrary to the Catholic and apostolic Church of Rome, in the form now shown to you."

HIS WORSHIP: Are you suggesting the court is bound by this decision?

MR. WEGENAST: No, that is what I say; no British court could give a decision like that. That is an extreme case.

MR. MERCIER: I might refer my friend to the trial of Joan of Arc. He might have something very interesting there.

MR. WEGENAST: I don't know whether a British court was involved in that.

I submit the law of the lawyer, the civil law, is not only the supreme law in this court, but it is the only law.

HIS WORSHIP: Well, it is the only law I recognize. I agree with you on that.

MR. WEGENAST: Your Worship is on solid ground as far as the cases are concerned, but here is a case in the Privy Council; namely, the case of Despatie v. Tremblay in 1921, 1 Appeal Cases, 702. Lord Moulton says in part at Page 712 (reads):

> "…It must be remembered that before the cession, Canada had been governed by the laws of a country which recognized no religion but the Roman Catholic. Protestants were allowed no civil rights; marriages performed by them were held invalid and the children accounted bastards. When Canada became the possession of a Protestant Power, which though it had permitted the practice of the Catholic religion, put Catholics under grave disabilities, all this was of necessity changed. The laws of England would have obtained in Canada unchanged had it not been that stipulations were made in the various Capitulations and in the Act of Cession to secure religious freedom for Catholics. It is from these alone and the subsequent acts of Parliament relating to Canada that all the rights of Roman Catholics in Canada are derived. Full effect must be given to the engagements thus entered into and the provisions of the laws thus passed. They are definite and ample to secure to the individual full religious liberty, but it is idle and without any justification to attempt to qualify their effect by references to the ancient position of the Protestants and Roman Catholics in France under a regime which from the nature of things automatically disappeared when Canada came under British rule."

The question there was as to the validity of certain decrees made by the Roman Catholic church with respect to marriages, and it was the same issue that we had in the case of Sir Wilfred Laurier; the same issue we have in this case under my submission.

There is a good deal more in that which is worth Your worship's attention. It exactly corresponds with what Your Worship has briefly said. I draw attention to a few lines more at Page 714 (reads):

> "The religious position in the Province of Quebec in 1774 was, therefore, that every individual had the right to

> profess and practice the Catholic religion without let or hindrance. But it must be borne in mind that this is a privilege granted to the individual. There is no legislative compulsion of any kind whatever. He may change his religion at will. If he remains in the Roman Catholic community, he may, so far as the law is concerned, choose to be orthodox or not subject to the inherent power of any voluntary community such as the Roman Catholic church to decide the conditions on which he may remain a member of that community unless that power has been limited in some way by the past acts of the community itself. In other words, each member of the Roman Catholic community in Quebec possessed the same privileges as any other citizen so far as religious freedom is concerned, save that he was not subject to any of the disabilities which then and for a long time after attached to Protestant dissenters. The Legislature did not put over him as a citizen any ecclesiastical jurisdiction. The decisions of the ecclesiastical courts that existed in the Roman church bound him solely as a matter of conscience. The Legislature gave to their decrees no civil effect nor bound any of its subjects to obey them. Indeed, the Act in art. 17 expressly reserves to His Majesty the power to set up courts of ecclesiastical jurisdiction in the province and to appoint judges thereof, although that power seems never to have been acted upon. But what has just been said must not be misunderstood. The law did not in any way interfere with the jurisdiction of any ecclesiastical courts of the Roman Catholic religion over the members of that communion so far as questions of conscience were concerned. But it gave to them no civil operation. Whether the persons affected chose to recognize those decrees or not was a matter of individual choice which might, or which might not, affect their continuance as members of that communion. But that was a matter which concerned themselves alone."

What I submit here is this is an indirect attempt to invoke the jurisdiction of this court to give validity and sanction to an ecclesiastical principle.

So that I understand, Your worship agrees, and my friend does not argue to the contrary, that there is no law in this Court

which is any higher than the laws passed by the Parliament in Canada on the strength of the British North America Act?

HIS WORSHIP: I would be very interested to find any other law.

MR. WEGENAST: Well, that is that much. Having regard to some of the theories that have been propounded here by witnesses like Dr. Couture and in documents brought out, Your Worship would have to take a course in canon law. This poster is a practical attempt, and if we can be sure that this thing called canon law, these rules posted up in the hospital, have no more force than the rules of a club, then I am satisfied. That is my understanding, that they have no more force than the rules of the Rideau Club. If you don't like them, you can get out; if you don't obey them, they can put you out, and that is all there is to it.

HIS WORSHIP: If you are asking me if I am prepared to rule a person could be prosecuted in a court of law for breach of something set out in the pamphlet there, I would certainly be prepared to oppose it.

MR. WEGENAST: Then why in the world isn't this prosecution dropped if that is the case? I can't see it.

MR. MERCIER: If that is the only point, Your Worship, and my learned friend wants to leave it at that, I will prove to my friend why it should not be. That is what my learned friend would like it to be.

MR. WEGENAST: It is a serious question, Your Worship. It was a serious question in a British jurisdiction which passed under the British Crown at the same time as the soil on which you are standing, namely, the United States. It arose in acute form in connection with the candidature of Alfred E. Smith for the Presidency of the United States. The question was -- and it was publicly discussed, and it was a very important factor in the election, it was argued on the one hand that Alfred E. Smith by his religion was compelled to acknowledge an authority above the civil law. This was on the other hand denied. It doesn't matter for our purpose which was right. Either the civil law, the law of the courts, is to be obeyed or it is not. Either it is the last word or it is not. If it is not the last word, then we know where we are at. And I say to Your Worship that we cannot in this court listen to any challenge to the law.

And we cannot listen to any argument the effect of which would be to ask Your Worship to give validity to a command or an inhibition or a restriction of liberty that is not provided for in the statute or Common Law. If anyone has any other kind of law he wants enforced, he must go elsewhere for his force. He cannot get it here.

MR. MERCIER: There is no difficulty about that, and I absolutely concur.

MR. WEGENAST: I submit, parenthetically, the officer Martel had no business taking these boxes from the woman and not taking them back. They were not legally held; there was no charge against these women.

Another point, Your Worship, that is interesting, if not important: that if there are any rules -- and it has been so held by the Privy Council, if there were any rules, they would not be the rules of the Roman Catholic church as now constituted; they would be the rules of the Gallican Church, the Church of France, and we have the authority in the Privy Council to which I will refer Your Worship.

HIS WORSHIP: An interesting point, Mr. Wegenast, but we have a lot to cover.

MR. WEGENAST: It is a case of Brown v. Cure etc. de Montreal, in Law Report 6, Privy Council, and there Sir Robert Phillimore, in his judgment, covers the ground, on my submission, and comes to the conclusion -- and it has not been disputed since -- that the rules, if there were any which any court in Canada should observe, are the rules of the Gallican Church.

If I appear to be laboring this point, it is because the matter is so vital and basic when we come to deal with our friends, the philosophers. They rest upon the implicit assumption that there is an authority higher than the Dominion Parliament and higher than Your Worship to which we must bow, both you and parliament. Here is what the encyclical Casti Connubii says on Page 5 of this exhibit; I think it is 86-B (reads):

> "Hence, these laws -- this is important -- making marriage indissoluble, cannot be abolished by any human decrees."

On Page 7, it is laid down (reads):

> "…to circumscribe in any way the principal ends of marriage laid down in the beginning by God himself…is beyond the competency of any human lawgiver."

I am absolutely certain of my ground when I say to Your Worship that there are people in this country who subscribe to the doctrine there is an authority higher than Your Worship and higher than the Dominion Parliament to which you must both give obedience, and I am afraid, Your Worship, that is what Dr. Couture is invoking and that he attempted to say in some way implicit proposed to give effect to that, shall we call it, "principle".

I cite the passage from the Encyclical letter of Leo 13th on the 10th of January, 1890, the Encyclical called "Sapientiae Christianae". (Reads):

> "But if the laws of the State are manifestly at variance with the Divine Law, containing enactments hurtful to the Church, or conveying injunctions adverse to the duties imposed by religion, or if they violate in the person of the Supreme Pontiff the authority of Jesus Christ, then truly, to resist becomes a positive duty, to obey, a crime; a crime moreover combined with misdemeanour against the State itself, inasmuch as every offence levelled against religion is also a sin against the State. Here, anew, it becomes evident how unjust is the reproach of sedition; for the obedience due to rulers and legislators is not refused; but there is a deviation from their will in those precepts only which they have no power to enjoin. Commands that are issued adversely to the honour due to God, and hence are beyond the scope of justice, must be looked upon as anything rather than laws. You are fully aware, Venerable Brothers, that this is the very contention of the Apostle St. Paul, who, in writing to Titus after reminding Christians that they are to be subject to princes and powers and to obey at a word, at once adds, and to be ready to every good work. Thereby he openly declares that if laws of men contain injunctions contrary to the eternal law of God, it is right not to obey them. In like manner, the Prince of the Apostles gave this courageous and sublime answer to those who would have deprived him of the liberty of preaching the Gospel; if it be just, in the sight of

God, to hear you rather than God, judge ye, for we cannot but speak the things which we have seen and heard."

We have that issue over and over. I have selected these passages from Encyclical letters just to make it clear I am not barking up the wrong tree.

It is, of course, a thoroughly established doctrine, particularly of the Jesuit moral theologians, that the Pope of Rome is above all other rulers, and that there are some subjects upon which he alone can legislate. The question was whether Alfred E. Smith would submit to legislation and the courts of the United States or obey legislation dealing with marriage.

Let us put to Your Worship what the real basis is of the objection of the Church of Rome to contraceptives. It is all involved in the claim of the Church of Rome to exclusive jurisdiction over marriage; and with marriage the church groups divorce and contraceptives and education, the theory being that marriage -- the establishment of the home -- involves the bringing into being of creatures which are not able to look after themselves; these must be cared for until they reach full growth, must be fed as infants and must be educated to take their place in the community. So that marriage includes at once education and a sort of coterie of subjects in which the Roman Catholic church brooks no opposition; with respect to which the Church of Rome will recognize no enforcement by any civil power.

That is the general theory, and that is what we are facing; it is a phase of what we are facing here. No matter how carefully -- let us say no matter how tenderly the thing is put, it absolutely comes down to that, and my submission to Your Worship is that the Bishop of Rome is of no more consequence in this court than the Archbishop of Canterbury or the Bishop of Ottawa or a colonel of the Salvation Army.

HIS WORSHIP: I agree with that.

MR. WEGENAST: These last have at least the advantage of being fellow subjects of His Majesty George VI. The Bishop of Rome is presumably a subject of King Victor Emanuel of Italy. At all events to Your Worship and to my friend and to me, he is a foreigner.

The proposition is that, in some way or other, those people in this country or in this district who stand in allegiance,

religiously speaking, to the Bishop of Rome stand in a different relation to their fellow citizen, Miss Palmer, from other people in Canada or in the Ottawa Valley. It might be in order for Miss Palmer to visit people in Mimico or Leaside, suburbs of Toronto, but not in Eastview, a suburb of Ottawa, because she knew or ought to have known that these people in Eastview stood in such a relationship to the Bishop of Rome that the knowledge of the use of contraceptives ought to be kept from them.

We must remember always that no one proposes that these people should violate their consciences or should be prevented from going to the Roman Catholic church or prevented from hearing the view of the Bishop of Rome as to how they should conduct themselves. We may concede to the Bishop of Rome the same right to persuade people as we would concede to our fellow subject Mahatma Ghandi or, let us say, Bernard Shaw. But to say that this Court ought to recognize a special group of citizens called Ghandites or Shawites and ought to prevent the Gandites from calling on the Shawites to try to show them a better line of conduct because, forsooth, the Shawites might afterwards suffer in their consciences -- the mere statement of the argument is enough.

It is well known that there is a religious cult which thinks it wrong to cook in aluminum dishes. What would Your Worship say to a proposition that a peddler of aluminum ware must not knock at a Russellite door?

Russellites do not vote in elections. It is against their consciences. Would Your Worship listen to an argument that it was not for the public good that a Liberal or a Conservative candidate or worker should try to persuade a known Russellite to vote one way or the other because it might afterwards cause a tension in his mind?

But the evidence is overwhelming that the constituents of the Bishop of Rome have no such inhibitions of conscience as are predicated for them by my friend. The evidence is overwhelming that the constituents of the Bishop of Rome in Eastview have no such inhibitions of conscience as are predicated for them by my friend. They were his witnesses and they all bared the fact that their conscience was clear in the matter. The one exception, Mrs. Duhamel, was almost as convincing as the majority for her evidence was given in a manner strongly suggestive of reciting a lesson rather than revealing a state of conscience.

Even if there had been a bias of conscience against the use of contraceptives -- Suppose Miss Palmer or Mr. Kaufman thought it was a wrong bias, unreasonable, unsocial against public interest. Is this not a free country? Can not Miss Palmer or Mr. Kaufman bring to these people what they consider to be the truth? If Miss Palmer had been an agent for Fuller brushes or a representative of the Upper Canada Bible Society, could she have been prevented from walking the streets of Eastview and going to people's doors even if she had not had a reference from someone? If the resident of the house did not want to talk to Miss Palmer, all he or she had to do was close the door. In the one case where it might be argued that the approach by Miss Palmer was impromptu, the reception was strongly suggestive of the celebrated case of the woman of Samaria at the well.

I understand the question thoroughly, the question posed by Section 207: whether the actions of Miss Palmer and of the Parents' Information Bureau served the public good. But my friend seeks to show that, somehow, they did not serve the public good because there was something reprehensible in Miss Palmer's calling on people in Eastview with a message directed to what she or her employer thought was for the public good. My friend argues that the mere bringing of the message was bad. They did not have to receive the message. They did not even have to listen to it. They certainly did not have to use the contraceptives even after they got them. But the proposition is that they must not know; they must be kept in ignorance. It is not for the public good that they be given even the choice.

I have adopted as part of my argument the words of Disraeli, already in evidence, that "Ignorance never solved any problem".

It is a basic tenet of our form of government, as well as of morality itself, that rules of conduct, whether they have to do with property or social relations or anything else within the purview of law, rest ultimately on the consent of the governed; that is to say, the majority of the voting public.

That is not to exclude Divine intervention or Divine authority. But the Divine influence and will must be exercised through the minds and consciences and votes of the voters of the country. If enough voters could be persuaded to vote for a government or a parliament which would pass a law to make the use of contraceptives illegal or to make divorce illegal, everybody

would have to obey. That is the way religious teachers will have to work if they want recognition in this Court.

Hitler, of course, scoffs at this idea. And so does the dictator of Italy. They liquidate the opposition. I feel like using the words of the street, “and how”. We had it in Russia a few days ago, and we see by the morning paper it is threatened on a much larger scale.

We, in this country, a British country, finished with the Divine right of kings a long time ago. The Europeans who undertake to advise and instruct us have that still to learn.

It could hardly be denied by the most religious-minded that if God chooses to intervene in the making of rules of conduct, it is within His power to act through the minds and hearts and consciences of the individual voters as effectively as through a bishop or a papal emissary. The English system of government under which we live has no objection to that and will put no obstacle in its way. But by the same token, the system under which we live will brook no obstacle in the way of informing public opinion and putting it in a position to judge what the best influences, human and Divine, indicate. And so freedom of the press, freedom of congregation and consultation, and freedom of communication are the most prized among our public rights. It was the right not merely of Miss Palmer, but of Mrs. Desjardins and Mrs. Duhamel that Miss Palmer should be able to speak to Mrs. Desjardins and Mrs. Duhamel and that Mrs. Desjardins and Mrs. Duhamel should be able to listen to the gospel of contraception. It was their right.

What possible legal sanction can be invoked against Mr. Kaufman or Miss Palmer to prevent them from persuading Mrs. Desjardins or Mrs. Duhamel to a more excellent way? There was no call for Mr. Kaufman in instructing Miss Palmer to tell her either to keep away from Eastview or to make any difference in her methods or manner of approach. Nor is there any warrant in the law of Ontario for setting up a category of French Canadians. They are British subjects resident in Ontario. They are subject to exactly the same law as the rest of the residents in Ontario of British or other origin, for example, the Irish.

What does Mr. Kaufman’s pamphlet contain that in the eyes of the law is worse than the contents of “Rhythm”? The object is the same, to prevent conception. And the advice on that score is

given with a wealth of rhetoric totally absent in Mr. Kaufman's pamphlet. "Rhythm" was really out to get results. Look at the cover. If giving information to people is advertising, what is this extraordinarily effective piece of propaganda? I say, Your Worship, if Mr. Kaufman's pamphlet is advertising, what is this Exhibit 86?

If Miss Palmer had had a book store in Eastview in which she sold the pamphlet, could she under the law have been convicted? That is the same question. Even "Rhythm" and "Legitimate Birth Control," which are distributed under ecclesiastical authority and for profit, indicate not only one method of contraception, but that others are available at drugstores, etc.

How could it possibly be contended that the dissemination of this information is for the public good and that the dissemination of Mr. Kaufman's pamphlet is a crime? If the circulation of "Rhythm" is for the public good, the rest of means of birth control must be bad precisely because the law recognizes the knife-edge theological distinction of the Roman Catholic church and ignores scientific, sociological, economic, and medical considerations. The difference between the Rhythm method and the ordinary contraceptives is entirely a matter of means, not of purpose or end. The evidence on this is uncontradicted. I have put that to Your Worship again, at the risk of wearying you, that if Your Worship should by any chance adopt this theory, -- the only theory so far as I can see on which my learned friend's case can rest -- it will be exactly because Your Worship says the end doesn't count; the means is the thing. It can't be otherwise, Your worship. All this talk about scientific, sociological, economic, and medical reasons must go by the board; the difference between "Rhythm" and other contraceptives is entirely a matter of means, not of the end.

As a matter of ascertained fact, the conditions in some respects were not essentially different in Eastview from what they are in the rest of Anglo-Saxon America. We have shown the facilities of the local drugstores. The authors of this prosecution seem to have underestimated the resources of the old hometown.

(Missing Page 40)

One of my friend's witnesses broke out, "They do strange things in Toronto". Toronto used to be sneered at as "the Good". Now, my friend draws his robes about him and is afraid his Ottawa

Valley may be contaminated. I say to him that he is in no different position from a Crown Attorney in Toronto or Orillia or Coboconk.

So much for the “offensif Torontonien”.

--- 11:30 a.m. Court adjourned for recess.

--- Court resumed at 11:40 a.m.

MR. WEGENAST: Your Worship, I have a volume here out of the library of the House of Commons, which Mr. Beament is under obligation to take back; The House is in session. I want only to refer to a paragraph of it, and I will show it to my learned friend. I have had it copied out, but I just want to make sure my learned friend will not question a copy.

MR. MERCIER: I am not objecting to it.

MR. WEGENAST: Unpleasant as it may be, what Your Worship has to face -- even if I were to leave it unsaid -- is the existence of an element, a religious element, if you will, for I propose to drop this farce of a philosophy -- an element which I believe does not include anything like the whole of those whom we speak of as Roman Catholics; an element which not only withholds its loyalty to some of the laws of the land but commands even science, astronomy, medicine, physics, economics, sociology to take its orders from an infallible authority at Rome; to disregard truth as demonstrated by reason and to adopt as standards of what is for the public good notions which outrage the best instincts of the human race.

Exhibit 86-B shows the present attitude toward science. Speaking at the Congress of Catholic Physicians at Vienna on the 24th June 1936, Father Gemelli, (Dr. Agostino Gemelli, O.F.M., Rector of the Catholic University of Milan), in conveying the blessings and greetings of the Holy Father said, (reads):

> “The Pope expects us to prove in the field of medicine that, seen from the point of view of biology, the Church did not err when she condemned eugenics and sterilization as errors and social crimes.”

What an attitude for a scientific congress!

There shall not be therapeutic abortions. There shall not be instruction in contraceptives. The life of the mother shall be sacrificed to the child. Nothing shall effectually interfere

with the right of the diseased to bring into the world beings condemned to lives of misery and suffering. I propose to refer to that later.

Now, so far as the question of language is concerned -- I must anticipate the case, but I submit to Your Worship there is no evidence that any of the witnesses were immigrants unless migration from Quebec is immigration, which perhaps it may be if there is a real line of demarcation -- Miss Palmer had a right to assume that as British subjects, residents in Ontario, they would use the English language. Most, if not all of them, did. If the argument is that foreigners -- Germans, Poles, etc. are entitled to interpreters, we fall back on the general position that social workers have to meet these conditions as best they can. And after all, they are not distributing anything harmful.

I suppose I need not seriously concern myself with the argument that Mr. Kaufman, instead of financing this philanthropic effort himself should have invited this and that other person to join with him and have meetings and elect officers and discuss this and that and call upon this and that person for donations of money. He cut the red tape and got results. Your Worship will not condemn him on that account.

It is of the peculiar genius of American life that these social services which arguably ought to be conducted by governments have been started by private agencies or individuals and later taken over by the government. From this statement, Mr. Silcox excepts Quebec and the Latin countries in South America. In French Canadian community life, one knows that the initiative comes from the presbytery or the palace. It may be putting it strongly but not incorrectly to say that to a French Canadian the idea of a single man doing what Mr. Kaufman is doing seems indecent and impious, and that may help to account for this prosecution in Eastview.

But at all events, it would seem that the Latin idea is to wait for some central authority to move. For a single individual to take it on himself is a bit silly. One knows, of course, Your Worship, that was one of the characteristics of the French on the St. Lawrence, and it was a very distinct line of difference between they and the English on the seaboard.

However, the Latin idea has its points. It is more logical. What are governments for? But in the Anglo-Saxon world, we have had

Plimsoll playing a lone hand and he got results. We have other examples in our own country; we had other examples cited by Mr. Silcox.

I am making this point, Your Worship, in case there should be an objection that this man Kaufman had no business to start off on a programme of this kind, should have had the desire or thought himself chosen to do this work. But most large movements for benefitting mankind, the public, are one-man jobs. Even in France, that is to some extent true; Your Worship will remember the terrible time Pasteur had or latterly one-woman jobs because we have Florence Nightingale, Marie Stopes, and Mrs. Pankhurst to mention only three. Dettweiler, the originating genius of the Hydro Electric system, and his follower, Adam Beck, worked on that theory. The important thing, of course, is to get the thing done if it is something that wants doing.

I do not, of course, adopt the theory of Smulders espoused by some of the witnesses for the Crown, especially by Dr. Couture, that the all-important thing is the means, not the end; that it is the means that makes the difference.

I would like to call Your Worship's attention particularly to two paragraphs from Bromley which were read into the record by Mr. Silcox on Page E-21 of Mr. Silcox's evidence (reads):

> "In September 1934, there were 147 clinics and mothers' centres scattered over the country and more are being organized every month. These centres of birth-control information are of different types, although they are all staffed by accredited physicians. A certain number, like Mrs. Sanger's, carry on under independent auspices, some having been established by a committee of public-spirited men and women; others by a state birth-control league or local birth-control group. A second type of clinic, like the one in Hull House, Chicago… --- (and Mr. Silcox interjects) 'If I might interject, it is generally well-known Hull House in Chicago is the mother house of social settlement work in the United States.' ---"…is housed by a social welfare organization and supported either by a state or local league or by a responsible group of citizens. A third type is maintained by hospitals as part of their service. A fourth, still comparatively rare, is supported by the public health authorities. In a few communities and rural districts where there is no established clinic,

> arrangements have been made with reputable physicians to advise patients of the lower- and moderate-income class on a clinic basis.
>
> In New York City, the hospital clinics for the most part confine their services to their own patients and make admission so complicated that many women prefer to register at Mrs. Sanger's clinic or at one of the neighborhood mothers' centres now located in a number of settlement houses. In a few cities, however, the hospital clinics serve a wide public. In Detroit, the Harper Hospital Clinic is one of the most active in the city, and in Cincinnati, the Maternal Health Clinic, established under the aegis of the Academy of Medicine, and now housed in the Children's Hospital Research and Clinic Building, serves every class of the community."

I have read those paragraphs, Your Worship, to give point to this observation -- or first let me remind Your Worship that is the book which Mr. Justice Riddell pronounced as the best book that has appeared on birth control, and if Your Worship is looking for any general information, I would suggest that is perhaps the best of the lot.

But I am going to put to Your Worship this, which may seem like forcing the issue, but I think it is in order: How could Your Worship, in the light of passages like that which I have read, in the light of the enormous aggregate of writing and activity on the part of men like Mr. Justice Riddell and Lord Buckmaster and Lord Wrenbury hold that this work on birth control was not for the public good? Is Your Worship going to rule that Mr. Justice Riddell is on the downward path of moral depravity? That is what it amounts to; Mr. Silcox, Professor Kemp, Dr.Coburn, Mr. Summerhayes, Colonel Sims, Mr. Zeidman, Mr. Essex, Mrs. Halkins, not to speak of the doctors, are all on the downward path of moral depravity and are headed for perdition. And the good women who saw nothing wrong, what is going to happen to them? They have undergone a lifetime of teaching, and they have presumably enjoyed all the ministrations of the church who would have kept them on the straight and narrow path, but look where they are.

Dr.DeHaitre and the little coterie who have kept themselves from even an elementary knowledge of what they are talking about, they are on the shining upward way. This is not sarcastic; it is

literally the position of the witnesses for the Crown who opposed birth control.

The others have the company of 193 bishops of what they think is the Holy Catholic Church. It is for Your Worship to say whether they are “agents of social corruption,” to use the language of the editor of Le Droit.

I want to pass to the examination of the terms of the section of the Criminal Code with which we are dealing. First, may I point out that what we are concerned with is a charge of “advertising instructions, drugs, medicines or articles intended or represented as a means of a pamphlet. Was it advertising? And if advertising, advertising what? What contraceptive? Was Miss Palmer advertising vinegar? Was she advertising soap? Was she advertising jelly? Was she advertising a condom? Was she advertising pessaries? Was she advertising Rhythm? Advertising, we have submitted, implies an element of commercialization. Your Worship recalls that we find, not infrequently, in newspapers an item which is set up in the ordinary type of the newspaper, but with a sense of decency, I suppose, the newspaper puts at the top “Advertisement”. That is what we mean by an advertisement in ordinary language.

Let us take it this way: Would a doctor, for example, if he recommended a woman to use Lysol in the bathroom, would he be advertising Lysol? What the pamphlet does is nothing more than recommend and discuss; there is no thought of commercialization. In fact, we cannot, in these modern times, discuss anything of this kind without using the commercial names. We use aspirin; we use a.b.s.c. tablets; we use these various names that are given to products. And the pamphlet goes on to give formulae, to give simple homely remedies. My submission to Your Worship is there is nothing in the pamphlet that in the remotest degree suggests advertising as that word is ordinarily used, and I submit this, Your Worship: If there is any doubt, if my point is arguable at all, if there is any doubt whether it is advertising, then Miss Palmer is entitled to the benefit of the doubt under ordinary principles.

Some reference has been made to a slip of paper, which was found in some of the boxes, which gave the prices. That, of course, Your Worship, is not part of the charge: the charge is “advertising by means of a pamphlet”. If the intention was to include that, it should have been included in the charge. The

obvious intention of the slip, of course, was to let these people see where supplies could be obtained at the minimum of cost, and as was established in the evidence and not contradicted, the practice was to give the information only to those who had, as the French version has it, been “recommended”.

I might refer Your Worship to the authority of Hardcastle on this point. Your Worship might see Hardcastle, 4th edition, at Page 67. The Court must presume the ordinary popular meaning unless there is some reason to the contrary. I admit at once, Your Worship, it is possible to speak of advertising a religion. Some enthusiastic commercial traveller referred to Jesus as the greatest salesman. Well, you use a phrase of that kind, but one knows that an advertisement is an advertisement, and as I have already submitted to Your Worship, if there is any doubt about it, it must be resolved in favor of the accused. This Court will not, by an interpretation, broaden the scope of this penal provision. The rest of the section purely refers to commercial transactions. The words are, “Offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means or instructions or any medicine, drug or article intended or represented…and so on.” The other words in the section are all compatible with an intention to aim at commercial exploitation of contraceptives. Why should the word “advertise” be given an extra-commercial signification that would extend it beyond its ordinary popular meaning? That puts my point.

Now, when we begin to consider the evidence, in this case, to discover whether it discloses any offense against the law, we shall have to carry in mind some idea of what the law is, what it forbids, and what it permits. And when we come to consider the rule laid down in subsection 2 and to apply it for the first time, at all events, in relation to the matter of contraceptives, we are compelled to look round for our bearings, for landmarks. We must see what the law was before this section was enacted. We must consider what was the evil aimed at. That is the ordinary, commonplace rule of interpretation.

Was it to prevent the use of contraceptives? Obviously not. Was the intention of the section to prevent the use of contraceptives? That is what the editor of Le Droit assumed. Was it to prevent the sale? No, for it provides for justification. It was to prevent a certain kind of sale or commercialization. What kind? The kind that is not for the public good. The kind

that amounts to obscenity. Your Worship will remember that the heading of the section is “Publishing obscene matter”. I suppose it is admitted that a doctor could give a prescription which a manufacturer or a druggist could fill, and it falls to Your Worship to take the first step in the elucidation of the principles laid down in the section as applicable to the work of sociology.

It cannot be too often or too emphatically stated that all we are concerned with is the question of circulating the information, whether that was for the public good. The question whether a contraceptive should be given or used without the intervention of a physician is a further question. And the charge is not giving or selling, it is “advertising”. There is more chance of excess in the actual giving than there is in the advertising. It is easier, Your Worship, for me to prove that there was no excess when it comes to advertising than it would be if it were a matter of “giving”. We are not charged with “giving away” anything; we are charged with “advertising”. And all the evidence as to the propriety or desirability of consulting the husband before using is irrelevant to the charge of advertising. That comes in when you come to the using of it.

Another way of testing the question of public good is to put the question: “Should the information about contraceptives be buried in medical textbooks and in the brains of doctors or should the information be popularized?”. There is a very strong argument on this in “Legitimate Birth Control” at Page 21, to which I would like to refer. Dr. DeHaitre agreed with the argument in the book that it was in the public interest that the information should be available to all.

Here is what Father O’Brien says: ---

HIS WORSHIP: That is an exhibit?

MR. WEGENAST: My copy is not marked, but it is at Page 21 and a page or two more (reads):

> “Why bother about it? Why bother, however, about the broadcasting of this information through the Catholic press? Why not allow it to remain buried in medical journals and scientific monographs until it finally comes after a long span of years to the general public? Simply because the Church is interested in the welfare and the happiness of her own children and indeed of all humanity.

> She is not the harsh, stern mother, inconsiderate of the cries of her children for happiness as she is so often depicted by her enemies. She is a tender, kind, and loving mother, responsive to all the anxieties and yearnings of her children.
>
> She concerns herself with the economic welfare of mankind. She descends from the high and comfortable ground of generalities, and braving the quicksand of shifting economic theories, wrestles with the complicated minutiae of industry and commerce, computing the cost of raw material, the expense of manufacturing, the market value of the product, the amount of profit and the hours of labor to secure justice for the employer and fair wages for the employee. She throws the strength of her moral power and influence in support of those struggling for the elimination of child labor in factories and long hours of labor for women in workshops."

Then he goes on, presently, setting out why it is desirable in the interest of parents and children that the knowledge should be disseminated as far as possible.

Now, that is the view that I hold out to you, Your Worship, and I put it that that and not the publishing of this information in textbooks is in the public interest.

What was the object that the legislature had in view in passing this legislation? And to size that up, we have to look at the law as it was and something of its history. There is no better way of ascertaining this than by examining Stephen's Digest. His propositions as to what the law was were based on certain decisions ending with the case of Rex against Bradlaugh and Besant. It is Stephen's 7th edition, Page 170. It is quite illuminating, but I will come to that presently.

Stephen's propositions were the basis of the draft Criminal Codes prepared by three successive government commissions each of which I think Stephen was a member.

HIS WORSHIP: It is a draft code of England?

MR. WEGENAST: Yes, never passed in England. And these draft codes were the basis of this code passed by the Canadian Parliament in 1892.

The question with which we are concerned is whence came this idea of applying the standard or criterion of the "public good". And what does it mean? What Section 207 deals with is criminal libel. This form of offence was developed in the Court of Star Chamber, and the basis of it was the theory of the likelihood of causing a breach of the King's peace, and Your Worship will see that set out in Holdsworth. In other words, it was a branch of criminal law.

The remedy at first did not extend to obscenity or obscene publications as such and for some time, it was doubted whether there could be a libel without a particular object or person libelled. For example, it was held by Holt, Chief Justice in Rex versus Read in Fortescue's Rep. 98, 92 English Reprint 777 that obscene publications were not punishable at common law because there was no one libelled. But later, in Rex against Curl, 2 Str. 789, -- I am sorry; I do not know the exact date of this case. At all events, it was held that such publication was against the public order whether anyone was libelled or not. It was a breach of the King's peace, and Rex against Read was overruled. Your Worship will observe it comes out of the Court of Star Chamber.

Now, I point this out, Your Worship: Rex against Bradlaugh was apparently the first case where the law of obscene libel was definitely attributed to sexual matters. And Your Worship, may I point out that works like Shakespeare's and many other works which appeared at that period in English history would never have got past the censor; they couldn't have been published according to Victorian ideas of what was proper, and there was not at the period in English history any such conception as we have developed somehow or other now that these things are obscene to speak about, and that a police officer has got to go around and gather up literature, and so on, and keep people good and honest. There was no such idea 200 years ago. As a matter of fact, the earlier English cases show that the law, even in those times, was concerned as much with matters excretory as with matters sexual. It wasn't a matter of sex; it was a matter of what was nasty.

Your Worship will find the case of Sir Charles Sidley, the facts of which I don't want to discuss publicly. It is quoted in the case Rex against Read, Fortesque's Report 98 if Your Worship cares to look at it.

HIS WORSHIP: What volume of Fortesque's?

MR. WEGENAST: There is only one volume, I think, but I can give Your Worship a reference to it in 92 English Reprint at Page 777. That is the case of Rex against Read. It was a matter of doing something that was liable to break the King's peace, get people angry and start something, and that was the basis of the offense.

In June 1877, Charles Bradlaugh and Mrs. Annie Besant were tried before Chief Justice Cockburn for publishing a pamphlet called "The Fruits of Philosophy" which had been first published in Boston in 1832. The defendants were convicted and sentenced, but the conviction was quashed by the Court of Appeal on the ground that the indictment didn't set out the passages alleged to be obscene.

The legal situation in England is to be gathered from the Bradlaugh case and later developments from it. The most general exposition of the law is to be found in the summing up of Chief Justice Cockburn to the jury. This is not found in the regular reports, but is found in a book called "The Queen against Charles Bradlaugh and Annie Besant," and this book has been referred to by the judges in later cases, so I feel free to put it in Your Worship's hands. I had to send to New York, at considerable expense, to get copied out the portions I want to read to Your Worship. Then I succeeded in getting the book itself from New York. Then in my office in Toronto, we found another copy, so I have the two here. I can send over to the hotel for it, and put one in your Worship's hands for a few days, although I am charged to take very good care of it; they are very rare.

This book is referred to in a judgment that I want to read presently, but I want to read this from the book at Page 255, and it is summing up Chief Justice Cockburn, and that I think is the basis of Stephen's observations (reads):

> "Gentlemen of the jury, there is one point on which I think everyone who has attended to this trial will cordially concur with the Solicitor-General, who has just addressed you, and that is as to the mischievous character and effect of this prosecution. A more ill-advised and more injudicious proceeding in the way of a prosecution was probably never brought into a court of justice. Here is a

> book that has been published now for more than forty years which appears never to have got into general circulation to any practical extent, and which by this injudicious proceeding has been resuscitated and sent into general circulation to the extent of thousands of copies. And when the learned Solicitor-General says that in consequence of the challenge sent forth by the defendants to the police authorities after the work had been given up at Bristol, that they were prepared to publish it and sell it with a view to challenge the question whether it was a work which might really be circulated -- when the Solicitor-General says that left no alternative to the authorities but to meet that challenge, I must say that I do not agree with him. And when he talks of the authorities, I should like to know who are the authorities and what are the authorities to whom he refers. He did not venture to tell us that anybody except the policeman who was put into the box on the part of the prosecution is, in fact, the prosecutor in this case. I should very much like to know who are the authorities who are prosecuting because that has not yet transpired. The Solicitor-General tells us it may have been the magistracy. I do not believe it. I, however, entirely concur with him that however ill-advised may have been this prosecution, here it is: Every man has a right, even if he is only a detective policeman, to put the criminal law of the land into motion if he thinks he has ground for so doing, so long as the government of this country thinks proper to have the administration of justice defective in that which, from this place I say, is an essential necessity with a view to its proper administration (I mean the office of a public prosecutor)--- so long as every individual, however rash, however ill-advised, has the right to put the criminal law of the land in motion. If he does so, he has the right to ask that the case shall be treated with due consideration and shall be disposed of according to justice and to law…"

I point out, Your Worship, that the Chief Justice thought it proper to interest himself in the question as to who in the world brought this prosecution, and I think it would be interesting, in this case, to find out how this present case started; who was it prompted the officer Martel to go from door to door to collect the evidence? Who was it that got him to spy

on Miss Palmer and stand outside Mrs. Mousseau's door to accost her when she came out? With whom were the police consulting all the long afternoon before they put Miss Palmer under arrest? One wonders also, by the way, why the charge with reference to Mrs. Mousseau was dropped. Why were they not spying on drugstores and filling stations and stationery shops? These questions are exactly in line with what the Chief Justice considers germane to the issue before him. But like him, Your Worship must say (reads):

> "Therefore, we have the case here, and however much we may deplore the rashness which set this prosecution going, we must deal with it as though it had had the sanction of the Crown, which I do not think it has, although the Solicitor-General appears to conduct it. It is not a government prosecution, nor have we any evidence that it is a prosecution set on foot by any authority which we should be disposed to treat with any great amount of consideration, but it is a case certainly deserving of your most serious attention. There is one thing in which I cordially agree with the Solicitor-General and that is that no better tribunal can be found in the world to judge of such a question as this than the average sound sense and enlightened judgment which is to be found in English society, and I quite agree with what has been said on both sides that the decision in this case when I have told you what the indictment is and what the law is rests solely and entirely and exclusively with you. If you are of opinion that this book in its details or in its scope or in its effects deserves the character that the Solicitor-General says has set its stamp upon it, your verdict ought to be undoubtedly given for the prosecution. But before you arrive at that conclusion, you must carefully consider this work, both in its detail and in its general effect. The indictment charges the defendants that they 'unlawfully and wickedly devising, contriving, and intending, as much as in them lay, to vitiate and corrupt the morals as well of youth as of divers other liege subjects of our said lady the Queen, and to incite and encourage the said liege subjects to indecent, obscene, unnatural and immoral practices, and bring them to a state of wickedness, lewdness, and debauchery, therefore, to wit, on the 24th day of March, A.D. 1877, in the City of London and within

> the jurisdiction of the Central Criminal Court, unlawfully, wickedly, knowingly, wilfully, and designedly did print, publish, sell, and utter a certain indecent, lewd, filthy, and obscene libel, to wit, a certain indecent, lewd, filthy, bawdy, and obscene book called 'Fruits of Philosophy,' thereby contaminating, vitiating, and corrupting the morals. That is the charge, and here, again, I agree with the Solicitor-General that if the effect of the work is as the words here designate it, and the defendants did, as they openly avow, intentionally publish the work, and that be its character, they must abide by the result however strange and anomalous that may seem. While it is admitted that they were acting under the belief that they were doing good in what they did, nevertheless, they are to be held responsible to the extent of its being found against them that they published this work which tends to deprave the morals of society.
>
> Now, gentlemen, as I have already said, you are the judges in this matter, and you have had this book before you, and you have had it in all its details and in its general effects commented on by both sides, and by this time, you must be pretty familiar with it. I am bound to tell you what the law says about it. Although it is a law of modern times and unknown, I believe, to the old common law of England, and forming a portion of that part of our law which is called 'judge-made law,' there it is; it is the law of the land, and we must all abide by it…"

HIS WORSHIP: Mr. Wegenast, are you proposing to read the whole of this charge to the jury? I can read it through later. If you could summarize on the important parts of it, ---

MR. WEGENAST: It is discursive, and I have gone over it many times. I think Your Worship will go over it more than once. I am leaving it at that instead of taking the time here.

I point this out that after the trial was over, Bradlaugh brought an action against the police for the recovery on his books and the action was successful.

The pamphlets were recovered and sold to the public with an inscription across them, "recovered from the police".

Now, I have to bring this in; it doesn't appear whether the prosecution of Bradlaugh was, in any sense, under Lord

Campbell's Act and whether the recovery of the pamphlets was under Lord Campbell's Act. Lord Campbell's Act was an act with reference to obscene literature and provided a summary method of seizing pamphlets or whatever it might be that was being published and having them destroyed, but that will appear presently.

Now, I come to the Stephen's sizing up of what the law was as a result of that summing up, and not having read it, perhaps Your Worship will take my interpretation of it wherever it becomes necessary. Stephens had it in this form: In his book, if Your Worship will refer to it -- this whole thing gets quite involved, Your Worship, but Your Worship might take my word for it that it isn't possible to come to any satisfactory conclusion without going through the steps which I want to point out to Your Worship. Your Worship will see that.

> "Everyone commits a misdemeanor who without justifications… (a) and (b)."

Then he puts this at the bottom with the word "submitted" in brackets (reads):

> "A person is justified in exhibiting disgusting, obscene books, papers, writings, prints, pictures, drawings or other representations if their exhibition or publication is for the public good as being necessary or advantageous to religion or morality, to the administration of justice, the pursuit of science, literature or art, or other objects of general interest, but the justification ceases if the publication is made in such a manner, to such an extent or under such circumstances as to exceed what the public good requires in regard to the particular matter published."

That, I submit, perhaps is the first, outside of the very discursive charge to the jury, very definite thing I have to put before Your Worship as saying what the "public good" probably means.

Then Sir James Stephens adds this in a footnote which is before Your Worship: Will Your Worship look at the "7" in Clause "A" of the draft on Page 170; there is a footnote 7 in the text about the second or third line. The footnote is this (reads):

> "These words are added in reference to the case of Rex against Bradlaugh tried before Cockburn, Chief Justice, on

> 18th June 1877. I have not seen any report of the trial itself. Proceedings in error on the ground that the indictment was defective were taken in 1878 and are reported in Bradlaugh against Rex, 1878, 3 P.B.D. 607. The jury found that the book prosecuted called “The Fruits of Philosophy” was published in good faith for the public good and that it recommended immoral practices. It appeared in evidence that it was not obscene in the sense of being calculated or intended to excite passion.”

Taking that case, he makes that observation, which I have read to Your Worship, as to what public good amounts to. The passage in question in the Digest, therefore, represents Stephen’s view of the law as the result of what transpired in the Bradlaugh case.

The result of the Bradlaugh case, however, was anything but conclusive. The summing up of the Chief Justice was rather definitely in favor of the defendants. Your Worship, of course, knows that the jury found against the defendants and said what they had published was calculated to deprave public morals, but that their motives were perfectly good, and on that finding, the judge was compelled to convict.

It is not at all clear that the finds of the jury in the Bradlaugh case disclosed an offense known to the law. This point was argued in the Court of Appeal, but the case went off on the other point that the publication complained of should have been set out in the indictment. It was argued also on the motion for judgment if that is what you call it; the case was adjourned and came up for sentence, and it was argued then.

It had been set out in his opening by the Solicitor-General that the offence charged fell under the head of obscene libel. I discovered that after reading through those books several times. There is nothing in the charge to the jury to indicate that. I mention that particularly because there were certain definite rules with regard to the crime of obscene libel that had been settled years before, and in some way, Chief Justice Cockburn, not only in this case but in two other cases to which I may refer Your Worship, had overlooked, the way that a charge of obscene libel actually worked out. I am coming to that, however.

It had been set out in his opening by the Solicitor-General that the offence charged fell under the head of obscene libel, and it

would seem that the prosecution could have been met by the defence that the publication was for the public good. I may say, Your Worship, this defence of “public good” is much older than the Bradlaugh case. It may be that the finding of the jury is to be interpreted that the publication was not for the public good, but that is anything but clear.

The Digest of Stephen, therefore, assumes the form of a criticism of the charge of Cockburn, Chief Justice, in not putting to the jury the test of the public good for a finding. Hence, perhaps the word “submitted”.

As a matter of fact, the expression “the public Good,” is older than Stephen’s Digest. It is found in the Libel Act of 1843, 6 and 7, Victoria, Chapter 96, Section 6, where it is used to distinguish punishable criminal libel. Since publication of contraceptive information falls historically under the head of obscene criminal libel, Stephen apparently felt justified in adopting “public good” as the test, although the expression had not been used in the case of Rex against Bradlaugh, which had immediately laid down the law as to contraceptives. That is to say, somebody slipped up in the case of Rex against Bradlaugh in not pointing out to the judge that it should have been left to the jury whether it was for the public good or not. It seems to have been left to the jury at large on certain loose expressions as to whether they considered it had a tendency to deprave public morals, but the question of whether it was for the public good was not put to the jury.

HIS WORSHIP: But the jury found the book prosecuted was published in good faith for the public good. That is in the footnote of Stephen.

MR. WEGENAST: But I submit that is not correct, Your Worship.

HIS WORSHIP: That is Stephen’s comment in the footnote; isn’t it?

MR. WEGENAST: Yes, of course, a text writer must not take issue with a judge like a Chief Justice.

HIS WORSHIP: You submit Stephen is wrong in stating the jury so found?

MR. WEGENAST: In effect, he may be right, but they didn’t find it in so many words. That is one of the reasons why Your Worship

really should go through that charge as Sir James Stephen had to do. Here is what the foreman of the jury said (reads):

> "We are unanimously of opinion that the book in question is calculated to deprave public morals, but at the same time, we entirely exonerate the defendants from any corrupt motives in publishing it."

Your Worship will see how difficult a situation that was for Stephen. Stephen knew as a good lawyer that the defence of "public good" was a good defence to a charge of criminal libel, and here was the Chief Justice conducting the case throughout without referring to it and without putting it to the jury, so it was anybody's game to figure out just exactly what was meant, and that was the best Stephen could do writing his text. I put it this way in the notes I have here, although the words "public good" do not appear in the judicial pronouncements in these cases there was equivalent language, which Stephen paraphrases by using the old well-known term and test.

Now, in a Commissioners' Report, Volume 20, there is a report of the Royal Commission; that is a report of the Commission appointed to consider the law relating to indictable offences, with an appendix containing a Draft Code embodying the suggestions of the Commissioners. The date is 1879. Sir James Stephen was on the Commission.

HIS WORSHIP: We are still in England?

MR. WEGENAST: Yes, Your Worship, we have got as far as the library at the Parliament Buildings.

Section 147 of the Draft Code is substantially as in the present Section 207 except that Item "C" is simply, "publishes any obscene libel". If Your Worship will look at Section 207, I think it will be found that has considerable significance. That is instead of "C," as we have it at the bottom of the page, there was only this, "publishes any obscene libel". That was all.

HIS WORSHIP: That was in the English Draft Code?

MR. WEGENAST: Yes, that is the way it was brought into Canada; that is what I am going to point out.

In the notes on Page 22 of this Draft Code, there is this item on Item "C":

> "We believe that this section as to obscene publications expresses the existing law, but it puts it into a much more definite form than at present. We do not, however, think it desirable to attempt any definition of obscene libel other than that conveyed by the expression itself."

They didn't think it necessary or desirable to define "obscene libel" any further than it has been done.

In Taschereau, Third Edition, Your Worship will find that this note is quoted as if it were applicable to the whole of what is now Section 207; that misled me for considerable time in trying to figure out.

HIS WORSHIP: What is the Taschereau book you refer to?

MR. WEGENAST: Criminal Law. It wasn't the Annotated Criminal Code, but the Third Edition of Taschereau. I haven't the page, but of course, it is quite incorrect in applying it to the whole section.

Now, in effect, Your Worship, Item "C," as we have it in this draft, does what the drafting Commissioners thought was unnecessary; namely, it undertakes to define "obscene libel". It may have been Sir John Thompson who brought the bill up, but I haven't succeeded in finding any account of the debates in committee, and what I was able to unearth gives no clue as to why it was thought necessary to explain this. At all events, somebody expanded the phrase "publish any obscene libel" into substantially what we have here.

I point this out to Your Worship, that the commission drafting the Criminal Code undertook to separate the functions of judge and jury in dealing with the question of public good. Their draft provides that:

> "It shall be a question of law whether the occasion of the sale, publishing or exhibition is such as might be for the public good and whether there is evidence of excess beyond what the public good requires in the manner, extent or circumstances in to or under which the sale, publishing or exhibition is made so as to afford a justification or excuse therefore, but it shall be a question of fact whether there is or is not such excess."

HIS WORSHIP: You are back to the English Code?

MR. WEGENAST: Yes. If this embodies the law as it was when the Bradlaugh case was decided, Cockburn, Chief Justice, might and probably should have made the preliminary decision whether there was evidence that the publication in question might have been for the public good. And he might and perhaps should have left it to the jury to say whether they were satisfied it was for the public good and whether there was any excess. Cockburn, Chief Justice, should have put before the jury these three questions:

1. Did the publication tend to deprave public morals?

2. Was it for the public good?

3. Was there any excess over what the public good required?

If that had been put in the Bradlaugh case, the result might have been different, and I suggest Your Worship should have those three questions in mind.

The whole of this, of course, is analogous to an ordinary case of libel. And it comes to something like the same question as that in Sutherland against Stopes, whether the various pleas can be rolled up in one. The analogy to the law of libel is adverted to in some of the judgments, and proof of public good was always considered a good defence to a charge of obscene libel. In other words, proving public good is proving that the publication is not obscene.

The Code has saved my friend some little trouble by starting off in specific terms that certain dealings with contraceptives and contraceptive information if without lawful justification or excuse are indictable offenses.

Now, the enquiry under the Criminal Code comes virtually to the same thing as that under the common law. If the publication is for the public good, it is not to be classed as obscene unless there was something about the mode of treatment or the occasion or circumstances of the publication that went beyond what the public good required. That is what the question of excess amounts to. It is accordingly quite arguable that this section, as it stands, is a codification of the law.

We may also remember in this connection the provision of Section 16 of the Criminal Code, which gives Miss Palmer the benefit of any common law defence. Will Your Worship look at Section 16? (reads):

> "Common law rules in force. All rules and principles of the common law which render any circumstances a justification or excuse for any act or a defence to any charge shall remain in force and be applicable to any defence to a charge under this Act, except in so far as they are hereby altered or are inconsistent herewith."

So that it may be said sub-section 2 was unnecessary.

All these authorities are important, but I think I should point out to Your Worship under Section 306 and Section 251, the Criminal Code also cuts across the path of the canon law. I mean to say Your Worship can not listen directly or indirectly to these rules, no matter what certain individuals may think of them, as compared with what we call the law. Your Worship can not listen to any depreciation of the precise provisions of the law as we find it in the Criminal Code, and I simply point out these sections as further examples of the sort of situation that has to be faced by our courts and our judges. It is common knowledge that it is against Roman Catholic principles to recognize divorce in any shape or form, and yet we have good Catholic judges sitting on the bench and granting divorces. It is an anomaly, one that we have to reckon with and deal with as best we can, respecting sincerely all conscientious scruples and respecting what we call character in these people, but it is as I have already submitted to Your Worship, a thing Your Worship must just shut your ears to.

In these sections, -- one deals with the killing of an unborn child, and the other one dealing with the question when a child becomes a human being. The Roman Catholic theory, of course, differs definitely from that of the Criminal Code. The authorities which I have cited are important, Your Worship, as bearing on the general question as to whether the dissemination of information on contraception is or is not for the public good. Certain it is that they indicate that the court will be favorably disposed to an argument to the effect that contraceptives and information regarding them are for the public good.

But the main consideration for the moment is to see how the courts go about estimating whether a publication is, on the one hand, obscene or, on the other hand, for the public good. And the basic question was whether the publication tended to corrupt public morals.

Your Worship, may I say that I propose to assume that when I have shown that birth control is good in England or in the United States or in Madagascar or in Toronto, I have gone at least some distance in showing that it is good for these people in Eastview, and if any proof were needed that Miss Palmer's ministrations were especially needed in Eastview, we have it in the evidence of Professor Kemp to which I propose to refer later.

But I do not propose to entertain, unless Your Worship compels me to do so, the idea that I must confine myself in this respect to Eastview.

The question in the English and Australian cases was whether the publication in question was obscene. And the question of obscenity resolved itself into the question of whether the publication, either because of the subject matter itself or because of the manner of treatment, tended to corrupt or deprave public morals. Whether a publication would tend to corrupt public morals would depend, for one thing, on the state of those morals. What might corrupt them in 1877 would not necessarily have had an effect on them in 1936.

For example, in the case in New South Wales -- I don't think Your Worship has a reference to this, Ex Parte Collins, (1888), in 9 New South Wales Law Reports, at Page 497. I now refer to Page 509; Mr. Justice Windeyer said this -- I may say, Your Worship, this case is directly in point, and I propose to read Mr. Justice Windeyer's judgment. It exactly bears on the question which Your Worship has before you, and on this point, I will refer to Page 509 (reads):

> "With this growth of public opinion, the law has also grown. A prosecution, as Lord Coleridge says in his able charge in the case of Regal against Ramsay and Foote, (48 L.R.N.S.733), which was possible for seditious libel because they decorously discussed the respective advantages of a hereditary or elective monarchy without any reflection upon any part of the existing government, and which was carried to a conviction, would be impossible under our present ideas of political freedom."

And I refer to a passage in the judgment of Lord Justice Scrutton in the case of Sutherland and Stopes in the Court of Appeal. Your Worship will find it in 39 Times Law Reports at Page 677. He says (reads):

> “In 1877, (when the Bradlaugh case was decided) it would have been impossible to discuss publicly, say venereal disease, but since the war, the most respectable newspapers have opened their columns to these discussions. The merits and methods of artificial birth control are in a similar position. In 1877, it would have been impossible to discuss them publicly. In 1923, there has been a great change in public opinion as to the necessity for discussion coupled with great differences of opinion about the advisability of such methods.”

The submission is that the question of public good may be determined by the state of public opinion. Parliament evidently intended this to be so. No doubt the court would not be bound to decide the case in accordance with public opinion if the weight of the other evidence was against that opinion. That is to say if Your worship was convinced public opinion on the point was wrong, I don’t suggest for a moment Your Worship couldn’t decide against the current of public opinion, but it is still a question of whether the standards of public opinion are being violated. And the fact that the practice is general and has the approval of the majority of the public is an element that the Court may consider. To do otherwise would be to assume that the majority of the people were morally depraved. That is, of course, what Canon Whalley thinks.

I point out also there is no basis for the assumption that the Legislature had anything against the use of contraceptives as such. The Legislature has nothing against the use of contraceptives as such. There is no law against the use of contraceptives. In the Bradlaugh case, the question was whether it was obscene for Bradlaugh to publish a six-penny edition, available to anyone, of a book dealing with the facts of life, particularly as to preventing conception. In Miss Palmer’s case, the question is whether her method of approaching women in their homes amounted to obscenity.

Now, of course, it is generally admitted that the publicity which arose out of the Bradlaugh case had a profound effect in England in more than one way and was responsible for a number of great changes, not only in publishing information but in actual practice. In fact, a very considerable drop in the birth rate in England is attributed by some writers, rightly or wrongly, to the effect of the Bradlaugh case.

There was another prosecution soon after against a man by the name of Truelove, who actually served out a four-month sentence for issuing a work called "Moral Physiology" by Robert Dale Owen, and when he came out of prison, he was met with brass bands and great rejoicing showing that the public opinion was backing Truelove rather than the court, and soon after that a number of works appeared; one by a man by the name of Owen and another, Besant's "Law of Population," which had an enormous circulation. As I have said, the whole proceedings had a profound effect upon English public life. Your Worship will find a short account of the Bradlaugh case in the Encyclopedia Britannica, in Volume 3, on conception.

HIS WORSHIP: We will adjourn until 2 o'clock.

--- 1:00 p.m., Court adjourned until 2:00 p.m.

--- 2:00 p.m., Court resumed:

PRESENT:

MR. R. MERCIER, Counsel for the Crown

MR. F. W. WEGENAST, K.C.

Mr. A. W. BEAMENT, Counsel for the Defence

MR. WEGENAST: I want to refer to the Australian case Ex Parte Collins. In this case, Your Worship, the headnote is (reads):

> "Applicant has been convicted under 43 Victoria, No. 24, S.2, for selling a book advocating and explaining the use of artificial checks as a remedy against over-population. Held on motion for prohibition, per Windeyer and Stephen, Judges, the meaning of the statute, and that the prohibition must go."

It seems to me, Your Worship, there is a mistake in copying that.

HIS WORSHIP: He didn't copy out the whole of the headnote. It says:

> "Held on motion for prohibition, per Windeyer and Stephen, JJ., Darley, C.J., dissentiente, that the work was not an obscene publication within the meaning of the statute, and that the prohibition must go."

MR. WEGENAST: Well, the rest doesn't matter, but this is important (reads):

> "This case comes before us on motion to make absolute a rule nisi, granted by me, calling upon a stipendiary Magistrate to show cause why the conviction of the applicant of selling an obscene pamphlet, under Section 2 of the Obscene Publications Prevention Act of 1880, should not be set aside upon the grounds:
>
> 1. That the work in respect of which he had been convicted was not an obscene publication.
>
> 2. That the information was defective in not setting out the matter charged as obscene."

I need not read the second paragraph because this refers to the second part. Then he goes on (reads):

> "The first objection taken to the conviction raises a question which involves not only the consideration of a topic difficult of discussion coram populo but the very right of the public discussion of a subject of great importance to civilized society. The difficulty of dealing with the matter is not lessened by the fact that the question involved comes for consideration surrounded by all the prejudices with which centuries of ignorance and thoughtlessness have invested it, accompanied by fear of the world's censure, on points about which all who reverence purity and the ideal life of goodness would least wish to be misunderstood.
>
> Apart from the obligation which is cast upon a judge to declare the truth as he sees it, only the love of truth and an earnest desire to benefit mankind could compel anyone in the present state of the world's education to pronounce an opinion upon a subject with reference to which it is so much easier to win a reputation for sanctity by declamatory violence against new ideas as to the essential in morality than by a life of virtue and of that service of man which is the true service of God."

And, Your Worship, how true that is now, fifty-seven years later.

> "A court of law has now to decide for the first time whether it is lawful to argue in a decent way with the earnestness of thought and sobriety of language the right of married men and women to limit the number of the children to be begotten by them by such means as medical

science says are possible and not injurious to health. Of the enormous importance of this question, not only to persons of limited means in every society and country but to nations, the populations of which have a tendency to increase more rapidly than the means of subsistence, there cannot be the slightest doubt. Since the days when Malthus first announced his views on the subject, to be misrepresented and vilified, as originators of new ideas usually are by the ignorant and unthinking, the question has not only been pressing itself with increasing intensity of force upon thinkers and social reformers dealing with it in the abstract, but the necessity of practically dealing with the difficulty of over-population has become a topic publicly discussed by statesmen and politicians. It is no longer a question whether it is expedient to prevent the growth of a pauper population, with all its attendant miseries following upon semi-starvation, overcrowding, disease, and an enfeebled national stamina of constitution, but how countries suffering from all these causes of national decay shall avert national disaster by checking the production of children, whose lives must be too often a misery to themselves, a burden to society, and a danger to the State. Public opinion has so far advanced in the consideration of a question that has become of burning importance in the mother country by reason of its notoriously increasing overpopulation that invectives are no longer hurled against those who, like John Stuart Mill and others, discuss in the abstract the necessity of limiting the growth of population, but they are reserved for those who attempt practically to follow up their teaching and show how such abstract reasoning should be acted upon. It seems to be conceded by public opinion and has indeed been admitted in argument before us that the abstract discussion of the necessity of limiting the number of children brought into the world is a subject fitting for the philosopher and student of sociology. The thinkers of the world have so far succeeded in educating it upon the subject, and public attention is so thoroughly aroused to its importance that every reader of our English periodical literature knows it to be constantly discussed in magazines and reviews. Statesmen, reviewers, and ecclesiastics join in a common chorus of exhortation against improvident

> marriages to the working classes and preach to them the necessity of deferring the ceremony till they have saved the competency necessary to support the truly British family of ten or twelve children. Those, however, who take a practical view of life will inevitably ask whether the masses, for whose benefit this exhortation is given, can be expected to exercise all the powers of self-denial that compliance with it would involve. To what period of life is marriage to be postponed by the sweater in the East End of London earning his three or four shillings a day without any hope of ever being able to educate, decently house, and bring up eight or ten children?"

Then he goes on to discuss some of the inconsistencies of those who argue against the use of checks as he calls them. He goes on in the next paragraph to deal with the question of population, and then he refers to Jenner. Further on, he goes into the field of medicine. I don't want to read too much of this, but may I go on at Page 509? (Reads):

> "In the region of religious discussion, it is the same. In an empire, the sovereign of which rules over more non-Christians than Christians, it has become an obsolete fiction that Christianity is part of the Common Law."

That is a strong statement, Your Worship, to which I do not want to consider myself bound because I have already made the suggestion I think it is a basic theory that the Christian religion in its Protestant form is part of the Common Law of the Province of Ontario. My friend seems so interested that I am tempted to go on and say that I think probably the Church of England is still the established church of Ontario.

MR. MERCIER: No doubt about that, the established church of Canada.

MR. WEGENAST: Well, I don't know that Canada has an established church. One doesn't know whether that would be a matter of provincial or dominion jurisdiction.

HIS WORSHIP: That is a question I don't have to decide.

MR. WEGENAST: No, but my friend was so surprised at my statement that I thought I would get another rise out of him with this.

Now, he goes on to comment on the changes. There was, apparently, we might say, a "Victorianism" in religion, as well as in other things. I will skip three pages here, and I think if Your Worship would look over that, you will find that he covers pretty well the ground which Your Worship has to cover, but with a paucity of evidence which Your Worship has not had to contend with. At the bottom of Page 512 (reads):

> "The definition of the word obscene adopted by Sir James Martin in the case of Bremner and Walker runs as follows: Obscene: Offensive to chastity and delicacy; impure; expressing or presenting to the mind or view something which delicacy, purity, and decency forbid to be exposed, as obscene language and obscene pictures."

My submission is what we are concerned with in this case is not the use of contraceptives -- is not the rightness or wrongness of the use of contraceptives; it is not really, Your Worship, the question of whether the use of contraceptives is for the public good; it is whether the discussion is for the public good and whether there has been excess; in other words, whether it is obscene, and my submission will be that that is really the whole field. Of course, we get into the larger questions more or less inevitably, but we have to resist the temptation to act on the assumption that the larger question of whether contraception is good for people or not is the real issue. The real issue is whether the discussion of contraception is or is not for the public good and as I have said, in short, whether it amounts to obscenity.

Then there is a reference to the discussion by Sir James Stephen, and on Page 513, he comes to the charge of Chief Justice Cockburn. He refers to this book which is before Your Worship, the pamphlet by Miss Annie Besant entitled "Law of Population," and so on. Then he makes this point on Page 514 (reads):

> "The information afforded in the third chapter of the pamphlet, if given by a medical man to a patient suffering from over-maternity or if whispered in matrimonial confidence, if imparted in the privacy existing between the author and the reader of her pamphlet, is not obscenity, though the public proclamation of the same information on a placard in George Street or Piccadilly so that all who ran might read would be an obscenity of the grossest kind."

I pause there, Your Worship, to make this point that a great deal, one might say almost everything, turns on the way in which the publication takes place. If Miss Palmer had gone out and posted illustrations and slogans on billboards, that might have been one way; if she had advertised in newspapers, that might have been one way, but to go discreetly from door to door, as my friend would say, -- we say of course it wasn't in the ordinary sense from door to door, but to go to places where she was referred and discuss the matter discreetly, decently with the lady of the house is an entirely different matter. There can be no question what Mr. Justice Windeyer would have thought of that manner of communication. Then further down the page (reads):

> "Everyone who knows what some, but only some, boys are and who remembers his school days must know that he has seen not only Lempriere's Classical Dictionary but the Bible itself used for the disgusting purpose of picking out passages which public decency forbids to be read aloud. No one, however, thinks of prosecuting a vendor of Lempriere's Dictionary or the Bible Society as publishers of obscene books. The intention and general scope of a work being clearly matters involved in determining the question of obscenity, it is possible to avoid a consideration of the general purpose of the pamphlet."

You can make a great deal of literature obscene by using it in a certain way; a great deal depends on the way in which the matter is used. The time, place, and circumstances are all important.

I will skip a large section again. This perhaps is an argument Your Worship should not overlook. On Page 516, he says (reads):

> "In all other matters of breeding but the all-important one of the breeding of the human race, the aim of man is to defeat the effects of nature's laws of reproduction and to limit the number and kind of animals produced to the amount required for the use of man."

That, I would say to Your Worship, is a rather important argument.

> "The forces of nature, blind and ruthless in their effect, we control and defeat in their operation by all the means that science places at our command. To protect churches and hospitals from the operation of nature's laws, we put up conductors to arrest the inexorable effects of lightning,

which would remorselessly destroy what piety and humanity would protect." And so on.

"The course of nature is to kill a noble woman, a devoted wife, and a loving mother if her pelvis is too small to admit the delivery of a child with an abnormally large head."

The obvious arguments are, I would say, in many more cases more effective, but I do hesitate to read paragraph after paragraph of this judgment. There is this paragraph on Page 517 (reads):

"Where is the immorality, if already broken in health from unresting maternity, already having a larger family than she can support when the miserable breadwinner has drunk himself to death, the woman avails herself of the information given in this book, and so averts the consequences of yielding, perhaps under threats of violence, to her husband's brutal insistence on his marital rights?" And so on.

Then the morality argument is put effectively at the bottom of Page 517 (reads):

"The argument, founded upon the allegation that the advocacy of preventive checks is immoral, seems to me equally untenable and founded upon a misconception of what is true morality. As this pamphlet points out, true morality is ever identical with the greatest good of the greatest number."

Some might cavil at that, Your Worship, but it is an arguable proposition; "the greatest good of the greatest number" is certainly morality in one sense.

"To quote from the pamphlet, its quoted words of another author whose book was long advertised in the Westminster Review and which has never been the subject of a prosecution, though its advocacy of preventative intercourse is as outspoken as that of the pamphlet before us, 'It is immoral to give life when you cannot support it. It is immoral to bring children into the world when you cannot clothe, feed and educate them. It is immoral to crowd new life into already crowded houses and to give birth to children wholesale who never had a chance of healthy life'."

Then there is mention of the two cases to which I want to refer Your Worship, and I will do it in this way, perhaps, as well as any other, by reading what His Lordship says about it near the top of Page 518 (reads):

> "The cases of the Queen against Hicklin and Steel against Brannan, which have been cited, have no direct bearing upon the question before us. They simply illustrate the doctrine that if the immediate effect of a publication is to injure morals, the publication cannot be excused on the ground that its ultimate object was laudable.
>
> The Queen against Hicklin turned upon the right of a political society to publish in the form of a pamphlet entitled 'The Confessional Unmasked' extracts from certain Roman Catholic theologians on the practice of auricular confession, the object of the society being 'to protest against teachings and practices which were un-English, immoral and blasphemous, and to maintain the Protestantism of the Bible and the liberty of England'."

The result of this case was that the feelings of… (missing Page 87)

> "Begin with assuming that the matter is obscene, and the right decision is clear enough in any case. The fallacy lies in assuming that evil is done that good may come, when the real case is that some few may be injured in trying to do good to the many."

You can't say because somebody's feelings are going to be hurt in this matter because some old-fashioned people, among whom I would like to be classed myself, are shocked at this sort of discussion; that doesn't get you anywhere. You have got to decide whether it is in the public interest; that even if it shocks our feelings, the great mass of the public should be entitled to think about it and to deal intelligently with the problem, and that is what he is addressing himself to throughout this judgment.

I am jumping over a great deal that I would like to have Your Worship read. Then on Page 520 (reads):

> "Both Lord Cockburn and Lord Blackburn in their judgments lay stress upon the mode in which the book was sold to young and old at the corners of the streets, and the

> judgment of all the judges manifestly went upon the ground that the publications of the filthy matter was not necessary, in their opinion, for combating the evils of the confessional system; Lord Blackburn pointing out the occasion of the publication is never irrelevant, and that the question was whether the matter published, which might be injurious, was more injurious than the occasion warranted. Mr. Justice Mellor, who seems to have seen the danger of bucking the expression of the truth in bona fide controversy, in giving judgment says, 'I confess I have, with some difficulty and some hesitation, arrived very much at the conclusion at which my Lord and my learned brothers have arrived. My difficulty was, whether or not the publication was under the finding of the Recorder, within the Act having reference to obscene publications. I am not, certainly, in a condition to dissent from the view which my Lord and my brothers have taken as to the Recorder's finding, and if that view be correct, then I agree with what has been said by my Lord and my brother Blackburn. The nature of the subject itself, if it may be discussed at all, and I think it undoubtedly may, is such that it cannot be discussed without, to a certain extent, producing authorities for the assertion that the confessional would be a mischievous thing to be introduced into the kingdom, and therefore, it appears to me very much a question of degree, and if the matter were left to a jury, it would depend very much on the opinion which the jury might form of that degree in such a publication as the present'."

That again is very pertinent; it is a question for Your worship, as a jury, whether it is arguable on the whole as you find it; Miss Palmer's method of circulating the pamphlet -- Take the whole thing; take the method because, after all, one must take it. Miss Palmer was only a link in the chain; she was one step in the process, and Your Worship must consider the whole process; whether taking it all in all, this was the sort of thing that went beyond what His Lordship, in the passage I have just read, indicates as the boundary line. Then he goes on (reads):

> "I take it for granted that the magistrates themselves were perfectly satisfied that this work went far beyond anything

> which was necessary or legitimate for the purpose of attacking the confessional."

The question for Your Worship would be whether Miss Palmer, who circulated these pamphlets, went beyond what was necessary for the accomplishment of the work of informing these persons who apparently were in need of the means of obtaining a remedy.

Now, jumping to Page 520, he says (reads):

> "His judgment evidently was given on the sole defensible ground that the publication of such filthy matter as was there published was not necessary for the purpose of the controversy."

If Your Worship could reasonably come to the conclusion that what Miss Palmer did was not necessary, what of the rest of them? Where was the excess?

Now, we have many cases in the records on excess. I am going to point out to Your Worship here what I think gets at least on the edge, if not over the edge, of excess. I want to refer to this book, "Rhythm". On Page 22, we find this sentence ---

The discussion has been as to the process of fecundation of the ovum, and by way of making the discussion more understandable or popular, the author refers to the "mother cell" and the "father cell" and he says (reads):

> "Possibly the mother cell is dependent upon the father cell more than the latter is upon the former, a beautiful symbol of marital unity and chivalry."

Now, I rather shrink from that. I think Your Worship will understand what I mean. I may be a little squeamish, but I just don't like it, and I think I am expressing the popular view. But here is one a little worse on Page 32 (reads):

> "If the mother cell does not find her 'hero,' she languishes and dies within a few hours."

I say, Your Worship, that is getting a bit over the line. Those are the only places of that kind on the very decent discussion of the subject in "Rhythm," but that is the sort of thing that I would think would be the beginning of excess in a discussion. If it were language of levity or language that was suggestive, illustrations that were unnecessarily realistic, and things of that sort, that took the discussion out of the dry, hard matter

of fact, which for some reason or other one considers desirable in discussing subjects of this kind --wherever you find that, I would say it is fair to begin to talk about excess. The question for Your Worship would be whether the methods employed by Miss Palmer had any content of that, and a little content, I suppose, of it, as in this case, one can forgive; one is human and there must be a margin for error. But any considerable amount of levity, of invitation to libidinous thought of action would be, under my submission, the beginning of excess.

Then there is this passage on Page 521 (reads):

> "It was not necessary, as Lord Cockburn suggests, to prevent the English people from becoming Roman Catholics that filthy matter should be sold at the corner of the streets to every boy and girl already of the Protestant faith." (That is the sort of thing we have to consider.)
>
> Such a course of action rather pointed to the conclusion that the object of the publication was to insult a small number of the religionists in England and to make money by the sale of filthy matter. In this pamphlet, there is no filthy matter published, as was the case in 'The Confessional Unmasked,' and the physiological information given with the information how conception may be prevented is clearly necessary for enabling men and women to understand how the evils following upon the unlimited procreation of children may be prevented."

Now, jumping again to near the bottom of Page 521, this is on another point which Your Worship has to consider because I think it arises on some of the questions my friend asked.

> "The unrestricted sale of arsenic is undoubtedly attended with some danger to society, but no one, I presume, would absolutely stop the sale of 'Rough on Rats' because it may be used by some people for poisoning their neighbours."

I submit, Your Worship, that is a very good way of putting the argument. There is evidence that some of the witnesses felt, -- that is I think as high as we can put it -- that the sale of contraceptives might encourage promiscuous, illicit relations, and might, although it is a little harder to see how, assist prostitution. Canon Hepburn, for instance, and other witnesses met that fairly with an argument "you have to take things with the defect of their qualities"; you can't have 100 percent good

with absolutely no bad of anything. What a horrible picture the moralists could paint of the evils of the automobile; look at the evils physically, people killed and maimed, and think where we would be financially if there was not such a thing as the automobile, the economic advantages of forbidding automobiles. If we are going to have the advantages of automobiles, we have to take them with the defects of their qualities and put up with a certain amount of disadvantages. And it is that way with everything in life worth having; I don't know of a single exception. The suggestion of one good councilman in the Town of Orillia was that it wasn't for the public good that a certain nurse, one of Mr. Kaufman's nurses, should go around Orillia showing people how to space their babies because they had a baby carriage factory in Orillia and it would hurt business. It is exactly the same thing. We understand from the newspapers that was actually solemnly discussed in the town council, and that was put forward by one of the councillors as an argument against contraceptives.

Will Your Worship note this just at the end of Page 521 which I was going to submit, and I can do it with confidence behind the protection of His Lordship:

> "Whether the verdict of the jury was right in that case is not a matter of law, but of opinion. Reading the summing up of Lord Chief Justice Cockburn with some knowledge of judicial modes of putting criminal cases to a jury, it appears to me that, though expressing no direct opinion as to its character, the learned Chief Justice thought that the book was not an obscene libel and was cautiously guiding the jury to that conclusion."

He didn't succeed, but I think Your Worship would come to the same conclusion reading that written charge to the jury, which I did. It really should all be read, and I think Your Worship would come to the same conclusion I did before reading this judgment in the Australian case. Chief Justice Cockburn wanted the jury to let Mr. Bradlaugh and Mrs. Besant off and charged to that effect. Now, that is important, again, as bearing on Sir James Stephen's sizing up of the law. I think the law as to obscenity in the Bradlaugh case is to be found not in the finding of the jury, which, after all, is as explainable as findings of juries are in our time and country, but in the discussion some time previous of the Chief Justice, and I think

it is rather easy to read out of that judgment what His Lordship read out of it; namely, that Chief Justice Cockburn thought that Charles Bradlaugh and Mrs. Besant were in order in circulating the book that was in question in that case, that it was for the public good and therefore not obscene.

Then he goes on (reads):

> "By the opinion of a jury coming to the consideration of so delicate a question of social science as was submitted to them, probably without any previous acquaintance with subjects of the kind, I decline to be in any way bound, and having read the book, I have no hesitation in saying that had I been a member of the jury, I should have acted upon the reasoning of Lord Chief Justice Cockburn and acquitted the defendants."

I think possibly Your Worship will let me observe that it is a serious question whether the sort of evidence which has been adduced at this trial, sociological and economic and so on, is a proper field for a jury. It would be very easy to argue that the evidence which has been adduced before Your Worship would have been lost on a good many juries and that I think we have to agree with what His Lordship is referring to here.

> "Not only does the whole tenor of His Lordship's summing up appear to me argumentatively in favor of the defendants, but from certain passages, it appears to me that the inference is clearly to be drawn that he neither thought the physiological details of the book were obscene nor was of the opinion that its teaching would promote immorality. He says on Page 261 of the special report printed by the defendants, which bears every appearance of authenticity…"

I don't think I will read that, Your Worship. He cites it to (missing word) his opinion that the Chief Justice was for an acquittal. Then he goes on at Page 523 (reads):

> "This latter passage seems to me clearly to indicate that, in the opinion of Lord Cockburn, the adoption of the preventive checks recommended would not be immoral; for how could it be urged by any reasonable being that the wish of married people to bring no more children into the world than they could support and the adoption of the necessary precautions to effect that wish would be immoral." And so on.

The rest is argument of the kind we have had here. He cites the Golden Rule at the bottom of Page 523 (reads):

> "Active altruism: The distinctive feature of Christian teaching inculcated in the precept, 'Do unto others as you would men should do unto you,' can never in its application injuriously react upon the moral nature of those who seek to put it in force with regard to any conduct which may affect the happiness of others. The profound law of ethics that in trying to do good to others we unconsciously benefit ourselves is no less true here than in all other phases of human conduct. Every thought entertained, every effort made for the good of others must elevate the thinker and the actor. Who will say that the low and vicious parents of East London's gutter children, brought up amidst all the moral horrors of overcrowding, half-starved and stunted in growth, without elementary notions of decency or morality -- who will say that such parents would not have been morally superior if they could have seen the wrong they were doing in bringing such offspring into the world and had taken measures to prevent it?"

Then skipping again, he refers to some dicta in the Court of New South Wales. I want to refer to this, and if my friend has found it, he might cite it against me. I want to give Your Worship the antidote to the poison which my friend might possibly instil in Your Worship's mind by referring to the case of In Re Besant, and here is the way Mr. Justice Windeyer sizes it up:

> "In the case of In Re Besant, there are also expressions used by the Master of the Rolls, Sir G. Jessel, condemning another book published, but not written by the author of this pamphlet before us, and entitled 'The Fruits of Philosophy'. What was the language of that book we, as a Court, are not informed, and we are therefore not in a position to say judicially whether it was an obscene book, though the Master of the Rolls seems to have thought it was, as he says, 'I am sorry to say that on my attention being directed to some of the pages of this pamphlet, I can entertain no doubt whatever as to its being an obscene publication. My view is exactly the same as was entertained by the Lord Chief Justice of England and a jury on the occasion of the trial of Mr. Bradlaugh and Mrs. Besant for the publication of this book, and although that conviction

> has been set aside on a technical point, no judge, so far as I am aware, has for a moment doubted the propriety of that conviction.' There was, however, no language used by Lord Cockburn which justified the Master of the Rolls in assuming that Lord Cockburn regarded the book as obscene or as the convicting jury did, nor was any judge afterward called upon to give any judicial opinion as to the propriety of the verdict. I have already given my reasons for thinking that Lord Cockburn could not have regarded the book as obscene, and the loose manner in which the Master of the Rolls here expresses himself shows how little weight is to be attached to his opinion on a point not submitted for his decision."

Your Worship will remember it is said of the eminent Master of the Rolls he never reserved judgment except once; then he managed to string the argument out until time for an adjournment at four o'clock and looked up the law at night. His judgments are, many of them, classics, but most, if not all, bear the marks of that impromptu habit.

> "The question of the obscenity of the book was not argued before him, and it was in no way necessary for his decision that he should determine whether the advocacy of preventive checks to population was immoral or whether a book only giving such physiological details as were necessary to elucidate the advocacy of such a system was obscene."

Your Worship will know what to say to my friend if he should cite In Re Besant. Now he goes on, and I come to this at the top of Page 528:

> "As pointed out by Lord Cockburn in the case of the Queen against Bradlaugh and Besant, all prosecutions of this kind should be regarded as mischievous, even by those who disapprove of the opinions sought to be stifled, inasmuch as they only tend more widely to diffuse the teaching objected to."

Now, I don't know whether I should object to it on that ground, but if it were by any chance against the public interest to circulate this sort of information, the concurrence of opinion seems to be it is bad business to make a lot of publicity out of it.

> "To those, on the other hand, who desire its promulgation, it must be matter for congratulation that this, like all attempted persecutions of thinkers, will defeat its own object, and that truth, like a torch -- 'The more it's shook it shines'.
>
> As it seems to me that this book is neither obscene in its language, nor by its teaching incites people to obscenity, I am of opinion that the prohibition should go."

I want to refer to, but not read from the judgment of the other judge in that case, Mr. Justice Stephen. I think Your Worship will find this: He was rather opposed to birth control, but he said that doesn't matter, my own opinion as to whether it is desirable or undesirable is of no consequence. What is of consequence is the question of whether these things shall be discussed or not, and I can't see it any other way than that the discussion should go on. I can't bring myself to stifle the discussion. That is the point in the judgment of Mr. Justice Stephen that I wish to bring before Your Worship.

I also want to refer Your Worship to the passage in Sutherland and Stopes from the judgment of Lord Wrenbury. I think this was mostly read before in the course of the trial, and if Your Worship thinks it is not necessary to read it, I don't want to read it.

HIS WORSHIP: Just quote me the particular page and section.

MR. WEGENAST: It is in 1925 Appeal Cases beginning at Page 47.

If I may paraphrase while the book is being looked for, he gives a brief sketch of the activities of government commissions and of the plaintiff Stopes in permitting discussion of birth control and providing facilities. He refers to the proposal, which was afterward carried out, of having government or municipal clinics established; he refers to the activities of Lord Dawson of Penn, and to the discussion generally. For example, he says (reads):

> "To those who have at heart the welfare of the nation, it is of national importance. There are cases in which the health and happiness of the woman are impaired by too rapid successions of conception."

And so on, the very arguments that have been covered here, and he ends up in this way (reads):

> "Upon the question whether birth control is desirable and legitimate or not, I express, of course, no opinion at all. It is not material to do so. My purpose in that which precedes is to emphasize the gravity of the matter and to indicate the nature of the subject with which I have to do."

But it is quite clear from the discussion that he is wholeheartedly in favor of the work -- the general direction, at all events, of the work that is being carried on by the persons he mentions.

Then I want to refer to a very recent case in the United States in which Dr. Matsner, who was here the last time we appeared, took a prominent part -- a case decided by the United States Circuit Court of Appeals since we met here last. I am not in a position to give citation to any report, but the name of the case is The United States of America, Libelland-Appellant, against One Package containing 120, more or less, rubber pessaries to prevent conception. Dr. Hannah M. Stone Claimant-Appellee. That is the way the case is put.

In this case, a provision of the Tariff Act providing that all persons are prohibited from importing into the United States from any foreign country any article whatever for the prevention of conception or for causing unlawful abortion, but that was interpreted, notwithstanding its positive language, as not standing in the way of the importation of condoms. The Court took the view that what the statute must be aimed at is the importation for unlawful purposes and that it could not have been intended to make unlawful the importation of articles that might be prescribed by physicians.

MR. MERCIER: Reading that case, Your Worship, it was a doctor who carried those goods.

MR. WEGENAST: Yes. The case shows the length to which the courts of the United States will go in upholding the sale of articles considered to be for the public good.

HIS WORSHIP: I think the Court held, did it not, that it was all right to import contraceptives if a doctor is using them to treat the health of his patients?

MR. WEGENAST: Yes, but when one says that one must remember the reasoning in the judicial arguments, they are very far-fetched from our standpoint.

HIS WORSHIP: You are the one who is quoting the case to me.

MR. WEGENAST: Yes, Your Worship, I am showing how far they will go in the United States in the public interest.

HIS WORSHIP: To circumvent a prohibition statute?

MR. WEGENAST: Yes. But what they have been doing for years is to stamp on the condoms and the pessaries that they were for prevention or cure of disease, and they have been getting by. And, of course, Your Worship has before you the evidence of an enormous amount of traffic in that sort of thing in the United States; I think it is in evidence Three Hundred Million Dollars a year is spent, and the number per day is something staggering.

The effect of that decision seems to be destined to be something like that of the Bradlaugh case in England.

HIS WORSHIP: That case was appealed, wasn't it?

MR. WEGENAST: To the United States Circuit Court of Appeals, but I have before me a newspaper article from the "New York Times," the 30th of January issue, indicating that it is not going to be appealed any further. (reads):

> "This means, in effect, that the decision is accepted as the law of the land."

Then further on (reads):

> "With the last legal restrictions removed by the recent court decision, contraceptives must be added to those medical services which are available to all of our people. Only in this manner can birth control become a eugenic movement and reach its final objective -- complete democratization."

Then there are some further expressions on the subject.

May I say again that in this round-about and rather illogical way, which I think is fairly characteristic of judicial processes in the United States, -- and in that, I include this idea of bringing it around by the doctors because that is only a part of the judicial technique, -- in doing this, I will adopt the words of Dr. Matsner, "The complete democratization of the knowledge and technique" will be brought about. I don't think there is any thought on the part of anybody that this is going to be a sort of preserve for doctors.

Now, I would like to refer Your Worship also to some expressions by Lord Buckmaster, which is by way of saying that men in our profession, men like Lord Buckmaster and Lord Wrenbury, have committed themselves definitely in favor of the dissemination of the knowledge of contraceptives as a matter of public good, and I put it this way: How could Your Worship possibly say that these men, Lord Buckmaster, Lord Wrenbury, Mr. Justice Riddell, and so on, are all, shall we say, "wet," when they take that position? And Miss Palmer had no right to assume that men like that knew what they were talking about? Your Worship and my friend and I can not disregard the opinion of men like Lord Buckmaster even if they are not contained in a judgment in the Privy Council.

I have a portion of a speech of Lord Buckmaster in the House of Lords in England to which I would like to call Your Worship's attention. We had the book here this morning. It is a case in the House of Lords, and I will get it in a few minutes.

--- 3:30 p.m., Court adjourned for five minutes.

MR. WEGENAST: The passage from Lord Buckmaster's speech is this: The occasion was the discussion of a housing bill in the House of Lords; these are the words of Lord Buckmaster in his speech made on the 13th of July, 1931, reported in Volume 81 of that year, Column 798 (reads):

> "I want to add this sentence. I do not think this matter (housing) is capable of being solved by approaching it on one side only. I am afraid that in what I am going to say, I shall get out of line with the Right Reverend Prelate. I cannot help it because it is my conviction. I am perfectly clear that until you can provide some method by which the unrestricted and uncontrolled birth rate can be brought to an end, you will never be able to make the thing permanent. Whatever you do, you will get conditions in which the family will repeat itself in the way that I spoke of it in the case of the family with girls of eleven, ten, nine, and so on, and you will have to make very large provision, indeed, if you are going to maintain a growing family like that.
>
> It is my firm conviction that the man who will devise some perfectly certain and simple method by which birth can be

> put within the control of married people will be as great a benefactor to the human race as Simpson or Lister, and until that is done, this kind of thing is certain to recur."

I say when we have expressions like that from men who are used to weighing their words and who know whereof they speak -- I put it to Your Worship you could hardly come to the conclusion that Lord Buckmaster does not know what he is talking about even if he doesn't know Eastview, and if he knew Eastview, I think he would not be less emphatic.

I want to submit this to Your Worship: what the public good demands is not necessarily determined or probably not at all determined by an act of Parliament. It is a question of fact for the jury, and it is so recognized in Section 207; that is, assuming subsection 3 applies to Item "C". The Parliament of Canada, as it were, declines to commit itself as to whether and on what occasions the advertising of contraceptives is or may be for the public good, and leaves it to the court and jury to make the decision on the facts. Then I submit to Your Worship that finding must be on the evidence. There is no warrant for introducing the rules which apply in determining questions of public policy.

Your Worship may have observed Mr. Justice Middleton, a few weeks ago, in the Millar will case decided he could not hear evidence on the question of public policy. He said he didn't know of a case where evidence had been taken, but that is a different -- I was going to say "a horse of a different colour," but I was thinking of the saying of one of the judges. Your Worship will remember if Your Worship took lectures from Mr. Hoyle at the law school. He used to quote the words of some judge to the effect that "public policy was an unruly horse". It is a sort of special judicial license when they don't know on what else to base a judgment -- base it on public policy.

And I think Mr. Justice Middleton is quite right in saying there has never been any evidence taken on it; however, this case of ours is different. Here the statute puts the onus on Your Worship in the first place to decide whether there are any facts that could prove "public good," and then puts it on the jury, in this case, Your Worship, to say whether it is for the public good.

But considering the matter quite apart from the historic setting, if one were to consider it apart from its historic setting, and taking the public good in its ordinary, popular meaning, my submission would be it must be distinguished from private good. Public good is not private good is my first submission.

My next submission is that it means more than Eastview. If we proved it was for the good of all the rest of the province except Eastview, it would still be public good in Eastview. You don't divide the municipalities into blocks or the blocks into houses and take the thing piecemeal. When it says "public good," it means "public good," and my submission is it does not mean "Eastview good".

I do not think it is for the public good of the rest of Ontario we should have to pay $125,000.00 out of the $130,000.00 spent n relief last year. I say "we" -- I say "we" in Toronto. We in Toronto have had to make up that $125,000.00, Eastview being able to make up only $5,000.00 out of $130,000.00. I say it is not for the public good of the people of Toronto that the people of Eastview should carry on in this way. If it is for the public good in any respect, then I submit that it doesn't make it for the "public bad" if it is mixed up with a certain amount of bad. I mean to say you never get anything 100 percent pure anywhere, even in the drugstore. You have to take things as they are.

I am not sure, Your Worship, that it is a case of the net good. I submit the intention of the law was not that you should strike a balance and find out whether the balance was in the red or the black. If there is a substantial body of good, then I say it is justified. I think it can be justified if there is anything in this Russellite idea that cooking in aluminum dishes is bad, even if only 5 percent of the community thought it, and the Russellites could go around and persuade people not to cook in aluminum dishes. I would say it is a fair proposition; I think it is for the public good.

It is not a matter of intention; it is not as was laid down in the Hicklin case, the question of what the motives were, but if it was for the public good. For example, suppose you had people going around and standing on soap boxes, carrying on propaganda against the use of automobiles -- I don't know who we are to say that they are entirely wrong, that we wouldn't be better off if there were no automobiles.

Some people don’t believe in white bread; they want us to eat rye bread. Some people want us to eat liver, and so on, for the public good. My point is if there is a substantial element of public good, it would not matter, but at all events, the presence of a little bad is not going to make the whole thing bad. “It is a good wind that blows nobody ill.”

I have already referred to our baby carriage friend.

However, Your Worship, the question is whether Miss Palmer’s acts were in excess of what the public good demanded. It is not a question of what the good of the real estate man demands; namely, more population, and it is not what the need of any religious body demands. The most important consideration is what is for the good of the people or a substantial part of them -- of the present-day demands and remembering that women constitute half the population. My submission is that from the standpoint of women alone, it would be good to give them the means of spacing their children. It would serve the public good. I say from the standpoint of women alone.

First, you decide whether the general tendency or purpose of the acts or the end aimed at would serve the public good. My friend says, “no, no, not the end, the means; we don’t care about the ends”. It is the means, whether a film of rubber or an act of will.

First, you look at the general tendency; then, you look at the particular acts to see whether there is anything in the act which a reasonable person would say was in excess of what was necessary or proper by way of attaining the purpose. The question of reasonableness is always important. If Your Worship should think some little digression, let us say, of Miss Palmer’s was inexpedient -- if Your Worship thinks she might better not have done that, Your Worship will say if you send an ordinary worker out, you have got to give her a chance to make some mistakes. We couldn’t take a junior into the office without giving him a chance to make mistakes. Nobody would ever get anywhere if they avoided making mistakes. You have got to give a certain margin of error in any project that is going to get anywhere.

I want to put to Your Worship this argument, which as far as it goes is, I think, conclusive, and it goes a long way: It is urged that to tell people about contraceptives is bad because

their use is unnatural, unmoral, irreligious, etc. But they forget that the advertisement, sale, etc. of contraceptives are grouped in the same item, "C," with remedies for venereal disease and stuff for restoring sexual vigour. Your Worship will see Item "C," which is, as I pointed out, the definition of obscene libel, includes not merely the advertising, selling, and so on of means of preventing conception, but advertising or publishing an advertisement of any means, instructions, medicine, drug or article for restoring sexual vitality or curing venereal diseases. Your Worship, I think possibly the reason is this: When that was drafted in 1892, I wouldn't be surprised if the draftsmen hadn't the idea there wasn't such a thing as a remedy for venereal diseases. I think the draftsmen also may have had some doubt as to whether it was possible to restore vigour. The result was that the advertisements we saw in the paper, well -- they weren't nice, and so, they were put in this section.

Now, Your Worship, let us apply the arguments that my friend has applied here to the remedy for venereal disease and see how it works. It is unnatural to cure venereal disease; let us say, it is immoral; it offends a sense of decency to speak about it, and the remedies are not 100 percent effective -- and the standard remedy -- one of the standard remedies is very hard on the kidneys. Now then, you put these arguments ---

MR. MERCIER: I want to make it clear this is Mr. Wegenast's argument and nobody else's.

MR. WEGENAST: Yes. If it is good for contraceptives, why isn't it good for venereal disease? How could one argue that because a cure for venereal disease is not 100 percent effective, it is against the public good to advertise it? How in the world could it be against public good to let people know that there is a remedy for venereal disease as long as it is done within the bounds of decency, avoiding obscenity?

You see at once that what Parliament is thinking of is not at all whether the use of contraceptives is good economically, eugenically, sociologically, or even morally. Parliament is not concerned about that any more than it is in the case of venereal disease. The question of morals has nothing to do with it -- the question of the morality of using a contraceptive any more than the question of using a remedy for a venereal disease. Who is to suggest there is anything wrong with finding a remedy, and that

is grouped with contraceptives? Parliament has not the faintest notion there is anything wrong with providing a remedy for venereal disease or using a contraceptive, but what Parliament is concerned with is obscenity -- the indecency of certain kinds of advertising.

Parliament does not think it wise that remedies for venereal diseases should be displayed in newspapers or on billboards or in other forms of promiscuous publication like advertisements for cigarettes or ginger ale. Remember that Item "C" is only an expansion of the term "obscene libel," and you have the point of view.

Now, what is there in the actions of Miss Palmer that constitute obscene libel? The evidence, of course, is there was a particular need in Eastview for Miss Palmer's work, and one of the benefits of such work is the reduction in infantile mortality.

Now, I want to come to this, Your Worship: If Your Worship will look at the section of the Act, I am going to submit it is not at all clear that sub-section 3, for example, applies to Item "C"; sub-section 3 provides that it shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing or exhibition and so on.

If Your Worship will compare that language with the language of Item "A," it fits right in -- "makes, manufactures, or sells, or exposes for sale or to public view…" Your Worship will find it fits in with "A" and "B" together, but it doesn't quite fit "C".

HIS WORSHIP: It doesn't fit "A" entirely either. It doesn't mention "distributed or circulated," not in 3.

MR. WEGENAST: But there is a distinct infelicity of language between 3 and "C". Then the next statement is there is some infelicity between 4 and "C," and I submit, Your Worship, it is not at all clear that the motive of Miss Palmer is not to be considered; I make my submission in that form. I think Your Worship has already seen -- and I am not in the habit of forcing arguments, and I just leave it that way; I think it is a serious question.

Of course, the question is whether it is intended as a codification of the Common Law and if it is nothing but a codification of the Common Law, then perhaps we must reckon with

the case of Rex and Hicklin, which is definite on the point that motives are no concern; it is the act and its effect that counts and the motive of the person performing the act is neither here nor there. But if Your Worship, this section in any sense goes beyond what the Common Law was, and if Parliament has expressed its own intentions and has undertaken to make improvements on the Common Law, then I think it is fair to argue that having used language which doesn't cover the case of advertising, Miss Palmer's motives are the proper consideration for Your Worship. And there is, of course, no question of what her motives were. The evidence is perfectly clear on that. If it needs any qualification, Miss Palmer's statement, put on the record by Officer Martel, would be sufficient. And if that comes into the picture, of course, the fact that the whole enterprise was philanthropic, and that is not denied ---

MR. MERCIER: It is not admitted.

MR. WEGENAST: Well, there is no evidence to the contrary and there is plenty of evidence that it was philanthropic. I don't know how it could be argued there is no evidence; the uncontradicted evidence is that the work was philanthropic, and if it was, then I invoke whatever weight there is in that.

Your Worship, there is something in the Hicklin case that is important in that connection. Mr. Justice Blackburn, in the Hicklin case, makes this point on Page 376. Would Your Worship like me to give you the citation of the Hicklin case?

HIS WORSHIP: I think it is given in this ex-parte Collins.

MR. WEGENAST: Page 376 says (reads):

> "In the case where a person carried a child suffering with a contagious disease along a public road to the danger of the health of those passing, it was held a misdemeanor without its being alleged that the defendant intended that anybody should catch the disease, but Lord Ellenborough, (in that case), had said that if there had been any necessity, as supposed, for the defendant's conduct, this would have been a matter of defence. If, on the other hand, the defendant was carrying out the inmates of a smallpox hospital, which was on fire, and took some of them into a crowd, he would not be guilty of a wrongful act and he does not do it with a wrong intention and is not guilty."

Your Worship gets the point; carrying a person with a contagious disease out of a burning hospital even if into a crowd, can be excused on the ground of intention. And the submission, of course, is that if sub-section 4 is not applicable and if the intention is the factor, then at once the words at the beginning of the section come into play, and it may be necessary for my friend to establish or it may be that the onus is on me to disestablish that the act was done knowingly and without lawful justification or excuse. Those words, after all, are there and they mean something, and my submission is -- and it has already been my submission that sub-section 2, which gives me a defence by proving the public good is not the only defence -- if that were not there, I have already submitted the Common Law would come in and give me the same way of justifying, but I might have to do it by way of "lawful justification or excuse".

Now, my submission is that the intention of Miss Palmer may be a factor in the question of lawful justification or excuse. I need not repeat this every time, Your Worship, but if there is any doubt, it must be resolved in favor of the accused. I think there is quite a substantial doubt as to the proper interpretation and effect of sub-section 4.

HIS WORSHIP: I will see if I understand you correctly, Mr. Wegenast. In your submission, you submit if this is a codification of the Common Law ---

MR. WEGENAST: And nothing else, then I have to drop my argument.

HIS WORSHIP: Then you have to drop your argument on the question of intention?

MR. WEGENAST: Yes.

HIS WORSHIP: By virtue of Rex and Hicklin, the question of the Common Law and obscene libel in that case in which definite motive is part of the defence, whereas, if this is an expansion of the Common Law by the legislature, then you argue that sub-section 4 must be strictly construed?

MR. WEGENAST: Well, I wouldn't say "must be". It is not that kind of section, except in this sense a penal section is always strictly construed, but I put it this way: If Parliament has done some thinking and has put down the results in sub-section 4, and having chosen the language it has chosen, I think we

ought to credit the Parliament of Canada with having meant something by that. If they had meant what we have up to a few minutes ago argued, why, they would say so. But they have deliberately chosen language which is not apt. Put yourself into the place of the legislature, Your Worship, and they say "silver and gold and other metals". Well, the legislature was not thinking of iron, and here I say you have that language. Obviously, the legislature wasn't thinking of Item "C".

HIS WORSHIP: Could they be thinking of distributors or circulators?

MR. WEGENAST: That may be. That is not my funeral; I don't need to care about that. But the historical explanation is something like this: I hardly know at the moment whether it cuts my way or the other way. When these sections were drafted, "C" still stood, "publishes any obscene libel". Now, the question is what happens when Parliament expands "C". I mean in the draft of the commissioners, not in the Canadian Parliament, because the draftsmen expanded "C" in the way I have indicated.

HIS WORSHIP: It was expanded by the time it got into the 1892 Statute.

MR. WEGENAST: Yes, that is quite so. Well, there you have it. I think it is fair to argue, Your Worship, that at Common Law, there was no inhibition against advertising remedies for venereal diseases; at all events, not for medicine to restore vigour, and if the Parliament of Canada undertakes to deal with these matters and puts its hands to it, it has to abide by the sections.

HIS WORSHIP: You are coming then to the thought this is an expansion of the Common Law?

MR. WEGENAST: Yes, Parliament has undertaken to tinker with this thing, and it isn't just a pure codification; that is my point, and my client has a right to whatever advantage there is in it.

May I put this to Your worship; it may clarify something: Suppose we drop for a moment the item of contraceptives and take up the item of remedy for venereal diseases, what would in a case of that kind be lawful justification or excuse? Would there be a defence for a drugstore carrying remedies for venereal diseases on the ground that their business was to supply

medicines? By the same token, of course, possibly the drugstore could put up a defence for selling contraceptives. But confining ourselves for the moment to remedies for venereal diseases, would that be a defence? What does my friend suggest could be a justification or excuse?

Then would a catalogue and price list of a supply house listing Salvarsan -- I don't know whether Your Worship is familiar with Eaton's catalogue; I was tempted to put it in as an exhibit here.

HIS WORSHIP: I have been for a short time in sections of Northern Ontario where it is almost the family Bible.

MR. WEGENAST: Then suppose the list of remedies for venereal diseases were sent only to doctors; suppose it was sent only to druggists, would that be an advertisement? Or suppose it was sent to a priest or to the secretary of the Y.M.C.A. or to Mr. Zeidman of the Scott Institute. Then what if it were contained in an elementary medical treatise? Your Worship will see what I am driving at there.

I have already submitted if my friend's argument is sound, then certainly the Catholic Truth Society ought to be prosecuted for circulating this book, and Officer Martel instead of prying around in the back streets of Eastview should have been getting after the Catholic Truth Society.

MR. MERCIER: He is not in Toronto. You get that in Toronto.

MR. WEGENAST: No, they were got here from the Catholic Truth Society on Rideau Street. There is no question about that, and there are plenty of other works there.

But there is no getting away from that argument. And how are you going to justify it? What is the line of justification that would leave Miss Palmer on the wrong side of the line? That is my point. How could there possibly be any excuse in this sort of thing that I have enumerated, and Miss Palmer got stuck? Of course, I submit, Your Worship, in many of these cases if you make out a defence of public good -- I hope Your Worship has got my point there. I think that in these cases, I have made out a defence, if made out in the ordinary words of the section -- I have a case here to which I want to refer Your Worship in the Quebec Reports, and there is no thought there of making out a defence of the "public good". Of course, the prosecution

succeeded, but I can imagine many of these cases where counsel for the accused would choose not to put up a defence on "public good," but to rely on the opening words, and there comes, of course, the propriety of my illustration drawn from the Hicklin case of taking the inmate of a hospital out into a crowd.

We submit there was plenty of justification and excuse for Miss Palmer quite apart from the question of public good, and the onus was on the Crown to prove lack of it. Prima facie proof would no doubt be enough, but where is it? The prima facie facts are in favor of Miss Palmer and uncontradicted. Any prima facie proof was wiped out by the statement Miss Palmer made to the police, which my friend has been good enough to put on the record.

--- 4:00 p.m., Court adjourned to 10:20 a.m. Tuesday, February 9th, 1937.

REX vs. PALMER

Argument

Taken Tuesday, February 9th, 1937.

VOLUME 11

Mr. F.W. Wegenast, K.C.

REX vs. PALMER

Tuesday, February 9th, 1937, at 10:30 a.m. Resumed

PRESENT:

Mr. R. MERCIER, Counsel for Crown

Mr. F.W. WEGENAST, K.C. and

Mr. A.W. BEAMENT, Counsel for Defendant

MR. WEGENAST: I want to deal now, Your Worship, with the branches of the question of public good, and I adopt for that purpose the analysis made by Mr. Silcox. It is also used by De Guchteneere.

The arguments whether birth control is for the public good or not may be dealt with under these heads: 1) economic, 2) eugenic, 3) medical, and 4) moral.

Then Mr. Silcox added to that "sociological," and he observes that that rule covers in a way the whole of the other four. He started with the sociological considerations, and that is what I propose to do -- start from the standpoint of sociology.

I wish to observe at the outset that this matter of sociology, which Mr. Silcox and most other modern writers take as the cornerstone of the whole matter, is rejected by De Guchteneere and his coterie of writers, or, at best, damned with faint notice. Some of them ignore sociological considerations entirely. The authors of "The Rhythm" and "Legitimate Birth Control," as Your Worship has observed, are not so hidebound. Then, of course, there are some Roman Catholic writers of a certain school who are prepared to open the matter up and consider it from the standpoint of sociology, but as pointed out by Mr. Silcox, they are on their guard because it seems to be necessary for them always to hold themselves ready to make the

considerations of science give way to the exigencies of the faith.

It is the same story of Galileo over and over again, down through the ages, and that is not confined to the Roman Catholic Church, Your Worship, I need hardly say. It was at one time just as serious a thing to a Presbyterian to have an organ in a church as it is now to some people to use a contraceptive; some Presbyterians wouldn't sing anything but the Psalms of David, and even the paraphrases were suspect.

There can be no question that there is a sociological side to birth control, notwithstanding the attitude of burying one's head in the sand and ignoring it. And I want to observe the fact that my friend has not seen fit to call a single witness on the sociological side. I put this question to Your Worship: whether, in the whole field of sociological work, my friend could have found a witness that would have done him any good.

He had Canon Whalley, who was produced, I suggest, as a theologian and who floundered into the field of theology, and I don't know whether one dare say that he was not the slightest bit interested in sociology. He was obviously one of the old school; he was completely out of touch with the social service work in his own church. He apparently knew nothing about it; he knew nothing of the work of Mr. Summerhayes. We had Canon Hepburn, who was a member of the Social Service Council of Ottawa, and we had Mr. Summerhayes very explicitly explaining what his work was, and the only gloss that Canon Whalley had on it was, "They do strange things in Toronto," and there we had to leave him.

But it is on the sociological grounds that the justification of Miss Palmer's work must principally rest, and in that branch, the evidence is uncontradicted. I could stop there and rely on that fact alone for the acquittal of Miss Palmer. On that ground and on the ground of economics, there is no evidence except that of the defence, and Your Worship must decide on the evidence. The same may be said of the branch of eugenics -- the welfare of the race in general; there is no evidence to contradict the evidence of the defence.

The law of the lawyer -- the law that Your Worship and I and my friend have to administer has no concern with the soul's salvation, important as that is. I have already referred to the

quaint warning of Thomasius, “Ne falcem hic immitamus in campum venerendae theologiae”.

But it is my task to point out to Your Worship where the boundaries of that field are. We should not venture into the field of theology because we cannot acknowledge any canon law. However, my task, as I tried to point out yesterday, is to determine the boundaries of the field, and part of my task is to show Your Worship where my friend is trying to reap -- to show Your Worship that my friend is putting his sickle, or his witnesses are, into the field. I might even acquit my friend of it, but it is his witnesses who strayed into that field. Dr. De Haitre, Dr. Gerin-Lajoie, Dr. Couture, and Canon Whalley couldn’t keep out of it. Dr. Couture thought he could argue us into thinking there was sort of a no man’s land, which he called “philosophy”; that is what he thought.

I think, Your Worship, that I demonstrated where the fence was and on which side of it the doctor was sickling. I spent hours chasing him in and out of that field. The evidence reads like a nightmare. The doctor would get back when I wasn’t looking and sickle out things like this -- that “society,” as he called it, had an interest in having children born. That, of course, was the old idea, which Dr. Latz and Father O’Brien in “Legitimate Birth Control” repudiate; (not to speak of Augustine and all the celibates) namely, that it is the duty of people to bring into the world all the children they can.

Dr. Couture’s pretext of observing his duty to society, of course, fails when you put to him the question of preserving the life of an idiot or monstrosity. It stands revealed then that when he says “duty to society,” he means the arbitrary dictum of his church. If he had put it on the Commandment “Thou Shalt Not Kill,” it would have been a different thing, but he said “no,” he wants to put it on the basis of philosophy -- that there is a biological or a philosophical duty to society to bring children into the world.

No one can get up in this court, Your Worship, and argue that the chief end of man is to bring as many souls into the world as possible to become baptized and praise the Lord forever and ever. That used to be the theory, and I say to Your Worship that that sort of thing -- and I give that as an example of one of the high spots in Dr. Couture’s evidence -- makes it necessary

to determine the boundary line of the fence that is supposed to be around “philosophy”.

When the Criminal Code speaks of the public good, it has no reference to the hereafter, important as it may be. I am not here to argue about the old theory that the soul’s salvation was the one concern and all civil jurisdiction had to give way to it, but what the Criminal Code does have reference to is human welfare. Its sanctions are sociological and not religious. That is my submission that the sanctions behind the provisions of the Criminal Code are sociological when it says the “public good”.

I think, Your Worship, we may define sociology as the science of human happiness and welfare, and why have we spent these weeks in this room except in the interest of human happiness? What is the Criminal Code for if not to promote human happiness? And what is my friend the Crown Attorney for if not to serve the interests of human happiness? That is what we are here for. I include in that myself and, of course, Your Worship. That is public good.

There used to be people who thought it was good for themselves and other people to scourge themselves with knotted cords. The idea was that it made you better, fitter for heaven.

After we are dead, it will be said there was a certain eminent jurist living in the City of Ottawa, who was fairly well known, who used to scourge himself in the morning for his sins, to the dismay of counsel who appeared before him, when his nerves were all frayed out. I hope the press will protect me in that if I need protection. But that sort of thing has persevered down to our day.

HIS WORSHIP: You still find it in the Hindus who sit upon beds of nails.

MR. WEGENAST: Yes, and the Stylites in Egypt, who are referred to in the evidence of Canon Whalley; they had to sit for thirty years on top of one of the pillars the Egyptians left. And in Tibet, they wall themselves in for life in a solid wall. That is some people’s idea of religion. It may be correct, but I am not arguing that. And the Criminal Code does not mean that sort of thing when it says “the public good”.

I now come to Exhibit 86-B, and I find something there that is rather significant -- the encyclical. I would refer Your Worship to a passage on Page 30 where His Holiness says (reads):

> "We are deeply touched by the sufferings of those parents who, in extreme want, experience great difficulty in rearing their children. However, they should take care lest the calamitous state of their external affairs should be the occasion for a much more calamitous error."

Then there is another passage (reads):

> "Holy Mother Church very well understands and appreciates all that is said regarding the health of the mother and the danger to her life. And who can think of these things without a sinking of the heart? But who is not filled with admiration when he sees a mother risking her life with heroic fortitude that she may preserve the life of the offspring that she has conceived? God alone, all bountiful and all merciful as He is, can reward her for the fulfilment of the duty allotted to her by nature, and will assuredly repay her in a measure full to overflowing."

And he refers to Luke 6 and 38, and that reference, by the way, is quite inapt. I don't see why His Holiness should have put that reference in.

MR. MERCIER: I just drew to my learned friend's attention, Your Worship, that is not the official version.

MR. WEGENAST: Well, I have several other versions here, and we can verify that.

MR. MERCIER: Whether my learned friend is right or not, I don't know.

MR. WEGENAST: It is at the top of Page 29. Now, some of that sentiment, of course, is very well as far as it goes, and I don't want to put myself on the side of irreverence or impiety, but there is a lingering theory there that, after all, human suffering is not so very important -- that there is something more important that human suffering, and why not get at the main thing? I think it is fair to say that the attitude is this: The great body of modern humanitarian thinking and doing is a thing to view with suspicion if not alarm, and there, of course, you have a real issue.

I think it is worth dwelling on that for a moment. It may be that we are all “haywire” on this idea of enjoying ourselves and not suffering. After a woman has had two or three or four babies, is she to stop and enjoy herself and have a car and go to bridge parties and so on? It may be all wrong, but it is, under my submission, rightly or wrongly, the theory of the Criminal Code when it says the “public good,” that people should go to bridge parties instead of having babies; put it as bluntly as you like. I may be all wrong; it may be wrong to own cars and go to Florida. I am putting it all at its worst, as Your Worship may see; I am putting it the way my friend might put it against me -- that these things, unnecessary and undesirable, are the things that the modern world lives for, and they think themselves none the worse for getting to the next world. We don’t think of scourging ourselves with knotted cords; we don’t think it is necessary to do so to be worthy of a place in the next world. That is the modern theory, whether it is right or not.

In our day and age, will any man say that it is a good thing for his wife or child to suffer? Does any man, in his senses, not want his wife or child to be happy? Then why this depreciation of human comfort and happiness?

When Florence Nightingale went to the Crimea, didn’t she do something worthy? When Christ healed the sick and made wine for a wedding, did He not work for human happiness? I think that is good, sound ethics, Your Worship, and perfectly sound theology.

And why this preference for the unlovely, the hard, the bitter, the hard-to-take? All honour to the men and women who faced the lions, the rack, the stake and thumbscrew, and all the rest of it for the sake of their faith. And by the way, were the women who were reared in luxury any the less competent and any the less willing to stand the rack and go to the lions? People reared in comfort and happiness are not, as Your Worship knows, any the less competent and ready today to face hard things when they do come. And in military life, the best soldiers are not from the downtrodden people, but the best soldiers are the men from the top -- best not only in physical but in mental and moral stamina.

It is a diabolical thing -- or is it -- to say that the woman shall suffer the pangs of childbirth because, forsooth, it is good for her? My submission is that under the Criminal Code, it

is. And to give her the choice between that and tears and sleepless nights and broken nerves and the wreck of a life because for perfectly good and valid reasons in the sight of God and man, she ought not to have another baby!

The saints of old had nothing in principle against a sleepless night. Their trouble was to keep awake. It was all to the good if you got your nerves on edge so you couldn't sleep; hence, fasting and so on.

That is what it comes to, Your Worship. If circumstances over which you have no control prevent a couple from having another child or indicate they shouldn't have another child -- Your Worship might read the Encyclical; His Holiness takes it out on that word "indicate". He uses it over and over; he doesn't like the word. But I say, Your Worship, if circumstances over which you have no control indicate to a couple they shouldn't have another child, then marital happiness, -- the intimacies of conjugal friendship, nerves, health, and success, -- must all be placed on the altar and burnt up.

There may be something noble about the life of an ascetic, but we are not all intended to be ascetics. We can not all be ascetics. Is the man who was never cut out to be an ascetic to be forced into that way of life by sheer force of circumstances? Is a woman who might have been a success as a nun -- might have lived her life in a cloister successfully, controlling her instincts -- is she to be subjected to nightly proximities and importunities calling forth the strongest forces of her nature, and just "take it"? Could any inferno be worse than that?

And those who oppose contraceptives have nothing to suggest but the grace of continence -- our friend Canon Whalley, for instance. Well, I don't say there is not enough grace to go around, but it doesn't go around for some reason or other, Your Worship, and remember it takes two to make continence. It is a perfectly good doctrine; only if they don't both agree, it is just too bad for the other one.

Then along comes a writer, a Father Benoit Lavaud, whom Your Worship might recall, who, in a very pleasing literary style and with obvious graces of person, sets out in all its stark austerity and unloveliness the attitude of the Roman Church as he sees it. He does mention periodic abstinence, but just misses condemning it. He obviously does not care to contemplate the bit

of relief and marital happiness which that system holds out, and certainly, he would be horrified at the attitude of our friend Dr. Latz.

The author avails himself of all the resources of literature and rhetoric to picture the beauties of childbirth and suffering and abnegation:

> "The woman, when she has brought forth, already does not remember her pains in her joy that a man has been born into the world". (And he goes on) Stronger than all the pains, the cares, and the burdens, she glorifies herself with a flowery crown of infants. The two spouses see in these infants received from God with love like a talent that he has committed to them, not that they should enjoy it or let it fructify for the earth only, but that in the day of judgment, they may bring it, with its increase, to the Lord."

Very good theological theory -- that, and not Ogino-Knaus, is what they are to have, and I put it to Your Worship how utterly un-Latzian and un-American it is.

Then he refers to Canon 1013 in these words:

> "Matrimonii finis primarius est procreatic atque educatio prolis," -- "The first end of marriage is the procreation and education of children."

And when he says "primarius," he doesn't mean maybe; he means "get busy and have them". There you are. It is the language of the ascetic, the sacerdoce, the celibate, the mystic, the other-worldly, and he undertakes to speak with authority. -- "Their's not to reason why."

It is not putting it too strongly, Your Worship, to say that the attitude is one of contempt for science, for knowledge, for truth -- except the sort of sublimated and sacerdotalized truth which it is the concern of the cleric and the religious to propagate. That is what Galileo ran up against. And I don't speak disparagingly of them; I put in the proviso over and over that we may be all wrong, but it is my duty to put it to Your Worship as clearly and as forcefully as I can that there are the two ideals. Deck it out in the form of law or call it truth with some adjective like "blessed" or "divine" or "eternal" in front of it; it is all the same thing. Its use is to persuade Your

Worship and myself from the paths of humanitarianism and common sense and to keep real truth forever on the scaffold.

That is not to deny them sincerity. Bellarmine and Torquemada were sincere enough, but they were, as Mr. Zeidman says, “in the sky”. They were zealots. Who was it -- perhaps Le Droit, but more likely Tallerand -- who said “Surtout, messieurs, pas de zele”? That is the coat of arms on the crest of the civil serva -- “Above everything, gentlemen, no zeal”.

I think, Your Worship, we must make an effort to realize that to the Latin mind, there is something funny, if not unbecoming or indecent, in Mr. Kaufman’s becoming all hot and bothered about the suffering of the section of humanity to which he is trying to minister. What business is it of his if Mrs. Louiseize has more children than she can bring up properly? If there is anything wrong about it, why not let the government or the church do something about it? Why not get it into politics and get the newspaper editors to write articles?

Well, there we are; Dettweiler, Mr. Kaufman’s fellow townsman, couldn’t leave things alone, and we have the hydroelectric system. Plimsoll couldn’t leave things alone, and the result is we have the Plimsoll line. Robert Raikes couldn’t leave things alone, and as a result, we have the Sunday school, at first, anathematized by religious bodies like the Baptists and Roman Catholics, but now adopted by them. And we have Florence Nightingale, Pasteur, Father Matthew, Wilberforce -- all zealots and zealatrices, all contemptible in the eyes of journals devoted to the eglise and the patrie.

I think there is room for an observation like this, Your Worship -- that the Roman Catholic Church as a whole does not enthuse over the objective study of society as such. The Roman Catholic Church is interested in the study of God and Heaven and sin. Society is infinitely less important; it is transitory, accidental, even a thing to get away from in cloister. The real thing is the relationship with God through the Mother Church. The exigencies and sanctions of society as such are relatively unimportant, and there you have the key to it.

From this austere attitude, this lack of enthusiasm for humanitarianism, we must except those two little books, “Rhythm” and “Legitimate Birth Control”. In these books, there breathes a spirit entirely different from that, for example, of the

Encyclical Casti Connubii. These books, Your Worship, are distinctively American. Again, in that, I except Quebec. The argument in "Legitimate Birth Control," is entirely inconsistent with Augustine's teachings.

I want to make some observations about this little book "Rhythm" because it is important. I am going to read to Your Worship a number of passages that haven't been read from yet. Has Your Worship read it through, may I ask?

HIS WORSHIP: The greater portion of it, yes.

MR. WEGENAST: So I think I can call Your Worship to witness it is characterized by a style of fairness and of frankness and humanitarianism that is exactly in line with what I am trying to argue to Your Worship; that is, the spirit of the Criminal Code when it says "public good". This book "Rhythm" has at heart -- the author of this book has at heart the public good, no question about it. He is working within certain limitations, of course -- the limitations which are set by the theory that it is not the end, but the means; that is the all-important thing. But it is also to be recognized -- and I don't see why Your Worship and I should ignore it -- that there is a distinctive quality about Roman Catholicism in America; and, Your Worship, you cannot imagine this book being translated into French and circulated in Quebec. I don't think so because it is American -- it is American in the sense of Anglo-Saxon Americanism.

MR. MERCIER: There is a lot of American literature that might be better left out of Ontario.

MR. WEGENAST: Oh, yes, I will agree there is. When I say "American," I don't mean American. When I say "American" now in connection with this book, there is an Americanism that is well recognized. It has been a subject of tremendous disputation and concern in the Roman Catholic Church for over a generation. You only need to refer to Hecker and the tremendous controversy over him in France, and "Americanism" as a whole was a subject of an encyclical.

But my point is that this revised point of view of the Anglo-Saxon American, including the Canadian, sets out the sociological ideals that pervade life as we know it here in Ontario and in Canada as a whole, with the exception, I think one must say, of Quebec, -- although I don't want to insist too

strongly, -- I think, perhaps, it is a case of "if the shoe fits, put it on, -- if not, it is o.k. by me".

Father O'Brien in "Legitimate Birth Control" is at some pains to try to demonstrate that the spirit of the encyclical is consistent with his book. But it is a thankless job, and the thanklessness of it is brought out, Your Worship, in that article of Father Parsons, S.J., in "America". I want to read the whole of that article, Your Worship, because it bears exactly on the question -- reading between the lines, it puts almost exactly my point from a different angle. He says (reads):

> "Recently, Catholic circles have been thrown into turmoil over the appearance in this country of a new theory which has received the unsavory appellation of 'Catholic birth control'. With an enthusiasm hardly warranted by the facts, some ill-advised persons have pushed into nationwide propaganda for the theory, and what is worse, have campaigned, for somewhat doubtful reasons, for the widespread and general distribution of books on the subject which by their nature were intended, as the introduction to one of them indicates, for physicians, nurses, social workers, and clergymen. In fact, the affair has assumed such proportions, under the pretext of good, that the term of commercial racket can hardly be withheld, as it certainly cannot be withheld from the straight birth-control movement."

Well, I say, Your Worship, he is wrong. I don't think there is any racket about "Rhythm" or "Legitimate Birth Control"; I have given credit for the highest motives. But this is one of the school who apparently cannot see anything good in anybody who doesn't believe just as he does. (Reads):

> "That Catholics have been bewildered can hardly be doubted by any editor, for instance, of a Catholic paper. In non-Catholic circles, its reception is enlightening. Thus, the chief organ of the birth controllers, the 'Birth Control Review,' in its February number says, <u>'It is idle to speculate on what determined this change of policy (sic). Is it a recognition that Catholics will avail themselves of some kind of birth control, and that for the Church to risk this is to risk disobedience? The step from advocating a faulty method to permitting a scientific one may be long, but logically, it will be taken at last'</u>."

And he says the italics are in the original. (Reads):

> "This passage is filled with errors, but it was inevitable that there would be such a reaction if for no other reason than a lot of money will be lost if there turns out to be a method of birth control that does not require the use of costly appliances. But in a sense not intended by the writer, the words are true as I shall shortly show.
>
> What is this new method? It is simply the old one of the 'safe period,' familiar to Catholics for centuries, to which those who did not wish children were advised to restrict themselves. Recent researches, however, by the Japanese Ogino and the certain ascertainable days, calculated by determining in each individual case the varying time of ovulation in the woman. Charts or discs are prepared and widely sold so that each individual can calculate for herself this 'safe period' or time of agenesis. Certain perfunctory warnings are given to consult a physician, which, of course, are applicable only to those who have the money for that or are objects of charity.
>
> That it is in itself allowable to restrict marital intercourse to such periods has, of course, always been known to Catholics; there is no 'new policy' involved here. Those who call it new are those who think that the opposition of the church to birth control is based on an imagined prohibition of the deliberate limitation of offspring, which it never was. It has always been taught that married couples are not bound by any law to have intercourse during a fertile period and may, under certain conditions and with certain motives, restrict it by common consent to a sterile period if there is such a thing. The only new thing about it is the assertion that it can now be known with certainty when that sterile period is. It is also new that indiscriminate circulation of advice about it should be broadcast."

These books are at pains to show exactly why it should be broadcast, and that is one of the great differences.

> "Not the least deplorable aspect of the affair is the danger to scientific medicine of being discredited through it. Thus, the editor of the London Catholic Medical Guardian, in his January issue says of Dr. Latz's book,

‘The Rhythm’: ‘Before reviewing it, we have been in communication with Dr. J. Holt of Dorrn, Holland, with whom we have been in touch for months as he is engaged in bringing out an English edition of the enlarged and revised second Dutch edition of Dr. Smulder’s book on the same important question. He informs us that Dr. Latz’s book has certain defects which must be revised to prevent misunderstandings and hence bring about disrepute of the method’.

Such defects may be surmised from a statement of the eminent Chicago surgeon, Dr. Ralph C. Sullivan, in a review of the Latz book in the February issue of the Loyola Alumnus, of Loyola University in Chicago, to which both he and Dr. Latz are attached. Dr. Sullivan points out that Dr. Ogino himself in 1932 admitted that his theory ‘is not applicable when there is a fluctuation of more than ten days in the menstrual cycle,’ and he further shows that Ogino accepted Obata’s figures that of 960 cases accurately recorded, there was in 56 percent of them a fluctuation of 11 days. Thus, we have the very author of the theory admitting that it would apply to only 44 percent or 422 of those 960 women. It is highly probable that this proportion would be repeated elsewhere.

It is, therefore, greatly misleading when we are given quotations from Dutch and Belgian doctors telling us that they have had uniform success with the method. Though we are not told it, it is obvious that they mean success with the method where it is applicable, which may not be in the cases of half of all women. It is tragic to think that hopes have been falsely raised of a way around the prohibition of birth control by a method that is advertised as certain. One shudders when one thinks of the results of disillusionment. And what of the ethics of selling a book when half the buyers of it may find that it is useless for them after they have bought it?

There are further scientific uncertainties that I will merely record. Everybody knows that the menstrual cycle fluctuates widely from month to month, and Dr. Latz admits that at least a year’s observation is necessary to have any certainty in the matter. Charts of cycles are printed in

the books, which are, to say the least, complicated and need correction in each individual case.

Dr. Sullivan doubts that untrained women will be able to determine the time for themselves. Readers are advised to consult doctors before attempting the method, but those who have the most justification for using the method are the very ones who can least afford that. Besides, all writers admit that a cycle once determined exactly may easily be overturned without warning or interrupted by an emotional disturbance or some physical occurrence.

In view of the wide circulation of the theory, it is clear that doctors are not going to be consulted, especially since most doctors here are not yet convinced of the soundness of the theory -- that with the explicit directions set forth, many are going to decide that they do not need any doctor and will experiment for themselves with the result that the last state will be worse than the first."

I don't see what he means by that -- how the last will be worse than the first. Continues reading:

"Priests have a very grave obligation in the matter not to commit the authority of the Church in the scientific aspects of the new theory. Thus, in his catechism, 'What is Marriage,' Father Vermeersch, writing in 1932, says of the Ogino-Knaus theory: 'No absolute guarantee can be given. The theory itself is only seriously probable, not absolutely certain; various causes may upset the calculations.'

What of the moral aspects of the question? The Holy See as long ago as 1880 advised confessors 'that there was no reason to disturb penitents who in their use of marriage restricted themselves to days that are physiologically sterile,' and allowed them to advise it in certain circumstances, but with prudence. Vermeersch remarks, 'It goes without saying that this practice normally supposes the agreement of both parties.'

The reasons for this permission I will not go into here at length except to say that there is an obvious moral difference between interposing artificial deterrents to conception in the act itself and using marriage naturally,

> but only when nature itself makes a woman sterile. It was never a limitation of offspring that was forbidden by the Church, but only an artificial interference with the natural end of the act itself, since it is an act whose end is not subordinated to man, being a function of the race, but one to whose end he himself subordinated. This makes it different from all other ‘interferences with nature’.”

May I read it again, Your Worship?

> “It was never limitation of offspring that was forbidden by the Church, but only an artificial interference with the natural end of the act itself, since it is an act whose end is not subordinated to man, being a function of the race, but one to whose end he is himself subordinated. This makes it different from all other ‘interferences with nature’.
>
> But it was never held by the Church that even this method with the purpose of not having children is allowable in any and every case. Father Vermeersch says in his catechism: ‘In itself indifferent or objectively good, this limitation which is not a violation of nature may, according to the circumstances and the intention, be praiseworthy, less desirable, or even worthy of blame.’ And Canon Coucke, in the recent ‘The Sterile Period in Family Life,’ (published by Wagner) says: ‘Then only may he (the confessor) suggest something to them about the time of agenesis when there exist serious reasons for believing that generation would be fraught with danger or for limiting the number of children.’ It was for this reason that the Holy See in 1880 decided that the confessor may advise it ‘to those couples whom he has in vain endeavored by the use of other means to draw away from the hateful crime of onanism’. Canon Coucke speaks of this action of the confessor as in ‘a case of necessity’. He also warns the confessor not to word his advice so as to seem ‘to favor the avoidance of children’. Vermeersch says ‘the confessor should not be a counselor of infecundity’.”

That is to say, you must have the sort of reasoning the bishops at Lambeth had in view even before using a contraceptive, and it is up to the confessor to see that is carried into effect, but of course, if the confessor finds a condition where they are going to disobey anyway, and he has tried his best to get them on track, then it is all right.

> "Thus, we may begin to see what are the 'circumstances and the intention' which Father Vermeersch says make the action good, less desirable, or even worthy of blame. The encyclical on marriage points out that such limitation is not to be considered 'as acting against nature,' and hence, the act is objectively good. It can, however, like every other indifferent act, become subjectively bad by the circumstances or the intention. If it is merely to avoid the trouble of having children when there is no serious reason, economic or health, for not having children, it is obvious that some sin has been committed, or again, if adoption of the method is not necessary to wean one or both the parties from artificial birth control. It is true that it is hard to see that the sin would be more than venial, but pious Catholics should have been warned even of this, in any indiscriminate mention.
>
> By thinking and experienced persons, it has often been objected that one of the social evils of artificial birth control is that it has made possible the present, almost universal immorality among high-school children by the taking away of the natural consequences and that it has introduced an 'amateur competition' that has all but ruined commercialized vice. Does there not exist the same danger to Catholics now in this new and less costly method if it is widely advertised as 'certain'? (That, of course, cuts both ways.)
>
> And also, did not the Birth Control Review, in the above quotation, point the way to what may be the natural consequences: not that the church itself will ever adopt its 'scientific' method, but that the people will after having found that in half the cases the new method is faulty?"

That, of course, is very significant; you get people started on "Rhythm," and they find it faulty, and they say, "If we can use a contraceptive, why not use a good one?". Then it goes on. (Reads):

> "It is true that birth controllers showed a very suspicious alarm at the ballyhoo for the new method; a very lucrative business will be ruined if the new method is quite generally adopted. (And incidentally, that business might very well be investigated if the Senate holds birth-control

hearings.) But the psychology of their prediction may be right in a sense not intended by them."

Canon Coucke makes another point and it applies to the birth controllers as well. There is a very general belief that the 'malice of onanism consists in the will of not having children, a will which, however, is not evil in itself.' The birth-control people have often claimed that the Church itself favors 'birth control' when it advises abstinence or the time of agenesis. This is nonsense. But Catholics have been led astray by it. That is why we are now being sneered at for having found a way of allowing people merely to satisfy their passions without the consequences and why many Catholics believe that too. Naturally, if they do, they will not see much difference between that and what the birth controllers call a 'scientific' method. In view of this danger, both within and without, Canon Coucke advises 'utmost prudence.' The need of this warning is real.

Doctors have been contemptuously referred to as 'conservative' because they have not accepted this method all at once. It behooves priests and Catholic leaders generally to be as prudent as the doctors or we will store up for ourselves a lot of trouble."

Now, there is a tremendous amount of truth in that; just where it leads is a serious question. We had witnesses in the box who said they would prescribe by way of preventative or cure of nervousness and repressions the Ogino-Knaus method. Well, does the Church permit it or doesn't it? Is Dr. Couture acting within the limits of his so-called philosophy when he does that?

There can be no disguising the fact that there are at least two schools of thought in the bosom of the Roman Catholic Church itself. The one may be called the Latin school prevailing in France, Belgium, Italy, Spain, and the South American republics. The other might be called the Anglo-Teutonic which prevails in Holland, England, and the United States. It prevailed in Germany until the advent of Hitler and may perhaps again prevail.

The issue, so far as the Roman Church is concerned, is deep. It has to do with the one subject which the Roman Church seeks to hold out from civil jurisdiction, namely, marriage, which I

pointed out yesterday, according to Roman Catholic theory, includes contraception and education.

Then on the score of human happiness, I would be content to rest generally and absolutely on the argument in this book, "Rhythm," without a shred of the evidence, cogent and convincing as it has been, that has come before Your Worship. I point particularly to the passages beginning at Page 131. They are in the record, and I have no doubt Your Worship has read them, and it will be for Your Worship to say whether you want to have them read again.

HIS WORSHIP: I hardly think so. You may refer to them if you wish -- refer to the pages, but if they are in the record, I wouldn't read them again.

MR. WEGENAST: Page 131 from the middle of the page, 132 and 133 to the middle of 134. He marshals the arguments there, and I will only read a few lines at the last. In the first place, he poses the question "What good is this going to do," and there, Your Worship sees it is the public good he is talking about, the very thing that is before Your Worship. "What good is going to follow?"

Then he puts, with tremendously effective rhetoric, the various burdens that it will relieve -- economic burdens, physical burdens, physiological and psychic burdens.

> "I refer to psychic burdens, not infrequently more difficult to bear than any I have so far mentioned, burdens of uncontrollable fear, anxiety, irritability, of rebellion against God and His Church for seeming to make demands beyond human nature, beyond human powers to endure."

And Your Worship, I think we may take it, -- you and I and my friend -- as men can well imagine when we read words like that, that we, after all, don't know very much about it; that the burdens on womenkind are of a kind that, while we can read it in words and print, we cannot altogether take in and appreciate.

Then he goes on citing the effect that birth control will have on abortions, and I adopt every word he says there as an important argument on the point.

Then he says the use of contraceptives is so general; -- I don't adopt his view that they should not be used -- he holds it out as a horrible picture of what is done that could be avoided, but he goes on then and points out that 36 percent of the clientele

of the birth control clinics in the United States are Roman Catholics.

HIS WORSHIP: All the clinics, that is?

MR. WEGENAST: All the birth control clinics, and I point out to Your Worship, it is quite out of proportion considering the Roman Catholics in the total population.

Now, what has my friend to meet these expressions of approval of birth control -- Roman Catholic approval? He has only two or three shreds of opinion, like that of Dr. Couture and Dr. Gerin-Lajoie. Dr. DeHaitre wasn't at all sound on that; he was an earlier product of this trial and he went a bit wrong from the standpoint of my friend. But there is plenty in the evidence of Canon Whalley and the other two doctors to support the proposition that they don't believe even in "Rhythm". Certainly, Canon Whalley was firmly of that opinion.

Now, what evidence have we from the witnesses, on the sociological side, put in for the defence? We have Mr. Silcox, Dr. Coburn, Mr. Summerhayes, Colonel Sims, Mr. Zeidman, Rabbi Sachs, Mr. Essex, and Canon Hepburn, not to speak of Miss Webber, Mrs. Hawkins, Miss Brandt, Dr. Batt, and Dr. Hutton.

I start with sociology, but the last group I have mentioned also got into the study of sociology, all with expert and special knowledge whereof they spoke. I say to Your Worship, they knew more about it than Dr. Latz did or Father O'Brien -- many of them. They are experts.

On the sociological side, the Crown offered no evidence whatever. Need I say anything more? The evidence of these witnesses stands uncontradicted, as does the evidence in the economic branch, as I pointed out. And perhaps there should be included the evidence of Professor Kemp and Mr. Savoie -- perfectly cogent evidence as to the conditions.

Then we have the concurrence of the witnesses for the Crown, for example, Dr. De Haitre and Dr. Cargill; I would like to refer to a couple of pages there. Page P.395 of Dr. Cargill's evidence, he favors birth control, which my friend admits. Then Dr. De Haitre on Page D.127, that is the passage from "Rhythm" with which he agreed. I said to him, "Is there anything in this to which you take exception?" and he said, "Not at all."

And on Page 141, he approved of everything that was said in "Rhythm" except that he said it wasn't as safe. We got into the question of sociology, that it has its medical aspects, and so on, and he approves the general proposition that from a sociological standpoint, this sort of work is good.

Then I point out right there in connection with that section of Dr. De Haitre's evidence, Page 142, he sanctions the view that Miss Palmer's work was sociological work. It may be hardly worthwhile referring to, but I thought I saw an expression on my friend's face yesterday as an indication that he didn't quite agree Miss Palmer was doing sociological work. If there is going to be any lingering idea this work is in the slightest degree commercial -- if I cannot convince Your Worship it is 100 percent philanthropic, well, I am instructed by my client to say she is ready to go to jail. I am going to pay some considerable attention to that at a later stage in what I have to say because that is the one thing that I am going to insist upon, and there can be no question as to that. I may say at once that not having the advantage of evidence as to the kind of man Mr. Kaufman is and the way he is known in his community, I want Your Worship to assume that it is philanthropic and I want Your Worship to take the uncontradicted evidence -- and I didn't consider it necessary to bring out any more because there was no evidence to the contrary -- that it is 100 percent philanthropic. And Miss Palmer's work, whether it is correct or not, her motives are philanthropic. Miss Palmer is only one of a large group of workers all over America who are engaged in work of this kind -- I don't say in work of disseminating knowledge of contraception, but in various branches of social service work. The profession of social service work is becoming a recognized profession and is taking a definite place in our social system. Presently, we will have it regularized -- and it is now taught in some of the universities -- and having them setting it up as a profession like medicine or law, and it is, in effect, on that basis already. And, of course, it had to start somewhere; it is started, and it is well on the way.

So we have Miss Palmer engaged in social service work, and with what qualities and qualifications? -- First, with experience as a professional nurse in a hospital in England and then a variety of institutions in Canada. We have her selected as the successor to Miss Todd, who had started the work in Ottawa. For what

qualities? -- I think I ought to start with this: My friend has put on the record as fine a confession of faith for social service work as could be credited to any man or woman. Here are the words to Officer Martel:

> "I may get a few months in prison, but in view of the desperate condition I have seen in the homes I have visited, I most certainly would do the same thing over again the moment I am liberated. A woman should be the master of her own body and should be the one to say if she wants to become a mother."

That is the thing that shocked Officer Martel, the idea of any girl saying a woman is the master of her own body.

Dr. Hutton who is experienced not only in medical and sociological work but also in the selection of staff said, "I think she was a highly proper person to give that information". He was asked, "Would you give her a job in Brantford?" and he said, "Absolutely, I think she carried on properly. There hasn't been the slightest suggestion of anything indecent or improper."

And Dr. Dover, who knew Miss Palmer and her work, said she was competent and he said he referred his patients to her. Just as Dr.Chisholm told us he farmed out his work in I.Q.s, so Dr. Dover farms out his contraception work to Miss Palmer. And that is exactly what a doctor would do in ordinary practice, I submit, Your Worship. Supposing a doctor got in to a large practice in advising on contraceptives, what would he do but put a woman in charge and tell her to do it?

Dr. Dover's evidence is uncontradicted, and there can be no further question to the contrary as to Miss Palmer's fitness.

Even Dr. Couture admitted that if contraceptive information was to be disseminated, a nurse like Miss Palmer was the proper agency.

--- 11:55 a.m. Court adjourned for 5 minutes

MR. WEGENAST: I was referring to Dr. Couture's evidence on pages P.229 and P.230, and may I say, Your Worship, that I have a good deal of respect for Dr. Couture in practical matters. When you get him out of the field of theology, he is not bad, but in that field, he is distinctly bad. But at the top of Page 229, he is somewhat practical, and I am quite prepared to abide by what he says: "As far as having nurses go to homes and

directing them to the doctor, there may be possibilities the nurse might find occasion to send people to the doctors; it depends on the object of the whole work." That is perfectly sound. That is part of an answer he gave me.

Then start at the bottom of the previous page; I said, "Granted, for the sake of argument, if you could teach people how to use the nozzle and jelly or that it is desirable to discuss with them the possibility of going to the doctor and having the pessary fitted, isn't that properly within the functions of a nurse?" And he said, "I can't answer that directly. We have nurses going out from organizations with the purpose of helping the health of the people; integrally, it is a social service work and it is hygiene."

I do rather rely on that as a bit of common sense from this standpoint. If I may anticipate from his questions, my friend seems to think that consultation with a physician should be the sine qua non of any work of this kind; first, you examine the woman, and then you tell her what to do.

Quite obviously, the doctor is prepared to entertain the idea that the nurse could go around and she may find cases and send them to the doctor. And isn't it the acme of common sense? That is the way a good deal of other medical work is initiated.

Then he goes on. He says:

> "Now, as far as having nurses going to homes, directing them to the doctor, there may be possibilities that the nurse might find things to send people to the doctors; it depends on the object of the whole work."

Then further down, he says:

> "If the object of that nurse's work is health and she is qualified to do it, I don't see any objection.
>
> Q. And you don't see any objection taking into consideration the economic condition of the home?
>
> A. They do that.
>
> Q. You don't see any objection to that?
>
> A. No.
>
> Q. I think I can safely ask this -- whether a nurse going into a home, asking questions, and getting acquainted would

not be in a better position to decide whether birth control was indicated than, let us say, a patient visiting a doctor in his office?

A. It depends on what point of view; if it is health, it is for the doctor to decide, and if economic and social, it is up to the social worker -- or not so much the social worker as the nurse.

Q. You would make a distinction between the medical part and the economic and sociological?

A. Yes."

Then what about Miss Palmer's methods? The first consideration I submit to Your Worship is that they were those prescribed for her by the Parents' Information Bureau. Her work was supervised by the head office.

And I think we can start with the idea that a man like Mr. Kaufman, who had sent 55 nurses out in different parts of the country, would have sense enough to start them off on a system and to hold them to it. That was unobjectionable from every standpoint, and whether the methods were right or wrong, they had at least the merit of being considered and deliberate. Mr. Kaufman gave clear evidence as to the policies pursued by his organization.

Your Worship, I don't propose to read very much evidence. Your Worship was good enough yesterday to say you would like to help me to shorten the proceedings where you could, and I may say Your Worship could shorten them by indicating at what points I might elaborate and illustrate and at what points Your Worship is satisfied with what Your Worship recalls of the evidence. That would be easier on me than piling up evidence.

Now, I propose in this case simply to recall to Your Worship that Mr. Kaufman did give very definite evidence as to what the policies were that he laid down for his organization, and I don't propose to point to the page where that was said if that is satisfactory to Your Worship.

HIS WORSHIP: I think that is quite satisfactory.

MR. WEGENAST: It is only where something gets into the realm of possible dispute that I intend to refer to specific pages of the evidence, then whether these policies were followed by Miss Palmer; of course, that is another question. But the evidence is

that the limitations that Mr. Kaufman imposed on the work were not the boundary of what was proper or for the public good. Your Worship will recall there were several witnesses who said they didn't think that it was necessary for Mr. Kaufman to fix the boundaries just the way he did. In the first place, we have a number of witnesses -- I suppose the majority of them -- who said as far as they were concerned, they didn't see any objection to giving this information to all women, and they didn't see why Mr. Kaufman should limit himself to married women even, and that in other respects, the limitations which Mr. Kaufman imposed on his workers were not necessary. For example, there was really no objection from a medical standpoint to letting a pregnant woman have the information; it couldn't possibly do her any harm. But Mr. Kaufman said his policy was not to send out any contraceptives if the information on the application indicated it was four weeks from the last menstrual period, and it was also not the policy to give contraceptives within eight months of the beginning of the pregnancy. The evidence of several of the witnesses was that they didn't think that was necessary, but it was up to Mr. Kaufman. Another thing that was said was that there was no reason why Mr. Kaufman should confine his activities to the poor; if he felt like extending them to the rich, that was his own business.

Now, Mr. Summerhayes, who was an expert in social service, gave a description of the way a social worker should carry on. Your Worship may remember that. He went out of his way to indicate just how he thought social workers should go at things, and Miss Palmer's methods fit into the plan that he laid out. He said there was nothing wrong, for example, with approaching a stranger, even in the proper way. We have heard the expression "door to door" mentioned over and over, and there was no evidence of going from door to door; it just happened that Miss Palmer's visits from time to time were pretty much in the same district. But Mr. Summerhayes saw no objection, and there were several other witnesses who saw no objection to doing that if Mr. Kaufman felt like doing it. And Dr. De Haitre thought it was quite proper for Miss Palmer to go from door to door. He was a Crown witness. That evidence is on Page D.142.

In any event, Your Worship, where is the evidence there is anything improper about it? I suggest we must leave some things

for Your Worship to decide, but after all, we might as well decide on the evidence what we can have, Your Worship.

MR. MERCIER: If His Worship follows my learned friend's and his witness' advice, there is nothing much left for him to decide.

MR. WEGENAST: Yes, and His Worship's duty is to decide on the evidence.

This may be the place to discuss the enterprise, as a whole, of which Miss Palmer's work was a part. Mr. Kaufman showed how the work started among his employees. He had previously been interested in large-scale philanthropies of various kinds, and I suggest to Your Worship that a man who has spent $48,000.00 in one year on this work is something of a philanthropist. The balance sheet shows that was the amount of one year's donations, and I would ask Your Worship to exercise your imagination whether those donations came from anywhere else than Mr. Kaufman.

I have already mentioned that there are 55 of these nurses in different parts of Canada, and I think we may take it that Miss Palmer's operations should be considered as part of the whole enterprise. Technically, of course, we have the right to rely on the fact that the charge against Miss Palmer is "advertising by means of a pamphlet". It is not "advertising by means of a pamphlet and a price list". The slip giving prices of certain articles is not included in the charge. So that I may be not strictly in order in meeting the charge, an imaginary charge of commercialization, but I may point out to Your Worship as

bearing on the question of whether the work is philanthropic that this evidence was uncontradicted: First, the giving away of the supplies -- practically all the supplies were free, and there was a refusal to give supplies to those who could afford to get them elsewhere. That is not good advertising if advertising were commercial.

Then the prices at which these supplies were given is another proof that there is nothing commercial about the venture. And Your Worship will see the enormous loss shown by the balance sheet. Then we have the straightforward evidence of Mr. Kaufman offering to let anyone take over the work without recouping any of his losses.

MR. MERCIER: Even offering it to me.

MR. WEGENAST: Yes, he would give it to my friend, but I don't think my friend would take it.

He went further than that. The evidence is that he is employing two organizers -- two ladies as organizer to go around and work him out of a job by getting the work taken over by local organizations. I don't suppose there is any harm in telling Your Worship that already an organization, since we were here, has been worked out in Toronto to take over the work there, and the evidence before Your Worship is that in Windsor, the clinic has already been taken over by a local organization. I point to the analogy between this work and the evidence of the development of this sort of work in England and the United States.

By the way, Your Worship, it is really too bad to deprive my friend of this one thing he thought he had on us. I thought when he put Mrs. Deslauriers in the box, out of the regular course, and after certain dark hints, that out of 40,000 cases might have been found some accidental misstep. But no, it turns out that what happened was that Mrs. Deslauriers had made a mistake as to the time when her baby was to arrive when she gave the information to Miss Palmer. She told Miss Palmer the baby was coming in August, and it came a month later than Mrs. Deslauriers had calculated. That is why, Your Worship will remember, I was uncertain about whether we would examine Mrs. Deslauriers. Here is the exhibit. Your Worship will see the last menstrual period was in December 1936; it should, of course, be 1935, and I was puzzled by that. And that would bring her baby in September and she had it in October.

HIS WORSHIP: It has the date of expecting baby, September 29th, 1936.

MR. MERCIER: I think there was also something to the effect she did not want the child.

MR. WEGENAST: No, the whole object, I thought, of putting the woman in the box was to dispute Mr. Kaufman's evidence that the policy was not to give them ---

MR. MERCIER: It has on the back of Exhibit 108-B: "Does not want the baby that is coming." Mrs. Deslaurier, to my recollection, stated she had never said such a thing.

MR. WEGENAST: The evidence was there was no object in giving the contraceptive to a pregnant woman; it was just a waste of money.

Now, the acts alleged must be regarded in the large. If the dissemination of birth control information is desirable from a sociological standpoint, it must allow for the exercise of human agencies with a certain possibility of error. And I have already submitted to Your Worship there must be a certain amount of give and take. No physician would undertake a case without a margin for the possibility of making a mistake in diagnoses or treatment, and no lawyer would guarantee that his advice was 100 percent perfect. There must be a margin for mistakes. It is not sufficient to find some flaw in the alleged acts of the accused; the question is whether her acts, as a whole -- that is to say, as a field worker of the Parents' Information Bureau were for the public good.

It is not a question of whether the whole process set in motion by her acts was for the public good. Someone else may have to answer for some of the links in the chain, and I submit this: It is not up to Miss Palmer at all to decide whether these contraceptives are to be used or not. Suppose some woman had used contraceptives for some purpose that wasn't right; -- they could not bring on an abortion -- I don't know what it could be. But suppose the contraceptive had been used in a way that Your Worship wouldn't approve. That is not our business here. The act of Miss Palmer was to give the information and to give the contraceptive. The way it was used was not her business.

Her part was to go to the women to whom she was referred by doctors and others and get their applications for a free supply of condoms and jelly. That was all.

MR. MERCIER: My learned friend has referred quite frequently to the accused going to the parties to whom she was referred by doctors or others. I submit, Your Worship, there is not a tittle of evidence showing that.

MR. WEGENAST: The evidence of Miss Weber and Mr. Kaufman is that is the way their nurses went out. That is the policy.

HIS WORSHIP: That is the policy, but there is no evidence that Miss Palmer carried out that policy.

MR. WEGENAST: Dr. Dover's evidence referred to it.

HIS WORSHIP: But there is a large number of women witnesses who said they did not know how Miss Palmer came to their place, had never known her before, and there is no evidence to show that Miss Palmer was referred to them.

Mr. Mercier's point is that there is no evidence in this case that she was referred. You can say we can draw the inference because that is the policy. There were one or two -- I think there were two who did say they knew she had been referred there; they had met her at a friend's, but the majority of the women said they had no idea how Miss Palmer came there.

MR. WEGENAST: Well, the women wouldn't know. I agree with Your Worship's proposition, but I don't agree with my friend. There is some evidence that in some cases she was referred. There is no reason why Your Worship should infer that they were not all that way.

HIS WORSHIP: Oh yes, that is quite true.

MR. WEGENAST: The policy was that, and naturally, in the nature of things, one doesn't circulate these things. Miss Palmer wouldn't want the women to know who sent her; that is not the way one carries on this sort of thing. These were poor women -- Your Worship saw them in the box; most of them were poor -- and the policy is to go to the poor ones. One woman might say well, there is Mrs. Louiseise; she has five kids and she shouldn't get any more, and she told me so. But Miss Palmer wouldn't tell Mrs. Louiseise that.

HIS WORSHIP: There is another point there that there was an answer given by Mr. Kaufman that there is a place on the application cards for "referred by," the name and address of the person by whom they were referred. I think Mr. Kaufman's answer to that was he thinks that is only to be used in cases where people are referred by others than social workers. I think that question was raised by Mr. Wegenast or somebody that there is that space on the application card for the name of the referrer, and that was the explanation that was given.

MR. WEGENAST: If the family doctor does refer a patient to the nurse, it is a matter of interest that may well be put on, but the fact that wasn't the way it came about is not considered a reason for not giving the information.

My attention is called to this, Your Worship, that where it is a question of supplying a pessary, different considerations arise, of course.

HIS WORSHIP: But on this point of reference, I just point out that on the application card, there is a space for the name by whom it is referred, and on none of these cards was the space filled in.

MR. WEGENAST: Yes, well, my submission would be that where a neighbor woman -- and there is some evidence of this, where a neighbor woman had a friend and tells Miss Palmer, "You had better go around and see Mrs. so and so," I doubt, Your Worship, whether Your Worship would, in organizing this work, insist that such information should be put in the blank.

HIS WORSHIP: Suppose a worker of that kind visiting Mrs. "X" would say to her, "Who do you think in your neighborhood would be interested in this," and she would say, "Mrs. Smith next door and Mrs. Jones across the street might be," and I suppose the worker takes that as a reference; it is not much of a reference.

MR. WEGENAST: No, but that is the way social work is carried on. Supposing there is a dental nurse going around, the same thing would arise.

MR. MERCIER: There is nothing in the Code that says a dental nurse can't go around.

MR. WEGENAST: There is nothing in the Code to say that nobody can go around and sell contraceptives. There is nothing in the Code that says they can't advertise; they can advertise if they do it for the public good.

My attention has been called to this, Your Worship: The blank is there to be filled out when the application comes from a person other than a social worker.

HIS WORSHIP: Yes, that is what I said. Mr. Kaufman mentioned it.

MR. MERCIER: That is all the more reason why my learned friend shouldn't say these people were referred to the workers.

MR. WEGENAST: There is no reason to suppose any of them were not referred.

HIS WORSHIP: That is a supposition by means of an inference, but not by direct evidence.

MR. WEGENAST: Yes, of course, Your Worship couldn't possibly convict on that kind of inference; the inference, if any, is my way. Of course, the main submission is if we had gone, as my friend said, from door to door indiscriminately, there wouldn't be anything wrong with it. The great bulk of the evidence is to that effect. I am coming right to that; Your Worship has anticipated me. This is what I have in my notes: As to going door to door without being invited, -- without for a moment implying that there would have been anything reprehensible about going from door to door -- it should be remembered that the evidence, uncontradicted, was that the policy laid down for her by her employer was for the nurse to go only to places to which she had been referred. There is no proof she went to a single home to which she had not been sent.

It is suggested that in one case, that of Mrs. Desjardins, Miss Palmer took the initiative, but there was no evidence that she had not been asked to go there.

The evidence of Dr. Dover showed how Miss Palmer received the information upon which she worked, and there is evidence from the women who appeared for the Crown that they referred their friends to Miss Palmer.

MR. MERCIER: Not all of them.

MR. WEGENAST: No, not all of them. I said they referred their friends to Miss Palmer. "There is evidence from the women…"; I didn't mean the whole of them.

Miss Weber's evidence is on Page D.267 if Your Worship cares to take note as to what the instructions to these nurses were.

Now, I think I have raised the question of why in the world this man Martel should have taken it into his head to go around to these places, and I do make this serious and deliberate proposal to Your Worship that if by any chance Your Worship should think what Miss Palmer did went beyond the boundary set by Section 207, then Your worship or my friend should see that this Martel, this zealot of the law, makes a clean-up of the drugstores here. Why didn't he go to the drugstores? If a policeman knows anything, he would know these things are on sale in a drugstore.

Why pick on Miss Palmer? Is it that the drugstores are not Torontonian, by any chance?

MR. MERCIER: Your Worship, there may be a slight inference there that the aim of the offices of the Court or anybody connected with it is to prosecute only Toronto people. I don't know whether my learned friend means that; I don't suppose he sees it very much on this side of the river.

MR. WEGENAST: After all, the river has something to do with it.

HIS WORSHIP: Well, for eight years, I considered myself a Torontonian when I went to college there.

MR. MERCIER: And Your Worship has been well treated at Ottawa since then.

HIS WORSHIP: Fairly well, yes.

MR. WEGENAST: I have been a citizen of Ottawa for a long time and I got along.

It is perfectly in order for me to make the observation, and for Your Worship to entertain it. As Your Worship will see from the summing up of Chief Justice Cockburn in the Bradlaugh case, it is a question: Who in the world started this thing? I asked the question, "Was it the Crown who started it; if not, who was it?" Were they anti-Torontonian?

MR. MERCIER: I never expected I would have the honour of having as an opponent a lawyer from Toronto. If I had, I might not have -- well, I might not have wished to be here.

MR. WEGENAST: You might have put it on a different basis.

Well, to go on with the pamphlet itself, if there were a jury, they would take the pamphlet with them into the jury room and read it just as the jury in the Bradlaugh case took the book in question there. They would consider Miss Palmer's method of talking to the women; they would take into consideration that she never dealt with men at all; they would give her credit for what my friend suggests was an omission on her part, namely, that she did not discuss the subject with the men, but left that to their wives.

So far as the literary style and method of treatment in the pamphlet are concerned, I apprehend that I will have no difficulty. Your Worship has had the advantage of hearing the evidence of Dr. Scott -- it wasn't necessary to ask anybody else

-- that the pamphlet in question was all that could be desired. That was Dr. Scott's evidence, which was, of course, uncontradicted.

The pamphlet is in restrained, matter-of-fact language without suggestion of even a little bit of levity such as that which I pointed out to Your Worship yesterday in "Rhythm".

The method of propagation in the Bradlaugh case was by open and unrestricted sale of a six-penny book, and that was adverted to in the discussion both in the lower and higher court. What, according to the evidence, was the method Miss Palmer used in actual practice? In the first place, it was confined to women, and secondly, it was by personal contact. Thirdly, it was under the control of the Kitchener clinic and under medical supervision. Fourthly, it was to give non-commercial advice. Miss Palmer wasn't peddling anything. That is one of the accusations in Le Droit; they accused Miss Palmer of being engaged in "petit commerce". It was free -- the information and the contraceptive. And the pamphlet was in restrained, matter-of-fact language and without any appeal to morbidity, levity, or lewdness. It was not a case of selling a book that anyone might buy; it was a step in a process of personal contact and advice. It wasn't a matter of trying to sell anything, and the evidence on this is uncontradicted.

The discreetness of Miss Palmer's methods is borne out, I submit, by the method which that sleuth of the law, Martel, had to follow in order to catch her. I wonder why this Mousseau charge was dropped and what was going on that long afternoon while Miss Palmer was in this room or somewhere here from soon after two o'clock until six when she was arrested and then later on before she got the bail arranged. What was going on? Why wasn't the Mousseau charge gone on with?

Not that Miss Palmer was expecting trouble from the police, -- she told them that -- but Miss Palmer would know that the women would naturally be averse to having their private affairs circulated around, -- that she was calling on them -- not that there was any suggestion of guilt about it, but because people don't want their own private affairs discussed in the community. Any of us would feel like that. I think Miss Palmer's conduct can be described as being in line with the conduct prescribed by a great teacher, "Be ye therefore wise as serpents and harmless as doves".

If there was a command like that against the use of contraceptives, what a case my friend could make out. And why isn't there a command against contraceptives? Why have we to argue so long about it?

Had Miss Palmer hired a hall and thrown on a screen illustrations of the condom, the pessary, etc., if she had put up such illustrations on public billboards, if a man were to make public speeches about contraceptives interspersed with off-colour stories and jokes, that would amount to excess. That is the sort of thing that would put it in the class of obscenity.

On the contrary, her actions were in the highest degree discreet. She talked only privately, only to women -- only to the individual woman concerned, woman to woman. She was under competent and organized supervision, -- under medical advice and direction -- at least the pamphlets which were complained of were. And we must remember the charge is "advertising by means of a pamphlet".

But the point is that what the law is looking for is obscenity, indelicacy, offensiveness to decency, and I am sure Your Worship is completely satisfied there was nothing indelicate, nothing immodest, nothing indecent, and nothing obscene in Miss Palmer's actions, and that Your Worship as a jury will so find.

My friend put it to a number of witnesses that where a married couple had gotten along "wonderfully well," the husband might wake up some night surprised by the fact that his wife, without his knowledge, had recourse to the contents of a box from the Parents' Information Bureau -- that is the condom; that is what was in the box. What nonsense!

But seriously, if Miss Palmer had made it her business to discuss this subject with men, then I think my friend might have had something to go on in the way of excess. The evidence of Dr. Chisholm shows why, even in the case of the most highly specialized medical practice, the dealings must be with the wife and not the husband. Dr. Chisholm said he would not think of talking to the husband.

But anyway, as was said by a number of witnesses, why assume that the wife would not consult the husband? Why not assume she would?

Colonel Sims, who must have had some rough human material go through his hands, was shocked at the idea of Miss Palmer talking to a man about these things. And Dr. Cargill wouldn't do it -- Dr. Cargill wouldn't talk to a man about it.

I wonder if by any chance my friend is living in a different country or a different age.

MR. MERCIER: I have been wondering that about my learned friend for a long time.

MR. WEGENAST: We all know from the kind of novels sometimes referred to as French novels that to tromper son mari is played up as a standard item of realistic fiction. We know that in France a young girl's reputation would be ruined if she were found walking on the street unaccompanied by her mother or father or brother or an old servant or something of that kind. Those were the conditions there. She must not even go out with her fiancée before she is married.

I am wondering whether my friend is thinking of that kind of society, whether things actually are that way in Eastview, whether the women of Eastview can't be trusted to take their husbands into their confidence, and whether his idea is that they will take every opportunity to fool their husbands? What nonsense that is from the standpoint of ordinary Canadian or at least Ontario ideas.

MR. MERCIER: I am beginning to think, Your Worship, that Ontario is not a part of Canada anymore.

MR. WEGENAST: I say to my friend and Your Worship that my friend fails entirely to estimate the spirit of these people. They have had 300 years of life here and they cannot be compressed into the Old Country moulds and conventions. I say to Your Worship the women of Canada -- and I suspect the women of Eastview -- can be trusted to take their husbands into their confidence. I could put it more strongly; I could talk about my friend insulting the women of Eastview; he is throwing an undeserved suspicion on the women of Eastview when he hints that the women of Eastview couldn't be trusted to take their husbands into their confidence on so important and delicate a matter, as he puts it.

I say more than that; I say to my friend the idea a woman is the mistress of her own body is not so strange to the women of

Eastview as Martel thought it was. Your Worship saw the women standing here; they were untutored; perhaps, they were unlettered, but they had all the poise that is the result of 300 years of Canadian life.

MR. MERCIER: I am glad to see it is admitted they are Canadians -- British subjects.

MR. WEGENAST: I have assumed that all along. I have assumed they were not immigrants. They are not the downtrodden creatures my friend seems to suppose.

MR. MERCIER: I thought it was my friend who believed that.

MR. WEGENAST: I am putting them on the same plane as the other women of Ontario. They may have been unfortunate that they have not had the same chance some of their sisters in Ontario have had, and the work of Miss Palmer, in one respect at least, was to see that the difference was made up, and that is what seems to have been the trouble. That is the Torontonian end of it.

Several of the women, witnesses for the Crown, were asked when it came to deciding whether there was to be a baby, who was to have the last word, -- and I want to refer Your Worship to several items of evidence there -- and there was no evidence to the contrary as far as I remember; it was that the women should have the veto power. I don't think my friend even hinted to a witness that that was not so. If I am mistaken in that, I would like to have it pointed out.

In any event, we have the evidence of Mr. Essex on Page L.30, Canon Hepburn on L.7, Dr. Hutton on J.69, Mr. Silcox on F.194, Mr. Summerhayes on H.4, Dr. Batt on J.119, Dr. Cargill at P.426, and of Mrs. Hawkins at N.77 that the women should have the veto power, and reasons were given which I need not repeat.

I think Your Worship suggested she doesn't have all the worry, and I think some of us would agree, but what we have to put up with isn't worth mentioning. It is un-Roman Catholic, Your Worship. It is inconsistent with the encyclical. In the encyclical here, it is said over and over the woman must be subject to her husband, although I don't remember any teachings by Christ to that effect. But rightly or wrongly, we don't quite fall in with that in our modern times, and the Roman Church still contends it is so, but there you are. And Your Worship saw the women, one after the other, 15 out of 18 -- there were 21

women altogether, but as I recall it, 15 out of 18 said they didn't see anything wrong about using contraceptives.

I am informed it was 17 out of 21, but I will look that up again.

However, only one said definitely, and she recited it as if she was reciting a lesson, -- it would be extraordinary if there weren't a few out of these women that had taken seriously their church's teachings in that respect -- but it all bears out what I am submitting to Your Worship; it just doesn't go down in modern times, and I suggest to Your Worship it isn't consistent with the public good set up by the Criminal Code. What I say to Your Worship is that it is for the public good that women should have the veto power as they claim they have.

Now, put it on another basis; it is the same thing, but put in another way, that the baby should be wanted. And we have the evidence on that, -- I haven't taken the trouble of looking it up -- there is Dr. Coburn's evidence on Page K.37 and you have Canon Hepburn's evidence on Page L.8; the children shouldn't be the result of an accident; it should be the result of an intention.

I think even Augustine might have subscribed to that, putting it that way, but there is something very repellant about the idea of a little creature coming into the world when nobody wants it. Mr. Essex, the Baptist in charge of the Memorial Institute, put that perhaps most strongly and worked it out in its logical sequence. He said it is the unwanted child that is the cause of juvenile delinquency, and he said it in such a convincing fashion I don't think Your Worship would have welcomed any other evidence even to support it.

Then there is this circumstance that we find even His Holiness amiss in his encyclical letter, deliberately, one must think, and while one knows that one in the position of His Holiness doesn't actually write out these things himself, -- he has people to do these things for him as even we lawyers have -- he deliberately, apparently, leaves out the phrase "lovingly welcomed" from the quotation of Augustine. That is brought out in the evidence of Canon Whalley, Page P.536, and there is also a reference to it on Page P.519.

MR. MERCIER: Your Worship, again I draw your attention to the fact it is only the Latin version there.

MR. WEGENAST: I have two other editions. I haven't put the other two in, but I say it to Your Worship, and I don't think Your Worship would think I would put anything like that over.

MR. MERCIER: No, I don't say that, but the inference is that the Bishop of Rome may have seen fit to get a private Latin version with the proper quotation, and it might have been forgotten or wrongly translated. I am not saying that it is, but the inference is it can't be possible that His Holiness might have been right.

MR. WEGENAST: We may be able to satisfy my friend on that yet. I was at considerable pains to try in Montreal and Toronto. I sent to Philadelphia, but I failed to get a copy of it in Latin. I was informed there had been a Latin version of it published in the Philadelphia paper, but they wrote back and said no, it was in English.

MR. MERCIER: As I told Your Worship before, why waste any time on that because I am not paying much attention to it.

MR. WEGENAST: Well, my friend has brought it up, but I am not going to put anything before Your Worship that is not well established. We will see what we can do about that.

Then on the score of the sociological benefits of this work, Your Worship is entitled to consider what is considered proper in other countries. Lord Wrenbury thought he was entitled to look at what was considered proper in his own country. And the evidence is before this Court, evidence of Mr. Silcox, that in England under regulations of the Board of Health, which was put in as Exhibit 67-B, a large number of clinics are being conducted under municipal and other public auspices. And I put this question to Your Worship: Can this be otherwise than for the public good?

MR. MERCIER: And under medical supervision.

MR. WEGENAST: Yes, like this one is. This sort of thing, it is submitted, makes it almost impossible to argue that birth control in general is not for the public good.

Exhibit 66-B shows that as of June 1935, there were 203 centres for contraceptive advice in the United States. There were 30 in California, 36 in New York, 25 in Pennsylvania, and 13 in Michigan; even Tennessee had 2, and Louisiana had none -- no birth control centres in Louisiana.

So we have Miss Palmer undeniably engaged in philanthropic sociological work, and the principal reason for birth control is sociological. The principal reason under this head is that it makes for marital happiness. I want to press that point. The principal reason why the dissemination of knowledge of contraceptives is for the public good is that it makes for marital happiness. Mr. Silcox put it this way in this evidence on Page F.1:

> "The effect on marital happiness of a knowledge of adequate and harmless methods of birth control is of such importance that it overshadows practically all other sociological considerations."

And I think Your Worship will take that at 100 percent value.

It is not for nothing that the fairy tales end with marriage "and they lived happily ever afterward". Humanly speaking, marital happiness is perhaps the greatest and most universal aim of existence. It is not for nothing that the great bulk of novels are love stories ending in marriage; it is not for nothing that constitutions postulate "life, liberty, and the pursuit of happiness". Sociology is the science of human welfare and happiness.

Now, attacking the matter from the standpoint of the sociologist, I have 15 points, Your Worship ---

HIS WORSHIP: Well, I think we might start on that this afternoon.

--- 1:00 p.m., Court adjourned to 2:30 p.m.

2:30 p.m. Resumed:

PRESENT:

MR. R. MERCIER, Counsel for Crown,

MR. F.W. WEGENAST, K.C. and

MR. A.W. BEAMENT, Counsel for Defendant.

MR. WEGENAST: The 15 points, Your Worship: The first is that it will reduce infant mortality. Now, I have on that quite a number of references, and unless Your Worship thinks otherwise, I am not going to go into them in detail. I think my friend, anyway, admitted at one stage there was a relationship between the birth rate and infant mortality, and if Your Worship should wish it, I

could give some references: in Mr. Silcox's evidence at E.34 and E.36, then Exhibit 102-B ---

HIS WORSHIP: That was a graph of the 1911 census in England; wasn't it?

MR. WEGENAST: My submission is it was so well established, there can be no question about it; the spacing of children will reduce infant mortality. I will go on with the others in the meantime.

In the second place, it will reduce maternal mortality, and there we have a graph of Dr. Batt's, Exhibit 103-B, and while that is being looked for, I will make this point, Your Worship, which was brought out by Mrs. Hawkins: that in the view of the injunction contained in the poster, which is Exhibit 105-B, -- Mrs. Hawkins found it in a work on moral theology, but we have it in this exhibit in such plain terms we need not look elsewhere. The reference is to Section 2350 of the canon law (reads):

> "Tout avortement provoqué directement, même dans un but thérapeutique, et sous peine d'excommunication réservée à l'Èvêque du lieu."

That is to say, an abortion, even with a therapeutic purpose, is forbidden under the pain of ex-communication, reserved to the bishop. On that basis, Mrs. Hawkins argues, I think correctly, that it is even more important in the case of a member of the Roman Catholic Church to have available the use of a reliable contraceptive by way of avoiding the more serious issue of abortion. Now, on that point, if it is worth following up, -- I think it is well enough established that is the principle of the Roman Catholic Church, -- it is perhaps of some interest to enquire as to what the actual practice of Roman Catholic doctors is. It is quite true that attitude, judging from the evidence of Dr. Couture and Dr. Gerin-Lajoie, and indeed from the Papal Encyclical, is hard to define. The Roman Catholic doctors themselves seem to have this difficulty. Dr. Couture said that other Roman Catholic doctors had consulted him in the matter, but that he -- that is Dr. Couture -- never had any difficulty. Your Worship will find that set out in Dr. Couture's evidence on Page P.197. Dr. Couture himself gave an exhibition of how he could get over such difficulties, but one may well surmise that other Roman Catholic doctors might not be so resourceful. Dr.

Couture said, “A Catholic doctor in that is badly known.” That is not an ordinary English phrase, but it is quite clear what he means.

Then on Page P.2, he says there is nothing to prevent treating the patient so long as it is to treat pathologically even at the expense of the child. Now, if that is so -- if it were so, -- Dr. Couture seemed to speak with a good deal of confidence on it -- it would lessen to that extent the force of the point made by Mrs. Hawkins.

MR. MERCIER: Considerably.

MR. WEGENAST: Yes, I will admit that at once.

HIS WORSHIP: Dr. Couture said they treat the disease, and if in treating the disease, it happens to result in an abortion ---

MR. WEGENAST: Quite so, this is my point: that other Roman Catholic doctors had consulted him, but they had difficulty, and he said no, I haven’t had any difficulty; I can do it all right. He said that various times throughout his evidence, and he took some obvious satisfaction in putting me right on it.

MR. MERCIER: Perhaps it is because he knows his business.

MR. WEGENAST: Quite so, he knows his philosophy. But it is conceivable there are other Roman Catholic doctors who weren’t as well up in philosophy as Dr. Couture who might take a different view. To that extent, at all events, Mrs. Hawkins’ point was well taken.

MR. MERCIER: Maybe the others interpreted passages like my friend that I wouldn’t interpret the same way.

MR. WEGENAST: Well, the matter of interpretation looms very large in Roman Catholic practice and theology, and what you can’t get one way, you get another way. If you are resourceful, you can find another way of getting around it.

MR. MERCIER: That happens in law sometimes too.

MR. WEGENAST: Oh, yes, but perhaps it is fair to say the difference between the Roman Catholic doctor and the Protestant doctor is that the Protestant has no such difficulties of philosophy to face and no such posters or rules of canon law to get around. And I think, Your Worship, from a medical standpoint, it is an advantage to a doctor not to have those

inhibitions or prohibitions, and correspondingly advantageous to the patient.

MR. MERCIER: It was on the authority of Miss Hawkins that it would be; that was her view.

MR. WEGENAST: I don't know why I should say this, but again, I am not poisoning Your Worship's mind; I think one knows that women, even Roman Catholic women, have certain preferences for Protestant doctors when it comes to childbirth. If that were not so, then what would this poster amount to?

Here is the graph, Exhibit 102-B, and Your Worship will remember pretty well what they amount to.

That is what I refer to, and Your Worship knows there was no evidence to the contrary.

Then I go on to the next point, that it promotes infant health. That is so clear that perhaps we need not expand on it.

HIS WORSHIP: If it reduces infant mortality, it will certainly promote infant health.

MR. WEGENAST: It isn't quite the same thing, of course, Your Worship. It is very easy in a practical way to show where a distinction might come in. If a woman has babies a year apart, it is bound to be hard on the immediate-past baby and on its health; that is, in each case, as soon as there is a "new" baby, the "less new" one gets less attention.

MR. MERCIER: That is arguable too.

MR. WEGENAST: Well, a woman has only so much attention to go around and if she divides it between three or four or five, there is obviously not so much as if she had only one.

I was reading to Dr. De Haitre from Dickinson's book, which is an exhibit, -- "It will also lower infant mortality through the control of the intervals between births and safeguard the lives and health of children" -- and he agreed with that. I don't think one needs to go further to cite evidence on a proposition so obvious.

Then fourth, maternal health. I would like to refer there to the evidence of Dr. Cargill.

HIS WORSHIP: I think his evidence shows he likes to see a space of two years.

MR. WEGENAST: Yes, but I think there was something we quoted from "Need our Mothers Die?". On Page 422, he agrees with what is set out in "Need our Mothers Die?" about the tremendous loss of life amongst mothers in the United States and Canada, and at the bottom of Page 423, I said to Dr. Cargill (reads):

> "Q. Dr. Scott said that --" (That was, every principle is a bug, the witness had said.) -- I am going to ask you if you agree with that in a moment. Then I thought I would ask you something, doctor, if you will, about the spacing of children; is it desirable from the standpoint of the health of the mother and that of the infant? Would you be good enough to do that without my leading too much?
>
> A. Well, we generally tell people to try to have their babies two years apart, and that interval is devoted to building up the patient's condition after the strain and stress of pregnancy."

At the bottom of Page P.422, I asked the question:

> "Q. Are you connected with any organizations in Ottawa having to do with maternal or infant welfare?
>
> A. No.
>
> Q. Now, doctor, you do believe in birth control?
>
> A. Yes.
>
> Q. Would it be too much to ask you to say why?
>
> A. I think the paragraph you have just read out here is a very good answer to that."

And that was "Need our Mothers Die?". I don't think I need to go into that because I think Your Worship has a very clear recollection of the paragraph from "Need our Mothers Die?".

Now, I come to the matter of preventing abortions; the use of contraceptives will prevent abortions. I have 10 references on that point, but I think the only one I am going to refer to Your Worship is "The Rhythm" on Page 132, and we referred to that this morning. Nothing could be clearer than the passage set out there. The reference is to Dr. De Haitre, Dr. Hutton, and Miss Brandt, who gave some figures from her own work in the clinic in Toronto.

The next point is that it will reduce prostitution. On that point, I think I am going to refer Your Worship to a passage in the Encyclical Castii Connubii at the bottom of Page 19.

MR. MERCIER: Your Worship, if my learned friend is going to refer again to Castii Connubii, I would like to inform the Court I have put at my friend's disposal an official copy of the Encyclical Castii Connubii, and I have found that I am right in submitting to the Court, I believe, that the contention I made this morning was the right one in that in the original the words "lovingly welcomed" are there in Latin.

MR. WEGENAST: I am going to deal with that in due time. But at the bottom of Page 19 of this exhibit, we find this:

> "Moreover, a staunch bulwark is set up in defence of loyal chastity against incitements to infidelity should any be encountered from within or without."

That is to say, His Holiness recognized any marital difficulty may produce what he calls incitements to infidelity, and one needn't cite any evidence on the point, although several of the witnesses referred to it -- that the idea of regulating the procreation of children by continence involves inevitably the incitement to infidelity; one need not put it any more plainly. Dr. Chisholm spoke of it on Page N.37.

And that couples with the next point, the seventh point I want to mention -- reduces the spread of venereal disease. Now, on that, I have a number of references, but I want to say this, Your Worship; there is undoubtedly a feeling -- a feeling rather than an argument, I think, that there may be something against contraceptives on the score they might promote prostitution or promiscuity. This feeling was evidently shared by the bishops at the Lambeth Conference, as pointed out by some of the witnesses. It was shared to some extent by the witnesses at the trial, -- Mr. Summerhayes and, I think, Mr. Essex -- and I quite admit it is a thing to be concerned about, but when you face the question frankly, the answer is clear, and it was given by a number of witnesses to which I want to refer, the evidence of Canon Hepburn and that of Dr. De Haitre.

HIS WORSHIP: Their evidence is more or less that you have got to take that chance.

MR. WEGENAST: Yes, something like that. You can't have anything without the defects of its qualities. The question is by Mr. Beament:

> "Q. The suggestion has been made to some witnesses that the spread of birth control information may lead to that information being used for improper purposes; that is to say, the removal of the fear of consequences may lead to the spread of immorality; what do you think of that as a proper reason for not disseminating birth control information?"

And the answer:

> "A. I don't think that is a valid reason for not disseminating this or any other information; it is the truth, and it is in the abuse and not the use of the knowledge where the danger arises, and if the information is scientifically and carefully prepared, it should be made available, and if there are some who abuse it, that should not be an objection."

That is on Page L.3 of Canon Hepburn's evidence.

MR. MERCIER: Would you kindly repeat the question, Mr. Wegenast?

MR. WEGENAST: The question was:

> "Q. The suggestion has been made to some witnesses that the spread of birth control information may lead to that information being used for improper purposes; that is to say, the removal of the fear of consequences may lead to the spread of immorality; what do you think of that as a proper reason for not disseminating birth control information?"

It is a thing we can consider, but it is like a great many other things -- I have already referred to the automobile; what a horrible picture one could paint of the evils attending the use of automobiles.

MR. MERCIER: Or bicycles.

MR. WEGENAST: Bicycles, yes. On one occasion in the Privy Council, Your Worship, it seems they had passed very severe legislation in Scotland against ice cream parlors because of the immorality that was consequent on the use of them, the meeting there of the young folks.

HIS WORSHIP: Wasn't it the Quakers of Pennsylvania who wouldn't allow a man to kiss his wife on Sunday?

MR. WEGENAST: Yes. The answers are more or less obvious, and I don't know that I need to dwell on it any further. I do want to observe this, Your Worship, that there is plenty to be said for the feeling that the subject of prostitution should be treated from a positive rather than a negative angle. We have the fact first that the clients of prostitutes are, in a large measure, married men. Mr. Silcox and other witnesses proposed that you promote marital happiness by removing the incentives for prostitution. That is a very important constructive idea. One knows -- and I want to refer to it again -- that prostitution is said to be the oldest profession in the world, and it is based on something that one can't deny as a biological, shall we say, necessity, and I suggest that if you face the facts and deal with the thing, as I say, in a positive way instead of a negative way, -- by shutting one's eyes to it and prohibiting it and so on -- then there is a chance of getting somewhere, and I am told that there has been a very distinctive and remarkable change in the whole situation throughout the United States. Whether it is all for the good, one doesn't know, but certainly, it is attributed to the use of contraceptives in some measure. It will take a statistician, when he gets the information, to work out just how much. But my suggestion is, basing it -- even going back to the expression in the Encyclical, which appeals to anyone's common sense, that if you preserve marital relations and remove the reasons and the dangers with which we are familiar, you probably have, I submit, the greatest factor that you could have in the reduction of prostitution.

The next point, number eight, is that it promotes mental and physical health. I am going to come to that again under the heading of the medical bearings of the subject.

HIS WORSHIP: You are going to skip that for the moment?

MR. WEGENAST: Well, I am going to say this by way of giving point to the suggestion: that Dr. Couture agrees with Freud in attributing neurosis, etc., in a great measure to sex repression, but he gives it the turn that the sex repression is probably due to the use of artificial contraceptives. I don't want to be unfair to the doctor, but he says sex is the thing that is responsible for neurosis, which looms so large in our modern life.

Dr. Chisholm, of course, who is a competent authority, speaks in the plainest possible terms and makes it clear that it is only by the use of contraceptives you can prevent neurosis.

Then the ninth point: It will promote marital happiness. I don't know that I ought to expand on that; I have already quoted Mr. Silcox. I would like to see what Exhibits 70-B and 71-B are.

HIS WORSHIP: Exhibit 70-B is the "Health and Empire Association".

MR. WEGENAST: Yes. I think Your Worship will bear with me a little when I confess that I put down these notes, and then I put on other notes and forget what the first one is about. I can't tell at the moment what 70-B is, but I have it here now. On Page 25 of Exhibit 70-B, we have this (reads):

> "I would like to say how surprised I have been to find that of all the causes of failure, the commonest is the failure to achieve sexual adjustment. I am exceedingly grateful for the fact that the British Social Hygiene Council is working on that matter in such a wise and thoroughgoing way. When sexual adjustment is achieved within marriage, it becomes a bond between two people that holds them together while they achieve all sorts of other adjustments leaving their natures harmonized and liberated so that they are able to conquer all sorts of difficulties by mutual cooperation. It is, perhaps, the most important factor for the couple who want to solve the inevitably difficult problem of achieving a successful marriage. But when sexual adjustment is not achieved, then the situation produces irritability, depression, resentment, and disappointment; a condition of affairs in which all the other difficulties are magnified and in which many of the problems become insoluble. That is the fact that I discovered and which thousands of others have discovered.
>
> It was a great surprise to me, I confess; but there it is. And yet I believe that adjustment -- really true, happy, harmonious, healthy sexual adjustment -- might be achieved in nearly all cases -- very nearly all -- if the right help and instruction were forthcoming for men and women."

That is from an article by the Reverend A. Herbert Gray, D.D., Chairman of the Birmingham Committee on Marriage. I think it was

Dr. Chisholm who agreed with that, but it is just possible it was Dr. Cargill.

MR. MERCIER: I am prepared to admit some of my friend's witnesses have agreed with that, Your Worship.

MR. WEGENAST: Then if Your Worship is prepared to follow it up, it comes to the same thing in the article in "Personality Adjustment and Domestic Discord," by Mowrer. It is on Page 149 of this book.

The tenth point is the use of contraceptives will promote economic equality. Need I say to Your Worship that there is a very general feeling, a feeling which has become perhaps the most important factor in politics, that things are not shared properly in the world -- that some people have too much and others too little. I am coming to that again under the head of economics, but that is what I mean when I say the use of contraceptives will aid in bringing about greater economic equality. I need only say for the moment: How can a man with eight or ten or twelve children possibly be on a basis of equality with a man who has only one or two when both men get the same salary?

Then the eleventh point is that it will reduce taxation. In all these cases, Your Worship, I have references. In that case, I refer more particularly to the evidence of Professor Kemp on Page F.272. Obviously, it would help things for the rest of us in the province, even in Toronto, if the people of Eastview didn't have more children than they could support.

Then the twelfth point is it will improve the quality of the race. That is a matter of eugenics, and I will come to that again.

The thirteenth point is that it will reduce inter-cultural friction, and Your Worship will remember the discussion we had on that led by Mr. Silcox. Whether one takes seriously any suggestion that there is fear, let us say, in the Ottawa Valley that the French might outbreed the English and the Roman Catholics might outbreed the Protestants. Whether that is so or not, one does know it is a very serious factor in Europe, and if we have any duty to posterity and if we are called upon to deal with these matters in any broad way, I think I am safe in submitting that it is a factor for serious consideration whether any inter-cultural friction, as Mr. Silxoc calls it, should be

allowed to become accentuated. And I have in mind this, Your Worship, that I have an idea -- I express it to Your Worship for what Your Worship may think it is worth -- that what Officer Martel had in mind, wherever the inspiration came from, was that Miss Palmer had no business to go to French Roman Catholic doors with her doctrines. If I am wrong, then, of course, it cancels out.

MR. MERCIER: I wouldn't like to see my learned friend take a narrow view.

MR. WEGENAST: It is a fact, Your Worship, that a newspaper called Le Droit canvassed that idea.

HIS WORSHIP: As I said before, I haven't read the article as of yet, but if you keep on, you will have told me everything that was in the article.

MR. WEGENAST: I didn't write the article, Your Worship, and I don't think any of my witnesses did. I did what I could to apply the antidote.

However, the fact is that feature was canvassed, and I need not say any more about the point. Any article of that kind is liable to cause sectionalism, which I think we all agreed should be kept down in this country of ours.

My fourteenth point is it would improve the standard of living. I don't propose to elaborate on that; it is quite obvious a man with eight or ten or twelve children can't keep up to the same standard of living. He can't buy a car; it takes him all his time to buy a baby carriage. We had one letter produced in evidence, the poignant plea of a woman for a baby carriage. He can't take a trip to Florida and he can't do a great many things which some people think are only necessities of life.

MR. MERCIER: If they can't take a trip to Florida, they can't afford a nervous breakdown.

MR. WEGENAST: My fifteenth and last of these points is it will reduce unemployment. I am not going to say anything further about that; I will come to it again.

Now, I pass from the sociological to the economic phase. That, of course, is in a sense included in sociology, but I propose to ask Your Worship to go a little more extensively into one or two features. We should divide this into two parts: first, the general, that is the effect on the population -- the country in

general, and second, the particular -- the effect on the particular individual.

Now, of course, it is possible to argue, and it is so, of course, that the aggregate of thousands of individual pocketbooks gives you a general aggregate, but in some respects, the good of the community is not the good of the individual and vice versa, so I propose to take them separately. The science of contraception -- the basis of the science of contraception has undergone changes in the past century. That is not unusual in any science. The science of chemistry has undergone very radical changes. The science of chemistry at one time was primarily if not exclusively concerned with the search for the philosopher's stone. And the science of astronomy was at first concerned with the telling of fortunes. Malthus, who, by the way, advocated continence, was concerned with keeping the population down. Our friends, some of the journalists, don't seem to know there is a difference between Malthusianism and neo-Malthusianism, and they do not know that neither one of them is very apt when applied to the science of contraception.

Now, the earlier advocates of birth control thought it would keep down the population; that was their idea of its adequacy. Mr. Silcox and one or two other witnesses have referred to the fact that the birth rate in Holland is very substantially higher than in Belgium. Conditions as to climate, occupation, and so on are similar, but in Holland, birth control information has been freely available, and in Belgium, birth control information has been forbidden. One very significant thing in this statistical report is the figures for the south of Ireland showing that the birth rate there is about one-half what it is in Belgium.

The evidence before Your Worship on that point is based on a statement made by Mr. Silcox, but I have had the advantage, since we were here before, of getting the exact figures from League of Nations sources on the point. I have before me a tabulation made by the American Population Association from information supplied by the League of Nations Society comparing the birth rates for the different countries in the League, and if my friend won't object too violently, I will ask Your Worship to look at this. If my friend objected too much, I could have it put in the "Citizen," then Your Worship would see it in the morning.

MR. MERCIER: You should realize your friend is objecting to very little.

MR. WEGENAST: Yes. Now that is a rather significant tabulation, and it is based on the observations made by Rene Sand, who was mentioned here by Mr. Silcox. I think the original of that, in French, is in the book if Your Worship should be interested in it. It shows that the figure for the excess of births over deaths for 1930 in Holland was 14; at the same time in Belgium, it was 5.5. In 1931, the figure for Holland was 12.6, and for Belgium, 5. For 1932, the figure for Holland was 13, and for Belgium, 4.5. For 1933 for Holland, 12, and for Belgium, 3.4.

Then the actual birthrates in 1930 for Holland were 23.1, and for Belgium, 18.8. In 1931, Holland 22, and Belgium 18.3. For 1932, Holland 22, and Belgium 17.7. And for 1933, the figures were Holland 20.8 and Belgium 16.6.

Now, the writers consider those figures significant, and perhaps I might as well point out to Your Worship the figures for Southern Ireland.

HIS WORSHIP: This is rather an interesting point, Mr. Wegenast. Taking the Netherlands from 1921 to 1934, the annual birth rate decreased from 25.7 to 20.7, and the death rate decreased from 10.4 to 8.4; whereas for Belgium, the birth rate for 1921 was 20.4 and decreased to 16.6. The death rate was 13.4 and only goes down to 13.2. The death rate practically remained stationary in Belgium, although the birth rate decreased in both countries.

MR. MERCIER: Your Worship is aware of the fact statistics can be made to show anything.

MR. WEGENAST: Well, we have the statistics there and we are showing them right now. His Worship has the figures there. That is what I thought was the advantage of having the raw figures there. Is Your Worship referring to the death rate? The one set of figures shows the increase in population.

HIS WORSHIP: This is the annual death rate here, but still, it is an interesting point.

MR. WEGENAST: I would like to examine that a little more closely before committing myself to any answer to Your Worship, but Your Worship will remember what stopped a certain resolution going through the League of Nations Council was the opposition

of the archbishop from Ireland, and I would ask Your Worship to look at the figures for Ireland.

In the Irish Free State, the first set of figures for 1930 -- that is the rate of excess of births was about the same as in Belgium; that is Holland was 14, Belgium was 5.5, and the Irish Free State was 5.6. The next year it was worse: Holland 12.6, Belgium 5, and the Irish Free State 4.8. The next year in the Irish Free State, it was 4.4; the next year, 1933, it rose somewhat and was 5.7.

HIS WORSHIP: And 1934 was 6.2.

MR. WEGENAST: Yes, going up. Well, then, when you look at the actual birth rate, it lists about the same as Belgium in both cases. Of course, the figures are very much better for Holland than either Belgium or the Irish Free State.

Now, I am going to make that the subject of a submission or two, but will wait until I come to that point.

As to the effect of contraception on the population, I would be pretty well content to adopt the views of "Rhythm" and "Legitimate Birth Control," and I would ask Your Worship to consider them for a moment. On Page 121 of "Rhythm," -- and I adopt this as my argument -- paragraph 65 (reads):

> "But does periodic abstinence not seem opposed to God's holy will as expressed in the command 'increase and multiply and fill the earth'?"

Of course, we will see at once here where one part of the Roman Catholic Church cancels all the arguments of the other part. Augustine goes by the board, and Canon Whalley, of course, goes by the board. (Reads):

> "If the literal meaning of these words is stressed too much, every person reaching puberty would have to enter the married state; vows of chastity would have to be abrogated; married people would not be allowed to observe continence and would be obliged to bring into the world a maximum number of children. This evidently cannot be the meaning of the text, nor can it be the will of God."

Someone here said "increase and multiply" didn't mean one man or one couple had to do it all.

Now, paragraph 66 (reads):

> "Will not the effect in both cases be the same, namely, underpopulation and possible race extinction?
>
> My first answer is: Be it so. Underpopulation and even the extinction of an entire race are not in themselves intrinsic evils. In fact, they may be distinct blessings. If the moral deterioration of Western nations is to continue at the rapid rate that characterized it during the post-war period, a reduction in that element of the population most affected should be welcomed."

That should please Canon Whalley; he says if we are going to go down ---

MR. MERCIER: Just at this point, Your Worship, I didn't object a few moments ago, but I heard my learned friend say that Roman Catholics including Canon Whalley -- well, I didn't know he had been converted.

MR. WEGENAST: He says he is a member of the Holy Apostolic Church, the Church of England.

HIS WORSHIP: Well, we all know Canon Whalley.

MR. MERCIER: Yes, but I don't want my friend to be under any misapprehension.

MR. WEGENAST: But the evidence is uncontradicted that Canon Whalley is a member of the Catholic Apostolic Church. (Continues reading from "Rhythm"):

> "My second answer is: What the results of periodic abstinence as regards population are going to be is a matter of speculation where everyone is allowed to make a guess. That it must lead to a greater restriction of offspring than we witness today, I deny."

I want to associate myself with that 100 percent. Then at the bottom of Page 122 in the same book:

> "In the case of periodic abstinence, the situation is altogether different. Married couples are sure of God's approval. Their consciences are at rest. The natural love of children can and will assert itself, and as soon as circumstances are more favorable, will override fear and anxiety.
>
> Adapting the words of Dr. Cooper in Birth Control, we would say…"

This, I would say, is characteristic of this man's treatment; he is fair; he will quote the authorities against himself just as freely as those in favor of his ideas, and when a man will do that, you can have confidence in what he says. Then he goes on (reads):

> "…the potential anti-social influence of periodic abstinence can be counteracted by many other influences. Among such influences stands out the factor of high sex ideals bred in by careful moral and religious training, backed up by strong social convictions, and buttressed by uncompromising public opinion."

I think it was Mr. Silcox who said you need never be afraid that there is going to be a case of race extinction; you can always pull out another stop and have as many children as you like.

MR. MERCIER: I think it was Dr. Hutton who said that.

MR. WEGENAST: Then it goes on (reads):

> "Should underpopulation come upon mankind, we should have to give more attention that we are giving to the training of self-discipline, willingness to suffer and endure for the sake of others, to face hardships and difficulties."

We may be permitted to quote Rev. John A. O'Brien, Ph.D., who has a keen appreciation of the problems involved. This writer of note, in an article on Birth Control and Catholic Leakage in the Homiletic and Pastoral Review for May 1933, expressed himself in regard to the difficulties under discussion as follows:

> "The only argument advanced against the general dissemination of the complete Catholic doctrine on this urgent question seems to be the specious objection that if all Catholic couples were aware of a legitimate method of limiting their offspring, many of them might decide to have no children at all. In the first place, this objection utterly ignores the ineradicable love of children which fills the heart of every normal human being. This affection for children will certainly not be lessened when it is discovered that children are not, as heretofore imagined, merely the result of blind chance, but that their coming into the world is absolutely determined by their parents. What a sobering uplifting thought for decent Catholic parents when they realize that their privilege of

> cooperating with God in His work of creation is also a responsibility that must be deliberately accepted or declined. As for the other class of Catholics, a large proportion if not the great majority are probably practicing birth control already, salving their conscience with the plea that the Catholic law as understood by them is morally impossible of observance. Lastly, let us not forget that rapidly growing army of individuals who, with mounting bitterness, find themselves condemned to a life of involuntary celibacy because they cannot undertake the responsibility of the unlimited family which they believe is the normal result of Catholic marriage. Moralists who are opposing the general dissemination of knowledge of the sterile period through fear of a decline in the Catholic birth rate might do well to consider whether the interests of Christian society and morals would not be better served by promoting more and earlier marriages among this economically unfortunate class even though the couples can foresee no possibility of being able to provide properly for more than a few children."

That is one of the most cogent arguments in this whole consideration. (Continues reading):

> "We priests should, indeed, be the first to resent the implication that our people's piety and loyalty to Catholic principles are predicated on ignorance of scientific progress in any field. Even supposing that this ignorance could be prolonged indefinitely and that anyone was so foolish as to wish it to be, how acceptable to the God of all knowledge would be a service based on ignorance? Yet simply to preserve this vitiated service, in so many cases rendered grudgingly today because of servile fear, we are allowing thoughts of rebellion and despair to develop in the breasts of millions who are being deprived of their birthright -- a knowledge of the true teaching of the church on this important subject.
>
> Is it admitted, then, that periodic abstinence, like contraception, frustrates the principal purpose of marriage -- the procreation of children?
>
> To the extent that it does so, periodic abstinence frustrates the principal purpose of marriage in a manner

> similar to that of perpetual continence and not after the manner of contraception."

Now, so much as to that. Then, I want to quote from "Legitimate Birth Control" on Page 22 under the heading of "Rational Fecundity". (Reads):

> "Farthest from our intention in the publication of the Ogino-Knaus finding is the lowering of the Catholic birth rate or that of the general population of our country. The purpose is simply to enable parents to space their children and to achieve the ideal of rational fecundity. This will vary with parents depending upon their health, their economic resources, and the reasonable requirements of their conjugal happiness. Sociologists point out that in order to keep the population simply at its present status, families should average 3.2 children. This number is required to offset the number who die in infancy and of those who do not marry and hence perish with no contribution to the preservation of the race.
>
> It is confidently expected that Catholic parents, far from misusing the new light that science casts upon the mystery of procreation for utterly selfish purposes, will use it for the high and noble end of cooperating generously with Almighty God in passing on to others the blessing of existence which has come to them only through the travail of mothers and the sacrifice of fathers. It is the key to the solution of the problem of human happiness, which paradoxically enough is found only in the forgetfulness of self and in the consideration of the well-being and happiness of others. If, contrary to all expectations, the coming years should show that the new knowledge is being misused, the Church's voice, speaking in no uncertain accents, will be raised in condemnation of stark and ugly selfishness and in defense of the just rights of the race."

Note that, Your Worship, the Church, in fact, according to this author, is on the fence, and if it finds out its children misuse this knowledge, the church may do something about it. That is the plain statement, but in the meantime, Father O'Brien is willing to take a chance and ride along with that warning of course.

Now then, I want to refer to "Legitimate Birth Control" on Page 46 where he discusses the effect on the birth rate and he says (reads):

> "Will not the widespread dissemination of the findings of modern science concerning the sterile period tend to lessen the birth rate? The assumption underlying this question is that married couples are not now familiar with other methods of birth restriction and hence aren't employing such. The notorious fact is, however, that the use of contraceptive devices is almost universal outside the Catholic fold, and even within it, the practice is much more widespread than most of us are willing to admit. 'In the United States, the production of contraceptive devices probably exceeds five million each working day and the consumption approximates to twenty-seven million each week'. (Cf. Henry Davis, S.J., Catholic Medical Guardians, January 1932, P.40).
>
> The result of the spread of the findings of medical science on this point should be to lessen the use of such artificial contraceptives involving, as they do, an abuse of nature's laws by substituting the method of periodic abstinence. This is merely a use of the means provided by the divine Author of nature for the spacing of births and the regulation of the number of offspring. The method of periodic abstinence has been discussed here, not with a view of lessening either the Catholic birth rate or that of the general population, but as a rational, natural, and ethical means of begetting the number of children for whom the parents by virtue of their health and economic means can make decent provision."

I would like Your Worship to note that, particularly as my learned friend has tried to draw a herring across the trail, -- of paying attention to the long working hours and wages, and so on.

> "This method, as Dr. de Guchteneere points out, will thus serve the ideal of a rational fecundity which consists in the raising of as many children as is possible for the parents without injury to their health or to that of their children and without impairing the harmony of their conjugal life. The heroism of fecundity and that of absolute continence have become equally difficult for the

average married couple in our present society, and as long as the present situation lasts, periodical abstinence would seem to be the only alternative to contraceptional practices, adultery, or solitary vice'."

On Page 12 of this same book, he says on the same point (reads):

"There are some who say that if such information were disseminated in a widespread manner, it would be abused. Married couples would use it for utterly selfish purposes, enjoying the rights of the conjugal state but neglecting its responsibilities."

This argument is, of course, on the same point of use and abuse.

HIS WORSHIP: Not quite so much on population.

MR. WEGENAST: It is on population, as Your Worship will see. (Continues reading):

"Many would have no children at all, while others would rise but one step above that abomination and have but 'an only child,' petted and pampered and thus disadvantaged for the rough and tumble competition of a sturdy life. In short, a vast number would restrict their offspring to a number far below the just requirements of their health, their economic means, and their conjugal happiness reasonably interpreted. The birth rate would decline sharply and the race would be threatened with extinction.

That such knowledge might be misused is indeed possible. The remedy lies, however, not in the removal of the knowledge but of the abuse. Does a physician cure a headache by decapitating the patient or by seeking to remove the pain and suffering, the head to remain? Food is abused. Some people commit gluttony by eating to excess. Do we correct the evil by withholding all food?" (And so on.)

That is on the other point, which I think we have dealt with sufficiently. Then on the next page (reads):

"If married couples are determined to evade the responsibility of parenthood, they have only to approach the corner drugstore to secure a variety of contraceptive devices to serve their purpose. With hundreds of millions of these devices flooding our land, pouring into every hamlet and village, with thousands of mothers dying from

> the abortion of unwanted offspring every year, is it not far better to proclaim the knowledge that modern science
>
> furnishes us concerning the natural, rational and ethical means of birth control?”

Now, I adopt that, of course, with the reservation I don’t see why Your Worship should be called upon to apply what I have called the knife-edge distinction between what they call natural and unnatural methods, but I can not argue, as it used to be argued, that birth control is needed to keep down the population. I must take something like a neutral position as these writers do.

One thing seems to be clear, and that is birth control does not necessarily lower the birth rate. Another thing apparently shown by the experience of the Scandinavian countries is that birth control may have the effect of shifting the burden from the poor to those better able to bear it. That has been the experience there.

I would like Your Worship to observe also that the author of “Legitimate Birth Control” doesn’t consider that the population argument is anything against birth control, even from the Roman Catholic standpoint. And Dr. De Haitre agreed with that. I think I am right in saying nobody in his senses would disagree, and of course, there is no evidence on the part of the Crown to the contrary.

Now, one knows that in France, there is a state of alarm over the birth rate, and that, I think, can be said also of Belgium. One would think in these countries where birth control is so strictly frowned upon, the result would be entirely different. I say this from the standpoint -- the broad standpoint of economics: If the result of condemnation, the suppression of methods of contraception in France and Belgium has anything to do with the reduction, the danger of reduction of the birth rate, I suggest to Your Worship, it does mean something, and it is an element bearing on what is for the public good in Canada.

MR. MERCIER: Your Worship, I do not want to interrupt my learned friend, but if I understand his statement correctly, he means in France because they prevent the sale of these contraceptives that would be the cause of the reduction of the birth rate?

MR. WEGENAST: I say if it has anything to do with that.

MR. MERCIER: In France, the law prevents the sale of contraceptives, which is likely just on account of that.

MR. WEGENAST: No, my understanding has been -- we must not thrash around this because it is not in evidence, but my understanding has been all along that the French Government has frowned on the use of contraceptives, though actually, of course, they have been bootlegged.

However, where we find in Holland that for a generation contraceptives have been legal, and the dissemination has been encouraged, -- though there is some controversy about it -- when we find in Holland that the birth rate is high and going up, and when we find in the Latin countries or shall we say the Catholic countries where the canon law has had a chance to get in its work, the birth rate is down -- is alarmingly down, it means something to us.

MR. MERCIER: I think it is an important point my learned friend has raised, and I don't intend to raise an argument myself, but my learned friend has mentioned France, and I think if he does mention it, I will not object provided it is mentioned correctly. My understanding is that France has a law prohibiting the sale of contraceptives. They were used freely until a few years ago when they found the birth rate was declining rapidly, and now it is a serious offence in France to sell contraceptives.

MR. WEGENAST: I don't want to continue the discussion, Your Worship, but my understanding was different.

HIS WORSHIP: Well, there is a dispute between counsel as to what is the fact, and there is no evidence as to what is the fact, so we had better leave it.

MR. WEGENAST: However, I am in a position to point out, Your Worship, by reference to writers, and I propose to say something about it.

There are two schools in the Catholic Church itself, and if Your Worship would have reference to an author, Father Coulet, he is a Jesuit who has written a book -- I don't know whether we have it here for Your Worship to refer to, but I have a passage copied here in French.

MR. MERCIER: My learned friend has a lot of books in evidence; I hope he is not going to bring out more books than he had in evidence, whether legal or ecclesiastical.

MR. WEGENAST: Well, I am prepared to submit this to Your Worship that I think Your Worship will find, by consulting the writers to which I think Your Worship is entitled to refer, that in France there is no such thing as "Rhythm" -- the circulation of "Rhythm".

HIS WORSHIP: You mentioned this morning that this is an American book.

MR. MERCIER: An American book that has the approbation of the bishop at that point to be printed.

MR. WEGENAST: I don't want to poison Your Worship's mind, but this is a familiar work. He refuses to give commendation to even a calcul; you must not use even a calcul to prevent procreation.

MR. MERCIER: Is that an inference that His Worship's mind might be poisoned by reading that book?

MR. WEGENAST: This idea of continence is a Dutch or a Teutonic idea. It starts with Capellman.

HIS WORSHIP: Who was definitely wrong.

MR. WEGENAST: He was wrong about the period, but he got papal recognition in 1880 in a mild sort of way -- he got some kind of recognition in an encyclical, and that is what has emboldened the American authors to propagate their theory. But my point is that sort of thing just isn't done in France and Belgium, and I suggest Your Worship should take into consideration the fact that there is that alarm in France that there isn't in the Teutonic countries.

--- 3:50 p.m. Court adjourned for recess.

--- 4:00 p.m. resumed.

MR. WEGENAST: As far as the Latin translation of the encyclical, I would ask my friend to let that stand over.

MR. MERCIER: As long as my learned friend doesn't forget about it.

MR. WEGENAST: Now, I have referred to the fact that in France and Belgium, contraceptives are bootlegged and in Holland, it is in the open.

MR. MERCIER: Well, that is disputed.

MR. WEGENAST: It is not disputed that in Holland it is out in the open?

MR. MERCIER: No, the first part of your statement.

MR. WEGENAST: We have seen the result in this country of trying to suppress things, and Your Worship knows what the result has been, as revealed in effect by this recent decision, and yet it is in the United States that the use of contraceptives has reached such enormous proportions. Now, it is not clear then, Your Worship, that the effect of the use of contraceptives would be to reduce the birth rate or the population, but there is one thing that is clear, and that is that to make contraceptives available to the working classes would be to put a powerful economic engine in their hands, for good or ill; that depends on the point of view. Anyone who wants an unrestricted supply of cheap labor had better oppose birth control, and I adopt the arguments and the attitude of Mr. Buckley on that point. I don't go with Mr. Buckley to the extent of thinking, as I have already said, that birth control necessarily reduces the population or the birth rate, but I do say that it places a powerful engine in the hands of the working classes. And by that same token, birth control may be the working man's best friend. To put it baldly, birth control may be, in the long view, the laboring man's best form of a strike if conditions are not what the working man wants them to be. Whether it is a matter of wages or whatever it is, the most effective way he can go on strike is by reducing the supply of cheap labor.

It wouldn't be hard on union dues, and there would be no trouble about the women voting against it. Working men have found one of their greatest difficulties in engineering strikes is the attitude of the women; there would be no question what the women would say about it.

I have already referred to the speech of Lord Buckmaster, and I couple with that what I have just said -- in answering the suggestion on the part of my friend by way of his questions to the witnesses -- that instead of supplying people with contraceptives, somebody -- one doesn't know who, whether Miss Palmer or the Dominion Government or Mr. Kaufman -- should see that housing conditions are bettered, should see there are better wages and working conditions, and so on.

MR. MERCIER: Did I suggest that?

MR. WEGENAST: I thought so. Wouldn't it be better if conditions were made better for the working people so they could bring up their families? These things ought to be done, and it was put to Professor Kemp, I think, and he brought out his famous analogy between quinine and castor oil. I think he was asked whether the remedy for economic conditions wouldn't be higher wages and better conditions rather than birth control, and he said:

> "Well, it all depends on what you are getting at; if it is one kind of disease, you want one kind of remedy, and if it is another, you want another remedy."

And I submit to Your Worship that the question of housing conditions and wages and so on has nothing to do with the argument on birth control, but there is this observation that I have made that if conditions are not what they should be, it would, in the long run, be a very effective remedy in the hands of the working classes to stop having so many children, and thereby force the others, whoever they are -- because one doubts whether it is anybody but themselves who make their conditions -- to give them better wages and better houses and so on.

But we are living under certain conditions at the present time, and the women of our time have got to live through them. These are the actual conditions, and we must deal with them as they are.

And I call Your Worship's attention to the phrase in the passage I read from "Legitimate Birth Control": "as long as the present situation lasts". He puts it this way on Page 49 (reads):

> "Until that time comes when the bursting prodigality of nature, from which the world through its faulty system of distribution is now suffering, is made available to all, the knowledge of the laws of the Divine Legislator concerning the natural methods for the regulation of births will be most helpful and opportune."

And I adopt that. Of course, it depends on the point of view whether you consider it is for the public good or not. It is conceivable from the standpoint of certain employers that this would not be for the public good. I assume I have made a point when I say it would be for the public good for a large part of the population.

A certain surplus of unemployed is no doubt necessary, but it would seem easy to argue that it is more consonant with justice and good order to keep that surplus within reasonable limits than to throw eggs and epithets at the man who is willing to work when another is not.

The laboring class is, in effect, in a position to say, “If you don’t give us the standard of living to which we think we are entitled, we will shut off the supply of labor and put ourselves in a position to demand more favored treatment”.

This, of course, brings us to the economic conditions of the individual. The economic conditions of the individual depend directly on the number of dependents depending on the head of the house. It used to be different. The small boys used to stay at home from school during the potato-planting time, and when the boy was fourteen, he began to earn and bring his earnings into the family coffer. The little ones used to take care of the baby. Now, that doesn’t work out. There used to be a song, “Everybody Works but Father”; now nobody works but father and, of course, mother, but she doesn’t count. And it would be cruel to make Johnny stay home to plant a few potatoes; the truant officer would be Martel.

We must remember that in Eastview we are in Ontario where education up to a certain age is compulsory. We are not in Quebec, which is the only jurisdiction north of the Rio Grande where education is not compulsory. Johnny can’t stay at home and earn money or work gratuitously for his parents until he is sixteen.

Under these conditions, a child is never an asset, and that is an economic condition that is not a theory. The child is not the asset he used to be when after the boy got old enough to plant a few potatoes, he earned his keep.

Anyway, the economic resources of the family are exactly the earnings of the one man no matter how many children he may have. There may be ways of coping with that; there may be a bonus for large families, though nobody can imagine an employer grading his workmen’s wages by the number of children they have. There may be a way of working that out, but at present, we have the question of arithmetic, and unless it is worked out some other way -- by social credit or Bolshevism or something; what is there to do but keep down the size of the families?

The intelligentsia have their methods of keeping down their families, some of them not all. The more unsophisticated and other-worldly come out at the short end. Why shouldn't things be evened up? It is truly a question of baby carriages versus motorcars, but why shouldn't the poor man be given a choice if the rich man takes it?

That is what Miss Palmer was giving the poor man.

It may be that this evening-up argument is the best of them all from an economic standpoint. Why must Mrs. Forgeron in Eastview go on having children until she kills herself while Mrs. Smith of the Sandy Hill District spaces her two, three or four to suit her convenience? Why must Mr. Forgeron keep his nose to the grindstone until he is old before his time while Mr. Smith drives around in his car? How can a man with ten children keep up the same standard of living as a man with two children?

I come to the question of eugenics. Eugenics might be considered a department of economics; it might even be considered a department of medicine, for example, preventive medicine. And certainly, it could be considered a branch of sociology.

The outstanding consideration in connection with the subject of birth control from the standpoint of eugenics is that by reason of advances in the science of health and the developments of humanitarian sentiments, the natural laws which formerly interfered with the survival of the unfit are impeded in their operation. The result is an increase in population and an increase in the number of relatively less fit.

We have interfered with biological laws in stopping famines and plagues; we haven't stopped war yet, but we are tinkering with it. If anything can be done, we do it, and the facts obviously represent a biological situation which may be called a "biological revolution," as it was by Dr. Hutton on Page J.85, or a "biological crisis," as it is called by Mr. Blacker in "Birth Control and the State"; there was a passage quoted from that book. And whatever is or may be done, the question of birth control will be a vital factor.

It is, of course, obvious that the number of people born into the world, and the kind, are matters of prime importance in sociology; call it eugenics or whatever else you like. I would like to call Your Worship's attention to a passage from Blacker which was quoted by Dr. Hutton. (Reads):

> "The human race is now passing through a biological crisis unprecedented in the history of life."

HIS WORSHIP: What page is that? It was not put in as an exhibit?

MR. WEGENAST: It was quoted by Dr. Hutton out of a book, on Page J.86 of Dr. Hutton's evidence. (Reads):

> "The human race is now passing through a biological crisis unprecedented in the history of life. It has achieved a mastery over nature such that mankind is now economically unified throughout the world by the astounding feats of intercommunication and transport. But as yet, the human race has achieved little ethical unification. It is directly in the interests of the race that such unification should take place, and all things which promote it may therefore be considered biologically good. And of those things, a restriction of human fertility is one of the most important."

And I want to adopt as part of my argument another passage on Page 84 of the same book to this effect (reads):

> "The development of fore and hind limbs from fins, of lungs from swim bladders, and of instincts appropriate to the new medium would strike all conservative fishes as highly immoral deviations from that biological tradition which had given stability to the glorious race of fishes."

And that was the picture of the first fish crawling out of the water and using its swim bladders for lungs and others complaining about the new environment.

And by the way, there is something there between the environment and history. (Continues reading):

> "Nothing could seem more a-biological. Similarly, with the development of fur and feathers and of the parental instinct, all of which was probably, in part, at any rate, invested with survival value by the spell of cold which followed the secondary period, and which perhaps conditioned the substitution of birds and mammals for the hitherto ubiquitous reptile as dominant vertebrates on the earth. From the point of view of the conservative reptile, such changes would appear highly anti-biological. In moments of racial crisis, therefore, it is dangerous to

generalize as to what is biologically good from past experience alone."

I think his illustration, although it may be somewhat far-fetched, is absolutely sound. You have a new biological situation there; one can imagine the other fishes swimming around at the edge of the water -- how it would shock their sense of decency to see this fish crawl up on land; an unheard-of thing, and yet in the nature of things, it had to come about.

If a new biological situation -- and there is no question we have one -- indicates -- to use the word again in its proper sense -- a different treatment of the functions of reproduction, then the world would have to stand for it, and no sense of decency, natural or unnatural, can be allowed to stand in the way. It meant nothing that it was unnatural for this fish to crawl out on the land; something had to start it or we wouldn't have had the land animals.

If I am going to be cursed and abjured for holding such a theory that ever happened - if, like Galileo, I have to bow to the exigencies of theology, that is a different thing, but we understand that actually did happen, and all I say is ---

MR. MERCIER: I wouldn't think you would have to bow to the exigencies of theology, Mr. Wegenast.

MR. WEGENAST: I may or may not; that is for His Worship to say. His Worship can overrule anything I may say and say, "No, Mr. Wegenast, the authorities have spoken; it is biology; it is heretical; it is indecent, and we will have none of it in Canada".

MR. MERCIER: Then it is against this Code.

MR. WEGENAST: The Code has left the question to His Worship.

Then I come to the medical phase. Under the medical head, one of the most important things to observe is that the subject of contraceptives is not exclusively a medical question. I want to emphasize that because I thought I had seen a disposition on the part of my learned friend to relegate the matter to the field of medicine excepting insofar as the philosophies of men like Dr. Couture served to override the medical considerations. The medical witnesses, however, all agreed on this, Your Worship, that it was not a matter exclusively for the doctors.

They stuck their sickle into the field of theology and economics, and I tried to rap them over the fingers for it, but it is for Your Worship to say how much there would be to that.

Before the doctor is called in, the sociologist and the theologian and the economist must have their say. Your Worship will recall the words of Lord Dawson of Penn. He said, (reads):

> "Let the theologian make up his mind whether this thing is right or wrong no matter how it is done, and we will come along then and tell you how to do it."

Now, the sociologist and the theologian and the economist, I submit, should have the first crack at this, or perhaps the doctors should sit in with them and contribute their reasons why, in the interest of health, birth control should be encouraged because there is that phase as well. Then it is left to the doctor to make up his mind on the technique. Of course, that is rank poison to a theologian; he says, "No, the technique is the all-important thing; if you do it one way, it is right; you go to Heaven, and if you do it the other way, you are wrong and you go to the other place".

But after the doctor makes up his mind, it is my submission that then the sociologist and the others may say how the knowledge is to be disseminated.

But the first thing is to call in the sociologist, the theologian, and the economist, and they make up their mind whether it is right for women to space their children. They may insist on putting it on this basis rather than birth control because it makes a nicer slogan of "spacing children".

So first, you call in these men -- the sociologist, the theologian, and the economist, and they tell us whether it is desirable that women should be allowed to space their children. Then we ask the doctor: "How shall we go about this spacing of children?" And he tells us how to do it. Then comes the third question: "How shall we get this information across to the ordinary people?" Then there is another further question -- whether people like Miss Palmer should do it, or should Dr. De Haitre go around from house to house and door to door to show them how to do it?

MR. MERCIER: I don't think there is any such question. I want Mr. Wegenast to be fair to the witnesses occasionally.

MR. WEGENAST: That relieves me of a great burden. He said, “Let us start a clinic; we will start tomorrow; I will take charge of it.”

MR. MERCIER: I hope my learned friend will give me credit for a little more intelligence.

MR. WEGENAST: It is a matter of Dr. De Haitre’s intelligence.

MR. MERCIER: He didn’t say “go from door to door”; he said he would be willing to start a clinic.

MR. WEGENAST: But we have plenty of evidence that they won’t go to the clinics. If they are to get the information, Dr. De. Haitre will have to go around with his satchel.

Now, that is the third question that has to be decided, whether Miss Palmer was justified in going around this way after she had been told by doctors how to do it and had been supplied with information by the doctors. But undoubtedly, when it comes to actual practice, the practical sociologist, the social worker, comes very definitely into the picture. And I submit to Your Worship what has been considered good practice elsewhere should have its weight with Your Worship. Of course, the great preponderance of the evidence is that the way Miss Palmer did this work is the way it should be done.

MR. MERCIER: That is admitted; all your witnesses agreed to that -- that it was perfect.

MR. WEGENAST: Yes, and my friend grew sarcastic over it and said to the witnesses, “Of course, you say everything Miss Palmer did was right and she did nothing which was wrong,” and they said, “Yes,” but they weren’t sarcastic.

It is for the social worker to gather the data about the individual case; the data won’t come to the doctor or even to the nurse or the clinic; it is for the social worker to go and gather the data. And it is a matter for her own trained judgment whether and when the doctor should come into the picture in the individual case. And we have Dr. Couture’s evidence to that effect that is perfectly in order. The doctor would never get the individual case if it were not for the social worker.

Then as to the medical considerations: On the positive side, we have the reasons cited under the head of sociology, and perhaps there should be a word or two more as to spacing. No witness denied the advantages of spacing. Now, all that is left is the

question of whether it is by mechanical or chemical means or by this “Rhythm” system. The great bulk of the witnesses, including most of the Crown witnesses, advocated it. Dr. De Haitre did; Dr. Cargill did, and I give Your Worship the references to that: Dr. De Haitre on Pages D.126, D.147, and D. 158, and Dr. Cargill on Page P.424.

One or two like Dr. Gerin-Lajoie were grudging in their admissions, but that was for forensic reasons; they were afraid of what such an admission would lead them into, and in this, they were right. Once you admit the desirability of spacing, you have admitted the desirability of birth control; that is all there is to it. All that remains is the question of means.

On the positive side, also, of the medical aspect, is the question of the factor of sex in the pathology of the nervous system. All medical scientists, not only those concerned with psychology or psychiatry, recognize this; all the medical witnesses admitted it: The bulk of the evidence, much of it uncontradicted, was to the effect that the use of contraceptives tended to avoid the kind and degree of nervous tension that was liable to have pathological consequences. And the one specialist in this branch, Dr. Chisholm, was utterly definite and convincing. He gave instance after instance where the restoration of normal sexual relations with contraceptives brought about a cure for a serious pathological condition. I refer Your Worship, in that connection, to the evidence of Dr. Chisholm on Page N.8 and, I think, N.9 and N.19.

All the witnesses agreed upon the pathological danger of breaking a cycle of nervous activity, and no cycle could be stronger than the one suggested by Colonel Sims. Your Worship remembers how it was put; we need not put it again. And there is no answer to the imperative call of natural impulse. Dr. Chisholm put it on Page N.29: “The natural principle is that of relieving the biological pressure.” And I would ask Your Worship to note those words particularly. The other doctors agreed, of course.

Dr. Chisholm also has this phrase which, in his own characteristic way, he used to clinch the matter: He said, “It is a matter of piling up of unsatisfied instinctual necessity.” That is on Page N.19. And it is a matter of finding some means of relieving this pressure.

Now, without the aid of science and following nature only, mankind evolved the oldest profession in the world, that of the prostitute. No one will say that artificial devices brought that about; that was natural enough if that is any advantage. And the natural relief of the natural man is not a thing to glory in; I would say that to His Holiness himself, but it does demonstrate the biological necessity. We don't need any evidence on that, and it only needs to be cited.

MR. MERCIER: I am sure His Holiness would be very pleased to be advised, Mr. Wegenast. You might take a trip for that purpose.

MR. WEGENAST: And the protection of the wife often involves recourse to the prostitute under natural conditions if that is the main consideration. Then we have this -- that Dr. Cargill, one of the Crown witnesses, agreed with the passage in the English textbook, which I read to him, that continence is as bad for the health as coitus interruptus. Your Worship will find that on Page P.445, and I am confident, as I think Your Worship will admit, that Dr. Chisholm and Dr. Hutton would have agreed with that.

One of the chief objections to Rhythm is that it cannot be used without nervous tension, which defeats one of the principal ends of coitus. Your Worship will find that in Dr. Chisholm's evidence on Page N.18.

And I submit, Your Worship, that logic and simple sense point to the need for something which will, where necessary, relieve the tension for husband and wife without incurring the other dangers attendant upon pregnancy, which I think is a fair way of putting my argument on that point.

So impressed were our friends the Crown with the incontestable validity of the arguments for birth control on the ground of psychiatry that they bring up a pale imitation themselves. They say that even the condom and the pessary are not 100 percent safe, that it might cause nervous tension to use them. In the next breath, they favor Ogino-Knaus, which is somewhere about 50 percent.

Dr.Couture was inclined to be of the opinion that most nervous or neurotic conditions were due to the use of artificial contraceptives. That is a crazy idea, but he puts himself on record to that effect.

MR. MERCIER: I certainly do object to my friend saying any witness is crazy. I think I may tell my learned friend through Your Worship that I do not intend to go half that far with any of his witnesses.

MR. WEGENAST: Well, I think I am justified in applying very strong epithets to some of the shifts to which some ---

MR. MERCIER: Well, if a man hasn't one "bug," it is possible to have another.

MR. WEGENAST: Of course, if there is going to be any argument about it, I am going to withdraw the word "crazy" and say "absurd,"; I will have something more to say about Dr. Couture anyway. I have given him one or two breaks, and I do submit that the argument put forward by Dr. Couture that the neurosis that the practitioner comes across in the ordinary practice is due to the use of contraceptives is, let us say, untenable if that will satisfy my friend.

MR. MERCIER: That is a little nicer.

MR. WEGENAST: Then we were talking about nerves and sensations; the doctor thought there might be endocrinological considerations, although he admitted it was all very vague. He said on Page P.163, talking about rubber caps and pessaries (reads):

> "That is also something intervening between the man and wife, and it should certainly tend to reduce the satisfaction in this sexual act for one or the other, and as a consequence of the prolonged use of that, it might affect the nerves of those patients dissatisfied with the consequences."

Then Mr. Mercier himself cancels that out by asking one witness after another whether it wouldn't cause tension if the husband found out after weeks or months that his wife had actually been using a contraceptive. Your Worship gets the idea. In the first place, the doctor says it would be so unsatisfactory that it would cause tension, and still, the suggestion is they could go on for a considerable length of time without the husband knowing about it. That is the sort of argument that I call, in deference to my friend, untenable.

MR. MERCIER: I take "untenable" to be a synonym of the word you used before.

MR. WEGENAST: My friend points out the passage in Dr. De Haitre's evidence, Page D.142, where I said to Dr. De Haitre: "Miss Palmer, going from door to door, was quite right in that if she used the right method?" And the answer was "yes," he thought it was perfectly all right.

Then whether there is a necessity of relieving tension is a matter which, according to the considered opinion of great bodies of moralists like the Lambeth Conference and the United Church Conference, should be left to the individual conscience. That is, every man, when the limit of continence has been reached, should decide for himself whether he is capable of being continent ---

MR. MERCIER: Or with the help of the social worker.

MR. WEGENAST: Well, I don't see where the social worker could help very much. Then it is a matter of the exercise of the individual conscience. My friend has adverted to it in his questions to the witnesses -- that in the report of the Lambeth Conference, they had put great emphasis on the importance of letting conscience get in its work on the question. But when the limits have been reached then, under the resolution of the Lambeth Conference, the parties have a right to resort to artificial contraceptives.

Now, leaving it to the individual conscience ought to satisfy everybody; even the psychiatrist will have to make the best of the scrupulous conscience if he finds one. Your Worship will remember Dr. Chisholm brought up that point. He also said the great bulk of people had no conscientious inhibitions, but if you have that kind of scrupulous conscience, you have to make the best of it.

The Roman confessor may build one up by the means at his disposal and thus make more work for the psychiatrists.

One of the outstanding advantages of contraceptives from the standpoint of psychiatry is that they obviate the highly deleterious practice of coitus interruptus. I need not say anything more about it; it is very briefly and effectively put by Dr. Chisholm.

On the negative side, this case pretty well resolves itself into a question of showing that there are forms of contraceptives

that are harmless and that those recommended in the pamphlet in question are of that sort.

I take the position of Lord Dawson of Penn that for questions of morality, we may let the theologians contest. The business of the doctors is to give us the right steer in techniques, and I do not thank Doctors Gerin-Lajoie and Couture for dragging the religious and philosophical herring across the scientific trail.

There may be an antecedent question -- whether any and all contraceptives, including periodic continence, may have certain untoward effects, and that is a legitimate field for medical judgment, and the medical judgment is practically one way except the suggestions of Dr. Couture that it might have its nervous untoward effects using their contraceptive. Of course, the evidence on that point was very inadequate; I would say it was laughably inadequate if my friend doesn't object to that as unparliamentary.

MR. MERCIER: It means the same thing. I know what it means.

MR. WEGENAST: Your Worship will remember Dr. Couture put it that you can't feel nature; nature is going to get back at you, and by a species of anthropomorphism, nature is set up as a person with a mind and a temper and a stubborn will. He is, of course, quoting De Guchteneere and his coterie of writers -- that won't let us get away. We are told nature is too smart or too stubborn or something to be fooled; nature will get even with you.

And this is from doctors who operate for appendicitis; they do the Caesarean section and inject serums and give enemas. They follow one another around in a back-scratching circle, -- De Guchteneere, Haliday, Sutherland, Koch-Preuss, McIlroy, Moore, and now, Lavaud -- none of them any more competent in this field, as far as we know, than Dr. Couture. And I was going to add a phrase there, but in deference to my friend's feelings, I won't do so.

MR. MERCIER: My friend has had so much deference for me right through this trial.

MR. WEGENAST: I was going to add, "and that is not saying very much".

But perhaps it should be said that our doctor made a better showing in the field of polemics than my friend's, which again, however, is not saying very much.

MR. MERCIER: Is Dr. Couture the only doctor who reads books in this case?

MR. WEGENAST: He is the only one who faced the music through.

There is not a shred of evidence such as a scientist must have as an essential.

Your Worship remembers it was put very well by Dr. Hutton, and even the witnesses like Dr. Couture, in the end, fell in with it. No one knew of any convincing or even provisional figures showing that the use of contraceptives had anything to do with sterility or cancer or any other untoward condition, not one of them. We have very clear evidence from Dr. Scott and the others that cancer, sterility, septic conditions, and so on were not the result of the use of contraceptives.

Dr. Couture said that the artificial methods can not be called harmless because they go against physiological laws, but he admits he has no proof of it; it is just his "reasoning". Then he puts it this way:

> "I wouldn't say that would happen in two or three years. Some have spent two or three years in clinics and not observed it; they may have missed it. I don't say it doesn't exist; I say, generally speaking, they can't be called harmless."

His idea was that Miss Brandt, who has had 40,000 cases go through her hands, has missed it. He said, "Generally speaking, they can't be called harmless," and he leaves it at that.

I don't think the doctor is crazy, but I think he is inconsequential.

Dr. Couture is like a lot of people in that he is willing to believe a man if he comes from another country like De Guchteneere -- he is away off in Belgium -- and he will take his word for it. He accepts De Guchteneere's word that contraceptives cause cancer and sterility, and when I said to him, "Here is Dr. Hutton who has made a study of it," he said, "I can not accept his statement without going into proof and I can't get this proof on the spur of the moment; I would have to look into the authorities. I am very willing to admire what he

has done, but at the same time, he is expressing a personal opinion". And there you are, he passes up Dr. Hutton.

MR. MERCIER: That is all these witnesses did -- express personal opinions.

MR. WEGENAST: Well, Dr. Hutton expresses more than personal opinion; he had proof, very cogent and effective proof.

MR. MERCIER: He had all the Canadian literature, I suppose.

MR. WEGENAST: He had his own studies.

MR. MERCIER: And he had books from other countries.

MR. WEGENAST: He had also made a study of the socially inadequate in Brantford, and he had the other study of the family -- of the family tree that we discussed, and he had the studies made by other people at his command.

Let me make this observation about these writers, Dr. Guchteneere and his coterie: -- I include Dr. Kelly of Johns Hopkins -- Dr. Scott gave us a very clear picture of Dr. Kelly's capacities as an eminent gynecologist -- Besides the tendency to quote one another without any reference to proofs, they all hark back to the period before 1926 when the technique of contraception was not what it is today. They have in mind the stem pessary which had caused pathological conditions, -- cancer -- which we admit, but they are hopelessly out of date as were Dr. Couture and Dr. De Haitre and Dr. Gerin-Lajoie.

MR. MERCIER: And so is the Bible now, I suppose, because it was published before 1926.

MR. WEGENAST: These men went into the box as scientific experts. I don't think I know of any part of the Bible that proposes to be scientifically accurate or of scientific consequence.

The question of possible deleterious effects is, of course, dealt with by Cooper in his "Technique of Contraception". And I think I must ask Your Worship if Your Worship will be good enough to look at that. I read passages of it to Dr. De Haitre, and he agreed with them, and I think it will settle my friend here if I read from the evidence, Page P.186 ---

MR. MERCIER: I hope my friend will not forget before recess to correct the question in regard to Castii Conubii.

HIS WORSHIP: And on another point, as well, are you approaching the end, or have you a long way to go yet?

MR. WEGENAST: I cannot finish tonight.

HIS WORSHIP: Then we will adjourn until 10 o'clock tomorrow morning.

--- 5:00 p.m., Court adjourned until 10:00 a.m., Wednesday, February 10th, 1937.

10:00 a.m. Wednesday, February 10th, Resumed:

PRESENT:

Mr. R. MERCIER, For the Crown

Mr. F.W. WEGENAST, K.C. and

Mr. A.W. BEAMENT, For the Defence

MR. WEGENAST: Your Worship, I promised my friend to deal with the question of the translation of the passage in the encyclical, as to which the Reverend Canon Whalley is on record, as constituting an error in translation, or a complete commission of a phrase. I want to say without any qualification that I have been labouring under a misapprehension, and I am corrected by my friend, who has been good enough to furnish me for the first time with the Latin text. I am not only bound to say, but am glad to say, that in this instance, I have unintentionally done wrong to His Holiness in my humble position, and I want to make amends.

The phrase in question is on Page 8 of Exhibit 76-B, if I may refer to the English text. Near the top of Page 8, it says, "With regard to offspring, that children shall be begotten of love, tenderly cared for, and educated in a religious atmosphere"; and what was said was that the phrase which is elsewhere, -- that is to say, in the translation of Augustine, which has been before Your Worship, "warmly welcomed," is here "begotten of love." The original is amanter suscipiatur, and it is a phrase that I understand is rather difficult to translate. I have no particular fault to find with the translator, who puts it "begotten of love"; I think he does not give it the sense -- even "warmly welcomed" is hardly good enough to give Your Worship the picture, which I understand is this: The words amanter suscipiatur puts before us the picture of the father taking the newborn child, pretty much in the way we do now, to the baptismal font, and holding the child up and confessing "this is my child, and I am proud of it". The idea is, of course, one that does come within the scope of our consideration in this case, and I submit to Your Worship without discounting at all the explanation, which I don'think need be in the form of an apology because I am innocent enough about it, and I don't think my friend expects me to apologize to him for it in any case.

MR. MERCIER: I do not.

MR. WEGENAST: The translator of this orange-coloured book may have something to answer for, but something has been lost in the process that certainly Augustine intended to convey, and it is something essential -- Your Worship will recall how many of the witnesses put it something like this, that the child coming into the world has a right to be wanted, and that is exactly in the line of our discussion, and if the translator, -- we can't blame His Holiness, but if the translator had been careful enough to give us something that would accurately convey that idea of Augustine, we would have had it on the record right there, -- the encyclical letter, -- and argument against its own admonitions, and I would have argued you could see by Augustine himself, as quoted in the encyclical, that it is one of the prime considerations when you come to the question of procreation that the child shall not be the result of an accident, but of loving and farseeing thought.

Now, we may leave that at that, Your Worship. I will come elsewhere to another fault I have to find, as to which I can't absolve His Holiness from the charge of misleading us.

MR. MERCIER: I am quite sure His Holiness will be sorry to miss that absolution.

MR. WEGENAST: Yes, I can understand that very well.

Now, starting where we left off last night, I had just started to call Your Worship's attention to the passages in Cooper's "Technique of Contraception". Perhaps Your Worship might take the book itself while I refer to the evidence of Dr. De Haitre on Pages D.186 and the following pages. I said to Dr. De Haitre, "Let us see what you say about 'Technique of Contraception' by James F. Cooper, M.D." And the doctor said, "You are well supplied with a library."

Then it goes on:

> "Q. He is Medical Director of the American Birth Control League, and until January 1929, of the Birth Control Clinical Research Bureau, New York City; formerly Professor of Clinical Surgery, Foochow Union Medical College, Foochow, China; and Clinical Instructor in Obstetrics, Boston University Medical School."

Then His Worship asked, "What is his name," and I gave his name.

Then I said to the doctor:

"Q. I am afraid you will not like this.

A. I am open to all knowledge."

Reading now from Page 153 (reads):

"Q. In the preceding chapter, consideration has been given to fallacious practices. A little attention is now given to fallacious ideas concerning contraception. Comment has already been made that there has hitherto been a dearth of scientific information on the subject of contraception. What is meant, of course, is that there has not previously been an adequate study on a sufficiently large number of cases under proper control to make any definite conclusions possible. This does not mean that all phases of the subject have hitherto been absolutely neglected; for many investigators have made observations on related studies which throw some light on this subject.

It is absurd, however, under these circumstances for anyone, who may have a traditional or emotional attitude against having contraception prescribed for any cause whatever, to come forward with unwarranted, unproved statements and expect thinking people to accept them. It is equally deplorable to hear physicians, who are as a rule devoted to the scientific attitude of demanding facts, repeat without question the unwarranted and unqualified statements that contraceptives are injurious."

Then the doctor puts in, "To my idea, they are when not used properly."

"Q. Isn't the answer 'some contraceptives are injurious?'

A. They have improved, but 10 or 25 years ago, the damage was done mostly by those things. It must be done under medical supervision, and the proper way to apply them given in individual cases, not in the general mass.

Q. I thought when you started in this afternoon, in response to my learned friend, that all these artificial contraceptives were bad?

A. Not all bad."

I want to put a little reliance on that because Dr. De Haitre, with perhaps certain faults from Your Worship's standpoint, and mine, as a witness, did have something -- something very substantial about his attitude. There was a frankness and a readiness to take in new ideas that I would say was all to the good.

He said they are not all bad, and although he shifts around a bit under pressure later, I think the result of his evidence is right there.

Mr. Mercier then says:

> "He said in examination in chief that these contraceptives were all right and harmless providing they were given under proper supervision.
>
> THE COURT: That is the doctor's stand.
>
> MR. MERCIER: And in fact, my learned friend's stand is that they were all right under proper supervision. I can't see he can get anything further from the doctor than this.
>
> MR. WEGENAST: Yes, but the doctor dragged in 'natural' and 'artificial'.
>
> THE WITNESS: It is scientifically divided."

I don't know what he meant there; it may be the reporter didn't get him right.

Then it goes on, (reads):

> "Q. I thought when we read extracts from 'Rhythm,' if natural, o.k.; if artificial, not?
>
> A. Not in all cases, but in individual cases; I am speaking your language?
>
> THE COURT: From my notes -- the doctor speaking of acute gonorrhea -- you asked would the jelly hurt, and he said no, but it must be done under medical supervision. That refers to one of your articles.
>
> MR. WEGENAST: But he is referring to the wrongness of artificial methods.
>
> MR. MERCIER: He said he didn't believe in them, but they may be harmless if done under proper medical supervision."

Of course, the doctor is trying to maintain that position, but obviously, Your Worship, he doesn't mean that the doctor has got to be at the bedside every time the jelly is used. That is, of course, nonsense. One knows that, and yet his actual words seem to carry so far as that.

Then the doctor said, (reads):

> "A. In individual cases, but not in the general mass -- ones that come to my office."

That was another of the doctor's ideas, and it is common to Dr. De Haitre, Dr. Couture, and Dr. Gerin-Lajoie; -- that was one of the three or four hiding places they had when they got rather closely pressed -- they said, "Well, you have got to take each individual case by itself," and they kept on saying that when sometimes it hadn't very much sense to it.

MR. MERCIER: I think Dr. Cargill had about the same idea on that subject.

MR. WEGENAST: I don't think so. What I am talking about now is the disposition to get away from a general principle, or a general statement by saying, "Well, you have got to look at the individual cases".

Then Your Worship said (reads):

> "Q. You take every case on its own merits?
>
> A. On its own merits.
>
> Q. In some cases, it is quite proper to prescribe them?
>
> A. Yes, the condom, but if you can't use that ---"

MR. WEGENAST: (Reading from Exhibit 95-B, Page 154):

> "Q. It is also possible, however, to select measures that will be harmless as well as effective?
>
> A. Certainly."

Further down the page:

> "Q. One of these unwarranted statements is that the practice of contraception leads to sterility. The fact is that women who, for one reason or another, are unable to avail themselves of medical advice may, in their desperation and ignorance, resort to unnatural methods. During the reading of an excellent paper by Dr. Cary of

Brooklyn, at the American Medical Association meeting in Dallas, Texas, in 1926, on the subject of sterility, he mentioned the use of an intra-uterine stem pessary as a cause of sterility. The point was well taken, and that type of pessary is condemned in Chapter 3 of this book?

A. Yes.

Q. Now, you will see the pertinence of my question?

A. (No reply).

Q. (Reading) 'There is an impression in some quarters that the use of contraceptive measures per se is a cause of sterility'?

A. Yes, perhaps from infection they carry, or injury to the generative organs; it has been mentioned by very good authority.

Q. The next sentence: 'This, I feel, is one of those generalized statements which has never been substantiated and which is very misleading'?

A. The men who have made those statements were certainly not in a position to prove them or know in their own practice.

Q. But you say it is not a thing to rely on; you need a broader base?

A. Yes.

Q. 'The adoption of any other ill-advised method recommended by a friend may have been a cause of sterility, but the point I wish to bring out is that contraceptive measures per se are not necessarily a cause of sterility and that there are many methods which have been used over long periods of time without having any sterility following their use?'

A. Yes, certainly.

Q. 'This statement is based on observation of more than 5,000 cases in the Birth Control Clinic of the American Birth Control League Research Department in New York. There is other information from many sources in Europe, where contraception has been practiced for a long time, showing that there are rational methods of contraception that do

not result in sterility and which, under medical prescription and supervision, are perfectly safe to use from this standpoint'?

A. Absolutely.

Q. A certain percentage of all human mating ---"

(And he goes on discussing this question of sterility and whether there is anything to the idea that contraceptives as such are a cause of sterility, and he says, (reads):

"A. Yes, they draw their own conclusions; there is no scientific ground."

Now, this from a witness for the Crown, under my submission, is getting somewhere near my immediate point, -- that the talk of this coterie of writers, to which I have referred at different times, of objections against contraception on the ground that it causes sterility dissolves into thin air when you come to examine it in the light: first, that the fact there are no proofs, and second, that there has been a radical change in the kind of contraceptives that are being used.

Now, I think I need not read any more of that, -- or perhaps there is something there I should read at the bottom of Page 192 where I say, (reads):

"Q. The next sentence: 'Whether, for example, the pessary is used for the corrections of displacements or for contraception, the mechanical effects will be the same. The relationship of vaginal pessaries as a cause of cancer was summed up by Weiss (Samuel Weiss, M.D.; Some considerations of the cancer problem. American Medicine, February 1926, Page 109) as follows: were irritation and ulceration necessary for the production of cancer of the cervix, surely as pointed out by Sir John Bland-Sutton in his classic work on 'Tumors, Innocent and Malignant,' the pessary would be a chief cause.' He mentions several cases of long-forgotten pessaries, and states that patients were examined under the impression that they were suffering from advanced cancer and none was found."

A. Yes.

Q. The doctor points out to me that the pessary is not exclusively a contraceptive?

A. No, it is for therapeutic treatment, for correcting mal-position or prolapsus."

Then I went on to speak of infections, and we came to the same result. At the bottom of Page 194 is something that in passing I might as well call to Your Worship's attention, where I said this, (reads):

"Q. Besides this group of uninstructed women, there are those who have a native delicacy and reticence, who shrink from any physical examination by a physician, even of the most general character. You have seen a good deal of that?

A. Q. They don't want to be examined, and refuse examination on timidity or they are ashamed.

Q. Naturally, these women have some feeling of revulsion against using any contraceptive. This means that the husband must use the condom, coitus interruptus, or continence. After a time, there is usually a revolt and the woman is asked to 'do her part,' -- meaning that she is to adopt some contraceptive measure; or if nothing is done and pregnancy results, and there should be some sound health or urgent economic or other obvious reason for her not becoming pregnant, she learns to overcome her timidity. It is very seldom that women who have had children and feel that they should not become pregnant again, for the time at least, have any aversion. What do you think of that?

A. That is quite true.

Q. When the aversion to an unwanted pregnancy becomes strong, the aversion to preventive measures tend to disappear?

A. Yes."

As I say, that gets away from a very considerable section of suggestion brought out by my friend before several witnesses, -- well, in the first place, that it might cause repression or neurosis, or some form of affliction of the nerves, which would be worse than the pregnancy itself, as I understand the suggestion.

Now, these passages to which I have referred in Cooper, and to which we have the concurrence of Dr. De Haitre, are so convincing I think I have carried Your Worship with me, so that I need not say anymore and bring in the evidence of say Dr.

Scott and Dr. Hutton and Dr. Chisholm and Dr. Batt, although there would be an overwhelming preponderance of evidence if Dr. De Haitre had gone entirely the other way.

I want to make a general observation here about the evidence of Dr. Gerin-Lajoie, Dr. Couture, and Dr. De Haitre, taking the three of them. I have written down what I want to say, and I have filled in the references to the evidence, and I am prepared to speak by the book on every one of them. I propose to read the paragraph first and then go over it again and point to the evidence to show what I say is fully supported.

I say one thing that appears very definitely in the evidence of Dr. Gerin-Lajoie, -- and the same is true generally of Dr. Couture and Dr. De Haitre, -- though it took a little time to get it out in most cases, -- is that the medical practice of the Roman Catholic doctor is controlled by his religious views. The Roman Catholic doctor may admit, after more or less forensic beating about the bush, that spacing babies is a good thing, but he gets to this: Although -- after some more beating about the bush, -- there are agencies thoroughly recognized as efficient and safe enough, —- and on these points again there is some rearing and plunging, if I may change the figure, -- he can’t use them because moral principles or philosophy stand in the way.

Even after that, if he has been driven behind the screen, the doctor peeks around the corner and says, “Don’t let this screen worry you too much; you might be surprised”. I am basing this on the evidence, though perhaps the figure of speech is mine. Dr. Couture says the Roman Catholic doctor is “badly known.” He means misunderstood. Just give him a chance, the wise ones know how to fix you up. Don't let these moral rules upset you or give you the idea the Roman Catholic doctor hasn’t resources.

And they are a bit mysterious about it. They let you understand that there is something behind that screen that they can’t just let everybody in on, but just leave it to them, and they will fix it up. That is precisely the position as developed by Dr. Gerin-Lajoie and Dr. Couture, with an occasional bit of unwanted help from Dr. De. Haitre. And I say to Your Worship that that stand is not edifying in a court of law, and if we may use the term we developed yesterday afternoon, it is not tenable from a scientific standpoint. We will have to get up a dictionary of synonyms for the purpose of this trial, Your Worship, so we may understand one another.

Now, I want to refer to the evidence in detail. First, on the point that these doctors recognize the agencies, -- that is to say, artificial contraceptives, -- as efficient. I refer to the evidence of Dr. Gerin-Lajoie on Page 52 where I asked him this question:

> "Q. I am asking you to give an opinion as a medical man; is it ever allowable from a medical standpoint to prescribe contraceptives like the pessary or the condom?
>
> A. I believe it is."

Then further on:

> "Q. Now, if people ask a medical man lacking these inhibitions, are they deprived?
>
> A. No.
>
> Q. Can they use the condom?
>
> A. They can."

That is, he says, medically speaking it is all right

Then Page 39 at the bottom, I asked the doctor:

> "Q. They might do some good?
>
> A. In some particular cases."

Now, they were also okayed as being safe. I refer to Page 53, -- well, I have already read that at the top of Page 53.

Then on Page 101 of Dr. Gerin-Lajoie's evidence where the question is asked whether a remedy that isn't absolutely 100 percent perfect can be used in the meantime. I say to the doctor:

> "Q. So we have to use the best we know of?
>
> A. That is the view of everybody."

Then Page 119, at the top, he says, "Let them go and see their doctors". He says that a number of times.

> "Q. And the doctors' advice will be not to do it?
>
> A. Yes, and then they can have continence.
>
> Q. Oh?
>
> A. The only thing I can admit is continence, partial or total.

Q. Well, that is fairly clear, and you think that the University of Toronto is all wrong in teaching the technique?

A. It is up to the University of Toronto to decide.

Q. You are under oath, doctor, and you are the one giving opinions?

A. I am telling you the teaching staff of the University of Toronto is very good; I can't say anything else; I can't say it is all wrong.

Q. According to your opinion, it is all wrong, or is there a difference of opinion between Montreal and Toronto, and one is right and the other wrong?

A. I suppose there would be a difference.

Q. What might be all right on the shores of Lake Ontario might not be so hot along the lower shore of the Ottawa River?

A. It depends on what it is.

Q. It is up to you?

A. We divert from the medical question and it becomes a moral question."

Now we are getting into the religious field. He admits on the medical question it is all right, but he shies from the other (continues reading):

"Q. And as His Worship won't let you follow that I won't run counter to His Worship's wishes, but you say there might be a difference in teaching between the University of Toronto in ---

A. Teaching contraceptive measures.

HIS WORSHIP: He goes on to say further that if Dr. Scott attempted to teach at Montreal what he teaches at Toronto, he would be suspended.

MR. WEGENAST: I remember that, but he is trying his best to get away from my question. Then I asked him this question:

"Q. What would be wrong for the individuals in Eastview would be wrong for individuals in Toronto?

A. It depends if the Eastview people have the same views as people in Toronto. It is there that principle comes in, the moral side."

Now, on Page 122, this is rather significant; after he had been driven from pillar to post, more or less, he said in answer to my question (reads):

"Q. You ventured an opinion it is bad -- contraceptives are bad, haven't you?

A. I am not so sure of that; I don't think I said contraceptives are bad."

Then in the evidence of Dr. De Haitre on Page D. 124 about condoms, I asked him:

"Q. About condoms?

A. As a matter of fact, we very frequently advise these when we have a lot of men come to see us who are unlucky enough to have acute gonorrhea, and when the time comes the sexual disease is about cured, we ask them to use the condom, in fact, only on that sole purpose.

Q. Do you think there is any serious damage in using the condom?

A. To whom?

Q. To the woman?

A. No."

Then on Page D.125, speaking about the pessary, at the middle of the page (reads):

"Q. Would there be anything wrong if at a clinic a doctor advised and prescribed in every case where one was used?

A. If anything wrong?

Q. Would there be anything wrong if at a clinic a doctor advised and prescribed in every case where one was used?

A. I think that would be the proper thing to do."

And Your Worship remembers the doctor thought if a clinic were opened it would be fine.

Then on Page P.46, I put it this way to Dr. Lajoie:

"Q. Might I put it this way, that like Dr. De Haitre, you have certain principles you go by?

A. All doctors have certain principles they go by.

Q. You have general principles you go by?

A. We?

Q. Not "we," you?

A. Yes.

Q. Your principles would stand in the way of your prescribing a condom?

A. To prevent conception?

Q. Yes.

A. Yes. "

Then on Page P.85 of the same evidence, at the bottom, (reads):

"Q. Now, doctor, the end is to prevent pregnancy. Smulders says it is not the end, but the means that does matter. Is it your position that it is all right to do it by "Rhythm" or periodical continence, but it is not right to use other means, a condom or pessary?

A. Yes."

And on Page 120 (reads):

"Q. What would be wrong for individuals in Eastview would be wrong for individuals in Toronto?

A. It depends if the Eastview people have the same views as people in Toronto. It is there that principle comes in, the moral side"

On Page 123 (reads):

"Q. Surely you won't say it is right in one place and not in another; seriously, I think I have you in a corner."

And there was no reply.

Your Worship will remember there was considerable silence; well, there was more than silence, I believe, because Your Worship is reported as saying, "I want this matter treated seriously".

Then I said:

"Q. I want to see if there is any way out, myself?

A. I think I answered the question; if Professor Scott was coming to teach it at the University of Montreal at Montreal what he teaches at the University of Toronto at Toronto, he would be expulsed; I can't say anything else.

Q. Would that be on any scientific basis?

A. No, it would be on a moral question.

Q. You will admit people in Montreal are constructed the same as people in Toronto?

A. Presumably.

Q. And for all you know, contraceptive methods would work in both cases?

A. Presumably.

Q. And for all you know, they have as much brains in Toronto to learn contraceptives; is it not possible?

A. It is possible.

Q. The only thing is that in one place, they don't believe in teaching them?

A. Possibly. What do you mean, by "believe"?

Q. You say it isn't right?

A. It isn't right.

Q. That is your opinion?

A. Yes.

Q. That is the difference?

A. Yes."

That is what Dr. Lajoie tells us. And Dr. De Haitre is on the same line on Page D.156. Well, all there is on that page, Your Worship, I followed up there the encyclical which the doctor, unfortunately for all of us, brought into the picture at that point. Then again on Page D.172.a, -- the reporter has written over some of these pages and filled in quotations that he didn't have before.

HIS WORSHIP: Is that the same as Mr. Mercier's copy? Some of these pages, apparently, he did not copy out the quotations, and he has done so and added to the evidence.

MR. MERCIER: I believe Mr. Wegenast got them. I was told they were ready for me, but I didn't get them.

MR. WEGENAST: Well, the reporter had access to the textbooks. It is the reporter's fault that he didn't get them at the beginning instead of adding it in later.

HIS WORSHIP: It isn't entirely the reporter's fault, Mr.Wegenast. It was very confusing. You were quoting all over the place from different books, and at the end of the day, they would be all gathered up and put in the same pile.

MR. WEGENAST: But, Your Worship, it isn't as though he didn't have enough time; he had six weeks of time.

MR. MERCIER: On this subject, Your Worship, my learned friend has requested the former reporter in this case on many occasions to give him some evidence of so and so before its logical sequence, and that was inclined to mix things up. I wasn't consulted at any time whether it suited my purpose or not.

MR. WEGENAST: We had this unfortunate situation where the reporter showed an unwillingness to deal with my friend, Mr.Beament, and insisted on writing directly to me.

On Page P.154 of Dr. Couture's evidence, that is on the question of what he called "philosophy" (reads):

> "Q. Those things come from experience in your practice?
>
> A. No, they are reasons I don't believe in contraceptives, not because of experience, but reasoning.
>
> Q. Yes?
>
> A. We are under biological laws as far as our body is concerned."

Your Worship will remember how he tried to develop that. Then on Page P.195, we got him very definitely committed to the religious basis, notwithstanding his position on "philosophy". We were referring to the poster, Exhibit 105-B, and I quoted the passage about abortions, and then I said (reads):

> "Q. Now, talk about mixing medicine and religion?
>
> A. That is based on the principles I have given you a while ago; you are not concerned with directing the life of the people. It is not the doctor's duty to decide whether one child should live or the mother; it is up above.

MR. BEAMENT: My friend was referring to 105.

A. It is derived from that particular principle. That is not an order simply because it is an order; it is reason."

And I pointed out on this is cited Canon 2350, and the doctor said (reads):

"A. That is the philosophical principle. That has been enunciated on.

Q. Promulgated?

A. Yes."

That is to say, he gave us a picture of the doctors of law in the Roman Church sitting down and discussing biology, and coming to the conclusion that is embodied in Canon 2350. I don't think there was such a thing as biology when that canon was drafted.

Then he goes on with this, which bears on another point:

"A. Here is what happened: In practice, it is being abused very often, and that has been reason, and in 20 years, I have never had need for therapeutic abortion, and I have had a dozen cases where I was consulted and it was not performed."

On Page P.242 of Dr. Couture's evidence, we have this:

"Q. Now, I am coming to this, doctor, and may I guess where you got this from -- When you interfere with the laws of nature and biology, you pay the penalty; may I guess where you got that from?

A. A lot of places.

Q. From the group of books I told you about?

A. Not necessarily, I knew that before I studied medicine.

Q. I suggest you can't find it in other books, in medical books?

A. No, I slipped there; what I meant is philosophy."

And he has already explained what "philosophy" is:

"… it is studied before medicine, and we have our principles and grounds. I didn't mean to mislead you.

Q. Of course, doctor, we are men; I am a lawyer, and you are a doctor; it is pretty hard to keep our knowledge in

separate compartments, but I do suggest you cannot find it anywhere in medical books except in Halliday-Sutherland and DeGutcheneere, and that group of writers?

A. I don't know of any others."

At the bottom of the page:

"Q. I leave the physical line of fooling nature that way and come to medicine. We fool nature by injecting something that keeps nature from giving us lockjaw?

A. That question isn't biological; it is physical failure and if you break your neck; it is physical failure, not biological."

Then on Page P.306, there is a discussion of where he got his philosophical principles from, and I don't think I need read that.

Then Page P.363, if Your Worship remembers the course of the evidence, -- I find it hard myself to carry it with me very long, but I do remember a good deal of Dr. Couture's evidence. It was of a nature that did impress itself on one, and if I am carrying Your Worship with me in what I say, that that is the effect of the evidence, then I don't want to go into all the details of it.

HIS WORSHIP: Well, that was his very first statement when he got in the witness box -- that anything he had to say would be based on certain preconceived ideas, as well as his experience and studies.

MR. WEGENAST: No, he denied his experience. He said it is not experience; it is philosophy.

HIS WORSHIP: Yes, but his philosophy is based on his education and experience of life.

MR. WEGENAST: But he said very definitely "no" to my friend. However, it isn't so important that I need to follow it up. But the point is when pressed as to whether his experience is based on Canon 2350, -- not his experience, I used the wrong word, his philosophy is based on Canon 2350 -- he said in so many words that the fathers of the church wouldn't have written that canon if it hadn't been logical.

MR. MERCIER: That may be an interpretation based on a certain philosophy, but I don't appreciate that word any more than the others.

HIS WORSHIP: As I understand it, Dr. Couture put it that he found it more in the nature of a coincidence that his philosophy of life and that canon coincided.

MR. WEGENAST: Your Worship wasn't sufficiently impressed then with what I got out of him in cross-examination because he stood here with certain notes in his hands and recited a little lesson to Your Worship. He didn't want to get in the same fix that Dr. Gerin-Lajoie had been in, and my purpose was to show him that he was in exactly the same boat. And if I didn't sufficiently impress Your Worship, then I am entitled to do so now.

Here it is on Page P.195. After reading to him from the poster, I said to him (reads):

> "Now, talk about mixing medicine and religion?
>
> A. That is based on the principles I have given you a while ago. You are not concerned with directing the life of the people. It is not the doctor's duty to decide whether one child should live or the mother; it is up above."

Then there was some talk about what the reference was to, that is, 105-B. Then the witness volunteers this:

> "A. It is derived from that particular principle. That is not an order simply because it is an order; it is reason.
>
> Q. On this is cited Canon 2350?
>
> A. That is the philosophical principle. That has been enunciated on.
>
> Q. Promulgated?
>
> A. Yes, because of certain biological laws of which I spoke at the beginning."

He said that is what his philosophy is, and he has got the day and date for it, number 2350.

Now then, we come to this: After enunciating the faith that is in them, these doctors get behind this screen of morality and say this:

> "Much as we admit it is a proper therapeutic agent, we can't use it, and we have enough faith in the church to

think that the church will not give us a wrong steer, and so that is good enough for us."

Now, here we have Dr. Gerin-Lajoie on Page P.107 coming back in this way: We were talking about whether contraceptives were 100 percent effective, and I think it arose out of discussion of the Kansas City Congress of Physicians, and I put this question (reads):

"Q. Do you think the mother should wait until doctors study this out to get unanimous, and when doctors have established it, a clinic can come along; is that your idea?

A. No.

Q. What will the poor mother do in the meantime?

A. See her doctor.

Q. Not you?

A. Yes, on the contrary, you would be surprised."

Then on Page P.54 in the same evidence, I crowded him again -- what about the patients that come to him or other Catholic doctors for advice, and Your Worship said:

"THE COURT: So far as this doctor's practice is concerned, he doesn't recommend anything except partial or complete continence.

MR. WEGENAST: I submit, with all deference, that I am in cross-examination and I am entitled to draw him out. I am cross-examining this man and I put it to him:

Q. Whether his patients are not deprived of valuable therapeutic agents?

A. My patients are not deprived.

Q. So long as they are under your care?

A. Certainly, they come for advice and can do what they want.

Q. If they want that kind of therapeutic advice, they must go elsewhere?

A. I don't know."

You find that implication throughout the evidence -- that it is not necessary for a patient to go to another doctor. "I can look

after him”; and of course, Dr. Couture was quite plain in that respect.

Then here is the passage I had in mind on Page 201 of Dr. Couture’s evidence. I said to him (reads):

> “Q. Is it fair to put it that way; in cases of doctors who are non-Catholic, the view is purely medical, and in your case, there is the added consideration of obeying the church’s laws?
>
> A. No, not obeying the church’s laws, but obeying the physiological or biological laws.
>
> Q. Of the church?
>
> A. They are physiological or biological laws; very many non-Catholics believe the same thing exactly.
>
> Q. What you go by is not what non-Catholics think, but what is written down in the canon law?
>
> A. I said before I am not stampeded by the laws of any church, but by philosophy and judgment.
>
> Q. And you go by reason?
>
> A. Yes.
>
> Q. And you believe reason is behind these canonical precents?
>
> A. Laws, yes.
>
> Q. That is why you obey them?
>
> A. Yes, because they wouldn’t order something illogical.”

There is a question there at the bottom of that page; the reporter hasn’t got it down right. The next question is by Your Worship; the reporter has it “as from the irrational,” and I want to ask Your Worship to tell me whether I am right in saying it was “as distinguished from the irrational”?

HIS WORSHIP: That is the sense of it, yes.

MR. WEGENAST: Your Worship will see it is quite clear; he voluntarily put himself on record. There is the poster, the canon law, and he said they wouldn’t have put it there if they hadn’t known what they were talking about. That is why I had to chase the doctor over that fence from one side to the other finding out ---

MR. MERCIER: No, that Mr. Wegenast thought they had, and explained very thoroughly just what it was. He made himself very plain on that point, and I am very glad my learned friend got that out of him.

MR. WEGENAST: That is an extraordinary feature of this trial. Your Worship saw the expression on my friend's face when that evidence came out.

MR. MERCIER: Sure, because your learned friend loves the truth.

MR. WEGENAST: It was, I say to Your Worship, the most blatant piece of sophistry one could imagine. He said:

> "Here is Canon 2350, which tells me I must not do so and so, but I am not going to lose any business over that, I can do it, I have told other doctors."

He said elsewhere in his evidence he had frequently been consulted by other doctors, and he had put them on the track. Then I accused him of sophistry, and we had to have a recess while we got a dictionary. Your Worship wasn't interested in sophistry after that. But I suggested to Your Worship that nothing could be more obvious than that evidence of that kind is not only valueless ---

MR. MERCIER: That is most unfair, Your Worship. The doctor gave very clear evidence, which I will admit, Your Worship, was not entirely to my learned friend's satisfaction, but from my point of view, I was glad to hear the doctor give the explanation that he gave because I believe it was the correct one. But my learned friend was very much disappointed, and now he is trying to make fun of it. He has been so sarcastic all along that I do think the doctor should have been entitled to more consideration, even from my learned friend, if he can show it to anybody.

MR. WEGENAST: The doctor put himself in the position deliberately; he gloated over it. He was exultant at the fact -- and my friend was -- that for once, he could show these Torontonians here is a Catholic doctor who can do just the same as a Protestant doctor can and just see how smart he is.

MR. MERCIER: I know my learned friend would rather have had the explanation given by the expert witness he called, Mrs. Hawkins, but when the doctor gave him the explanation, which I submit is the right and proper one -- of course Mrs. Hawkins was a great authority on a great many things, and the doctor, because he

doesn't believe in birth control, his position must be untenable, to use the synonym my learned friend used.

MR. WEGENAST: The general impression is that Mrs. Hawkins is right, and she had it in the canon law, but she wasn't smart enough to see the way around, as Dr. Couture does, and I am going to say this -- that if there is a chance that there are other Catholic doctors who are not as resourceful as Dr. Couture in finding their way around those promulgations ---

MR. MERCIER: There was a look of relief on my face, and I can never forget the look of disappointment on my friend's face when that came out.

MR. WEGENAST: I don't know what my learned friend means. It was surprise -- it was consternation that a man could reason in that way. But I still think Mrs. Hawkins had a substantial point when she says if there are Catholic doctors who think the canon law means exactly what it says and don't know their way around it ---

MR. MERCIER: That is what Mrs. Hawkins thinks.

MR. WEGENAST: Will you please let me finish? I say if there are Catholic doctors in that category, perhaps nearer to Toronto than here, and if there is a danger that the life of the mother may be sacrificed to the child, that is all the more reason why the mother should have that recourse to contraceptives. You can have it one way or the other; you can divide it 50-50 or whatever way you like.

MR. MERCIER: I will take it the way it is.

MR. WEGENAST: I am not going to refer to that any further, except that I may say this in the interest of accuracy -- that when I call Your Worship's attention to the position in which we find these three -- not musketeers but three doctors, let us say, they are not always consistent in that position, and I mustn't let my friend have this on me -- that every one of them didn't say things which were inconsistent with the position which I put before Your Worship. Dr. Gerin-Lajoie, of course, said, at one stage, he would feel himself free to advise artificial contraceptives. That is on Page 41 at the bottom and at the top of Page P.42. Yet, of course, he said immediately before he would not, but that was characteristic of the evidence.

Then, sometimes, he would get stubborn when he was corrected and said he was absolutely opposed to a pessary quite apart from any

religious consideration, although he admitted in another breath that they were proper contraceptive agents apart from religious scruples.

Then he said women shouldn't have to wait until the doctors made up their minds, but apparently, that was good only for Toronto and wasn't good for the women on the other side of the Ottawa River.

There was that general principle that ran through the evidence of all of them, Your Worship. They threw out a challenge to me every once in a while: "Give me an individual case -- you give me the facts of an individual case and I will show you how I can get around it," and once or twice, I gave them cases and they just naively fell for it; -- I use that in the English, and not in the French sense -- they just bared their hearts to us and showed us exactly how the machinery worked.

Then Dr. Couture laid it down on Page 168 that what the patient should do is go to the doctor and find out what to do, and he would tell them.

Now, when you come out of all this -- sometimes we don't see the wood for the trees -- when you come out from amongst the trees at this side of the discussion and take another look around, you do get rather a clear view. After all, we have to settle ourselves back into the position, once in a while, that the question we are arguing is whether it is for the public good under Section 207 of the Criminal Code and that that section deals with obscenity. It is a question of whether what Miss Palmer did was so obscene and unjustifiable that she should go to jail for it.

MR. MERCIER: Of course, that is my learned friend's contention.

MR. WEGENAST: Well, it is there. Now, the question is whether Miss Palmer handled this delicate subject so as not to offend the decencies, which, as Your Worship has observed from some of the cases, is held out as a proper subject for discussion if discussed properly. The question is whether she handled it in such a way as not to offend the decencies.

The law, again I submit Your Worship, has nothing whatever against the use of contraceptives. You can't even do what is done under the Liquor Act; you can't seize them. I have already said Officer Martel had no business with those boxes. There is

nothing anywhere in English law prohibiting the use of contraceptives or having them, and under my submission, of course, all that Section 207 tries to do is to surround the subject with a sort of a screen of decency and ask that certain amenities be observed in the discussion. The discussion is the only thing that is in question.

But let us take it in all seriousness as if there were a point or points to demonstrate as to the use of contraceptives and see what the arguments are from the medical standpoint. Many of them have been already covered in covering other ground.

--- 11:30 a.m. Court adjourned for recess.

MR. WEGENAST: Perhaps Your Worship will permit me to say that if I appear to be "riding" -- I think is the right word -- Dr. Couture and the other doctors, it is purely forensic, and it is my privilege and duty as counsel to show up the inconsistencies, and I think I have made my point that they are there. One has difficulty sometimes in deciding -- I am going to refer to it presently -- whether one's own particular process of reasoning and getting at things is the right or the wrong one. I am going to observe that our thinking process -- my thinking process, the thinking process of a Protestant doctor is not quite the same as that of a Roman Catholic doctor. We don't go at things the same way; the same arguments are not followed.

Now, I was afraid I might hurt Dr. Couture's feelings by accusing him of being sophistical, but apparently to him that wasn't anything very painful; he would have felt the same, I suppose, if I had called it Jesuitical, or scholastic, or mediaeval. To me, it was painful to say those things, but I am glad to know that it didn't hurt the doctor as much as it did me. In these human issues, we just can't all be alike, and it is just as well we are not. I do hope nothing I said will be taken unkindly.

Now, I want to refer to the question of the harmfulness or otherwise of the contraceptive means recommended in the pamphlet, and if I occasionally say the same thing that has been said before, it is really to save time, and to get along the road I am travelling.

The pamphlet, as the evidence has shown us, and its contents were prepared, and the subject matter was adopted on the advice of doctors who had made a special study. It has that in its

favor in the first place. In that, I refer to the evidence of Miss Weber on Page D.246, and Miss Weber also said, on Page D.247, that they had been advised that the methods were harmless.

Then, I point out to Your Worship that the contraceptives were sent to people who seemed to need them. In the next place, as Professor Kemp said, the principle of selection is applied, -- whatever one may think of the exact consideration or considerations in selecting, -- there was care expended all along the line to see that the means were well-founded on medical opinion and that they were the best that science afforded. Then, when they go out to the people to whom they are given, they have a method of dividing those who should have them from those who shouldn't have them, and my immediate point is that when you commit a matter of this kind to a human agency or when a human agency takes up a system of this kind, you have got to allow for some give and take. It isn't as if somebody had just blindly and ignorantly started this business of distributing contraceptives. The whole thing was carefully thought out, and you must give the authors of it credit for that.

The selection of the persons who are to get the information and the contraceptives is made on the basis of facts reported by the visiting nurse -- facts which are adduced, sought out by the visiting nurse, and there, of course, my submission is that it couldn't possibly be done by any better means or agency. It is impossible to contemplate the doctor going around with his satchel to all these places. If a doctor were deputized by the Town of Eastview -- if a doctor were engaged by the Town of Eastview to look after this matter of contraceptives for the municipality, as no doubt he will be in a few years, he wouldn't go around himself any more than he does the hundred and one things in his own office himself. You go into a well-organized doctor's office, a nurse takes you in hand, she undresses you, she gives you a drink of barium, or whatever it is, and does this, that, and the other thing, and you are not wheeled into the doctor's presence until every last thing has been gotten ready.

Now, can you imagine a town of 7,000 people even being served by a doctor or a corps of doctors running around from house to house? The matter would be put into the hands of nurses, especially when we consider it is women who are to be dealt with.

At the head office of this enterprise in Kitchener, there is a part-time doctor in charge who is called on, when necessary, for practical purposes. A routine has been established, as the evidence shows, and it is not necessary to refer to the doctor except in odd cases where peculiar problems arise that haven't been dealt with before. Certain rules have been laid down -- policies, as Mr. Kaufman called them. For example, the rule is not to give a contraceptive to any but women -- never given to a man. They don't give them to any but married women in the ordinary course. They don't give them to anybody but poor married women, and they don't give them to pregnant women until after the eighth month. I don't know whether or not it is in evidence, but I think it is obvious why that would be done. The evidence is, of course, that a woman couldn't do herself any harm with the contents of that box -- well, all it amounts to is it would be wasting money -- waste as far as to give them to women while they are pregnant, but the policy is to give them the supplies very near the time when the baby is to come so as to avoid an immediate following pregnancy because there are some cases where they "follow very hard upon," as I think it is put in Hamlet. That is what Hamlet remarked about his mother's wedding; it "followed very hard upon".

Certain exceptional cases arise where, in the first place, a visiting nurse will use her own judgment, and then finally the matter is dealt with at the head office. I have already referred to the fact in the case of Mrs. Deslauriers that there was a miscalculation of one month, apparently, by the woman herself - presumably, by the woman herself because Miss Palmer wouldn't know when the baby was coming, and to say that Miss Palmer had deliberately shifted the date of the arrival of the baby forward for some reason or other, one can't believe that.

In the case of the unmarried mother, I need not spend any great amount of attention upon it; I should think, in any case, Your Worship will take the girl's story with a grain of salt -- several grains of salt.

It is not the sort of evidence Your Worship would convict anybody on. She isn't the sort of girl on whose evidence Your Worship would convict. And the blank is there, signed circumstantially by a Mrs. Hudon; the box was sent to her as a married woman. Whether the girl's story as she told it in the box is any truer than what she told Miss Palmer first, she is a

self-confessed liar, and whether she was building up a picture in the box, it would be, I should say, impossible for Your Worship to decide.

MR. MERCIER: That is not admitted.

MR. WEGENAST: What is that?

MR. MERCIER: That she told the worker she was married.

MR. WEGENAST: That is so. The girl's story wasn't worth denying -- a story of that kind. Suppose it were all true? It would be a curious thing if there hadn't been more instances found of something like that -- if Miss Palmer was the kind of person who would do that. There is no reason anywhere else in the evidence to suppose that Miss Palmer is the kind of woman who would do the sort of thing for which she might be blameworthy, if the girl's story were true. But suppose it were true that Miss Palmer knew the whole story -- here is the girl; she had started on her career of having babies ---

MR. MERCIER: Having one baby.

MR. WEGENAST: Yes, she started on the career.

MR. MERCIER: There is no evidence she started a career. The evidence is that she had enough.

MR. WEGENAST: The evidence is she had one, and Your Worship saw her in the box.

MR. MERCIER: Well, that is not "babies".

MR. WEGENAST: She started to have them. There is the same reasoning. My friend is apparently not content unless you start with quintuplets.

MR. MERCIER: No, I am against quintuplets since I have heard Mr. Silcox.

MR. WEGENAST: Suppose it was true Miss Palmer had thought that she ought to have the contraceptives, even if she wasn't married, the great preponderance of the evidence is the girl was entitled to it anyway, on general principle -- sociologically. I don't want to waste time on it because it is so obvious, but it can be considered from half a dozen different angles. What about the next unwanted child of this unmarried girl? If there is anything in what Augustine says, who is going to hold this child up before the public authorities and say, "This is mine"? And it

is the father who has to hold the baby. Your Worship can imagine the other points of view -- from the point of view of economics, sociology, and eugenics. The preponderance of the evidence is to the effect that every woman is entitled to this information by virtue of the fact she is a woman. I know how utterly repugnant that is to Roman Catholic theology; I don't want to be talking about it all the time ---

MR. MERCIER: To certain other people too.

MR. WEGENAST: Well, like Canon Whalley.

It is a matter of evidence; Mr. Silcox, Dr. Cobourn, Dr. Batt, Miss Weber, and Dr. Hutton, not to speak of the others like Mrs. Hawkins, are on record.

Now, I have already submitted to Your Worship that it is not a matter of striking a balance -- of finding out whether we are in the right or not as far as the public good is concerned. And another thing, Your Worship, I don't think we ought to wait for the approval of the next century before we make up our minds whether Miss Palmer was doing a good thing or a bad thing. I think Your Worship has a shrewd guess as to what the next century will say. We had it a half-century ago in New South Wales, and we had a half-century of practice in England; we had a century of practice in the United States, notwithstanding all the Comstock laws that they could pass. Human nature wouldn't stand for it any more than they would stand for prohibition, although it was a provision of the United States Constitution.

Individually, as to the different means, we have, of course, some generalities about the matter from witnesses like Dr. Gerin-Lajoie, who said that the methods set out in the pamphlet would do lots of harm. He used that phrase a number of times throughout his evidence -- "lots of harm," and my submission is that his evidence and that of Dr. Couture and Dr.De Haitre wasn't at all strong on that; it was more varied than it was strong, but their evidence simply doesn't get us anywhere.

We had very definite evidence of men who are utterly competent in their field. We had, in the first place, Dr. Scott, and I want a little later to read some of Dr. Scott's evidence. There is a man who did know what he was talking about, and so did Dr. Chisholm, Dr. Hutton, and Dr. Batt. And these people come along and say one after the other, in their confidence, that this, that, and the other thing -- the whole lot them -- in the

pamphlet are harmless. There can be no cavilling at that. I don't think Your Worship wants any references, but one after another, -- the condom, the pessary, the tampon, the jelly, the suppositories, -- were declared by these doctors to be harmless.

MR. MERCIER: Under all circumstances?

MR. WEGENAST: Well, I would say yes. I don't know what evidence there is to the contrary, but if my friend wants to get into an argument over that, let us have it right now.

MR. MERCIER: Under all circumstances, for every woman?

MR. WEGENAST: Yes. A woman has cancer, let us say, and let us say she doesn't know it. The evidence was uniform -- even the witnesses for the Crown said they didn't see how the jelly could do any harm. They all said they didn't know how the condom could do any harm. The question was -- and it was seriously suggested with some colour of sense to it -- that if a woman were so absurd as to leave the pessary in there for months, forget it was in there, -- well, heaven only knows there is no guaranteeing anybody against a lack of brains so outstanding as that; nothing is fool-proof. A woman who would do that wouldn't be safe crossing a street in these days of automobiles.

I say you have got to leave some room for the operation of ordinary brains. We had several pieces of evidence of pessaries, or sections of them, being found in women, but we have had evidence of scissors and sponges and needles and this and that being left in people's insides after operations by experts. Accidents will happen. The absurd lengths to which my friend was driven, of course, shows. The suggestion was made by somebody in the box that the woman might use this same sponge to scrub the floor. It was seriously suggested. I don't think I need to say anything more about that.

Dr. Chisholm said it was almost impossible for a woman to injure herself with a nozzle unless she were insane, and Dr. Cargill, you will remember, dropped his opposition to it when he found, and I found what I didn't know before -- that the nozzle was made of celluloid, and not of glass. And all the witnesses said the jelly was harmless, and the vinegar tampon was perfectly safe. Dr. Scott said he wouldn't mind using vinegar as an antiseptic, -- it is an effective antiseptic -- and it is often used when there is nothing else handy in the case of a bruise or

a cut. So far as the sponge is concerned, Dr. Chisholm okayed that on Page N.17 of his evidence.

Then there were some untenable suggestions made, for example, that a woman mixing ingredients in the formula for suppositories might not turn the spoon a sufficient number of times and not mix it up enough, and there might not be enough quinine in one suppository to cause harm. It really gets to the jumping-off place of argument to have to deal with such things seriously, but they are seriously put forth, and my duty is seriously to say something about them. You can conjure up scores of possibilities of that kind -- there may be enough baking powder in one biscuit to give a man indigestion. The evidence of Dr. Cargill, one of the Crown witnesses, was of course absolutely definite there was no possibility of any such untoward result from any quantity of quinine that could be got into one, two, or three suppositories; it would be perfectly absurd to say that. We had it figured out, in the evidence of Dr. Couture, just how much it would be possible to get into one suppository, and even then, it would take several of these suppositories with far more quinine in the aggregate than it would take in the whole batch to have any such effect as was suggested.

There are one or two other points in connection with the medical feature that one ought to take up. Perhaps one ought to say a little more about the question of medical supervision. My friend keeps canvassing and working on the idea that Miss Palmer's work might have been all right if it had been done by a doctor, or under medical supervision, and he asks Dr. Cargill and others -- Dr. De Haitre says "This would be fine if it was under medical supervision". Well, it is under medical supervision. You have got a competent woman of judgment and with the proper spirit. That point was elaborated upon by a number of the witnesses. You get a woman of judgment with the proper spirit and you can pretty well leave it to her to say when it is time for the doctor to come in.

Certainly, Your Worship, you don't leave it to the doctors. They would be living in our houses if they had it their way, at least in the house of some who had enough money to pay them.

HIS WORSHIP: I think Dr. Cargill's point was the point of view of efficiency; you can't apply the methods in Exhibit 5-B to a large class of women and expect it to be as efficient as it

could be if each individual case was examined for the particular contraceptive most applicable to that case.

MR. WEGENAST: Yes, I agree at once, Your Worship. Well, I was going to say this: It would be a fine thing if we all went to the doctor twice a year to be examined. We just don't do it. We don't even go to our dentist twice a year, although most of us listen to "Amos and Andy" every evening.

MR. BEAMENT: The doctor said specifically that didn't apply to the jelly or the condom.

HIS WORSHIP: The question that was put to him was, would he refuse a condom or jelly to a woman at a clinic who didn't want to be examined, and he said "no".

MR. WEGENAST: And then he said there was no reason why these people in the backwoods -- all these people who had conscientious scruples about calling in doctors at all -- he wouldn't deny them that. What he was thinking of was the pessary. Well, we agree with that. It wasn't the custom of Mr. Kaufman to give a pessary without an examination by a doctor, so what are we arguing about? The whole thing just blows up as far as any medical supervision is concerned. These nurses go around and get the facts; you can't send the doctors out to get the facts like that.

HIS WORSHIP: Dr. Cargill didn't say the pessary would be the best method; he said some oil that was coming through for that would be better still.

MR. WEGENAST: Yes, and of course, Your Worship will remember in Cooper, it is forecast that there will be still better methods. There is this, of course, Your Worship; there may be new methods in use now in some places that would be better than some of those, or perhaps all of those in the pamphlet, but until they come into general use and have general approval of the medical profession, it wouldn't be a proper thing to use them on a large scale. It is all very well for a doctor to experiment on his own patient if they will put up with it, and it is all very well for a group of doctors to experiment on patients in a clinic where people don't know they are being experimented on in order to get statistics so we will know where we are at, but until thousands of cases have gone through the statistical mill and until thousands of cases have been observed, we must, especially in medicine, be conservative and not take chances.

My friend tells me Dr. Cargill said he prefers the jelly.

HIS WORSHIP: To anything else set out in Exhibit 5-B, but he also says there is now this new method.

MR. BEAMENT: But Your Worship, although he does mention there is a newer type of thing which they are playing with, he said in his own practice -- he was asked this question:

> "Q. In your own practice, do you use chemical or mechanical methods? Which do you prefer; I know it depends on individual cases?"

And he said:

> "Generally, the cervical diaphragms with jelly, and more recently, there is a new type of contraceptive put out; it doesn't give any obstruction like the cervical cap."

Then he goes on to talk about the new preparation from England, which they are trying out.

HIS WORSHIP: Doesn't he mention that he is using it himself?

MR. WEGENAST: No, I don't think so, and I was interested in it.

MR. BEAMENT: I think it is open to the construction he is trying to use it now, but I don't think it cuts down his preference subject to what he may find out later.

HIS WORSHIP: And what he has learned has been found out in England about its use.

MR. WEGENAST: There is in some part of the evidence an extract that was read out of a book, I forget where; there may be methods like hormone treatments of some kind, -- there may be treatments to inject something into the blood that will have an effect for a certain length of time, having a spermicidal effect. But those are all things that will develop as the years go by, and of course, nobody is going to say -- some of the doctors didn't want to get to it -- they showed their stubbornness and resistance to my examining by backing away in admitting that you should use the best you have as long as you have nothing better. If and when advances are made in the art, one can rely on men of Mr. Kaufman's enterprise and judgment to adopt them. So much as to that.

I don't want to be unkind, Your Worship, and I don't think I will be understood in that way because I am going to preface

what I am going to say by admitting that, as a lawyer, -- and asking Your Worship, perhaps, to admit as lawyers we have the human tendency to resent encroachments upon our profession. It is a matter of pocket-book, and we don't like country conveyancers to convey ---

HIS WORSHIP: And don't like trust companies drawing wills.

MR. WEGENAST: Exactly, it is a natural, human thing. One mustn't let it run away with one, but just to show doctors are no different, -- they are after all humans, -- I ran across this in Dr. Gerin-Lajoie's evidence on Page P.62: He said "I don't think this book, 'Rhythm," should be in layman's hand," and he explains the reasons for it. Your Worship will find the discussion there was on the question of whether the layman shouldn't be taught to use the doctor's services more, and on Page P.69, you will find this: He says "…there are too many medical notions given people in Canada gratuitously."

MR. MERCIER: He might not have meant free of charge by the word "gratuitously". That doesn't mean free of charge, I don't think.

MR. WEGENAST: Doesn't it mean that in French? Well, my friend will correct me if I am wrong. I don't think it has the same "sideswipe" in French that it has in English. I am quite sure from the discussions that is what he meant, but after all, why throw your good medical knowledge away for nothing? And that is why he didn't want "Rhythm" to be circulated -- because he said the people might think they didn't need to go to the doctors.

I submit, Your Worship, what could have been usefully done in the way of medical supervision in the operations of the Parent's Information Bureau that wasn't done? If you or I were to give Mr. Kaufman advice, what would we suggest to do? If my friend were to advise Mr. Kaufman to have more medical supervision, how would he go about it?

MR. MERCIER: I am certain I have no suggestion to offer.

MR. WEGENAST: There you are. I hope my friend will be constructive and tell Mr. Kaufman exactly what he should have been doing -- what he has left undone that he should have done in the way of medical supervision.

MR. MERCIER: I may take it over; it has been offered to me.

MR. WEGENAST: Then Dr. Ratz was sent to New York to acquire knowledge and techniques that he couldn't acquire in this

country. The evidence is all one way, of course, that doctors in this country, speaking generally, don't know enough about contraceptives to entitle them to be consulted by the public generally.

It is nonsense to say to the women of Ontario at large "go to your doctor"; the doctors weren't trained. It is only in the last two or three years now that they have been lecturing on contraceptives at Toronto University, and at Montreal University, apparently, the situation is still that a man would be expulsed if he attempted anything of the kind there.

I don't know how it is in McGill, -- that is the alma mater of Dr. Couture -- but I suppose since it is in Montreal, on the other side of the Ottawa River, the same rules would apply there as in the case of Dr. Gerin-Lajoie's institution.

Doctors, as the evidence shows, get their education in contraception from salesmen and travellers for supply houses. The doctors -- Dr. Gerin-Lajoie, Dr. De Haitre, and Dr. Couture demonstrated to Your Worship here, in the museum we have here, that they knew very little.

MR. MERCIER: Which one?

MR. WEGENAST: Of contraceptive appliances, -- the local drug stores, the hometown museum.

None of them knew how to put in a pessary; they didn't know the different kinds, didn't know any of the techniques.

Now, there is a suggestion that Mr. Kaufman, instead of doing it the way he is doing it now with the 55 nurses, should have, I suppose, 55 clinics, but at all events, clinics in different parts of Canada where he has seen fit to start operations.

Well, the evidence of course is the clinic doesn't obviate the necessity of this kind of work. Miss Brandt's evidence is quite clear on that. She is in charge of one of the clinics in Toronto, and they have to do this sort of thing in Toronto where the clinic is accessible to anyone. There is first the factor of the unwillingness of the women -- the women of the poorer classes. It is well-known in all countries that women of peasant classes have a set indisposition to personal examination. Your Worship may remember the passage in Pygmalion, by Bernard Shaw, where the flower girl wouldn't take a bath in a bathroom with a mirror until she hung the towel over the mirror. That is the

feeling we find is characteristic of what one might call the "unsophisticated". The lower classes just don't want that sort of thing.

And we have definite evidence in figures as to the percentages -- I am not sure about the figure, and it doesn't matter about being exact -- showing that 38 percent of the women in Kitchener for whom Miss Weber had arranged an examination went to the doctor. Only 38 percent of those women for whom an examination had been arranged with a doctor went and kept the appointment. And there you are.

HIS WORSHIP: Were the examinations arranged, or were they merely advised to go to a doctor?

MR. WEGENAST: No, I think the arrangements were made. We will get the evidence on that; it was in Ms. Weber's evidence. They just won't go.

And Miss Brandt's evidence is very definite on that. There is not only the indisposition, but they can't get away. Miss Brandt talked about women who hadn't been away from the house for years. There are children there and they have got to stay with them. They haven't got clothes; I think there was evidence in some cases they had to be supplied with clothes before they could go to the clinic in Toronto.

So if the work is to be effectively done, there has got to be a very substantial element of visitation and -- what do they call it in hospitals? -- outpatient work.

Now, if Mr. Kaufman, as a practical businessman and for even, let us say, financial considerations, doesn't see fit to open a clinic in Ottawa or any other place, who are we to take exception to it? There is plenty of evidence the work is better done by the social service worker, who can go around and pick up facts other than medical. Dr. Couture was quite free in elaborating on this -- that there are sociological, economic, and other considerations that come into the picture and which can be sized up only by visitors going around and seeing what things are like right on the ground.

HIS WORSHIP: I think there is evidence that one reason they didn't come to the clinics is that they often haven't got the car fare, and if they haven't got car fare to go to a clinic, they certainly won't have money to go to a doctor to be fitted

with a pessary, nor will they have money to send for new supplies when they have used up what they are given, which would throw them on the homemade remedies.

MR. WEGENAST: Quite so. If there is anything to this, shall we say Jesuitical principle of choosing the lesser of two evils, we had an exhibition of it here in something I read; if the tampon is no good and the sponge is no good, and the danger is that it is going to be used for scrubbing the floor, then for heaven's sake, let us give them something a little better, even if it isn't what Dr. De. Haitre would have done.

Mr. Kaufman has gone a long way in giving the facilities he has, and how can there be the slightest criticism on our part -- on the part of the government and Your Worship as long as we are not going to do it ourselves?

Hasn't Mr. Kaufman a margin to work on? The preponderance of the evidence is that nobody would have known how to do it any better, and unless we are in a position to tell Mr. Kaufman how to do it, we had better, to use very plain language, "keep our mouths shut".

Then here is the evidence of Miss Weber on Page D.249. She says:

> "In 1932, we referred 124 mothers to the family physician, a doctor in each case, and on making a survey the following year, we found that only 38 percent of the mothers actually went to the doctor; they wanted the information but didn't go."

HIS WORSHIP: They referred them to their family physician, but she doesn't say they arranged for them to go to a family physician. That may be what she did; she may have made the arrangements, but she said "referred them," which leaves it open to two interpretations of what that word "refers" actually means.

MR. MERCIER: Maybe they didn't want to go and said they would just to get rid of the social worker.

MR. WEGENAST: Immediately preceding that doesn't carry us much further, but ---

HIS WORSHIP: If she came across a woman who wanted a pessary, she would refer the woman to a local doctor, but that doesn't mean she would make arrangements for the woman to go and see the doctor.

MR. WEGENAST: That is so. I don't know whether this carries us much further, but Miss Weber says this:

> "Q. I want you to give His Worship your viewpoint of this visitation method against the clinical method employed by Mr. Kaufman in some other centres.
>
> A. The advantage is that the worker goes into the home, she sees the mother in her own environment, and in only a third of the cases we have handled of mothers have they the initiative to go to a clinic if there is one or to the doctor."

There was a clinic right in Kitchener that they could have gone to. Then I said (reads):

> "Q. You have had experience in that?
>
> A. Yes.
>
> Q. Where?
>
> A. In Toronto and Kitchener ---"

Then follows the part I read before:

> "Q. Can you give any reason why these women don't go to the doctor?
>
> A. Yes, they told us.
>
> Q. What?
>
> A. Many had unpaid doctors' bills; others when not ill were ashamed to be examined by a physician.
>
> Q. Yes?
>
> A. In other cases, there was no one with whom to leave the baby, and still other cases where there was no clothing or suitable clothing."

Then I go on to the question of the advantages of Miss Palmer's methods. So I must not worry Your Worship with any more reference to that.

There is this, of course, which means something to Your Worship -- that the evidence is that Mr. Kaufman has two organizers out trying to get things organized. Mr. Kaufman has no objection to clinics; I suppose what he has objection to is paying for them as well as the social workers.

Even Dr. Cargill, who preferred clinics, was satisfied that persons not within their reach should have the information as furnished by Miss Palmer. Then Your Worship pointed out he said he wouldn't refuse them the condom and jelly even though they didn't have an examination.

So there is a very large portion of my friend's evidence goes with that.

Dr. Cargill, of course, thought that there ought to be a physical examination. Well, we have admitted that it would be a fine thing if there was a physical examination before marriage in every case, but is there? Why exact it in this case of the use of contraceptives that is more dangerous or more exacting than marriage?

Now, against Dr. Cargill's strong disposition in favour of a physical examination, we have the evidence of Dr. Scott. Your Worship will notice throughout this discussion, I am devoting a great part of my time to the evidence of the Crown witnesses, and only bringing in the very strong and utterly convincing evidence on the part of the defence by way of good weight.

MR. MERCIER: You have a perfect right to do that, and I hope you enjoy it.

MR. WEGENAST: Yes. Dr. Cargill's evidence must be set over against that of Dr. Scott who said an examination wasn't necessary. And Dr. Hutton also gave evidence to the same effect. One of the witnesses, -- wasn't it Dr. Couture? -- when he was faced with the studies which Dr. Hutton had made, said he had great respect for Dr. Hutton but after all, he was a Canadian, and he was right in the courtroom, and how could that be as favourable as the evidence from Germany or ---

MR. MERCIER: I don't think that is fair to Dr. Couture. He never said any such thing.

MR. WEGENAST: It was to that effect. He said after all, he was only Dr. Hutton, and he hadn't a general practice, and so on, and my submission is Dr. Hutton knows what he is doing in Brantford, and there is no use talking about it. Dr. Hutton's evidence is on Page J.40. Dr. Chisholm's evidence on that point is on Page N.22, and Dr. Scott's on J.17. I may also refer to Miss Weber's evidence on Page D.247, and Dr. Batt's on Page J.109.

Mr. Kaufman must be given credit for having designed a system that would at least get results in the sense that it gets contraceptives to the people who need them. Of course, if you want a less efficient system, if you don't want to get to these people, -- if you have the mind of the officer, Martel, that is a different thing. If the idea is "No, you mustn't come in here and disturb our peaceful life in Eastview," that is another thing. But if the idea is to get the knowledge of these contraceptives, whether they use them or not is their own business, but I suggest to Your Worship that it is a matter of public good to get the knowledge to them; and if the idea is to get the knowledge to the people who most need it, then my submission is Mr. Kaufman's methods have the merit of efficiency -- getting results.

These doctors, Your Worship, like Dr. De Haitre, who want a clinic, I suspect, don't want the information circulated. They would prefer a less efficient system.

MR. MERCIER: Dr. De Haitre said he would be glad to give his services free of charge one day a week.

MR. WEGENAST: Dr. De Haitre was not one man. There are words of a poet somewhere, "Not one, but all mankind's epitome". He was all over the place.

MR. MERCIER: I think my learned friend and his witnesses have travelled all over the world.

MR. WEGENAST: I go a little farther, Your Worship; I say the doctors who desire the physical examination don't want any alternative. They don't want the alternative of having the information handed out.

Then there is this untenable argument -- it is so untenable that it hardly merits any notice, but perhaps I should mention it -- that the use of contraceptives may be deleterious because it will cause a sense of insecurity and hence, nervous tension and nervous disorders,

MR. MERCIER: I wouldn't say it is so untenable.

MR. WEGENAST: Well then, I must say a word or two more if I haven't carried my friend with me in that. The proposition is this: A woman doesn't want to have any more children; she is afraid of the ordinary contiguities of marriage in fear they may result in a pregnancy. Now, that involves, let us say, a certain

amount of tension, nervousness, and fear, and there, according to “Rhythm,” we have a very serious factor. Now, on the advice of a neighbor woman across the back fence, she begins to use a vinegar tampon. Is it suggested that because that is not 100 percent effective, it shouldn’t be used because it may cause tension? What an utterly untenable argument. Surely, she is in a better position. Surely, the man who has some money in the bank is in a better position than the man who hasn’t, even if there is a chance the bank will break. It is so utterly obvious it is hard to find analogies in which to express it. The woman without any protection is supposed to be nervous and get neurosis, but if she has some protection, say 50 percent, then it is something against that protection that she may still be nervous.

The pessary might not be absolutely effective. It is difficult to understand the kind of mind that would entertain such a process of reasoning. You are to remove the nervous tension by giving the woman less security, or offering her “Rhythm”. It is the suggestion of my friend’s witnesses: “Don’t use the condom because something may go wrong with the rubber, and there is a risk there”. A woman is on edge with nervous tension owing to that reason? “Don’t use the condom, but use the sterile period.”

MR. MERCIER: If my friend insists on treating my witnesses that way, I will have to get Dr. Chisholm from Toronto to come and look them over.

MR. WEGENAST: Then I come to the last, but not the least stage of my argument and that is the moral side -- the question of morality. Now, I submit to Your Worship that I have proved my case on the score of morality by the overwhelming evidence of men like Mr. Silcox, Dr. Coburn, Mr. Summerhayes, Colonel Sims, Mr. Zeidman, Rabbit Sachs, and the overwhelming weight of the evidence is that the use of contraceptives is not immoral. They say it is not immoral, and without suggesting that the view of witnesses like Mrs. Hawkins and the doctors are to be overlooked as immoral, I put it that the evidence of the other witnesses I have mentioned is positive and convincing that the use of contraceptives is entirely consistent with good morals.

Now, these witnesses are men to whom good morals are a matter of vital concern. Their business is to make people good; they are in a position to give expert evidence on the point -- they are experts on morality; that is their job. Mr. Silcox, Mr.

Summerhayes, Mr. Zeidman, Mr. Essex -- their business is to make people better. But not Dr. De Haitre. Your Worship would not let me go on cross-examining him on morals because he was so inexpert that Your Worship thought that his evidence wouldn't prove much, and I have not much evidence on that point. The other witnesses put up by my friend Your Worship thought so inexpert on the question of morals that Your Worship didn't think I should examine them on morals.

HIS WORSHIP: Well, it wasn't on account of that, but because they were medical experts and not called on the question of morality.

MR. WEGENAST: While we are on that point, I may say I think I had a right to examine Dr. Couture as a moralist. He set himself up as a moralist, but I decided by what Your Worship said that the evidence wouldn't have very much probative value because he was not an expert on morality.

Now, Dr. Couture started off by insisting his views had nothing to do with morality; they were just philosophy. Dr. Gerin-Lajoie effectively shied away from the question, and Your Worship, may I say, let him get away with it. There is only one witness, Canon Whalley, of the class of moral experts, who gave a minority opinion on the other side. That is respectful, I hope. It should hardly be necessary to discuss the question of morals in detail, but as there was a good deal of evidence touching on the matter in one way or another, we may as well see what it comes to. For this purpose, we may refer to the analysis made by Mr. Silcox, that when it is said that the use of contraceptives is wrong -- is immoral, the arguments are (a) that it offends against a Divine command, or (b) that it is unnatural, or (c) that it offends against an innate sense of decency. No one has been able to suggest to me any other standards or lines of division than those three.

I think, by the way, that I ought to have credit for making a reasonably good guess at the beginning that a point would be made by my friend that the contraceptives -- that the use of contraceptives was not for the public good because it was a sin. He held his one witness back until the very last minute, but I am patting myself on the back, Your Worship, for judging that, sooner or later, it would come out, and it did.

The question of whether there is any Divine command against the use of contraceptives is, of course, a religious question, and we cannot avoid it. Actually, when the forensic backing and filling is over, we all know that the objections to birth control are in the nature of religious objections. Your Worship, as a jury, knows it; no 12 men that could be got in the box anywhere in Ontario could avoid knowing it. And if there is any religious point, Your Worship will have to decide it according to the evidence.

There is, of course, a moral question, and religion undoubtedly enters into that so that for better or for worse, the sickle must go into the field of theology. Dr. De Haitre and the other doctors admitted that the religious question entered into it, and Dr. De Haitre said it was "terrible".

Now, we might as well begin with Canon Whalley, who was called as a theological expert -- a religious or theological or moral expert. Canon Whalley pinned his faith on the Book of Common Prayer and on Sarah. The Prayer Book was to him the latest piece of legislation. He espoused the legalistic view. He wouldn't say that if the legislation were repealed or amended, he would not change his views. He was strictly on the legalistic line.

Now, one does not want to be unkind or disrespectful, but taking his evidence on its merits, he stuck to the law as passed in the reign of Edward VI, the Prayer Book, and the 39 Articles -- although he was not so well up on these as it turned out. He didn't know, apparently, until I showed it to him, that the 39 Articles condemned the idea that marriage was a sacrament. Now, 193 Bishops of his Church, in solemn conclave, meant nothing to him; they had no legislative power, and therefore, what they did amounted to nothing, and anyway, they were on the downward path of moral degradation.

I think Your Worship will take judicial notice of the bible story in the 12th chapter of Genesis. I have it copied out, but somebody has gone for the bible. The 12th chapter of Genesis, 10 to 20, if Your Worship cares to have the text, or perhaps you know it off by heart (reads):

> "And there was a famine in the land; and Abram went down into Egypt to sojourn there; for the famine was grievous in the land.

> And it came to pass, when he was come near to enter into Egypt, that he said unto Sarai his wife, behold now, I know that thou art a fair woman to look upon:
>
> Therefore it shall come to pass, when the Egyptians shall see thee, that they shall say, This is his wife: and they will kill me, but they will save thee alive.
>
> Say, I pray thee, thou art my sister; that it may be well with me for thy sake: and my soul shall live because of thee.
>
> And it came to pass, that, when Abram was come into Egypt, the Egyptians beheld the woman, that she was very fair.
>
> The princes also of Pharaoh saw her, and commended her before Pharaoh: and the woman was taken into Pharaoh's house.
>
> And he entreated Abram well for her sake: and he had sheep, and oxen, and he-asses, and men-servants, and maid-servants, and she-asses, and camels.
>
> And the Lord plagued Pharaoh and his house with great plagues because of Sarai, Abram's wife.
>
> And Pharaoh called Abram, and said, What is this thou hast done unto me? Why didst thou not tell me that she was thy wife?
>
> Why saidst thou, She is my sister? So I might have taken her to me to wife: now therefore behold thy wife, take her and go thy way.
>
> And Pharaoh commanded his men concerning him; and they sent him away, and his wife, and all that he had."

But that is not the whole story. There is Genesis 20, verses 1 to 12, and the story is this (reads):

> "And Abram journeyed from thence toward the south country, and dwelled between Kadesh and Shur, and sojourned in Gerar.
>
> And Abraham said of Sarah his wife, She is my sister; and Abimelech King of Gerar sent and took Sarah.
>
> But God came to Abimelech in a dream by night, and said to him, Behold thou art but a dead man, for the woman which thou hast taken; for she is a man's wife.

> But Abimelech had not come near her; and he said, Lord, wilt thou slay also a righteous nation?
>
> Said he not unto me, She is my sister? And she, even she herself said, He is my brother: in the integrity of my heart, and innocency of my hands have I done this.
>
> And God said unto him in a dream, Yes, I know that thou didst this in the integrity of thy heart; for I also withheld thee from sinning against me: therefore suffered I thee not to touch her.
>
> Now therefore restore the man his wife; for he is a prophet, and he shall pray for thee, and thou shall live; and if thou restore her not, know thou that thou shalt surely die, thou, and all that are thine.
>
> Therefore Abimelech rose early in the morning, and called all his servants, and told all these things in their ears: and the men were sore afraid.
>
> Then Abimelech called Abraham, and said unto him, What hast thou done unto us? And what have I offended thee, that thou hast brought on me and on my kingdom a great sin? Thou hast done deeds unto me that ought not to be done.
>
> And Abimelech said unto Abraham, What sawest thou, that thou hast done this thing?
>
> And Abraham said, Because I thought, surely the fear of God is not in this place; and they will slay me for my wife's sake.
>
> And yet indeed she is my sister; she is the daughter of my father, but not the daughter of my mother; and she became my wife."

That is what I would call sophistical reasoning. Now, it took a miracle to let Sarah have one child, and it took at least two miracles to keep her faithful to her husband if we know the whole story.

MR. MERCIER: That, of course, is submitted as my learned friend's interpretation.

MR. WEGENAST: I hope my friend will not cavil at the translation. This is King James' version. If Your Worship has any objection, I can present the Jewish or Vulgate here; I am not going to be caught on anything like that.

But Canon Whalley did us one valuable service. He showed us that men who have, for many centuries, been regarded as religious authorities may make mistakes. I hope I do not shock Your Worship if I say that Augustine was human. If he was an expert in morality, there is no doubt he was also at one time an expert in immorality. He had sown an abundant crop of wild oats. But as a religious authority, he was clearly mistaken; he thought it was a sin to use the marital act for anything but procreation. I need not refer to his other mistakes. The one I have mentioned is thoroughly recognized even by papal authority.

But His Holiness, Pius XI, also made mistakes. It was shown by Canon Whalley that he made at least two serious misquotations of Augustine, and he built arguments on the misquoted passages.

MR. MERCIER: Was that the one that was mentioned yesterday?

MR. WEGENAST: No, I was coming to that. Perhaps I had better take it up right away. It was brought out in Canon Whalley's evidence where he quoted a passage from Augustine in which the ends of marriage were stated. He transposes the passage so that children -- proles came first, and then he built an argument on that. The fact was that in the passage in Augustine "fides" came first, that is to say, the conjugal relationship; the companionship of married couples came first in the Augustinian passage, and children came second.

Of course, Your Worship, I don't believe in that kind of argument anyway, even if Augustine and His Holiness use it. I don't see why a man ---

MR. MERCIER: I may draw my learned friend's attention to this – there are references my friend may read ---

MR. WEGENAST: I am coming to that. Augustine had no thought -- Augustine was a preacher; he was a "word artist"; he had no thought that by putting those words in a certain order he was settling for all time that the chief end of all men was that they should have children.

Now, to come to my friend's observation that in other works, Augustine had the words in a different order. My friend can find passages, and His Holiness could have found passages in Augustine on which to found the argument, which would have borne out what he said, but he didn't take that passage; he took this passage and transposed the words. I showed Your Worship the

text; I had it here in Latin. I think the argument is a rotten argument -- to set out an argument which is to go down through the ages and become a bone of contention, a thing that people die for, a thing that people suffer for through all the ages because, forsooth, a preacher in saying those words put them in a certain order. He had no thought of laying down a rule, and His Holiness ought not, I submit, to use them in that way; it isn't fair. It isn't a fair argument.

But at all events, he did misquote in that respect. Your Worship had the passage before you, and we can get it again if necessary.

It is a footling argument, if you know what I mean. Then I say to Your Worship all the evidence on the point before Your Worship is uncontradicted, that His Holiness is mistaken when he cites the Onan story as an authority on the use of contraceptives. The evidence is all one way, not a shred of evidence the other way. As a matter of fact, the Onan story, -- the correct version of the Onan story is that Onan was punished for refusing to let his sister-in-law have a child. I don't know just how it works out in the Levirate Law, but I suppose Onan was going to profit from the fact there wasn't an heir to his older brother. In any event, that is what the theologians say he was punished for.

The theologians were in evidence before Your Worship, and one of them was introduced by my friend by way of California in a book by a man named Oliver; he was against birth control in a rather violent way, but he said they can't pin anything on Onan.

Canon Whalley showed us, of course, that as far as Augustine is concerned, his whole attitude, his whole outlook, and his whole philosophy were entirely inconsistent with the conditions under which we live and entirely inconsistent with the argument in the Casti Connubii. Your Worship will recall that Augustine's idea was whereas at one time it was necessary for people to have lots of children, -- the necessity was so great men were allowed to have a plurality of wives, but now, he said, there are plenty of people to convert to Christianity and to form a Christian community, and build up what he called "The City of God". And anyway, he said, what is the use of having any more children; the world is coming to an end very shortly, and what is it all about? The best thing is not to marry at all. The next best thing if you do marry is to be continent and not have any children, and the next best thing is to have some children but

to confine the marital act strictly to the procreation of children. That, I suppose, would be once every year or two.

Now, suppose you go according to Augustine, -- and he ought to have known -- that that is as far as you can go without sinning, -- if you went any further, if you had sexual relations for any other purpose than to have a baby, that was a sin. You might be pardoned for it if you stuck to your wife and didn't go roaming around, and you had some credit -- some sort of "plus" credit for not roaming around, -- it was a matter of pardon, he said, -- a matter of forgiving people, but it didn't quite balance the demerit for having a sexual relationship for any other object than the procreation of children. Well, it is obviously inconsistent with the encyclical letter and modern Roman Catholic doctrine.

A good deal could be said about the idea of bringing forward into this generation the ideas of fifteen generations ago, but one can leave that to the imagination.

Another thing, of course, even Augustine, 400 years after -- in the year A.D. 410 or whatever it was -- 401, I think it was, to be exact, -- didn't consider that it was necessary to be fruitful and multiply. And that and the Onan story are the texts which are relied on as the sanctions for the opposition to contraceptives.

It has been admitted, I think -- it must be admitted that there isn't anything else, and it was brought out by Canon Whalley that there is no scriptural sanction. He, of course, relied on the implications of the Prayer Book. He said he thought it was rather silly for the people to get married if they weren't going to have a lot of children ---

MR. MERCIER: He didn't say "if they weren't going to have a lot of children"; he said," prevented having children". I wish my friend would at least quote the witnesses intelligently and fairly.

MR. WEGENAST: He said he thought the object of marriage being procreation, you had no business to interfere with procreation. And the obvious, logical consequence of his argument was that you should have as many as you could. He had no use for Ogino-Knaus, -- nothing doing as far as he was concerned -- have all you can.

--- 1:00 p.m. Court adjourned until 2:30 p.m.

2:30 p.m., Court resumed

PRESENT:

MR. R. MERCIER, For the Crown

MR. F.W. WEGENAST, K.C and

MR. A.W. BEAMENT, For the Defence

MR. WEGENAST: If Your Worship will permit me, I want to go back a moment to something I overlooked. I want to refer Your Worship to the report of the American Medical Association. The report is set out in Exhibit 104-B, and I want to call Your Worship's attention to this first -- that in considering a pronouncement of this kind, one must have in mind the setting -- the legal setting in the United States. It is quite different from the setting here or, say, in England. We have here, if my submission is correct, nothing against the propagation of information on birth control; the only thing we have is a precept laid down, carried forward from the Common Law in Section 207 -- not to be indecent about it, not to be obscene. And as I pointed out to Your Worship, the antidote, or the thing that makes it not obscenity, is the public good. I pointed out that the defence of public good was always a good defence to any accusation of criminal libel.

Now, that is not the situation in the United States. There, by reason of what are called "the Comstock Laws," Federal and State, the whole matter of information about contraceptives and the distribution of contraceptives is referred to the medical profession, so that they have a special position with respect to the matter, and one might say a special responsibility, and throughout all the considerations of the subject, whether in these birth control leagues or other voluntary organizations or the deliberations of the courts, as Your Worship has seen in this recent case of Dr. Hannah M. Stone, the questions turn on that special position in which the medical profession finds itself. And that is the setting that accounts for the form and the content of the resolution to which I refer, and the attitude of the medical profession as set out in the resolution.

I refer to paragraph 3, in particular, of the resolution at the bottom of Page 1911. Paragraph 3 of the report is this:

> "Your committee desires to record its disapproval of propaganda directed to the public by lay bodies, organized solely for the purpose of disseminating (without consideration or restraint) contraceptive information. Your committee deplores the support of such agencies by members of the medical profession. We feel that an entirely false sense of values with respect to the important function of childbearing and of parenthood has been created by the activities of such organizations."

I take that in connection with some of the preceding context to which reference has been made in the course of the evidence, in which the doctors have undertaken to busy themselves with considerations other than medical. And I notice this on Page 1911, "Eugenic consideration". Well, they start first with the problem of overpopulation in the Western world, and then they go on with eugenic considerations, economic considerations, and moral considerations, and then only they come to medical considerations.

My suggestion to one or two of the witnesses was that the shoemaker had better stick to his last and that the doctors in the convention assembled had better confine themselves to the medical feature. That, I think, is a good argument and good sense, but it must, as I now say to Your Worship, be considered in the light of the legal situation in the United States, and since we find the medical profession in that preferred and responsible position perhaps, we should forgive them for treating the subject as a whole, since nobody else, apparently, under the law is competent to do anything about it.

Your Worship will, of course, remember that the laws were gotten around, as I pointed out in the case in New York, an arbitrary interpretation on the part of the courts; the courts said, in effect, the legislature could not have intended that the doctors should be deprived of therapeutic agencies such as mechanical and chemical contraceptives, and hence, the laws, although comprehensive and unequivocal, must be interpreted in such a way as to allow the medical profession to use those therapeutic agencies. Under cover of that, and by a process of reasoning, which we have characterized as "sophistical," the American courts have managed to give the public some relief via the medical profession, and hence I say the form and content of this resolution. And I would like Your Worship to bear that in mind,

and to bear in mind that if a conference of doctors had to consider the matter in this country, -- and if and when conferences of this kind have had occasion to consider it in England, -- the basis of consideration would have been quite different, much narrower than that in this resolution.

But taking the resolution as it stands, and promising that under the law as we have it in Section 207, there is no suggestion there should be any monopoly on the part of the medical profession, we have, under my submission that I have already made, conformed adequately with what is laid down in this resolution.

We have not, Your Worship, gone about this work without consideration or restraint, -- very much not so. They say "without consideration or restraint," -- they refer to lay bodies organized solely for the purpose of disseminating contraceptive information. I think it would be fair if this body had in mind -- and perhaps they had, inferentially lay bodies, from a medical standpoint, such as the Roman Catholic Church, because I think it is fair to say in this respect what is sauce for the Parents' Information Bureau is sauce for the bishop or the archbishop of a Roman Catholic organization, and that if the Roman Catholic Church, through its confessors or otherwise, by sermons or promulgated doctrines, undertaken to tell the medical profession where they are getting off at in the use of contraceptives, then they can't be heard to say there is anything wrong about an organization like Mr. Kaufman's -- which is obviously philanthropic, and with the best methods in the world from their standpoint, -- undertaking to do what can be done under the law of this country.

And I submit that there is nothing in that resolution that in any way assumes that it has a validity or a force in this country. It technically doesn't, but assuming it had, there is nothing in it that even impinges on the work that Mr. Kaufman's organization has been doing, or on the particular department of that work which Miss Palmer represented. So much as to that.

Then I want to refer to his also, parenthetically: I have talked about the insistence that the means is the main thing, that the end is not so important, and I want to add this to what I have said before, -- I haven't thought of this until my attention was called to it, -- that I put it to Canon Whalley on Page P.546, referring to a book which I haven't here, it was a borrowed book

and I returned it and unfortunately, the reporter didn't ask for the book and he hasn't copied out the passages which I read to Cannon Whalley. But the effect is clear enough on the face of Page P.546 I put it to Canon Whalley after reading the passage, quoting St. Thomas Aquinas, who is supposed to be the last word on doctrine in the Roman Catholic Church. This is my paraphrase of what St. Thomas Aquinas: He says,

> "If you want to obtain a certain end, then the best means is the best one, the most efficacious, that attains that end."

And Canon Whalley said:

> "I would say it was commonsense; I don't see anything contrary in it."

It is quite a brief statement, and we haven't the passage itself, but I want to cite that as cited by the highest authority in the Roman Catholic Church, as supporting my proposition that the end is the main thing, and that, as St. Thomas says, "The best and most efficacious means is the best."

I want to refer for a moment to the position of the Roman Catholic Church, and I want to make some general submissions without referring in detail to any books -- at least so far as I can avoid it because I want to shorten it as much as possible. But I want to submit on the text of the encyclical letter itself, -- I want to put it in the form of a question, Your Worship, -- whether it is not obvious that the Roman Catholic Church is or may be preparing for a strategic retreat on this very subject?

Nobody realizes more clearly than I do that there are arguments to the contrary, but I can't help it if there are arguments in my favor. There are, of course, and have all down through the centuries been different tendencies within the Roman Catholic Church itself, -- that I don't suppose will be denied. There have been doctrines espoused and then abandoned. We have mentioned Galileo, and we may as well use that example again. Galileo, who was compelled to abjure and curse the idea that the earth turned around the sun, was afterward -- a long time afterward, -- I have forgotten the exact date -- cleared of suspicion of having done anything wrong. In other words, the Church completely changed its mind as to the finding of which I read a portion against Galileo and washed out the charge. It

wasn't until 1760 that the Church took the step of washing out from the records, as it were, its condemnation of the doctrines of Galileo. That is one instance, and I need not take any more.

We find in the encyclical at least the thin end of the wedge over which our friends Dr. Latz and Father O'Brien took so much satisfaction, -- that you can have birth control, at least by way of periodic abstinence. I have pointed out to Your Worship there are two schools, -- one doesn't know which will ultimately prevail, one can hardly even guess. We have the school, as I pointed out to Your Worship, which will have none of this Ogino-Knaus. We have the writer of the article in "America" very emphatic, as well as, shall I say, sarcastic about the whole thing. There is room, no doubt, for a conjecture that the Roman Church might withdraw the concession in the last encyclical letter and might, in some way or other, by a process of interpretation, say, "No, you misunderstood us there. It may be that there are cases, individual cases for the confessor in which he may pardon or justify the use of these methods, but as a general thing, no." The whole idea of publishing and broadcasting information of which both Dr. Latz and Father O'Brien thoroughly approve may be in due time condemned.

MR. MERCIER: It is in evidence by Mr. Silcox that they cannot recant.

MR. WEGENAST: I will admit that, but they can reinterpret. There is nothing in the encyclical Casti Connubii so far as I can see to prevent the Church from reforming or restating whatever is put forward there.

MR. MERCIER: Mr. Silcox stated that he had full knowledge of Casti Connubii.

MR. WEGENAST: Mr. Silcox was one witness, and I am asking Your Worship to look at the text of the encyclical letter and to consider my submission that as that document stands, it does not shut the door to a reformation or reinterpretation of the doctrines enunciated.

May I put to Your Worship what I understand to be the boundary -- the limits within which the Pope, since 1870, -- the enunciation of the doctrine of infallibility -- operates. Before 1870, doctrinal matters were dealt with by the Sacred Congregation and other bodies; since 1870, -- since the promulgation of the doctrine of papal infallibility -- the Pope

himself, without the advice and consent of any council, can promulgate doctrines. It is as though, in our statutes, instead of saying, "His Majesty, by and with the consent of the House of Commons -- the Senate and the House of Commons, enact so and so," it was as if the latter part of that were wiped out and it is "His Majesty hereby enacts…" The enacting power is now concentrated in the Pope, but that is subject to certain restrictions and limitations. In the first place, the Pope must be speaking ex-cathedra; in the second place, it must be with respect to an item of apostolic teaching. And Your Worship will find that in this matter of contraception if and insofar as the encyclical is a pronouncement on that subject, there is no reference to any apostolic teaching, and that rule itself would keep this document from being an infallible pronouncement. Thirdly, my understanding is that what His Holiness must be dealing with is an item of faith and morals.

MR. MERCIER: Of course, on that my learned friend must make it clear that that is his understanding.

MR. WEGENAST: Yes, it is for His Worship to check that up. I am not here to mislead His Worship, and I have given the matter some considerable thought. I have my notes immediately before me; I think they come later, but my friend has raised the question now.

And fourthly, it must be addressed to the whole church. I think the encyclical letter complies with the last condition, but the one condition I have mentioned to Your Worship is sufficient to exclude it from being an infallible pronouncement or a permanent item of dogma.

So I take it there is nothing to prevent the Roman Catholic Church from receding from its position, and Your Worship, we have the right, I think, to consider in this connection -- we have a right to look at it from, may we say respectfully, the papal chair at Rome; if Your Worship or I were Pope, what would we do with this thing? We know very definitely how America feels about this thing; we know how a large section of public opinion in the world is directed now to the arguments that have already been put before Your Worship. In these little books, "Legitimate Birth Control" and "The Rhythm," the question has been canvassed what is going to happen if we make this too hard for people, so they will possibly turn away from the church? You will remember that was very seriously canvassed in the "Legitimate Birth

Control," and it is, as I understand it, always an item of consideration even for the individual confessor, -- whether by his decisions he may possibly drive the penitent out of the church. And it is a question of choosing the lesser of two evils. I take it His Holiness is competent to take into consideration matters of that kind, and what the effect would be perhaps by way of driving out of the church a large portion of its membership by taking too strict and too austere a position.

I point particularly to the passages on Pages 27 and 28 of the encyclical and raise the question, Your Worship, and that is all I think I need to do, -- whether it is likely, whether it is intended that those precepts which we find there are in the nature of a permanent doctrine -- permanent finding. In the middle of Page 27, I find this paragraph (reads):

> "But no cause, however grave, can make that which is in itself against nature conformable to nature and morally good. Since, therefore, the conjugal act is primarily ordained by nature for the begetting of children, those who in exercising it deliberately frustrate its natural effect and purpose, sin against nature and do what is shameful and intrinsically vicious."

May I point out to Your Worship that if this were intended as an infallible papal pronouncement His Holiness wouldn't need to argue about it. A military officer doesn't accompany his commands by a lot of reasons why the soldiers should do so and so. The sergeant doesn't give his orders even in that way, but His Holiness is representing the last word and constituting the legislative assembly; surely, he doesn't need to start off in his legislation with a preamble and a lot of "whereases". But what His Holiness does here is not to set out a command, a pronouncement -- he doesn't promulgate a doctrine, I submit, Your Worship, on the very words, almost coaxing as they are; he is reasoning with his people, reasoning with himself, one dares say, that this thing of contraceptives being against nature, as he says -- Of course, we could meet him on that ground and argue as he is arguing. He says, "No cause, however grave, can make that which is in itself against nature conformable to nature…" I can meet His Holiness on that, and some of our witnesses have; even the witnesses for the Crown have admitted it. For example, I think it was Dr. Gerin-Lajoie who admitted an operation for

appendicitis was not natural. We can meet His Holiness on that ground ---

MR. MERCIER: Dr. Gerin-Lajoie stated it was to remedy a condition -- to assist nature.

MR. WEGENAST: But I am talking about a definite statement that it was not natural.

Now, what His Holiness argues here is "that which is in itself against nature cannot be conformable to nature". I put it to the witnesses, -- vaccination and so on, and I am coming presently to the theory in the article in "America," which I think is perhaps the best and the nearest to the point. He says:

> "Since, therefore, the conjugal act is primarily ordained by nature for the begetting of children, those who in exercising it deliberately frustrate its natural effect and purpose, sin against nature and do what is shameful and intrinsically vicious."

And Your Worship will remember he built that on the words of Augustine.

Your Worship will look in vain in this encyclical for a pronouncement as to what kind of a sin it is to use a contraceptive. The nearest he comes to it is in the middle of Page 28 where he calls it a "grave sin," and that is all. We don't know whether it is a mortal sin or a reserved sin that only the bishop can absolve or whether it is a venial sin, which doesn't have to be put to the confessor. He goes on on Page 27 (reads):

> "Small wonder, therefore, if Holy Writ bears witness that the Divine Majesty regards with greatest detestation this horrible crime, and at times has punished it with death."

I say respectfully, but in the language of the day, "says who?". I would say it isn't so. "…regards with greatest detestation…," says who? If His Holiness wants to say that to his people, that is his privilege, but to argue it leaves it open to the sort of observation I am making now. "…As St. Augustine notes, intercourse even with one's legitimate wife is unlawful and wicked where the conception of the offspring is prevented."

He should have gone further because Augustine certainly thought that to have intercourse with one's legitimate wife for anything but the procreation of children is unlawful and wicked. And he

goes on and says, “Onan, son of Juda, did this, and the Lord put him to death for it.” And I have already submitted, and all the evidence before Your Worship is that that is a wrong exegesis.

MR. MERCIER: Says who?

MR. WEGENAST: Well, say the witnesses, all the witnesses before His Worship, and that is enough for His Worship. They are competent witnesses -- says Mr. Silcox for one. He is qualified -- he is certainly qualified as a theological expert.

MR. MERCIER: Says who?

MR. WEGENAST: Says Harvard University. He is a Bachelor of Sacred Theology. I am not sure His Holiness has that degree.

The encyclical goes on (reads):

> “Openly departing from the uninterrupted Christian tradition, some, of late, have judged it proper solemnly to promulgate a different doctrine regarding this question. (And I say ‘query’).
>
> The Catholic Church, therefore, to whom God has entrusted the task of safeguarding the integrity and purity of morals, standing erect in the midst of the moral ruin which surrounds her, in order that she may preserve the chastity of the nuptial union from being sullied by this foul stain, raises her voice as ambassador of Christ, and through us proclaims anew: Any use whatsoever made of marriage in such a way that the act is deliberately frustrated of its natural power to generate life is an offence against the law of God and of nature, and those who indulge in such a practice are branded with the guilt of a grave sin.”

That is getting into the region of a pronouncement, but why all the argument? All it comes to at the end of the paragraph is that it is a grave sin, and there is no indication of what kind of a grave sin it is.

MR. MERCIER: It is not venial.

MR. WEGENAST: Well, I don’t know. I don’t know, Your Worship, and I have tried to find out, but I failed to find out, and I venture Your worship will not find out from anybody which it is.

MR. MERCIER: If my learned friend had tried to find out, he would know by now because he spent the whole evening with very good theologians and learned a lot of things.

MR. WEGENAST: My friend is hardly fair in saying that.

MR. MERCIER: I have that from my learned friend.

MR. WEGENAST: Yes, but not "ex-cathedra," and I didn't say who did the learning.

MR. MERCIER: No, but I have my doubts.

MR. WEGENAST: Everybody is entitled to that.

In other words, whatever the meaning of the doctrines there laid down, they are subject to be reformed. In the meantime, however, Your Worship, they are to be obeyed; that I grant, but the question I am dealing with is, where is the Church of Rome going from here?

If I may refer Your Worship to a work of moral theology, Your Worship will find on Page 336 of the work on moral theology, a work in four volumes, by Davis, a Jesuit writer. I think it is a standard work. I think Your Worship will find that this sin, under certain circumstances, might become what is called a "reserved" sin; that is to say, one which only the bishop can pardon, and Your worship will find there that if it should become a reserved sin, it will stand under Canon 897, it will be characterized as an "atrocious sin".

I must confess I am not up on the grade of these sins; what is the difference between a "grave" sin and an "atrocious" sin? If Your Worship cares to look into that any further, there is an introduction to one of the editions of the encyclical by Father Vincent McNabb, O.P., which I understand means "Dominican," in which he discusses the effect of the encyclical, and also discusses the question that I have been trying to put before Your Worship and illustrate, as to the exact effect of the encyclical, and whether it is open to be reformed or amended. The passages are very brief. I am not going to read any of it, but Your Worship may care to verify what I have said. I have given Your Worship the gist of it, I think.

There is one more reference in that connection, which I might give to Your Worship, that I think would be useful, and that is Walker's History of the Christian Church on Page 561. That deals more particularly with the questions of when and under what conditions a pronouncement of the Pope comes under the rule of infallibility.

I wonder, Your Worship, if I have to meet -- if I have to do more guessing as to the implication that there is anything wrong about having this work done under the auspices of a single individual like Mr. Kaufman, and on that point, I want to make an observation or two just in case it does interest my learned friend.

MR. MERCIER: I might assure my learned friend he has gone through a lot of things from the point of view of argument that will not interest me very much.

MR. WEGENAST: Well, is this one ---

MR. MERCIER: I don't know; it all depends on what you have to say. I know there is a lot that doesn't interest me very particularly.

MR. WEGENAST: I refer once more to the poster and put it to Your Worship: What sort of system would we have if every one of the other churches wanted to put up posters in the hospitals? For example, the Baptists, suppose they wanted to put up a poster and wanted to have baptism by immersion -- of course, it wouldn't make any difference there because I believe it is by immersion. The United Church would give them a choice between immersion and sprinkling. The Russelites would give directions that nothing was to be cooked in aluminum dishes. I wonder whether Your Worship knows that the Russelites go under the name of Jehovah's Witnesses. And the Mennonites would object to the buttons on the doctor's uniforms.

But there is this about it, there is a perfectly worthy history to justify in a measure the intervention of the church in hospitals and hospitalization. There are writers who attribute the whole humanitarian movement of the last 200 years to the Methodist revival in England. But we have gone a long way since then, and I have already pointed out many cases as in the case of Dettweiler and the hydroelectric system. We have Wilberforce. In the case of Sunday schools, Robert Raikes; Plimsoll, the Plimsoll line -- the initiative of the individual, and this enterprise is none the worse for having been initiated by Mr. Kaufman.

MR. MERCIER: By the way, we didn't have the Methodists represented on the defence.

MR. WEGENAST: The United Church, that is the same thing.

I have already referred to and needn't say anything more, perhaps, about the extraordinary variety of opinions at the present time on this subject of contraception. The truth is, of course, there have been these differences of opinion all down the line, not on contraception but, as I have pointed out, on other matters, and I think another thing that is patent on the face of the encyclical is that ---

MR. MERCIER: This is becoming a trial of the encyclical and not contraceptives.

MR. WEGENAST: This is an exhibit, and I don't know why we should wander all over the place when we have this right here. It is a sort of an ultimum on the question. I call attention to the last part of Page 28, which in my submission has the effect or may have the effect of putting this whole matter of the use of contraceptives up to the individual confessors. Here is the paragraph (reads):

> "We admonish, therefore, priests who hear confessions and others who have the care of souls, in virtue of our supreme authority and in our solicitude for the salvation of all, not to allow the faithful entrusted to them to err regarding this grave law of God, and especially that they keep themselves free from such false opinions, and in no way connive at them. If any confessor or pastor of souls, which may God forbid, lead the faithful entrusted to him into these errors, or at least encourage them by approval or by guilty silence, let him be mindful of the fact that he must render a strict account to God, the supreme Judge, for the betrayal of his sacred trust, and let him take as spoken to himself the words of Christ: 'They are blind and leaders of the blind; but if the blind lead the blind, both fall into the pit'. Matthew 15-14."

Now I say to Your Worship, there is nothing in that paragraph -- and that is the last word on that branch of the subject by His Holiness -- to indicate that the confessor is under the tutelage even of the bishop, except on the question of absolving penitents from what is called a "grave sin". It is strictly, as I understand it, rightly or wrongly, up to the individual confessor, and he has an enormous leeway, a large area of give and take.

MR. MERCIER: That, of course, again, is your personal view.

MR. WEGENAST: I am putting it to His Worship as the best interpretation I can make of it without going into a lot of authorities. One of the authorities that Your Worship might find useful is a book by a man by the name of Mr. Silcox ---

MR. MERCIER: Our Mr. Silcox?

MR. WEGENAST: Yes, a book, "Catholics, Jews and Protestants," Page 262, in which you will find this thing pretty well sized up. He puts it on the basis of distinction; he thinks that this may be the ultimate distinction, -- that any system of contraception that absolutely prevents conception may be bad, but as long as there is a chance -- Your Worship will understand the relation of that to Ogino-Knaus, -- and that is the argument there. It doesn't absolutely prevent conception because there is no such thing as an absolutely sterile period, and nobody can guarantee there will not be conception during that period. And that, Your Worship, is used as an argument, even in the little books "The Rhythm" and "Legitimate Birth Control," why it is not a sin.

Now then, to carry that a bit further, if a condom isn't 100 percent safe, then it isn't sinful. I leave it to Your Worship with that, and it may be that is the way the church will go. These arguments which our friends the doctors have brought forward against contraceptives, -- because, forsooth, they are not 100 percent good, may recoil on them and be the very arguments in our favor in 10 or 15 years from now.

On this point, Your Worship, just briefly, the modern view is that the women of Eastview are entitled to know all the scientific considerations and all the religious and moral considerations and to make their choice. And that is supported by the evidence of Mr. Silcox and Mr. Summerhayes. They point out, -- I will go on with the note I have here -- it is, indeed, the very basis of morality that there must be a choice. It is no credit, morally, to Mrs. Duhamel if she avoids the use of contraceptives because the confessor of the bishop has so ordered it.

From the standpoint of morality alone, it is arguable that it is in the interest of the women of Eastview that they should be given the choice. The notion that science should follow the lines laid out by religion is so intrinsically ridiculous, according to modern ideas accepted by educated people, -- I

refer again to the conference of physicians at Vienna and the message of the Pope, -- that it is rarely advanced nowadays.

It is raised again in this trial but, of course, in a form not directly or courageously, but in a shame-faced or elusive manner, under the guise of “philosophy” or some other “sophy”.

I am skipping a large part of my notes here because I think it has been sufficiently crisscrossed by other lines of argument.

The opinion of the witnesses who appeared before the Court and admitted that they were governed or influenced by their religious views may be valuable to Your Worship as indicating that it is against the religious views of certain persons to use contraceptives. That may be a point that it is against their religious views. And it may, no doubt, be argued that what is against people’s religious views is not for the public good, but that is as far as it goes. That is the most you can make of that.

And I suggest, Your Worship, that that is not Your Worship’s concern, nor mine; that is up to the individual.

The three doctors admitted that they knew practically nothing about contraceptives -- that they were not experts on that subject. Their evidence has no weight either as to technique or use or pathological considerations. Their evidence has its main or sole bearing on religion, and as such, Your Worship will take it, sharing, I think, with me the regret that the Crown did not choose, if it was a matter of choice, to produce more expert evidence, either medical or theological.

MR. MERCIER: The Crown has chosen to do so, Your Worship, much to my learned friend’s regret. I know he is very sorry.

MR. WEGENAST: I have referred to the method of argument of the good Dr. Couture. I have referred to it as “sophistical,” “casuistic” and “scholastic”. There is a modern term, Your Worship, that I think carries more force perhaps, although it is a vernacular term; I think it is not unfair to call the doctor’s argument “phoney”. Phoney is in the dictionary, by the way. It is perfectly good English. It would not be listened to, except in derision, by any judge or by men who stipulated sincerity and straightforwardness. It wasn’t getting down to brass tacks. It shifted -- it was an effort to shift to avoid a point instead of meeting it. It was a sort of “lip service” to the law.

I think it is quite in order to quote scripture against it, a passage like this, for example:

> "Woe unto you, Scribes and Pharisees, hypocrites: for ye pay tithes of mint and anise and cumin, and have omitted the weightier matters of the law."

MR. MERCIER: I wonder that my learned friend, with his line of thought so far, has forgotten to use the term "Papist" once. That is the only one he has forgotten.

MR. WEGENAST: No, that is only in legal documents you find that, and in acts of parliament.

Nobody in a court of law would come to any conclusion or would seriously entertain a line of argument of that kind.

Now, Shakespeare has given us a parody with a caricature of that kind of argument that I think is not merely interesting but it is rather illuminating and quite worthy of Your Worship's consideration. I refer to "Hamlet," Act 5, Scene 1; that is the grave-digger scene. The first clown, standing with a skull in his hand, says:

> "It must be se offendendo: it cannot be else. For here lies the point; if I drown myself wittingly, it argues an act; and an act hath three branches; it is to act, to do, and to perform; argal, she drowned herself wittingly."

Your Worship remembers they were discussing whether Ophelia had a right to be buried in the graveyard, and two gravediggers are discussing this, and the one fellow is holding forth to his

humbler assistant. I suppose what he meant was "ergo," but he had heard the clergyman use it in a sermon some time.

And I put it to Your Worship that is the kind of argument we meet here; all knowledge comes from God -- Argal; all power comes from God -Argal; marriage laws were made by God -- Argal; God said to Adam, "Be fruitful and multiply -- Argal; Marriage is a sacrament -- Argal; It is easier to get away from sex by going into a monastery or a nunnery -- Argal; A pessary is unnatural -- Argal.

It is his whole idea of "argal," and he is coming to conclusions, and only the consummate art of Shakespeare could have put it in so brief a space. It is hardly necessary to undertake any analysis; "Be fruitful and multiply," therefore,

every man and every woman must have as many children as possible. The Church, through a council or a pope, has sanctioned celibacy; therefore, it is not necessary to have children. And so on ad infinitum. That is the sort of conclusion you come to by that kind of argument.

Many of the conclusions of this kind of reasoning are rejected by mankind at large because they are inconsistent with a great body of what may be called humanitarian thought. Suffering and unhappiness are things to be avoided, if possible. Hence, the Red Cross, the Victorian Order of Nurses, the Board of Health, relief activities, disarmament conferences, and social services. Things that otherwise might seem logical are cancelled out by this humanitarianism. It was logical to hang the Kaiser. But humanitarianism prevailed, whether we liked it or not. A man may refuse work, but the community will not let his family, or even him, starve. Many people would abolish capital punishment. Many people oppose war even in a just cause.

The thing the Roman Church is up against is humanitarianism, right or wrong. Enlightened -- query that word as you will -- public opinion repels the arguments. The ratio is not recta, and the attempts to make it seem recta have not been successful, except with those who surrender their ratio to arbitrary authority or who submit to censorship.

Hence, of course, the insistence of the Roman Church on controlling education. Without that, she fears disaster, which goes a long way to prove unreasonableness.

MR. MERCIER: I am beginning to believe, Your Worship, that this will go down in history not as a birth control trial, but a trial of the Roman Church by Mr. Wegenast.

MR. WEGENAST: It is a trial of those who say it is a sin to practice birth control.

Now, what I have said, Your Worship, on this "argal" process refers to the deductions of theologians, not the teachings of Christ. There may be some -- there are always people who differ -- who would withhold assent to some of the items of the Sermon on the Mount. But I venture to say that the great bulk of humanity would declare allegiance to its teachings, hard as some of them are. "Whosoever shall smite thee on thy right cheek, turn to him the other also. "We would be surprised, perhaps, to find out how many people would concur with that. They might want

to have something to say about its actual organized working out, but they would agree in principle. Sir Anthony Eden is working it out right now. In Anglo-Saxon and, perhaps, one should say in Teuton society, revenge is not considered decent -- not even, I suppose, la revanche de nos berceaux.

It is the edifice of deductive doctrine and sacerdotal practice that invites the assaults of reason. "On this rock will I build my Church" -- Argal what not?

It is hardly necessary to say that the question with which we are immediately concerned is only part of a larger question as to the validity of the sanctions which the Roman Church seeks to attach to its views and attitude on marriage generally. Indeed, we must recognize that the attitude of that church on birth control is symptomatic of something that is general to its whole policy and outlook. An element, of course, is the traditional contempt for what is pleasant and comfortable, and the tendency to assume that misery in this life augers happiness in the next, a sort of law of balance and compensation.

Now, writers like Father O'Brien and Dr. Latz will not agree to that -- not until they have to. But if the question is put: "What scriptural authority is there against the use of contraceptives?", -- that is to say, as a question of Divine command, the religious authority behind it -- the plain answer is "There isn't any".

The evidence before this Court is that there isn't any. Your Worship may look at the evidence of Mr. Silcox, Pages F.24 to 26; Rabbi Sachs, Page K.3 and Canon Whalley, Page P.488. Canon Whalley sets it out that there is no -- He agrees that there is a tradition running down through the ages that seems to be against the use of contraceptives, but there is no pronouncement of any council against it, and this encyclical Casti Connubii is the first first-class pronouncement, although possibly there were some instructions to confessors before that time.

The two passages I have referred to, -- "Be fruitful and multiply and replenish the earth and subdue it," and the Onan story -- the first, we have discussed enough, and the second, perhaps, also.

And it is admittedly not against religious principles to remain celibate, and for the rest, one may refer to Augustine, who

insisted on celibacy, -- who thought that celibacy was perhaps the best thing.

There is a passage in another encyclical, that of Libertas Praestantissimum, of June 1888, an encyclical letter in which Pope Leo XIII says (reads):

> "…For instance, though nature commands all to contribute to the public peace and prosperity, still the amount, manner and kind of such contribution is determined not by nature, but by the wisdom of man."

Although it is not "argaling," it is worth reading again. (Reads above quotation.)

MR. MERCIER: Is that in the encyclical on contraceptives?

MR. WEGENAST: No, but I am "argaling" now, and I say if that is so with respect to the contribution which we are to make to the community itself, and which is to be determined by the wisdom of man, why is it not so in the case of contributing our quota of children? It is nothing against a man if instead of going into the business of raising children, he goes into a monastery and goes into the business of educating them, let us say, and I think as a general principle, I would be content to abide by the passage I have read.

Now, the passage in Canon Whalley's evidence, Your Worship, is on Page P.488, and perhaps I should read it from the report of the Lambeth Conference (reads):

> "It must be recognized that there is in the Catholic Church a very strong tradition that the use of preventive methods is in all cases unlawful for a Christian. We acknowledge the weight of that testimony, but we are unable to accept that tradition as necessarily final. It must be admitted that it is not founded on any directions given in the New Testament. It has not behind it the authority of any Ecumenical Council of the Church. Moreover, it is significant that the Communion which most strongly condemns in principle all preventive methods, nevertheless in practice recognizes that there are occasions when a rigid insistence on the principle is impossible. If our own Communion is to give guidance on this problem, it must speak frankly and openly with a full appreciation of facts

and conditions which were not present in the past, but which are due to modern civilization."

That is pure common sense, Your Worship.

Another point, Your Worship: If the Onan story were to be taken as directed at the practice that is there illustrated, it would be an authority against the practice of coitus interruptus, and nothing more; there is no suggestion of its being anything else.

As for the attitude of the Church of England, I am passing now from the Roman Catholic Church ---

MR. MERCIER: You will come back to it. I am quite sure you can't leave it.

MR. WEGENAST: Well, it is an important body.

As for the attitude of the Church of England, the facts are clear enough, and we can well rely on the evidence before this Court. There was Mr. Summerhayes; he is Secretary of the Toronto Anglican Diocesan Council for Social Service, -- and Toronto, after all, is the capital of Eastview. He gave us an exposition of the Lambeth Conference resolutions that agree with Mr. Silcox and Canon Hepburn -- and with the course of events -- and with common sense. Mr. Summerhayes was, of course, entirely in accord with the sort of work Miss Palmer was doing.

Then there was Canon Hepburn. He is a member of the Social Service Council of the City of Ottawa. He is active in social work; unlike Canon Whalley, he is in immediate touch with what is going on in the Anglican Church and outside. He describes himself as a convert. He was wholeheartedly in favor of the kind of work Miss Palmer was doing.

Then there is Mr. Silcox. He represents the Church of England if he represents anything. Can anyone imagine that he would occupy the position that he does, and that the Church of England would be identified with the Social Service Council of Canada if Mr. Silcox were going contrary to the main body of opinion in the Church?

Then, of course, there is the Lambeth Conference, -- 193 bishops to 67. Canon Whalley's insistence that he was not bound by resolutions and that the conference had no legislative authority is well enough as a quibble, but everyone knows what such a vote must mean. We have heard from Mr. Silcox what the effect of it

was throughout the other churches. Certainly, the conference had no authority over the United Church or the Salvation Army.

MR. MERCIER: There is no evidence that the Lambeth Conference approved of work such as done by Miss Palmer in Eastview.

MR. WEGENAST: Mr. Silcox has put before His Worship the actual effect in the other churches -- the result on the other churches.

I may say Canon Whalley, by the way, on Page 553, acknowledged that there is no legislation of the Anglican body against contraceptives, so why would he be so positive? He admits on Page P.555 that there is no foundation in the New Testament. He is the only theological expert we have for the Crown, and he further admits it has not behind it the authority of any ecumenical council; that is on Page P.556. He admitted in the end that the Lambeth Conference does stand for something.

I don't think my friend is going to get much comfort out of Canon Whalley's evidence. If the idea was to show that there are individual Anglicans who have not yet seen their way clear to approve of birth control, I should have been prepared to admit it.

Canon Whalley, of course, agreed that there is no scriptural injunction against contraception and that contraception had not been dealt with in the way I have stated. Then Your Worship has also Exhibit 82-B, the findings of Round Table Number 4 with Canon Plumptre as chairman. I think Canon Plumptre's reputation must be known even as far as Eastview or Ottawa. The finding was that it favored the establishment of birth control clinics under proper leadership and supervision.

Then there is the report of the Toronto Diocesan Council; that is Exhibit 78-B. It is mentioned in the evidence of Mr. Silcox on Page F.35, and also mentioned by Mr. Summerhayes.

Then we have, of course, the attitude of the other churches; I needn't go into that. I am referring to the Anglican Church because there was a sort of herring drawn across the trail here. The other churches are represented by Mr. Silcox, in the first place, who represents a number of them, and there was Mr. Essex, Mr. Zeidman, Dr. Coburn, and Mr. Summerhayes, of course, for the Church of England too.

MR. MERCIER: And Mr. Zeidman.

MR. WEGENAST: Mr. Zeidman was for the Presbyterians, not officially, but he represents a department of their work.

I have gotten away from the religious question, and I pass to the argument that birth control is not natural and is wrong. Of course, that does bring us back because the argument is used by His Holiness that it is not natural, therefore, it must be wrong.

--- 4:00 p.m. Court adjourned for recess.

MR. WEGENAST: As to the argument that contraceptives are wrong because they are not natural, I am in a bit of difficulty with the interpretation of the word "natural". And of course, when that argument is put forward, we have to keep in mind that it is the argument of the encyclical letter, and it is the argument of the coterie of writers associated with the name of de Guchteneere. It is probably the main argument that is put forward by the opponents of contraception everywhere, whatever opponents there are. It is not confined to the Roman Catholic Church. But we find just a bit of difficulty in defining it.

I have already suggested to Your Worship what appears to me the best way of putting my friend's argument -- if he is going to put in any argument on this ground – is the way the argument is put in "America":

> "There is an obvious moral difference between interposing artificial deterrents to contraception in the act itself, and using marriage naturally but only when nature itself makes a woman sterile. It was never limitation of offspring that was forbidden by the Church, but only an artificial interference with the natural end of the act itself, since it is an act whose end is not subordinated to man, being a function of the race, but one to whose end he is himself subordinated. This makes it different from all other interferences with nature."

Your Worship, I say this without any thought of humourous possibilities, but it does suggest the gravedigger; it is too profound, I think, for Your Worship and for me -- we don't in our legal ministrations get down to things as fine as that; we do try to get down fine, but don't get as fine as that. Let us look at it again:

> "There is an obvious moral difference between interposing artificial deterrents to contraception in the act itself,

and using marriage naturally but only when nature itself makes a woman sterile. It was never limitation of offspring that was forbidden by the Church, but only an artificial interference with the natural end of the act itself…"

Well, "natural end of the act itself," -- there is room for a lot of argument there "…since it is an act whose end is not subordinated to man…". What does that mean? … being a function of the face, but one to whose end he is himself subordinated…" That is to say, man is subordinated to this function of the race. Then he ends up, "…this makes it different from all other interferences with nature."

Now, if it means anything at all, it applies equally, Your Worship, to chewing gum. There are the jaws and the muscles, and their object is to chew food for nourishment, and you prostitute them; you take them away from their natural end. You do something that is not natural. It is not natural to put a wad of gum in your mouth and chew away at it. Let us see the argument. It doesn't apply all around, but some of it does. "…but only an artificial interference with the natural end of the act itself, since it is an act whose end is not subordinated to man, being a function of the race, but one to whose end he is himself subordinated."

Hardly that, but it gets away from the biological, shall we say, end of the function of chewing. Or let us say drinking whiskey -- it is not food, although some people perhaps think it is, but a great many would say it isn't, and it certainly isn't done for its food value; it is not done for any biological end.

Taking communion is just as unnatural if there is going to be that distinction made.

MR. MERCIER: As contraceptives?

MR. WEGENAST: Just as unnatural. There is no thought of food value -- no thought of using the function of eating for its natural purposes.

I am puzzled as to whether the writings, including the encyclical, when they say "natural" -- if all this passage which I have picked out and put into the words of my friend as I think it is his best argument -- is only one man's idea, and I pass it on. But here is another from Father Davies, to whom I have already referred, and this is one of the most significant things

I have seen in the literature on this subject. He says on Page 240 of Volume 1, in a footnote (reads):

> "The method of procuring sexual gratification in such a way as positively to eliminate the purpose of the sexual function appears to the writer the palmary argument against artificial birth control."

That word "palmary" was a new word to me; I don't know whether it is to Your Worship. It means "the one which takes the palm," I suppose, the one that "takes the cake," in ordinary language.

That will stand a long looking at. Note, Your Worship, the word "palmary" and what it implies. It implies that prizes are being given for something that is already determined. You give a prize for an argument. What a prostitution of the reasoning process it is. You have already determined that it is wrong; now, let us produce some arguments. And I say to Your Worship that is exactly the spirit of the encyclical -- of trying to find arguments. There may be something, but I say, Your Worship, they haven't got it.

Note, by the way, Your Worship, that by using the word "artificial," they either beg something or concede something. He says, "the palmary argument against artificial birth control." Why did he put "artificial" in there? Why isn't the palmary for any other birth control? That is the nature of the arguments on the line that contraceptives are not natural.

There is another definition for "natural" to which I might call Your Worship's attention, in another work -- a standard work on moral theology that has the name of McHugh and Callan. I think that is the first work that appeared in the English language on moral theology in Volume 1, Page 320, he says this:

> "The natural law forbids one to read or hear read written matter of any description which one knows is dangerous to one's faith, even though it is not dangerous to others and not forbidden by the law of the Church."

Now, it is not necessary to analyze that, but here we have the term "natural law" applied to reading, and apparently when the Church says natural law forbids this or that, it comes in the same category -- "The natural law forbids one to read or hear read written matter…".

Then it goes further on Page 321 and says (reads):

> “Under the natural law, of course, even a page or less is notable matter if it places an individual in proximate danger.”

That is to say, even to read a page of a book, even a page or less of a book, that may be dangerous -- is against natural law. And so I say to Your Worship that it is none too clear what the writers mean when they say “natural”. The word could have a special or technical meaning. It would appear at least that anything that the Roman Catholic Church considers inimical to salvation is against natural law. Hence, it may be that when the encyclical or a theologian says that birth control is against natural law, he simply means that it is against the Church’s idea of the exigencies of salvation. The argument, of course, goes around in a ring; birth control is wrong -- that is, against the rules of the Church because it is unnatural, and it is unnatural because it is against the rules of the Church.

But elsewhere, of course, the word is used in its natural meaning, and it has been used in that way by the witnesses.

Now, Dr. Cargill is on record as saying, for example, in using the word in its natural meaning, that contraceptives were an interference with nature, but were none the worse for that. That is on Page P.424.

I think I have during the course of the trial put to the witnesses -- to recapitulate now some things that we have to consider if we are going to put up naturalness as a criterion -- we have this, in the first place, from Mr. Silcox; it is on Page F.18, that the whole process of civilization is an interference with nature and a diversion of faculties and functions to uses that are not natural. Our hands, our teeth, our feet, many of our muscles, and the appendix are biologically intended for a purpose different from that to which we, in our wisdom, are artificially not devoting them. To take these examples: The cooking of food -- The cooking of food is not natural; Using skates; Using automobiles; Cutting hair; Using anaesthetics; Using a toothbrush; Using lip-stick; Using clothes; Using an enema; Appendectomy; Pulling teeth; Using false teeth; Using the telephone is unnatural; The telescope is unnatural. And, of course, there was a great row raised before the time of Galileo about using the telescope at all; what an impertinence it was to pry into God’s nature.

I have the authority also of the Catholic dictionary; it is quoted on Page F.18 of Mr. Silcox's evidence:

"Even artificial productions are governed by the laws of nature, and, in man, natural activities, after they are perfected, differ not in kind but only in degree from those that are less developed."

So the definition there in the Catholic dictionary -- which I presume is perfectly good doctrine -- is that there is nothing to be made out of that distinction.

Now, I come to what I think is almost the last point as to the sense of decency. It is argued by some of the writers, -- and it seems to me the argument has more cogency if it could be established, perhaps, than any other; it is less far-fetched than others -- that there is something about the use of contraceptives that offends against a natural sense of decency. We had quite a bit of evidence on that; we had Dr. Chisholm, for instance, who said that a sense of decency is entirely a matter of time and circumstance and environment, and when you examine the thing a little, it turns out that is exactly correct. But I put this to Your Worship, in the first place, that when we are dealing with the sense of decency argument, what is involved is not the use of contraceptives but the subject of sex itself. It is because one feels a delicacy about discussing sex, rightly or wrongly, that there is any inhibition against contraceptives. I needn't elaborate on that. The discussion of a pessary or a condom or a jelly is not more indecent than the discussion of the generative organs or ordinary functions of excretion. It is a shock to hear me say this, and that proves my point. There is no indecency about having generative organs or excretal organs, but there is an indecency about talking about them unnecessarily. And that is what, I say to Your Worship, the section is aimed at. We needn't analyze too closely why.

Mr. Silcox told us of people -- not in Eastview -- who had no such inhibitions. Shakespeare and Burns certainly did not have any such inhibitions, and I point out to Your Worship that before the law against obscene libel had developed, Shakespeare wrote works, and afterward, Burns, that nobody in this country -- well, at least the Martels in this country would not have allowed to be published.

If Miss Palmer had been taking subscriptions for an edition of Shakespeare in Eastview or Francois Villon or Rabelais, she probably would have fallen under Martel's suspicion in the same way.

The question of decency is a matter of time and circumstances, and here are some examples: -- You can call it a matter of decency or of conscience or morality -- I think it is fair to say, Your Worship, that in the Bradlaugh case, what was really in question was what we now call "Victorianism," an overdose of prudery. But call it what you like, here are some of the things that are indecent to some people: eating pork -- how indecent that would appear to some people, wearing a bathing suit -- Your Worship probably has never seen the bathing suits that I in my younger days saw.

MR. MERCIER: Or wearing no bathing suit.

MR. WEGENAST: Well, they are coming to that. We had one case where that came up.

Then wearing pajamas -- imagine our grandmothers wearing pajamas. Drinking whiskey is very indecent to some people. Using playing cards -- some fathers would rather have had a corpse found in the house than a pack of playing cards. To the Mennonites, wearing buttons is just as indecent as anything about contraceptives is to us. Riding in a top buggy is against the conscience of Mennonites, eating un-koshered meat, drinking milk -- we have referred to that.

What a terrible thing that must have seemed to the first person who saw someone drinking the milk of this animal they saw in the woods. Using grease -- the suspicion of using cartridges greased with lard was the cause of a mutiny in India. Wearing a moustache -- there were some people who wouldn't go to hear a minister who wore a moustache. The people of the House of David would feel the same way about shaving.

I want to point out, Your Worship, that one of the unique features of this trial is that we have, for the first time, I think, in the legal history of the subject, what might be called a judicial study, under oath, as to the attitude of conscience on the part of women towards the use of contraceptives -- and I say to Your Worship if there is anything in this shocking of moral sense, if my friend can put forward any argument on the basis that there is something about Miss Palmer's activities

that shocks the moral sense of this Town of Eastview, then this is the clinching consideration -- or, it might be put, their reaction from the standpoint of a sense of decency. Of twenty-one women put in the box, fifteen were asked whether they thought there was anything wrong with contraceptives. Thirteen replied in the negative and two took the other view. Of those two, one, Mrs. Duhamel, undertook to expound her reasons, and the other, Mrs. Olive Maheux, thought the marriage law put her under an obligation. The other thirteen saw nothing wrong, and the proportion would have probably been the same if they had all been asked. And that coincides with Dr. Chisholm's evidence that nobody thinks there is anything wrong with it. Poor Martel!

If we argue, and our Worship must, I think, hold that sanctions from a moral standpoint can only be the three, -- first, Divine command; second, nature, and third, a sense of decency, then the evidence of these thirteen women will be cogent and convincing evidence on the third point. This evidence, under oath, though on a base of only fifteen cases, will for future sociologists be a valuable contribution to the subject. Taking it with the evidence of Dr. Chisholm that the mental and psychological reaction depends on the teaching, it seems to mean that any inhibitions of conscience that there may be are entirely the result of teaching, which we say is erroneous.

Your Worship will remember Dr. Chisholm's evidence to that effect -- that these things he has to deal with in his practice are mostly based on erroneous -- one might say "phoney" -- conscientious attitudes.

And that brings us back to the first of the three sanctions and shows that fifteen women with only one or two exceptions -- and those a product of what might be called "forcing" -- had given up the idea of any Divine command, the Church to the contrary notwithstanding -- and that probably means something.

Of course, the theological argument is that birth control is against Divine command because it is against natural law and because it is against a sense of decency. Obviously, the evidence of the women fails to bear this out, and we say that the evidence is utterly overwhelming that the work of Miss Palmer was for the public good.

Then may I pause once more to say that it doesn't matter about the use of the contraceptives -- the use that was made of the

contraceptives. The only question is in the light of the history of Section 207, in the light of the history of the idea of the standard of public good -- the only question is whether it is a shock to the sense of decency of such proportions that it must be considered as amounting to obscenity.

Then as to the matter of excess. The great preponderance of evidence was that there was nothing in Miss Palmer's alleged acts which was wrong or improper. We have a number of witnesses on that; I don't know why I should go through the list, but Mr. Silcox on Page F.47 and F.49 and Mr. Kemp on Page F.270. On this question of excess, the evidence is so definite that my friend very soon fell into a habit of putting it sarcastically to the witness, saying, "Of course, you agree everything Miss Palmer did was all right," and every time, they fell right in ---

MR. MERCIER: Was I the only one to use sarcasm?

MR. WEGENAST: I am not saying a word about the use of sarcasm; I am just pointing out that was the reaction of my friend to the evidence and its overwhelming quality.

Then one reason, of course, abundantly established why Miss Palmer's work was in order was that the women couldn't get the information anywhere else -- at least not in Eastview; they had to go probably some distance from Eastview before they would get into a district where doctors could be found that would have anything to do with it.

It all depends where you start from. If you start on the assumption that there is something about the condition of these people in Eastview that makes it a more delicate matter to give them the information about contraceptives than if they were, let us say, Protestants; if you assume that the priest or confessor ought to get a chance of warning them first, that is one thing, but if you start from the position that neither Miss Palmer nor Mrs. Maheux are beholden in law to any desire of the priest or anyone else, -- unless they so choose -- then you get a different result. The latter is the real legal position.

And indeed, the position may be stronger still, and I would be prepared to argue that it is against public policy that any priest or cleric should be in a position to stand in the way of the free circulation of knowledge, whether it be about contraceptives or astronomy.

And I close what I have to say on the subject with this: A generation ago, the attitude of respectable people towards sex experiences was one of reserve coloured by shame in which they felt that while sex was unavoidable yet the less we thought of it and the less we had of it the better, and in fact, morally, it was a bit of a nuisance. Today, however, for the best informed, the attitude is exactly the opposite; the sex impulse is now found to be the fount of all the creative arts, and in its higher forms of expression, a matter not for shame but for glory.

Three young women with strong maternal instincts, when the stress is great, one of these women will take her paints and go out to the country and make pictures, another will go to her music and produce a song, while the third will say, “Let me make you an evening frock”. And there are many cases in which, instead of nursing their own babies, they mother derelict men and women. The maternal instinct dammed back is likely to find its outlet in mothering the community. It is called sublimation.

We have heard conclusive evidence from men like Dr. Chisholm, not only as to the admissibility of considerations of sex but the absolute necessity of taking it into our consideration. We have to have that; it is the driving force -- it is the driving principle of humanity. It isn’t a matter of reproducing; it isn’t a matter of procreating; merely, -- it is a matter of driving -- the best, the highest instincts and qualities of the human being. It is a driving power.

Under the old primitive conditions and under conditions as we find them on the farm now, the thing will take care of itself. But under modern, intensive hot-house conditions such as we have in our cities where it isn’t a matter of spending the day ploughing or harvesting, where every faculty of the mind is under strain, and where the whole thought, the whole direction of activity runs in paths which are foreign, -- artificial, let us say, from the standpoint of the primitive state of the human race -- I say to Your Worship that it is inevitable that adjustments such as these which are recommended by the scientists who have appeared before you should be made. And I say to Your Worship that even if Your Worship was not convinced that the sort of work that Miss Palmer was doing was the only way or the best way, Your Worship would have to conclude that in view of the fact that it was what the views of scientists and

the wisdom of our generation had evolved as the best means to the end of keeping the human race fit, -- of keeping our nerves in shape -- of curing and avoiding the misery and suffering which is so ably depicted in that book, “The Rhythm”. If there were nothing but these, let us say, tentative measures, if Your Worship were convinced that Miss Palmer’s activities and the activities of Mr. Kaufman were only the beginning -- the feeble beginnings of something, Your Worship would still have to conclude they were for the public good. We can’t have these things fully developed, -- I don’t see anything wrong with them -- but we can’t have these things in their perfect form without going through the process of perfecting them.

How was this thing of informing Mrs. Dagenais and Mrs. DesLauriers of the means of contraception to start? I wouldn’t have started; Your Worship wouldn’t have started; my friend wouldn’t have started it. Then I say again, the least we can do is give these people a chance to do something that we don’t feel like doing ourselves, or that we are not in a position to do. Mr. Kaufman, fortunately, is in the position to do it, and he has the will. Will Your Worship say to Mr. Kaufman, “You have spent the last six or seven years since you started this idea in the encouragement of a course of depravity?”

I finish with this, Your Worship, -- my learned friend Mr. Beament will have something to say, but I finish with this: In pointing out once more -- if I am not laboring it -- that the question is not one of the good or bad or contraceptives, although it may involve that, but the main question is whether Miss Palmer had committed something which amounts to obscenity. And it is to that and to that alone that the section in the Criminal Code is directed. And I say once more that my friend has no right, as Le Droit had no right, to start out on the assumption that the dissemination of the knowledge of contraceptives was wrong -- that that was a thing you could put people in jail for. That is what Le Droit said, and that is what Le Droit was punished for.

MR. MERCIER: Your Worship, I would like to submit to the Court that I don’t believe that is quite the case. Le Droit was punished for commenting on a case that was being tried.

MR. WEGENAST: I argued the case and I know what His Lordship said, and I know on what basis I put it, so I think, with respect to Your Worship, I am entitled to express an opinion on

it. The judgment was not taken down, but I am entitled to say to Your Worship ---

HIS WORSHIP: Are you suggesting if this case were not taking place and the same remarks were made by Le Droit that they would still be subject to the prosecution and penalty which they were?

MR. WEGENAST: No, it is a matter of contempt of court, of course.

HIS WORSHIP: That is what they were punished for.,

MR. WEGENAST: Yes, but the offence was to say that this is something that people could be put in jail for; they were prejudging the case. That was the basis on which I put the argument, and I say to my friend, he is not right when he says that circulating knowledge about contraceptives is something you can put people in jail for.

MR. MERCIER: I can argue it if I wish.

MR. WEGENAST: I say my friend cannot validly argue that here -- that the offence is circulating information about contraception by advertising means. The offence is advertising means of contraception by giving information that is not for the public good.

MR. BEAMENT: Your Worship, I don't think I will impose on your time for long. I want to start by reminding Your Worship of the charge on which Miss Palmer is being tried and it is this: That between the 1st of August, 1936, and the 1st of September, 1936, at Eastview, she did advertise to several persons in the said Town of Eastview by means of a pamphlet entitled "Birth Control, and Some of its Simplest Methods," and also giving the French version, drugs, instructions, medicines or articles intended or represented as a means of preventing conception.

That is the charge of advertising instructions, drugs, medicines, or articles intended or represented as a means of preventing conception. As it has been pointed out, the prevention of conception is not an offence, and as has also been argued by my friend, Mr. Wegenast, the section under which this charge is laid is one which, in our submission, is aimed at obscenity. And here is one further point that goes to support that contention and that is the group of sections, the location in the statute where the section is found. Your Worship will

find Section 205 deals with indecent acts; 205-A, parading while nude; 206, acts of gross indecency; 207 is the section under which we are charged; 208, immoral theatrical performances; 209, posting obscene publications, and 210 starts to deal with seduction.

So that you will see this section, in our submission, is aimed at obscenity or immorality. And there is nothing immoral about the use of birth control appliances. The section is not a section designed to increase or promote any monopoly that the medical profession may have in the giving of advice in relation to the human body; it is not that at all.

It can be, in fairness, I submit, only interpreted as something aimed at immorality, and further, it is something that is aimed at the manner, primarily, in which birth control information is disseminated.

The dissemination of birth control information is not an offence if it is for the public good, and the only suggestions which seem to have been made against the accused in this case fall under two categories: One is that it can't be for the public good because what is urged is something which is essentially immoral, and secondly; it can't be for the public good because, in some respects, those things which were urged were medically unsound.

In support of the public good contention, grounds sociological, economic, medical, and moral have been advanced, and the Crown, neither by cross-examination nor its own evidence, has endeavored to contradict any of those grounds except the medical and moral or theological grounds. And on that ground, the heat of battle has raged owing to the attitude of the Roman Catholic Church.

Now, I personally, in my argument, am not in the slightest degree concerned with the logic of the Roman Catholic Church -- with the validity of their views, or otherwise, and I am perfectly prepared to admit a large body of their membership may believe that the use of contraceptive methods -- artificial contraceptive methods are wrong and improper.

And I will start with that point of view. I do not propose to burden Your Worship at all with any argument based upon the attitude of that theology, but what is the effect of the Roman Catholic attitude, which I am prepared to admit exists? It can

only have relevancy in this prosecution in one of three ways: First, because of the Roman Catholic attitude that the dissemination of birth control information is absolutely wrong, or secondly, because of the Roman Catholic faith or attitude held by certain persons, the dissemination of that information to those persons by reason of the shock to their sense of faith may be wrong in that particular case, or thirdly, it may have an effect on this trial because of its effect on the credibility of certain witnesses who gave evidence before Your Worship; that is to say that they had a bias or prejudice -- I use the word "prejudice" in a nice sense -- as a prejudging of the case.

Now, I ought to deal with those three points. First, on the basis because the Roman Catholic Church does not believe in birth control that, therefore, it is an absolute wrong to disseminate birth control information; it is absolutely untenable. The attitude of the Roman Catholic Church, which exists today, has existed for many years and was in existence when this statute was passed. If the legislature had intended the statute to mean they were absolutely opposed to the dissemination of birth control knowledge, -- that it was against the public good to disseminate it -- then Subsection 2 is meaningless and there could be no sense in putting in Subsection 2.

Now, the second point is the objection to the dissemination of the information to Roman Catholics because it may be offensive to them. In that regard and, in fact, in all these matters, Your Worship is, needless to say, bound to decide on the evidence.

We have before Your Worship the evidence of 22 women. The first one, I think, perhaps I should disregard because I think strictly her evidence was given on a charge that has been dismissed. She came to Miss Palmer upon the advice of her doctor, Dr. Cowan -- I am referring to the evidence of Mrs. Le Blanc. The last one I think we can disregard in this argument, and that is the evidence of Mrs. Des Lauriers, who was called in rebuttal by the Crown to try and clear up a mistake or difference of opinion that had arisen with regard to giving contraceptives during pregnancy.

So we are left with 20 witnesses who gave evidence of having been interviewed by somebody. They didn't all give evidence of having been interviewed by the accused, but they were interviewed by somebody, and birth control was discussed with

them. Now, of those 20 cases, I say -- and I am prepared to give Your Worship word and verse for it -- that in 16 of those cases, the ladies said they had no objection whatever, that they didn't think it was wrong, that they thought they had had enough children, or words to that effect. I don't know whether Your Worship wants me to give you the specific quotations for this, but I have the 16 quotations marked of these 16 out of 20 ladies who all said they had no objection, that they were not offended.

Now, the other four: One of them did not identify Miss Palmer at all, and she was dropped without being asked any questions at all, so she can hardly be counted. The next one was the unmarried mother, Miss Hudon, with regard to whose case I will deal shortly. The next one was Mrs. Leo Maheux, who said that she gave the information to Miss Palmer, and she signed the card that the information on the card was accurate, and she knew what Miss Palmer wanted it for. The last one of the 20 was Mrs. Pharand, who signed the application and knew Miss Palmer's purpose in visiting her when she signed, but she suggested it was against the tenets of her church to use it, although she knew why she signed.

Now, there is the story. Not only, Your Worship, is there no evidence that the conversation of Miss Palmer or the things that she advanced to these ladies were offensive to them, but you have 16 specific cases of the women saying that they wanted the information and there was nothing wrong with it. And, of course, you have 20 cases where they signed knowing what they were signing for.

These women were not unsophisticated girls out of a convent who knew nothing at all; they were all women who had borne children and, in all cases, women who had borne too many children. They knew something about the facts of life; they didn't have to be told how children came into the world; they knew. And there isn't one word or one suggestion in the evidence any place that Miss Palmer ever said one word of any kind to any one of these women that was in the slightest degree offensive to them.

The third point, of the relevancy of the Roman Catholic Church's position -- in regard to the medical testimony, I want to deal with it very shortly. The point seems to be very obvious: A number of prominent members of the medical profession were called to give evidence before Your Worship. Four of them were called on behalf of the Crown: Dr. De Haitre, Dr. Couture, and

Dr. Gerin-Lajoie. Each one of those three witnesses was a Roman Catholic; each one of them said that he was forbidden by his religion to agree with the use of artificial contraceptives.

MR. MERCIER: Except Dr. Couture, he said it was his philosophy.

MR. WEGENAST: He said it was based on canon law in the end.

MR. BEAMENT: Each one of them intimated that he had approached the acquisition of his professional knowledge and the practice of his profession with that background of faith in his mind. Now, I am not attacking the doctors for feeling that way, -- I am not suggesting they haven't got a perfect right to adopt any faith they choose and to apply that faith in their practice or in their everyday life, and that is what they said they were doing, but I do say this to Your Worship, that where there is a conflict of scientific evidence, on any purely scientific matter, the evidence of a person, -- each being equally honest, if you will, each being equally intelligent, -- who attacks the problem with an open mind, seeking only the truth, unhampered or unwarped by any prejudice of bias, is to be preferred to that of another man who attacks the same problem saying, "I have believed throughout my life that this thing is wrong". And surely there can be no question -- and I am not suggesting that any of these gentlemen were trying to mislead the Court -- I am suggesting nothing against them at all except that their whole course of life, as sworn to by them, had disqualified them from giving that type of unprejudiced evidence on a question of this kind to which Your Worship is entitled.

Having gone as far as that, if I can without impertinence, I would like to propound to Your Worship five questions, and I think the answers to these five questions show conclusively that Miss Palmer must be acquitted. The first question I would ask Your Worship -- and I am propounding these questions to Your Worship strictly on the evidence, the first question is: Is the dissemination of birth control information justified?

There can only be one answer to that. The answer is "yes," of course, both on the evidence and on the wording of the statute itself because the statute itself clearly contemplates that the dissemination of birth control information is justified.

Then the second question that naturally flowed from that is: Was the information given in this case proper information? And again, I say the evidence is absolutely, overwhelmingly in favor

of an affirmative answer to that question. On the one side, you have the Crown's witness, Dr. Cargill, and you have all the witnesses for the defence. I needn't enumerate them again; their names must be clear in Your Worship's mind. On the opposite side, you have some evidence from the three other Crown witnesses, and I have already pointed out to Your worship why I think you ought to prefer the evidence of the unbiased, unprejudiced investigator to that of the man who tackles the problem with a preconceived idea of the answer.

Then the third question -- assuming that the dissemination of birth control information is a proper thing, and assuming the information, in this case, was proper information, the third question that naturally follows is: Was Miss Palmer a proper person to give that information? And that again must be judged on the evidence. It falls into two categories: First of all, should information of this kind ever be given by anybody other than a medical practitioner? We have in favor of that contention all the witnesses for the defence; we have also the evidence of Dr. Cargill in favor of that contention, as applied to the facts of this case. What Dr. Cargill says that he advocates is that it should be under medical supervision. I refer Your Worship to Page P.293 and Page P.433. He advocates it under medical supervision as a means of attaining efficiency. Also, Page P.397 and Page P.409. But he says I have no objection to a social worker taking part in the scheme of dissemination; he says that on Page P.398. And he says the condom and jelly have a very high degree of efficiency, even higher than the pessary and jelly, which he recommends. He said that on Page P.406. And you must remember that medical supervision is for the sole purpose of attaining efficiency. Then he goes on to say that he has no objection to the jelly and condom -- which has this very high degree of efficiency -- being given without individual advice. That is on Pages P.430 and P.457. And he has no objection to all married women having this information. That is on Page P.443.

I would like Your Worship to fit that together. Medical supervision is only necessary to attain efficiency; the condom and jelly have the highest efficiency of any of those methods prescribed. "I have no objection to the condom or jelly being given without medical advice; I have no objection to the intervention of the social worker." And in this case, all that

was given to these people without medical advice was a condom and jelly.

Now, I submit to Your Worship that Dr. Cargill's evidence completely corroborates and vindicates the mass of defence evidence.

HIS WORSHIP: Aren't you a little wrong there, Mr. Beament? You say they were only given the condom and jelly without medical advice; weren't they also given formulae for home remedies?

MR. BEAMENT: According to the advertisement, we are accused of advertising something by that, and the only things we advertised are the things we gave as a result of it. You can't have it both ways, Your Worship; you can't say it is the advertisement and it is the means. The Crown, rightly or wrongly, -- perhaps wrongly -- has chosen to put that pamphlet in the category of being an advertisement, and we have to abide by that. And the Crown says," What does it advertise"? It advertises three things: condoms, pessaries, and jelly. But it was clearly pointed out the pessary couldn't be purchased without the intervention of a doctor's prescription, and there is no evidence that a pessary was ever given to anybody without a doctor's prescription.

MR. MERCIER: What about the sponge, and so on?

MR. BEAMENT: I disagree with you. I say you class that as an advertisement.

Now, no doubt my friend will have ample opportunity to argue when the time comes.

MR. MERCIER: I am sorry, Mr. Beament.

MR. BEAMENT: Now, the second branch of the question of whether Miss Palmer was a proper person to give out the information, -- not generally to the question of social workers but to Miss Palmer herself. Again, Miss Palmer must be judged on the evidence and be given the benefit of the doubt, if there is any doubt. I say there is no doubt. The evidence, and the only evidence with regard to Miss Palmer, is that she was selected, after careful investigation by the Parents' Information Bureau, as a fit and proper person. The doctors and sociologists who heard the manner in which she carried out her work expressed the opinion she was doing it in the proper manner and without excess. As to her skill, we have the evidence of Dr. Dover who, after no doubt finding out her capabilities, on occasion

referred his patients to her for advice, and he said in his opinion when he looked into the matter that she was a fit and proper person and duly qualified to give the advice that was required in cases of this kind.

We have also the suggestion of the same thing implicitly in the fact that Dr. Cowan referred a patient to her, and that evidence stands uncontradicted, Your Worship.

So I say we have the great body of evidence that a social worker is the proper person to do this work, that it doesn't require a medical practitioner to give the type of advice that Miss Palmer was giving, and that she herself was a proper person to give that kind of advice.

Now then, if birth control information is justified, -- if the information we were giving is true and accurate information, -- if Miss Palmer was a proper person to give that information, the next question, -- and my next submission in the form of a question is: Was it given without obscenity, lewdness, or impropriety? That is the next question. I submit, Your Worship, I don't think there can be any doubt about that at all -- there isn't the slightest suggestion of offensiveness, obscenity, or lewdness, in any word of the evidence.

Then the last question comes on the position I understand my friend to take from his cross-examination and some of the remarks he has made from time to time -- the last question is: Did it hurt the conscience of any of the persons to whom it was given? I think I have answered that question, Your Worship, in my analysis of the evidence of these 20 women, and I think that Your Worship, judging on the evidence, must answer that question "no".

Well then, Your Worship, if we have given information which is true and accurate, and a person who is a proper person to give it has given that information, and it has been given without lewdness, obscenity, and coarseness, and it doesn't hurt the conscience or offend the minds of the persons to whom it was given; who can say it wasn't for the public good?

True, there has been a lot of talk about misusing the information; there has been the suggestion it will weaken the faith of these ladies. It is perilously close to suggesting that people must be kept in ignorance to remain faithful.

And if it is the truth, then the use to which it is put is a matter in which I suggest Your Worship is not concerned.

I have only one more point that I want to direct to Your Worship's attention, and it concerns the suggestion that arose from some of my friend's questions -- that possibly Miss Palmer or her methods were to be attacked by reason of the fact that some of these ladies didn't understand what she was doing. She may have forced something on them, in other words, because they didn't speak the English language. Well now, of these 20 women, only 7 were examined in this Court through an interpreter. Two of them, and I will give Your Worship the names, Mrs. Dagenais and Mrs. Richer, failed to identify Miss Palmer; they said they didn't know her at all. And one of them, Mrs. Louiseize, was questioned through an interpreter.

HIS WORSHIP: Questioned by Miss Palmer through an interpreter.

MR. BEAMENT: Yes, by Miss Palmer. Three of them, Mrs. Lee Maheux, Mrs. Gervais, and Mrs. Groulx, said they didn't speak much English, but they gave the information to Miss Palmer. In each of these three cases, they said the information on the card was correct. Mrs. Groulx, as a matter of fact, said she understood all that Miss Palmer said to her. You will find that on Page D.96 of the evidence.

So boiled down, there is nothing very sinister in it. The information on the cards was substantially correct and could only come from these ladies, so you only have to -- I beg your pardon, there is the seventh case, Mrs. Doris. After getting the information about the size of the family, Miss Palmer left the pamphlet. There is nothing very sinister in that.

Now, I come to the question of Miss Hudon. I need not repeat what my friend has said, -- the type of witness Miss Hudon was, nor about the justification or otherwise of giving this information to an unmarried mother; I need only recall Your Worship's attention to the charge, and the charge is "advertising with a pamphlet". If Your worship will read Miss Hudon's evidence, you will find that not only was she not shown a pamphlet, but she never got a pamphlet. There is not one word or tittle of evidence that Miss Hudon ever saw this pamphlet or ever heard of it until she got up in the Court. And Your Worship will remember we are not charged with giving Miss Hudon condoms, although there is no evidence she got any condoms or jelly or

that we told her something about the facts of life. We are charged with “advertising with a pamphlet,” and there isn’t one tittle of evidence she ever saw or heard of the pamphlet. And if there was a box, -- there is no evidence of it -- there was no box produced by the policeman, Martel.

I submit most strongly that no evidence can be accepted; Miss Hudon can be entirely disregarded. It can have no more bearing on the evidence than if Miss Palmer had stopped Constable Martel on the street and started to tell him about the facts of life.

Now, Your Worship, we are charged with “advertising by means of a pamphlet”. The pamphlet is the advertising. What did we advertise by that pamphlet? Because I think my friend has met every point that can be made that advertising connotes some degree of commercialization. And Your Worship discussed this, -- if Your Worship will refer back -- on the motion for non-suit and came to the conclusion that the fact there was a possible follow-up with regard to certain items produced that degree of advertising which Your Worship thought was sufficient to bring Your Worship to the conclusion that our motion for non-suit should be denied. The pamphlet is the advertising. The only things supplied, -- the condoms, pessaries, and jelly, -- that is what we are advertising by means of this pamphlet, and that is all we advertised by means of this pamphlet.

It is quite true the Crown could have brought the charge in a different way, to charge us with a different offence, -- I don’t know -- that is not what we are defending. Although the onus of establishing the “public good” -- of proving the “public good” -- rests on the shoulders of the defence, the onus of establishing the exact performance of those acts which constitute a prima facie case against Miss Palmer rests squarely on the Crown. They have to show, for instance, that Miss Hudon got a pamphlet. I don’t want to repeat myself, Your Worship, but that is squarely on the Crown, and if the Crown fails to satisfy Your Worship on that ground, then, of course, Miss Palmer must be acquitted and discharged from custody.

HIS WORSHIP: We will adjourn until 10:30 tomorrow morning.

REX vs. PALMER

Argument

Thursday, February 11th, 1937, at 10:30 a.m., Resumed:

VOLUME 4

PRESENT:

MR. R. MERCIER, Counsel for Crown

MR. F.W. WEGENAST, K.C. and

MR. A.W. BEAMENT, Counsel for Defendant

MR. MERCIER: Your Worship, I wish to begin my few remarks, first of all, by thanking Your Worship for the patience that you have displayed to all of us in our very heavy task, which I am sure was not much lighter for Your Worship. I do hope that during the course of my remarks, I will be guided by the spirit of moderation for which the Court has known me during the past fourteen months and that I will be able to show the Court that my personal feelings do not enter into the matter, and I will endeavor to prove I am an officer of the law.

I wish also to extend my thanks to the many visitors we have here, who are interested in this case, for the courtesy they have shown to me, and I do hope they will have the same opinion after I have finished my remarks.

Your Worship, it may not be amiss at this time, for reasons which are evident, to refer to a certain prayer which was known as the prayer of Eusebius, who was the father of church history, -- church history, in this sense, at a time when there were no Catholics or Protestants, but all people were Christians -- a prayer which has remained famous in history, (reads).

In that spirit, more or less, Your Worship, I wish to endeavor to argue the Crown's side of this case.

Now, my learned friend, in the course of his remarks, has repeatedly put it up to the Crown or dared the Crown to say how this prosecution was instituted. My learned friend has asked for it, and, as Your Worship well knows, I am under no obligation to tell him, but whether he likes it or not, I will.

Some five or six weeks before the proceedings were started, I received a telephone call at the Crown Attorney's office from a lady who did not give her name and did not wish to name herself,

asking me if it was right to peddle safes in the City of Oshawa. I must say, at that time, I didn't know anything about the Parents' Information Bureau, or Miss Palmer or her work, or anything of that kind. But I didn't take the matter too seriously then because I thought it was more or less of a joke by some woman who didn't know exactly what she was talking about; I couldn't imagine such a thing could be possible.

Later on, I received a similar telephone call, but, again, the woman would not name herself, so after that, Officer Martel, the zealot of the law, as my learned friend has called him, came to the office for a consultation and told me that in the police court at Eastview, they had received complaints about a certain person, whom I did not know at the time, making calls and doing the same kind of work as this other woman. So I asked Martel to make an investigation and find out about it, and Martel did make an investigation. He informed me of the results of his investigation, and glancing at Section 207 of the Criminal Code of Canada, I thought prosecution might be instituted. And on the famous afternoon of the arrest of Miss Palmer, which was also referred to by my learned friend, I received a telephone call, -- that was about five or six o'clock -- that Miss Palomer had been arrested, and I did not have the slightest notion she could have been qualified as a social worker or anything of the kind; I did not know what she was.

I suggested a certain amount of bail, which was, I think, agreed to by Your Worship at the time. And that is all the mystery there was about it. On that very evening at the police court, some money had been wired to my name -- and I think it was Mr. Berger who brought a cheque into court which I endorsed over, payable to Your Worship for Miss Palmer's bail. So that, Your Worship, will clear the mystery and the more or less veiled insinuation of my learned friend.

MR. WEGENAST: Your Worship, nothing I said was either veiled or an insinuation. I am glad to have so much of the explanation my friend has given and accept his absolutely at his word, and I believe that he knows no more about the origin of the case than he has told us. I think Your Worship is wise enough to guess that there may have been other features of it that neither my friend nor I know about.

MR. MERCIER: Well, Your Worship, that is all I know about it, and as an officer of the law, I felt it my duty to give instructions that the prosecution should be instituted.

My friend has also referred to Mrs. Mousseau -- Why was the charge against Miss Palmer in regard to Mrs. Mousseau withdrawn? Well, the first information about Mrs. Mousseau was that the accused had been to her place and had offered to sell her a pessary, which she had in a box. That was the first information I received, and upon further investigation, I was advised that Mrs. Mousseau had changed her mind and was not saying the same thing. Well, I thought it was the decent thing not to take any more action, and, as I said, Your Worship, I did not know anything about the Parents' Information Bureau or Miss Palmer or what has been referred to as her work.

MR. WEGENAST: Of course, I submit this is quite irrelevant, Your Worship, but nonetheless ---

HIS WORSHIP: You rather asked for it, and he is obliging you. You raised the point that I should be very diligent to enquire into it, and Mr. Mercier is saving me -- even if I had decided to try and find out -- Mr. Mercier, as far as he is concerned, is saving me that trouble.

MR. WEGENAST: I am asking my friend if he knows of any connection of any newspaper with the institution of this prosecution, or any efforts in the City of Ottawa to launch a prosecution. I thought he should tell Your Worship, and I understand now my friend knows nothing about that.

MR. MERCIER: I will go a little further and tell my learned friend I am prepared to take my oath to the effect that this is absolutely the only thing I know about it, and I didn't know anything about any newspaper or anybody connected with any newspaper or any other source at all.

Now, Your Worship, although I do not intend to go into the religious field to the extent my learned friend has, I wish to make a remark that my learned friend may not like, but I wish to go on record as saying that my learned friend's assault on the Roman Catholics and on Canon Whalley was just a smoke screen to hide the real issue, and is, shall I call it, a threat; his words almost amount to a threat to the Court, that the Court must dismiss this action or forever be branded as a friend of the Church of Rome.

MR. WEGENAST: Your Worship, there was no hinting of anything of that kind.

MR. MERCIER: It may be my impressions are all wrong, but that is what I understand.

MR. WEGENAST: I may say my friend's view of the matter is utterly distorted. I haven't had the slightest idea of drawing Your Worship into this thing except in Your Worship's official capacity, and I call Your Worship and my friend to witness there is not a word I have spoken that would bear any such construction as my friend has endeavored to suggest.

MR. MERCIER: If Your Worship will recall the remarks of my learned friend at the beginning of his address -- if those words are not warranted, Your Worship, I do not wish to mention them.

HIS WORSHIP: I rather think it was the point that this is an attempt to obtain from the civil courts a declaration as to the validity of the canons of the Roman Catholic Church.

MR. WEGENAST: To invoke the sanction of the Court for something that is not, under my submission, civil law -- that is the whole point there.

HIS WORSHIP: I don't think either the defence or Crown Attorney need worry about what is going to happen to me after I have given my decision. I am prepared for the worst.

MR. MERCIER: I am going to endeavor, Your Worship, to perform my duties as I see them and stick to the facts, and according to the lawyer's law, -- not that of the Biship of Rome, but that of His Majesty by and with the consent of the Parliament of Canada. I have too much respect for my position and what it stands for, and for my profession to even think of meeting my friend on the ground which he has chosen to try and meet me in discussion, and I have too much respect for the Venerable Canon Whalley, who had the misfortune to give evidence for the Crown, and for all the other venerable gentlemen. It would not be the British way, and, therefore, it cannot possibly be mine. The enactments of the Parliament of Canada are law to me, and I must see that the law is enforced.

Now, Your Worship, what is the charge against Miss Palmer? I do not think I need to repeat it; Your Worship is familiar with it, and it was read late yesterday afternoon by my friend, Mr. Beament. I submit, Your Worship, that the Crown has proved that

the alleged offense was committed at the Town of Eastview, that the Crown has proved it was done knowingly -- there is the voluntary statement of Miss Palmer stating she knew what she was doing. Then "without lawful justification or excuse," -- my learned friends have said that the onus is on the defence and that onus has been met.

On this point, Your Worship, may I cite a few cases? Lebel v. Bryant, 18 American Cases, taken from 16 Corpus Juris.

Then in the Encyclopedia Brittania, 14th Edition, Volume 13, Page 208, it says:

> "Justification in law is the showing by the defendant in an action of sufficient legal reason why he did what he was called upon to answer."

The shorter Oxford English Dictionary says:

> "Justification in law; the showing in Court that one had sufficient reason for doing that which he is called to answer."

And Archibald's Criminal Pleading, Evidence and Practice, 1921, Page 364 (reads):

> "Negative averments, it seems, must formerly have been proved in all cases by the prosecution (see Over vs. Harwood, 1900, 1 Q.B. 803, 806, L.J.Q.B.272, Channel, J.); but the present rule upon the subject appears to be, that, in cases where the subject of such averment relates to the defendant personally, or is peculiarly within his knowledge, the negative is not to be proved by the prosecution, but, on the contrary, the affirmative must be proved by the defendant as matter of defence."
>
> Then Stroud's Judicial Dictionary, English, 2nd Edition, -- I mention that, Your Worship, because I understand there are some American editions -- 1903, Page 1036:
>
> > "Justification is an affirming or showing good reason in court why he did such a thing as he is called to answer."

And Byrne's Law Dictionary, 1923, Page 507:

> "In the law of torts and crimes, justification is where the defendant in an action or prosecution shows that the act complained of was justifiable, that is, lawful. Thus, a

> derogatory statement is not defamatory if it is true; an assault or battery is lawful if committed in self-defence, or in defence of one's property, or for the purpose of proper correction or discipline, etc. A defendant who sets up such a defence is said to justify."

So I submit, Your Worship, that is quite clear according to these authorities.

Your Worship, the next step is as to the advertisement. My learned friend has discussed at quite a length about advertisements, so I will submit to Your Worship the following definition which I have taken from Webster's, 1898:

> "Advertising: notifying, giving notice; publishing notice; to advertise; to inform, to give notice, advise, whether of the past or present event, or of something future; to apprise; make known; announce; proclaim; promulgate, publish."

So according to this definition, at any rate, the argument of my learned friend is untenable.

MR. WEGENAST: That is an American authority.

MR. MERCIER: It is a recognized dictionary.

Well, according to this definition, at any rate, Your Worship, -- I hope my learned friend is not going to be too peeved at me if I consult a foreign authority because he has enjoyed that privilege ad libitum. However, from the definition that I cited, there is nothing that suggests it should be commercial, and, in any event, we will come to the commercial side of the matter a little later on.

Miss Palmer did advertise to several persons and to all the witnesses in this case by means of a pamphlet. There is no doubt it is a pamphlet entitled -- well, there is no use in wasting the Court's time in reading that. Then, "instructions or any medicine, drug or article…" Your Worship must know all the contents of the pamphlet by heart now and I need not spend much time on that.

"Intended or represented…" Again, I refer Your Worship to the statement of Miss Palmer to the police officers, and to the representations made in the pamphlet. In Crankshaw's, at Section 202, there is a heading "Offences against Morality," and that heading continues until Section 221, which is under "Nuisances,"

and it goes right over the head of Section 207. That is the 1927 Edition.

MR. WEGENAST: "Obscene or Immoral Books," the general section of the Act.

MR. MERCIER: Yes, but right above Section 207, there is no such thing in the ordinary code as "obscenity".

MR. WEGENAST: I referred to the margin.

MR. BEAMENT: Crankshaw put the marginal notes above instead of at the side.

MR. MERCIER: Let us then take Section 207 and refer to the marginal notes under Subsection "A," "Obscene or Immoral Books or Pictures"; under Subsection "B," "Indecent Showing"; under Subsection "C," "Drugs"; under Subsection 2, "Excess," and under Subsection 3, "Questions for the Judge and Jury," -- on which Your Worship has been given a lot of very valuable advice, and under Subsection 4, "Motives". So next to Subsection "C" is the marginal note "Drugs," not "obscenity".

MR. WEGENAST: That is obviously incorrect.

MR. MERCIER: Marginal notes in the construction of statutes -- we have often been told during my days at Osgoode Hall -- are not of much value. But the point that my learned friend raised on obscenity is in Subsection "A". There is no doubt Subsection "A" deals with immoral books or pictures, but if we follow the same process of reasoning, Subsection "C" would mean "Drugs," and drugs only, but I submit to Your Worship it does mean the use of contraceptives. The Code does not say anything about obscenity, and it doesn't say it is obscene to advertise. The Code says:

> "Offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means or instructions of any medicine, drug or article intended or represented as a means of preventing conception."

It doesn't say anybody must be obscene about it. The Code is very clear. It does not, as my learned friend said, prevent the use of contraceptives; it does not prevent birth control. The Code says these articles shall not be advertised.

And here I submit most respectfully to Your Worship that that is just what the Code intended, that the methods employed -- of

offering it indiscriminately to anybody who wanted it -- is just what the Code did not want, and that was the intention of the legislators.

Then, Your Worship, was the accused advertising contraceptives? I think there is no doubt in the mind of the Court, -- and I believe my learned friend is admitting they were contraceptives -- and I submit to Your Worship that there is no doubt ---

MR. BEAMENT: I think we can concede that.

MR. MERCIER: She did not advertise only jelly, condoms, and pessaries, but other means referred to in the pamphlet, and I will not detain the Court by reciting that because I believe I could advise on all matters there at a moment's notice.

Now, Your Worship, that section is not there just for the fun of it. It has a meaning, and surely, Subsection 2 was never intended by the legislators to be put there so that any judge might defeat entirely the effect of the enactment. This Court is not required to decide whether the public good is served for the whole world or that the actions of the accused should be a standard for the whole world on the propriety or impropriety of advertising contraceptives. Surely, Parliament did not enact Subsection "C" with the purpose of having it defeated by subsection 2.

I submit, Your Worship, the law is there to be obeyed, and while it is there, it is the duty of all good citizens to comply with its requirements. If the law has become obsolete, then those concerned should make efforts to have it amended or repealed. That is the British way -- not to break them. The only concern I have in this case, Your Worship, is to find out whether the law has been broken or whether it was obeyed, and that, I submit, is the only point at issue before this Court. There is no question, as I stated before, of birth control being legal or illegal. My personal views on the subject of birth control might amaze my learned friends.

Neither this section nor any part of the Code forbids birth control, but it does forbid advertising contraceptives; the section is aimed not at the use of contraceptives, but the abuse of advertising it indiscriminately. The law does not talk about obscenity; it talks about the method of advertising contraceptives and condemns it. They may be used when required for the public good, but they must not be advertised.

MR. WEGENAST: Unless it is for the public good.

MR. MERCIER: The Court is not expected to decide the effectiveness or desirability or otherwise of contraceptives, but whether they were advertised, and we will come to that a little later.

If the doctor prescribes them, it may be for the good of a patient, and that, I submit, is what Subsection 2 means -- that it was placed there for the protection of medical men who, under certain circumstances, wish to prescribe contraceptives for the health of their patients and for no other reason. Otherwise, what would the meaning of that subsection be? Surely, Your Worship, not just canvassing from place to place, if not from door to door, and after saying a few words, "Well, what do you say about contraceptives? Do you need them? Do you want them? It won't cost you anything the first time". Surely, that section was not meant to protect any such action, Your Worship. And how was the public good served by the acts alleged to have been done by the accused which are in issue?

Well, Your Worship, let us look now at the uncontradicted evidence of the 21 women. I intend to go through it thoroughly and prove that the public good, as I understand it, is not served, even if my learned friend thinks he made a point that it was for the public good. And I will endeavor to prove to Your Worship that there was excess in the acts alleged beyond what the public good required.

Was the accused a nurse? Well, the only evidence we have of that is she is a very respectable lady. All the witnesses had very nice things to say about her; they were very nice people, and I don't intend to treat them like my learned friend treated my witnesses.

Then was she a social worker? It all depends on what is meant by a "social worker". She may be a social worker, but what evidence is there that she is one? Even if Mr. Wegenast or Mr. Kaufman says so or any of the propagandists of this movement say so.

Was she the wife of a doctor, as stated in the evidence she told one of the women? Are all her statements truthful? I will endeavor to ---

MR. WEGENAST: Or are the witnesses truthful?

MR. MERCIER: The evidence that I am going to quote to Your Worship is absolutely uncontradicted, and I will endeavor to prove it by a complete analysis of the evidence of the 21 women. Let us take the evidence of Mrs. Lafleur. What does the accused do? (Reads):

"Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. Sometime in August.

Q. Under what circumstances and how did you meet Miss Palmer?

A. She came to my house as a visitor."

Mrs. Lafleur's card has been put in as an exhibit, I believe, and on that card, there is no reference shown -- Exhibit 2-B. Well then, that sort of proves Mrs. Lafleur might not have been very untruthful when she said that "She came to my house as a visitor," and on the space "referred by," it is vacant; there is no name there, so that would confirm Mrs. Lafleur's statement when she said she did not know Miss Palmer, and that she just came there.

I noticed also on the top of this exhibit in red letters, "8-19-36, letter to worker re sterilization," and the initials "R.G.," whatever that means, unless they thought this woman was having too many children. Now, as to the truthfulness of the witnesses in this case, Your Worship, here is the uncontradicted evidence of Mrs. Lafleur that she told her about having one abortion, and Dr. Couture in the box confirmed that -- that she went to him.

MR. WEGENAST: The doctor didn't say that. If my friend wants to quote the evidence ---

MR. MERCIER: Very well, there is enough without that. "That she has been using abortives," that is on the card by Miss Palmer, and "Number of abortions, 4". And Mrs. Lafleur denied this absolutely; not only that she did not have four abortions, but that she never said such a thing to the accused at any time.

Now, as to the method of approach and the qualifications of the accused, at the bottom of Page 1, it says (reads):

"Q. Was there any conversation when she came in?

A. Yes.

Q. Do you remember what she told you?

A. It was for the birth control, you know. She asked if I got a big family. I said nine, and she asked if it was enough, so I took the parcel. I wanted it myself; she didn’t ask me to take the parcel.

Q. You are talking about a box?

A. Yes.

Q. What happened about the box? What did you do? Did she show you a box or offer it?

A. I asked for it; I took it myself. She said, “Take it,” and I took it with my own consent.

Q. Miss Palmer offered you a box, and you accepted it with your full consent?

A. Yes.”

That would seem more or less to qualify her first remarks that, at first, the box was offered to her. I don’t suppose there is any doubt in Your Worship’s mind about that; it was offered to her, and she took it.

MR. BEAMENT: At Page B.6, she corrected herself and said it was wrong and the box came by mail.

MR. MERCIER: We will get to that. I don’t suppose the accused handed the box right over to her. I am prepared to admit she didn’t do that in any case.

I would ask my learned friend, Mr.Beament, not to interrupt me.

MR. BEAMENT: Your learned friend, Mr. Beament, won't interrupt you unless you make a statement on the evidence that is unfair. If a witness makes a statement that is corrected, you should make a notation to that effect.

I do not wish to interrupt my friend, but I think I should endeavor to keep him on the straight and narrow path as far as the facts are concerned.

MR. MERCIER: Your Worship, I intend to go through this evidence and comment upon it, and I want to show you the method of approach that was followed in most of the cases (reads):

"Q. What was the conversation about birth control after you got this box?

A. She said if I need some, I could have some for nothing; if people cannot afford to have those, they give them to people who can't afford a big family."

In no case did Miss Palmer leave a box, and if I mention it while reading the evidence, I am prepared to correct it at any time.

She said, "If I need some, I could have some for nothing," and I submit to Your Worship that clearly shows the conversation that took place before the application was signed by Mrs. Lafleur.

"Q. What were the explanations given; you had a conversation with Miss Palmer before this box was offered to you, and you accepted with your consent. Before this box was offered to you, there was some conversation?

A. Yes.

Q. Was anything else said?

A. She just showed me how to ---

Q. She just showed you how to what?

A. I can't say that in English.

MR. WEGENAST: I am satisfied to have her say it to Your Worship in French and have Mr. Mercier repeat it.

THE WITNESS: She showed me how to use it."

Now that, I submit, is the box referred to in Miss Palmer's bag, the one she had for demonstrative purposes.

"Q. She showed you how to use what?

A. The tube.

Q. Answer in English the best you can; you needn't be nervous. She showed you how to use what, Mrs. Lafleur?

A. The tube.

Q. I see a box here addressed to Mrs. G. E. Lafleur, 30 Catherine, Eastview, Ontario, which I will put in as an exhibit, Your Worship, from 410 King Street West, Kitchener, Ontario, Canada, postage nine cents paid, August 19th, No. 877."

Now, again I point to the approach (reads):

> "Q. And Miss Palmer showed you how to use what is in this box?
>
> A. It was in the bag; she showed it quick."

That is the social worker or nurse going on the very important task of teaching people how not to get children. And this woman's husband, I believe, had been working steadily for a number of years and had been earning $45.00 a week -- no economic situation there.

> "Q. What do you mean she showed it quick; just exactly how did she show you?
>
> A. She got a parcel in the bag; she just turned the key.
>
> Q. At the bottom of this tube?
>
> A. Yes, and it was out.
>
> Q. Is that all?
>
> A. Yes.
>
> Q. She showed you how to use it?
>
> A. Yes.
>
> Q. You also received an envelope in this box?
>
> A. Yes.
>
> Q. Was this in your box when you received it?
>
> A. Yes.
>
> Q. It was in the box and known as liquid latex, and together with this, you also received a slip that was in your box, which reads as follows: ---"

Well, I intended to come to that point, the philanthropic side of it, a little later on, Your Worship.

Then there were other things in the box, and if Your Worship would like to have the number of that exhibit ---

HIS WORSHIP: I have the number of the exhibits.

MR. MERCIER: At the bottom of Page B.5 (reads):

> "Q. Did you know about these things before meeting Miss Palmer?
>
> A. No.

Q. It was as a result of information received from her you used it?

A. Yes.

Q. And you say Miss Palmer told you it was for birth control?

A. Yes.

Q. Was any explanation added to that; did she just tell you it was for birth control?

A. She asked me first if I had a big family, and I said nine kids, and we laughed, and I said we get along fine, and she asked did I care to take this box.

Q. What did she tell you about that box?

A. It is hard to tell, you know.

Q. What is it hard to tell? She told you something about that box; you might tell the Court what it was Miss Palmer told you.

A. She told me it was to stop getting kids.

Q. Is your husband working?

A. Yes.

Q. What is his occupation?

A. Pressman."

Now, that just goes to show, Your worship, what the Crown contends; it was this idea of distributing this information with the avowed purpose, which the Code forbids, of telling people how to stop having children -- advertising methods of stopping them, and that is uncontradicted. "She told me it was to stop getting kids," and that is the method of approach in this case as in others.

And in cross-examination, Mr. Wegenast says:

"Q. This was sent by mail?

A. Yes.

Q. Miss Palmer didn't leave it there with you?

A. No.

Q. And you didn't pay anything for it?

A. Not a cent.

Q. Now, is this your signature, Mrs. Lafleur?

A. Yes.

Q. That is your signature?

A. Yes."

There is another entry on this statement:

"This mother was much in need of our help. Has been using abortives. Last baby not strong, and I believe because of this reason, grateful and appreciated."

And we have the uncontradicted evidence of Mrs. Lafleur who said the baby is never sick; it is not as strong as the others.

"Q. You have nine children living?

A. Yes.

Q. The last one is not very strong or wasn't when Miss Palmer was there?

A. It is never sick.

Q. It is not as strong as the others?

A. They are all the same.

Q. And you have had four abortions -- abortements -- enforced coucher?

A. Just one.

Q. Just one; it says four here?

A. Just one miscarriage; it is a long time.

Q. You had a talk with a friend about Miss Palmer?

A. Yes.

Q. Who was it?

A. Mrs. Mousseau.

Q. And you know Mrs. Mousseau gave your name to Miss Palmer?

A. No, I gave a card to Mrs. Mousseau.

Q. And who told Miss Palmer about you?

A. I don't know.

Q. Now, we have here, Mrs. Lafleur, that you have been using abortives. I don't know whether I can explain that to you -- medicaments pour faire abortements?

A. Oui, oui.

Q. Vous vous en etes servie?

A. Justement.

Q. She admits she uses abortives. It says here the last baby wasn't strong?

A. It was a big fat baby, nine and a half pounds. They are all strong.

Q. Nine of them?

A. Yes.

Q. Down from the age of fifteen to nine months?

A. Pardon?

Q. One is fifteen?

A. Sixteen.

Q. Down to the baby?

A. Just eleven months.

Q. You had another baby stillborn; it died at two months?

A. Between the first one.

Q. That makes ten children altogether?

A. Yes.

Q. Now, you didn't think you were doing anything you shouldn't do?

A. No."

I would like Your Worship to take into consideration also the knowledge of English this witness had. Then the re-direct examination (reads):

"Q. All your children are healthy?

A. They always have been."

MR. WEGENAST: May I ask my friend whether she didn't know what "morally wrong" was?

MR. MERCIER: I will come to that later.

MR. WEGENAST: Well, you have made the observation her knowledge of English was slight. The word is the same in French.

MR. MERCIER: I will come to that again. In the re-direct examination, Mrs. Lafleur was questioned again:

"Q. Did you have four abortions, Mrs. Lafleur?

A. Just one."

Then, Your Worship, from that evidence of Mrs. Lafleur, I would like Your Worship to draw your conclusions as to the method of approach on this very important subject -- Mrs. Lafleur said, "She shows the box quick" ---

MR. WEGENAST: I don't want to interrupt too often, but my friend said that this man was getting $40.00 a week; it is $75.00 per month on the card.

HIS WORSHIP: On the card, but on the evidence?

MR. MERCIER: That is another misstatement on the card; I am glad my friend brought it to my attention. That is sworn to be wrong in the evidence.

MR. WEGENAST: The question is whether the woman said that to Miss Palmer.

MR. MERCIER: According to the card, Mr. Lafleur earned $75.00 a month.

HIS WORSHIP: But I don't think the witness was asked whether she told Miss Palmer he was getting that wage.

MR. MERCIER: Then we have here Mrs. Jennie Grecco on Page D.1 (reads):

"Q. Speak up; do you know Miss Palmer?

A. No, I never see her before she was at my place."

That is another method of approach, and I submit to Your Worship there is no evidence to prove she saw her before that time (reads):

"Q. How did Miss Palmer come to go to your place?

A. She told me somebody sent her to my place.

Q. Now, did she talk with you when she was sent to your place?

A. Yes, sir.

Q. What did she say to you when she was sent to your place?

A. She talk about those boxes.

Q. What did she say?

A. She asked could she talk to me. I said, 'I don't talk much English; I got work to do'. I didn't want to be bothered with the box."

That is her first answer; there was no suggestion on my part or anybody else's part; she didn't want it, but she was offered it.

Then on Page D.2 (reads):

"Q. That is all Miss Palmer showed you; did she tell you anything about these?

A. She asked if I wanted to go to hospital, me or my husband.

Q. For what purpose?

A. For an operation -- if I want to be operated, I would be two weeks, or if I didn't want to go, she asked if my husband would go.

Q. She suggested either you or your husband go to the hospital for an operation?

A. Yes.

Q. Did she say what sort of operation -- what kind of operation?

A. Yes.

Q. What

A. I told her I had nine kids living and two dead, and she said, 'You are young yet; you might get more. Why not get operated; you might have more'?"

That is uncontradicted, Your Worship -- "You have too many kids; what would you think of certain methods?"

There is no question about that at all – "You have too many kids, therefore, you need this operation." (Reads):

"Q. Did you reply to that?

A. I told my husband and he said, 'Don't be bothered with that'.

Q. Is your husband working?

A. No.”

Then further down the page (reads):

“Q. How old are your children?

A. The oldest boy is 17.

Q. Any girls?

A. Yes, two.

TO THE COURT: Q. How did you come to receive this box?

A. Pardon?

TO THE COURT: Q. Why did you get the box?

A. She told me she was going to send me that box -- Miss Palmer.

Q. What did you say when she said that?

A. I didn’t say anything. She said, ‘You will get that box by mail.’

Q. Did you sign anything?

A. I signed a paper, but I don’t read English; I don’t know what it is.

Q. Was that paper explained to you in French?

A. I didn’t read the paper.

Q. Was it explained to you?

A. I just see the paper; that is all.

Q. You just saw the paper?

A. Yes.

Q. Did you see your doctor?

A. No.

Q. Were you told to see your doctor?

A. No.

Q. Did Miss Palmer tell you to see your doctor?

A. No, she didn’t.

Q. You just got this box after you signed something?

A. That is all.

Q. Did you sign this?

A. She told me I had to sign this.

Q. She said you had to sign this?

A. Yes.

Q. Did she tell you why you had to sign this paper?

A. No.

Q. What made you believe she had the authority to make you sign this?

A. After, she said, if I signed it, I would get the box."

Here is a woman who has nine children, and she said, "Sign this paper and I will give you the box". "She told me to sign it"; and I submit, Your Worship, the proper interpretation is that they signed it because they had work to do and wanted to get her out as quickly as possible. "I don't want to be bothered with this box"; that is what she said in the witness box, and that evidence is uncontradicted absolutely.

Now, in the cross-examination (reads):

"Q. You knew what the boxes were for?

A. No, but she explained.

Q. So you wouldn't have any more children?

A. Yes.

Q. You have nine?

A. Yes, and two dead.

Q. Any miscarriages?

A. No.

Q. Any abortements?

A. Two stillborn.

Q. You didn't think you were doing anything wrong in talking to her?

A. No."

This woman says, "No, I didn't see anything wrong in talking to Miss Palmer."

"Q. How long have you been married, Mrs. Grecco?

A. Sixteen (16) years.

Q. You are on relief?

A. Yes.

Q. You are on relief now?

A. Yes."

TO THE COURT: Q. You have had 11 children in 16 years?

A. (No reply).

MR. WEGENAST: Q. Two not born alive and nine born alive?

A. Yes, eleven altogether.

TO THE COURT: Is that all?

MR. MERCIER: That is all unless my learned friend -- All those exhibits are in with their contents and advertising?

THE COURT: Yes."

Now, Your Worship, we come to Mrs. Dagenais, and an interesting point was raised there; it was raised by my friend yesterday (reads):

"Q. What is your name?

A. Hermenline Dagenais.

Q. Address?

A. Thirty-one (31) Cedar Street."

And by the way, this woman was questioned through an interpreter, therefore, she knew very, very little English, and that is uncontradicted, of course. (Reads):

"Q. Do you know Miss Palmer?

A. I am not kind of sure it is her. I won't say yes when I am not sure."

So immediately when I saw this witness could not give any more information than that, I didn't press the question, but my learned friend wanted to keep her in the box and cross-examined her notwithstanding that to see what he could get out of her, and I wonder if Mrs. Dagenais' card was put in as an exhibit?

HIS WORSHIP: No.

MR. MERCIER: Well, at any rate, it is admitted by my friend there was a card similar to the others, and he was asked, "Are you putting that card in as an exhibit?" And he said, "I can; I am only using it as a memo." So he goes on asking a few more questions about her husband, and my learned friend admits right there it was Miss Palmer who was at this woman's place. He asked the question (reads):

> "Q. What income did he have from last fall until the time Miss Palmer saw you?
>
> A. Only that week's earnings.
>
> Q. Do you think you did anything wrong?"

Well, I don't know why he would ask her that. It was just a habit my learned friend was getting into if they thought they were doing anything wrong.

> "Q. When she was talking to the young lady, did she think there was anything morally wrong about discussing the matter with her?
>
> A. I did not.
>
> Q. The eldest child is twenty-two or three (22 or 3) now?
>
> A. Twenty-two (22).
>
> THE COURT: Q. How long have you been married?
>
> A. Twenty-four (24) years.
>
> MR. WEGENAST: That is all."

Then, in order to show you how these things were distributed by social workers, on Page D.11 (reads):

> "Q. When this lady came to see you, did she tell you what you were signing?
>
> A. She told me it was concerning family.
>
> Q. What conversation did you have with this lady?
>
> A. Not very much on account she couldn't speak French and I couldn't speak English.
>
> Q. And this lady who went over to visit you, what did she say when she came into your house?
>
> A. All I understood was that it was for family because I do not understand English.

Q. Did the lady tell you what it was or what her occupation was?

A. She told me she was a nurse."

This woman, as Your Worship recalls, was questioned through an interpreter (reads):

"MR. WEGENAST: May I ask Your Worship's indulgence; it arises out of my learned friend's examination?

Q. The lady asked some questions?

A. If she did, I did not understand them.

Q. How do you think the lady knew you had twelve (12) children?

A. It is easy to be understood; I understand a little, but not enough to keep up a conversation."

Now, there is a great sense of approach in that, a great sense of responsibility about this important matter of asking this woman whether she wants any more children. There is not even any discussion of that, Your Worship; the only thing was, "Do you want it?" -- That is uncontradicted evidence -- And the Parents' Information Bureau sent the box. In this case, I would like to know what my learned friend's submission could possibly be on that point.

Then here, Your Worship, we have the case of Mrs. Bertha Burton on Page D.13. This woman got the box and never signed anything.

MR. BEAMENT: What relevance has that to a charge against Miss Palmer of advertising?

MR. MERCIER: But Your Worship, it is admitted by the defence in sworn evidence that Miss Palmer is the authorized representative in this region of the Parents' Information Bureau, and it is admitted in all instances these boxes were sent under the directions of Miss Palmer, and this woman received a box.

HIS WORSHIP: It is also in evidence that Miss Hudon was working at Mrs. Burton's place during the week in which Miss Palmer was making her visits, and she came to Mrs. Burton's home and asked Miss Hudon the name of the lady of the house.

MR. MERCIER: All my learned friend's witnesses who had anything to do with the Parents' Information Bureau gave evidence that Miss Palmer was their representative, and it was given in

evidence in this Court that she was the one responsible for sending these boxes, and I think Your Worship can take it for granted even in the LeBreton case, it was Miss Palmer who sent this box. I think all the evidence points to that. That is my submission to Your Worship; this woman got the box and never signed anything, and there was no way of knowing whether she thought it was morally wrong or not.

MR. WEGENAST: Of course, my friend isn't quite fair in putting that, Your Worship. This is, after all, a criminal case, and the onus of proof is on my friend, and the girl may have got the box from one of the other women; we don't know.

MR. MERCIER: She got it by mail; that is in the evidence. Page D.14 (reads):

"Q. Did you ever request these?

A. I saw certain persons this lady saw, and I said I would find it funny if she came at home to see what she was giving away."

That is uncontradicted, Your Worship, and I submit by inference that there can be no other inference than that this box was sent through Miss Palmer.

"Q. You don't know the accused?

A. I never saw her before.

Q. You never saw her before today?

A. At home neither. I was not at home when she passed.

MR. BEAMENT: If she called.

Q. Was anybody else at home?

A. A young girl.

Q. It is marked August 29th?

A. I don't know the date, but I received it about that time."

MR. BEAMENT: There is no evidence it was received during the period covered by this charge.

MR. MERCIER: It is marked August 29th. At any rate, Your Worship may take my submission and deal with it as Your Worship wishes -- take it for what it is worth.

Then on Page D.15 (reads):

"Q. How many children?

A. Three."

So I believe we might there leave Mrs. LeBreton to Your Worship's care.

Now, we come to Miss Hudon, she is the girl -- a very bad girl, and she did need this thing, but she told Miss Palmer before she signed the application she was not married, but she received these things just the same.

HIS WORSHIP: But she signed the application as a married woman.

MR. MERCIER: She told Miss Palmer and Miss Palmer wrote the information on the card. And of course, this is a very bad girl because Miss Palmer said she had been using abortives before, which the girl denied, and because the girl said she had enough with one child, she must not be believed because she had the misfortune of having one child, but she was very positive in her answer that she had had enough. That is on Page D.23 in cross-examination by my learned friend (reads):

"Q. You told Miss Palmer you were married?

A. I told her at first, but after I told her I wouldn't say lies, I told her I wasn't.

Q. You have one child?

A. Yes.

Q. And you have started to have several more?

A. What?

Q. You have been pregnant several more times?

A. No, I had enough of one; don't worry.

Q. You signed this?

A. (No reply).

THE COURT: It will have to go in as an exhibit.

Q. This paper was made out at your place before you signed it?

A. She asked me a few questions and put them on the paper."

Now, the girl said to the social worker or nurse, "I had enough of one; don't worry," and told her before the application was signed that she was not married, and that is uncontradicted. And

she leaves the box. What for? Well, maybe she is a bad girl -- no danger now.

MR. WEGENAST: Quite true, she was a bad girl.

MR. MERCIER: Because the girl had one child, I don't suppose that makes her a prostitute the rest of her natural life.

MR. WEGENAST: That is just the point. Which way will you have it?

MR. MERCIER: Just that way. Then there were a few remarks there, and on Page D.25, there was some mention about abortions (reads):

> "Q. The card says three or four?
>
> A. No.
>
> Q. Did you tell her you had those?
>
> A. No.
>
> Q. Did you say anything about the physical condition of your husband?
>
> A. I didn't tell her I had a husband.
>
> Q. It says here, 'physical condition of husband, good'; did you tell her you had miscarriages before as well as since marriage?
>
> A. No, I didn't.
>
> THE COURT: Q. You are under oath, Miss Hudon. You didn't tell her any of those things?
>
> A. No, I didn't.
>
> Q. You didn't tell her you had a husband age 27?
>
> A. No, I didn't.
>
> THE COURT: Is that all for this witness?
>
> MR. MERCIER: As far as I am concerned."

The date of marriage is marked there, husband's occupation, number of abortions -- three or four, and the reason is "economic". Physical condition of husband -- good, and as far as the reference is concerned, there is nothing I can see. And in none of the cases, I submit, Your Worship, was there any reference, although they were supposed to have been referred by "Mrs. so and so".

Just at this point, Your Worship, there are a few of these cards marked as exhibits, and there is not one case where there is any evidence of a reference marked on the card, and that shows the method that was employed, whether it was by reference or not.

MR. WEGENAST: It was explained yesterday.

MR. MERCIER: Well, I submit, Your Worship, the evidence shows there is no reference on those cards.

MR. WEGENAST: Your Worship, I submit my friend is unfair in putting it that way. He knows perfectly well what the explanation was -- that the blank was used when the reference was by somebody else other than a social worker.

HIS WORSHIP: Mr. Wegenast, I don't think it is right to call Mr. Mercier unfair in making his submission to the Court. Mr. Kaufman said, "I imagine we only require that blank to be filled in when some person else gives the reference other than our worker." He gave his explanation while he was in the witness box as to why those blanks were not filled in, and Mr. Mercier gave his view of what the method was.

MR. WEGENAST: It is not fair that the Crown should make a statement of that kind. The point that I am putting now to Your Worship, rightly or wrongly, is I don't think the Crown Attorney ought to put one side of the question only.

HIS WORSHIP: You put the other side yesterday.

MR. MERCIER: Your Worship, the Crown Attorney is not like the Pope; he is not infallible, and when my learned friend sees that I misinform the Court -- I want to tell him for the 14 months I have been endeavoring to fill this position, I believe my record is perfectly clean as to fairness, and if I say anything which is not quite correct, it is unintentional, and I am always prepared to stand corrected and to take it like I have taken other things for the past four days.

MR. WEGENAST: I can't go as far as my friend and claim that I am always fair, but when I am not fair, it is because I have overlooked something.

MR. MERCIER: Then, Your Worship, I believe we stand on the same ground.

--- 11:30 a.m. Court adjourned for recess

MR. MERCIER: Now, Your Worship, on Page D.29, we have the evidence of Mrs. Jennie Goneau, and we will there see what the mode of approach was. In all these cases, I want to impress on Your worship, without repeating it too often, that there might have been an order taken in each and every one of them, and that might be the reason why these things were distributed so indiscriminately (reads):

> "Q. Will you tell the Court how you came to meet her?
>
> A. I went to my friend's, and she said she was a nurse.
>
> Q. She told you she was a nurse?
>
> A. Yes.
>
> Q. What else?
>
> A. She asked if I was married, and I said yes. She said, 'How many children?' I said two. She asked 'How old are they?' and I said, 'One is six and one is four.' She asked, 'Do you want a birth control box?' -- one of those (indicating exhibit boxes). I said, 'I might; it might come in handy'."

There is no suggestion of her wanting one; the birth control representative simply asked her if she wanted a box.

Then on Page D.30 (reads):

> "Q. As a result of that conversation, did you receive a box, Mrs. Goneau?
>
> A. Yes, she asked the age and all that and how long married, and I signed for the box, and I got the box in two weeks.
>
> Q. Did she ask the name of your doctor?
>
> A. Yes, it is marked on the paper.
>
> Q. Who is that doctor?
>
> A. Dr. DesRosiers.
>
> Q. Was anything said about consulting your doctor?
>
> A. No, I didn't see him for a long time.
>
> Q. Did Miss Palmer say anything about consulting him before using this box?
>
> A. No.

Q. She didn’t tell you that?

A. No.

Q. Will you look at the contents of this box?

A. Everything is in there. I read a few of the papers and put them in the stove.

Q. Was this paper there -- ‘Birth Control and Some of its Simplest Methods’?

A. Yes, and a larger page; I burnt them and put the box in the bathroom.

Q. And you had this application?

A. Yes, I put it in the bathroom.

Q. Inviting you to send it to your friends?

A. Yes.

Q. And you received this as a result of signing an application form given to you by Miss Palmer?

A. Yes, in case it might be handy.

Q. When did you receive this box?

A. About two weeks after; I saw her about the end of August.

Q. It is Exhibit 6-C. Did Miss Palmer show you anything?

A. No, she was in a hurry and passed the door a few minutes after. She said everything would be in the box and not to worry.

Q. That the instructions were in there?

A. Yes, and it is.

Q. You were not shown anything by Miss Palmer?

A. No, I don’t believe she had anything in that bag.

Q. She didn’t show you anything?

A. No, she just gave me that paper.

CROSS-EXAMINATION

MR. BEAMENT:

Q. Have you had any miscarriages?

A. No, sir.

Q. Your husband, what is his occupation?

A. Painter.

Q. Has he steady employment?

A. No, just in the summer, a few weeks, that is all.

Q. His employment is uncertain?

A. At Dufour's.

Q. His work is not regular?

A. Not safe.

Q. So there are periods when you are on relief?

A. Sometimes we have to go on relief.

Q. And sometimes your husband has a job for a short period?

A. Yes, sometimes he has good wages.

Q. Did you think you were doing anything morally wrong?

A. No, because I wasn't anxious to get that box, but I thought it might come handy."

Then on Page D.33, there we only need to discuss the mode of approach. This is the evidence of Mrs. Catherine Murphy (reads):

"Q. Did you have a conversation -- where did you meet Miss Palmer?

A. In my own home.

Q. Do you know how it came she went to your home?

A. No.

Q. How did she come there?

A. She came, knocked on the door.

Q. You answered the door?

A. Sure.

Q. Did you have any conversation with Miss Palmer?

A. Yes, we talked.

Q. What was the conversation?

A. We talked about birth control.

Q. Who do you mean by 'we'?

A. Miss Palmer and I.

Q. She came in and what did she say?

A. I couldn’t say exactly what she said.

Q. Do you remember the substance of what she said?

A. She asked about my family.

Q. And you replied to that?

A. Yes.

Q. After she asked about your family, and you replied?

A. I said I wasn’t anxious to have any more children.

Q. You told Miss Palmer you were not anxious to have any more children.

A. Yes, that is what I told her.

Q. How did you come to say that?

A. She said she was helping anxious mothers with big families.

Q. And you told her, as a result of something she told you, you were not anxious to have more children?

A. She didn’t tell me that; she just said she was helping mothers.

Q. And then what did she say?

A. She said she would send one of those boxes by mail.

Q. To prevent family?

A. Yes.

Q. Did you sign an application?

A. Yes, I signed a form.

Q. Did she ask the name of your doctor?

A. No.

Q. Did she tell you to see your doctor before using one of these boxes?

A. No, she didn’t mention a doctor at all.

Q. Is this the box you received?

A. Yes, exactly.

Q. And the contents -- literature, application, and envelope?

A. (No reply).

THE COURT: Exhibit number?

MR. MERCIER: Seven-B (7-B), Your Worship."

MR. MERCIER: Then in cross-examination, there were some questions, and the witness was asked (reads):

"Q. You didn't think you were doing anything wrong in using it?

A. No, I thought it was law, and they would have to have it. I thought it was law; it was a policeman.

Q. You thought he had a legal right to take it?

A. I did."

That is the evidence of Mrs. Murphy, which I bring to Your Worship's attention just as to the mode of approach -- without any recommendation, but this woman undoubtedly got what she was looking for.

Then, Mrs. Sarah Legere on Page D.38 (reads):

"Q. Where did you meet Miss Palmer?

A. In August.

Q. Where?

A. At home.

Q. Your home?

A. Yes.

Q. Forty (40) Beechwood?

A. Yes.

Q. How did she come to go there?

A. She came like a visitor; she knocked at the door.

Q. She came like a visitor and knocked at your door, and you answered your door?

A. Yes.

Q. When you answered, what did she say?

A. She had a little card and presented it to me with her name on it like she was mothers' help or something like that.

Q. After presenting her card to you, did she say anything to you?

A. Yes.

Q. What did she say?

A. She asked me how many children I had.

Q. What did you tell her?

A. Five.

Q. Were there any other questions she asked you?

A. She asked me if I could afford to keep them, and I said, 'No, I don't want any more children.'

Q. What did Miss Palmer say to that?

A. She told me about birth control, about those boxes.

Q. She told you about a certain box and about birth control?

A. Yes.

Q. What else?

A. I can't remember.

Q. Did she just tell you it was a birth control box and you understood that right away?

A. I can't remember everything.

TO THE COURT: Q. Try to remember as much as you can.

A. Yes.

TO MR. MERCIER: Q. Did she tell you what was in those birth control boxes?

A. Yes.

Q. What did she tell you?

A. She showed me and explained how to use everything.

Q. Did she ask you your doctor's name?

A. Yes.

Q. Did you tell her?

A. Yes.

Q. Who?

A. Dr. DesRosiers.

Q. Did she tell you to consult your doctor before using them?

A. No.

Q. Did you, in fact, consult your doctor?

A. No, never.

Q. How did Miss Palmer show you to use these things?

A. She showed me the tube and nozzle and key in the box; that is all she said.

Q. And she told you what to do?

A. Yes, what for.

Q. And what to do?

A. She said there was a book inside; I could read the book and see.

Q. It was a box like this you received?

A. Yes.

Q. With an envelope inside it?

A. Yes.

Q. And some literature?

A. Yes.

CROSS-EXAMINATION

MR. BEAMENT: Q. And you gave this to Mr. Martel?

A. Yes.

Q. Why?

A. I don't know why; he came to the house.

Q. Because you thought he was entitled to it?

A. Yes, I thought because he was the chief; was sorry after.

Q. Mrs. Legare, you told us you had five children?

A. Yes.

Q. And I understand you were married in May 1929?

A. Yes.

Q. And those children are six, five, four, three, and two years of age?

A. Yes.

Q. And your husband is on relief?

A. Yes, he is working now for two weeks.

Q. And at this time, he was on relief?

A. Yes.

Q. And you feel now you are entitled to stop having children?

A. Certainly.

Q. And you don't think in stopping having children you are doing anything wrong?

A. Certainly not, no, I am not doing anything wrong."

Then Mrs. G. Maheux on page D.43 (reads):

"Q. Do you know Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. At my home.

Q. When?

A. In August.

Q. How did you come to meet Miss Palmer?

A. Well, she come to my home and I answer the door and she tell me she was a nurse.

Q. Did she tell you anything else?

A. And she tell me about birth control and if I was interested in it."

MR. WEGENAST: I may be dumb, but the fact that there is nothing in the evidence to show that somebody referred the woman to Miss Palmer doesn't mean anything to Your Worship.

HIS WORSHIP: It means there is no evidence she was referred to them. That is what Mr. Mercier is pointing out.

MR. WEGENAST: You wouldn't expect to get it there. How would the woman know? I am willing to admit that there won't be any evidence in the whole of that as to reference.

HIS WORSHIP: There is one woman who said Miss Palmer told her she was sent to see her.

MR. WEGENAST: There are one or two cases where we find women did refer others.

HIS WORSHIP: Mrs. Lafleur, I think, gave a card to Mrs. Mousseau, and Mrs. Grecco said Miss Palmer mentioned someone had sent her.

MR. MERCIER: Of course, what I want to point out in all of these cases, or most of them, is the method of approach was very abrupt; just a question of going to a woman and asking her how many children she had and offering her a box of contraceptives. Some of them wanted it, and some didn't want it. They were taken for various reasons.

MR. BEAMENT: If I may interrupt, in going through Mrs. Goneau's evidence on page D.29 (reads):

"Q. And you know the accused, Miss Palmer?

A. Yes, I met her through one of my friends."

I don't think it is important, but I read that just to get the record clear.

MR. MERCIER: (Reads):

"Q. Will you tell the Court how you came to meet her?

A. I went to my friend's, and she said she was a nurse."

Now then, there is Mrs. Maheux on Page D.44:

"Q. After that, did she tell you anything else?

A. She asked me some questions.

Q. What did she ask you?

A. It is on the card.

Q. I haven't got the cards.

A. If I was married, the name of my husband, where he works and how much children I have.

Q. And what did you tell her?

A. I said, ‘three children.’

Q. How long have you been married?

A. Eight years.

Q. What are the ages of your children?

A. Six, five, and two and a half.”

Then there was some questioning by my friend at Page D.476 (reads):

“Q. And you wanted Mis Palmer to have these things sent to you?

A. Yes.

Q. And you intended using them?

A. Yes, when I took that, I was not sure I would use that.

Q. You got it intending to use it?

A. Yes.

Q. Do you feel you have had enough children now?

A. Oh, for a while.”

But I submit here, in this case, the children had been spaced before quite properly without the use of birth control information or the use of contraceptives.

HIS WORSHIP: We don’t know whether the woman used contraceptives or not.

MR. MERCIER: Well, she might have been lucky.

MR. WEGENAST: Is that lucky not having children?

MR. MERCIER: It might be birth control is not a crime, but the advertising of contraceptives is (reads):

“Q. You think you should be able to make up your own mind when you are going to have another child?

A. (No reply).”

Now, Your Worship, there is a statement by Your Worship on Page D.48. (Reads):

“Q. Do you think you are right in making up your mind when you will have another child?”

The woman does not reply, and Your Worship said, “I doubt if she understands”. That was the reaction Your Worship had to this witness’s evidence, and how could she understand all these other things? How could she understand all that was said if she couldn’t understand whether it was right or wrong? Does Your Worship believe, in this case, the public good was served, and there was no excess in the act alleged to have been done by the accused?

Now, there is Mrs. Aline Maheux on page D.49 (reads):

> Q. Do you know Miss Palmer?
>
> A. She came home during the kids’ summer holidays.
>
> Q. Do you remember what month?
>
> A. No.
>
> Q. Did you receive anything as a result of your interview with Miss Palmer?
>
> A. Yes, I received a box.
>
> Q. Did you receive a box in the same month you had an interview with Miss Palmer?
>
> A. I was not interested and can’t pronounce myself.
>
> Q. What do you mean you were not interested?
>
> A. Because I thought it was the Eastview nurses were coming home, and I answered her to the best of my knowledge.”

There is evidence that nurses visited these homes in Eastview, and this woman thought it was one of the nurses who visited these homes. (Reads):

> “Q. How did Miss Palmer come to go to your home, Mrs. Maheux?
>
> A. I can’t tell you.
>
> Q. What did you do; did you invite her, or did she happen to go by your place, or what?
>
> A. She was passing by my place.
>
> Q. And I suppose she rapped at the door, and you answered the door?
>
> A. Yes, sir.
>
> Q. Did Miss Palmer speak to you when you answered the door?

A. Yes, she told me she was a nurse.

Q. What language did she tell you that in?

A. In English.

Q. Did you understand her?

A. I understood she came in as a nurse.

Q. Did she ask you anything else?

A. She asked me how much my husband was earning.

Q. Was it in English she was asking that?

A. Yes.

Q. And you understood that?

A. Yes.

Q. And in what language did you reply to her?

A. In English.

Q. You speak a little English?

A. Not enough to interpret myself, but when the Eastview nurses are coming home, I knew a few odd words."

This woman was examined here through an interpreter, and it appears that these people should get these things whether they wanted them or not; they should get them for their own good.

MR. WEGENAST: These things were forced on no one. When my friend says these people were to have these things whether they wanted them or not, that is wrong. There is no evidence that Miss Palmer went into these places and gave the women these boxes without caring whether they understood it or not.

MR. MERCIER: That is my submission. I think you have denied about everything I have endeavored to say so far.

MR. WEGENAST: Well, I have found it necessary to do so.

MR. MERCIER: (Reads):

"Q. After that, -- Miss Palmer asked you how much he earned and you told her -- what did she ask you?

A. I did not understand her."

And by the way, several of the witnesses have said the work couldn't possibly have been improved upon; it was the most wonderful work that had been done by Miss Palmer here, and I

will come to that when I come to the question of approach, Your Worship, (reads):

> "Q. You did not understand what she told you -- did you understand what she was there to tell you?
>
> A. I always answered my questions because I thought she was an Eastview nurse.
>
> Q. You mean a nurse from the Social Service in Eastview, here?
>
> A. A nurse from the clinic.
>
> Q. You thought Miss Palmer was a nurse from the clinic?
>
> A. Yes, sir.
>
> Q. And is there anything else -- you were talking with her and you didn't understand; what did she do, if anything, after?
>
> A. She asked me how much my husband was earning and she put the same questions as the Eastview nurses do.
>
> Q. Did you sign anything?
>
> A. Yes, I did.
>
> Q. What did you sign?
>
> A. The paper she presented to me.
>
> Q. Did you know what was on that paper?
>
> A. I did not know. Usually, when the nurses come home, they present us with a slip, and we sign it, and I did sign it.
>
> Q. Did you understand you were getting something if you would sign it?
>
> A. Yes, because she spoke to me about a sample, and I did not refuse it."

And she got a sample, Your Worship, and it was not contradicted.

(Continues reading):

> "Q. Did you know what kind of sample it was?
>
> A. No, because I do not speak English.
>
> Q. And as a result of your interview with Miss Palmer, you received this box?
>
> A. Yes, you have it.

Q. You opened it when you received it?

A. Yes, I opened it, but I didn't read any of the instructions.

Q. Did you see this information and the tube in the box? Were they there when you received the box?

A. I looked in it, but I didn't read any of those books.

Q. Why did you not read the instructions?

A. Because I did not need them.

Q. How did you come to know you did not need the instructions -- did you know what the instructions were for?

A. I had heard about it.

Q. So you knew what was in the parcel?

A. Yes, I did.

Q. And what the purpose of the contents of that parcel was?

A. I knew it for sure.

Q. And why do you say, knowing that, you did not need it?

A. Because I do my duty.

MR. WEGENAST: She said she didn't need the instructions.

Q. What do you mean, 'your duty'?

A. The marriage law obliges me."

There is a case of a woman who acts according to the inhibitions of her religion, whether right or wrong.

Then at Page D.54, in cross-examination by my friend (reads):

"Q. And you knew when you were talking to Miss Palmer what was in that box was to keep you from having a baby?

A. I found out after."

This may be one of the cases, Your Worship, where the acts alleged to have been done may have been in excess of what the public good required.

MR. WEGENAST: Is there an application for that?

MR. MERCIER: Yes, it is Exhibit 24-B.

MR. BEAMENT: I think my friend should point out this lady was asked a number of questions about her family and her married

life, and in every case, the answers coincided with the statements on the card.

MR. MERCIER: On Page D.56, you will see the social worker marked on the back of her card, "Very glad of help given to her," and I think Your Worship can draw your own conclusion as to that.

Then there is the case of Mrs. Betha Desjardins, and the evidence, uncontradicted, that Miss Palmer came along when she was outside washing windows, and Miss Palmer enquired about some party she came to see, and said she wanted to see that party, and then told Mrs. Desjardins about birth control. Well, that may not be door-to-door canvassing, -- "I told her to come in; I was glad to know about it." And she just gave her the box. This woman had been married twelve years; she had six children, and her husband was earning $20.00 a week.

Then on Page D.59 (reads):

> "Q. And you are a good Catholic, too?
>
> A. Yes."

MR. BEAMENT: Read the questions that go before.

MR. MERCIER: (Reads):

> "Q. Do you think you are entitled, Mrs. Desjardins, to make up your mind when you want another baby?
>
> A. I certainly do.
>
> Q. You are not doing anything wrong?
>
> A. No.
>
> Q. And you are a good Catholic, too?
>
> A. Yes.
>
> Mr. Mercier, I don't suppose the question of religion should enter into this.
>
> The Court: It is the first time it is raised."

And I protested there against the question of religion being raised.

MR. WEGENAST: Well, the question had come up in the case of Mrs. Murphy.

MR. MERCIER: It wasn't brought out by my learned friend then; it came from the witness herself.

MR. WEGENAST: Yes.

MR. MERCIER: And on Page D.61 (reads):

"Q. When you got the box, there were papers in it?

A. Yes.

MR. BEAMENT: That was another box.

Q. The box you got had papers and slips saying you might send those to your friends?

A. Yes, sir."

Then we have Mrs. Louiseize on Page D.63 (reads):

"Q. Do you know Miss Palmer?

A. Since she came to my home.

Q. When did she go to your place?

A. During the month of August.

Q. Of this year?

A. Yes.

Q. And how did Miss Palmer come to go to your place; do you know?

A. I do not know; she told me she had been sent.

Q. When she came in, did she speak to you?

A. She spoke to me. I did not understand anything, so I had somebody interpreting.

Q. When you had somebody to interpret for you, what was said?

A. She told me she was a nurse.

Q. Anything else?

A. She told the other woman to explain to me what she was home for. She asked how many children I had.

Q. And what did you tell her?

A. I told her I had six children.

Q. And after that, what did she say?

A. Afterwards, she showed me the box and told me if I wanted one, I could get it free.

Q. What did you reply to that?

A. I did not reply as I can't speak a word of English; only she had me sign my name."

Then on Page D.65 in cross-examination (reads):

"Q. You have had nine children?

A. Yes.

Q. You think it is beaucoup; it is plenty?

A. I believe it is enough when a person can't afford to raise them. My husband earned three dollars a week all summer.

Q. And you think you have a right not to have any more until you are ready?

A. No, it is not that; I took the box because it was given for nothing and I wanted to see what was in it.

Q. And she used one of the condoms?

A. Yes, as I had never used it before, I wanted to see what it was like."

MR. WEGENAST: Your Worship will remember what she looked like in the box.

MR. MERCIER: Then Mrs. Sarault -- at Page D.67 -- was approached by Miss Palmer in the following manner (reads):

"Q. How did Miss Palmer come to go to your place?

A. I don't know; she just rapped at the door.

Q. You answered the door, and what did Miss Palmer say when she rapped at the door?

A. She came in and asked if my husband was working, and I said yes. She asked, 'How many children have you,' and I said, 'one.' We sat down and talked.

Q. What did you talk about?

A. She asked if I was getting along all right, and I said, 'yes'."

There is one sample of the method of approach of a social worker. (Continues reading):

> "Q. She asked you if you were getting along all right, and you said you were?
>
> A. Yes, and then she showed me a box."

This woman was getting along all right, and right away, "She showed me a box". That is the delicate approach on an important subject.

MR. WEGENAST: I think I ought to observe on my friend's constant reiteration about the manner of approach. I personally don't know what he is talking about; I don't know what he means.

HIS WORSHIP: He is explaining Miss Palmer's method.

MR. WEGENAST: I don't know that there is anything in what my friend has read that shows Miss Palmer was improper or indelicate in her approach to these women. There is no such suggestion anywhere in the evidence.

MR. MERCIER: We have to take what is in the evidence and uncontradicted.

MR. WEGENAST: But to put it that that indicates the method of approach is untenable.

And while I am on my feet, may I point out that in the case of Mrs. Sarault, her husband's salary wasn't $45.00 per week; it was $45.00 per month.

HIS WORSHIP: That is in the evidence.

MR. MERCIER: Yes, it was in the evidence, $45.00 per month.

HIS WORSHIP: Well, in the case of Mrs. Lafleur, in her evidence, she said her husband got $40.00 a week, and the card showed $70.00 a month.

MR. MERCIER: It is my contention, Your Worship, -- and I would like my learned friend to understand it -- as well as I can put it -- I am not arguing whether there is anything right or wrong in birth control; I am just endeavoring to prove that the accused did commit an illegal act by advertising contraceptives and that the public good was not served and there was excess in the acts alleged to have been done. That is all I am endeavoring to do. (Continues reading):

"Q. What did she say about the box containing a tube and nozzles?

A. She asked me if I had ever used any of them, and I said no and that I didn't intend to.

Q. Was anything else said after that?

A. No.

Q. Did she ask you to sign anything?

A. Yes, she asked if I cared for one, and I said I didn't use it before, and she said I could try, and I signed the papers."

There is a question there, Your Worship, is that for the public good, and is there any excess in the acts alleged to have been done? (Reads):

"Q. As the result of signing the paper, did you receive anything?

A. I got a box.

Q. Is this the box; will you look at it?

A. Yes.

Q. The same thing is there now as when you got it?

A. Yes, I didn't take anything out of it.

Q. Did you intend to use these for anything?

A. No."

This woman didn't want it; she signed the application after being coaxed, and she didn't intend to use the contents of the box, but she got it just the same.

MR. WEGENAST: Well, why not?

MR. MERCIER: I am asking Your Worship if there is any excess there in serving the public good.

Now, at the bottom of Page D.68 (reads):

"Q. Did Miss Palmer say who she was?

A. She said she was a nurse.

Q. You are quite positive you were not interested, in spite of the fact she asked you to sign the card?

A. I said I didn't use them. She said, 'Sign the card,' and she would send a box.

Q. Is your husband working?

A. Not steady; he has been working this summer.

Q. What does your husband do?

A. He drives a truck."

Then on Page D.70 in re-direct examination (reads):

"Q. Would you have gone to any extent to get this application?

A. Not if she didn't come to the door.

Q. These two children, are you getting paid for them?

A. No, on charity.

Q. You feel you can take care of two more on what your husband gets?

A. He doesn't give me much, just for dressing them.

Q. You have enough to get along with?"

And there was no reply.

"TO THE COURT: Q. You said you had no intention of using what was in the box?

A. Yes.

Q. Why?

A. I never did; I don't know.

Q. Do you think it is wrong to use them?

A. No, Miss Palmer told me all the Catholics around were using them; there is no wrong in them.

Q. You just didn't feel like using them?

A. No."

Now, Your Worship, of course, there is no evidence that all the Catholics around are using them -- the Catholics in Eastview, but this was a statement made to coax this woman along.

MR. BEAMENT: Well, all the women who have given evidence in this case were Catholics.

MR. MERCIER: Well, there is evidence of similar acts that can be brought out. Here is the way she approached Mrs. Duhamel -- She asked her if she was a married woman. (Reads):

"Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet her?

A. I met her in August.

Q. Where?

A. At my tenant's house.

Q. Where is that?

A. Three and a half (3 ½) Cedar Street.

Q. Under what circumstances?

A. Well, I was home one afternoon and the lady's daughter came to my home.

Q. What is the name of your tenant?

A. Mrs. Louiseize, and she said, 'Mrs. Duhamel, there is a nurse at home; she talks only English, and my mother wants you to interpret her.' I went there.

Q. You went there, and what happened?

A. She said, 'How do you do?'

Q. Who said that?

A. Miss Palmer said, 'How do you do,' and said, 'Are you a married woman,' and I said, 'Yes, I am.'

Q. And?

A. She said, 'Would you mind explaining to that lady…' -- first, she said, 'It is about the birth control.' She said, 'I am visiting families to whom I am sent. Would you mind explaining to her what it is about?' She explained to me.

Q. What did she explain to you?

A. She showed me a tube of jelly and the key -- to turn the key, fill the nozzle with jelly first, and I told Mrs. Louiseize; I repeated.

Q. Was anything else said about the use of this jelly?

A. She said it had to be used before intercourse.

Q. Was there any conversation about what it was for -- what purpose?

A. She said it was for the purpose of birth control.

Q. And you, in turn, explained that to Mrs. Louiseize?

A. Yes.

Q. Was there any further conversation?

A. Nothing.

Q. Was there nothing more?

A. She questioned the lady, and I repeated to the lady the answers, and she wrote them down.

Q. Did you have any conversation with Miss Palmer about yourself?

A. Oh, yes; she asked me about my family. I said I had three, and she said, 'Would you be interested in having some too?' and I said, 'All right.' So she went by the same procedure, and I signed my name.

Q. Did you receive anything?

A. It was understood I was to receive it by mail, a free sample."

MR. WEGENAST: The French word used for 'sample' doesn't mean anything commercial.

MR. MERCIER: I don't know of any other translation (Reads):

"Q. Did you receive anything?

A. Yes.

Q. What was contained in that free sample?

A. There was the tube to fit the nozzle; it wasn't fitted on, but there was the nozzle and two pamphlets, one French and one English. There was something else; I was surprised, an envelope with three condoms in it. That is all there was, I think.

Q. Was there any discussion of price about these things?

A. No, it was understood it was to be given as a free sample.

Q. What was to happen; was there any discussion if you wanted some more?

A. Well, at first, I asked was there any charge for the mail, and she said no. I know she said if we wanted some more, we would have to pay for the mailing."

Of course, Your Worship, the literature that is in there doesn't say that -- good salesmanship.

Then, there was some discussion that there was something wrong with the card. The social worker had given the residence of Mrs. Louiseize as the residence of Mrs. Duhamel. On Page D.76, Mrs. Duhamel said she didn't want to take responsibility for the remarks below her signature, whatever those remarks are. (Reads):

"TO MR. WEGENAST:

Q. You didn't think you were doing anything wrong in taking this information?

A. Well, I have no information about birth control, and to be sincere, I wanted to have some information.

Q. Why?

A. To see what it was like.

Q. And do you agree that you have something to say whether you ought to have any more children or not?

A. I believe I have no right to limit my family; according to my religion, I have no right to use any kind of contraceptive.

Q. You didn't feel that way at the time?

A. I wouldn't say that because when I said to get the box, I didn't make any promise, and I didn't have in my mind to use it; I just wanted to see what was in the pamphlets.

Q. Have you had any talk about this since; has anyone said it wasn't right?

A. I knew a long time ago it wasn't right.

Q. That isn't what I asked, Mrs. Duhamel. Have you had any talk about this since; has anyone said it wasn't right?

A. Not in particular.

Q. You know you are on your oath?

A. I know. I talked with the women who got some boxes, and we make jokes; that is all.

Q. Has anybody told you it was a sin?

A. I know it is a sin; that is my religion.

Q. I didn't ask you if it is your religion.

A. Nobody has to tell me; I know."

Then on Page D.78 in re-direct examination:

"Q. Are you 'not too happily married?'

A. I never said such a thing; it is not the truth because I am happily married."

MR. BEAMENT: I think my friend ought to go back to Page D.76. (Reads):

"Q. You don't see anything wrong with this; take your time and look it over?

A. I don't see anything wrong.

Q. That is your own comments?

A. Yes, it is."

Then she said she didn't want to take responsibility for the remarks below her signature with the exception of the remarks on the card including the question of the number of abortions, and so on. She read it over and agreed with it when in the box.

MR. MERCIER: But she said she never had one, and she was on oath, and that is uncontradicted. As for the spacing of the children, the ages are 11 years, 8, and 14 months.

MR. BEAMENT: She was in public then with a number of priests of her own religion in court.

MR. MERCIER: All right, I am not objecting to that, but it is marked on the card, "not too happily married," and she denied it. This only goes to show whether there was any excess in serving the public good.

MR. WEGENAST: I think Your Worship, in all these cases, can believe what Miss Palmer put on the card.

MR. MERCIER: If His Worship wishes to do so, I can't prevent it, but I am submitting I would rather believe the weight of evidence, which is uncontradicted.

Then, Mrs. St. Amour -- on Page D.82 -- met Miss Palmer in the following way. (Reads):

> "Q. Do you know Miss Palmer?
>
> A. Yes.
>
> Q. Where did you meet Miss Palmer?
>
> A. At my home.
>
> Q. When?
>
> A. When she came over to my place.
>
> Q. Under what circumstances did she go to your place?
>
> A. She came to my place and said she was a trained nurse and asked about birth control and told me she was giving certain articles to prevent family, and she asked me if I was interested in it."

It was just a case of going up to these people and saying, "Here is something to prevent a family if you want it". And that, I submit again, is just what Subsection "C" of Section 207 of the Criminal Code does not want. "A. At first, I said, 'no'." After getting an answer like that, what right had Miss Palmer to force herself upon these people?

> "A. Then she told me that if I took the articles, I was in no way obligated and I could dispose of it in whatever way I wanted."

A little bit of coaxing there, Your Worship. (Reads):

> "Q. Why did you take it?
>
> A. I just took it out of curiosity."

She had one child, and she received the articles in Exhibit 15-B.

> "Q. Were the pamphlets in it, too?
>
> A. Yes.
>
> Q. Had you seen the contents of that or something similar before you received this box?
>
> A. When Miss Palmer showed me one.
>
> Q. That was on the occasion of her visit to you?
>
> A. Yes.

Q. What did Miss Palmer show you on the occasion of her visit to you?

A. The tube.

Q. Did she show you anything else?

A. She explained it, and my baby was crying and I took her in my arms. She said everything would be explained in the box."

Now there, on the question of morality, at the bottom of Page D.84 (reads):

"Q. Did you think there was anything wrong in asking for it?

A. No.

Q. Did you think there was anything wrong in Miss Palmer sending it to you?

A. No.

Q. Do you think it is wrong to decide for yourself about having another baby?

A. I don't care about that."

MR. BEAMENT: Whatever that means.

MR. MERCIER: Then we come to Mrs. Marie-Ange Pharand at Page D.85 (reads):

"Q. Do you know the accused, Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. When she came home.

Q. When was that?

A. I did not notice the date.

Q. Do you remember what month it was?

A. It must be in August because I left the place in September.

Q. How did you come to meet Miss Palmer?

A. She rapped at the door and introduced herself as a nurse.

Q. In French or English?

A. In English.

Q. Do you understand English, Mrs. Pharand?

A. I understand a few words.

Q. And Miss Palmer told you she was a nurse?

A. Yes.

Q. And was there any further conversation?

A. She spoke a lot that I couldn't understand; she asked me now and then if I understood.

Q. What did you reply?

A. I thought she was a nurse who came along to weigh my baby as the Metropolitan nurses usually do come.

Q. What happened while she was there?

A. She followed me into the kitchen. She asked me my name and my husband's name, what was our ages and how many children there were.

Q. And how many children have you?

A. I have two. She also asked how many children we had.

MR. MERCIER (to interpreter): She said, 'That is all I understood in English.'

THE INTERPRETER: A. That is all I understood in English.

Q. After that conversation, did you do anything?

A. Afterwards, I understood that she was coming regarding maternity because I understood what was written on the pamphlets. The title of the pamphlet was 'Control of Maternity,' but I did not believe I had to sign.

THE COURT: Q. I didn't understand; she had to sign?

A. I didn't know when I signed it was for to send the stuff to me.

MR. MERCIER: Q. Is this the pamphlet, Exhibit 5-B?

A. It is a pamphlet like this, which was written, 'Control of Maternity.'

Q. Why do you say you did not think it would be sent to you?

A. Because I did not understand she was going to send some over. I thought we would ask for it.

Q. Did you understand you were asking for it when you were signing this card?

A. No.

Q. Would you have signed the card if you had known it was for the purpose of getting this box?

A. No.

Q. Why?

A. Because I do not need it.

Q. Is your husband working?

A. Yes.

Q. And you have two children?

A. Yes.

Q. I show you this box, Exhibit 17-B; will you tell me if that is the box you received and the contents of it?

A. It looks like it.

Q. Your name is on this box?

A. Yes.

Q. Did you receive this box?

A. Yes.

Q. When Miss Palmer was interviewing you, did she show you anything besides the pamphlet?

A. She showed me what her box was containing.

Q. What was that?

A. The very same thing aa she sent to me.

Q. You mean the tube?

A. Yes.

Q. The key?

A. I did not pay attention."

She didn't pay attention to see whether there was a key in it. (Continues reading):

"Q. How far are your children apart in age?

A. A year.

Q. You were married in 1934?

A. Two years ago."

This woman was married in 1934 and had two children, I believe. Then to go on with the cross-examination on Page D.88. (Reads):

"Q. Let me see that box, please. This pamphlet, 'Control of Maternity,' was in the box when you got it?

A. She left me one on the table and there was another one in the box.

Q. Why did you sign the application?

A. Because I thought it was only my name she asked me.

Q. Does she always sign things like that?

A. It is the first time I ever signed in English. I usually sign when it is in French, but never in English.

Q. That doesn't quite answer the question; does she always sign things like that when people ask her?

A. It is the first time.

Q. It doesn't seem reasonable to me.

A. It is the first time I ever got fooled. I don't want to get fooled 10 times."

There is a case, Your Worship, of excess: "I got fooled and I am not going to get fooled again." And there is where the Court made the remark that perhaps book salesmen don't travel in this district, so people haven't had experience in signing things.

Then in the re-direct examination (reads):

"Q. Arising out of this cross-examination: What did you think you were signing when you signed this card?

A. I thought it was only to prove my age, my husband's age, and my children's.

Q. Did you know that when you signed that application?

A. (No reply).

MR. WEGENAST: I do not know if that is the way to put that question.

MR. MERCIER: Q. Why did you sign this card for Miss Palmer?

A. Without reflection of any kind, I didn't put any thought to what I was doing.

Q. That will be sufficient?

A. I signed because she asked me to.

Q. She told you she was a nurse?

A. Yes.

Q. You told us before you thought she was coming in to weigh your baby?

A. My baby hasn't got two months yet, and the nurses usually come and weigh them; as the nurse used to come, and it was during her holidays."

There is the approach, Your Worship; this woman said she signed the card without reflection of any kind.

MR. WEGENAST: What has that to do with approach?

MR. MERCIER: My friend's witnesses have been harping on the question of approach and the wonderful social service work.

MR. WEGENAST: My witnesses haven't been harping on it; my friend has been harping on it.

MR. MERCIER: They all said her work was perfect; it couldn't be done in a better way.

MR. WEGENAST: Well, His Worship knows what was said.

MR. MERCIER: (Reads):

"Q. Why did you sign this card for Miss Palmer?

A. Without reflection of any kind; I didn't put any thought to what I was doing.

Q. That will be sufficient?

A. I signed because she asked me to.

Q. She had told you she was a nurse?

A. Yes.

Q. You told us before you thought she was coming in to weigh your baby?

A. My baby hasn't got two months yet, and the nurses usually come and weigh them -- as the nurse used to come, and it was during her holidays."

Then in re cross-examination (reads):

> "Q. But she knew before she signed the paper this nurse had to do with the prevention of maternity?
>
> A. Yes, I did know. I can't remember right.
>
> Q. What was the first thing she asked you?
>
> A. My name and my age, because during the month my baby fell off the stairs; I went to pick him up and it put my mind off her."

HIS WORSHIP: We will adjourn until 2:15 p.m.

--- 1:00 p.m. Court adjourned to 2:15 p.m.

2:15 p.m. Resumed:

MR. MERCIER: Then, Your Worship, I was finished reading the evidence of the last witness, and I will begin at Page D.92, the evidence of Mrs. Lillian Gervais.

Before continuing with this, Your Worship, -- I know my learned friend Mr. Beament may pass the same remark -- my learned friend was under a misapprehension this morning when he stated that several Roman Catholic priests were in the courtroom when the women gave evidence. Both Mr. Beament and myself have checked up on that and we have found the Roman Catholic priests -- none of them were in the courtroom when any of the women gave evidence; they just came in when the religious issue had been raised because they had instructions to find out what it was all about, so I believe Mr. Beament intends to make that correction himself.

Mrs. Lillian Gervais, Your Worship, at Page D.92:

> "Q. Do you know Miss Palmer?
>
> A. Yes, I do.
>
> Q. When did you meet Miss Palmer?
>
> A. I can't remember if it is the end of August.
>
> Q. Under what circumstances did you meet Miss Palmer?
>
> A. She rapped at the door, and I went to open the door.
>
> Q. Yes?
>
> A. She told me she was coming for the birth control; then, she said something I didn't understand.

Q. Did you understand anything of what she said?

A. I understood it was for family.

Q. Did you understand anything else of what Miss Palmer told you?

A. She asked me my age, my husband's age, and also my children's ages.

Q. And you gave her that?

A. Yes.

Q. Did she ask you anything else?

A. My doctor's name.

Q. What did you tell her?

A. I told her it was Dr. Lemay.

Q. Did you tell her anything else?

A. She asked me if I wanted to get one of those boxes free.

Q. What did you reply

A. I told her if it was free, I would accept it."

A little excess, maybe, in the public good there. How was the public good served in this case? This woman took the things because they were free, and on that condition only, she took them. (Reads):

"Q. Did Miss Palmer tell you what was to be in that box?

A. She showed me and explained to me, but I didn't understand.

Q. She showed you what?

A. She showed me the tube and the jelly.

Q. And explained what to you?

A. She showed me how to do it, to put the jelly in the tube.

Q. Did she tell you what it was for?

A. She told me it was for family.

Q. What do you mean by that; 'She told you it was for family'?

A. She told me it was to distance family."

This woman also required the services of an interpreter, and I was explaining the translation of the interpreter. “It might be space. It is more than space. It means to keep away, to keep a family at a distance.” Continues reading:

“Q. And after that, did you sign a card?

A. Yes, I signed a card to receive the box.

Q. Did Miss Palmer tell you to see your doctor before using this stuff?

A. She did not.

Q. Did you consult your doctor about this?

A. No, I did not.

Q. And as a result, did you receive this box, Exhibit 18-B, Mrs. Gervais?

A. Yes.

Q. And what you see in there now was there when you received it?

A. Yes.

Q. With the literature?

A. Yes.

MR. WEGENAST: Let me see that box.

MR. MERCIER: Q. How many children have you, Mrs. Gervais?

A. Three.

Q. Is your husband working?

A. Yes.

Q. Steadily?

A. Yes.

Q. And do you own your own home?

A. Yes.”

Then in cross-examination, my learned friend asked these questions (reads):

“Q. Your husband is a waiter?

A. Yes, he works in Bowles’ Lunch.

Q. How much does he make a month?

A. Forty dollars.

Q. I see you did not use the tube?

A. No, it was to see what it was.

Q. How long did you have it before the police took it?

A. At least a month for sure."

Was there excess there? I don't know what Your Worship thinks of it. There is a little notation, Your Worship, that I put on my notes that an Englishman's home is his castle, meaning, of course, that he should not be disturbed.

MR. WEGENAST: Are you suggesting an agent for Fuller brushes, say, hasn't the right to knock at the door and enquire whether they want a Fuller brush?

MR. MERCIER: There is nothing in the Criminal code against Fuller brush or aluminium ware agents or anything like that.

MR. WEGENAST: If that is the idea, they had no business to go there. I am quite willing to have His Worship consider that.

MR. MERCIER: Yes, that is what he is here for. He has been offered very excellent advice on what he should do.

There is a question here, Your Worship, which I want to read, the last question on Page D.95. (Reads):

"Q. You didn't see any harm in that?

A. No."

She didn't see any harm in spacing -- not in using contraceptives.

MR. BEAMENT: Again, my friend has left out a complete answer. He got to the interpreter, and then, he became so immersed in what he had written down about the Englishman's castle that he went on.

MR. MERCIER: What was it you wished me to read?

MR. BEAMENT: Just continue on:

"Q. What does she understand by eloigner des enfants?

INTERPRETER: That is the way she introduced herself; it was to distance herself."

MR. WEGENAST: I remember distinctly what passed through my mind; it was this: I put to the interpreter, “What does she understand by eloigner des enfants?” and I wanted to know through the interpreter whether what she meant was to keep away children.

MR. MERCIER: The only thing I want to submit to Your Worship is: This woman was asked whether she wanted the box, and she didn’t see any harm in being curious, and whether there was a little over-zeal or excess ---

MR. WEGENAST: We are quite willing to admit if they had been very keen, they could have gone to the corner drugstore.

MR. MERCIER: Now, Mrs. Olive Groulx at Page D.96 -- This woman doesn’t understand English, and the interpreter is required (reads):

“Q. Do you know Miss Palmer?

A. Yes.

Q. When did you meet Miss Palmer?

A. During the month of August.

Q. Where?

A. At home.

Q. How did Miss Palmer come to get there?

A. She rapped at the door and told me she was a nurse.

Q. What did she tell you?

A. She asked my name and my husband’s name.

Q. Anything else?

A. How many children I had.

Q. How many did you tell her you had?

A. Two living and four dead.

Q. Was this conversation in French or English?

A. She spoke in English, but I can understand it a bit.

Q. You understood everything Miss Palmer told you?

A. Yes.

Q. And after asking you these questions about how many children you had, what further conversation did you have with Miss Palmer?

A. She asked me if I wanted to accept a box.

Q. What box?

A. The box with tube and jelly.

Q. Did she show you this tube and jelly?

A. Yes, she did.

Q. And what did she say about it, if anything?

A. She told me it was good to prolong a family.

Q. What did you understand by that: 'prolong a family'?

A. Not to have family so often.

Q. And what did you do after this, if anything?

A. I signed the paper."

You see there again, Your Worship, is the intention of the woman getting these people to sign the cards. What I want to get at is: My learned friend has made quite a point that some of these women didn't see anything wrong in it, and this woman said, "She told me it was good to prolong a family".

Is that sufficient explanation to these people, not knowing whether it is against what is called their religious inhibitions?

Miss Palmer would go into these homes and say to these people: "Do you want anything to prolong your family, or space it? I have something for that which is efficacious." (Reads):

"And what did you do after this, if anything?

A. I signed the paper.

Q. What did you sign; do you remember?

A. I signed my name.

Q. What did you sign your name to?

A. To accept the box.

Q. You signed your name to accept the box of what Miss Palmer showed you?

A. Yes.

Q. And would you have asked for this box if it had not been offered to you?

A. Yes.

Q. You would have asked for it?

A. Yes.

Q. Is this the box you received?

A. Yes.

Q. Are the contents the same as in the one you received?

A. (No reply).

Q. Did you know how to get, or had you heard about this before?

A. No.

Q. Who would you have asked for a box?

A. To nobody, I wouldn't know.

Q. I believe you told me you would have asked for this box?

A. (No reply).

Q. You have told me you would have asked for this box if it had not been offered, and now you tell me you don't know who you would ask for it?

A. I do not know, as I had no address.

Q. Had you heard about this before?

A. (No reply)."

And I left it at that, and Mr. Wegenast cross-examined on Page D.100 (reads):

"Q. You have had six children?

A. Yes."

MR. BEAMENT: I might suggest there is nothing until you get to Page 105. If my friend remembers, there was an effort made to find out how many of these children were dead.

MR. MERCIER: At the bottom of Page D.105 (reads):

"Q. I didn't understand that; now, you know what is meant by spacing children further apart?

A. Yes, I do.

Q. And you think it is a good thing?

A. Yes.

Q. And it isn't wrong?

A. No.

Q. And she has used some medicine sometimes to help space them?

A. Sometimes."

MR. WEGENAST: Before my friend passes from Mrs. Groulx, I think he should remind Your Worship Mrs. Groulx and Mrs. Maheux were found to be able to converse in English. That is in the evidence of Miss Brandt. Miss Brandt said she carried on a conversation with them in English. The evidence is on Page N.64 in regard to that, although they gave their evidence through an interpreter.

MR. MERCIER: Then we have Mrs. Dores at Page D.107. She met Miss Palmer at her home. Miss Palmer went there and asked her if she believed in birth control, and she said, "Yes, come in, but I said she was a little late".

"Q. How many children have you?

A. I have had nine.

Q. How many are living?

A. Eight.

Q. What do you mean by that; she was a little late?

A. Well, I don't know; I think my time is over now."

And by the way, this woman was intelligent enough; her husband had a good position, and she didn't need the good offices of Miss Palmer. And that is the point I want to make there: Miss Palmer had no right to interfere with this woman. She asked her, "Do you believe in birth control," and Mrs. Dores said, "Sure, come in, but you are a little late."

MR. BEAMENT: But my friend should read the evidence. He just passes it off, misrepresenting the avidity, the gladness with which she received this information. If my friend will read it all: "What conversation did you have after that…" and so on ---

MR. MERCIER: I think I can take it for granted.

MR. BEAMENT: There was no "invasion of the Englishman's home" or anything of that kind. She was welcome.

MR. MERCIER: I submit, even in that case, Your Worship, it wasn't a case of selling Fuller brushes, and by the way, Fuller brush men have a license; they have to have a license to go from door to door to peddle their goods.

MR. WEGENAST: So what?

MR. MERCIER: Well, this isn't Fuller brushes or toothbrushes or anything of that kind; this is peddling contraceptives, and whether it is for the public good is for Your Worship to decide, and I intend to let Your Worship decide without giving you too much advice about it.

Then, the evidence of Mrs. Deslauriers to which I wish to draw Your Worship's attention. There is another woman who received some of these contraceptives, and Mrs. Deslaurier was at the time pregnant. Well, I am not going to discuss that at any length, Your Worship, but I am going to leave it to Your Worship to decide.

Then there is another point; my learned friend brought Mrs. Deslaurier back into the box ---

MR. WEGENAST: I didn't bring her back.

HIS WORSHIP: Yes, to prove the card.

MR. WEGENAST: But my friend admitted it.

MR. MERCIER: When she was brought back, and the card was shown, it stated on the back of the card -- the social worker or nurse had asked her -- that the child was unwanted, and Mrs. Deslaurier absolutely denied that. That is the point I want to bring to Your Worship's attention -- to show the excess there was in carrying out the work for the public good, if by any chance Your Worship could believe the public good was served by the acts alleged to have been done at the time in Eastview.

Now, Your Worship, leaving these poor unfortunate and benighted women for a while, I would like Your Worship to give thought to the sum total of their evidence, and I submit to Your Worship that it is exactly that kind of propaganda that Section 207, Subsection "C" of the Criminal Code was meant to cover. Surely, Your Worship, nobody can -- I might say it is untenable to argue that in any of these cases, the public good was served and that there was no excess of public good by a person going into a home, -- and for fear of scandalizing my learned friend, I won't say a Catholic home, but going into a home, rapping on the door,

walking right in and saying to the woman, “Do you want contraceptives?” Some of them wanted it; some of them were lukewarm; some of them just took it because it was a sample, and some of them didn’t want it at all, but they got it just the same.

I cannot see where the public good was served when you come to certain definitions of public good that I have to submit to Your Worship. I cannot for the life of me, Your Worship, understand the idea or the mentality of our legislators if they had put a section in the Code just for the purpose of breaking away from it by putting in sub-sections. And I submit to Your Worship at this point, although birth control is not on trial, as I said before, -- and I will come to that a little later on -- this so-called birth control is a misnomer; the real name is birth prevention. What does it control? What does it control? It is prevention. But the propagandists of that movement do not dare to call it by its real name.

MR. WEGENAST: May I take it now my friend, for the moment, is at least getting away from the position that birth control is on trial?

MR. MERCIER: It isn’t on trial, but I must at any rate try to impress the Court with certain views I have. I believe my learned friend has had all the leeway possible in that line, and I may mention a few words in regard to the general good -- the public good. I have given my friend all the latitude any defence counsel could expect at any time.

MR. WEGENAST: Well, I am grateful.

MR. MERCIER: Your Worship, just at this moment, I am going to say a few words in Latin. I see my learned friend is rather afraid of this, but it is taken from Broom’s Legal Maxims. Now, Brooms Legal Maxims, Your Worship well knows, are the very basis of the laws of England.

MR. WEGENAST: No.

MR. MERCIER: Well, part of them. I hope my learned friend will not have me establish Broom’s Legal Maxims as an authority or the legal maxims of the laws of England as stated by Broom.

In Chapter 1, -- this is an old version, 1858, but I don’t think they have changed much. It is the Third English Edition. Right at the beginning, Chapter 1, this is what is said (reads):

"The maxims contained in this section are of such universal application and result so directly and manifestly from motives of public policy and the simple and fundamental principles on which the social relations depend that it has been thought better to place them just in this collection as being, in some measure, introductory to those more precise and technical rules which embody the elementary doctrines of English law and are continually recurring to the notice of practitioners in our courts of justice."

Then, I take Broom's Legal Maxims on Page 14 (reads):

"Summa Ratio est Quae pro Religione Facit, -- That rule of conduct is to be deemed binding which religion dictates."

Then, the fourth paragraph (reads):

"It may further be observed that upon these two foundations, the law of nature and the law of Revelation, depends all human laws; that is to say, no human laws can be suffered to contradict these. For instance, in the case of murder, this is expressly forbidden by the divine, and demonstrably by the natural law, and if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine. Neither are positive laws, even in matters seemingly indifferent, any further binding than they are agreeable with the laws of God and nature.

It cannot, however, be doubted that obedience to the laws of our country, provided such laws are not opposed to the law of God, is a moral duty; and therefore, although disobedience is justifiable in the one case supposed of a contradiction between divine and human laws, yet this is not so, either where the human law affirms the divine in a matter not indifferent in itself, -- as where it forbids theft -- or where the human law commands or prohibits in a matter purely indifferent, and in both these cases, it becomes a moral duty on the part of the subject to obey."

While my learned friend may not think this is in point ---

MR. WEGENAST: Since my friend anticipates an objection -- all I am interested in for the moment is -- it is quite contrary by its own admission at one stage. If I had thought my friend was going to cite this ancient sort of law, I might have stayed a

little longer in the field of ancient law, and the relation of the Roman law to the English law. It is just that I am interested in the inconsistency of the two positions.

MR. MERCIER: (Reads):

> "In order to form a correct judgment on this subject, it is necessary to take into consideration that the true principle both of moral and positive law is, in effect, the same -- viz. utility, or the general welfare; and that the disobedience of either sort of precept must be presumed to involve in it some kind of mischievous consequence, if for no other reason, yet for this, that such example of disobedience may encourage others to violate laws of a beneficial character, and tend to lessen that general reverence which ought to be entertained by the community for the institutions of the country."

Now, at the bottom of Page 15 (reads):

> "Proceedings in our courts are founded upon the law of England, and since that law is founded upon the law of nature and the revealed law of God, it follows that if the right sought to be enforced is inconsistent with either of these, the English municipal courts cannot recognize it, and it may, therefore, be laid down generally, that what is called international comity, or the comitas inter communitates, cannot prevail here in any case, where its observance would tend to violate the laws of this country, the law of nature, or the law of God."

MR. BEAMENT: Does the learned text writer quote any cases of binding authority to support that contention?

MR. MERCIER: He refers to Best, J., in Forbes v. Cochrane, 2 B.& C. 471, and see Stephens Com. 38, 39.

MR. BEAMENT: For the proposition, the law of the church overrules the law of the land?

MR. MERCIER: No, not that -- that both must work together.

MR. WEGENAST: Is there any indication that has reference to the law of the Church of Rome or the Church of England?

MR. MERCIER: I suppose he means any church because if my friend had the respect for other religious beliefs that I have, he may have been able to see it.

I will just refer Your Worship to this maxim without commenting on it -- "Non potest Rex Gratiam facere cum injuria et damno aliorum; the king cannot confer a favour on one subject which occasions injury and loss to others" -- and I will let Your Worship think that over.

MR. BEAMENT: My friend has never heard of the power legislation in Ontario, evidently.

MR. MERCIER: I have heard of it, but I am not worrying about it at present. I don't blame my learned friends for enjoying themselves, Your Worship; I have had quite a bit of pleasure during the course of this trial.

HIS WORSHIP: You know the Court's view of that power legislation, Mr. Beament.

MR. MERCIER: I am submitting that to Your Worship for what it is worth and to get it off my chest, just as my learned friend got something else off his chest.

Then on Page 104:

> "Omnis innovatio plus novitate perturbat quam utilitate prodest; every innovation occasions more harm and derangement of order by its novelty, than benefit by its abstract utility."

Then, Page 105:

> "The province of the legislature is not to construe but to enact, and their opinion not expressed in the form of law as a declaratory would be, is not binding on courts whose duty is to expound the statutes they have enacted. For the maxim of the Roman law ejus est interpretari, cujus est condere does not under our constitution hold."

MR. WEGENAST: Would you translate that, please?

MR. MERCIER: I don't think I know that myself.

MR. WEGENAST: I don't understand it. It is sort of "evil to them that evil thinks"; isn't it

MR. MERCIER: "Condere" is the word that gets me.

Then the footnote on the same page, 105, Your Worship (reads):

> "My duty, says Alderson, B. in Miller v. Salomons, 7 exch. 543, is plain. It is to expound and not to make the law -- to decide on it as I find it, not as I may wish it to be."

MR. WEGENAST: That is perfectly sound; I will admit that.

HIS WORSHIP: There are schools of law -- Mr. Justice Cardoza, for example -- who disagree with that law entirely.

MR. WEGENAST: But my suggestion is that Mr. Justice Cardoza isn't expounding English law as it is in force here.

MR. MERCIER: Then, Your Worship, I will refer to footnote number 5 on Page 105 (reads):

> "An unnecessary departure from precedents, whether it spring from the love of change or be the result of negligence or ignorance on the part of the pleader, ought not to be encouraged. It can only lead to useless litigation, delay and expense."

MR. WEGENAST: Isn't this a work of philosophy rather than law?

MR. MERCIER: And footnote number 6 (reads):

> "When the law has become settled, no speculative reasoning upon its origin, policy or expediency should prevail against it."

Now, Your Worship, on Page 130, here are the words in the second paragraph (reads):

> "If there be any doubts what is the law, judges solve such doubts by considering what will be the good or bad effects of their decision; but if the law is clear, inconveniences afford no argument of weight with the judge: the legislature only can remedy them."

That is what I was referring to at the beginning of my argument -- that while the law is on the statutes, it is the duty of the citizens to obey it. (Reads):

> "Where the law is known and clear, though it be inequitable and inconvenient, the judges must determine as the law is, without regarding the inequitableness or the inconvenience. These defects, if they happen in the law, can only be remedied by Parliament; therefore, we find many statutes repealed and laws abrogated by Parliament as inconvenient, which before such repeal or abrogation were, in the courts of law, to be strictly observed."

I submit that that is the case here, Your Worship, as far as the law is concerned. (Reads):

> "But where the law is doubtful and not clear, the judges ought to interpret the law to be as is most consonant to equity and least inconvenient."

MR. WEGENAST: Would my friend allow me to point out that these maxims are maxims of equity, and what we are dealing with here is criminal law, and there are other maxims that apply, such as the benefit of the doubt should be in favour of the accused.

MR. MERCIER: The footnote concludes (reads):

> "That judges ought, above all, to remember the conclusions of the Roman Twelve Tables, salus populi suprema lex."

The interpretation is "the salvation of the people".

MR. WEGENAST: No, "the public good is the supreme law."

MR. MERCIER: (Reads):

> "…and to know that laws, except they be in order to that end, are but things captious, and oracles not well inspired."

Then it refers also to Pollock, C.B. 4 H.L. Cases, 152.

On Page 134, Chapter 5, here is what Broom says:

> "Many of the principles set forth and illustrated in this chapter are of such general application that they may be considered as exhibiting the very grounds or foundations on which the legal science rests. To these established rules and maxims, the remark of Sir W. Blackstone, (com. 21st, Ed. Vol. 1 P.68) is peculiarly applicable: -- Their authority rests entirely upon general reception and usage, and the only method of proving that this or that maxim is a rule of the common law is by showing that it hath been always the custom to observe it."

Then on Page 159 (reads):

> "Actus Dei Nemini Facit injuriam -- The act of God is so treated by the law as to effect no one injuriously."

I submit this doctrine, Your Worship, is one very well-known in civil law, but I just want to use this sentence for the sake of argument and analogy: "The act of God is so treated by the law as to affect no one injuriously." If birth is an act of God, then it can be said to affect no one injuriously.

MR. WEGENAST: The idea is that a birth can never be an evil -- a birth being an act of God can never be a thing undesirable?

MR. MERCIER: If I can take those words in that way and use them as my own: "If birth is an act of God…" ---

MR. WEGENAST: "Argal" what?

MR. MERCIER: I am commenting on the words that may be used.

MR. WEGENAST: In other words, the phrase is not correct, but you want to use it.

MR. MERCIER: I am referring Your Worship now to the decision of Mr. Justice Middleton in the Millar Will Case, 1936 Ontario Reports, November Edition, on Page 554 where His Lordship, among other things, says this on Page 565:

> "In my opinion, the contention of the next-of-kin fails. I know no ground of public policy that recognizes the undesirability of having children at too frequent intervals. It may well be that there are many distinguished physicians and others who believe this to be the case, but public policy as such lags far behind the opinions of scientists and sociologists. Public policy is not what a judge thinks is best for the community. It is something far more than that. It is that which for many years has been recognized as for the public weal and the common law, and the principle must be found to be embedded in the authorities. No judge has a right to declare that which he does not himself believe in to be against public policy simply because it is against his opinion and his idea of that which is for the welfare of the community."

And he refers to the history of the legislation. I just want to put this in as a matter of record as I believe Your Worship is familiar with that.

MR. WEGENAST: Is this the proper time for me to ask whether my friend agrees with me that the question there is a deduction to be drawn by the Court itself, and that that is a different thing from the application of an expressed statutory provision? What Mr. Justice Middleton held there was that when you argue to the Court that a certain result will not be in the public interest, you are ---

HIS WORSHIP: Bound entirely by the authorities in law on that particular question.

MR. WEGENAST: Yes. But here we have a statute that sets out the function of the judge and jury in finding that very thing so how can there possibly be an application?

MR. MERCIER: Well, Your Worship, I am putting this in as what I submit might be a case which is an authority on the question. Mr. Justice Riddell and Lord Buckmaster say so and so, -- have their own personal opinions on certain subjects -- and I submit Mr. Justice Middleton is giving an official opinion in the case there.

MR. WEGENAST: Your Worship, of course, remembers the dictum that "public policy is an unruly horse".

MR. MERCIER: Yes, I remember reading that too.

Now, Your Worship, I come to this point that has been raised by my learned friend: that the work done by the Parents' Information Bureau through Miss Palmer was philanthropic in nature, and my learned friend has told us that Mr. Kaufman had lost $48,000.00 But I submit it has been known, Your Worship, that people have lost money in certain ventures in order to make a lot of money, and I would call Your Worship's attention to Exhibit 31-B, the charter. There are such things as charters for philanthropic organizations, but in this case, the Parents' Information Bureau have taken a commercial charter and incorporated a private company of 5,000 shares, $10.00 per share. It is a federal charter, and whether it would have been granted as easily as it was ---

MR. WEGENAST: I don't know why my friend should speculate about that, but it is in effect that if the Department had known Mr. Kaufman was going to use his organization for distributing contraceptives, it would have interfered; the charter might not have been granted.

Well, I ask Your Worship to observe that is exactly what may have been the reason why the other sort of charter was not asked for.

MR. MERCIER: Well, in any event, Your Worship, a philanthropic organization gets a commercial charter of $50,000.00, 5,000 shares, and subject to all the regulations of private companies, and for that purpose.

Well then, Your Worship, I call your attention to Exhibit 34-B, which is a price list for supplies ---

MR. WEGENAST: I object, Your Worship. It is an exhibit, but it was one of the things Miss Palmer had in her bag. It was not included in the charge; the charge is not "advertising by means of a pamphlet and a slip".

HIS WORSHIP: I know that.

MR. MERCIER: My learned friend has raised the question, in any event, that it was philanthropic work, and it was done for no commercial purpose, and there was nothing like that in mind, but from this slip, it doesn't look like it.

MR. WEGENAST: "Condoms will be sold to patients only."

MR. MERCIER: I will read the whole thing, Your Worship, if you like, and there will be no misunderstanding, although I hope my learned friend doesn't intend to keep me here three more days. I will let Your Worship see it, and you can judge for yourself.

HIS WORSHIP: It is a price list for women who have received an initial supply of contraceptives and wish a further supply.

MR. WEGENAST: And it was explained the difference was in regard to pessaries.

MR. MERCIER: It is in French also, Your Worship (reads):

> "Les Preservatifs suivants seront envoys par la poste a des gens recommandes si le paiement est inclus:
>
> Parents Information Bureau
>
> 410 King Street W., Kitchener, Ont.
>
> Miss A. Weber
>
> 410 King Street W., Kitchener, Ont.
>
> 1 Tube de 4 oz. de Gelée préventive -- 35¢ ou 3 pour $1.00
>
> 1 Canule pour attacher au tube de gelée – 35¢ ou 3 pour $1.00
>
> 2 Tubes de 4 oz. De gelée et 1 canule -- $1.00
>
> 1 Pessaire de première qualité -- 50¢
>
> Protecteurs de bonne qualité – 25¢ la douz.
>
> Ces protecteurs seront vendus aux patients seulement et pas plus que 3 douzaines par anneé.

Now, of course, Your Worship should also take notice of the fact that Miss Palmer was paid one dollar per application that was

accepted at the office. She was not paid by salary, but she had a certain incentive to get as many as she could.

MR. WEGENAST: She was paid a fee, as any doctor or nurse. She has to live, or doesn't she?

MR. MERCIER: I wonder whether this was for the public good, and whether there was any excess?

Your Worship, at this point, I think there is an exhibit which will be very interesting to the Court showing the sequence of events, and I intend to show Your worship everything that is in it. First of all, there are certain instructions and illustrations for the use of contraceptives. It should be called, I believe, to Your Worship's attention ---

HIS WORSHIP: Those are all in Exhibit 22-B.

MR. MERCIER: Yes, Your Worship. There are several application cards which have not been mentioned in evidence, but on each and every one of these cards, the space for "referred by" is vacant; no reference at all, although that space is there.

MR. WEGENAST: I think perhaps I ought to raise the question to Your Worship, -- I am not sure I am able to give the answer myself -- but the responsibility, after all, is on Your Worship, and all I need to do is pose the question: Whether by simply pulling things out of this bag which happened to be carried by Miss Palmer, my friend is proving anything, and whether he can produce them in that way.

I submit not; I submit that if my friend found Miss Palmer with a bag in which she had a powder puff and a night gown, it wouldn't be evidence in this case, and I ask Your Worship to rule out these articles which are not in evidence.

MR. MERCIER: She is accused of "advertising by means of a pamphlet," and similar acts are given in evidence.

MR. WEGENAST: Where do you get "similar acts"? There is an account book of her expenses; what has that to do with the case?

HIS WORSHIP: That is the bag which was found upon her when she was arrested.

MR. BEAMENT: Two weeks after the alleged offense, Your Worship.

MR. MERCIER: Then there are several cards, Your Worship, with names on.

MR. WEGENAST: What does my friend suggest they show? Does my friend mean to say those cards are in as exhibits? I am asking His Worship to rule whether they are in as exhibits and evidence of the facts shown on those cards. I submit not.

MR. MERCIER: I submit, Your Worship, that Exhibit 22-B, the whole bag, is in as an exhibit, and I draw Your Worship's attention to these cards in order that Your Worship may be guided by the facts that similar acts might have been performed somewhere else.

MR. WEGENAST: I submit Your Worship should not entertain any such evidence.

MR. MERCIER: I am just submitting this to Your Worship without any further comments.

MR. WEGENAST: I submit Your Worship cannot, under the law as it stands, take these articles, which my friend is pulling out of the bag, as evidence of anything except that there was something in the bag. He can't draw conclusions and courses of conduct out of that bag with those papers.

HIS WORSHIP: You can't say those papers refer to anything that went on between the dates in question.

MR. MERCIER: I have another little book here, Your Worship, marked ---

MR. WEGENAST: There again, I submit Your Worship has no right to accept it.

HIS WORSHIP: The time to object was when it was put in as an exhibit. You can examine any exhibit that is put in.

MR. WEGENAST: We didn't know what was in the bag. Suppose that were so, then if Your Worship found out a mistake has been made, does it mean that the mistake has been made and cannot be corrected by Your Worship?

HIS WORSHIP: The exhibit is there, and I am allowing it in.

MR. MERCIER: This little book entitled "Pregs," which I submit, Your Worship, means "pregnant women," and the date they would be due because there are seventeen names in this little book, and next to the name there is "due such and such a date".

MR. BEAMENT: That is all irrelevant, Your Worship.

MR. WEGENAST: Your Worship will make a note that I have objected to having this brought in in this way because I think it is more or less a serious thing for the Crown Attorney to attempt to prove his case in this manner.

MR. MERCIER: Well, I will take the responsibility of my position, Mr. Wegenast.

MR. WEGENAST: I hope you do.

MR. MERCIER: I would call Your Worship's attention to that, and I submit these things to Your Worship for what they are worth.

I would also like Your Worship to refer to certain words of an author in the American Mercury for November called "The Birth Control Industry," which will show that these things ---

MR. WEGENAST: Just to put myself on record, I must say I have relied on Your Worship very heavily in these matters. I hadn't thought it was necessary to make point after point as to the relevancy, and so on, but I do object to my friend reading from the "American Mercury" as any authority in this Court.

HIS WORSHIP: Lord Renfrew could look at "The Times"; where is the difference?

MR. WEGENAST: I wish I had known of Your Worship's view before.

MR. MERCIER: According to the view of this author, it has become a great industry in the United States -- the selling of contraceptives. "Approximately $300 million a year is spent," according to this author, and an estimate is placed of 5 million articles manufactured and sold daily, and it goes on to explain it has become an industry in the United States. I submit that might be the aim of these people.

Also, Your Worship, as to the philanthropy of this work, I do not know what profits, if any, were made by the transfer of the Windsor and Brampton and Toronto clinics, but ---

MR. WEGENAST: What my friend suggests is that Mr. Kaufman has sold out some branch of his work?

MR. MERCIER: Yes, or it has been taken over by somebody; I don't know for what consideration.

MR. WEGENAST: It is not within the scope of the duties of the Crown Attorney to make hints of that kind.

MR. MERCIER: My friend inferred this was a philanthropic enterprise, and I am entitled to draw to Your Worship's attention certain facts which arise ---

MR. BEAMENT: My friend is entitled to make any comment upon the evidence that he thinks is relevant, but he is not entitled to suggest something is a fact. He has made the suggestion Mr. Kaufman made a profit by relieving himself of carrying on this work in Windsor and Toronto and having it taken over by a local clinic. There is not one word in the evidence to justify that statement; on the contrary, the only inference from the evidence is that there is no profit, and there can be no profit from this work.

MR. MERCIER: I will put it this way: I will say there is evidence before the Court that the clinic was transferred over ---

MR. WEGENAST: When was it transferred? It wasn't transferred.

MR. MERCIER: Well, taken over in Brampton and Toronto and Windsor, recently.

MR. WEGENAST: Only in Windsor, but recently an organization has been formed that may take over the Toronto clinic in due time.

MR. MERCIER: Well, let us limit it to the Windsor clinic, Your Worship; I do not know what profits, if any, were made by the transfer of the Windsor clinic.

MR. WEGENAST: Not transferred, there is nothing to transfer.

MR. MERCIER: I will draw Your Worship's attention to Mr. Kaufman's evidence on Page O-2 (reads):

> "Q. Mr. Kaufman, do you know how many of Miss Palmer's applications were rejected?
>
> A. No.
>
> Q. You have no means of telling if any were rejected or if all accepted?
>
> A. I have the means, but not here.
>
> Q. Do you know what was her average salary or commission?
>
> A. No, we pay on a case basis and I didn't count the cases.
>
> Q. Do you know how many cases she has had?
>
> A. I don't know.

Q. When did she start with you?

A. I don’t know that, but I think in May of this year.

Q. You don’t know if she had many applications or just a few?

A. I don’t know, but offhand, I don’t think she averaged as high as the average.

Q. What is the average?

A. I don’t know that either.

Q. How do you know she doesn’t average as high as the average?

A. I am only guessing.

Q. There is some part of the evidence where you said you were very well satisfied with her work?

A. I don’t think I commented on her work.

Q. In Miss Palmer’s statement to the police, she stated you were very well satisfied with her work?

A. I don’t know what she said.

Q. Why not open a clinic in Eastview rather than have these door-to-door calls?

A. I opened one in Windsor before I realized it wasn’t the best method to contact the neediest people. I learned my mistake and wouldn’t repeat it.

Q. Why?

A. Because you can’t get the neediest people to the clinic.

Q. And you opened your Toronto clinic before the Windsor clinic?

A. Yes.

Q. You didn’t find it out then?

A. That is difficult there, too.

Q. Why open the Windsor clinic if you had that experience in the Toronto clinic?

A. I opened the Windsor clinic too soon after the Toronto clinic or it wouldn’t have been done.

Q. How soon after did you open it?

A. Maybe a year or more.

Q. And in one year, you would find out that the methods in Toronto might not do in Windsor?

A. The methods used in Toronto were used in Windsor, but I hadn’t gained sufficient experience in Kitchener with my method there to make an intelligent comparison until later on.

Q. May I take it you opened your clinic in Toronto later on, and conditions were not satisfactory there, and one year later, you opened one in Windsor?

A. Toronto's conditions are satisfactory, but I learned from Toronto and Windsor that the clinics will not reach a good percentage of the very needy people.

Q. Couldn’t you find that out in Toronto in one year before opening the Windsor clinic?

A. I didn’t want to come to conclusions too rapidly.”

I leave that for Your Worship’s consideration.

Now, Your Worship, notwithstanding my learned friend’s objections now and then, I have it down here, and I intend to get it off my chest: I want to pay a tribute to him for the very legal manner in which he made his argument yesterday. It didn’t take him very long, and it would take me very much less time if I had only to deal with the legal aspect of the case without other things being brought in; I think the case would have been much shorter if it had been dealt with in that way.

In the course of my learned friend’s argument, he stated the Crown witnesses were biased. There is no doubt about that, and I am asking Your Worship if they were the only ones. Suppose, for the sake of discussion, all the witnesses for the Crown were biased: I leave Your Worship to judge the evidence. Is there any prejudiced evidence from the testimony of the defence witnesses? They were fervent adherents of the birth control movement.

In rebuttal of arguments medically, Your Worship, I present to you the American Medical Association, with all due respect, and I don’t want my remarks to be taken in any disrespectful manner to Dr. Hutton or any other medical gentleman, but I will go this far and say the opinions expressed by the American Medical Association are at least just as worthy of consideration as the

opinions of these gentlemen who all admit they are fervent adherents to the movement, and they can't see anything wrong in it, or the acts of Miss Palmer.

Of course, Your Worship, the American Medical Association may be "pre-Victorian," and I am not going to take the time of the Court by reading it.

Then, I would like to call Your Worship's attention to an article published in what is known as "the Canadian Doctor," -- and to use this for the purpose of my argument -- an article from November 1936.

MR. WEGENAST: Would my friend say where it is published and under what auspices?

MR. MERCIER: It is entitled the "Business Journal of the Medical Profession" and published in Gardenvale, Quebec, but it is entirely English.

MR. WEGENAST: What is the name of the publisher?

MR. MERCIER: It is just marked "Gardenvale, Quebec".

MR. WEGENAST: It is one thing to read it in the columns of the "Times" and then come along with something ---

MR. MERCIER: I have made certain enquiries, and this is a book that is received by all doctors with very great joy; several doctors have told me they like it very much, and it contains some very valuable articles to them. It is a business journal of the medical profession.

MR. WEGENAST: And it contains large quantities of advertising.

MR. MERCIER: Yes, but I don't see any advertisement for contraceptives.

HIS WORSHIP: It is published by the National Business Publications Limited.

MR. BEAMENT: It is not a medical publication in any sense at all.

MR. MERCIER: It was published in 1936, and there are certain things there, Your Worship, that I just want to call to your attention. On Page 16 of the November issue, -- I intend to leave this book with Your Worship if you care to read it -- it deals with the point I wish to bring out -- that the birth rates are declining very rapidly.

MR. WEGENAST: I point this out to Your Worship: That is an extraordinary manner of getting in statistics, and this would have been a very much easier way of presenting it to Your Worship than the way we did it, but I do hope Your Worship will not hold it against us.

MR. MERCIER: I am just touching on these points, Your Worship; that is all, and in case my learned friend might feel inclined to take another action against somebody for libel or something, if he sees anything in that.

Then, the December 1936 issue on Page 21 (reads):

> "The recent trial in Ontario for alleged contravention of the law which prohibits the dissemination in Canada of information on birth control had the effect of focussing general attention on the subject in a manner no previous development had perhaps done."

MR. BEAMENT: Quite clearly, Your Worship, this cannot be put in as the opinion of Sir Henry Brackenbury in this manner.

MR. MERCIER: They purport to report Sir Henry Brackenbury's speech made at the York Medical Association.

MR. WEGENAST: Whenever I offered any document -- and Your Worship will remember how nervous we got about it, whenever I brought out a document, Your Worship always insisted it should go in as an exhibit, and if I had known that I could bring the things in argument in this way, I certainly would have.

HIS WORSHIP: There were a couple of them which you read from which you didn't put in, and that is why the reporter had difficulty in transcribing his notes.

MR. WEGENAST: I will put them in now if that will help.

MR. MERCIER: In any event, Your Worship, I don't want to hold the Court too long, and I do think that this information will be taken by my learned friend just as favorably as the information he gave us yesterday in regard to France. I just got this information over the telephone yesterday, Your Worship, but it is a law passed in 1920 in France on the subject of contraception, and I am just giving this to Your Worship for what it is worth (reads):

> "The law passed by the Senate and Chamber of Deputies…" ---

That was passed in 1920 in France, and I submit to Your Worship it has not been amended as I have found out.

MR. WEGENAST: I rather fall in with that because it fits into the picture I gave Your Worship. In France, there is very grave concern; there has always been the discouragement of contraception, and a constantly falling birth rate.

MR. MERCIER: Then, Your Worship, I wish to put to Your Worship this: That Canada is not an over-populated country; it is far from being that. That has been set out, I think, by our good friend, Mr. Buckley, for the defence, and it is more an economic situation. I think my good friend Mr. Buckley went so far as to say this country could feed 200 million people, so preventing births will not help the situation, and I claim it is not for the public good in this country to prevent births, -- such a young country -- and perhaps it might be suggested that they should spend their energy and their money and their time in trying to improve the economic situation rather than to prevent births.

Now, Your Worship, I will make my own the words referred to by Helen McMurtry, C.B.E., M.D. in "Sterilization and Birth Control," in which she gives certain views, more or less, on both sides. The attitude she takes is: Is it good or is it not? I will make this my argument ---

MR. WEGENAST: Your Worship, I rise once more to object to this. I laid my hand yesterday on a book by Cooler, which had a paragraph I wanted to read to Your Worship, and I couldn't use it -- and I do claim my friend has no right to come along at this stage and read a lot of books.

MR. MERCIER: My learned friend has read from at least six or seven books during the trial. That is where I got the contagion.

MR. WEGENAST: Had I known Your Worship would have permitted that, the conduct of my argument would have been different because I had to put things in my own words and rely on my own presentation where it could have been put very much better by some of the authors.

MR. MERCIER: I wonder if that is the case, Your Worship. My recollection is during the trial, my learned friend has quoted substantially from books which were not in evidence.

MR. WEGENAST: I took them out of the records, and if there was one exception -- I think I did that as to one paragraph from a book by Blacker, but I had copied out the passage, I didn't read it from the book, and I said I want to make this part of my argument. I think that was the sole exception.

HIS WORSHIP: Didn't you quote from Lord Buckmaster?

MR. WEGENAST: But my submission is that it was a law quotation.

MR. MERCIER: You quoted Mr. Justice Riddell.

MR. WEGENAST: No, I just mentioned Mr. Justice Riddell thought Mrs. Bromley's book was the best one on the subject; that is all I said about it.

MR. MERCIER: If I remember correctly, my learned friend did add he thought Your Worship should read Lord Buckmaster and Mr. Justice Riddell. He could not for the life of him see how Your Worship could hold any other ideas.

HIS WORSHIP: I think you also read something to me on the trial of Galileo.

MR. WEGENAST: I suggested to Your Worship there were things that could be read. If my friend was doing only that, -- recommending Your Worship should read so and so -- I wouldn't object.

HIS WORSHIP: You also read something on the Bradlaugh trial.

MR. WEGENAST: That was a report of a trial. I had this advantage: The Court in Australia had used that very book, and my submission was that if the Court in Australia could read that book and quote from it, how could Your Worship say that I shouldn't read that paragraph which I wanted to read, and which Your worship would not allow me to read?

MR. MERCIER: Your Worship, what I want to say at this time is this: that Canada is too young a country to commit race suicide, and we need more babies. These people would be better engaged to spend their money in trying to encourage births, and to take care of the babies of the poor than to spend money, very lavishly indeed, trying to prevent people from having babies.

Your Worship, I am going to endeavor, at any rate, to submit to Your Worship -- to comment upon the case of Stopes v. Sutherland. And there again, I wish to use the words of Dr.

Sutherland himself, and if I am not correct, and if Dr. Sutherland is not correct ---

MR. WEGENAST: I want to object in the most definite fashion. I had two score of books of that popular character; I had de Guchteneer, and I mentioned Sutherland over and over. If I had been at liberty to put Sutherland on the grill and answer him, I could have put forward a much more effective argument than I did.

MR. MERCIER: If my learned friend will allow me, I can explain to Your Worship what I intended to do. Sutherland has written a book in which he refers to the libel action, and I have read the case of Stopes v. Sutherland and I think he sums it up pretty well, and in order to save time, I thought I might argue the case by quoting what Sutherland mentions about the libel action, and by saying to Your Worship that I do believe that is a correct view of the case.

MR. WEGENAST: My submission is that is entirely unfair to me. It is not for me to assume Your Worship will not be affected by it, and I had two score of books that I could have used, but I thought I had no right to do what my friend is endeavoring to do.

MR. MERCIER: My learned friend will not deny that in the case of Stopes v. Sutherland, Mrs. Stopes did not fare so very well there when she sued Sutherland for expressing certain opinions that he had about it; that is reported in the Times Law Reports. I just want to refer to the words that Dr. Sutherland got away with.

MR. WEGENAST: Tell His Worship how he happened to get away with it -- on what grounds.

MR. MERCIER: I think you explained that.

MR. WEGENAST: It was called the “question of the rolled-up plea”.

MR. MERCIER: I will refer Your Worship to the Times Law Reports, Volume 39.

--- 4:00 p.m. Court adjourned for recess.

MR. MERCIER: Now, Your Worship, I might relieve Your Worship and my learned friends by saying I won’t be very long now. The only thing I would like to do, Your Worship, is to submit that the Crown, in this case, has satisfied the onus placed upon it to prove, first of all, that contraceptives were advertised at

the Town of Eastview; and secondly, that the Crown, I submit most respectfully, has defeated the argument of the defence that the public good was served; and that if, by any chance, Your Worship could find the public good was served, that there certainly was excess in the acts alleged to have been done by the accused at the Town of Eastview.

Then, I might add this: that the section of the Code, Section 207, Subsection "C," was not meant, as I have argued before, to be defeated by Subsection 2. It was put there for a reason, a certain purpose, and I submit to Your Worship it is just for the purpose of forbidding the acts alleged to have been done by the accused in this case.

Now, Your Worship, to sum up generally, if Your Worship believes that the use of contraceptives is a cure-all for moral, economic, sociological, and other ills, as suggested by my learned friend, by all means, we should have the law changed. If Your Worship believes that, -- and I am quite sure all of us would agree if it was as strong as my learned friend has put it -- that it will cure almost everything -- that there will be bigger and better babies, and so on, -- it is the most wonderful thing in the world if Your Worship believes it.

But I believe even then, as a loyal subject of His Majesty and the authorities of this country, if it is correct, then the law should be changed, and I am wondering why our leaders have not realized this before. They have been looking for years for a cure for the depression, -- economic conditions – and they haven't discovered birth control, and they haven't seen fit to repeal that section of the Code.

I have a suggestion to make to my learned friends Mr. Silcox, Dr. Hutton, Mr. Wegenast, and Mr. Kaufman ---

MR. WEGENAST: Don't include me; I am only doing my duty as counsel.

MR. MERCIER: I apologize for that, but the propagandists of this movement should all run for parliament, according to the story that has been put before us ---

MR. WEGENAST: In the Ottawa Valley, I suppose.

MR. MERCIER: No, in Toronto, where this thing is supposed to be so popular. They might try that. They might form a party, a political party, -- the birth control party, or the pro-

contraception party, to secure power to cure all these ills. I am sure they would meet with a great deal of success, and they might become strong enough to have steps taken to repeal this law. If it would cure all our social and economic problems, prevent mothers from dying, make the poor more comfortable and the rich more generous; if it is going to make Canada the land of plenty, and if it is going to dry up the Ottawa River so that there will be no longer a barrier, then let us have it. And it would be the duty of all good citizens to join that party.

They do not realize the great possibilities of birth control, and the free distribution of these contraceptives, and what it would mean to the health and happiness of this nation. It would be a new Garden of Eden without a serpent.

Another point I would like to raise, Your Worship, is that it was admitted by one of the defence witnesses that this propaganda might cause intercultural friction but that the good to be derived therefrom would be so wonderful -- I referred to it before -- that it was worthwhile trying it.

I suggest to Your Worship it is not for the public good of Canada to cause any more intercultural friction than there is, and that is admitted by the Reverend Mr. Silcox. Inter-cultural friction is not for the good of this country and anything that goes toward bringing about that end, -- and it was admitted by an eminent witness for the defence, Mr. Silcox, that inter-cultural friction might be caused by the propagation of this movement ---

MR. WEGENAST: No by stopping it. The evidence of Mr. Silcox was that a great many people ---

MR. MERCIER: I am sure that in reply to a question by myself, where I said, “Don’t you think it might cause inter-cultural friction,” and Mr. Silcox said, “Yes, but the good to be derived from this would be so wonderful, it would take second place.”

MR. WEGENAST: My friend put him through the mill on a speech he made in the United States about the Dionne quintuplets, but Mr. Silcox’s point was that there were people in Canada who were afraid that the French were outbreeding the English, and they would say the English people have these facilities for birth control, and why shouldn’t the French have them? That was the main argument. Then, my friend put the question: “Mightn’t it cause intercultural friction to go into homes in Eastview?” and

Mr. Silcox said, “Yes, it might a little, but any ill effects would be more than offset by the good effects.

MR. MERCIER: I will leave it at that, Your Worship, and say if any intercultural friction is going to be caused even in the Town of Eastview, -- that is where these acts are alleged to have been done -- that there is enough of that through the country and in this province, unfortunately, and that it is not for the public good.

Again, Your Worship, may I call your attention to this: This country has become bigger and better in the course of years by the work of its pioneers, -- not only French, but English, Scotch, and Irish, -- and I think the pioneers of this country did not do it by being at their ease all the time or leading a life of comfort, but by making the necessary sacrifices and having the large families that everybody used to boast of in former days.

Only recently, I believe, the Right Honourable Mr. R.B. Bennett, returning from a trip around the world, suggested we needed more people. How is birth control and the indiscriminate distribution of contraceptives going to help to populate this country? I can’t see it.

It is for the public good to have a larger population, and it is for the authorities to remedy the economic situation. And the Code, I submit to Your Worship, is meant for the public good, and again, I submit this point: that Subsection 2 was not meant to defeat Subsection “C”. By working all together for a bigger and better Canada, -- which I believe still is part of the British Empire -- by doing that, we will work not only for a bigger and better country but also for a bigger and better empire.

I have expressed my views on the case, and I would rather leave the Court on this pleasant note than on more unpleasant ones; and again, I wish to thank Your Worship for your patience, and I wish to thank my learned friends for -- even Mr. Wegenast -- for his occasional courtesy.

MR. WEGENAST: Thank you for those kind words.

Your Worship, I was all prepared to argue to Your Worship that I have a right to reply to my friend, but I am not going to argue that now because I don’t need to reply, but I do want to express

my own personal appreciation, if I may. It is not good policy to compliment the judge or thank the judge, but this is an extraordinary case, and I think I should express just one word of appreciation, on my own behalf and on behalf of Mr. Beament, for the extraordinary patience of Your Worship, not to speak of a great many other things.

HIS WORSHIP: It has been a long, difficult case, gentlemen, and I do want to congratulate the counsel, both for the defence and the Crown, for the very fair and considerate manner in which they have handled themselves through what I would state to be a very difficult situation.

I am not prepared to give judgment today in this case. There is a great deal of evidence to cover. It is, to my mind, a very important question, and I wish to give considerable thought to the whole matter before I render my decision.

It is my intention to give a written judgment, and I therefore wish time to prepare it. I do not wish to take an undue length of time in this matter, but I would propose this: I will set a date, the 17th of March, and if by any chance I am able to complete my judgment before that date, I will undertake to notify both the defence and Crown counsel and set an earlier date. Under the circumstances, when a case is reserved for judgment, I think the accused may remain on bail until the date set rather than appear each week. So the accused now stands on bail until the 17th of March.

--- Court adjourned 4:30 p.m. until Wednesday, March 17th, 1937.

JUDGMENT

Dorothea Palmer is charged under Section 207 (c) of the Criminal Code of Canada, that she did "within the space of six months past, to wit, between the 1st day of August 1936 and the 1st day of September 1936, at the Town of Eastview, did unlawfully and knowingly and without lawful justification or excuse: Did advertise to several persons in the said Town of Eastview, by means of a pamphlet entitled "Birth Control and some of its simplest methods," and also "Le Controle de la Natalite et quelques unes de ses methodes les plus simple," instructions, drugs, medicine or articles intended or represented as a means of preventing conception.

Section 207 of the Criminal Code reads as follows:

> "(1) "Everyone is guilty of an indictable offence and liable to two years imprisonment who knowingly without lawful justification or excuse (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means or instructions, or any medicine, drug or article intended or represented as a means of preventing conception or of causing abortion or miscarriage.
>
> (2) No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done and that there was no excess in the acts alleged beyond what the public good required.
>
> (3) It shall be a question for the court or judge whether the occasion of the manufacture, sale, exposing for sale, publishing or exhibition is such as might be for the public good and whether there is evidence of excess beyond what the public good required in the manner, extent or circumstances in, to, or under which the manufacture, sale, exposing for sale, publishing or exhibition is made, but it shall be a question for the jury whether there is or is not such excess.
>
> (4) The motives of the manufacturer, seller, exposer, publisher or exhibitor shall in all cases be irrelevant."

The facts are that Miss Palmer is an employee of the Parents' Information Bureau of Kitchener. This Bureau is incorporated under the laws of the Dominion of Canada. It has some 53 persons

in various Canadian cities from Vancouver to Halifax apparently carrying on a similar type of work to that carried on by Miss Palmer. Most of those workers are, with a few exceptions, graduate nurses. Miss Palmer is one of the exceptions, although she has had some experience in nursing institutions. According to the evidence, Miss Palmer, during the month of August 1936, visited some 20 women in the Town of Eastview. Most of these women who gave evidence said that Miss Palmer knocked at their door; they did not know Miss Palmer before or how she happened to come to their particular door. Most of these women spoke English well; a few spoke and understood only a few words of English, and one could not speak or understand any English at all. Miss Palmer apparently could speak very little or no French. The woman who could speak no English used a friend as an interpreter.

Miss Palmer's method was to introduce herself as a nurse and to ask questions as to the age of the woman, her husband, her children, etc. The answers to all these questions were written down by Miss Palmer upon an application card together with a comment by Miss Palmer as to the home conditions and her observations as to the type of woman. Miss Palmer explained to the women that she was interviewing women with a view to the spacing of children. She then would demonstrate a sample box of tube, nozzle, and jelly, showing the women how and when to use it. She would then have the woman sign the application card which she would forward to the Parents' Information Bureau at Kitchener. If the application was "approved," the Parents' Information Bureau would mail to the applicant a box containing a nozzle and tube of contraceptive jelly, an envelope containing three condoms, a price list of pessaries, condoms, and jelly tubes, and a pamphlet containing information, instructions and comment upon various methods of contraception. This first box was sent free to each individual applicant, although they were requested to send $2.00 or any part thereof if they could afford it. The pamphlet would be in French or English according to the notation on the application card. Miss Palmer received a fee of $1.00 for every application card approved. This, briefly, is the method used by Miss Palmer.

Section 207 appears, with slightly different wording, as Section 179 in the 1898 Criminal Code of Canada which was based on the English Draft Code. The corresponding section of the English

Draft Code, however, does not contain the words of subsection (c) of subsection (1) but has instead the clause, “Publishes any obscene libel,” and it also omits the provision contained in subsection (2) of Section 207. The English Common Law deals only with obscene libels and literature. There are, therefore, no English cases to be found directly in point. Any English cases to be found deal with the question of “publishing an obscene libel”.

In 1900 – By C.46 of 63-64 Victoria, Section 179 was repealed and substituted by the wording in the Revised Statutes of Canada of 1906. C.146 Section 207 with the exception that in subsection (3), the 1900 amendment includes the words “so as to afford a justification or excuse therefore” in the second last line thereof. These words are omitted from the 1906 revision, although there is no amendment between 1900 and 1906.

In 1909 – By 8-9 Edward VII C.9, Section 2 – Part (a) of subsection 1 of Section 207 was repealed and substituted but that does not affect that part of Section 207 with which we have to deal.

The 1927 Revised Statutes of Canada contain Section 207 as set out in the beginning of this Judgment. There have been no amendments since 1927.

In as much as the accused has elected Summery Trial before me, I must function in this case both as a judge and jury. I shall deal first with section (1) of Section 207.

The burden is upon the Crown to satisfy the jury that the accused actually had knowledge, although knowledge may be inferred from the evidence: Rex vs. McDougall 15 C.C.C. 466. The accused, in the case of Marie Ange Pharand, used the French version of Exhibit 5B, the pamphlet in question, to help translate to Mrs. Pharand. Mrs. Pharand understood it was for “maternity”. In other cases, Miss Palmer told some of the women that they would find full instructions in the box to be sent to them. And in the boxes sent as a result of Miss Palmer’s activities are to be found pamphlets similar to Exhibit 5B. Her position was quite different from that of a newsboy selling papers on the street, as he is ordinarily quite ignorant of the contents, save in the case of some sensational news. Rex vs. Beaver 9 O.L.R. 419. Miss Palmer’s statement to the police clearly shows she had knowledge.

In my opinion, the Crown has proved that Miss Palmer had knowledge of the contents of the pamphlet, and the acts alleged to have been done by her were done with full knowledge within the meaning of Section 207 (1).

Dealing with the question of "Lawful justification or excuse," I quote from Mr. Justice Meredith in the case of Rex vs. St. Clair 1913, 12 D.L.R. 710.

> "Of lawful justification, there is no reasonable pretence. The Criminal Code, which defines the crime of which the defendant is convicted, deals with lawful justification expressly in many instances, such as the lawful justification for the acts of those who carry into execution the judgments of the courts or execute lawful warrants, reasonable correction of children by parents, person in 1oco parentis, schoolmaster or master and so forth: See the Criminal Code Section 16 to 68; so, too, or by analogy, anyone whose lawful duty requires him to do that which otherwise would constitute the crime in question is not guilty because such duty is such a lawful justification. That the defences lawful justification and public good are two different things is obvious upon the face of the enactment. "Lawful justification or excuse: The Criminal Code Section 207: The one justifies, the other excuses the act."

This Judgment was given upon appeal by the defendant from his conviction under subsection (a) of Section 207 for publishing grossly obscene words. Knowledge had been proved, and Mr. Justice Meredith went on to say:

> "Unless it can be considered that the publication of the grossly obscene words in question served the public good and were not excessive, the conviction must stand."

Following this Judgment, I must hold that the acts alleged to have been done by Miss Palmer were done without lawful justification. The question of excuse, or the public good, I shall deal with later.

Section 69 of the Criminal Code reads as follows:

> "Everyone is a party to and guilty of an offence who (6) does or omits an act for the purpose of aiding any person to commit the offence."

Miss Palmer, by calling upon the various women who gave evidence in this case, asking questions, demonstrating the tube, nozzle and jelly, obtaining their signature to the application card, and forwarding the application card to the Parents' Information Bureau at Kitchener, did acts which aided the Parents' Information Bureau to mail to these women a box containing among other things a pamphlet similar to Exhibit B. Therefore, if the sending through the mail of such a pamphlet constitutes an offence under Section 207, Miss Palmer is a party to and guilty of the offence.

The wording of subsection (c) of subsection (1) of Section 207 applicable to this case is "advertises…any means or instructions or any medicine, drug or article intended or represented as a means of preventing conception."

The pamphlet, Exhibit 5B, copies of which were included in the boxes mailed by the Parent's Information Bureau to the Eastview women witnesses in this case certainly contains means of instructions, intended or represented a means of preventing conception.

The question, therefore, arises as to whether the sending of this pamphlet in such a manner constitutes "advertising" within the meaning of Section 207 (1)(c).

The purpose of this pamphlet is to give to women instructions in the use of the contents of the free sample box of contraceptives sent to them. Miss Palmer told several witnesses that everything was explained in the pamphlet to be sent in the sample box. It was to be hoped that they would use the sample contraceptives in accordance with these instructions. After using them up, the women could then obtain replacements in accordance with the terms of a price list enclosed in the sample box. The pamphlet therefore has an element of commerce in it. On an inside page of the pamphlet is the address of the Parents' Information Bureau in Kitchener. The instructions contained in the pamphlet are part and parcel of the advertising designed to induce purchases of the articles sold by the Kitchener firm, the Parents' Information Bureau. The pamphlet, therefore, is advertising material, and the sending of the pamphlet to several persons in the Town of Eastview constitutes advertising.

It is to be noted, however, that Exhibit 5B contains instructions in many other methods of contraception than the

pessary, jelly and condom. It deals with homemade remedies. The only articles of commerce that the Parents' Information Bureau sells are the pessaries, condoms and jelly. The pamphlet, Exhibit 5B, I hold to be advertising, therefore, only in so far as it refers to these three articles or methods of contraception. As to the remainder of the pamphlet, it is the supplying of information or instructions on contraception. Miss Palmer is not charged with supplying or disposing or having for disposal but solely with advertising. The pamphlet, therefore, only applies to the charge in so far as it refers to the articles of commerce sold by the Parents' Information Bureau. In that aspect only do I look upon the pamphlet as advertising.

In the case of Rex vs. Karn 5 O.L.R. 704, the judge presiding at the sessions held that looking at the advertisement on the box and the printed instructions inside, i.e., at the whole of the advertisement, it was not advertising of a certain nature. In that case, the printed instructions were part and parcel of the whole advertising, just as, in this case, Exhibit 5B is part of the whole advertising.

I, therefore, hold that the acts alleged to have been done by Miss Palmer were done knowingly, without lawful justification, and for the purpose of aiding the Parents' Information Bureau to advertise means or instructions intended or represented as a means of preventing conception.

The accused has therefore cast upon her the onus of proving that the public good was served by the acts alleged to have been done and that there was no excess beyond what the public good required.

I have only been able to find one reported Canadian case under Section 207 (1)(c).

In Rex vs. Karn, 1903, 5 Ontario Law Reports 704 just quoted, the evidence for the Crown showed that the accused conducted a large business in various proprietary medicines including a certain medicine for stimulating or renewing the menstrual flow. The chairman at the sessions held that looking at the advertisement on the box and the printed instructions inside, i.e., at the whole advertisement, it was not one advertising a medicine for preventing contraception or causing abortion, and he directed an acquittal. A case was reserved, and on appeal, it

was held that it would have been right to have left the case to the jury. Mr. Justice MacLaren says:

> "I think it should have been left to the jury to say whether under the circumstances of the case, taking into account not only the language itself but also the context, the repetition of certain words and phrases and the prominence given to them by special type and otherwise, the advertisement in question did or did not actually bear the meaning charged in the indictment. If they came to the conclusion that it did, they would then have to inquire further whether in the language of the section above referred (then Section 179) the public good was served by the act complained of, or whether there was any excess beyond what the public good required or whether it was without lawful justification or excuse."

In as much as I am sitting as both judge and jury, I have, therefore, to decide all these questions upon the evidence.

Any other cases that I have been able to find deal with charges under subsection (1)(a) of Section 207 dealing with publication of obscene literature.

In Rex vs. McDougall 15 Canadian Criminal Cases, 466, the accused was charged with criminal libel through the publication of a magazine entitled "Free Speech.".

Mr. Justice White says:

> "In deciding whether or not these paragraphs are obscene, as also whether or not the public good could in any way be served by their publication, in this paper 'Free Speech,' not only the words themselves, but the character of the paper in which they appeared, as disclosed by the evidence, is to be taken into consideration."

In Rex vs. Beaver 90 Canadian Criminal Cases 425, the Judgement quotes from Burbidge, Page 505:

> "The publication of an edition of Juvenal, Rabelais & C. cannot be regarded as a crime; yet each of these books contains more or less obscenity for which it is impossible to offer any excuse whatever. I know not how the publication of them could be justified except by the consideration that upon the whole, it is for the public good that the words of remarkable men should be published

> as they are so that we may be able to form as complete an estimate as possible of their character and of the times in which they lived."

Rex vs. Britnall 1912, 26 Ontario Law Reports 141, and Rex vs. Graf 1900, 15 Canadian Criminal Cases, 193 turned upon the question of knowledge and not upon the question of the public good.

In Rex vs. St. Clair 1913, 12 D. Law Reports 710, the accused had prepared, had printed, and had in his possession for publication a thousand copies of a 'special bulletin' which contained disgusting details of an obscene character. He was convicted under Section 207 (1) (a).

This case turned on the question of obscenity and is therefore not applicable to the case before this Court.

I can find no other Canadian cases which could have any bearing upon the present case.

I shall now deal with subsection (2) of Section 207, namely the question of the public good in relation to Miss Palmer's acts.

The Criminal Code does not prohibit the use of contraceptive devices. What Miss Palmer is charged with is the advertising of certain means of contraceptives. The broad question of whether the use of contraceptives is or is not for the public good is not for this Court to decide. What the Court has to decide is whether Miss Palmer, in advertising contraceptives, was acting for the public good and whether there was any excess in her acts.

When one examines the conditions in the Town of Eastview, where over 1000 out of a population of 4000 are on relief, where the Province of Ontario has to provide $125,000.00 out of an annual $150,000.00 relief bill, it is reasonable to assume that in this Town of Eastview, there is a large pauper population.

It is a well-known fact that the rich and middle-class people who can afford to go to a doctor can and do obtain information on how to practice contraception and do use these means. It is also true that any person can go to a drugstore and purchase, without any red tape or restriction, any number of contraceptive devices. The one class of society from whom this information is being withheld is the poor classes.

An examination of birth statistics reveals that the poorer classes are generally breeding large families. Any person who

has had any experience with social service work or court work knows of countless poor families where children appear at regular year-apart intervals. The mothers are in poor health, pregnant nine months out of every year. Several witnesses in this case had 9 or 10 children and were aged 30 to 35 years, husband on relief or small salaries. What chances have these children to be properly fed, clothed and educated? They are a burden on the taxpayer. They crowd the Juvenile Court. They glut the competitive labour market. They are reared in conditions that impair their health.

What argument is there from a humanitarian point of view, from the point of view of the public good of humanity that will deny to these people the knowledge and the means of properly spacing these children so that the mother and the child can enjoy good health, and so that parents can control the number of children to the number that they can support in a manner above the mere level of starvation subsistence? And what means are available to these poor families in Eastview to obtain this knowledge? There is no birth control clinic in Ottawa or Eastview. There are only two doctors in Eastview, both Roman Catholics. The evidence appears to be that the only method of contraception that Roman Catholic doctors are permitted to advise is partial continence or the abstention of intercourse during certain periods. It has been pointed out that the majority of women are irregular in their menstrual period and that this method depends upon the time of the period to come. It seems to me that this method, even with the most careful and intelligent application, is open to the charge of unreliability. How can one then expect it to be efficacious among the poorer classes where intelligence is often below the general level? The uncertainties of this method surely must have a psychiatric effect upon women that is to say the least undesirable.

Therefore, what valid argument can there be against giving these women the most reliable information that medical science has discovered to date?

The pessary, condom, and jelly have all been declared by the medical witnesses in this case to be harmless and even to be advised in some cases for therapeutic reasons. There is no evidence to support the contention that they will cause sterility, cancer, or infection. It is argued that they will, but there are no experiments, no evidence to support that

contention. Rather the evidence tends to contradict this argument. From the evidence, I am satisfied that these three contraceptives are not harmful. And these three contraceptives are the ones Miss Palmer advertised.

It is argued that as these women are mostly Roman Catholics and that as Eastview's population is 71 percent Roman Catholic and the Roman Catholic Church forbids the use of mechanical and chemical contraceptives that, therefore, it is not for the public good for Miss Palmer to advertise to such people. I cannot see the harm of providing scientific truth and knowledge from the people. What they do with that knowledge is their own affair. If their religion forbids it and they accept the tenets of their religion, they will not use the knowledge. But the evidence of some of the witnesses, Roman Catholics, is that they wanted this information and intended to use it, the tenets of their religion notwithstanding. They were women to whom this information would be valuable. Is it for the public good to withhold this information from them?

It is argued that Section 207 (c) forbids the advertising of contraceptives and that subsection 2 should not be used to render subsection (c) meaningless: that if it is desired to legalize the advertising of contraceptives, Section 207 (c) should be repealed. It is obvious that the legislature did consider that there would be cases where the public good required the advertising or else why put subsection 2 in the statute? The Court is given the discretion to interpret wisely subsection 2. Here is an opportunity for the courts of law to keep abreast of the social development of the community and to break away from the criticism that the law is rigid and at times obsolete.

The defence argues that by virtue of its position in the Criminal Code, in the midst of a number of cases dealing with obscenity, that all that Section 207 contemplates is prohibiting the advertising (illegible) of contraceptives in an obscene manner. They point out that in England there is no law against the use, sale, advertising of contraceptives. The only legal limitation is the Common Law limitation of criminal or obscene libel. Section 147 of Stephens Digest of the Criminal Law only dealt with obscene libel. Section 207 of the Canadian Criminal Code is based on Section 147 of Stephen's Draft. There is considerable strength to this argument. However, it seems to me

that subsection (c) of Section 207 appears to be an extension of the Common Law. It deals with the sale, disposal (illegible) of means of contraception, and contemplates more than merely printed obscene matter such as the law of obscene libel deals with.

If, however, one holds that Section 207 is an extension and not a mere codification of the Common Law and that, therefore, the principles laid down in the Common Law cases in England are not applicable, there arises a difficult point in the construction of subsection 4.

This subsection makes motive irrelevant in the cases of "the manufacturer, the seller, the exposer, publisher or exhibitor". It fails to mention the "advertiser". A penal statute ought to be strictly construed in favour of the accused. The legislature may have intended the advertiser to be included, but they have not done so. I hold, therefore, that the motive is relevant in the case of Miss Palmer.

Dealing with motive, Miss Palmer, in her statements to the police, stated that she was trying to help the poor mothers of Eastview who are overburdened with large families. The Crown argues that her method of dealing with the women witnesses rather suggested an impatience to obtain a signed application so that she could hurry it to Kitchener for approval and thereby receive the $1.00 fee for each application approved. While there is room for argument on this point, it is an inference the Court is asked to draw against the declared motive of the accused. In certain cases, her actions may be open to censure, but I think that she must be given the benefit of any doubt in this question, however small, and there is some doubt in my mind on this point.

If, therefore, there are strong grounds for the dissemination of birth control information in Eastview, if there are no other means of Eastview women obtaining this information, if the methods advertised are harmless, if the women witnesses wanted this information and thought there was nothing wrong in obtaining it and if Miss Palmer, a nurse, had a bona fide motive in her work, should not any court of law in an honest effort to interpret the law for the well-being of the community come to the conclusion that Miss Palmer's acts were for the public good and that the excess in one or two cases was so small compared to the good in other cases as to amount to no excess at all?

That is the conclusion I have come to, well knowing that opinion is sharply divided on so contentious a question. The development of public opinion in this matter during the past ten years has been tremendous. Religious bodies even are declaring, in guarded tones, in favour. Social welfare organizations have declared themselves in favour. In Australia 50 years ago, in the case of In re Collins, 9 N.S.W.L.R. 497, Mr. Justice Windeyer expressed opinions wholly in accord with mine as outlined above. Is Canada, 50 years later, still to be wandering in the intellectual and social wilderness on this vital subject?

For the reasons stated above, I hold that Miss Palmer has proved that the public good was served by the acts she is alleged to have done and that there was no excess in the acts alleged beyond what the public good required. The charge, therefore, will be dismissed.