

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

REX vs. PALMER

Eastview Police Court,
1936

Volume ^{II}~~III~~ (of ⁹~~10~~ volumes)

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Mr. Mequast

Rex vs. Palmer

Defence
non suit argument

D-199

to

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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 waiving that stipulation and I will
allow more than five experts.

Mr. Mercier:

Before stating my case is closed -- there is a

Mr. Mercier:

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 matter 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 -"

"(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 conception 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.

Mr. Wegenast:

"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 subsection 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.

Mr. Wegenast:

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 friends 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

Mr. Mercier:

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.

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

Mr. Wegenast:

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 ~~the~~ 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.

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 ^dbrige 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)

(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} ~~contre-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} and offence of this kind and it is one we must argue inferentially from the merest elemental type of thing.^{king}

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,-

~~the same~~ during the same dates: "(c) did have for disposal means or instructions represented or intended as a as a means of preventing conception."

While at that point I may say that the Crown on the order of Your Worship ^{particularized} penalized the second of those two charges as follows:

"The 'means' therein referred to are the 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'".

Under the Code those particulars become part of the record and must be preferred.

Mr. Beament:

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 ~~not being proved~~ 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. Women after woman was

Mr. Beament:

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.

Mr. Beament:

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

Mr. Beament:

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 1936² 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 binding on the Crown. Further the particulars if incorporated in the information or indictment, as long as they remain particulars, do not rectify the ~~importance~~ 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.

Mr. Beament:

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

Mr. Beament:

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~~ 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 ~~entire~~ 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 ^{show} 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

Mr. Beament:

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.

Furthemore, 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 fery 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~~ 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

Mr. Beament:

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 ~~things~~ methods.

"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

Mr. Beament:

"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 doctors' advice at all any person might endeavour 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. DeHaitze admitted two things -- he admitted a number, but two are relevant --

Mr. Beament:

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 arrent nonsense.

Mr. Beament:

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

Mr. Beament:

to the matter before us but the importance of their decisions 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 Ellis, 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:

Mr. Beament:

"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.

Now, as I have told Your Worship there
is no similar offence in any jurisdiction and
persons who attempted to enlighten the popul-
ation 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 misdemeanour
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

Mr. Beament:

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 misdemeanour.....B.....before students B. 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.

Again, in this regard I would like to give Your Worship some further remarks. The case is that of Sutherland and Stokes; 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.

Mr. Beament:

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 - Bessym^{ant} difficulty. It was finally squashed in 1877:

"Bradlaw was convicted in 1857.....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^W Renbury in that House. It is ~~quoted~~ reported among other places in ^{19(?)}25 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 Renbury wrote a dissenting judgment. ~~It~~ 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:

Mr. Beament:

".....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".

Now I submit to Your Worship whatever may have been said about the dissemination ~~in~~ of birth control in 1877, 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 practised 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~~ worker providing devices or 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

Mr. Beament:

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 endeavour 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.

Mr. Mercier:

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 ^{each} assist/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*)

Undoubtedly this is an offence under the 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 exists~~

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

Mr. Mercier:

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 *case* prima facie has been established.

Now Your Worship my learned friend has mentioned the Pharend 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

Mr. Mercier:

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 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

Mr. Mercier:

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

Mr. Mercier:

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.

Mr. Beament:

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 went to~~ ~~these houses~~ 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.

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.

Mr. Mercier;

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 offense 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." (*Cranshaw 5th, 1924*).

She is charged 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.

Mr. Beament:

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 or 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 perview of the legislation -- it was relevant. Sub-section 4 says:

"The motives of the manufacture, seller, exposor, publisher or exhibitor, shall in all cases be irrelevant".

In this section, sub-section A,

"(a) makes, manufactures, or sells, or exposes

Mr. Beament:

"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 ~~p~~ morals, or any plate for the reproduction of any such picture or photograph;

"(b) publicly exhibits any disgusting object or any indecent show; or".

Sub-section 4 refers to manufacturers, sellers, ex-
posers, publishers or exhibitors. It does not
refer to advertisers or to a person having for
disposal.

Under legislation where it is enacted ~~xxx~~ for
one class, other classes are deemed excluded and
the legislature by omitting to include "and adver-
tisers" 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 question of disposal, I say this, and just

Mr. Mercier:

like a commercial traveller comes with a catalogue, sells ~~x~~ 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 of a conversation ~~was~~ with certain women who signed

Mr. Mercier:

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 ~~he~~ 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 ~~punx~~ charged with ~~isshery/for~~ 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 traveller -- she represents a house -- some institution which ~~x~~ 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. / These goods are at her beck and call.

Mr. Mercier:

The minute a signed application is sent or an order is taken by her or the commercial traveller, an

Mr. Mercier:

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.

(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 ^{prudence} which there apparently is no jurisdiction on this particular point, as raised in this case.

There have been a ~~gn~~ great number of points

The Court:

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. Megeest

Re. vs. Palmer

Miss Meber	D. 240	to	D. 271
Mr. Kaufman	D. 272	to	D. 307
W. E. Scott	D. 308	to	D. 317
Leroque	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 ^{n 91}Alia 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.

To Mr. Wegenast:

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.

To Mr. Wegenast:

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.

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

To Mr. Wegenast:

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 ~~happened~~^{about} the families of these people?

A. They were large, most of them.

To Mr. Wegenast:

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 re-

To Mr. Wegenast:

ceived 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?

To Mr. Wegenast:

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

To Mr. Wegenast:

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

To Mr. Wegenast:

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 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:

~~What~~ 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.

To Mr. Wegenast:

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. De-Haitre 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 exper-

To Mr. Wegenast:

ience 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 criticise 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.

To Mr. Wegenast:

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 ~~right~~ 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?

To Mr. Wegenast:

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:

Q. Two per cent lactic acid; ten percent 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.

To Mr. Wegenast:

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} ~~I~~/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

To Mr. Mercier:

love or ten children to love?

A. No.

Q. Now, Miss Weber, the Kaufman Rubber company where you are a nurse -- what do they manufacture?

A. Footwear.

Q. None of these ingredients are manufactured there?

A. The diaphragm pessary.

Q. And the condoms?

A. No.

Q. And the jelly?

A. No.

Q. So the first work of your institution in 1929 was for the sterilization of feeble minded wives, if I gathered your evidence correctly: that is what it started for?

A. (No reply).

Q. Was there not a question about the sterilization of the feeble minded?

A. Yes.

Q. As a result of investigations you had made, you found that there were feeble minded people who might give birth to children: that was the burden of your discovery?

A. Yes.

Q. From then on you decided or thought you could take a hand in families where there were too many children and you would help them have the necessary means of contraception, as harmless as possible?

A. Yes.

Q. The decision, you say, of your head office is

To Mr. Mercier:

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?

A. Yes.

Q. 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 nurse-

To Mr. Mercier:

maid?

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.

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?

To Mr. Mercier:

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.

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.

ToThe 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?

To Mr. Mercier:

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. ~~z~~ 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

To Mr. Mercier:

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.

Mr. Wegenast:

If there is no reason why the pregnancy should not 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?

To Mr. Mercier:

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 ~~many~~ 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.

Mr. Wegenast:

Are those English?

Mr. Mercier:

French.

To Mr. Mercier:

Q. Do you agree with M Dr. DeHaitre that many women do not even know how to douche themselves?

To Mr. Mercier:

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 vagine 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

To Mr. Mercier:

answer.

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." ~~an~~

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,

To Mr. Mercier:

might it not cause irritation through continued use?

A. It is antiseptic.

Q. So is vasolene?

A. No.

Q. Or any other thing -- the same thing, if vasolene 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 of 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

To Mr. Mercier:

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 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

to Mr. Mercier:

mother's.

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 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 employigg 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?

Q. 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 ~~it~~ ^{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.

To Mr. Mercier:

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~~ 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

To Mr. Mercier:

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

To Mr. Mercier:

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. Therefore, 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 ~~be~~ 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

Mr. Wegenast:

Q. Arising out of that -- it is new -- if it were a home with ~~x~~ 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 one p. m.).

- - - - -

(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?

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.

To Mr. Wegenast:

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.

~~Q.~~
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

To Mr. Wegenast:

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 in-

To Mr. Wegenast:

formation with various authorities I could contact and after 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 -- ?

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 filed 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

The Witness:

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 calibre 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 sent 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

To the Court:

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 ~~1944~~ -- ?

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 pregnant

To the Court:

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 ~~HEX~~ 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 sheet, says: "period from August 7, 1935 to September 30, 1936").

Mr. Wegenast: (reading from Exhibit 32-B):

"ASSETS

Cash in bank -	\$ 135.54
Inventory (estimated) -	532.80
Deficit, brought forward from Statement of Income and Expenses -	1,384.52
	<hr/>
	2,052.86

LIABILITIES

Unpaid accounts -	2,022.86
Capital Stock, paid up -	30.00
	<hr/>
	2,052.86

STATEMENT OF INCOME

AND EXPENSES

INCOME

Sales and fees -	9,887.01
Donations -	48,184.25
Rent -	162.00
	<hr/>
	58,233.26

Mr. Wegenast (continues reading from Exhibit 32-B):

Deficit for period, carried to balance sheet -	\$ 1,384.52
	<hr/>
	59,617.78
EXPENSES	
Fees for applications -	29,102.15
Materials -	\$16,978.08
<u>Less</u> inventory (estimated), 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
	<hr/>
	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.

To Mr. Wegenast:

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

To Mr. Wegenast:

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 ~~investigated~~ 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

To Mr. Mercier:

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 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.

To Mr. Mercier:

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?

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 ~~post~~ mail to people recommended if the payment is included."

("Les preservatifs suivants seront envoyes 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 ~~the~~ 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~~ 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.

To Mr. Mercier:

Q. 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.

To Mr. Mercier:

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

Mr. Mercier:

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 supplies only. It is likely that the expansion of the work must be checked on account of the expense...Q"

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 ever establishing myself on a commercial basis.

To Mr. Mercier:

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?

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 ~~phrnsphst~~ 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.

To Mr. Mercier:

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.

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 ~~how~~ why?

A. I stated the applications are refused for lack of sufficient information; when the date is 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 ~~xxx~~ ^{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 thing if they are pregnant?

To Mr. Mercier:

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 thereplies given to the worker?

A. Yes.

Q. And it might be easier for a doctor to tell if a

To Mr. Mercier:

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? X

A. We do not.

Q. Do you know whether or not -- don't answer unless you wish -- do you know if some woman 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. 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

To Mr. Mercier;

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?

Q. 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
a
make/door to door canvass.

Q. At least, they are not supposed to?

A. I think it is very seldom done.

Q. From door to door?

To Mr. Mercier:

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.

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 ~~xxx~~ 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?

To Mr. Mercier:

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.

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.

To Mr. Mercier:

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

To Mr. Mercier:

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 ~~xx~~ doesn't know

To Mr. Mercier:

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 ~~xxx~~ correct enough to give correct information?

To Mr. Mercier:

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.

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

To Mr. Mercier:

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 .

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.

To Mr. Mercier:

Q. What do you think is "enough to understand one another"?

ToThe Court:

Q. Inx 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

To the Court:

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?

To Mr. Mercier:

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.

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?

xx

To Mr. Wegenast:

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 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 inter-

To Mr. Wegenast:

ested 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 ~~prejud~~ 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 county 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 ~~xxxx~~ birth control information and they get it.

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

To Mr. Wegenast:

the hope I won't ~~xxxx~~ 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, ~~xx~~ 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-five thousand.

To the Court:

Q. Sent in by workers?

A. Well, the Toronto clinic, - I own and control it, but it has independent operation. In Kitchener, almost fourteen months, I would say we had almost twenty-three thousand.

Q. That is all, Mr. Kaufman.

(Witness retired).

The Court:

Adjourn for five minutes (at 4:00 o'clock).

- - - - -

(Following five-minute recess, at 4:05 p.m.)

Walter Elliott Scott, duly sworn, deposed:

To the Court:

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 ~~area~~ 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
the
them in/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.

To Mr. Wegenast:

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 I 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

Mr. Wegenast:

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 has 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?

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:

To Mr. Wegenast:

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 ~~36~~ 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.

To Mr. Wegenast:

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 ~~not~~ 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 ~~41~~ 42-B.

To Mr. Wegenast:

Q. What else?

A. One pessary.

Mr. Wegenast:

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 men 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.

Q. 45-B - this is manufactured in England, and?

A. One rubber pessary.

Q. They stuck you hard for that?

To Mr. Wegenast:

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.

The Court:

Exhibit 47-B.

To Mr. Wegenast:

Q. Now, we come to?

To Mr. Wegenast:

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:

Q. What is your occupation?

A. Government relief inspector for the provincial government.

Q. Are you acting in that capacity now?

To Mr. Mercier:

A. Not just now.

Q. Have you any occupation now?

A. Not connected now.

(Witness retired).

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?

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?

To the Court:

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 ~~wh~~ 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:

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 social 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 ~~sm~~ birth control to social service?

A. I don't want to speak soft neither do I want to press, but I 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 ~~xxx~~ 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,

To Mr. Wegenast:

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 street.

Q. That is Mr. Kaufman's clinic there?

A. Yes; I didn't know it then.

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 everytime he came out of jail the children came, on an average of every fifteen months, and I went back for some time and it seem^ed 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^t might object: I know of one man with nine children

To Mr. Wegenast:

in three rooms and when someone brought him to ~~take~~
task all he said was his wife was having as many
children as God sent -- whether ^{he} ~~I~~ 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; ~~and~~ 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 stricly 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 --

To the Court:

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, ~~but~~ quite sane 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 ~~xix~~ 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.

To Mr. Wegenast:

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 to birth control and I want to know whether or not there has been a change in 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?

To Mr. Wegenast:

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:

Q. You wouldn't advise a social worker that young girls or ~~w~~ 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.

To Mr. Mercier:

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~~ 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 and 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 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

To Mr. Mercier:

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 advise people to use contraceptives?

To Mr. Mercier:

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 ~~x~~ 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.

To ~~Mr. Martin~~ the Court:

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 ~~is~~ 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 ~~sure~~^{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

To the Court:

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 it, 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~~ 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

To Mr. Wegenast:

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 ^{Oct} November 23, 1936) to Tuesday
morning at ten o'clock (^{Oct} November 27, 1936).

(The Court resumed at 10:00 a. m., 27th ^{Oct.} November, 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 East-view 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

The Court:

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 advertizing designed to induce purchases of articles sold by the Kitchener firm, the Parents' Information Bureau. The pamphlet therefore is advertising.

Therefore the Crown und^exr 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"^u denotes some kind of possession. ~~If~~ 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"

The Court:

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 Count 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. DeHiatre'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 ~~xx~~ his long testimony

The Court:

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 she 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 evidence-and 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 ~~single~~ sample box. Miss Hudon swears that she told Miss Palmer that she was unmarried before Miss Palmer left the house.

The Court:

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 Pamer 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.

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 ~~mx~~ 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

Mr. Mercier:

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.

- - - - -

Denis W. Savoie, duly sworn, deposed:

To the Court:

Q. Your name?

A. Denis W. Savoie.

To Mr. Wegenast:

Q. ~~You~~ 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 ~~is~~ ^{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:

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 ~~px~~ 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.

~~px~~

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 went all the information available.

Mr. Wegenast:

This is June, 1935, and I want to ask the witness if conditions are substantially different.

~~Mr~~ 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?

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.

Q

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 ~~gaining~~ 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

To Mr. Wegenast:

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 percent assistance from the provincial government now?

A. Not one hundred per cent; the municipality has to make its contribution.

Q. What is its contribution?

A. I have never ~~figured~~ ^{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 some one 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

To Mr. Wegenast:

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:

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?

ToThe 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

To the Court:

protection?

A. Yes; it will take a day and a half.

To Mr. Wegensst:

Q. We will give you three or four days. Now, Mr. Savoie, can you make any ~~other~~ 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?

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 ~~xxx~~ 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. Wegensst:

He is to look them all over and I am asking him

Mr. Wegenast:

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.^{ti} 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 to anybody, ~~may~~ 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 wit-

The Court:

ness. 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~~ To Mr. Mercier:

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?

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:

Q. That is all.

(Witness retired).

The Court:

Exhibit 53-B. ("Survey of Greater Ottawa").

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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 reports of the City of Ottawa ~~from~~ 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?

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).

