Outline of Select Legal and Topical Issues

For

"Women's Issues: Everything Old is New Again"

Subtopic: Pay Equity

I. Pay Equity – Up To 1950

- Backdrop: From 1912 to 1923, minimum wage laws covering women and children were enacted in 15 states, the District of Columbia, and Puerto Rico. Then, in 1923 the U.S. Supreme Court in *Adkins v. Children's Hospital*, declared that the District of Columbia's minimum wage law violated the right of contract under the due process clause of the Fifth Amendment.

- 1932 – Federal Economic Act passed in response to job shortages during the Great Depression. Includes provision prohibiting wives of federal employees from holding government positions and declares that women with employed husbands be first on the lists for firing/layoff.

- 1935 – National Recovery Act passes, again in response to job shortages in the Great Depression. The Act provided that women holding jobs with the government receive 25% less pay than men in the same jobs.

- 1938 – Fair Labor Standards Act. Drafted by Senator Hugo Black in 1932 (he was later appointed to the Supreme Court in 1937). The Act established an eight-hour work day and a forty-hour work week, and allowed workers to earn overtime wages. Set a minimum wage of 25 cents per hour.

    - Impact on women workers was limited due to the exclusion of several key job sectors (initially excluded agriculture, domestic work, retail, laundry, hotel and restaurant work, government employment and food processing).

    - It covered 14% of employed women vs 39% of employed men.

- 1942 – War Labor Board rules enacted providing for voluntary "adjustments which equalize wage or salary rates paid to females with the rates paid to males for comparable quality and quantity of work on the same or similar operations."

    - Most employers ignored the voluntary request and at war's end most women were pushed out of their jobs to make room for returning veterans.

I. Pay Equity – 1950-1980s

FEDERAL LAW:

- Equal Pay Act of 1963 - 29 USC §206(d) Prohibition of sex discrimination

  (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

  (2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

  (3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

  (4) As used in this subsection, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

  - Act was an amendment to the Fair Labor Standards Act. Congress intended to remedy the fact that the wage structure of "many segments of American industry has been based on an ancient but outmoded belief that a man, because of his role in society, should be paid more than a woman even though his duties are the same." S. Rep. No. 176, 88th Cong., 1st Sess., 1.

  - EPA limitations:

    - Applies only to employees covered by the FLSA. Excludes certain retail sales, agriculture, and other work.

    - Applies only to "equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."

    - EPA's four affirmative defenses exempt any wage differentials attributable to seniority, merit, quantity or quality of production, or "any other factor other than sex."

- Pertinent cases:

    - *Corning Glass Works v. Brennan*, 417 US 188 (1974): Under the Equal Pay Act, the allocation of proof in a pay discrimination case requires the plaintiff to prove that an employer pays an employee of one sex more than an employee of the other sex for substantially equal work. The application of an exception under the EPA is an affirmative defense.

    - *Stanley v. Univ. of S. Cal.,* 178 F3d 1069 (9th Cir.1999) and *Maxwell v. City of Tucson*, 803 F2d 444 (9th Cir. 1986): Once the plaintiff establishes a *prima facie* case under the EPA, the burden shifts to the employer to demonstrate that the wage disparity is attributable to one of four statutory exceptions: (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (3) a differential based on any other factor other than sex. These exceptions are affirmative defenses which the employer must plead and prove. The final exception for "any other factor other than sex" is a catch-all provision that covers legitimate business reasons for discriminating as to pay. If the employer establishes one of the affirmative defenses, the burden shifts back to the plaintiff to show that the employer's proffered nondiscriminatory reason is a pretext for discrimination. EPA claims are also cognizable as disparate treatment claims under Title VII, since both statutes render it unlawful to differentiate "in wages on the basis of a person's sex." Title VII also incorporates the Equal Pay Act's affirmative defenses. Hence, a defendant who proves one of the defenses cannot be held liable under either the Equal Pay Act or Title VII.

- ***Title VII, 42 USC § 2000e et seq.* –** Title VII of the Civil Rights Act of 1964 makes it an "unlawful employment practice" to discriminate "against any individual with respect to his [sic!] compensation ... because of such individual's ... sex." 42 USC § 2000e–2(a)(1). An individual wishing to challenge an employment practice under this provision must first file a charge with the EEOC. § 2000e–5(e)(1).

  Discriminatory pay can be the subject of a Title VII sex discrimination case, i.e., where a woman is paid less than a man because of her sex.

  The key distinction between the EPA and Title VII is that the former requires a showing of intent. In practical effect, if the trier of fact is in equipoise about whether the wage differential is motivated by gender discrimination, Title VII compels a verdict for the employer, while the EPA compels a verdict for the plaintiff. Sullivan, M. Zimmer, & R. White, *Employment Discrimination: Law and Practice* § 7.08[F][3], p. 532 (3d ed.2002).

    - Pertinent cases:

        - *County of Washington v. Gunther*, 452 US 161 (1981): The Bennett Amendment, which incorporates the four affirmative defenses of the Equal

Pay Act (EPA) into Title VII, does not limit Title VII pay discrimination claims to EPA claims, i.e., that the work involved is "equal work."[1] Title VII wage claims can be broader than EPA claims because Title VII, unlike the EPA, is "intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes."

- *Ledbetter v. Goodyear Tire & Rubber Co*., 550 US 618 (2007), a 5/4 majority held that a claim for disparate treatment in the form of pay must be presented to the EEOC within the 180 day period prescribed by statute. Majority rejected argument that unequal payments made within 180-day period "carried forward" discriminatory actions before period that that resulted in Lily Ledbetter being paid disparately compared to males. Because the discriminatory actions occurred outside the 180-day period, her Title VII claim was time-barred (Ledbetter also had filed an Equal Pay Act case, but that claim had been dismissed on summary judgment). Congress subsequently passed the Lily Ledbetter Fair Pay Act in 2009. The Act amended Title VII. It provides that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new paycheck affected by that discriminatory action. President Obama signed it in 2009, the first statute he signed into law.

STATE LAW:

- Fajardo v. Morgan, 15 Or App 454 (1973): Appeal from a decision of the Employment Appeals Board denying a claim for unemployment compensation. The Court of Appeals, Foley, J., held that claimant was not required to bring action against employer under Civil Rights Act prior to seeking unemployment compensation and that discrimination against female employee on the basis of sex constituted 'good cause' for her voluntarily leaving employment so that she was entitled to benefits.

- The above case cites to an older Colorado case: "In Indust. Com. v. McIntyre, 162 Colo. 227, 425 P.2d 279 (1967), the claimant was transferred from the mail room to the file room so that she could be replaced by a man. She considered this a demotion. In the file room she was forced to stand all day while other employees had desks and chairs. She resigned and the court held that she was entitled to unemployment benefits since she was forced to work under conditions not prevailing among her peers."

- City of Portland v. Bureau of Labor and Industries, 298 Or 104 (1984): City petitioned for judicial review of order of Commissioner of Labor which found that city had committed unfair employment practice by virtue of wage discrimination on basis of sex

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[1] The Bennett Amendment provides:

"It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206 (d) of title 29." 42 U.S.C. 2000e-2 (h).

and had awarded female employee back pay and damages for mental suffering. The Court of Appeals, 61 Or.App. 182, 656 P.2d 353, found no sex discrimination, but, on reconsideration, 64 Or.App. 341, 668 P.2d 433, upheld damages for emotional distress resulting from unlawful retaliation for filing complaint. On review, the Supreme Court, Lent, J., held that: (1) claim of wage discrimination on basis of sex stated cause of action under Fair Employment Practices Act, notwithstanding that city was excluded from coverage of Equal Pay Act; (2) fact that city civil service board which established wage rates was not subject to control by city council did not preclude city's liability; (3) fact that female employee was in different classification from male employees did not preclude finding of discrimination; and (4) evidence that female employee at lower classification performed essentially same duties as male employees who received higher wage afforded rational basis for finding of unlawful disparity of pay by reason of sex.

- Portland Police Ass'n v. Civil Service Bd. of Portland, 292 Or 433 (1982): City police association brought action against city civil service board and its individual members seeking a declaration that the rule relating to certification of minority and women candidates for classified civil service positions and adopted by the board was beyond the board's authority to adopt and therefore invalid. The Circuit Court, Multnomah County, Clifford B. Olsen, J., entered judgment for the association, and board appealed. The Court of Appeals, 52 Or.App. 285, 628 P.2d 421, reversed. On review, the Supreme Court, Peterson, J., held that although the affirmative action rule conflicted with the city charter requirement that hiring be merit based, the rule was not invalid on its face.

- Smith v. Bull Run School Dist. No. 45, 80 Or App 226 (1986): Female school teachers commenced action for damages under state and federal Equal Pay Acts. The Circuit Court, Clackamas County, Howard J. Blanding, J., entered judgment for school district, and teachers appealed. The Court of Appeals, Warren, J., held that judgment was supported by substantial evidence notwithstanding ambiguities in memorandum opinion indicating possibility of requiring teachers to prove discrimination based on sex.

- Bureau of Labor and Industries v. City of Roseburg, 75 Or App 306 (1985): Bureau of Labor and Industries brought action against city, alleging discrimination in compensation of female transit coordinator because of her sex. The Commissioner of Bureau of Labor and Industries entered order finding that city had committed unlawful employment practice, and city brought petition for review. The Court of Appeals, Newman, J., held that: (1) allowing Bureau to amend charges was not error; (2) evidence was sufficient to sustain Commissioner's finding that female transit coordinator's job was substantially similar to work performed by three male employees of city; (3) Bureau proved prima facie case of employment discrimination; (4) city's assertions that merit system and job classification system were reasons for pay disparity were insufficient to overcome inference of unlawful sex discrimination.

- City of Portland v. Bureau of Labor and Industries, 64 Or App 341 (1983): City petitioned for judicial review of an order of the Commissioner of Bureau of Labor and Industries which found that city had committed unfair employment practices and awarded claimant back pay and damages for mental suffering. The Court of Appeals, 61 Or.App.

182, 656 P.2d 353, affirmed in part, reversed in part and remanded. On reconsideration, the Court of Appeals, Van Hoomissen, J., held that a $15,000 award to claimant for emotional distress was proper where it was intended to compensate claimant for damages she suffered due to unlawful retaliation against claimant, and where the award was not compensation for claimant's discrimination claim which was reversed. Reconsidered granted; affirmed as modified.

III. Pay Equity – Present

- **Some current issues**

  Women earned on average $0.78 to every $1 earned by men in 2013 (78%) for annual earnings. No matter what their race/ethnicity, age, occupation, or education, all women are impacted by the gender wage gap, and the gap doesn't close the higher women go. In 2014, the median weekly earnings for women in full-time management, professional, and related occupations was $981 compared to $1,346 for men.

  To put the wage gap in perspective, women will need to work more than 70 additional days each year to catch up to men. Another way to think about it is that the average full-time working woman will lose more than $460,000 over a 40 year period in wages due only to the wage gap. To catch up, she will need to work 12 additional years.

  At the current rate of change, it will take 45 years (until 2058) for women and men to reach parity. Some studies predict that change will take 100 years because the rate of change has slowed down over the past 10 years.

- **Explanations for the wage gap?**

  - **Family Responsibilities**

    Motherhood is associated with a wage penalty. Yet men continue to earn more even after they have children. While economists have long speculated that these different experiences reflect household decisions about specialization and women with children do work fewer hours and are more likely to take parental leave, more recent research has documented patterns of discrimination against women with children.

    In fact, once they have children, women do earn less and are more likely to leave the labor force. However, not all women who do so are doing it by choice. Research shows that when women have access to paid maternity leave, a year later they work more and have commensurately higher earnings. A lack of access to leave or affordable quality childcare prevents some women who would like to work from doing so.

- **Negotiations and Promotions**

  In general, women, even highly-educated women, are less likely to negotiate their first job offer than men. But even when women do negotiate, if the norms of negotiation and salary expectations are not transparent, they are likely to receive less than men.

  Even though negotiation can lead to greater career prospects and higher wages, it can also be detrimental, particularly for women. Studies show that women are more often penalized for initiating negotiations, largely because female negotiators, while perceived as technically competent, were also viewed as socially incompetent.

- **Discrimination**

  It is difficult to isolate how much of the pay gap is due to discrimination. Discrimination and implicit bias can impact the pay gap through many channels. It can influence what women choose to study in school, the industry or occupation that they choose to work in, the likelihood of a promotion or a raise, and even the chances that they stay working in their chosen profession.

  Yet even when we ignore these forms of discrimination and hold education, experience, employment gaps due to children, occupation, industry, and job title constant, there is a pay gap. This "unexplained" pay gap leaves little beyond discrimination to explain it. Some research has found that this unexplained portion is a sizeable share of the total gap – 41 percent.

  While it is difficult to get a measure of discrimination from data sets, more experimental research is starting to show evidence of discrimination in hiring, pay, and advancement. Resume studies have shown that, among identical resumes where only the name differs, gender affects whether the candidate is hired, the starting salary offered, and the employer's overall assessment of the candidate's quality.

- **Policy Solutions**

  - **The Equal Paycheck Act**

    The Paycheck Fairness Act would amend the portion of the Equal Pay Act.

    The bill would revise the exception to the prohibition for a wage rate differential to education, training, or experience. Defenses for an employer shall apply only if the employer demonstrates that such factor: (1) is not based upon or derived from a sex-based differential in compensation, (2) is job-related with respect to the position in question, and (3) is consistent with business necessity. Defense would

be inapplicable where the employee demonstrates that: (1) an alternative employment practice exists that would serve the same business purpose without producing such differential, and (2) the employer has refused to adopt such alternative practice.

The bill would also revise the prohibition against employer retaliation for employee complaints by prohibiting retaliation for inquiring about, discussing, or disclosing the wages of the employee or another employee in response to a complaint or charge, or in furtherance of a sex discrimination investigation, proceeding, hearing, or action, or an investigation conducted by the employer.

For damages, the bill would make employers who violate sex discrimination prohibitions liable in a civil action for either compensatory or (except for the federal government) punitive damages. It would state that any action brought to enforce the prohibition against sex discrimination may be maintained as a class action in which individuals may be joined as party plaintiffs without their written consent and allow the United States Secretary of Labor (Secretary) to seek additional compensatory or punitive damages in a sex discrimination action.

The bill would also require state agencies to collect of gender equity pay data and make grants available for negotiation skills training for girls and women.

- **Eliminating Pay Secrecy**

  A pay gap stemming from discrimination is particularly likely to exist under conditions of pay secrecy, where workers do not know whether they are being discriminated against. In order to improve pay transparency and ensure fair pay, workers should be allowed to discuss compensation without fear of retaliation. The Paycheck Fairness Act could make it law to protect workers who discuss their compensation without fear of retaliation from their employers.

- **Raising the Minimum Wage**

  Raising the minimum wage and the tipped minimum is particularly important for women since women are disproportionately represented in lower-wage sectors. Although women are 47 percent of the labor force, they represent about 56 percent of workers who would benefit from increasing the minimum wage and indexing it to inflation.

- **Family Friendly Work Environments**

  Family-friendly workplace policies and paid maternity leave can also better enable workers to choose jobs in which they will be most productive. Work-life balance policies are associated with higher productivity, and a survey of California employers found that 90 percent reported that paid maternity leave did not harm productivity, profitability, turnover, or morale.

Written Materials:

1. Attached 1935 National Recovery Act

2. Attached Labor Force Participation Rates for Women 1950 to 2000

3. Attached Unemployment by Gender 1930 to 1940

4. Fair Labor Standards Act – http://www.dol.gov/whd/flsa/

5. Handy Reference Guide to Complying with the FLSA – http://www.dol.gov/whd/regs/compliance/hrg.htm

6. National Committee on Pay Equity - http://www.pay-equity.org/info-Q&A.html

7. "The Equal Pay Act – Powerful But not Enough" - http://www.washingtonmonthly.com/political-animal-a/2013_06/the_equal_pay_act_powerful_but045215.php

8. National Women's Law Center - http://www.nwlc.org/tags/equal-pay-act

9. Statistics – https://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf

10. Calculating what the statistics mean – http://www.nwlc.org/resource/how-wage-gap-hurts-women-and-families

11. Summary of the Paycheck Fairness Act – https://www.congress.gov/bill/113th-congress/senate-bill/2199

12. For further study – https://www.whitehouse.gov/sites/default/files/docs/equal_pay_issue_brief_final.pdf

The **Comstock Law** is a federal act passed by the United States Congress on March 3, 1873, as the Act for the "Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use." Here is its text:

> "Be it enacted... That whoever, within the District of Columbia or any of the Territories of the United States...shall sell...or shall offer to sell, or to lend, or to give away, or in any manner to exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession, for any such purpose or purposes, an obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any cast instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles in this section…can be purchased or obtained, or shall manufacture, draw, or print, or in any wise make any of such articles, shall be deemed guilty of a misdemeanor, and on conviction thereof in any court of the United States...he shall be imprisoned at hard labor in the penitentiary for not less than six months nor more than five years for each offense, or fined not less than one hundred dollars nor more than two thousand dollars, with costs of court."

03.05.15

#STANDWITHWOMEN: Murray, Boxer, Mikulski Announce New Bill to Advance Women's Health Care

Through increased information and access, the 21st Century Women's Health Act empowers women across the country to take charge of their health care and their futures

The 21st Century Women's Health Act challenges elected leaders to stand on the right side of history when it comes to women's health, equality, and opportunity

(Washington, D.C.) – Today, Senate Health, Education, Labor, and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA), Senator Barbara Boxer (D-CA), and Senator Barbara Mikulski (D-MD) announced the 21st Century Women's Health Act, a new bill that would protect and build on progress made on women's health care. The 21st Century Women's Health Act invests in women's health clinics and the primary care workforce, and promotes critical preventive services like contraception coverage. The bill also works to provide compassionate assistance for survivors of rape by ensuring all hospitals provide emergency contraception, spreading awareness, and working with community-based groups to help prevent sexual violence.

In a call with reporters and advocates, Murray highlighted that at a critical time in the fight to protect a woman's right to make her own choices about her own body, the 21st Century Women's Health Act would challenge elected officials to be on the right side of history when it comes to women's health, equality, and opportunity. Murray was joined on the call today by Dana Singiser, Vice President for Public Policy and Government Affairs, Planned Parenthood Federation of America and Dr. Laurel Kuehl, Planned Parenthood of the Great Northwest's Washington Medical Director.

"I am so proud today to be introducing the 21st Century Women's Health Act. As we continue to fight back against those who miss the Mad Men era, the 21st Century Women's Health Act lays out important ways we can and should move forward on women's health, from maternity care, to preventive health services, to continuing to expand access to birth control, to ensuring survivors of rape have access to emergency contraception in every hospital. Period," **Senator Murray said.** *"The 21st Century Women's Health Act would mean that more women across the country have the information and access they need to be in the driver's seat about their own health care and their own futures."*

"At a time when the GOP congress is trying to drag women back to the last century, we are offering a bold agenda to strengthen women's health in this century," **said Senator Boxer.**

"Fighting for women's health has been one of my life-long priorities," Senator Mikulski said. *"When I first came to the Senate, women's health wasn't a national priority. We've changed that paradigm but there's more to be done. I'll continue to fight for women to get the preventive care and treatment they need to live healthy lives. We must raise awareness, raise consciousness, and raise hell so that women are not left behind when it comes to their health."*

"We applaud Senators Murray, Mikulski, and Boxer for the introduction of the 21st Century Women's Health Act in Congress today. This aptly-named bill not only brings women into the 21st century — it launches us forward," said Cecile Richards, President, Planned Parenthood Federation of America. *"At Planned Parenthood, we've seen the progress that comes when women can make their own health care decisions, without politicians standing in the way. Together, through this bill and other efforts, we will keep working to ensure that women across the country have the information and access they need to make decisions about their health care and their futures."*

"Women deserve to be treated with dignity and respect and this bill helps give them the tools they need to lead happy, healthy lives," said Dr. Laurel Kuehl, Washington Medical Director, Planned Parenthood of the Great Northwest. *"I'm lucky to practice in a state where elected officials understand that it's best when decisions are left between me and my patients. I know that for my colleagues across the country — things aren't that easy. That's why it is so important that we have champions in Congress like Senator Murray working to expand access to health care instead of standing in the way. From contraception to childbearing, a woman's reproductive well-being is a major part of her health and her economic well-being."*

"The 21st Century Women's Health Act is the right approach at the right time to improve and protect women's health," said Debra L. Ness, President, National Partnership for Women & Families. *"This legislation would promote prevention and make it possible for more women to control their reproductive health and make their own health care decisions. By doing so, it would enhance the economic security of women and families. We commend Senators Patty Murray, Barbara Boxer and Barbara Mikulski for championing this vitally important bill."*

"It is time for Congress to strengthen – not obstruct – women's access to health care, and the 21st Century Women's Health Act does just that. This bill takes a number of important steps to advance women's health and well-being. Access to health care, including reproductive health care, is critical to the health and economic security of women and their families," said Gretchen Borchelt, Acting Vice President for Health and Reproductive Rights, National Women's Law Center.

<u>Key excerpts from Senator Murray's bill announcement today:</u>

"I really believe that for women across the country, we are at a critical moment. We've made incredible progress when it comes to advancing women's health and expanding access to reproductive care. As a result, teen pregnancies are now at a 40-year low. At the same time, we've seen women become an incredible economic force in our country. The vast majority of women are now breadwinners or co-breadwinners for their families. And more women are taking on positions of leadership, from boardrooms to the Senate floor. That's not only good for women—it's good for our country."

"…we've come a long way—but there's no question there is a lot more we need to do. Especially because unfortunately, some elected officials are laser-focused on taking us backwards. They want to make it harder for women to access critical health care services…They are dead set on interfering

with personal decisions that should be made between a woman, her doctor, and her partner. And this isn't just in Congress—there are efforts across the country that would have these very same consequences."

"I am so proud today to be introducing the 21st Century Women's Health Act. As we continue to fight back against those who miss the Mad Men era, the 21st Century Women's Health Act lays out important ways we can and should move forward on women's health, from maternity care, to preventive health services, to continuing to expand access to birth control, to ensuring survivors of rape have access to emergency contraception in every hospital. Period. The 21st Century Women's Health Act would mean that more women across the country have the information and access they need to be in the driver's seat about their own health care and their own futures."

"…Today I'm calling on elected leaders to stand with women—and on the right side of history—and support the 21st Century Women's Health Act. Now, I know there are those who will say "no" right off the bat. And my message to them is: I've heard that before. It hasn't stopped me. And it won't stop women across the country either."

FACT SHEET: The 21st Century Women's Health Act

Our country is stronger today because more women are empowered to make their own health care choices. We need to protect that progress and keep building on it. That's why, at a critical moment in the fight to protect a woman's right to make her own choices about her own body, Senator Murray is introducing the 21st Century Women's Health Act and challenging elected leaders to put themselves on the right side of history when it comes to women's health, equality, and opportunity. The 21st Century Women's Health Act would help break down outdated barriers to a woman's reproductive freedom, ensure deeply personal health care choices are put back where they belong—in the hands of American women—and in doing so, help expand opportunity for women across the country.

The 21st Century Women's Health Act would:

Expand comprehensive preventive health services, including full access to contraceptive coverage for all women served by Medicaid. All private health insurance plans are now required to cover all U.S. Food and Drug Administration (FDA)-approved forms of contraception and all services like breast pumps and breast feeding counseling. To ensure coverage equity across programs, this legislation would extend this requirement to women, men, and families who are served by Medicaid.

Establish a women's health nurse practitioner training program to expand access to primary care. Nearly two-thirds of Americans see a nurse practitioner (NP) for their primary care health needs.NPs are critical to ensuring access and play an increasingly important role in meeting demand for primary care. To expand access to primary care providers, the 21st Century Women's Health Act provides training grants for NPs in Title X clinics who specialize in women's health care. The grants are for a three-year period and can be made permanent or replicated nationally as a model that works to increase quality and lower the cost of care for women and their families.

Improve maternal safety and quality of care. The 21st Century Women's Health Act grants states the power to start or enhance existing Maternal Mortality Review (MMR) Committees. MMRs examine pregnancy-related and pregnancy-associated deaths to identify ways to prevent future

deaths. Only about half of all states have active committees today, creating a significant knowledge gap. Incentivizing the creation and improvement of MMRs will improve data collection and help eliminate disparities in maternal health outcomes.

Create a new ombudsperson role to support women's access to health services. The Affordable Care Act made great progress in expanding women's access to health care services. But too oftenstate policies, high costs to patients, and the ongoing need for clinician training in contraceptive methods continue to hinder women from accessing the forms of contraception that have the lowest rates of failure and highest rates of adherence. There have been numerous attempts to allow insurance companies and employers with personal objections to deny women coverage for all FDA approved contraceptive methods, and due to misinformation from insurance companies and pharmacies, many women are struggling to access critical health benefits.As a result, one in 20 women has been denied access to care by a health care provider because of a religious, moral, or personal objection. The 21st Century Women's Health Act will create a Women's Health Ombudsperson who can advocate for women, be their voice, and enforce their right to access the best health care services for their needs.

Provide compassionate assistance and awareness for survivors of rape. Although the American College of Obstetricians and Gynecologists recommends that doctors routinely discuss emergency contraception with women of reproductive age during their annual visit, only half of OB/GYNs offer emergency contraception to all of their patients. Unfortunately, emergency contraception remains an underused prevention method in the United States, especially for survivors of sexual assault. It is estimated that 25,000 to 32,000 women become pregnant each year as a result of rape or incest. If used correctly, emergency contraception in conjunction with prompt medical treatment could help many of these rape survivors avoid the additional trauma of facing an unintended pregnancy. However, only 13 states and the District of Columbia require hospital emergency rooms to provide emergency contraception upon request to survivors of sexual assault. Additionally, nine states have enacted restrictions on emergency contraception, including six states that allow pharmacists to refuse to dispense emergency contraception.

The 21st Century Women's Health Act would ensure that when survivors of sexual assault present at hospitals and clinics, they are provided with free emergency contraception, period, no matter where they live or who owns the hospital. In addition, the Act provides for prevention partnerships with community-based organizations to prevent sexual violence.

Help women report instances of inappropriate charges for birth control and other critical health care needs. The 21st Century Women's Health Act would help ensure that women are not wrongly forced to pay more for health care services now covered under the Affordable Care Act by creating a reporting database for women to inform Health and Human Services of inappropriate charges.

Examine reproductive health access across the country. Some women in the U.S. must travel 50 miles or more for access to reproductive health services like abortion. Eighty-nine percent of counties lack abortion clinics, and hundreds of laws have been passed at the state and federal level to restrict a women's access to reproductive health services and family planning services. These developments make it harder for a woman to access her constitutionally protected rights in the 21st Century. This Act would study the harmful effects of trends across the country to restrict access on a woman's overall health and morbidity.

Launch a public awareness campaign for women's preventive services. The Affordable Care Act made preventive services, like mammograms, immunizations and contraception coverage, breast-feeding counseling, domestic violence screening, and others available at no cost to women and their families. To ensure women are fully informed about their rights and health care options, the Act would launch a public awareness campaign among community-based organizations, pharmacists, providers and other stakeholders.

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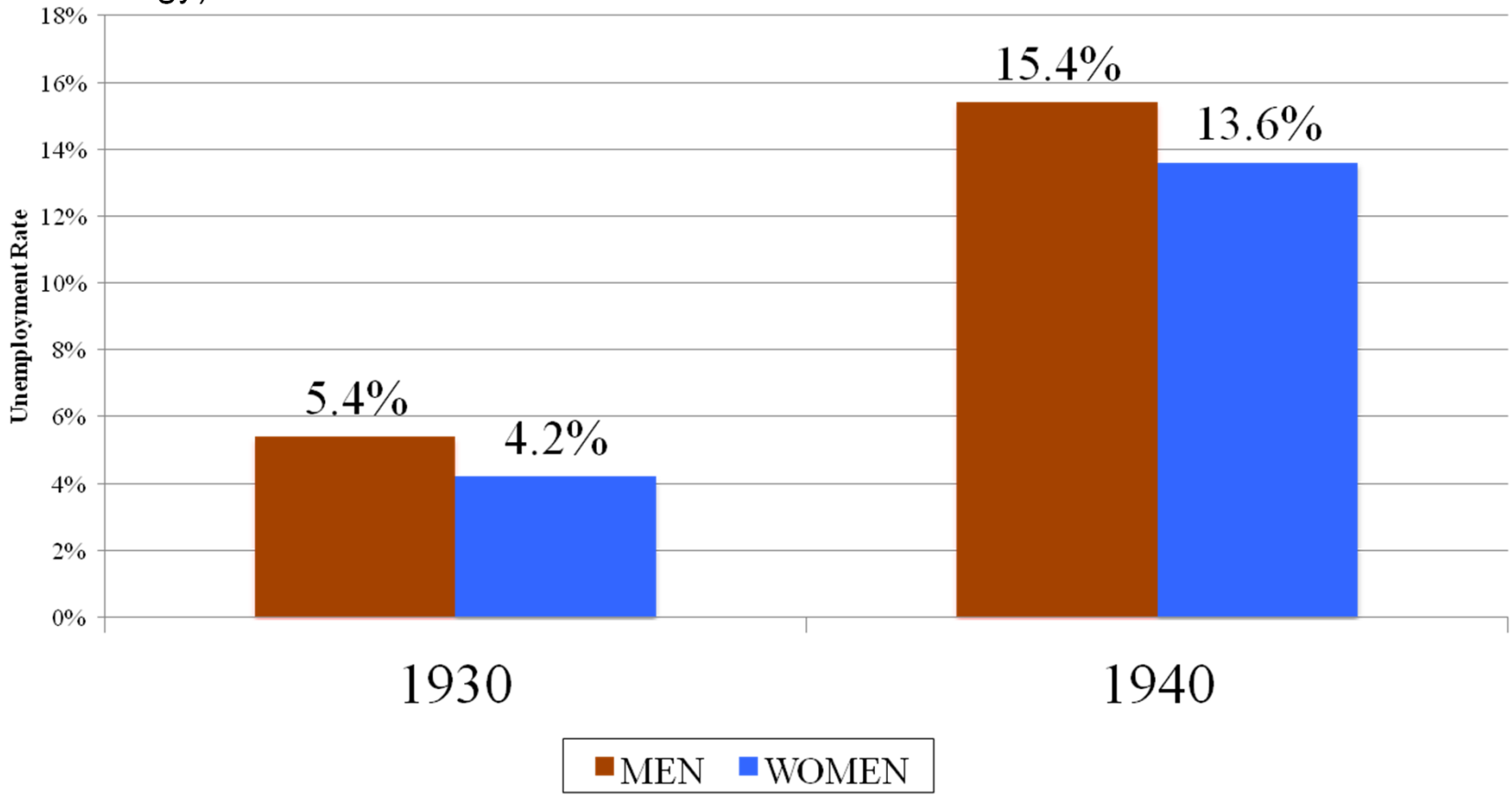
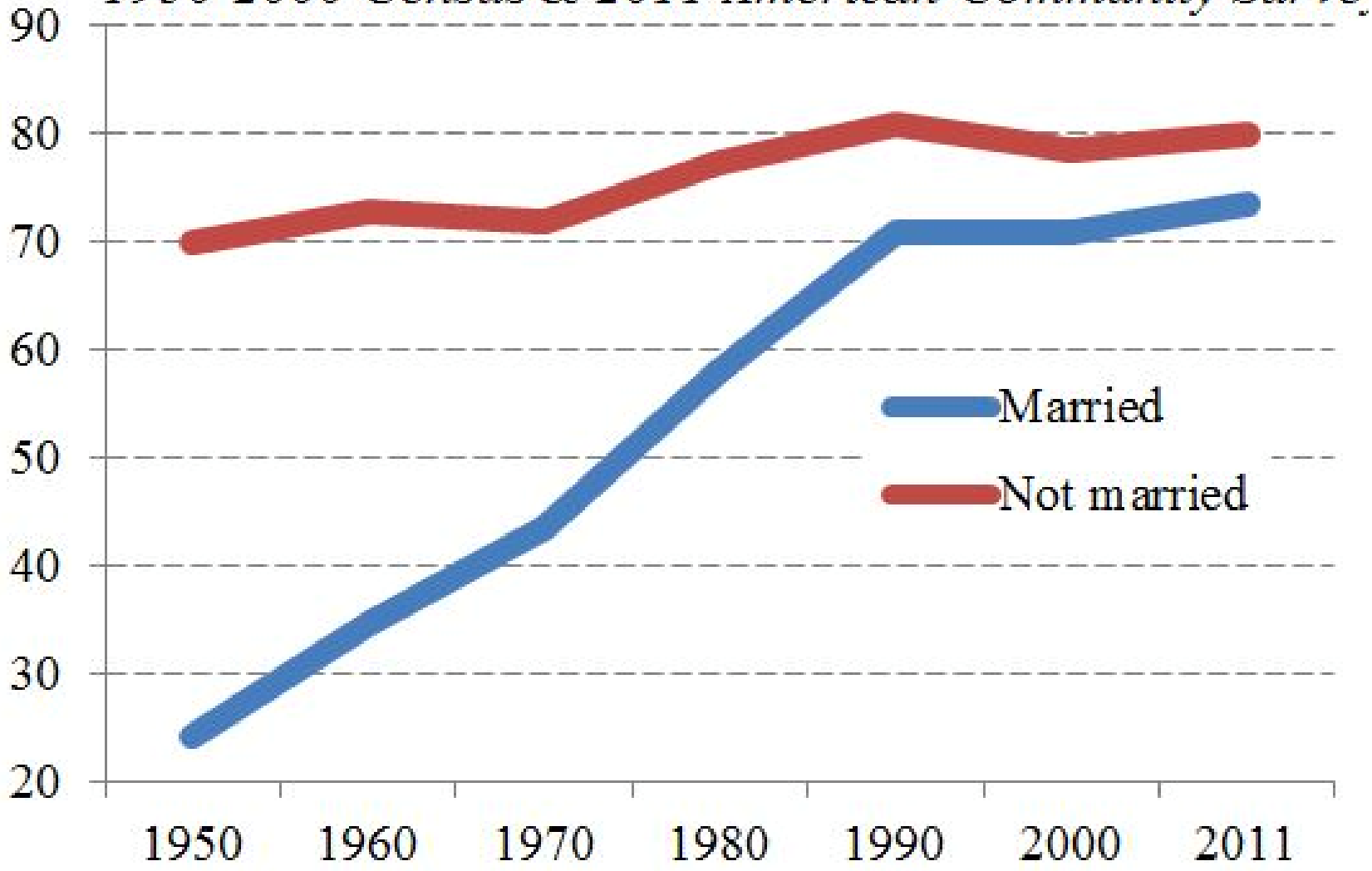
Unemployment by Gender,1930 - 1940

(Source: U.S. Census Bureau data, adjusted for 1930 to be consistent with 1940 *methodology*)



Labor force participation rates
women ages 25-54 by marital status

1950-2000 Census & 2011 American Community Surve



MICHAEL HELQUIST

"Criminal Operations"

The First Fifty Years of Abortion Trials in Portland, Oregon

NEARLY TWENTY YEARS after Oregon adopted its ban on abortions, Portland authorities prosecuted the state's first "criminal operation," as the procedure was often called at the time. The *Oregonian* remarked on the "particular character" of the "unusual and, in some respects, remarkable trial" and noted that nothing of its kind had ever appeared "before any of the courts during the history of the state." The "mysterious affair" of the abortion trial stirred the public and elicited "a painful degree of suspense" over its solution.[1] An end-of-the-year assessment by the newspaper described the trial as one of the principal events of 1873.[2] Although the prosecution was successful, newspaper coverage of the trial introduced Portlanders to the obstacles that made the law's enforcement elusive during the decades that followed.

That first abortion case involved C.G. Glass, a practitioner of eclectic medicine charged with manslaughter for performing an abortion that led to the death of Mary E. Hardman, a nineteen-year-old single woman.[3] Glass was a purveyor of herbal remedies at his downtown operation, which he advertised as The Eclectic Dispensary. He specialized in "all chronic and private diseases," including the ailments of young men who had "injured their constitutions by secret habits" and of women who were "dragging out a life of misery" from "diseases peculiar to the sex." He also sold what he called Female Regulator Pills to help women with reproductive concerns.[4] His business typified the kind of unlicensed practice that the local medical society worked to banish.

At the trial, Glass testified that Hardman was several months pregnant when he examined her but that she "was carrying a dead child." He reported that she had disclosed earlier attempts to end her pregnancy, first with the help of a midwife and then by ingesting oil of tansy, a plant believed to

DRIVE OUT QUACKS

Committee Declares War on Illicit Practitioners.

ADDS TO ITS MEMBERSHIP

Clergymen, Physicians and Others Enlisted in Struggle to Rid City of All Who Perform Criminal Operations.

The Portland City and County Medical Society sought to ensure the professional and financial status of licensed physicians by ridding Portland of alternative healers and anyone who assisted with illegal abortions. The campaign reached a peak during the early 1900s, as headlined on February 16, 1908, in the Oregonian.

induce abortions. He declared that he had agreed to provide medical care and lodging to her for $250, a considerable sum.[5] Mary Anna Cooke Thompson, identified by historians as the first woman to practice medicine in Portland, testified along with another physician that Hardman had sought help from them (presumably for an abortion), but they had both refused.[6]

Glass reportedly told Hardman's brother that she had died of "bilious intermittent fever," but other doctors disputed that assessment. One believed death resulted from inflammation of the womb and that she was unlikely to have died of hemorrhage after he saw her. Another conducted the post-mortem with two medical colleagues and concluded that the organs were healthy with no damage from the bilious fever Glass had proposed. Instead he found a "violence and rough usage" of the uterus, and believed Hardman had "died of hemorrhage consequent upon delivery of a fetus six months old." Two physicians who had examined the woman's body as part of an autopsy testified that she had died of inflammation and hemorrhaging associated with an abortion of a six-month-old fetus. After three days of proceedings in Multnomah County Circuit Court, jurors retreated to determine the intent of the practitioner, the viability of the pregnancy, whether an abortion had occurred, and the cause of the woman's death. Following two-and-a-half hours of deliberation, the jury found Glass guilty as charged, and the judge sentenced him to five years in the state penitentiary.[7] Portland's first abortion trial ended with a conviction, but the outcome proved more an exception than the rule in prosecutions that followed.

OHS digital no. bb003366

Long involved in protective services for young women, Lola Greene Baldwin used her position as Superintendent of the Woman's Auxiliary with the Portland Police Bureau to monitor the activities of physicians she suspected of providing abortions. In 1907, she worked up charges against Dr. Charles H.T. Atwood.

A study of the first fifty years (1870–1920) of abortion trials in Portland, as reported in the *Oregonian*, reveals the two significant factors that hindered

prosecutions and thwarted convictions: a lack of sufficient evidence peculiar to abortion cases, and ambiguities of the abortion law itself. Physicians often contributed to evidentiary difficulties, and their reticence to collaborate with enforcement was likely due to several reasons examined here. Throughout the fifty-year period under study, a number of practitioners avoided legal problems and provided abortions to women who were determined to end their pregnancies. Among that group was Dr. Marie Equi, the only Portland physician of the time known to provide abortion services as part of a larger, holistic commitment to women's reproductive health.

No study has previously been published about this period of prosecutions in Portland, but segments of the city's early abortion history have appeared in a handful of important works, including Ruth Barnett's autobiography (as told to Doug Baker) of her life as an abortion provider beginning in 1919, Rickie Solinger's biography of Barnett and her contemporaries, Nancy Krieger's journal article about Dr. Marie Equi, Sandy Polishuk's manuscript about Equi based on her research with Krieger and Susan Dobrof, and Polishuk's biography of activist Julia Ruuttila.[8] Gloria E. Myers and, more recently, Sadie Anne Adams have also addressed aspects of Portland's abortion history in their biographical studies of Lola G. Baldwin and Dr. Jessie Laird Brodie.[9]

City of Portland Archives, Oregon, A2004-002.713

As Multnomah County District Attorney from 1902 to 1908, John Manning was an aggressive prosecutor of abortion providers, yet his efforts to convict were hampered, he believed, by intrinsic problems with the state's anti-abortion law.

Oregon adopted its first anti-abortion law in 1854, during its territorial days and following the lead of twenty-one states and territories that had criminalized the practice as part of a national campaign initiated by the American Medical Association (AMA).[10] From the mid to late nineteenth century, the AMA lobbied state legislatures to outlaw abortion as part of its overall goal to drive competition from the medical field and to enhance the status, professional domain, and financial wellbeing of its members. The AMA spoke for regular physicians rather than irregular, or alternative, practitioners, and abortion bans were part of its strategy to force midwives from the childbirth and abortion care they had provided women for hundreds of years. At a time when medical

science had yet to provide many diagnostic and clinical tools, the AMA sought to establish regular doctors as the sole source of all medical care, including obstetrics.[11]

Civic boosters, business interests, and politicians readily joined the anti-abortion efforts, reasoning that well-ordered, proper communities attracted more settlers, commerce, and investments. Church leaders, in turn, supported restrictions purported to bolster moral behavior. The campaign drew on the anxiety of many Americans that declining birth rates among Anglo-Saxon women, aided in part by access to abortion, might plummet further and result in a nation with too many immigrant births. The leader of the anti-abortion campaign, Dr. Horatio R. Storer, exhorted white, native-born women "upon [whose] loins depends the future destiny of the nation."[12] The rallying cry against abortion succeeded, and by 1900, "virtually every jurisdiction" had banned the procedure. Ironically, the laws codified by the states complicated enforcement of the bans.[13]

OREGON'S 1864 REVISED ABORTION LAW

"If any person shall administer to any woman pregnant with a child any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such a child, unless the same shall be necessary to preserve the life of such mother, such person shall, in the case of the death of such child or mother be thereby produced, be deemed guilty of manslaughter."

Journal of Proceedings of the House of the Legislative Assembly, 1864 (Portland, 1864) and Journal of Proceedings of the Senate of the Legislative Assembly of Oregon, 1864 (Portland, 1864).

One of the most vexing elements of the abortion bans was confusion about when life began. Traditional beliefs held that until a woman felt a quickening, or movement, of the fetus — usually between the fourth and sixth months of pregnancy — life was not present. Before fetal movement was detected, women sought help from midwives or folk treatments to "unblock" their menstrual cycles. Accordingly, common law defined abortion as an act that occurred after quickening. Only by the mid to late nineteenth century did states prohibit abortive acts at every stage of pregnancy, even before quickening. Many people held to the traditional belief, however, and their ideas about when life began often hindered abortion prosecutions.[14]

The matter of an abortion provider's intent proved especially troublesome to prosecutors. Several states required evidence that an accused practitioner intended to end the life of a child. Proving intent was a difficult proposition because most abortion discussions and procedures occurred in private, typically in a patient's home or a doctor's office. Only the participants knew the pregnant woman's circumstances, the nature of her request, and the practitioner's response. If challenged after an abortion was reported — and especially if the woman had died in the course of the procedure — providers could claim the woman presented conditions unrelated to pregnancy. Or they could simply deny any intent to end a pregnancy.

Another complicating factor involved a clause eventually included in nearly all abortion statutes. What was known in legal realms as the *therapeutic exception* allowed a provider to proceed with an abortion if the woman's life appeared to be endangered. James C. Mohr identifies New York as the first state to adopt the clause, which helped create what Leslie J. Reagan describes as a "legal loophole" and led to an understanding of "therapeutic abortion."[15] What constituted valid medical indications that the woman's life was at risk remained largely up to the clinical judgment of one or more physicians. Practitioners might cite all sorts of physical, psychological, or even financial difficulties that their clients presented to justify an abortion.

Oregon legislators revised the state abortion ban in 1864 (after statehood) to clarify and tighten its prohibitions and to bring it more in line with current scientific understanding.[16] James C. Mohr argues that the changes in Oregon forecast more restrictive abortion laws adopted in several states following the Civil War and contributed to "the most important burst of anti-abortion legislation in the nation's history." Oregon dropped the quickening doctrine and added both intent to do harm as a necessary condition of guilt and the therapeutic exception. The revised law referred specifically to a child — rather than a fetus — although it left open to interpretation the legal definition of when viability began and when the fetus became a child. The destruction of a child in utero became a manslaughter offense regardless of whether the woman died, and the punishment for destroying the child or causing the death of the mother was set at one to fifteen years in prison. Although anyone who procured or assisted with the abortion could be held liable and prosecuted, the pregnant woman was exempt.[17]

A clear sense of the incidence of abortion in Portland during this period is difficult to determine due to the few available records from hospitals, clinics, medical practices, and illegal operations. Studies undertaken for cities and states of the Midwest and East Coast suggest significant numbers of abortions. Edwin G. Burrows cites an 1868 New York City study that estimated abortions were procured by 20 percent of pregnant women, and Rickie

Solinger notes that an 1898 survey by the Michigan Board of Health found one-third of pregnant women obtained abortions.[18] At a June 1895 meeting of a Washington, D.C., medical society, a prominent physician lamented that abortion throughout the country was "fully as frequent" as ever before, not only in the cities but in the "remotest country districts" as well.[19] Statistics for West Coast cities or those comparable in population size to Portland have not been located, however, and federal surveys overall did not include abortion in annual mortality reports during this period.[20]

Unofficial observations by abortion practitioners suggest a total of more than 6,000 abortions were performed annually in Portland during the early 1900s. That number results from an extrapolation of observations by Ruth Barnett, a naturopath who assisted physicians with full-time abortion practices during this period. She noted that five to seven women a day could crowd the waiting rooms of Dr. Alys Bixby Griff's downtown office, and she discussed the robust practices of five other regular doctors.[21] On a basis of four to five abortions performed each workday, one full-time practitioner might account for 1,000 to 1,250 annually, and the work of five providers might have totaled 5,000 to 6,250. In addition, Dr. Charles T. Atwood, a practitioner notorious for his abortion prosecutions, claimed in 1908 that he and his physician son refused in one month alone fifty requests to end pregnancies.[22] Atwood's assertion may have fit his defense strategy and therefore may not be the most reliable estimate. Nevertheless, the services of Atwood, as well as those of general medicine practitioners, irregulars, and entrepreneurs, could add another 1,000 abortions each year, boosting the minimum combined total to 6,000 or more abortions. Although these totals result from imprecise accounts and a degree of speculation, it is evident that several thousand abortions were performed in Portland each year during the early 1900s and, in comparison, there were remarkably few prosecutions.

The *Oregonian* reported twenty-seven abortion trials in Portland during the fifty years between 1870 and 1920 (see Table 1). The relatively small total initially suggests that enforcement was a low priority in the city, but the ratio was not unlike those in other cities. In her comprehensive examination of Chicago's history of abortion control, Reagan notes that the much larger city undertook "at most a handful" of abortion cases each year during the period between 1902 and 1934.[23] She also suggests that a full assessment of a jurisdiction's resolve to enforce an abortion ban should include the number of abortion arrests as well as the "entire investigative process," a scope that is unfortunately beyond the reach of this study. She adds that Chicago prosecutors limited the number of abortion cases to those with the greatest potential for conviction.[24] The data from this study suggest that Portland

authorities, facing difficulties with obtaining convictions, pursued a similar strategy over time.

Seven-year gaps occurred between the first abortion trial in 1873 and the next in 1880, and again from 1880 to 1887. The cause of these lapses is unknown, but they may reflect the priorities of district attorneys at the time. The total of twelve trials from 1873 to 1900 is similar in number to the fifteen of the latter period, 1900 to 1920, but a significant spike occurred in the early 1900s, with fourteen cases taken to court between 1906 and 1911 and five in 1908 alone. The surge in numbers likely reflects the influence of Progressivism that was at the peak of its fervor and power in Oregon during those years. Progressives tended to view abortion as a threat to the social order, because it alleviated unintended consequences of extra-marital sex and separated intercourse from reproduction.[25] The greater number of prosecutions also coincides with a second campaign by the AMA to encourage greater enforcement of the abortion bans.[26] As will be seen in the case examples that follow, one Multnomah County District Attorney, John Manning, spearheaded many of the prosecutions during the early 1900s in Portland.

The spike of Progressive Era trials ended by 1916, and no further reports of abortion prosecutions appeared in the *Oregonian* through the end of 1920. Several factors may have contributed to the drop-off, including prosecutors' frustration with the law and their reticence to indict, the fading of the Progressive Era and its political agenda, and doctors' shift to other concerns. Reagan notes that as early as 1908 a proposal by obstetricians within the AMA to investigate anti-abortion laws and further suppress the procedure failed to clear committee deliberations for lack of support.[27] She concludes that the Progressive Era anti-abortion campaign failed to enlist most physicians nationally and, by 1920, "few doctors talked anymore about the evil of criminal abortion and how to combat it."[28] Instead, the medical establishment became more engaged with other national policy questions, including access to birth control and the government's emerging role in providing public health to infants and mothers.[29] Mohr observes that, by the early twentieth century, regular physicians had achieved many of the goals of the initial anti-abortion campaign, and middle- and upper-class women increasingly relied on birth control methods other than abortion.[30] In addition, world events — World War I and, especially for physicians, the overlapping influenza epidemic of 1918 to 1919 — pressed on everyone to mobilize for a greater national purpose. The reported trial data reveal three other factors that influenced whether cases would be taken to court and what the outcomes might be: the professional status of providers, the pregnant woman's marital status, and whether the woman survived the abortion.

TABLE 1: ABORTION TRIALS IN PORTLAND, OREGON, REPORTED IN THE OREGONIAN, 1873 THROUGH 1920 (See continuation on p. 16)

Year	Defendant	Type of Practitioner	Woman's Name	Woman's Age, Marital Status	Health after Procedure
1873	C.G. Glass	Irregular	Mary E. Hardman	Nineteen, Single	Died
1880	Joseph A. Riddle	Unknown	Rosa Lent	Unknown age, Single	Survived
1887	Mrs. James Cornwall	Irregular	Emma Crozier	Unknown age, Single	Died
1888	Mrs. and Mr. F.M. Murray	Irregular (Mrs.), non-practitioner (Mr.)	Mary Schueller	Unknown age, Single	Died
1889	William E. Morand	M.D.	Hattie Reed	Thirty, Single	Survived
1892	W.J. Taylor	M.D.	Rosa Steiner	Unknown age, Single	Died
1893	Mrs. Tomaro Vann, Charles A. Bowker	Irregular (Vann), non-practitioner (Bowker)	Henrietta Wilson	Unknown age, Single	Died
1893	Meyer Schwartz	Irregular	Mamie Middross	Nineteen, Single	Died
1894	Mrs. E. Brunke	Irregular	Mrs. Mary Arata	Twenty-five, Married	Died
1895	William Spencer	Unknown	Lucy Augustine	Unknown age, Single	Died
1896	William Eisen	M.D.	Mrs. Louise Markley	Unknown age, Married	Survived
1897	Dr. and Mrs. Palmer, Jennie Melcher	Irregular (Dr.), non-practitioner (Mrs. and Melcher)	Mary Mac Mahon	Unknown age, Single	Survived
1906	Paul Semler	M.D.	Winifred McGrath	Fifteen, Single	Survived
1907	Charles H.T. Atwood	M.D.	Hattie Fee	Sixteen, Single	Survived

** A manslaughter charge was not reported specifically, but it was the designated charge for an abortion case.

	Charge	Legal Outcomes	Notes
	Manslaughter	Convicted, sentenced to five years	Oregon Supreme Court upheld the conviction. The governor pardoned Glass in 1877.
	Manslaughter	Unknown	The woman testified against accused. No further reports.
	Manslaughter **	Unknown	Cornwall operated a small lying-in hospital. She was arrested for giving abortifacients and jailed pending trial. No further reports.
	Both defendants sued for woman's death; uncertain of manslaughter charge	Unknown	The Murrays were sued for $5,000 damages. No further reports.
	Manslaughter	Convicted at first trial, charges dismissed during second trial	Reed later withdrew charge during second trial that was allowed by the judge. Insufficient evidence also complicated the second trial.
	Manslaughter	Unknown	The trial received a continuance. Insufficient evidence and application of law was a difficulty during the trial. No further reports.
	Manslaughter for both defendants	Both convicted; Vann sentenced to three years and Bowker ten years	Vann became ill in jail and died. The Oregon Supreme Court reversed Bowker conviction and a new trial was expected. No further reports.
	Manslaughter	Acquitted	Middross was diagnosed with blood poisoining and there were indications of abortion, but insufficient evidence overall. No further reports.
	Manslaughter **	Unknown	Brunke operated a maternal care facility. The case was continued. No further reports.
	Unknown	Dismissed by judge	Another doctor reported abortion as the cause of the woman's death, but there was uncertain and insufficient evidence to convict.
	Manslaughter	Acquitted	Eisen was acquitted during his second trial. The judge did not allow submission of woman's "dying declaration" naming the abortionist because she survived. Insufficient evidence to convict.
	Manslaughter for the Palmers and Melcher	All three acquitted	The abortion was possibly self-induced by Mac Mahon. Conflicting circumstances and insufficient evidence prevailed.
	Manslaughter	Uncertain outcome	Defense counsel argued that charges of abortion did not constitute a crime. Confusion about the law as well as insufficient evidence complicated the case. No further reports.
	Manslaughter	Hung jury; charges dismissed by judge	A second trial was planned, but the district attorney stated that Oregon's abortion law was insufficient for prosecution. There was also a lack of compelling evidence to proceed.

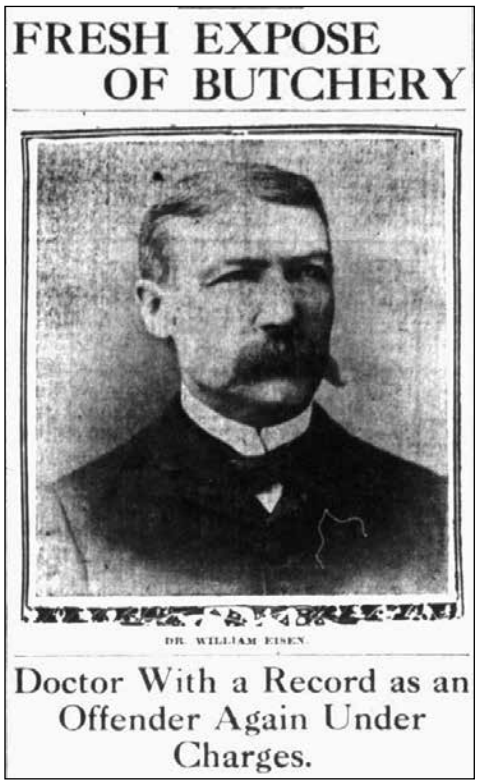
TABLE 1 (CONTINUED): ABORTION TRIALS IN PORTLAND, OREGON, REPORTED IN THE OREGONIAN, 1873 THROUGH 1920

Year	Defendant	Type of Practitioner	Woman's Name	Woman's Age, Marital Status	Health after Procedure
1907	Ernest Heymans, William Eisen, David Smith	Entrepreneur (Heymans), M.D. (Eisen), non-practitioner (Smith)	Jennie Seighers	Seventeen, Single	Survived
1907	J.W. Morrow	M.D.	Unknown	Unknown age, Single	Survived
1908	G.B. Whitney	M.D. (dentist)	Mabel Wirtz	Twenty-one, Single	Died
1908	J.S. Courtney	M.D.	Stella Bennett	Fifteen, Single	Died
1908	Ernest Heymans	Entrepreneur	Golda Rowland	Twenty-five, Single	Died
1908	Charles H.T. Atwood and Charles H. Atwood	M.D. (father and son)	Mrs. Bessie Crippin	Unknown age, Married	Died
1908	Charles H.T. Atwood and Charles H. Atwood	M.D. (father and son)	Pearl Lamb	Unknown age, Single	Survived
1910	W.J. May and C.H. Francis	M.D. (May), M.D. (Francis)	Mrs. Frances Roberts	Unknown age, Married	Died
1910	William Eisen	M.D.	Mrs. Anna Foleen	Unknown age, Married	Died
1910	J.J. Rosenberg	M.D.	Vera Hall	Twenty, Single	Died
1911	O.C. Liscum	Irregular	Mrs. A. Scheiderhahn	Unknown age, Married	Survived
1911	Charles F. Candiani	M.D.	Lillian Krueger	Twenty-two, Single	Died
1915	Andre A. Ausplund	M.D.	Anna Anderson	Unknown age, Single	Died

NOTES:
1. Portland's first abortion prosecution occurred in 1873. Oregon enacted state law banning abortion in 1864.
2. Oregon law specified indeterminate one-to-fifteen year prison sentences for anyone who procured, provided, or assisted with an abortion. These acts were manslaughter offenses. A pregnant woman seeking an abortion was not charged.

	Charge	Legal Outcomes	Notes
	Contributing to delinquency of minor (Eisen and Smith)	Eisen convicted and fined $500; Smith's charges dismissed by judge	Heymans granted immunity to testify against Eisen. The delinquency charge was in lieu of manslaughter for the abortion.
	Uncertain if trial proceeded	Unknown	The Oregon State Medical Board tried to revoke Morrow's medical license, but witnesses for the case disappeared. No further reports.
	Manslaughter	Convicted, sentenced to five years in prison, fined $100, then released	Whitney was convicted for administering abortifacients to his fiancée. The Oregon Supreme Court overruled his conviction.
	Manslaughter	Judge delayed trial, uncertain if it resumed	The minor's family consented to the abortion; they respected the doctor and thought it would be a simple operation. A prime witness was missing for the case. No further reports.
	Manslaughter initially, then forgery	Acquitted of death certificate forgery	Heymans operated X-Radium Institute and was implicated in the abortion for Golda Rowland, but insufficient evidence and problems with the law complicated the trial.
	Maintaining a public nuisance	Acquitted	The abortion provider in this case was uncertain. The district attorney attempted to convict on a lesser charge related to abortion.
	Maintaining a public nuisance	Convicted; both sentenced to five months in county jail	The district attorney attempted to convict on a lesser charge related to abortion. The U.S. Supreme Court upheld the conviction.
	Manslaughter for both defendants	Case dismissed by judge	Roberts had been married for ten years and had an affair. The jury remained undecided after seven hours of deliberation.
	Manslaughter	Case dismissed by grand jury	Foleen made a dying declaration and signed it, but the grand jury still found that there was insufficient evidence to go to trial.
	Murder	Case dismissed by judge	The doctor provided anesthesia. Hall died before the abortion began, although preparations for the procedure were apparent. Uncertain of criminal intent and procedure.
	Suspected of crime	Case presumably dismissed but not reported	Scheiderhahn refused to testify against her doctor and the case floundered with insufficient evidence. Liscum was licensed in other states as an M.D.
	Manslaughter	Delayed due to illness	Candiani returned home to Italy and died before the trial could proceed.
	Indicted for manslaughter; one report indicated second degree murder	Convicted of manslaughter with leniency recommended by jury; sentenced to one to fifteen years	The Oregon Supreme Court upheld the conviction. The U.S. Supreme Court dismissed an appeal. Oregon's Governor pardoned Ausplund after one year in prison, and he resumed his practice.

3. Follow-up information about several prosecutions after initial charges could not be found in the *Oregonian.*
4. No reports of "abortion" or "criminal operations" were found in a digital search of the *Oregonian* for the periods 1864 to 1873, 1874 to 1880, 1898 to 1906, or 1916 to 1920.
5. Please see end notes for a description of research methods and limitations of this study.


FRESH EXPOSE
OF BUTCHERY

DR. WILLIAM EISEN.

Doctor With a Record as an Offender Again Under Charges.

Dr. William Eisen avoided conviction in two abortion trials and was implicated in the notorious X-Radium Institute scandal of 1908. His record was examined in a front-page article in the Portland Evening Telegram *on November 1, 1910.*

From 1870 to 1900, irregular practitioners were more often the targets of prosecutions than regular medical doctors; seven of the twelve trials involved irregulars. The reasons for this predominance are uncertain, but prosecutors may have been influenced by medical societies that denigrated irregulars as hucksters who preyed on the public's gullibility with promises of quick and easy remedies. Prosecutors may also have believed that irregulars wielded less political power and commanded fewer financial resources to fight a prosecution. By the start of the twentieth century, however, reports of abortion trials in Portland indicate a shift from targeting alternative providers to licensed, regular physicians. From 1900 to 1920, regular doctors and one dentist were implicated in thirteen of fifteen abortion prosecutions reported in the *Oregonian*. Three doctors were involved in more than one trial. This change of emphasis appears to result from the Progressive Era's campaign conducted by the local medical society, civic leaders, and district attorneys to rid the medical profession of what they deemed rogue physicians.[31]

The study data indicate that single women figured in abortion trials significantly more often than married women. Twenty-one of the twenty-seven trials — 78 percent over the fifty-year period — involved single women. Reagan and other historians believe that most women who sought abortions during this period were married, but they have found that those entangled in prosecutions were more frequently single.[32] A partial explanation for this disparity is the likelihood that middle-class and well-to-do married women enjoyed ready and affordable access to abortions from their personal or family physicians or from others through collegial referrals for assistance. This explanation does not address the plight of poor and working-class married women who were less able to afford the professional, private care that skirted public attention. Unfor-

tunately, the trial reports do not reveal with certainty whether the married women implicated were of lower economic status; however, four of the six cases with married women targeted less-reputable providers who probably charged less than more respectable physicians.[33]

According to the data, prosecutors favored abortion cases that involved a woman's death. Of the twenty-seven trials, seventeen (63 percent) were conducted when the woman had died as a result of the abortion. The deaths also appeared to predict convictions. Four of the seven trials that ended with guilty verdicts in local courts (57 percent) involved a woman who had died. Prosecutors had good reason to pursue these incidents. An investigation often began with notice from a social service worker or another physician that a woman had suffered from a poorly executed abortion. In such instances, police and sometimes doctors sought from the woman a dying declaration, a signed statement in which she confirmed her pregnancy and the identity of the abortion provider. These declarations were admissible as evidence in court and, as such, greatly strengthened a prosecutor's case against a provider.[34] In the 1896 and 1910 abortion trials of Dr. William Eisen, however, the presence of dying declarations did not ensure conviction. In the first, the judge did not allow the statement, perhaps because the woman ultimately survived and the document carried less legal standing than if she had died. In the second, the grand jury dismissed the case for lack of sufficient evidence.[35]

Abortion convictions were especially difficult to obtain in Portland due to both insufficient evidence and the law's ambiguities and limits. The challenges often resulted in withdrawal of cases, dismissals by judges, or hung juries and contributed to a low conviction rate, based on reports in the *Oregonian*. Yet the outcomes of eight other trials were unreported or could not be located. Several involved continuances, witnesses who failed to appear, and possible out-of-court settlements. Guilty verdicts in any of these eight instances would increase the conviction rate.

Most criminal trials presented a complex mix of hearsay, conflicting testimony, and legal maneuvering, but abortion trials also introduced an array of factors specific to the alleged offense. An abortion prosecution was highly stigmatizing to the woman involved, suggesting unwed pregnancies or extramarital affairs. A trial thrust a fundamentally private and personal matter onto a public stage, and a woman's reputation, relationships, and, possibly, livelihood were often damaged beyond repair. Women had good reason to avoid the public shame that a trial could bring to themselves and their families. Reagan's examination of arrest records and coroner reports in Chicago during the early 1900s revealed the reluctance to endure the stigma of court appearances and testimony on the part of women, their relatives, and friends.[36] When the woman died, the jury typically heard only the abortion

provider's account of what had transpired. On other occasions, witnesses other than the pregnant woman feared association with the scandal of an abortion trial and never appeared in court to testify. One such incident occurred in 1908, when the Oregon State Board of Medical Examiners was forced to postpone indefinitely an attempt to revoke the license of an abortion provider when two witnesses failed to appear, even after receiving subpoenas.[37] Evidence sometimes was lacking simply because medical science and diagnostic technology had not yet provided the necessary understanding, skills, or instruments. Mohr observes that prosecutors often could not obtain definitive assessments from medical examiners about the viability of a fetus or, in some cases, the cause of death. He concludes that abortion cases were "essentially impossible to prove."[38]

CASE EXAMPLE: THE 1907 CHARLES H.T. ATWOOD TRIAL

In April 1907, a sensational incident of rape and abortion involving a minor revealed the difficulties of obtaining adequate evidence. The case also demonstrates how a private, social service organization could become involved with enforcement of the abortion ban.

Police arrested Dr. Charles Herbert T. Atwood for providing an abortion to Hattie Fee, a sixteen-year-old girl who did not die as a result.[39] Atwood was an unremarkable fifty-three-year-old, married man with three adult children who practiced from offices in the downtown Lewis Building and advertised his services in the *Oregonian*. "Dr. Atwood, female disease cases, private hospital" one of his notices read.[40] According to the *Oregonian*, the announcement attracted Willard B. Holdiman, a forty-year-old married man with two children, who had impregnated Fee, the daughter of his housekeeper. Holdiman allegedly arranged for Atwood to perform an abortion on Fee. When she suffered complications from the procedure, her case came to the attention of the Travelers' Aid Society, a Progressive Era organization concerned with the perceived moral dangers for young women drawn to the city. The society's director, Lola Greene Baldwin, then took charge of Fee's case.[41]

Gloria E. Myers recounts that Baldwin, a stalwart Progressive who would become the nation's first policewoman, hoped to develop "an elaborate institutional apparatus of social control" to counter behavior she and her allies found immoral and unsuitable.[42] In response to Fee's plight, Baldwin told the *Oregonian* that "the time has come when drastic measures should be used" against physicians in the abortion trade. She prepared the cases against Holdiman for statutory rape and against Atwood for abortion. Holdiman pleaded guilty to a statutory crime and was sentenced to one year in the county jail.[43] The *Oregonian* described the case as "the first of a crusade"

against physicians who performed criminal operations.[44]

At his trial, Atwood declared that Fee was not pregnant when she visited him.[45] Perhaps he was aware of an 1887 decision by the Oregon Supreme Court (*State v. Clements*) that declared the state, not the defendant, must prove all charges, including whether a woman had been pregnant and whether an abortion was necessary to save her life.[46] His denial of pregnancy may also have appealed to jurors who harbored lingering beliefs about quickening. Atwood also denied any criminal intent — an essential requirement for a conviction — and he claimed to have administered only legal medicines to Fee.[47] Multnomah County District Attorney John Manning built his prosecution on Fee's testimony alone. Not even the girl's mother testified, perhaps fearing that to do so against her employer would risk her livelihood. The judge cleared the courtroom before Fee "sobbed out her story" of sickness and distress after the operation while Atwood sat with one hand shadowing his eyes.[48] The jury stalemated after three votes, and Judge C.U. Gattenbein dismissed the jurors, acknowledging the "perplexing issues" in the case. The *Oregonian* noted the public remained interested in the case and that Manning declared he would consider a new trial, vowed to prosecute all physicians who performed abortions, and intended "to wipe out the practice." Less than a month later, however, the *Oregonian* noted that Manning and Gattenbein agreed a conviction was not possible in the Atwood case because Oregon laws were "not sufficiently specific to prove manslaughter in such a case."[49]

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One of several downtown buildings where physicians provided abortions, the Lewis Building at the corner of Southwest Oak Street and Fourth Avenue housed the office of Dr. Charles H. T. Atwood. He was the practitioner most frequently prosecuted during the period 1870–1920.

Facets of the abortion law often entangled prosecutors in legal dilemmas with no clear path to obtaining guilty verdicts. In just seven (26 percent) of

the trials in the study, prosecutors and judges cited specific problems with the law, but most abortion trials were fundamentally affected by trouble with elements of the law. As prosecutors found, proving pregnancy, intent, an actual abortion, and the death of a child often posed insurmountable challenges.

The anti-abortion law of 1864 clearly stated that any person who uses any means with intent to destroy a pregnant woman's child shall be found guilty of manslaughter if the woman or child dies as a result. But the law did not define *child* or when life begins, and prosecutors often struggled to convince juries that a child's (or fetus's) death had occurred when the woman survived, when there was no proof of pregnancy, or when no aborted fetus was available as evidence.

Prosecutors were often hard-pressed to question the authority and clinical prerogatives of licensed physicians. In the 1907 Atwood trial, the doctor asserted that he administered only legal medications that the patient required, and prosecutors did not find a way to counter his professional judgment.[50] The following year, a dentist was found guilty of administering abortifacients to his pregnant fiancé, but the Oregon Supreme Court overruled the decision based on a faulty indictment that was insufficient to prove voluntary manslaughter and that failed to charge involuntary manslaughter.[51]

District attorneys in Portland sometimes sidestepped problems with the abortion law by charging suspected abortion providers with lesser crimes. C.H.T. Atwood and his physician son, known as C.H. Atwood, became targets of the strategy after reports of deaths suspected of being abortion-related at the maternity hospital they operated. In one case, a jury censured the doctors for not obtaining a dying declaration from a patient, and in another, prosecutors considered a charge of malpractice instead of manslaughter.[52] Others suspected of abortion work were convicted of contributing to the delinquency of a minor or of maintaining a facility deemed a public nuisance.[53] In 1908, members of the local medical society brought charges before the Oregon State Medical Board to revoke the licenses of two doctors for having provided criminal operations.[54]

CASE EXAMPLE: THE 1908 ERNEST HEYMANS TRIAL

Progressive leaders in Portland tackled another abortion case in 1908, but difficulties with ambiguities of the law proved as troublesome as they had in the Atwood case the year before. The case became one of the most egregious and controversial abortion incidents reported in the *Oregonian*, and the coverage documented the collaboration among Progressive politicians, prosecutors, medical leaders, and clergy in a local anti-abortion campaign.

Dr. Esther Pohl (later Pohl Lovejoy), a prominent suffragist, was appointed Portland's City Health Officer in July 1907 by the Portland Board of Health and the Democratic Mayor, Harry Lane. She shared Lane's commitment to public health reforms as integral elements of a Progressive agenda. Several months into her new position, Pohl confronted what became known as the "Rowland scandal."[55] In early February 1908, Pohl reported to the Board of Health that Golda Rowland, a twenty-five-year-old school teacher living in Washington State, had died the previous September from an abortion performed at the X-Radium Institute. (Public interest in the discovery of radium and the use of x-ray technology apparently inspired the outfit's name.) Pohl also charged that the death certificate for Rowland had been altered to conceal the crime.[56] According to newspaper reports, Ernest Heymans, a proprietor of the institute, forged the signature of a Portland physician on the death certificate. But Heymans claimed that the doctor in question, Carey Talbott, authorized him to sign her name because she was ill. The Rowland scandal then swirled with counter charges and contradictions. Talbott adamantly denied any involvement, but Rowland's mother testified that the woman doctor had cautioned her against making a fuss that would be pointless and damaging to her daughter's reputation.[57] Dr. William Eisen, a physician at the X-Radium Institute, alarmed the public by claiming he knew of four murders committed on site and that "infants, prematurely born" had been "incinerated in a furnace."[58] Health officer Pohl expressed her dismay to the *Oregonian*: "Think of a poor, unfortunate girl, dying among a crowd of grafters, such as Heymans and his assistants!"[59]

OHS Research Library, OrHi 27736

Dr. Esther Pohl Lovejoy used her position as City Health Officer to support the Progressive Era's anti-abortion campaign. During what became known as the "Rowland scandal" in 1908, she objected to reportedly unhealthy conditions at a notorious abortion site and to an apparent cover-up of an illegal operation.

The same day that Pohl reported the incident, Heymans sold his interest in the institute and fled the city. Four days later, the police closed the facility. A committee of doctors joined members of the clergy and the local bar

LIQUID SUNSHINE—The Most Marvelous Medical Treatment of the Age

INDORSED BY THE MOST PROMINENT PHYSICIANS AND SURGEONS THROUGHOUT THE WORLD

The "Elixir of Life" Now Curing Rebellious and Chronic Diseases Heretofore Pronounced Incurable—Is the New and Successful Treatment at the X-Radium Medical Institute and Sanitarium, the Largest and Most Complete Private Institute in the Northwest.

New York Press Dispatches, Dated June 15, '05, speaking of this famous treatment say: "Liquid Sunshine, as used at the X-Radium Medical Institute, of Portland, Or., is reported as being productive of almost miraculous cures."

Chicago Press Dispatches, Dated Sept. 2, '05, say: "Liquid Sunshine is bordering close upon the miraculous and Oregon is being prominently identified with the scientific world in producing such remarkable cures as have been made of late at the Portland X-Radium Medical Institute."

Press Dispatches, dated October 1st, under Telegraphic News, say:

NEW RHEUMATISM CURE

After Eighteen Years' Chronic Sickness Liquid Sunshine Cures.

ST. PAUL, Minn., Sept. 30.—Darius F. Simms, a cripple for 18 years past, suffering from chronic rheumatism, who left here nine weeks since to visit the Portland Fair, accompanied by a nurse and crutches, returned here last evening with the nurse, but minus crutches. He is full of enthusiasm at his remarkable recovery. Eighteen years ago he was taken down with inflammatory rheumatism, which left him a cripple, his condition getting worse each year. On his arrival at Portland, Or., he says, he placed himself in the care of the X-Radium Medical Institute physicians and was treated for seven weeks with the new elixir of life, "Liquid Sunshine" which has effected a complete cure. The local physicians who have treated Mr. Simms for the past 15 years are themselves astonished at his marvelous cure. Other invalids here are preparing to leave for the Portland X-Radium Medical Institute.

By this new and superior method of treatment at the X-Radium Institute, this elixir of life, just discovered, gives vigor to the whole system, creates new energy, strengthens the nerves, makes new blood, bright eyes, a clear brain, restores the healthy complexions of youth, and makes life worth living.

Ladies will find a boon in Liquid Sunshine. It fills out hollow cheeks, restores the curves of beauty to the scrawny neck and shrunken bust. It makes women healthy, beautiful and able to be a wife and mother as well as the joy of her family.

Puny Girls and Sick Children Are Given New Life and Growth.

FOR OVERWORKED MEN, sufferers from nervous prostration, or people approaching old age, there is nothing that will benefit them so surely, so quickly, or so permanently as Liquid Sunshine.

Liquid Sunshine

"LIQUID SUNSHINE"

As a Tonic, Stimulator and Invigorator It Has No Equal.

The X-Radium Medical Institute is indorsed, patronized and the only institute recognized by the medical profession and hospital clinics throughout the Pacific Northwest for the treatment and cure of CANCER, TUMORS, CONSUMPTION, STOMACH, LIVER, BLOOD POISONING, RHEUMATISM, PARALYSIS, FEMALE TROUBLES, CATARRH, ULCERS, LUMPS, DEAFNESS, ASTHMA, LOCOMOTOR ATAXIA, NERVOUS DISORDERS, RUPTURE, PILES, FISTULA, RECTAL DISEASES, BLADDER, KIDNEY AND KINDRED DISORDERS.

No Mistakes Are Made in Diagnosing Your Case and dragging you for months without knowing what ails you. The Liquid Sunshine Ray looks clear through your body and at once locates the cause.

American, German, French and Scandinavian Specialists in attendance. Consultation free; treatment within the reach of all. Correspondence solicited. Strictly confidential. Send for symptom blank covering our home treatment.

The X-Radium Medical Institute and Sanitarium Is Now Located in Its Magnificent New Building, Third and Alder Sts.

It Offers to Those Seeking the Highest-Class Medical or Surgical Attendance an Elegant and Refined Home for Sick or Convalescent. Maternity Cases Given Special Attention. Professional Lady Nurses in attendance.

Hundreds of Testimonials and Gilt-Edge City References at Office.

X-RADIUM MEDICAL INSTITUTE AND SANITARIUM

Office Hours—9 A. M. to 12 M. 1:30 to 5 P. M. Evenings 7 to 8 P. M. Sundays 11 A. M. to 2 P. M.

X-Radium Building, 3d and Alder, Entrance 253 Alder
Telephone Main 2796
Portland, Oregon

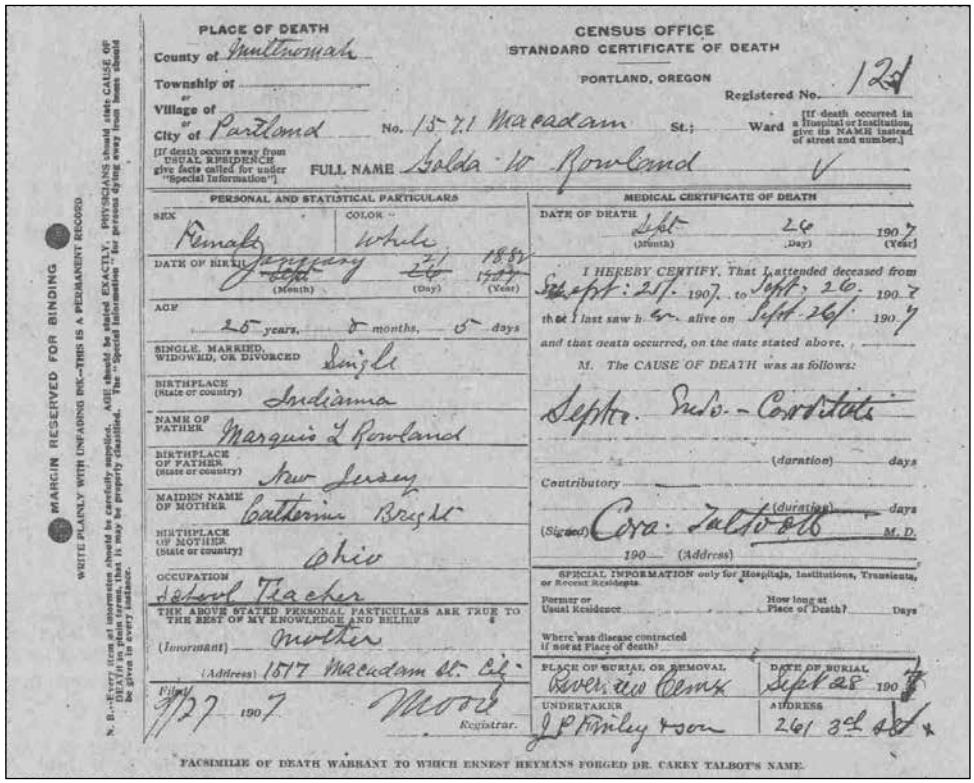
With a name that reads today like a hangout for a Spider-Man villain, the X-Radium Institute purported to be a clinic for advanced medical care. Located at Third and Alder streets in downtown Portland, the operation touted elixirs to treat sexually transmitted diseases and suggested women would receive assistance with ending pregnancies. This ad appeared in the Oregonian *on October 15, 1905.*

association to rid the city of criminal operations.[60] Ministers railed against the circumstances of the case. Dr. J. Whitcomb Brougher, the prominent pastor of the First Baptist Church, spoke of the Rowland "murder" before an overflow audience at a downtown auditorium. He suggested that society made it difficult for "erring" women to return to "rectitude." Many, he declared, might feel driven to death rather than endure the disgrace of their condition. Brougher characterized the state of affairs around Rowland's case as "simply horrible" and tried to rally "moral people" to undertake the disagreeable task of ridding the city of abortion providers, who he called a "generation of vipers."[61]

Several months later, in late July 1909, Heymans was arrested in Seattle and then tried in Portland for the lesser charge of forging the Rowland death

certificate. A jury acquitted him.[62] When the Medical Examiners Board revoked Dr. Eisen's license due to his involvement in the case, the Oregon Supreme Court overruled the decision, citing insufficient proof that Heymans intended to end a life.[63]

Manning vented to the *Oregonian* his immense frustration with what he considered the ambiguities of the abortion law. "I have been through the courts many times in these cases and have never been able to score a conviction, much as the courts and I have tried." He complained that Oregon had a statute against manslaughter, not abortion. "But manslaughter is the taking of life," he said. "Life must be present before it can be destroyed. In nearly every case of abortion there is no taking of life, according to the legal and medical authorities."[64] Several months after the Rowland scandal played out, the Multnomah County Grand Jury essentially agreed with Manning.



PLACE OF DEATH

County of Multnomah

Township of ——

or

Village of

or

City of Portland No. 15 7.1 Macadam St.; Ward

[If death occurred in a Hospital or Institution, give its NAME instead of street and number.]

[If death occurs away from USUAL RESIDENCE give facts called for under "Special Information"]

FULL NAME Golda W Rowland

CENSUS OFFICE

STANDARD CERTIFICATE OF DEATH

PORTLAND, OREGON

Registered No. 124

PERSONAL AND STATISTICAL PARTICULARS

SEX Female

COLOR White

DATE OF BIRTH (Month) January (Day) 24 (Year) 1882

AGE 25 years, 8 months, 5 days

SINGLE, MARRIED, WIDOWED, OR DIVORCED Single

BIRTHPLACE (State or country) Indiana

NAME OF FATHER Marquis L Rowland

BIRTHPLACE OF FATHER (State or country) New Jersey

MAIDEN NAME OF MOTHER Catherine Bright

BIRTHPLACE OF MOTHER (State or country) Ohio

OCCUPATION School Teacher

THE ABOVE STATED PERSONAL PARTICULARS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF

(Informant) Mother

(Address) 1517 Macadam St. City

Filed 1907 Registrar. Moore

MEDICAL CERTIFICATE OF DEATH

DATE OF DEATH Sept (Month) 26 (Day) 1907 (Year)

I HEREBY CERTIFY, That I attended deceased from Sept. 21. 1907. to Sept. 26. 1907.

that I last saw h alive on Sept 26. 1907.

and that death occurred, on the date stated above.

M. The CAUSE OF DEATH was as follows:

Septic. Infection - Contributory

(duration) days

Contributory (duration) days

(Signed) Cora Talbot M. D.

190 (Address)

SPECIAL INFORMATION only for Hospitals, Institutions, Transients, or Recent Residents.

Former or Usual Residence How long at Place of Death? Days

Where was disease contracted if not at Place of death?

PLACE OF BURIAL OR REMOVAL Riverview Cemetery

DATE OF BURIAL Sept 28 1907

UNDERTAKER J P Finley & Son

ADDRESS 261 3rd St

MARGIN RESERVED FOR BINDING

WRITE PLAINLY WITH UNFADING INK—THIS IS A PERMANENT RECORD

N. B.—Every item of information should be carefully supplied. AGE should be stated EXACTLY. PHYSICIANS should state CAUSE OF DEATH in plain terms, that it may be properly classified. The "Special Information" for persons dying away from home should be given to every instance.

FACSIMILE OF DEATH WARRANT TO WHICH ERNEST HEYMANS FORGED DR. CAREY TALBOT'S NAME.

Golda W. Rowland, a twenty-five-year-old schoolteacher, died from an abortion conducted at the X-Radium Institute in downtown Portland. Her death and the trial that followed triggered sensational newspaper coverage at the peak of the Progressive Era's campaign against abortion. On February 8, 1908, the Oregonian *published a copy of Rowland's death certificate.*

In an official report, the panel recognized that abortions had become "an established industry" in Portland and that a "new and more forceful law" was needed because "the present law is of little or no effect."[65] Whether a more restrictive and punitive ban would have made a difference in ending abortions or increasing the conviction rate is not known, because the state never enacted a more restrictive law.

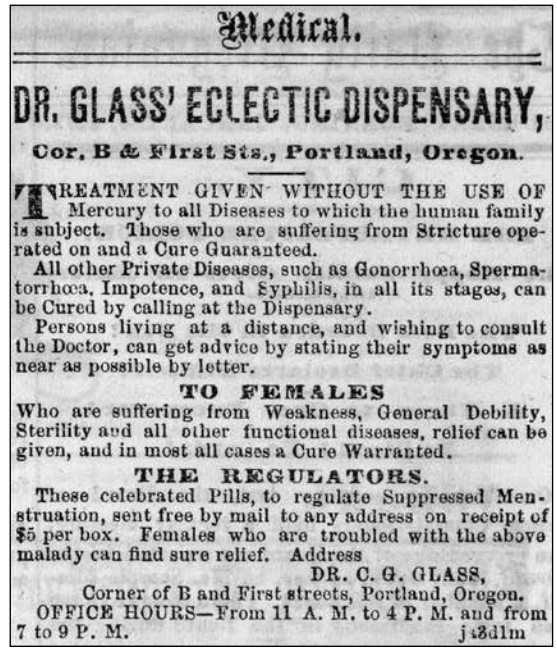
WITH THE MANY OBSTACLES to successful prosecutions, Portland authorities obtained guilty verdicts in just seven of the twenty-seven trials, for an overall 30 percent conviction rate. Prosecutors in the 1870–1900 period achieved convictions in three of twelve trials (25 percent) compared to the four convictions in fifteen trials (27 percent) during the years 1900 to 1920.[66] The increase in the latter period probably reflects the vigilance of Progressives and the determination of Manning, who served as district attorney from 1902 to 1908, when nine abortion-related trials were prosecuted.[67] Portland's experience was not much different from that of other jurisdictions. Reagan observes that Chicago sometimes obtained only one or two convictions a year, and in one ten-year period, that city's conviction rate was less than 25 percent.[68]

Given the repeated entreaties by the district attorney and the medical society, most Portland physicians apparently resisted demands from legal and medical leaders to assist with enforcement of the state's abortion law. During the early 1900s, the *Oregonian* gave extensive coverage to alleged abortion offenses and allowed parties to the acts to make unsubstantiated, scandalous claims. With convictions difficult to obtain even in high-profile trials, one Portland prosecutor, Manning, vented his frustration at regular physicians and the local medical society. His sentiments echoed the discontent of prosecutors in other cities who also demanded collaboration from physicians. They wanted doctors to identify abortion providers, report indications of abortions, obtain dying declarations, and testify at trials. After the Atwood trial in 1907, Manning placed local doctors and the City and County Medical Society on notice: "I shall when the proper time comes, call upon the society to produce all the evidence its members have."[69] Anything less, he implied, would be tantamount to hindering prosecutions.

Local medical society leaders needed little prodding; they were already engaged in a public dispute with the AMA over Oregon's quality of medical education and the state's medical profession overall, and they wanted no further damage to doctors' reputations.[70] Dr. Alan Welch Smith, secretary of the society, urged members at a May 1907 meeting to identify and help prosecute practitioners among their ranks and to "stamp out this blot on the medical profession." He complained of the "clique of doctors" who dared

to advertise their "unholy vocation" and then boasted of the money they pocketed.[71] Another doctor, C.N. Suttner, expressed disgust for the situation in an article for *Northwest Medicine*, a medical journal. He wondered if his law-abiding colleagues would ever have the courage to banish abortion providers from their medical societies, shun them from their homes, and refuse to defend them before a court of law.[72]

The doctors who attended the May 1907 session agreed that abortion had become so rampant in the city that drastic measures were necessary, and the *Oregonian* reported that every member of the medical society had pledged to assist with securing evidence against abortion providers. A few doctors testified at abortion trials, including the prosecution of Dr. Atwood. The physicians continued their efforts into the following year, and in February 1908, society members agreed on an informal collaboration between their "abortion committee" and legal authorities that was similar to arrangements developed in Chicago, Philadelphia, and other cities.[73]



Medical.

DR. GLASS' ECLECTIC DISPENSARY,

Cor. B & First Sts., Portland, Oregon.

TREATMENT GIVEN WITHOUT THE USE OF Mercury to all Diseases to which the human family is subject. Those who are suffering from Stricture operated on and a Cure Guaranteed.

All other Private Diseases, such as Gonorrhœa, Spermatorrhœa, Impotence, and Syphilis, in all its stages, can be Cured by calling at the Dispensary.

Persons living at a distance, and wishing to consult the Doctor, can get advice by stating their symptoms as near as possible by letter.

TO FEMALES

Who are suffering from Weakness, General Debility, Sterility and all other functional diseases, relief can be given, and in most all cases a Cure Warranted.

THE REGULATORS.

These celebrated Pills, to regulate Suppressed Menstruation, sent free by mail to any address on receipt of $5 per box. Females who are troubled with the above malady can find sure relief. Address

DR. C. G. GLASS,

Corner of B and First streets, Portland, Oregon.

OFFICE HOURS—From 11 A. M. to 4 P. M. and from 7 to 9 P. M. j18d1m

Oregon's first reported abortion trial led to the conviction of the proprietor of this operation that touted herbal remedies for an assortment of maladies. This advertisement, published in the Oregonian *on September 1, 1873, targeted men with "secret habits" and women in need of "Female Regulator Pills." A nineteen-year-old woman died from an abortion procured at this facility in 1873.*

Despite these cases of collaboration, the repeated requests and demands for doctors' help suggest that cooperation was limited and that most doctors were unwilling to help bring charges against their colleagues or risk involvement at any level in a public abortion case. The AMA's early anti-abortion efforts had empowered the state to control women's reproductive lives, but individual doctors apparently did not expect the state to place demands or attempt to exert control of them as well. The *Oregonian* reported that these "legitimate practitioners" had known for some time that at least a dozen physicians performed abor-

OHS negative no. 36331

Edward Stewart and Maude Van Alstyne, both licensed doctors, maintained full-time abortion practices in the Broadway Building at 715 Southwest Morrison Street. Stewart's operation commanded the full eighth floor. Ruth Barnett, a naturopath, later expanded her abortion services with the purchase of Van Alstyne's and Stewart's practices.

tions in the city. Smith of the medical society conceded the point and admitted that an earlier lack of vigilance in purging abortion providers from the profession had led to the distressing circumstances before them.[74] The demands on doctors ignored that many physicians, as Solinger notes, "treat[ed] their work as a private business" and valued their clinical and financial independence.[75]

The matter of collaboration by individual physicians was more complicated than it might appear. Doctors who had no direct role in an abortion often risked their reputations when they became implicated as medical experts or as autopsy assistants in a trial. Likewise, providing medical care to a woman suffering from a botched abortion could also mean becoming the last attending physician before the woman died. Reporting the incident as required could bring the suspicions of the coroner or prosecutor. Obtaining dying declarations provided some protection, but that strategy proved contentious as well. One of the few outspoken advocates for legal abortion, Dr. William Robinson of New York, objected to distressing a patient over a dying declaration: "The business of the doctor is to relieve pain, cure disease and save life," "not to act as a bloodhound [for] the state."[76]

No reports in the *Oregonian* during this fifty-year period describe the medical practices, professional lives, or personal motivations of abortion providers who avoided indictments and trials. Nevertheless, those

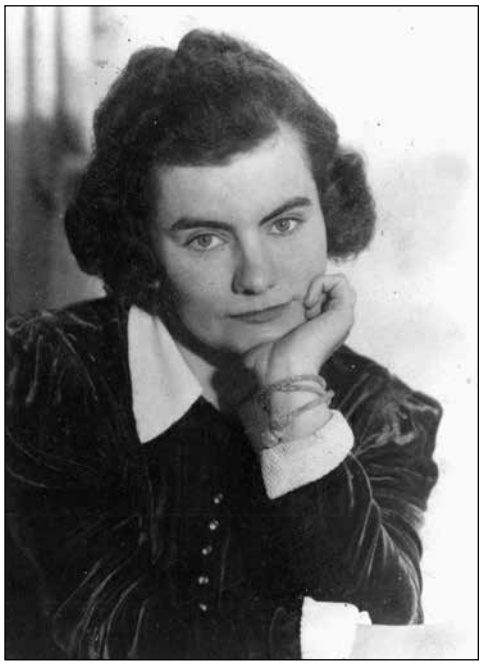
unprosecuted individuals reveal another part of the city's experience with enforcement of the abortion ban.

Ruth Barnett, a naturopath and abortion assistant, identified several regular, licensed physicians who practiced during this study period and avoided legal troubles for their abortion work in Portland.[77] She published her recollections in her later years and, as a well-known abortion provider at the time, had reason to portray her colleagues in a positive light. Her accounts suggest she held them in high regard. Given the few trials and convictions during this period, the physicians assumed low legal risk and provided the service for professional and personal reasons. Barnett disclosed that she had obtained an abortion from Dr. George Watts, a "highly skilled physician and surgeon" who had shifted his general practice to offer full-time abortion assistance to "woebe-gone women."[78] Barnett then described Dr. Edward Stewart as a cosmopolitan provider with a flourishing practice that occupied the eighth floor of the modern, elegant Broadway Building downtown. He also switched his practice to specialize in abortions, and his swank location probably increased his appeal to middle-class and wealthy patients. Stewart dismissed others' concerns about abortion, according to Barnett, and declared what was important to him was "the appreciation of the hundreds of women I've helped — yes!, and that of their husbands and lovers."[79] Two women abortion providers also became associates of Barnett. Dr. Maude K. Van Alstyne of Grants Pass, Oregon, graduated in 1902 from the University of Oregon Medical Department (UOMD) and maintained a suite of offices in the Broadway Building. Dr. Alys Bixby Griff also completed her UOMD studies in 1902. She established a practice for the diseases of women and maintained it until the increasing demand for abortions prompted her to

OHSU Historical Collections & Archives

Dr. Alys Bixby Griff established a general practice serving women and children in Portland in 1902, but she shifted to full-time abortion work when the demand became so apparent. With her medical skill and professional discretion, she avoided arrest and prosecution.

specialize in the service. A vivacious, confident, and sometimes nervous woman, Griff hired Barnett as her assistant, and they worked together for eleven years.[80] Barnett's portrayals of these practices clearly contrast with the newspaper reports of outfits such as the X-Radium Institute, presenting a fuller picture of abortion services during the fifty-year study period.



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Portland labor activist Julia Ruuttila, pictured here in the 1940s, knew Dr. Marie Equi for decades, and she confirmed that Equi helped women end their pregnancies. She thought Equi believed women "should have the right of choice and should not be forced to bear a child."

Dr. Marie Equi stands out among the abortion-providing physicians of her time for offering the service as part of a larger medical and political commitment to women's reproductive rights. According to her contemporaries, she performed abortions for a wide range of clients, including regular patients, poor and working-class immigrant women, political activists, and the wealthy women referred to her. One of her radical colleagues recalled: "She did most of it for nothing . . . cuz working-class women needed it," adding: "If they could, they paid, if not, not."[81] Equi brought to her medical practice a fierce independence as a woman often regarded an outsider. She spent her youth in New Bedford, Massachusetts, as the daughter of Catholic, working-class, immigrant parents, and she understood the difficulties for families at a time when birth control was forbidden. Her mother gave birth to eleven children in sixteen years, and Equi witnessed the death of three of them during childhood. She was an eager student, but she was forced to leave her high school studies to work in the city's gritty textile mills. She managed to escape with a girlfriend to an Oregon homestead, and there she first became known for seeking the intimate company of women exclusively — a lesbian before the term was used.[82]

Equi self-studied her way into medical school and graduated in 1903 as one of Oregon's early woman physicians. She became a local hero for her relief work after the San Francisco earthquake and fire.[83] She aligned

herself first with Progressives and worked for woman suffrage and civic reforms before becoming radicalized after rough treatment by police during a labor dispute in 1913. She made abortion and birth-control services part of her medical practice, and she was an active member and supporter of the Portland Birth Control League. In 1916, she spent a night in jail with Margaret Sanger, both charged with distributing birth control information.[84] Equi is not known for publicly protesting against the abortion law as she did criminalization of birth control, but her commitment to full patient services and her life as an outsider led her to disregard the demands of prosecutors and medical leaders. Treated as disreputable by many for her lesbianism and her radical politics, Equi sided with women considered morally irresponsible for seeking abortions.[85]

OHS negative no. 23496

Dr. Marie Equi is not known to have protested against the anti-abortion law in Oregon, but her own background combined with the disrespect she encountered for her radical politics and lesbianism led her to stand with women considered morally irresponsible for seeking abortions.

Radical activist Julia Ruuttila, a younger contemporary, thought Equi performed abortions because "she believed that women should have the right of choice and should not be forced to bear a child . . . if they didn't want that child or couldn't take care of it."[86] Portland physician Jessie Laird Brodie, who started her practice in the 1920s, noted that she and other doctors refused to risk performing abortions. Those doctors who did offer the service did so, she said, because "they felt so strongly about it and I think Marie Equi was one of that type."[87]

THE AMA'S ANTI-ABORTION campaign succeeded in criminalizing the procedure nationwide, an achievement that aided its efforts to diminish the role of midwives and push irregular and alternative practitioners to the periphery of health care. As a result, regular physicians increased their dominance of the nation's medical marketplace and were well positioned

to enhance their status once scientific and technological advances increased their ability to treat infectious diseases.[88]

The abortion ban also produced unanticipated consequences. Prosecutors found the law extremely difficult to enforce, and their best efforts yielded low conviction rates. And, according to physician observers, women sought abortions no matter how the bans were drafted or revised. For their part, physicians discovered that the willingness of the state to regulate women's reproductive choices might also extend to how they conducted their medical practices. Doctors in Portland and elsewhere proved reluctant to help the state enforce the law. Mohr notes that in the Midwest and on the East Coast, many physicians believed their professional goals for the abortion ban had been met by the 1890s, and they felt less motivated to engage in enforcement.[89] In 1908, the first chair of the abortion committee of the Chicago Medical Society, according to Reagan, concluded that "the public does not want, the profession does not want, the women in particular do not want any aggressive campaign against the crime of abortion."[90] Four years later, another member of the same group remarked that the coroner and prosecutors stood convinced that "the profession of Chicago and [of] the Chicago Medical Society is apathetic in the extreme, in matters relating to criminal abortion."[91]

How much physicians in Portland and elsewhere in the West shared this lack of desire for anti-abortion legislation and the apathy for enforcement is uncertain. They may have prized their independence and clinical prerogatives over helping enforce prohibitions on private decisions. Many Portland physicians enabled the practice of abortion by providing post-abortion medical care, by invoking the therapeutic exception and helping end pregnancies, by referring patients to willing physicians, and by not reporting their colleagues.[92] Reports suggest that more than a dozen Portland physicians skirted the law to help women end their pregnancies during this fifty-year time frame.[93] Many of those practitioners combined surgical skill and discrete service to attract sizeable numbers of clients from all backgrounds, although poor and working-class women were probably hard-pressed to afford their assistance. At least one, Equi, was known to provide abortions regardless of whether a woman could afford her care. She also achieved distinction for distributing birth control information at a time when doing so was illegal.

The first fifty years of attempted enforcement of the abortion ban in Portland became mired in legal, medical, and sometimes political quandaries that challenged and frustrated city and county officials, the medical establishment, and individual physicians. One civic body in 1908 suggested the state abortion law should be revised with "more forceful" provisions to address these difficulties.[94] The recommendation was not pursued. Instead, at the conclusion of the next fifty-year period, in 1969, Oregon adopted a more

liberal abortion law following the Model Penal Code proposed by the American Law Institute. The new law legalized abortion in cases of rape, incest, or when the pregnancy would damage a woman's physical or mental health.[95]

Oregon's revision of its abortion ban held until the U.S. Supreme Court's landmark *Roe v. Wade* ruling on January 22, 1973, which decriminalized abortion throughout the United States. In the seven-to-two decision, the court declared the right of privacy included "a woman's decision whether or not to terminate her pregnancy."[96] Abortions became legal throughout a woman's pregnancy, although states were allowed to set conditions during the second trimester and possibly prohibit abortions during the third trimester except when the life or health of the woman was at risk. The era of illegal abortions ended, and, as historian Reagan notes, "for the first time, the state recognized women's role and rights in reproductive policy."[97] The *Oregonian* carried the abortion story the following day in the middle of page one in its morning edition, but the news was overshadowed by reports of former president Lyndon B. Johnson's death.[98] Embedded on page thirty-seven ran an advertisement: "BIRTHRIGHT," Untimely pregnancy? Is abortion the solution? Call if you desire professional help or advice."[99]

The early history of Portland's abortion trials reflects the difficulty with enforcement since the enactment of the ban, and it foreshadows the abortion policy conflicts of the mid nineteenth century as well as many today. This analysis of the city's experience also highlights the nuanced and disparate reactions of physicians who found themselves on the front lines of abortion services, policies, and enforcement.

Much of the early history of reproductive rights in the Pacific Northwest — and women's roles in the efforts — remains unexamined. It can be argued, however, that an understanding of the conflicts over reproductive policy are as important to women's and the nation's history as the struggle to achieve woman suffrage and other rights of citizenship. Both arenas deserve further analysis. The data source examined in this study yielded several accounts of women's involvement with abortion issues. Women such as Mary Hardman, Hattie Fee, and Golda Rowland, who defied the ban, officials and advocates such as Lola Baldwin and Dr. Esther Pohl, who supported protection of women and enforcement, and physicians such as Alys Griff and Marie Equi, who assumed professional risks by providing abortions — all contributed to the ebb and flow of an issue that has roiled the body politic for more than 150 years. Other data sources — municipal and district court records, arrest and jail records, public documents, additional periodicals, private collections, and medical reports — await the examination that can broaden and deepen our understanding of abortion and women's reproductive rights in the Pacific Northwest.

NOTES

A digital version of the *Oregonian* served as primary data source for this study. Searches for *abortion* and *criminal operation* from 1864 to 1920 yielded accounts of arrests, investigations, and prosecutions. Incidents occurring outside Portland were excluded from the analysis. When an accused practitioner was identified, an additional search by surname was conducted to obtain additional information, such as trial outcomes. Decisions by the Oregon Supreme Court and the U.S. Supreme Court, some of which are available online, revealed the outcomes of appeals as well as clarifications of the abortion law.

The *Oregonian* mostly offered straightforward accounts of the trials, exercising the restraint that Peter Boag notes in its coverage of anti-vice campaigns and the 1912 same-sex scandal (Peter Boag, *Same-Sex Affairs, Constructing and Controlling Homosexuality in the Pacific Northwest*, Berkeley: University of California Press, 2003, 161). Only during the most controversial cases in the 1900s did the paper appear to stoke as well as report public concern.

A few abortion prosecutions in Portland during this period may not have been reported in the newspaper, and a number of arrests and investigations may have been missed. The newspaper occasionally employed euphemisms for abortion — for example, "for reasons growing out of their intimacy" and "preventing possible working out of the laws of nature" — that eluded searches and were found in full page-by-page readings.

This study did not include reports of trials that may have appeared in non-digitized and less-accessible Portland newspapers, and it did not examine court records. The newspaper coverage cited here failed to examine the national ban on distribution of birth control information as an underlying cause of unplanned pregnancies.

The author appreciates the assistance of several colleagues who helped guide this project, especially the participants at the 2014 Pacific Northwest History Conference, where an earlier version of this study was presented. Thanks also to the anonymous manuscript readers and to Eliza Canty-Jones, editor; Erin Brasell, assistant editor; and Rose Tucker Fellow Melissa Lang of the O*regon Historical Quarterly* for their excellent support and insight. Dale Danley's data-driven perspective proved invaluable.

1. "Found Guilty: Concluding Testimony in the Trial of Dr. C.G. Glass – Argument of Counsel." Oregonian, November 17, 1873, 4. Note: C.G. Glass employed the term "Doctor" but there is no evidence of his having obtained a medical degree

2. "1873, Principal Events of the Year," *Oregonian*, January 1, 1874, 3.

3. "True Bill Found," *Oregonian,* November 7, 1873, 3; "Oregon," *Los Angeles Daily Herald,* November 19, 1873, Image 2, http://chroniclingamerica.loc.gov/lccn/sn84038806/1873-11-19/ed-1/seq-2/ (accessed January 7, 2015). In a separate trial outside Portland, Menly was charged with arranging for the abortion. His acquittal became a factor in Glass's later receiving executive clemency from Oregon's governor. "Set for Thursday," *Oregonian*, November 11, 1873, 3.

4. "The Eclectic Dispensary," (advertisement) *Oregonian*, October 25, 1873, 4.

5. "Tried for Manslaughter," *Oregonian,* November 14, 1873, 3.

6. Ibid. "The Noble Representative Woman from Oregon, Dr. Mary Anna Cooke Thompson," *Oregon Historical Quarterly* 108:3 (Fall 2012): 411. Thompson (1825–1919) lacked a medical degree but had undertaken ten years of medical study and started a medical practice with the guidance of two physicians before settling in Portland.

7. "Tried for Manslaughter: The Trial of Dr. C.G. Glass for the Crime of Manslaughter, *Oregonian*, November 14, 1873, 3; "Found Guilty," *Oregonian*, November 17, 1873, 4.

8. Ruth Barnett, *They Weep On My Doorstep* (Beaverton, Ore.: Halo Publishers,

1969); Rickie Solinger, *The Abortionist, A Woman Against the Law* (Oakland: University of California Press, 1996); Nancy Krieger, "Queen of the Bolsheviks, The Hidden History of Dr. Marie Equi," *Radical America*, 17:5 (1983); Sandy Polishuk, "The Radicalization of Marie Equi," unpublished manuscript, Oregon Research Library, Oregon Historical Society, 1971 Sandy Polishuk, *Sticking to the Union, An Oral History of the Life and Times of Julia Ruuttila* (New York: Palgrave Macmillan, 2003).

9. Gloria E. Myers, *A Municipal Mother: Portland's Lola Greene Baldwin, America's First Policewoman* (Corvallis: Oregon State University Press, 1995); Sadie Anne Adams, "'We Were Privileged in Oregon': Jessie Laird Brodie and Reproductive Politics, Locally and Transnationally, 1915–1975," (M.A. thesis, Portland State University, 2012).

10. Oregon Statutes, chapter 3, section 13 (1854); *Journal of the Council of the Legislative Assembly of the Territory of Oregon . . . Begun and Held at Salem, 5th of December, 1853* (Salem, 1854), cited in James C. Mohr, *Abortion in America, The Origins and Evolution of National Policy* (New York: Oxford University Press, 1978), 138 *n*48; James Witherspoon, "Re-Examining Roe: Nineteenth-Century Abortion Statutes and the Fourteenth Amendment," *St. Mary's Law Journal* 17:29, 32–34. Witherspoon documents 18 states with abortion laws by 1850, and Mohr lists 4 territories with anti-abortion laws by 1854.

11. Linda Gordon, *The Moral Property of Women, A History of Birth Control Politics in America* (Urbana: University of Illinois Press, 2007), 24–34; Leslie J. Reagan, *When Abortion Was a Crime, Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997), 8–18, 80–112.

12. Quotation from Horatio R. Storer, *Why Not? A Book for Every Woman* (Boston: Lee and Shepard, 1868) as cited by Reagan, *When Abortion Was a Crime*, 11 *n*34.

13. Mohr, *Abortion in America*, vii, 229-30; Gordon, *The Moral Property of Women,* 24–34; Reagan, *When Abortion Was a Crime,* 8–18, 80–112.

14. Janet Farrell Brodie, *Contraception and Abortion in 19th-Century America* (Ithaca: Cornell University Press, 1994), 253–58; Mohr, *Abortion in America*, 3. On quickening, see Gordon, *The Moral Property*, 26; Reagan, *When Abortion Was a Crime,* 25–26, 82–85.

15. Witherspoon, "Re-examining Roe," 45 *n*49; Mohr, *Abortion in America*; Reagan, *When Abortion Was A Crime*, 61–64.

16. *Journal of Proceedings of the House of the Legislative Assembly, 1864* (Portland, 1864); and *Journal of Proceedings of the Senate of the Legislative Assembly of Oregon, 1864* (Portland, 1864).

17. Mohr, *Abortion in America*, 119–46, 200–25, 293.

18. Edwin G. Burrows, *Gotham: A History of New York City to 1898* (New York: Oxford University Press, 2000), 1016; Rickie Solinger, *Pregnancy and Power, A Short History of Reproductive Politics in America* (New York: New York University Press, 2005), 76, *n*49.

19. Reagan, *When Abortion Was a Crime*, 80. The observation was made by Dr. Joseph Taber Johnson before the Washington, D.C., Obstetrical and Gynecological Society on June 7, 1895. Johnson helped lead a second anti-abortion crusade once abortion became illegal in all the states.

20. For example, "Mortality Statistics, 1906, Seventh Annual Report," U.S. Bureau of the Census, http://www.cdc.gov/nchs/data/vsushistorical/mortstatsh_1906.pdf (accessed January 7, 2015).

21. Barnett, *They Weep On My Doorstep*, 8–15, 20–29, 36. Barnett identified Drs. Albert Littlefield, George Watts, Edward Stuart, Maude K. Van Alstyne, and Alys Bixby Griff as well as Dr. Marie Equi, who kept her general practice but provided abortions.

22. "Atwoods in Jail," *Oregonian*, October 30, 1908, 12.

23. Reagan, *When Abortion Was a Crime*, 116–17; Portland and Chicago 1910 population figures: https://www.census.gov/population/www/documentation/twps0027/tab14.txt (accessed January 7, 2015).

24. Reagan, *When Abortion Was a Crime,* 114–18. The scope of this study is an ex-

amination of one primary source of data to document and better understand Portland's enforcement of the state abortion ban specifically through prosecution of providers. A broader study might assess other facets of the "investigative process" over a fifty-year or more period through other sources. These might include arrest and jail records, county court records, appellate court records, official reports by enforcement personnel, other private and public documents, and coverage in other newspapers. It is possible that the number of abortion prosecutions was greater than those reported by the *Oregonian*. Vagaries in the newspaper business may have led to an incomplete accounting of all prosecutions. Also, the *Oregonian* did not appear to limit its coverage to the most controversial abortion cases.

25. Myers, *A Municipal Mother*, 3, 75–90, 91–107.

26. Reagan, *When Abortion Was a Crime,* 80–112.

27. Ibid., 89–90.

28. Ibid., 110.

29. Ibid., 110–12. The Sheppard-Towner Act was enacted in 1921 to provide federal funds for pre-natal and child health care centers. Many AMA members regarded the act as government intrusion in the practice and finances of medicine.

30. Mohr, *Abortion in America*, 242–45.

31. "The Quacks and Fake Doctors of Portland," Medical Notes, *Northwest Medicine*, April 1908, 155; Alan Welch Smith M.D., "Practical Methods of Dealing with Quacks and Quackery," *Northwest Medicine*, July 1908, 300–307; "Drive Out Quacks, Committee Declares War on Illicit Practitioners," *Oregonian*, February 16, 1908, 8; "Swoop by Officials Bags 11 Doctors," *Oregonian,* September 10, 1911, 10.

32. Reagan, *When Abortion Was a Crime*, 116–17; Mohr, *Abortion in America,* 242.

33. Of the six trials that involved married women, one in 1894 implicated a small-time, irregular female provider, two dealt with the notorious Dr. William Eisen (in 1896 and in 1910), and one with the frequently indicted Dr. C.H.T. Atwood (1908). See Table 1.

34. Reagan, *When Abortion Was a Crime*, 113–31. Reagan examines the full investigative process that often led to trials in Chicago.

35. "Dr. Eisen's Case," *Oregonian*, September 30, 1896, 10; "Ten Men Are Indicted," *Oregonian*, December 4, 1910, 14; Reagan, *When Abortion Was A Crime,* 118–19.

36. Reagan, *When Abortion Was A Crime*, 124–29.

37. "Fails to Revoke Morrow's License," *Oregonian*, July 23, 1908, 11.

38. Mohr, *Abortion in America*, 72. The outcomes of many of the indictments and trials were inconclusive or were not reported.

39. "Dr. Atwood Is Arrested," *Oregonian*, April 8, 1907, 14. "Accused of Criminal Operation," *Oregonian*, February 24, 1906, 11.

40. Federal Census, Year: 1900, Census Place: Eugene, Lane, Oregon; Roll: T623_1349; Page: 15A, Enumeration District: 34; Advertisement, *Oregonian*, August 21, 1906, 13.

41. "Will Drive Out Criminal Doctors," *Portland Evening Telegram*, May 16, 1907, 12; "Dr. Atwood Is Arrested," *Oregonian,* April 8, 1907, 14. "Sick Juror Delays Atwood Hearing," *Oregon Daily Journal*, May 16, 1907, 3.

42. Myers, *A Municipal Mother,* 2–3, 75–90.

43. "Dr. Atwood Is Arrested," *Oregonian*, April 8, 1907, 14 ; "Holdiman to Serve a Year," *Oregonian*, June 16, 1907, 15. Leniency was granted to Holdiman at the request of his attorney and with the concurrence of the District Attorney.

44. Myers, *A Municipal Mother,* 8–24. Baldwin's work led to the establishment of a women's protective unit in the police department in 1908 with Baldwin as director. "Accused of Criminal Operation," *Oregonian*, February 24, 1906, 11.

45. "Doctor Is Out on Bond," *Oregonian*, April 13, 1907, 11.

46. *State v. Clements*, 15 Or. 247, 14 Pac. 410 (date), "The Codes and Statutes of Oregon: Showing All Laws of a General Nature, Including the Session Laws of 1901," Charles B. Bellinger and William W. Cotton

(San Francisco: Bancroft Whitney Company, 1902).

47. "Dr. Atwood Is On Trial," *Oregonian*, May 15, 1907, 19; "Will Drive Out Criminal Doctors," *Oregonian*, May 16, 1907.

48. "Slow Progress Is Made," *Oregonian,* May 18, 1907, 11; "Evidence Completed in Atwood Case," *Portland Daily News*, May 18, 1907, 1. Atwood's attorneys also filed for a dismissal on grounds that there was no state law under which Dr. Atwood could be prosecuted. The motion was overruled.

49. "Jury Cannot Agree," *Oregonian*, May 19, 1907, 11; "Case Against Atwood Dismissed," *Oregonian*, June 11, 1907, 9.

50. "Doctor is Out on Bonds," *Oregonian*, April 13, 1907, 11.

51. "Whitney Is Held in Girl's Death," *Oregonian*, April 1, 1908, 10; "Dentist Whitney Released," *Oregonian*, July 31, 1909, 14.

52. "Jury Blames Physicians," *Oregonian*, September 9, 1908, 18; "Drs. Atwood in Trouble," *Oregonian*, October 29, 1908, 3.

53. ""Physician Denies Guilt," *Oregonian*, October 16, 1907, 7; "Say Indictment Is Faulty," *Oregonian*, November 20, 1908, 18.

54. "Quack Crusade Is Bearing Fruit," *Oregonian*, July 12, 1908, 1. Medical society member brought charges against W.T. Eisen and J.W. Morrow.

55. Kimberly Jensen, *Oregon's Doctor to the World, Esther Pohl Lovejoy & A Life in Activism* (Seattle: University of Washington Press, 2012), 52–55, 75–91. On Lane, see Johnston, *The Radical Middle Class: Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon* (Princeton: Princeton University Press, 2003), 307–47. "Turning Light on the Rowland Scandal," *Oregonian*, February 4, 1908, 11.

56. Reagan, *When Abortion Was a Crime*, 28–29. Reagan describes how unwed women were urged to bear their children at maternity homes, but that women often objected to the treatment they received there. The name of the institute apparently reflected the public's interest in the relatively recent discovery of radium and the use of x-ray technology in American hospitals as well as "x-radium" for all sorts of questionable consumer products. "Death Certificate Conceals Crime," *Sunday Oregonian*, February 2, 1908, 10. The X-Radium Institute was located at 3rd and Alder streets. The article lists the age of Golda Rowland as 32, but her death certificate, published in the *Oregonian,* February 5, 1908, 10, reports her birth as January 21, 1882, and her age as 25.

57. "Death Certificate Conceals Crime," *Oregonian*, February 2, 1908, 10; "Turning Light on Rowland Scandal," *Oregonian*, February 4, 1908, 11; "Police Search For Heymans in Vain," *Oregonian,* February 5, 1908, 10; "Heymans Is Still in Hiding," *Oregonian,* February 6, 1908, 7.

58. "Turning Light on Rowland Scandal," *Oregonian*, February 4, 1908, 11.

59. "Death Certificate Conceals Crime," Oregonian, February 2, 1908, 10.

60. "Drive Out Quacks," *Sunday Oregonian*, February 16, 1908, 8.

61. "Crusade Is Opened," *Oregonian,* February 17, 1908, 5. Other ministers to join the committee included the pastors of First Congregational Church (Dr. Luther B. Dyott), First Christian Church (Rev. E.W. Muckley), First Presbyterian Church (Rev. William Hiram Foulkes), and Grace Methodist Episcopal Church (Dr. W.H. Heppe).

62. "Heymans Is Coming," *Oregonian*, March 2, 1908, 7; "Heymans To Be Returned," *Oregonian*, July 29, 1909, 10; "Heymans Is Not Guilty," *Oregonian*, October 16, 1909, 10.

63. *Board of Medical Examiners v. Eisen*, 61 Or. 492 (April 23, 1912), Oregon Supreme Court, *Reports of Cases decided in the Supreme Court of the State of Oregon, Volume 61* (San Francisco: Bancroft-Whitney, 1915), 492–96. In 1910, the Oregon State Board of Medical Examiners revoked Dr. Eisen's license for procuring an abortion in Portland, but the Oregon Supreme Court overruled the decision for lack of proof of intent to end a life and mistakes of the lower court. Eisen continued in his practice.

64. "Criminal Doctors to be Prosecuted," *Sunday Oregonian*, February 23, 1908, 12.

65. "Mayor's Crusade Opposed by Jury," *Oregonian*, October 4, 1908, 1, 5.

66. These four trial convictions involved five defendants found guilty (1907, Eisen; 1908, Whitney; 1908, both Atwoods; 1915, Ausplund).

67. "New Regime of Office Is Begun," *Oregonian*, July 7, 1908, 10. Manning was succeeded by George J. Cameron.

68. Reagan, *When Abortion Was a Crime*, 116–17.

69. Ibid., 115–16, 120–25; "Will Drive Out Criminal Doctors," *Portland Evening Telegram*, May 16, 1907, 12.

70. "Misleading, Mischievous, False, Say Doctors in Reply," *Oregon Daily Journal*, March 7, 1906, 8; "Stormy Session of the Doctors," *Oregonian*, January 4, 1906, 14; "Dr. McCormack and the Profession of Oregon," *Northwest Medicine*, June, 1906, 205–206; Alexander Flexner, *Medical Education in the United States and Canada, A Report to the Carnegie Foundation for the Advancement of Teaching* (New York: The Carnegie Foundation for the Advancement of Teaching, 1910), 291–92.

71. "Black Sheep To Be Driven Out," *Oregonian*, May 16, 1907, 10. Other Portland doctors who joined the effort to rid the city of abortion providers included R.C. Coffey, E.P. Geary, E. F. Tucker, and Esther Pohl.

72. C.N. Suttner, M.D., "A Plea for the Protection of the Unborn," *Northwest Medicine*, October 1907, 305–10.

73. "Black Sheep To Be Driven Out," *Oregonian*, May 16, 1907, 10; "Evidence Completed in Atwood Case," *Portland Daily News*, May 18, 1907, 11; "Slow Progress Is Made," *Oregonian*, May 18, 1907, 11; "Drive Out Quacks," *Sunday Oregonian*, February 16, 1908, 8. The Portland doctors on the anti-abortion committee were Alan Welch Smith, E.F. Tucker, and Esther C. Pohl. Reagan, *When Abortion Was A Crime*, 88–89.

74. Black Sheep To Be Driven Out," *Oregonian*, May 16, 1907, 10.

75. Solinger, *Pregnancy and Power*, 70.

76. Reagan, *When Abortion Was a Crime,* 124.

77. Barnett, *They Weep On My Doorstep*, 9–10 (George Watts), Alys Bixby Griff (11–15), Maude van Alstyne (23–25) Edward Stewart (27), and Albert Littlefield (36). Sandy Polishuk, *Sticking to the Union: An Oral History of the Life and times of Julia Ruuttila* (New York: Palgrave MacMillan, 2003), 92–93. Julia Ruuttila with Sandy Polishuk and Nancy Krieger, Interview, Portland, Oregon, June 6, 1981, Oregon Historical Society Research Library, Portland, Oregon, Library Accession 28389, "Materials relating to research on Dr. Marie Equi" [hereafter OHS Research Library, ACC 28389]. Ruuttila confirmed that Marie Equi provided abortions.

78. Barnett, *They Weep On My Doorstep*, 9–10, 20–40; Solinger, *The Abortionist*, 87–116, 129–49. Solinger balances the portrayal of Drs. Watts and Stewart that Barnett provides with information about their difficulties with the law in later years.

79. Barnett, *They Weep On My Doorstep*, 27, 36–39.

80. Ibid., 11–16. The six physicians who provided abortions kept offices in the following downtown buildings: Dr. George Watts (Oregonian building and later the Broadway Building), Drs. Edward Stewart and Maude van Alstyne (as well as Ruth Barnett after 1919, Broadway Building), Drs. Alys Griff and Marie Equi (Lafayette Building). *Seventeenth Annual Announcement, Medical Department of the University of Oregon, Session 1903–1904* (Portland: Anderson Printing, 1901), 29–30. Maud Kremer (later Alstyne) of Grants Pass is listed among the graduates of 1902.

81. Lew Levy with Sandy Polishuk, Interview, April 5, 1976, OHS, ACC 28389. Levy was an Oregon member of the Industrial Workers of the World.

82. Nancy Krieger, "Queen of the Bolsheviks, The Hidden History of Dr. Marie Equi," *Radical America* 17:5 (September-October 1983): 55–71. Mary E. Austin to Evelyn S. Hall, Northfield Seminary, September 6, 1889, Archives/Dolben Library, Northfield Mount Hermon School, Northfield, Massachusetts. Austin taught Equi and, after Equi dropped out of high school to work in the textile mills, wrote for her a reference letter to Hall of Northfield Seminary.

83. Michael Helquist, "Portland to the Rescue, The Rose City's Response to the 1906 San Francisco Earthquake and Fire," *Oregon Historical Quarterly,* 108:3 (2007): 474–86.

84. "Book Sale Stopped," *Oregonian*, June 24, 1916, 18; Margaret Sanger, *Margaret Sanger, an autobiography* (New York: Dover Publications, 1971), 206.

85. "Portland Congressional Body of Suffragists Divide over Seating of Dr. Equi," *Oregonian*, September 20, 1915, 4; "Suffragist Camp Upset and At War," *San Francisco Examiner*, September 26, 1915, 1; Emma B. Carroll to Virginia Arnold, September 19, 1915, National Women's Party Papers, "The Suffrage Years, 1913–1920," Series I, Reel 19. In a well-publicized dispute, an Oregon suffrage leader, Emma Carroll, tried to keep Equi from representing the state at a national suffrage convention in San Francisco in 1915. "Mrs. Carroll Is Sued for Libel by Marie Equi," *San Francisco Examiner*, October 9, 1915, 1; "Dr. Equi Sues Suffragist," *Oregonian*, October 10, 1915, 4; *Marie Equi v. Emma B. Carroll*, Oregon State Circuit Court case #63125. Equi later sued Carroll for slander and libel. "Dr. Equi Is Guilty of Disloyalty," *Oregon Daily Journal*, November 21, 1918, 1; "United States Department of Justice files; National Archives, Civilian Records Unit (Archives II), Case File #9-19-1354-0 and Bureau Papers #9-19-1354, parts 1 and 2. In her sedition trial in 1918, Equi objected to the prosecutor's characterization of her as "an unsexed woman." Federal agents frequently referred to Equi as an immoral and politically dangerous woman.

86. Sandy Polishuk, *Sticking to the Union: An Oral History of the Life and Times of Julia Ruuttila* (New York: Palgrave Macmillan, 2003), 92–93; Julia Ruuttila with Sandy Polishuk and Nancy Krieger, Interview, Portland, Oregon, June 6, 1981, OHS ACC 28389.

87. Jessie Laird Brodie, MD, Interview with Susan Dobrof, date uncertain, 1981–1982), OHS ACC 28389.

88. During the fifty-year period of the study, scientists discovered the causes and treatments for tuberculosis, cholera, diphtheria, rabies, and syphilis.

89. Mohr, *Abortion in America,* 240–45.

90. Reagan, *When Abortion Was a Crime,* 89. The chair of Chicago's Criminal Abortion Committee was Rudolph Holmes.

91. Reagan, *When Abortion Was a Crime*, 90.

92. Carol Joffe, *Doctors of Conscience: The Struggle to Provide Abortion Before and After* Roe v. Wade (Boston: Beacon Press, 1995), 46–67.

93. Myers, *Municipal Mother*, 75–90, *n*23, 199. Police officer Lola Baldwin listed the following abortion providers who practiced in Portland: Courtney, Von Falkenstein, CHT and CH Atwood, McCormick, Pierce,Walker, Armstrong, Candiani, McKay, Watts, Mallory, King, and Ausplund. Of the fourteen, nine are not known to have been prosecuted in Portland for abortion, although in 1911 a few of these were arrested for practicing without a license. "Swoop by Officials Bags 11 'Doctors'," *Oregonian*, September 10, 1911, 10. Barnett, *They Weep On My Doorstep*, 11–25. Barnett named an additional four physicians who offered abortions without encountering legal problems in Portland: Stewart, Littlefield, van Alstyne, and Griff.

94. "Mayor's Crusade Opposed by Jury," *Oregonian*, October 4, 1908. This report detailed the work of the Multnomah County Grand Jury and its recommendations.

95. "Liberalized Abortion in Oregon," http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1654074/pdf/amjph00473-0069.pdf (accessed February 13, 2015); Reagan, *When Abortion Was a Crime,* 220–22, 330 *n*15.

96. *Jane Roe, et al. v. Henry Wade, District Attorney of Dallas County*, 410 US 113, 35 L Ed 2d 147 (1973).

97. Reagan, *When Abortion Was a Crime,* 244–45.

98. "Supreme Court Decision Grants Abortion Right," *Oregonian*, January 23, 1973, 1; "Ex-President Lyndon Johnson Dies," *Oregonian,* January 23, page 1.

99. "Special Notices," Advertising Section, *Oregonian*, January 23, 1973, 37.

Oregon has some case law on point for Planned Parenthood and updated statutes to reflect the findings.

The statute is:411.404 (updated in 2009)
Determination of eligibility for medical assistance

• rules

(1)The Department of Human Services or the Oregon Health Authority shall determine eligibility for medical assistance according to criteria prescribed by rule and in accordance with the requirements for securing federal financial participation in the costs of administering Titles XIX and XXI of the Social Security Act.

(2)Rules adopted under this section may not require any needy person over 65 years of age, as a condition of entering or remaining in a hospital, nursing home or other congregate care facility, to sell any real property normally used as the persons home. [Formerly 414.042; 2011 c.602 §34; 2011 c.720 §103; 2013 c.14 §5; 2013 c.688 §43]

The case was from 1984 in OR:
Planned Parenthood Assn. v. Dept. of Human Res., 687 P. 2d 785 - Or: Supreme Court 1984

Rule arbitrarily limiting number of elective abortions woman in medical assistance program may receive was outside authority of Division because under this section only factors to be considered in determining need are requirements and needs of individual, income, responsibility of spouse, parent or guardian and individual circumstances. Planned Parenthood Assn. v. Dept. of Human Resources, 297 Or 562, 687 P2d 785 (1984)

The status of abortion providers throughout the US I was able to find the chart below (information from NARAL Pro Choice America):

State	Bans of Abortion				Limits on Abortion						Protections for Abortion	
	Status Before "Roe"		Current Status[26]		General Limits				Limits on Minors			
	Completely Illegal	Illegal with Limits	Trigger Law on Any Abortion	Trigger Law on Late Term Abortion	Waiting Period	Mandatory Ultrasound [27]	Counseling	% of Counties Without Provider	At least One Parent Informed	At Least One Parent Consent	Freedom Act[28]	State Constitutional Protection[29]
Alabama	No	Yes	No	Yes	Yes	Yes	Yes	93%[30]	Yes	Yes	No	No
Alaska	No	No	No	Yes	None	No	Yes	83%[31]	No	No	No	Yes
Arizona	Yes	No	No	Yes	Yes	24 hours	Yes	73%[32]	Yes	Yes	No	Yes
Arkansas	No	Yes	No	Yes	Yes	No	Yes	97%[33]	Yes	Yes	No	No

State	Bans of Abortion				Limits on Abortion						Protections for Abortion	
	Status Before "Roe"		Current Status[26]		General Limits				Limits on Minors			
	Completely Illegal	Illegal with Limits	Trigger Law on Any Abortion	Trigger Law on Late Term Abortion	Waiting Period	Mandatory Ultrasound [27]	Counseling	% of Counties Without Provider	At least One Parent Informed	At Least One Parent Consent	Freedom Act[28]	State Constitutional Protection[29]
California	No	Yes	No	No	None	No	None	41%[34]	**No**	No	Yes	Yes
Colorado	No	Yes	**Yes**	No	None	No	None	78%[35]	Yes[36]	No	No	No
Connecticut	Yes	No	No	No	None	No	None	25%[37]	**No**	No	Yes	Yes
Delaware	No	Yes	No	No	None	No	Yes	33%[38]	Yes	No	No	No
Florida	No	Yes	No	Yes	None	Yes	None	69%[39]	Yes	No	No	Yes
Georgia	No	Yes	No	No	Yes	No	Yes	92%[40]	Yes	No	No	No
Hawaii	No	No	No	No	None	No	None	20%[41]	**No**	No	Yes	No
Idaho	Yes	No	No	Yes	Yes	No	Yes	93%[42]	Yes	Yes[43][44]	No	No
Illinois	Yes	No	Yes	Yes	None	No	None	92%[45]	**No**	No	No	Yes
Indiana	Yes	No	No	Yes	Yes	No	Yes	93%[46]	Yes	Yes	No	Yes
Iowa	Yes	No	No	Yes	None	No	None	93%[47]	Yes	No	No	No
Kansas	Yes	No	No	Yes	Yes	Yes	Yes	96%[48]	Yes	No	No	No
Kentucky	Yes	No	No	Yes	Yes	No	Yes	98%[49]	Yes	Yes	No	No
Louisiana	Yes	No	**Yes**	Yes	Yes	24 hours[50]	Yes	92%[51]	Yes	Yes	No	No
Maine	Yes	No	No	No	None	No	None	63%[52]	Yes	Yes	Yes	No

State	Bans of Abortion				Limits on Abortion						Protections for Abortion	
	Status Before "Roe"		Current Status[26]		General Limits				Limits on Minors			
	Completely Illegal	Illegal with Limits	Trigger Law on Any Abortion	Trigger Law on Late Term Abortion	Waiting Period	Mandatory Ultrasound [27]	Counseling	% of Counties Without Provider	At least One Parent Informed	At Least One Parent Consent	Freedom Act[28]	State Constitutional Protection[29]
Maryland	No	Yes	No	No	None	No	None	58%[53]	Yes	No	Yes	No
Massachusetts	No	Yes	No	No	None	No	Yes	14%[54]	Yes	Yes	No	Yes
Michigan	Yes	No	No	Yes	Yes	No	Yes	83%[55]	Yes	Yes	No	No
Minnesota	Yes	No	No	No	Yes	No	Yes	95%[56]	Yes	No	No	Yes
Mississippi	No	Yes	No	Yes	Yes	Yes	Yes	99%[57]	Yes	Yes	No	No
Missouri	Yes	No	Yes	Yes	Yes	No	Yes	96%[58]	Yes	Yes	No	No
Montana	Yes	No	No	No	None	No	None	91%[59]	No	No	No	Yes
Nebraska	Yes	No	No	Yes	Yes	No	Yes	97%[60]	Yes	No	No	No
Nevada	Yes	No	No	No	None	No	None	88%[61]	No	No	Yes	No
New Hampshire	Yes	No	No	No	None	No	None	50%[62]	No	No	No	No
New Jersey	Yes	No	No	Yes	None	No	None	19%[63]	No	No	No	Yes
New Mexico	No	Yes	No	No	None	No	None	88%[64]	No	No	No	Yes
New York	No	No	No	No	None	No	None	44%[65]	No	No	No	No
North Carolina	No	Yes	No	No	None	No	None	86%[66]	Yes	Yes	No	No

State	Bans of Abortion				Limits on Abortion						Protections for Abortion	
	Status Before "Roe"		Current Status[26]		General Limits				Limits on Minors			
	Completely Illegal	Illegal with Limits	Trigger Law on Any Abortion	Trigger Law on Late Term Abortion	Waiting Period	Mandatory Ultrasound [27]	Counseling	% of Counties Without Provider	At least One Parent Informed	At Least One Parent Consent	Freedom Act[28]	State Constitutional Protection[29]
North Dakota	Yes	No	No	Yes	Yes	No	Yes	98%[67]	Yes	Yes	No	No
Ohio	Yes	No	Yes	Yes	Yes	No	Yes	90%[68]	Yes	No	No	No
Oklahoma	Yes	No	No	Yes	Yes	No	Yes	96%[69]	Yes	No	No	No
Oregon	No	Yes	No	No	None	No	None	78%[70]	No	No	No	Yes
Pennsylvania	Yes	No	No	No	Yes	No	Yes	78%[71]	Yes	Yes	No	No
Rhode Island	Yes	No	No	Yes	No	No	Yes	80%[72]	Yes	Yes	No	No
South Carolina	No	Yes	No	Yes	Yes	No	Yes	91%[73]	Yes	Yes	No	No
South Dakota	Yes	No	No*	Yes	None	No	None	98%[74]	Yes	No	No	No
Tennessee	Yes	No	No	Yes	None	No	None	94%[75]	Yes	Yes	No	Yes
Texas	Yes	No	No	No	Yes	24 hours	Yes	93%[76]	Yes	Yes	No	No
Utah	Yes	No	Yes	Yes	Yes	No	Yes	93%[77]	Yes	No	No	No
Vermont	Yes	No	No	No	None	No	None	43%[78]	No	No	No	Yes
Virginia	No	Yes	Yes	Yes	Yes	24 hours	Yes	86%[79]	Yes	Yes	No	No
Washington	No	No	No	No	None	No	None	67%[80]	No	No	Yes	No
West Virginia	Yes	No	No	Yes	Yes	No	Yes	96%[81]	Yes	No	No	Yes

State	Bans of Abortion				Limits on Abortion						Protections for Abortion	
	Status Before "Roe"		Current Status[26]		General Limits				Limits on Minors			
	Completely Illegal	Illegal with Limits	Trigger Law on Any Abortion	Trigger Law on Late Term Abortion	Waiting Period	Mandatory Ultrasound [27]	Counseling	% of Counties Without Provider	At least One Parent Informed	At Least One Parent Consent	Freedom Act[28]	State Constitutional Protection[29]
Wisconsin	Yes	No	No	Yes	Yes	24 hours[82]	Yes	93%[83]	Yes	Yes	No	No
Wyoming	Yes	No	No	No	None	No	None	96%[84]	Yes	Yes	No	No

As the chart shows the majority of Americans live in counties without abortion providers

Oregon has no additional restrictions on abortions and does not require the parents of a minor receiving an abortion to be informed, OR does not require pre-abortion counseling, and it does not require a transvaginal ultrasound before the abortion.
Other states require the above, and some require that physicians performing abortions have admissions at local hospitals, as well as, abortion centers meet standards for surgical centers which they do not need as abortions are not performed in operating rooms. Additionally, some states require physicians performing abortions to read a script with incorrect medical information to the patient receiving an abortion before performing the abortion.

the 8th circuit heard ***Planned Parenthood v. Rounds*** (686 F.3d 889 (8th Cir. 2012), and affirmed that the state could force a physician to read a medically inaccurate script to abortion patients. No other circuit courts have addressed the issue.

Journal of Criminal Law and Criminology

Volume 10 | Issue 1 Article 5

1919

Criminal Statutes on Birth Control

J. C. Ruppenthal

CRIMINAL STATUTES ON BIRTH CONTROL

J. C. RUPPENTHAL[1]

In the United States, laws relating to birth control seem to have been developed since about 1870. Congress, the legislatures of nineteen states and Porto Rico, and the commission of the Canal Zone, have enacted statutes that clearly and definitely refer to the prevention of conception in women as a practice to be declared a crime by such laws. In Canada, at least Ontario has such a law. Twenty-two more states of the Union, and also Hawaii have statutes which the courts, with liberality of construction or strictness, hold to apply or not apply criminally to the matter of birth control, at least through prevention of conception, or "contraception." The District of Columbia, and the states of Rhode Island and Florida have kindred enactments, relating in the states to causing miscarriage of a pregnant woman, and in the District to abortion. Four states, Georgia, New Hampshire, New Mexico, and North Carolina, and also Alaska, appear to have no legislation that either certainly or possibly may be held to apply to birth control. All the forty-nine sets of enactments referred to, are found in the statute books under "obscenity" and "offenses against morals," as headings. In most cases the phraseology relating to contraception is found embedded among many clauses relating to pornographic or non-mailable matter, to indecent and immoral printing, writing, painting and the like. Colorado, Indiana and Wyoming mention "self-pollution," and Massachusetts names "self-abuse" along with abortion and prevention of conception.

Clear and definite laws on contraception are found on the statute books of the states of Arizona, California, Colorado, Connecticut, Idaho, Indiana, Iowa, Kansas, Massachusetts, Minnesota, Montana, New Jersey, New York, North Dakota, Ohio, Oklahoma, Washington and Wyoming—eighteen—as well as Porto Rico, Ontario, the Canal Zone and the United States. The federal laws are quite full in expression, and perhaps served as model for most of the states.

If a court regards written matter relating to contraception or means to accomplish this, as "obscene, vulgar and indecent," then laws

[1]Judge of the Twenty-third Judicial District of Kansas; Judge Advocate U. S. Army.

apply also in the states of Alabama, Arkansas, Delaware, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, Pennsylvania, Nevada, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia and Wisconsin—twenty-five in number. In some states a limitation is "if they manifest a tendency to corrupt the morals of youth," or morals generally.

"Articles and instruments of immoral use or purpose" are denounced, but no specific purpose or object of such is set out, in the laws of Connecticut, Illinois, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Oregon, Pennsylvania, Rhode Isand and Utah. In Maryland "obscene and indecent" books are mentioned, and "obscene" matters in South Carolina, with no more specific designation. In Ontario the law very widely includes the assertion or warranty of the offender, as the language is "any article intended or represented as a means of preventing conception or causing abortion." To make prosecutions more easy, Idaho provides that the complaint need not set out any portion of the language alleged to have been unlawfully used. To aid in capture of contraband articles, instruments and literature or other things, search warrants or seizure, or both, are authorized in Arizona, California, Colorado, Idaho and Nevada.

Where advice or information as to abortion is forbidden, though some states, as Minnesota and New York, carefully discriminate against "unlawful abortion," others, as Kansas and Iowa, say, "procuring abortion," with no intimation that such could, in any case, be lawful. Kansas, however, in another statute—as to manslaughter of a woman pregnant or her child—excepts "when it shall be necessary to save the life of the mother," and thus inferentially distinguishes acts as of two classes.

While some statutes are word for word alike in several states, most of them vary in scope. Among the forbidden acts, in connection with articles, instruments, books, papers, etc., are to "exhibit" (United States law and Colorado); "bring into the state" (Alabama); "import" (Hawaii); "buy," "sell," "lend," "keep for sale," "have in possession," (Iowa); "have in possession with intent to sell," "have possession with or without intent to sell" (Indiana); "advertise," "distribute" (New York); "manufacture," (Missouri, New York); "has possession with intent to utter or expose to view or to sell," "for gratuitous distribution" (in Ohio, drug or nostrum; in Kansas, literature); "conveying notice, hint or reference to," under "real or fictitious name" (Rhode

Island); "give information orally" (New York, Minnesota, Indiana); "write, compose, or publish" (notice or advertisement, in Arizona); "manifesting a tendency to the corruption of the morals of youth or of morals generally," (Hawaii); "cautions females against its use when in pregnancy" (Ohio); "drug or nostrum purporting to be exclusively for the use of females" (Ohio). To meet the ingenuity of evasive devices, New Jersey includes all persons "who shall in any manner, by recommendation against its use or otherwise give or cause to be given, or aid in giving any information, how or where any of the (literature, instruments, medicines, etc.) may be had or seen or bought or sold." Whatever is prohibited directly to anyone is usually expanded in terms to include aiding in any way toward the forbidden end.

A few exceptions from the sweeping provisions are incorporated. In Ontario the offense must be "knowingly, without lawful excuse or justification;" in New Jersey, "without just cause." In some states the law provides that it "shall not be construed to affect teaching in medical colleges" (Colorado, Indiana, Ohio); "nor standard medical books" (Colorado, Indiana, Kansas, Ohio); "nor the practice of regular practitioners of medicine and druggists (Colorado) in their legitimate business" (Ohio); "nor works of scientific character, or on anatomy, surgery or obstetrics" (Kentucky); "article or instrument used or applied by physicians is not . . . indecent." In Connecticut possession of the things forbidden is unlawful "unless with intent to aid in their suppression or in enforcing the provisions" of the law.

Almost everything denounced under any of these laws is nonmailable under the laws of the United States, Colorado, Illinois, Indiana, Iowa, Missouri, Nebraska, Ohio, and New York. Delivery of such to express or railroad companies is forbidden by the United States, Illinois, Indiana and New York. Besides forbidding the deposit of such matters in the mails, Colorado adds "or with any person."

From the foregoing it may be seen that no general principle runs through the statutes of all the states, etc. As with laws everywhere that impinge upon sex matters in any way, there is more of tabu and superstition in the choice and chance, the selection and caprice, the inclusions and exclusions of these several enactments than any clear, broad, well-defined principle or purpose underlying them. Without such principle, well-defined and generally accepted, the various laws must remain largely haphazard and capricious.

ABSTRACT OF THE CRIMINAL LAWS OF THE UNITED STATES, THE SEVERAL STATES THEREOF, AND CANADA, RELATING TO BIRTH CONTROL

UNITED STATES. Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore-mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be, used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such articles, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any postoffice or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000, or imprisoned not more than five years, or both.—Act of Congress, March 4, 1909, sec. 211; 35 Statutes at Large, p. 1129; Criminal Code of the United States.

Whoever shall sell, lend, give away, or in any manner exhibit, or offer to sell, lend, give away, or in any manner exhibit, or shall otherwise publish or offer to publish in any manner, or shall have in his possession for any such purpose, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article of an immoral nature, or any drug or medicine, or any article* whatever, for the prevention of conception, or for causing unlawful abortion, or shall advertise the same for sale, or shall write or print, or cause to be written or printed, any card, circular, book, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom, or by what means, any of the articles above-mentioned can be purchased or obtained,

*A similar statute of Colorado here has "instrument" also.

or shall manufacture, draw, or print, or in anywise make any of such articles, shall be fined not more than $2,000 or imprisoned not more than five years, or both. Ib., sec. 312, p. 1149.

Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one state, territory, or district of the United States, or place non-contiguous to, but subject to the jurisdiction thereof, to any other state, territory, or district of the United States, or place non-contiguous to, but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivous, or any filthy book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted, or intended for preventing conception, or producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the hereinbefore-mentioned articles, matters or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing the depositing of which for carriage is herein made unlawful, shall be fined not more than $5,000, or imprisoned not more than five years, or both. Ib., 245, p. 1138.

ALABAMA. "Any person who brings or causes to be brought into this state, for sale, or advertises, or prints, or sells, or offers to sell, or receives subscriptions for any indecent or obscene book, pamphlet, print, picture, or paper, must, on conviction be fined" ($50 to $1,000).—Act of December 3, 1884; Section 7428, Code of 1907, Alabama.

ALASKA. (Alaska does not seem to have any laws upon the subject of Birth Control, or that can be construed as such.)

ARIZONA. Every person who writes, composes, prints, publishes, sells, distributes, or keeps for sale, gives or loans to any person, or exhibits any obscene or indecent writing, paper, or book, etc., or writes, composes, or publishes any notice or advertisement of any such . . . is guilty of a misdemeanor . . . (such) may be seized and destroyed.—Section 313, Revised Statutes of Arizona of 1913.

Every person who wilfully writes, composes,* or publishes any notice or advertisement, or any medicine or means for producing or facilitating miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement or otherwise, to assist in the accomplishment of any such purpose is guilty of a misdemeanor.—Sec. 318, Rev. Stat. Arizona, 1913. Cp., California, § 317; Montana, § 8399.

ARKANSAS. The sale, circulation, or attempted circulation, etc., of obscene, vulgar and indecent papers, books and periodicals, in which are

*Idaho, in a similar statute, omits "writes, composes."

illustrated any indecent or vulgar pictures, is forbidden.—Sec. 2099, Kirby's Digest of Statutes of Arkansas, 1916.

Every person publicly exhibiting any obscene or indecent picture or figures shall be deemed guilty of misdemeanor.—Sec. 2103, ibid.

CALIFORNIA. Penal Code of California, 1915, section 311, is similar to Arizona, § 313, and was enacted February 14, 1872. The act was amended by "Code Amendments, 1873-4" by omitting "or any notice or advertisement for producing or facilitating miscarriage."

Sec. 317, Code Amendments, 1873-4, is the same as § 318 of Arizona, except that violation of the act is made a felony.

CANAL ZONE. Penal Code 1904, sec. 213. Every person who wilfully writes, composes or publishes any notice or advertisement of any medicine, or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose is guilty of a felony.

Section 228 is similar to section 313 of Arizona, with a further summary provision in section 230, like section 373 of South Dakota.

COLORADO. Whoever exhibits, lends, gives away, sells or offers to . . . or in any manner publishes or offers to publish, or has in his possession for any such purpose, any obscene, lewd or indecent or lascivious book, pamphlet, circular, paper, drawing, print, picture, advertisement, writing, circular, or other representation, figure or image . . . for procuring abortion, or for self-pollution, or for preventing conception . . . (then follows language similar to U. S. Criminal Code, § 312, and a penalty of $20 to $2,000, or one month to one year prison, or both, and a further limitation that the law shall be) "not construed to affect teaching in regularly chartered medical colleges, or the publication and sale of standard medical books, or the practice of regular practitioners of medicine or druggists in their legitimate business."—Act of 1885, p. 172, section one; section 1778 Revised Statutes of Colorado, 1908.

Sec. 1779, ib., makes it a crime to deposit in the mails or with any person any of the things denounced in sec. 1777.

Sec. 1780 authorizes search for such forbidden matter with a search warrant for authority, and the destruction of the material when found.

CONNECTICUT. Every person who shall buy, sell, advertise, give, lend, offer or show, or have in his possession with intent to sell, etc. . . . , containing obscene, indecent or impure language, or any picture, . . . of like character, or any article or instrument of indecent or immoral use or purpose, unless with intent to aid in their suppression or in enforcing the provisions hereof, etc. (punishable by sentence of not over two years, or fine up to $1,000, or both).—General Statutes of Connecticut, 1902, section 1325; Gen. Stat., 1918, section 6397.

Every person who shall use any drug, medicinal article or instrument for the purpose of preventing conception, shall be fined not less than $50, or imprisoned not less than 60 days nor more than one year, or both.—Gen. Stat., 1902, Connecticut, section 1327; Gen. Stat., 1918, section 6399.

DELAWARE. Whoever prints, etc., . . . a book, etc., . . . containing any obscene or indecent picture of any description tending to corrup-

tion of the morals of youth, is guilty of a misdemeanor. Sec. 2231 Rev. Statutes, Delaware, 1915.

DISTRICT OF COLUMBIA. Forbids "obscene books, pamphlets, etc., and "articles of indecent or immoral use . . . or any drug, etc., . . . intended to produce abortion." Sec. 872, Code of March 3, 1901, Dist. of Columbia.

FLORIDA. Whoever knowingly advertises, prints, publishes, distributes or circulates, books, papers, etc., . . . "for the purpose of causing or procuring the miscarriage of any woman pregnant with child," punishable in state prison up to one year, or fine to $1,000. Sec. 3539 Compiled Laws of Fla., 1914.

Sec. 3540. Whoever imports, prints, publishes, sells, or distributes any book, pamphlet, ballad, printed paper or other thing containing obscene language, or any obscene prints, figures, pictures or descriptions manifestly tending to the corruption of the morals of youth, or introduces into any family, school or place of education, or buys, procures, receives or has in his possession any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan, or circulation, or with the intent to introduce the same into any family, school or place of education, shall be punished by imprisonment in the state prison," etc.

GEORGIA. (Parks' Annotated Code of Georgia, 1914, seems to contain nothing relating to birth control, directly or indirectly.)

HAWAII. The importing, printing, publishing, selling, offering for sale, putting into circulation, distributing, lending, exhibiting publicly, or introducing into any family, school or place of education, any obscene picture, or pamphlet, sheet or other thing, containing obscene language, obscene prints, figures, descriptions, or representations, manifestly tending to the corruption of the morals of youth, or of morals generally; or buying, procuring, receiving or having in possession, any such picture, book, pamphlet, sheet, or other thing, with intent to sell, circulate, distribute, lend or exhibit the same, or to introduce the same into any family, school, or place of education, is a common nuisance. Section 4129, Revised Laws of Hawaii, 1915; Penal Code, 1869, ch. 36. Section 4130 provides for seizure of such things upon warrant.

IDAHO. Idaho Revised Codes of 1908, sec. 7695 (same in Rev. Stat., 1887), provides that in proceeding in court against this class of offenses, the complaint "need not set forth any portion of the language," etc.

Idaho Rev. Code, sec. 6840, of 1908 (same as R. S. 1887), is the same as California Penal Code of 1872, and Arizona Code, except that clause 4, after "or," omits the provision about miscarriage.

Idaho Code, 1908, sec. 6841, provides how officials "may seize any obscene or indecent writing, paper, book, picture, print, or figure, found in the possession of, or under the control of a person so arrested (for violation of the preceding section), and to deliver same to the magistrate before whom the person so arrested is taken."

Idaho Code, 1908, sec. 6843, is like R. S. Arizona, sec. 318.

ILLINOIS. Forbids to "bring in or sell, etc., any book, pamphlet, etc., . . . instrument, or article of indecent or immoral use . . . or (states) where such indecent or obscene articles and things may be pur-

chased or otherwise obtained or (to) manufacture . . . any such articles."—Illinois Statutes Annotated, 1913, sec. 3861.

Sec. 3862, ibid., forbids to "deposit (such) in postoffice or in express office or with a common carrier or other person."

INDIANA. Whoever sells or lends, or offers to sell or lend, or gives away, or offers to give away, or in any manner exhibits, or has in his possession with or without intent to sell, lend or give away, any obscene, lewd, indecent or lascivious book, pamphlet, paper, drawing, lithograph, engraving, picture, daguerreotype, photo, stereoscopic picture, model, cast, instrument or article or indecent or immoral use, or instrument or article for procuring abortion, or for self-pollution, or medicine for procuring abortion or preventing conception, or advertising the same, or any of them for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement, or notice of any kind, or gives information orally, stating when, how, where, or by what means or of whom any of the obscene, lewd, indecent or lascivious articles or things hereinbefore mentioned can be purchased, borrowed, presented, or otherwise obtained, or are manufactured; or whoever manufactures, draws, prints," etc. (such things), shall be fined $10 to $5,000, and may be further imprisoned ten days to six months, "but this shall not affect teaching in regularly chartered medical colleges," etc.—Burns' Annotated Indiana Statutes, 1914, section 2359.

Sec. 2360, ibid., forbids depositing any of the things denounced in section 2359, in postoffice or express office, or in charge of any person or corporation to be carried or conveyed.

Sec. 2362 is the same as sec. 13034 of Ohio.

IOWA. "Whoever sells, or offers to sell, or gives away, or has in his possession with intent to sell or give away any obscene, lewd book, etc., or any instrument or article of indecent or immoral use, or any medicine or thing designed or intended for procuring abortion or preventing conception, or advertising the same" . . . shall be fined $50 to $1,000, or sentenced to jail not over one year, or both fine and jail.—Code of Iowa, 1897, sec. 4952, being act 21 General Assembly, ch. 177, sec. 1, amended by ch. 170 of 34 G. A. 1911.

Sec. 4953, Code Iowa, forbids depositing such things in the postoffice, or in charge of any one to be carried or conveyed, as are forbidden in the preceding section, 4952.

KANSAS. "If any publisher or other person shall, by printing, writing, or in any other way, publish, or cause to be published, or expose to sale any obscene pictures; an account, advertisement or description of any drug, medicine, instrument or apparatus used or recommended to be used, for the purpose of preventing conception, or procuring abortion or miscarriage; or shall by writing or printing in any circular, newspaper, pamphlet, or book, or in any way, publish or circulate any advertisement or obscene notice herein recited; or shall within the state of Kansas keep for sale or for gratuitous distribution any newspaper, circular, book or pamphlet containing such notice, or advertisement of such drugs, medicines, instrument or apparatus; or shall keep for sale any secret nostrum, drug, medicine, instrument or apparatus named; . . . such publisher or other person

. . . shall be fined $50 to $1,000 or 30 days to six months in jail, or both. Provided, That nothing in this act shall be so construed as to prevent the publication and sale of standard medical works.—General Statutes of Kansas, 1915, sec. 3676, being laws of 1874, chapter 89, section one.

"Every person or persons who shall bring or cause to be brought into the state, or shall buy, sell, or cause to be sold, or shall advertise, lend, give away, offer, show, exhibit, or have in his possession, with the intent to sell, lend, give away, offer, show, exhibit, distribute, or cause to be distributed, or shall design, copy, draw, photograph, print, etch, or engrave, cut, carve, make, publish, or otherwise prepare or assist in preparing, or shall receive subscriptions for any indecent or obscene book, pamphlet, paper, picture, print, drawing, figure, image, or other engraved, printed or written matter, or any article or instrument of immoral use, or any book, pamphlet, magazine, or paper devoted principally or wholly to the publication of criminal news or pictures, or stories of deeds of bloodshed or crime, shall be guilty of a misdemeanor . . . (penalty, $5 to 300, or not over 30 days in jail, or both).—Sec. 3677 Gen. Stat., 1915, being chapter 101, section 1, laws of 1886.

KENTUCKY. Section 1352 of Carroll's Kentucky Statutes, 1915, forbids the sale, etc., . . . of any immoral or obscene book, etc., . . . "or any article or instrument of indecent or immoral use" . . . (No allusion is made to the purpose of such article or instrument.—Act of Jan. 27, 1894.

Sec. 1355 provides that the preceding sections do not apply to works of a scientific character, or on anatomy, surgery and obstetrics, or other scientific publications, nor prevent issuing and selling such books.

LOUISIANA. If any person shall bring or cause to be brought into this state, for sale or exhibition or shall sell or offer to sell, or shall give away or offer to give away, or, having possession thereof, shall knowingly exhibit to another, any indecent pictorial newspaper, tending to debauch the morals, or any indecent or obscene book, pamphlet, paper, drawing, lithograph, engraving, daguerreotype, photograph, picture, or any model, cast, instrument or article of indecent and obscene use, or shall advertise any of said articles or things for sale, by any form of notice, printed, written, or verbal, or shall manufacture, draw or print any of said articles, with intent to sell or expose, or to circulate the same, such person so offending shall be guilty of a misdemeanor. Revised Statutes of Louisiana, 1915, Marr's annot., vol. 1, sec. 2088; Laws, 1884, p. 148, act 111.

MAINE. Revised Statutes of Maine, 1916, chapter 126, section 23, forbids publications tending to corruption of the morals of youth. The same as Florida, sec. 3540. Section 24 authorizes seizure of such when an arrest is made.

MASSACHUSETTS. Chapter 212, section 20, Revised Statutes of Massachusetts, 1902, penalizes "whoever imports, prints, etc., . . . any book, paper, pamphlet, etc., . . . tending to corrupt the morals of youth." The same as Florida, sec. 3540.

Chap. 212, sec. 26, penalizes "whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug for self-abuse, or any drug, medi-

cine, instrument or article whatever for prevention of conception, or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article, shall be punished by imprisonment in the state prison," etc.

MARYLAND. Public General Laws of Maryland, 1914, Bagby, vol. 3, article 27, sec. 372, forbids to "bring into the state, sell, lend, etc., . . . obscene or indecent books, etc., or any article or instrument of indecent or immoral use, or shall design . . . or prepare such . . . article, or shall (give) written information or orally, stating when, where, how, or of whom, or by what means such a lewd, indecent, or obscene article or thing can be purchased, seen, or obtained, shall be guilty of a misdemeanor . . .; provided that this section shall not apply to any person committing the acts thereby prohibited with intent to prevent violations of this subtitle, or to procure the punishment of offenses against the same. (No specific purpose is mentioned.)

MICHIGAN. Howell's Michigan Statutes, 1913, chapter 406, section 14785, prohibits anyone to "import, print, etc. (matter), tending to corrupt the morals of youth." The same as Florida, sec. 3540.

Section 14786 authorizes a search warrant to seek such. Section 14787 refers to "prints, articles, instruments," etc., but no specific purpose thereof is denounced.

MINNESOTA. Section 8705, General Statutes, Minnesota, 1913, is the same as California, section 311.

Sec. 8706 makes it a crime to "sell, lend, . . . etc., have in possession to sell, advertise to sell, or distribute, any instrument or article, or any drug or medicine for the prevention of conception or for causing unlawful abortion, . . ." or to give oral information where such can be obtained or who manufactures such articles, etc.

MISSISSIPPI. Hemingway's Annotated Code of Mississippi of 1917, section 1025, forbids persons to sell, lend, etc., articles, etc., of indecent or obscene use, but names no specific purpose of such articles, etc.

Section 1026 is the same as Section 8706 of Minnesota.

MISSOURI. Revised Statutes of Missouri, 1909, section 4737, forbids anyone to manufacture, print, publish, buy, sell, etc., indecent or immoral articles, etc. (but names no specific purpose of such articles).

Section 4738 penalizes the deposit of any such forbidden things in the postoffice, or placing them in charge of any person to be carried or conveyed.

MONTANA. Section 8399 of the Revised Statutes of Montana, 1907, is the same as Arizona, § 318, and California, § 317.

NEBRASKA. Whoever sells, etc., things of obscene or immoral nature is punishable, but no special purpose of such articles is named.—Revised Statutes of Nebraska, 1913, sec. 8787. Sec. 8788 is the same as sec. 4738 of Missouri.

NEVADA. Revised Laws of Nevada, 1912, section 6461, is the same as section 313 of Arizona and section 311 of California.

Section 7069 provides that in prosecuting the exact language used by the defendant need not be set out in the complaint, etc.

NEW HAMPSHIRE. The Public Statutes of New Hampshire, 1901, Supplement of 1913 and Laws of 1915 and 1917, appear to contain nothing relating to birth control.

NEW JERSEY. "Any person who, without just cause, shall utter or expose to view of another, or have in his possession (with such intent) or to sell, any obscene or indecent book, pamphlet, etc., or any instrument, medicine, or other thing designed or purporting to be designed for the prevention of conception or the procuring of abortion, or shall in anywise advertise the same or in any manner by recommendation against its use or otherwise, give or cause to be given, or aid in giving any information, how or where any of the same may be had or seen or bought or sold, shall be guilty of a misdemeanor."—Compiled Statutes of New Jersey, 1910, vol. 2, p. 1762, sec. 53; P. L. 1898, p. 808.

NEW MEXICO. New Mexico Annotated Statutes, 1915, and Laws, 1917 and 1918, appear to contain no enactment relating to Birth Control, or kindred matters.

NEW YORK. Section 1141, of the Penal Law of New York, Laws of 1909, ch. 88, forbids anyone to sell, lend, etc., . . . anything immoral, etc., but names no especial purpose of such thing forbidden.

Section 1142, same statute of New York: "A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manufactures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties," etc.

Sec. 1143 penalizes depositing any such thing, etc., in a post office, express office, or with a common carrier, or other person for transportation.

Sec. 1145. "An article or instrument, used or applied by physicians lawfully practising, or by their direction and prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use within this article. The supplying of such articles to such physicians, or by their direction or prescription, is not an offense under this article.

NORTH CAROLINA. Pell's Revisal of North Carolina Statute Laws, 1908, Gregory's Supplement, 1913, and Laws, 1915 and 1917, appear to contain no law on matters like Birth Control.

NORTH DAKOTA. Section 9652, Compiled Laws North Dakota, 1913, similar to section 313 Arizona.

Section 9654 is the same as section 3677 of Kansas.

OHIO. "Whoever sells, gives away, or keeps for sale or gratuitous distribution, a secret drug or nostrum, purporting to be exclusively for the use of females, or for preventing conception, or procuring abortion or miscarriage, shall be fined" not over $1,000, or sentenced to six months, etc. —Page & Adams Annotated Ohio General Code, 1912, section 13033.

Section 13034. Whoever prints or publishes an advertisement of a secret drug or nostrum purporting to be for the exclusive use of females, or which cautions females against its use when in a pregnant condition, or publishes an account or description of a drug, medicine, instrument or apparatus for preventing conception, or for procuring abortion or miscarriage, or keeps for sale or gratuitous distribution a newspaper, circular, pamphlet, or book containing such advertisement, account or description, shall be fined not more than $1,000 or imprisoned not more than six months, or both.

Section 13035. Whoever sells, lends, gives away, exhibits, or offers to sell, etc., or has in his possession for such purpose, a . . . figure, image, cast, instrument, or article of an indecent or immoral nature, or a drug, medicine, article or thing intended for the prevention of conception or for causing an abortion, or advertises any of them for sale, or gives information, or manufactures such articles or things, . . . shall be fined . . .

Sec. 13036 makes it an offense to deposit any such matter in a post office, or in charge of a person to be carried or conveyed, etc.

Section 13036 makes it an offense to deposit in a postoffice or place in charge of any person, to be carried or conveyed, any such matter or things.

Sec. 13037. The next preceding three sections (secs. 13034-5-6) shall not affect teaching in regularly chartered medical colleges, the publication of standard medical books, or regular practitioners of medicine or druggists in their legitimate business.

OKLAHOMA. Section 2463, Revised Laws of Oklahoma, 1910, are substantially the same as those of Arizona, omitting a clause after "or," as to miscarriage. The prohibited matter or articles may be seized.

ONTARIO, CANADA. Every one is guilty of an indictable offense and liable to two years' imprisonment, who knowingly, without lawful excuse or justification, offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any medicine, drug or article intended or represented as a means of preventing conception or causing abortion.

OREGON. Lord's Oregon Laws, 1910, section 2094, being Laws 1864, sec. 637, forbids importing, printing, etc., obscene or immoral articles, but does not state any object of such articles.

PENNSYLVANIA. If any person shall bring or cause to be brought into this state for sale or exhibition, or shall sell, lend, give away, or offer to give away or show, or have in his or her possession, with intent to sell or give away, or to exhibit, show, advertise, or otherwise offer, for loan, gift, sale or distribution, any obscene or indecent book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, card, drawing or photograph,

or any article or instrument of indecent or immoral use. (The rest, and in fact the entire section substantially like section 372 of Maryland.) Purdon's Digest of Pennsylvania, 1905, sec. 366, vol. 1, p. 988; act of May 6, 1887.

PHILIPPINE ISLANDS. These insular possessions do not seem to have legislated on these matters.

PORTO RICO. Revised Statutes of Porto Rico, 1911-1913, section 5725, is the same as California laws on matter of birth control, omitting after "or . . . ," as to miscarriage.

RHODE ISLAND. Chapter 347, section 13, page 1277, General Laws of Rhode Island, 1909, forbids importation, etc., of articles and things to corrupt the morals (but gives no particulars). The same as section 3540 of Florida.

Sec. 24, page 1279, "Every person who shall advertise, print, etc., book, paper, etc., containing words or language giving or conveying any notice, hint or references to any person, or to the real or fictitious name of any person, from whom, or to any place, house, shop or office, where anything whatsoever, or any instrument or means whatsoever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of any pregnant woman, shall be imprisoned not exceeding three years.

SOUTH CAROLINA. South Carolina Code, 1912, criminal code, sec. 391, is substantially the same as section 3540 of Florida if the acts be done "knowingly."

SOUTH DAKOTA. Compiled Laws of South Dakota, 1913, vol. 2, p. 602, sec. 371, is similar to sec 313 of Arizona. Section 372 authorizes seizing the prohibited matter. Section 373 requires a summary determination by a magistrate whether or not to destroy the material seized.

TENNESSEE. Thompson's Shannon's Code of Tennessee, 1918, section 6770, is similar to Florida, section 3540.

TEXAS. Vernon's Criminal Statutes of Texas, 1916, Penal Code, article 508, forbids printing, etc., designed to corrupt the morals of youth.

UTAH. Compiled Laws of Utah, 1907, section 4247, penalizes one who writes, etc., . . . obscene, immoral, indecent, etc., but no special purpose of the articles, things or instruments condemned is named.

Sections 4248 and 4249 are the same as sections 372 and 373 of South Dakota.

VERMONT. General Laws of Vermont, 1917, section 7021, is substantially like section 3540 of Florida.

VIRGINIA. "If any person import, print, etc., . . . any book, etc., . . . tending to corrupt morals of youth," he shall be punished, etc. Virginia Code, 1904, Pollard, section 3791, same as Florida, section 3540.

WASHINGTON. Code, 1912, title 135, sec. 413, is similar to sec. 313 of Arizona. This section and the next are similar to Minnesota's laws.

Section 415. Every person who shall expose for sale, loan or distribution, any instrument or article, or any drug or medicine, for the prevention of conception, or for causing unlawful abortion, or shall write,

print, distribute, or exhibit any card, circular, pamphlet, advertisement, or notice of any kind, stating when, where, how, or of whom such article or medicine can be obtained, shall be guilty of a misdemeanor.

WEST VIRGINIA. West Virginia Code, 1916, page 1221, chapter 149, section 11, being ch. 123, Act of 1889; Hogg's Code, 1913, sec. 5316, is substantially the same as the Virginia law.

WISCONSIN. Section 4590, Wisconsin Statutes, 1917, is practically like the law of Florida, Virginia, etc.

WYOMING. "Whoever sells, or lends, etc., . . . any book or article, etc., . . . for self-pollution or abortion or medicine to procure abortion or prevent conception" shall be punished.—Wyoming Compiled Statutes, 1910, section 5911, being laws, 1890, chapter 73, section 81.

Section 5912, ibid., penalizes the deposit of any such things for delivery, by others.

APPENDIX XXIV.

ABORTION.

Penal Law, Sections 80, 82, 1050, 1051, 1142.

Section 80.—Definition and punishment of abortion.—A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or the child with which she is pregnant, either:

1. Prescribes, supplies, or administers to woman, whether pregnant or not, or advises or causes a woman to take any medicine or drug or substance; or,

2. Uses, or causes to be used, any instrument or other means, is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

Section 82.—Selling drugs or instruments to procure a miscarriage.—A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony.

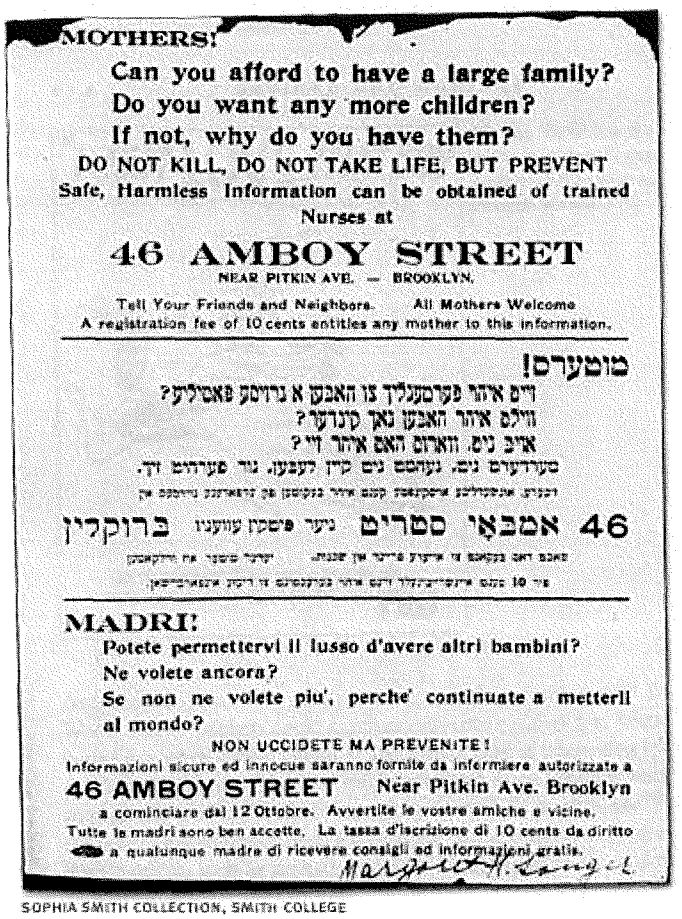
Section 1050.—Killing unborn quick child by administering drugs.—The willful killing of an unborn quick child, by an injury committed upon the person of the mother of such child, is manslaughter in the first degree.

A person who provides, supplies, or administers to a woman, whether pregnant or not, or who prescribes for, or advises or procures a woman to take any medicine, drug or substance, or who uses or employs, or causes to be used or employed, any instrument or other means, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve her life, in case the death of the woman, or of any quick child of which she is pregnant, is thereby produced, is guilty of manslaughter in the first degree.

Section 1051.—Punishment for manslaughter in the first degree.—Manslaughter in the first degree is punishable by imprisonment for a term not exceeding twenty years.

Section 1142.—Indecent Articles.—A person who sells, lends, gives away, or in any manner exhibits or offers to sell, lend or give away, or has in his possession with intent to sell, lend or give away, or advertises, or offers for sale, loan or distribution, any instrument or article, or any recipe, drug or medicine for the prevention of conception, or for causing unlawful abortion, or purporting to be for the prevention of conception, or for causing unlawful abortion, or advertises, or holds out representations that it can be so used or applied, or any such description as will be calculated to lead another to so use or apply any such article, recipe, drug, medicine or instrument, or who writes or prints, or causes to be written or printed, a card, circular, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, where, how, of whom, or by what means such an instrument, article, recipe, drug or medicine can be purchased or obtained, or who manu-

factures any such instrument, article, recipe, drug or medicine, is guilty of a misdemeanor, and shall be liable to the same penalties as provided in section eleven hundred and forty-one of this chapter. (Is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment or be fined not less than fifty dollars nor more than one thousand dollars or both fine and imprisonment for each offense.)



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Margaret H. Sanger

SOPHIA SMITH COLLECTION, SMITH COLLEGE

THIS CIRCULAR ADVERTISED THE OPENING OF AMERICA'S FIRST BIRTH CONTROL CLINIC, RUN BY MARGARET SANGER IN BROWNSVILLE BROOKLYN, NY, IN 1916.

People v. Sanger

Court of Appeals of New York
December 10, 1917, Argued ; January 8, 1918, Decided
No Number in Original

Reporter
222 N.Y. 192; 118 N.E. 637; 1918 N.Y. LEXIS 1445

The People of the State of New York, Respondent, v. Margaret H. Sanger, Appellant

Prior History: [***1] Appeal from a judgment of the Appellate Division of the Supreme Court in the second judicial department, entered July 31, 1917, which affirmed a judgment of the Court of Special Sessions of the city of New York convicting the defendant of a violation of section 1142 of the Penal Law.

People v. Sanger, 179 App. Div. 939, affirmed.

Disposition: Judgment affirmed.

Core Terms

prescription, disease, advice, prevention, advertise, medicine, patients, sickness, married, matters, cure

Case Summary

Procedural Posture

Defendant appealed the judgment of the Appellate Division of the Supreme Court in the Second Judicial Department (New York), which affirmed defendant conviction of a violation of N.Y. Penal Law § 1142 for disseminating information about contraceptives.

Overview

Defendant was convicted of N.Y. Penal Law § 1142, which makes it a misdemeanor for a person to sell, or give away, or to advertise or offer for sale, any instrument or article, drug or medicine, for the prevention of conception, or to give information orally, stating when, where or how such an instrument, article or medicine can be purchased or obtained. She was sentenced to 30 days in the workhouse. On appeal, defendant claimed that the law was unconstitutional, arguing that if the law was broad enough to prevent a duly licensed physician from giving advice and help to his married patients in a proper case, it was an unreasonable police regulation, and, therefore, unconstitutional. The court affirmed defendant s conviction. The court held that defendant was not a proper person to make such a constitutional claim, since she was not a physician, and that N.Y. Penal Law § 1145 excepted physicians from the provisions of § 1142.

Outcome

The court affirmed defendant s conviction and sentence.

LexisNexis® Headnotes

Governments > Legislation > Interpretation

Jennifer Morrissey

HN1 The general rule applies in a criminal as well as a civil case that no one can plead the unconstitutionality of a law except the person affected thereby.

Headnotes/Syllabus

Headnotes

Constitutional law -- the statute (Penal Code, § 1142) forbidding the dissemination of information for the prevention of conception does not violate the Constitution.

Syllabus

1. The general rule applies in a criminal as well as a civil case that no one can plead the unconstitutionality of a law except the person affected thereby.

2. The provision of section 1142 of the Penal Law which makes it a misdemeanor to sell, advertise or give information for the prevention of conception does not violate the Constitution.

The facts, so far as material, are stated in the opinion.

Counsel: Jonah J. Goldstein for appellant. Section 1142 violates both the federal and state Constitutions, as to individual liberty, because of its failure of regulation. It establishes an absolute inhibition of the dissemination of information [***2] to all persons, in that it fails to make provision for cases of women who suffer from certain infirmities, whereby the statute endangers their lives and brings about a condition injurious to their health. The inhibition precludes physicians from giving any information even where conception would make pregnancy dangerous or fatal. (Fisher v. Woods, 187 N. Y. 90; Barry v. Vil. of Port Jervis, 72 N. Y. Supp. 120.)

Harry E. Lewis, District Attorney (Harry G. Anderson of counsel), for respondent. Section 1143 of the Penal Law is constitutional. (People v. Fegelli, 163 App. Div. 576; 214 N. Y. 610; N. S. Bank v. Haskell, 219 U.S. 104; People v. Byrne, 99 Misc. Rep. 1; M. P. Co. v. Bell, 179 App. Div. 13; Ackley v. United States, 200 Fed. Rep. 217; Viemeister v. White, 179 N. Y. 235; People ex rel. Nechamcus v. Warden, 144 N. Y. 529; Armour v. North Dakota, 240 U.S. 510; Bertholf v. O Reilly, 74 N. Y. 509; Bank of Chenango v. Brown, 26 N. Y. 467.)

Judges: Crane, J. Hiscock, Ch. J., Chase, Collin, Cardozo and Andrews, JJ., concur; Hogan, J., concurs in result.

Opinion by: CRANE

Opinion

[*193] [***3] [**637] Section 1142 of the Penal Law, among other things, makes it a misdemeanor for a person to sell, or give away, or to advertise or offer for sale, any instrument or article, drug or medicine, for the prevention of conception; or to give information orally, stating when, where or how such an instrument, article or medicine can be purchased or obtained.

[*194] The appellant was convicted in the Court of Special Sessions of the city of New York, borough of Brooklyn, for a violation of this section, and sentenced to thirty days in the workhouse. She claims that the law is unconstitutional.

Some of the reasons assigned below for the illegality of this act have now been abandoned and it is conceded to be within the police power of the legislature, for the benefit of the morals and health of the community, to make such a law as this applicable to unmarried persons. But it is argued that if this law be broad enough to prevent a duly

licensed physician from giving advice and help to his married patients in a proper case, it is an unreasonable police regulation, and, therefore, unconstitutional. There are two answers to this suggestion.

In the first place, the defendant is [***4] not a physician, and HN1 the general rule applies in a criminal as well as a civil case that no one can plead the unconstitutionality of a law except the person affected thereby. (Collins v. State of Texas, 223 U.S. 288, 296; People v. McBride, 234 Ill. 146, 164; Isenhour v. State, 157 Ind. 517, 520; State v. Haskell, 84 Vt. 429, 441; Commissioners of Franklin Co. v. State ex rel. Patton, 24 Fla. 55.)

Secondly, by section 1145 of the Penal Law, physicians are excepted from the provisions of this act under circumstances therein mentioned. This section reads: "An article or instrument, used or applied by physicians law-fully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use, within this article. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article."

This exception in behalf of physicians does not permit advertisements regarding such matters, nor promiscuous advice to patients irrespective of their condition, but it [*195] is broad enough to protect the physician who in good [***5] faith gives such help or advice to a married [**638] person to cure or prevent disease. "Disease," by Webster s International Dictionary, is defined to be, "an alteration in the state of the body, or of some of its organs, interrupting or disturbing the performance of the vital functions, and causing or threatening pain and sickness; illness; sickness; disorder."

The protection thus afforded the physician would also extend to the druggist, or vendor, acting upon the physician s prescription or order.

Much of the argument presented to us by the appellant touching social conditions and sociological questions are matters for the legislature and not for the courts.

The judgment appealed from should be affirmed.

State v. Willson

Supreme Court of Oregon

October 27, 1924, Argued ; December 2, 1924, Decided

No Number in Original

Reporter
113 Ore. 450; 230 P. 810; 1924 Ore. LEXIS 28; 39 A.L.R. 84

STATE v. E. O. WILLSON.

Subsequent History: [***1] Rehearing Denied February 17, 1925, Reported at: *113 Ore. 450 at 458*.

Prior History: From Union: JAMES A. EAKIN, Judge.

In Banc.

REVERSED.

Disposition: REVERSED AND REMANDED.

Core Terms

indictment, pregnant, foetus, abortion, woman

Case Summary

Procedural Posture

The Circuit Court of Union County (Oregon) convicted defendant of manslaughter for ending the life of an unborn child. Defendant appealed.

Overview

Defendant was indicted for unlawfully and feloniously using a certain metallic instrument into a woman's vagina and uterus, causing the destruction of the woman's unborn child. Defendant pleaded not guilty but he was later convicted on the charged crime. On appeal, defendant claimed that the trial court erred by allowing the prosecuting witness to testify that she became pregnant by defendant and that he performed two separate and distinct operations upon her resulting in the death of the child with which she was at the time pregnant. The court found that each of the acts described by the witness were complete crimes in themselves. The court determined that the evidence did not correspond with the allegations of the indictment. In addition, the court held that the State had no right merely to allege the use of an instrument and then add to that proof of the administration or use of a drug with intent to destroy the child. Lastly, the court determined that there was insufficient evidence presented that the witness was actually pregnant. Therefore, the court reversed defendant's conviction.

Outcome

The court reversed defendant's conviction of manslaughter for ending the life of an unborn child.

Jennifer Morrissey

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Homicide, Manslaughter & Murder > Criminal Abortion > General Overview

HN1 If any person shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter. Or. Laws § 1900.

Criminal Law & Procedure > ... > Grand Juries > Indictments > Contents

Criminal Law & Procedure > ... > Accusatory Instruments > Indictments > General Overview

HN2 It is required by Or. Laws § 1437 that an indictment must contain a statement of the acts constituting the offense in ordinary and concise language, without repetition in such manner as to enable a person of common understanding to know what is intended.

Headnotes/Syllabus

Headnotes

Criminal Law--Prosecutrix's Testimony of Operation Before One Alleged Held Improper.

1. Prosecutrix's testimony that defendant made her pregnant, and performed two separate operations, resulting in death of foetus, prior to offense named in indictment, was improper as relating to distinct crimes not charged. [1]

Abortion--Evidence of Use of Drug not Admissible, Under Indictment Alleging Use of Metallic Instrument.

2. Under Section 1437, 1900, Ore. L., where indictment alleges use of certain metallic instrument, evidence of administration or use of drug with intent to destroy child is not admissible. [2]

Criminal Law--Requested Instruction Alluding to "Complicity" of Prosecutrix Improper, but Cautionary Instruction as to Her Interest as Affecting Credibility Should have Been Given.

3. Requested instruction, that fact that prosecutrix consented to alleged abortion, and "fact of her complicity," might be considered as affecting her credibility and weight of her testimony, was objectionable as alluding to prosecutrix as accomplice; but some cautionary instruction should have been given as to interest of prosecutrix. [3]

Criminal Law--Female Operated on by Accused not Accomplice.

4. In cases of abortion, female operated on is not an accomplice of one charged with the offense. [4]

See (1) 16 **C. J.** 586, 587. (2) 16 **C. J.** 592. (3) 31 **C. J.** 835. (4) 16 **C. J.** 590. (5) 31 **C. J.** 560, 846.

See 1 **C. J.** 315, 324; 16 **C. J.** 592, 678, 999, 1013 (1926 Anno.).

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[1] Evidence of other crimes in abortion and attempt to procure, see note in 62 **L. R. A.** 229. See, also, 8 **R. C. L.** 198.

[2] Necessary allegations as to means used in indictment for abortion. See notes in 11 **Ann. Cas.** 221; **Ann. Cas.** 1912D, 1325. See, also, 1 **R. C. L.** 79.

[3] See 14 **R. C. L.** 734.

[4] Woman upon whom abortion is committed as accomplice, see notes in 12 **Ann. Cas.** 1009; **Ann. Cas.** 1916C, 629. See, also, 1 **R. C. L.** 71.

Counsel: For appellant there was a brief over the names of Mr. F. S. Ivanhoe, Mr. Jesse Crum and Messrs. Green & Hess, with oral arguments by Mr. R. J. Green and Mr. Ivanhoe.

For respondent there was a brief over the names of Mr. Ed. Wright and Mr. E. R. Ringo, with an oral argument by Mr. Ringo.

Judges: BURNETT, J. BROWN, J., concurs in the result.

Opinion by: BURNETT

Opinion

[*452] **[**810]** BURNETT, J.--There is an Oregon statute reading thus:

HN1 "If any person shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter." Ore. L., § 1900.

The grand jury of Union County returned an indictment against the defendant on February 5, 1924, the charging part of which reads as follows:

"The said E. O. Wilson on the 2d day **[***2]** of November, 1923, in the county of Union and State of Oregon, then and there being, did then and there unlawfully and feloniously use a certain metallic instrument, by then and there inserting said instrument in the vagina and uterus of one Hazel Barnes, said Hazel Barnes then and there being pregnant with a child, with the intent then and there thereby to destroy such child, said use of said instrument not being necessary to preserve the life of said Hazel **[*453]** Barnes, and said defendant did then and there unlawfully and feloniously thereby produce the death of the said child, contrary to the statutes," etc.

A trial of the defendant on a plea of not guilty resulted in his conviction and he appealed.

It will be observed that there are two classes of acts by which the crime defined by the statute may be committed. They are the administration of any medicine, drug or substance, and the use or employment of any instrument or other means. ***HN2*** It is required by Section 1437, Ore. L., that the indictment must contain:

"A statement of the acts constituting the offense in ordinary and concise language, without repetition in such manner as to enable a person of common understanding to **[***3]** know what is intended."

It appears in evidence, in substance, that the woman named in the indictment went to work for the defendant in his dental office in June, 1922, and continued there until August 17, 1923. She testified that after that date, there was no coitus between her and anyone until November 9, 1923, and none afterwards. Meanwhile, she had been regular in her menses and suspected nothing until November 18th when her catamenia were due but did not appear. The prosecution relies upon November 9th as the date of the intercourse resulting in the pregnancy charged in the indictment. The whole history of the charge in the indictment is included between November 9, 1923, and December 18th of that year, at which last date she claims she had a miscarriage.

1. One class of objections to the procedure of the court is that the prosecutrix was allowed to testify, over the objection **[**811]** and exception of defendant, that she became pregnant by him, and that he performed **[*454]** two separate and distinct operations upon her resulting in the death of the foetus with which she was at the time pregnant, prior to the one named in the indictment. This is contrary to the rule laid **[***4]** down in this state in the following decisions: *State v. O'Donnell, 36 Ore. 222 (61 P. 892)*; *State v. Dunn, 53 Ore. 304 (99 P. 278, 100 P. 258)*; *State v. Start, 65 Ore. 178 (132 P. 512, 46 L. R. A. (N. S.) 266)*; *State v. McAllister, 67 Ore. 480 (136 P. 354)*. Each

of the acts described by the witness, and which were objected to by the defendant, were complete crimes in themselves. If this procedure were permissible, it ought to be laid in the indictment with a *continuando*, but the statute says that the statement must be without repetition, Ore. L., § 1437, and it is axiomatic that the evidence shall correspond with the allegations of the accusing document. One consequence of supporting the procedure allowed in this respect by the trial court would be that no defendant could know how many violations of the law he would be called upon to defend upon a single charge, neither would he know when his prosecutions for some offense would come to an end. Another result would be that having narrated in testimony all the instances constituting separate offenses and failing in the prosecution of one, the state **[***5]** could take precisely the same evidence and, by changing the date of the indictment, prosecute a defendant on the same testimony an indefinite number of times. The statute contemplates the statement in the indictment of a single offense, and that the evidence shall be confined to that charge alone of which the defendant has been informed. The principle is settled in this state by the precedents cited.

[*455] 2. Another objection to the procedure was that in the face of the allegations of the indictment confining the act to the use of "a certain metallic instrument," the state was allowed to produce testimony to the effect that certain drugs and medicines introduced and admitted in evidence were given by the defendant to the prosecuting witness on former occasions for the purpose of producing an abortion and the destruction of the foetus of which she was pregnant in those instances. Likewise, she was permitted to testify that he furnished her the money to buy turpentine which he administered to her to bring about the abortion of the foetus named in the indictment. If the state would prove such conduct it should allege it in the indictment, for it is one of the acts constituting **[***6]** the offense. The state had no right merely to allege the use of an instrument and then add to that proof of the administration or use of a drug with intent to destroy the child.

3, 4. The defendant also complains of the refusal of the court to give to the jury the following instruction:

"I instruct you, Gentlemen of the Jury, that the fact that Hazel Barnes consented to the alleged abortion and the fact of her complicity may be considered by you as affecting her credibility as a witness, and the force and weight of her testimony."

The instruction is subject to criticism, in that it alludes to "the fact of her complicity." The weight of authority is to the effect that the female in such instances is not an accomplice, but as stated in *Seifert v. State, 160 Ind. 464 (67 N.E. 100, 98 Am. St. Rep. 340)*:

"The deceased was not strictly an accomplice, but the moral quality of the act and her connection with **[*456]** it were such as to entitle the appellant to have said instruction given to the jury."

According to the statement of the case in that precedent:

"At the proper time appellant tendered an instruction to the effect that, in determining what weight should **[***7]** be given to the dying declarations, the jury might consider the fact that according to her own admission therein the declarant had used the catheter upon her person to produce an abortion. The court refused so to instruct, and appellant reserved an exception."

The testimony for the state is to the effect that the woman named in the present indictment, accompanied by her sister, went to the defendant, complained that she was pregnant, and sought his assistance to produce an abortion, and so destroy the foetus of which she was then pregnant. There were two of these interviews at each of which, according to her statement, the prosecutrix, her sister and the defendant were present, viz.: on November 20th and 22d. Her motive of shame and dread of the disgrace attendant upon the discovery of her condition would naturally operate strongly on her mind to aid in bringing about the result she desired. She was deeply interested in the question, much more than any other witness, and hence in fairness to the defendant, some such cautionary instruction ought to have been given.

In the instant case no qualified witness had ever seen what could be called a foetus, and no one has said anywhere in **[***8]** the testimony that the child of which the woman was alleged to be pregnant is dead. The prosecutrix relies

upon sexual intercourse with the defendant November 9, 1923. She declared that she had frequent desire to urinate and had "morning **[*457]** sickness." These manifestations are classed as doubtful signs of pregnancy by some authors: 2 Witthaus & Becker, Med. Jur. 554; Draper Legal Med. 173. She testifies that the defendant administered **[**812]** to her turpentine on the twentieth of the same month; and that two days later, on November 22, 1923, he introduced a metallic instrument into her uterus. The testimony of her sister is to the effect that afterwards, on December 18, 1923, there passed from the prosecutrix with a clot of blood a piece of what "really looked almost like flesh" about the size of an adult woman's finger and about one and one half to two inches long. This was not exhibited to her attending physician whom she consulted on November 28th and December 18th and who testifies he saw no foetus. No one pretends to say that it was a foetus or that it was alive or dead. The record is silent as to any indication of development of the different members of the human **[***9]** body on the thing so discharged, though according to respectable authorities a foetus of the size described begins to show traces of eyes, nose, mouth, ears, hands and feet, as well as other characteristics of the human body which would readily distinguish it from a vaginal polypus not due to pregnancy: 1 Peterson, Haines & Webster, Leg. Med. & Tox. (2 ed.), 959; 2 Hamilton, System of Legal Medicine, 477. There is before us no history of pigmentation of the breasts or vulva nor softening of the uterus classed among the probable signs of pregnancy: 2 Witthaus & Becker Med. Jur. 557. It may well be doubted whether the testimony was sufficient in that respect, but for the errors already noted, the judgment is reversed and the cause remanded for new trial.

REVERSED AND REMANDED.

BROWN, J., concurs in the result.

Neutral
As of: November 13, 2015 12:39 PM EST

People v. Flaherty

Supreme Court of New York, Appellate Division, Fourth Department
November 9, 1926
No Number in Original

Reporter
218 A.D. 204; 1926 N.Y. App. Div. LEXIS 5893; 218 N.Y.S. 148

The People of the State of New York, Respondent, v. Charles Flaherty, Appellant

Prior History: [**1] Appeal by the defendant, Charles Flaherty, from a judgment of the County Court of the county of Livingston, rendered on the 8th day of April, 1926, convicting him of the crime of manslaughter in the first degree.

Disposition: Judgment of conviction reversed on the law and facts and a new trial granted.

Core Terms

young woman, district attorney, girl, dying declaration, morning, die, procure

Case Summary

Procedural Posture

Defendant sought review of his conviction by the County Court of the County of Livingston (New York) for manslaughter in the first degree.

Overview

Defendant was accused of administering drugs and using an instrument on a pregnant woman with the intent to procure a miscarriage and of causing the death of the woman. Defendant claimed that he only administered a heart medication, that he did not use any instruments, and that the trial court erred in admitting the woman s statements as dying declarations. The court reversed defendant s conviction. The court held that there was no evidence that defendant administered drugs designed to procure a miscarriage, that defendant only administered digitalis, and that expert testimony on the cause of death of the woman was not based on facts within the experts knowledge and was improperly received into evidence. The court also held that the woman s statements to her mother were not made under a sense of impending death or without hope of recovery, that the statements were hearsay and were improperly admitted, and that defendant was entitled to a new trial.

Outcome

The court reversed defendant s conviction for manslaughter in the first degree and ordered a new trial.

LexisNexis® Headnotes

Evidence > ... > Exceptions > Dying Declarations > General Overview

HN1 To entitle dying declarations to be received in evidence, they must be made by a person who believes he or she is about to die and has no hope of recovery. The evidence shall be clear that the declarations were made under a sense of impending death without any hope of recovery.

Jennifer Morrissey

Evidence > ... > Exceptions > Dying Declarations > General Overview

Evidence > ... > Exceptions > Dying Declarations > Form of Declarations

Evidence > Relevance > Preservation of Relevant Evidence > Exclusion & Preservation by Prosecutors

HN2 Where the evidence of a defendant s guilt is based largely on the fact that he may have had the opportunity to commit the crime, prejudicial dying declarations tending to establish the defendant s connection with the crime charged against him without laying a proper foundation for their admission in evidence is a substantial error which cannot be overlooked.

Criminal Law & Procedure > Appeals > Procedural Matters > Records on Appeal

Criminal Law & Procedure > Appeals > Standards of Review > General Overview

HN3 It is the duty of an appellate court to search the record and see that justice is done.

Criminal Law & Procedure > Trials > Defendant s Rights > Right to Fair Trial

Criminal Law & Procedure > Trials > Judicial Discretion

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

HN4 A defendant, attempting to try his own case without the aid of experienced counsel, is entitled to every reasonable consideration to the end that he receives a fair and impartial trial. If through inexperience or ignorance, or for any other cause, he fails to note exceptions or make motions to strike out improper evidence, it shall not preclude him from the right to a fair hearing. It is the duty of an appellate court to order a new trial, if in its opinion justice requires it, whether or not exceptions were taken by the defendant to erroneous rulings in the court below or motions made to strike from the record evidence that had been improperly received. N.Y. Code Crim. Proc. § 527.

Headnotes/Syllabus

Headnotes

Crimes -- manslaughter first degree -- defendant was charged with administering drugs and medicines and using instrument on woman for purpose of procuring miscarriage, from which death resulted -- evidence does not support charge as to use of medicines or drugs -- defendant was not represented on trial by attorney -- two physicians testified that death was result of septic peritonitis and that condition was caused by attempted operation -- said testimony was improperly admitted since neither physician gave facts on which opinion was based nor was testimony given in answer to hypothetical question based on facts assumed to be true -- testimony by mother of decedent as to statement by decedent was hearsay -- said statement was not dying declaration since testimony did not show that decedent anticipated death -- evidence of statements cannot be overlooked under Code of Criminal Procedure, [**2] § 542 -- fact that motion was not made to strike out evidence does not prevent Appellate Division from considering same.

Syllabus

On a prosecution for manslaughter in the first degree, based upon the death of a woman alleged to have been caused by the defendant through the administration of drugs and medicines, and through the use of an instrument with the intent to procure a miscarriage, the evidence does not sustain the charge that the defendant used medicines or drugs designed to procure or which did procure a miscarriage.

The testimony by two physicians, one of whom saw the decedent just before she died, and both of whom assisted in performing an autopsy, to the effect that septic peritonitis, which caused the death, was caused by an attempted

operation to terminate pregnancy, was improperly admitted, since neither physician gave any facts on which the opinion could have been based, nor did they give their opinion in answer to a hypothetical question based on facts assumed to be true, and, furthermore, both physicians testified that the septic condition might have been the result of any one of several causes.

It was error to admit testimony on the part of the mother of the [**3] decedent to the effect that the decedent told her, shortly before her death, that she had been operated on in defendant s house and that she had been in defendant s house all the time she was away, for that evidence was merely hearsay, the statement not having been made in the presence of the defendant.

Furthermore, said evidence was not admissible as a dying declaration, since the witness testified that the decedent did not believe that she was dying at the time the statement was made and did not anticipate death within a short time.

The Appellate Division will not overlook the error, under the authority of section 542 of the Code of Criminal Procedure, on the theory that defendant s rights have not been prejudiced, for the evidence in this case of defendant s guilt is based largely on the fact that he may have had the opportunity to commit the crime, and the testimony in question was very important in that connection and, therefore, the error was prejudicial.

The defendant was not represented on the trial by an attorney, and, therefore, the contention by the district attorney that no motion was made to strike out said evidence cannot be sustained, for it is the duty of the [**4] appellate court, especially under the circumstances of this case, to consider the entire case whether or not proper objections or motions were made by the defendant.

Counsel: Sebring & King [James O. Sebring of counsel], for the appellant.

Austin W. Erwin, District Attorney, for the respondent.

Judges: Clark, J. Hubbs, P. J., Davis, Sears and Crouch, JJ., concur.

Opinion by: CLARK

Opinion

[*205] Defendant has been convicted in Livingston county of the crime of manslaughter in the first degree. He was charged with causing the death of one Clara Hagan, which resulted from a criminal operation, alleged to have been performed on the person of said woman by defendant for the purpose of procuring an abortion. (See Penal Law, §§ 80, 1050.)

The indictment charged that to accomplish this result defendant supplied and administered to the young woman drugs and medicines, and that he also used an instrument on said Clara Hagan with intent to procure a miscarriage, and that she died from the effects of such treatment.

There is no evidence that defendant ever prescribed or administered [*206] medicines or drugs designed to procure or which did procure a miscarriage. The only [**5] medicine that defendant is shown to have prescribed or administered was diluted tincture of digitalis, which is a heart stimulant and which was prescribed for her as such.

If this judgment stands it must be under the charge that defendant used some instrument on this young woman to procure a miscarriage, and that from the effects of that operation she lost her life.

The defendant is not a lawyer, but nevertheless tried his own case. Experienced counsel had been retained to conduct his defense, but when the case was moved for trial his counsel was not present and the trial proceeded.

Under the circumstances it is our duty to inquire carefully into the proceedings at the trial to see if this man, charged with a serious crime, and attempting to conduct his own case without the aid of counsel, was accorded that fair and impartial trial to which he was entitled under our system of administering the criminal law.

It was the theory of the People that Clara Hagan, a young woman some twenty-two years of age, died as the result of a criminal operation performed upon her by defendant at his residence in the village of Mount Morris sometime between the 12th and 19th days of January, 1926.

[**6] The evidence shows that the defendant was an old acquaintance of Clara s family and that some weeks prior to her death she and the young man charged with being the author of her condition, and her mother, called on defendant at his residence and asked his advice in the circumstances, and that defendant advised the young people to get married, which the young man was willing to do, but which proposition was not favorably received by the young woman. Defendant then advised that Clara go to some institution where she could be cared for. That suggestion was agreeable to the parties and the young man agreed to pay the expenses and did subsequently leave money with defendant for that purpose.

Defendant contends that on the morning of the 12th of January, 1926, Clara came to his residence and he turned over to her the money that had been left with him, as above stated, to defray her expenses; that after receiving this money she left defendant s house and was accompanied to the train by a Mr. Wheelock, who testified that he went with the young woman to the train and saw her board a west-bound train going to Buffalo on the morning of January twelfth.

Defendant further contends that [**7] he did not see Clara again until the evening of January 18, 1926, when she returned to his residence; [*207] that he attempted to communicate with her family that evening by telephone but was unable to do so, but that early the next morning, January nineteenth, he succeeded in that effort and very shortly the mother of the girl came to his residence and that Clara was able to and did go home with her mother that morning. She died the following afternoon, defendant not having seen her after she left his residence to go home with her mother on the morning of January nineteenth.

To sustain the charge that this young woman died from the effects of a criminal operation the People produced the testimony of two physicians, Dr. Roy A. Page and Dr. Harold A. Patterson. Neither one of these physicians had treated her. Dr. Page testified that he did not see the young woman until she was in a dying condition and just before her death, and Dr. Patterson never saw her until after her death. Dr. Page testified that he called to see her on the afternoon of January twentieth; that she was unconscious and dying and that he could get nothing from her as to how she felt, but a physical examination [**8] showed her condition was due to septic peritonitis. After her death he assisted in performing an autopsy and testified that from his examination and the history of the case it was his opinion that her death was caused by a criminal operation for the relief of pregnancy.

Dr. Patterson testified that from his investigation and examination it was his opinion that this septic condition was caused by an attempted operation to terminate pregnancy.

Dr. Page did not state what examination he had made or what facts were disclosed thereby. He did not state what history of the case he had received or from whom. Neither physician gave any facts from which they were enabled to form an opinion as to the cause of death. Both physicians testified that the septic condition they found could be produced by a great number of conditions aside from an operation to relieve pregnancy. So far as any facts are disclosed by the testimony of the physicians the septic condition they found might have resulted from any of the many causes they testified might produce it.

The opinions of these experts as to the cause of the death of this young woman were improperly received, for they were not based on any [**9] facts testified to by either of them that were within their knowledge, or assumed to be true in the form of a hypothetical question. (Marx v. Ontario Beach Hotel & Amusement Co., 211 N. Y. 33; Broderick v. Brooklyn, Queens County & S. R. R. Co., 186 App. Div. 546.)

In an attempt to connect the defendant with the performance of the operation to which the experts testified, the district attorney [*208] called the mother of the young woman and she was permitted to testify, over defendant s objections and exceptions, that on the morning of January twentieth after the daughter had returned to her home she told her mother where she had been, and what had happened, and that she had been operated on and that she was "right in that [defendant s] house from the time she went in until the time she came out."

Defendant was not present when it is claimed the girl made these statements to her mother. This was hearsay evidence pure and simple, and was improperly received. As the learned and experienced justice who granted a certificate of reasonable doubt in this case stated in his opinion: "I think the evidence as to the conversation, the defendant not being present, [**10] was erroneously received and that it was highly prejudicial to the defendant."

This evidence was received on the theory that it was a dying declaration. The district attorney, by repeated questions, sought to have the witness testify that these statements were made by her daughter in anticipation of death, but the mother could not so testify, but stated among other things in response to the district attorney s questions: "No, she didn t think but what she was coming all right," and then after the court had asked the district attorney to lay the foundation for the admission of the statements, he made a further effort and asked the witness: "Did she say anything else about expecting to die?" and the witness replied: "She didn t seem to worry so much about dying." The district attorney still persisted and asked the witness these questions: "Did she express any hope that she was going to recover?" "Was she gradually growing weaker and suffering more pain?" "Did she express to you in words or by actions that she understood that she was going to die?" He received no satisfactory answers and finally the court took hold of the situation and asked the witness: "What did she say about dying [**11] or living?" and the witness replied: "I don t think the girl really thought she was going to die at the last. I don t think so."

It is plain from this examination that no proper foundation was laid for the admission of the statements alleged to have been made by Clara Hagan to her mother in the absence of defendant on the theory that they were dying declarations.

HN1 To entitle dying declarations to be received in evidence they must be made by a person who believes he or she is about to die and has no hope of recovery.

"The evidence should be clear that the declarations were made under a sense of impending death without any hope of recovery." (People v. Sarzano, 212 N. Y. 231; People v. Conklin, 175 id. 333.)

[*209] "There must be proof that the declarant believed it, that recovery was impossible and no hope of recovery." (Peak v. State, 50 N. J. L. 179.) To the same effect: People v. Chase (79 Hun, 296; affd., 143 N. Y. 669); People v. Mikulec (207 App. Div. 505, 507).

The foundation laid for the admission of Clara s statements to her mother as a dying declaration did not measure up to these conditions. The deceased according to [**12] the testimony of her mother not only did not believe that she was going to die but as her mother testified the girl "didn t think but what she was coming all right. * * * She didn t seem to worry so much about dying," and finally the mother testified: "I don t think the girl really thought she was going to die at the last. I don t think so."

Notwithstanding all this the damaging statements were permitted to stand, and in his summary to the jury the district attorney took full advantage of the mother s testimony when he said: "The testimony of the girl s mother is such, and is uncontradicted and the record will show it uncontradicted by the defendant, and it must be taken here, gentlemen, as the truth, that that girl was deprived of her life by reason of this criminal operation for the termination of pregnancy, and that that criminal operation was performed, by the evidence here, beyond a reasonable doubt, at the residence of Charles Flaherty, the defendant, in the village of Mount Morris * * *."

It is urged by the district attorney that even though the evidence of the mother as to the alleged dying statements of her daughter was erroneously received in evidence, it would not affect [**13] the result, and should be

overlooked under the authority of section 542 of the Code of Criminal Procedure, on the theory that defendant s rights had not been prejudiced.

That might be true in a case where such dying declarations added nothing to the facts presented (People v. Sprague, 217 N. Y. 373), but in a case like this HN2 where the evidence of defendant s guilt is based largely on the fact that he may have had the opportunity to commit the crime, prejudicial dying declarations tending to establish defendant s connection with the crime charged against him without laying a proper foundation for their admission in evidence, was a substantial error which cannot be overlooked.

It is urged by the district attorney that no motion was made to strike out this evidence, and that defendant should not now be heard to urge this error to defeat "a just verdict."

HN3 It is the duty of the appellate court to search the record and as far as may be see that justice is done. HN4 This defendant, attempting to try his own case without the aid of experienced counsel, was [*210] entitled to every reasonable consideration to the end that he receive a fair and impartial trial. If through inexperience [**14] or ignorance, or for any other cause he failed to note exceptions, or make motions to strike out improper evidence, it should not preclude him from the right to a fair hearing, and it is the duty of this court to order a new trial, if in its opinion justice requires it, whether or not exceptions were taken by defendant to erroneous rulings in the court below, or motions made to strike from the record evidence that had been improperly received. (Code Crim. Proc. § 527; People v. Minkowitz, 220 N. Y. 399; People v. Console, 194 App. Div. 824; People v. Oxfeld, 121 Misc. 524.)

Many other alleged errors are pointed out by the learned counsel for the defendant which it is urged require a reversal of this judgment. It is not necessary to discuss them, however, in view of the fact that we have concluded that because of the errors heretofore pointed out there must be a new trial.

The defendant may be guilty of the crime charged against him. If so and he is to be convicted it should be on sufficient and legal evidence and on a record reasonably free from substantial errors prejudicial to his interests.

The judgment of conviction should be reversed on the law [**15] and the facts, and a new trial ordered.

People & Events: Margaret Sanger (1879-1966)


CORBIS

Margaret Sanger devoted her life to legalizing birth control and making it universally available for women. Born in 1879, Sanger came of age during the heyday of the Comstock Act, a federal statute that criminalized contraceptives. Margaret Sanger believed that the only way to change the law was to break it. Starting in the 1910s, Sanger actively challenged federal and state Comstock laws to bring birth control information and contraceptive devices to women. Her fervent ambition was to find the perfect contraceptive to relieve women from the horrible strain of repeated, unwanted pregnancies.

Tragedy Leads to Commitment

Sanger's commitment to birth control sprung from personal tragedy. One of eleven children born to a working class Irish Catholic family in Corning, New York, at age nineteen Margaret watched her mother die of tuberculosis. Just 50 years old, her mother had wasted away from the strain of eleven childbirths and seven miscarriages. Facing her father over her mother's coffin, Margaret lashed out, "You caused this. Mother is dead from having too many children."

Nurses Botched Abortions

Determined to escape her mother's fate, Sanger fled Corning to attend nursing school in the Catskills. Eventually, she found work in New York City as a visiting nurse on the Lower East Side. It was there that Sanger saw her personal tragedy writ large in the lives of poor, immigrant women. Lacking effective contraceptives, many women, when faced with another unwanted pregnancy, resorted to five-dollar back-alley abortions. It was after these botched abortions that Sanger was usually called in to care for the women. After experiencing many women's trauma and suffering, Sanger began to shift her attention from nursing to the need for better contraceptives.

Anger Turns to Militancy


CORBIS

Although married and the mother of three young children, Sanger devoted more and more of her time to her mission. Sanger's anger turned into militancy, and her family took a backseat to her crusade. In 1914 she coined the term "birth control" and soon began to provide women with information and contraceptives. Indicted in 1915 for sending diaphragms through the mail and arrested in 1916 for opening the first birth control clinic in the country, Sanger would not be deterred. In 1921 she founded the American Birth Control League, the precursor to the Planned Parenthood Federation, and spent her next three decades campaigning to bring safe and effective birth control into the American mainstream.

Still More to Do

But by the 1950s, although she had won many legal victories, Sanger was far from content. After 40 years of fighting to help women control their fertility, Sanger was extremely frustrated with the limited birth control options available to women. Since the 1842 invention of the diaphragm in Europe and the introduction of the first full-length rubber condom in the U.S. in 1869, there had been no new advances in contraceptive methods. Sanger had championed the diaphragm, but after promoting it for decades, she knew it was still the least popular birth control method in America. The diaphragm was highly effective, but it was expensive, awkward -- and most women were too embarrassed to use it.

Worried about Population Growth


SOPHIA SMITH COLLECTION, SMITH COLLEGE

But Sanger, now in her seventies and in poor health, was not ready to give up. She had been dreaming of a "magic pill" for contraception since 1912. She was no longer just concerned about women suffering from unwanted pregnancies. Now, a firm believer in the theory of population control, she was also worried about the potential toll of unchecked population growth on the world's limited natural resources.

A "Magic Pill"

LIBRARY OF CONGRESS

Tired of waiting for science or industry to turn its attention to the problem, Margaret Sanger set out on a mission. She sought someone to realize her vision of a contraceptive pill as easy to take as an aspirin. She wanted a pill that could

provide women with cheap,
safe, effective and female-controlled contraception. Her search ended in 1951 when she met Gregory Pincus, a medical expert in human reproduction who was willing to take on the project. Soon after, she found a sponsor for the research: International Harvester heiress Katharine McCormick. Their collaboration would lead to the FDA approval of Enovid, the first oral contraceptive, in 1960. With the advent of the Pill, Sanger accomplished her life-long goal of bringing safe and effective contraception to the masses.

A Dream Achieved
Not only did Sanger live to see the realization of her "magic pill," but four years later, at the age of 81, Sanger witnessed the undoing of the Comstock laws. In the 1965 Supreme Court case *Griswold v. Connecticut,* the court ruled that the private use of contraceptives was a constitutional right. When Sanger passed away a year later, after more than half a century of fighting for the right of women to control their own fertility, she died knowing she had won the battle.

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In re Neshamkin

Supreme Court of New York, Appellate Division Third Department

November 2, 1938

No Number in Original

Reporter
255 A.D. 897; 7 N.Y.S.2d 483; 1938 N.Y. App. Div. LEXIS 5788

In the Matter of the Application of Dr. ALEXANDER NESHAMKIN, Petitioner, Appellant, for a Review under Article 78 of the Civil Practice Act, of the Determination OF THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, Respondents, Suspending Petitioner s License to Practice Medicine.

Core Terms

recommendation, violation of section, grievance committee, criminal abortion, subcommittee, unanimously, medicine, procure, costs

Case Summary

Procedural Posture

Petitioner physician sought review of a determination by respondent Board of Regents of the University of the State of New York, which suspended the physician s license after he was charged with having procured and performed criminal abortions in violation of N.Y. Penal Law § 1142.

Overview

The physician was charged with having procured and performed criminal abortions on three occasions. The Board found that the physician had offered one woman a pill that he told her would relieve her of her pregnancy and that he had offered to procure abortions for two other women. The Board suspended the physician s license. He appealed, but the court affirmed. The court held that the Board s findings were warranted by the evidence.

Outcome

The court confirmed the Board s determination.

Opinion

[***1] [*897] [**483] Review in the nature of certiorari of a determination by the Commissioner of Education of the State made June 1, 1938, and transferred to this court by an order of the Special [*898] Term made June 30, 1938. The petitioner was charged with undertaking and engaging to procure and to perform criminal abortions in violation of section 1142 of the Penal Law, on December 18, 1936, and January 5 and 7, 1937, and that he performed overt acts to that end. The charges were tried in the first instance by a subcommittee of the committee on grievances, the latter consisting of ten practitioners of medicine appointed by the Board of Regents pursuant to section 1265 of the Education Law. The subcommittee [**484] took testimony and made findings of fact and a recommendation to the grievance committee. These findings and this recommendation were unanimously adopted by the grievance committee and by that committee certified to the Department of Education and the Board

of Regents. The committee found that on December 18, 1936, the petitioner had offered to sell and give to a woman a pill for the purpose of relieving her of pregnancy in violation of section 1142 [***2] of the Penal Law, and on January 5, 1937, that the petitioner engaged to procure criminal abortions on two other women. These findings were based on the testimony of at least two witnesses in each instance who testified to physical examinations and diagnoses made by the petitioner. The Board of Regents adopted said findings and recommendation and made its determination that the license of said petitioner to practice medicine in the State of New York be suspended for the "period of one year from May 20, 1938, to May 20, 1939, and until the further order of the Commissioner of Education, with leave to respondent [petitioner] to apply to the Department of Education for reinstatement," upon the expiration of said period, and upon proof that during such period he shall have actually abstained from such practice in any form, as principal, agent, assistant or employee. The findings made were warranted by the evidence, and the determination of the Commissioner of Education is confirmed, with costs. Determination unanimously confirmed, with fifty dollars costs and disbursements. Present - Hill, P.J., Rhodes, McNamee, Crapser and Heffernan, JJ.

OREGONLIVE

Early Portland abortion provider defended her services to the last

John Terry, Special to The Oregonian By **John Terry, Special to The Oregonian**

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on August 29, 2009 at 2:00 PM, updated August 29, 2009 at 2:10 PM

Oregon Historical SocietyDr. Ruth Barnett in 1951

Depending on your point of view, Dr. Ruth Barnett was one of Portland's most famous -- or infamous -- women.

For years, long before 1973's Roe v. Wade made the practice legal, Barnett reigned as the city's most sought-after abortion provider. What's more, she failed to project the image associated with her vocation -- slatternly and operating down seedy alleys.

Barnett had class.

In her heyday, she operated in the open, without fear. She catered to rich and poor alike, egalitarian except for payment. The rich paid a lot. The poor sometimes paid nothing.

In her 1969 autobiography, "They Weep on My Doorstep," Barnett said she had performed at least 40,000 abortions during her career. She collected cash in advance for her services, with a career total of as much as $17 million, according to various estimates. (Even so, there's no evidence she paid an IRS demand in 1952 for $1.2 million in back taxes; she died with a net worth of about $150,000.)

Her clinic occupied the eighth floor of downtown's upscale Broadway Building, now the site of Nordstrom. And it was plush.

"The reception area and treatment rooms were decorated in a thoroughly modern style," Rickie Solinger wrote in a 1994 biography, "The Abortionist, A Woman Against the Law."

"Dorothy Taylor, Ruth's nurse in the clinic for many years, described the rooms where the operations were done as spotlessly antiseptic," Solinger wrote. In her private office, "Ruth indulged her love of luxury and elegance. ... Comfortable lounges, plants, antiques, a massive painting of Shangri-la, other expensive oils by nineteenth century naturalists, oriental rugs, and elaborate filigreed floor lamps fitted with seductive red lights."

Barnett's lifestyle, too, was opulent. She owned palatial Portland residences, two ranches in eastern Oregon, racehorses, two houses in Seaside and several successful nightclubs. She reveled in late-night parties and played a mean hand of poker.

She dressed to the nines, evidence of her flamboyant social life. But the city's upper crust, despite its patronage, shunned her. She turned to "club owners, musicians, entertainers, other nocturnal people ... perhaps because such people were not so hide-bound and prudish," she wrote in her book.

Despite an 1864 state law outlawing abortions, as of the late 19th century, a number of medical practitioners offered them without legal repercussions. At age 16 in 1908, Barnett underwent an abortion after a boyfriend abandoned her.

"I was relieved of an exaggerated burden of apprehension and terror that inevitably comes to a young, unmarried girl," she wrote in her autobiography.

After a failed five-year marriage and a stint as a dental assistant, she went to work for one of the city's premier female physicians, Dr. Alys Griff, who, among services, performed abortions. Barnett picked up Griff's techniques.

In the early '30s, Barnett went to work for Dr. George Watts in the Broadway Building, earned a license as a naturopathic physician and eventually bought his practice. She later bought out two other physicians in the building, Drs. Maude Van Alstyne and Ed Stewart. She kept the latter's name for her clinic.

The next two decades brought her huge success. Through it all, head held high, she defended her services. "In spite of my patients' tears and anguish, I toiled in a happy climate, because here, in my surgery, came the end of tears and anguish," she wrote.

"She felt she was doing something that needed to be done, and apparently that (the illegality) didn't bother her," says retired journalist Rolla Crick, now 91, whose 1951 expose in the Oregon Journal prompted a crackdown on Barnett and fellow providers.

"Of all the abortionists in town at that time, she was the best," Crick says, saying he found 18 altogether.

For Barnett, the crackdown heralded 15 years of arrests, court appearances, two terms in the Multnomah County Jail and a stretch in the Oregon State Penitentiary women's unit.

In the 1960s, she enlisted Journal columnist Doug Baker to help with her autobiography. The book is Barnett's unflagging self-defense.

A 1997 article by Kerry Donaghue and Cathy Ramey in the anti-abortion journal Life Advocate turned Barnett's words against her, branding her a murderer and social pariah.

In 1968 as a condition of her release from prison, Barnett pledged to never perform another abortion. She died of cancer the next year at age 79.

-- *John Terry,* **johnfterry@comcast.net**

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Margaret Sanger Papers

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Biographical Note

Margaret Sanger, 1916

Margaret Louise Higgins was born in Corning, New York, on September 15, 1879, the sixth of eleven children and the third of four daughters born to Anne Purcell Higgins and Michael Hennessey Higgins, a stone mason. Her two elder sisters worked to supplement the family income, and financed her education at Claverack College, a private coeducational preparatory school in the Catskills. After leaving Claverack, Higgins took a job teaching first grade to immigrant children, but decided after a short time that the work did not suit her temperament. She returned to Corning where her mother, then only forty-nine years old, was dying of tuberculosis. Margaret Higgins blamed her mother's untimely death, as well as her sisters' need to sacrifice their own ambitions to support the family, on her parents' high fertility. Though she loved and admired her father, she resented his demand that she take her mother's place managing the household. Shortly after her Anne Higgins's death, Margaret Higgins left Corning for White Plains, New York, where she entered nursing school.

In 1902, after completing two years of practical nursing training and gaining acceptance to a three-year degree program, Higgins met and married William Sanger, an architect and aspiring artist. By 1910 Margaret Sanger had survived her own bout with tuberculosis and given birth to three children (Stuart, 1903; Grant, 1908; and Peggy, 1910), but was chafing inside her role as a traditional housewife and mother in Hastings-on-Hudson, New York. Later that year the family moved to Manhattan where, through her work as a home nurse on the Lower East Side and her political involvements with the International Workers of the World and anarchist Emma Goldman, Margaret Sanger was drawn into the burgeoning struggle for women's right to control their sexuality and fertility. By 1912 Sanger was widely recognized as a writer and speaker about sex reform. Later that year she became a regular contributor to the socialist newspaper The Call, where she published a series of articles on sexual hygiene. One of these, an article about syphilis published in February 1913, was targeted by the U.S. Post Office under the Comstock Act of 1873, which banned the distribution of sexually-related material through the U.S. mail. This repression of her writings, combined with her exposure to the damages done to women by repeated childbirths and self-induced abortions, led to Sanger's decision to devote herself entirely to the birth control movement. By 1914 she had separated from her husband, written a pamphlet entitled Family Limitation which coined the term "birth control," traveled to Europe to research new contraceptive methods, and set out to establish a system of advice centers where women throughout the U.S. could obtain reliable birth control information.

Sanger's use of radical tactics to educate women about birth control, especially her publication of the radical journal The Woman Rebel, brought her once again to the attention of the U.S. Postal Service. When the U.S. government brought charges against her, Sanger fled to Europe where she befriended the sex reformer Havelock Ellis, who encouraged her to avoid radical political rhetoric and reframe her writings in the language of the social sciences. The pneumonia death of five-year-old Peggy Sanger, which occurred shortly after her mother's return to the New York in October 1915, devastated Margaret Sanger. But Peggy's death, in tandem with William Sanger's arrest for distributing a copy of Family Limitation, aroused considerable public sympathy for Sanger, which, in turn, led the U.S. government to drop its earlier charges against her. More convinced than ever of the need to legalize birth control, Sanger and her

her work, Margaret Sanger became a national figure. On appeal, Sanger won a clarification of the New York law forbidding the dissemination of contraceptive information. The Judge, Frederick Crane, rejected Sanger's argument that, because it forced women to risk death in pregnancy, the law was unconstitutional. Nevertheless, Crane did establish doctors' right to provide women with contraceptive advice for "the cure and prevention of disease."

Interpreting Crane's decision broadly as a mandate for birth control clinics staffed by doctors, Sanger completed the strategic and tactical transformation she had begun at Havelock Ellis's suggestion. Sanger minimized her radical past and began to stress eugenic arguments for birth control over feminist ones. In doing so, she gained increasing support from both medical professionals and philanthropists; in 1921 such backing allowed her to organize the American Birth Control League, which would become the Planned Parenthood Federation of America in 1942. In 1923, aided by her second husband, millionaire J. Noah Slee, Sanger opened the first doctor-staffed contraceptive clinic in the U.S., the Birth Control Clinical Research Bureau in New York City, under the direction of Dr. Hannah Stone. In addition to dispensing birth control information and devices, the Bureau trained hundreds of physicians in contraceptive techniques and served as a model for the national network of 300 clinics Sanger and her supporters would establish over the next fifteen years. In 1925 Sanger convinced her old friend Herbert Simonds to found the Holland Rantos Company, which became the first American company to produce the diaphragm. Between 1929 and 1936 Sanger and her lobbying group, the Committee on Federation legislation for Birth Control, waged a series of court battles which culminated in United States v. One Package, which overturned the old statutes by permitting the mailing of contraceptive devices intended for physicians. Sanger's victory in this case led the American Medical Association to endorse contraception as a legitimate medical service and a vital component of medical education in 1937.

After the U.S. v. One Package Victory Sanger retired to Tucson, Arizona determined to play less central role in the birth control movement, yet her influence continued. In 1952 Sanger helped found the International Planned Parenthood Federation and served as the organization's first president. Also in the 1950s she won philanthropist Katharine Dexter McCormick's financial support for Gregory Pincus's work on the development of the birth control pill. Margaret Sanger died of congestive heart failure in Tucson on September 6, 1966.