When Abortion
Was a Crime

Women, Medicine, and Law
in the United States, 1867–1973

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CHAPTER 4

Interrogations and Investigations

In March 1916, Mrs. Carolina Petrovitis, a Lithuanian immigrant to Chicago and mother of two small children, was in terrible pain following her abortion when her friends called in Dr. Kahn. The doctor asked her, "Who did it for you[?]" He "coaxed" her to answer, then told her, "if you won't tell me what was done to you I can't handle your case." When Petrovitis finally revealed that a midwife had performed an abortion, Dr. Maurice Kahn called for an ambulance, sent her to a hospital, told the hospital physician of the situation, and suggested he "communicate with the Coroner's office." Three police officers soon arrived to question Carolina Petrovitis. With the permission of the hospital physician, Sgt. William E. O'Connor "instructed" an intern to "tell her she is going to die." The sergeant and another officer accompanied the intern to the woman's bedside, and, as the doctor told Petrovitis of her impending death, she "started to cry—her eyes watered." Sure that Petrovitis realized she was about to die, the police then collected a "dying declaration" from her in which she named the midwife who performed her abortion, told where and when it was done, the price paid, and described the instruments used. Later, the police brought in the midwife and asked Petrovitis "if this was the woman." She nodded "yes." A third police officer drew up another dying statement "covering the facts." As he read the third statement back to Carolina, she lay in bed "in pain, vomiting," she made her "mark" on the statement. And then she died.

This chapter answers an important question in the history of repro-
duction: how did the state enforce the criminal abortion laws? From the mid-nineteenth-century criminalization of abortion through the 1930s, the state chiefly prosecuted abortionists after a woman died as a result of an illegal abortion. This account, drawn from the Cook County Coroner’s Inquest into Carolina Petrovitis’s death in 1916, provides an example of standard medical and investigative procedures used in criminal abortion cases. As is evident from the work of the three police officers in the Petrovitis case, the state had a strong interest in obtaining dying declarations from women who had had illegal abortions. Dying declarations were crucial pieces of evidence for the successful prosecution of criminal abortion cases, and therefore state officials focused on collecting them. For over half a century, state officials in Chicago and across the nation followed the same methods of enforcing the criminal abortion laws. Enforcement was marked by continuity. Not until the end of the Depression, as a result of changes in medicine and abortion practices in the 1930s, did the patterns of controlling abortion change.

Petrovitis’s experience illustrates the intimate questioning endured by women during an official investigation into abortion. In abortion cases, the investigative procedures themselves constituted a form of control and punishment. These cases point to the gendered nature of punishment. Recognizing the impact of the criminal abortion laws on women requires looking closely at the details of women’s experiences: the interactions between women and their doctors and between women and police and lower-level state officials. Our understanding of what punishment is needs to be refined and redefined, particularly in cases of women who violate sexual norms, to include more subtle methods of disciplining individuals. Gender informed the nature of punishment. The penalties imposed upon women for having illegal abortions were not fines or jail sentences, but humiliating interrogation about sexual matters by male officials—often while women were on their death beds—and public exposure of their abortions. Police, coroner’s officers, and prosecutors followed standard procedures during investigations of abortion in order to achieve the larger end of putting abortionists out of business. No evidence suggests that officials consciously created or carried out these investigative procedures in order to harass women, yet the procedures were, nonetheless, punitive. For government officials, the procedures were routine. For the women subjected to these routine investigative procedures, they were frightening and shameful once-in-a-lifetime events. Moreover, media attention to abortion deaths was a
crucial component of the enforcement system; publicity warned all women that those who strayed from marriage and motherhood would suffer death and shameful publicity. Because of the singular importance of sexual purity to female social reputation and identity, public exposure could effectively punish women for the transgression of abortion.

The criminal abortion laws and their enforcement not only prohibited abortion, but demanded conformity to gender norms, which required men and women to marry, women to bear children, and men to bear the financial responsibility of children. Although most women who had abortions were married, state officials focused special attention on unwed women and their partners. Coroner’s inquests into abortion deaths of unwed women reveal a state interest in forcing working-class men to marry the women they made pregnant. Historians of sexuality have given little attention to the regulation of male heterosexuality, concentrating instead on the sexual control of women and “deviants.” Yet, as I was surprised to find, in the late nineteenth and early twentieth centuries the state punished unmarried, working-class men whose lovers died after an abortion. The sexual double standard persisted, but the state imposed penalties upon men, in certain unusual situations, when they failed to carry out their paternal obligation to marry their pregnant lovers and head a nuclear family. Unmarried men implicated in abortion deaths, like women, endured embarrassing questions about their sexual behavior, but in general, the state punished men in more conventionally recognized ways: arresting, jailing, and prosecuting them.

State efforts to control abortion were part of a turn-of-the-century trend toward growing state intervention in sexual and family matters. In enforcing marriage when pregnancy resulted from premarital sex, state officials seemed to be willing to take over another traditional responsibility of the male patriarch. The punishment of unmarried men in cases of abortion-related deaths of unmarried women may have at the same time been a response to feminist demands for male sexual responsibility. Much of this promotion of marriage occurred in the newly created juvenile court system, which female reformers had helped create and in which they participated.

The Petrovitsis story reveals some of the ways in which physicians and hospitals served the state in collecting evidence in criminal abortion cases. State officials pulled physicians into a partnership in the suppression of abortion by threatening them with prosecution. Although some physicians voluntarily worked to enforce the criminal abortion laws,
others would have preferred to have nothing to do with it. To obtain evidence against abortionists, state prosecutors needed physicians to report abortions and collect dying declarations from their patients. Without doctors' cooperation, police and prosecutors could do little to suppress abortion. In illegal abortion cases, doctors found themselves caught in the middle between their responsibilities to their patients and the demands of government officials. The state regulation of doctors in abortion cases coincided with expanding governmental control of medicine through licensing laws and medical practice acts.\(^4\)

In enforcing the criminal abortion laws, prosecutors learned to concentrate on cases where they had a “victim”—a woman who had died at the hands of a criminal abortionist. Popular tolerance of abortion had tempered enforcement of the criminal abortion laws and helped create the focus on fatalities. In 1903, attorney H. H. Hawkins reviewed Colorado's record and concluded, “No one is prosecuted in Colorado for abortion except where death occurs. ... The law only applies to the man who is so unskilful as to kill his patient.”\(^5\) To some extent this emphasis protected women by locking up some of the worst abortionists. Yet the criminalization of abortion contributed to the dangers of abortion because it restricted access to better trained and more careful practitioners. In Illinois, thirty-seven out of forty-three different abortion cases on which the Supreme Court of Illinois ruled between 1870 and 1940 involved a woman's death. Because prosecutors focused on abortionists responsible for abortion-related deaths, they relied upon dying declarations, like those obtained from Petrovits, and coroner’s inquests as sources of evidence. The Illinois Supreme Court commented on dying declarations in almost a third of the cases it heard where a woman died because of an abortion.\(^6\)

Prosecutors won few convictions for abortion, however. But counting convictions for abortion underestimates and obscures the state’s serious interest in enforcing the criminal abortion laws. Analysis of the entire investigative process is necessary to bring to light the state’s effort to suppress abortion. Police arrests for abortion and inquests into abortion deaths indicate a greater degree of interest in repressing abortion than suggested by the number of convictions. (See figure 1.) Between 1902 and 1934 in Chicago, the state’s attorney’s office annually prosecuted at most a handful of criminal abortion cases and never won more than one or two convictions a year. In one ten-year period, less than one-quarter of the prosecutions for murder by abortion resulted