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## “Champion Man-Hater of All Time”: Feminism, Insanity, and Property Rights in 1940s America

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“CHAMPION MAN-HATER OF ALL TIME”:  
FEMINISM, INSANITY, AND PROPERTY  
RIGHTS IN 1940S AMERICA

*Magdalene Zier\**

ABSTRACT

*Legions of law students in property or trusts and estates courses have studied the will dispute, In re Strittmater’s Estate. The cases, casebooks, and treatises that cite Strittmater present the 1947 decision from New Jersey’s highest court as a model of the “insane delusion” doctrine. Readers learn that snubbed relatives successfully invalidated Louisa Strittmater’s will, which left her estate to the Equal Rights Amendment campaign, by convincing the court that her radical views on gender equality amounted to insanity and, thus, testamentary incapacity. By failing to provide any commentary or context on this overt sexism, these sources affirm the court’s portrait of Louisa Strittmater as an eccentric landlady and fanatical feminist.*

*This is troubling. Strittmater should be a well-known case, but not for the proposition that feminism is an insane delusion. Despite the decision’s popularity on law school syllabi, no scholar has interrogated the case’s broader historical background. Through original archival research, this Article centers Strittmater as a case study in how social views on gender, psychology, and the law shaped one another in the immediate aftermath of World War II, hampering women’s property rights and efforts to achieve constitutional equality. More than just a problematic precedent, the case exposes a world in which the “Champion Man-Hater of All Time”—newspapers’ epithet for Strittmater—was not only a humorous headline but also a credible threat to the postwar order that courts were helping to erect.*

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*The Article thus challenges the textbook understanding of “insane delusion” and shows that postwar culture was conducive to a strengthening of the longstanding suspicion that feminist critiques of gender inequality were, simply put, crazy.*

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## INTRODUCTION

*In re Strittmater’s Estate*<sup>1</sup> is a mainstay of law school syllabi and treatises on property and trusts and estates.<sup>2</sup> Legions of law students

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1. *In re Strittmater’s Estate*, 53 A.2d 205 (N.J. 1947).
  2. I encountered the case in my first-year property law class at Stanford Law School, which assigned CHARLES M. HAAR & LANCE LIEBMAN, PROPERTY AND LAW 581-83 (2d ed. 1985). The case is also referenced in numerous editions of Jesse Dukeminier’s classic textbook, *Wills, Trusts, and Estates*. See, e.g., JESSE DUKEMINIER & STANLEY JOHANSON, WILLS, TRUSTS, AND ESTATES 142-44 (3d ed. 1984); JESSE DUKEMINIER & STANLEY JOHANSON, WILLS, TRUSTS, AND ESTATES 145-47 (5th ed. 1995); JESSE DUKEMINIER & STANLEY JOHANSON, WILLS, TRUSTS, AND ESTATES 159-61 (6th ed. 2000); see also STEWART E. STERK & MELANIE B. LESLIE, ESTATES AND TRUSTS 400 (5th ed. 2015). Several major legal treatises also cite *Strittmater*. See, e.g., 79 AM. JUR. 2d *Wills* § 81 n.6, Westlaw (database updated Nov. 2020). Numerous law school syllabi assign *Strittmater* as the only or one of several cases exemplifying the insane delusion doctrine. See, e.g., Keith Davidson & Stewart Albertson, Chapman University School of Law, *Wills & Trusts: Fall 2014 Course Syllabus* 4 (2014), [https://www.aldavlaw.com/wp-content/uploads/2018/05/2014\\_Fall\\_Outline\\_Syll\\_WILLS.pdf](https://www.aldavlaw.com/wp-content/uploads/2018/05/2014_Fall_Outline_Syll_WILLS.pdf); Patricia Hoke, Southern Illinois University, *Syllabus: Trusts & Estates* 5 (2012), [https://law.siu.edu/\\_common/documents/courses/fa12-syllabi/trusts-estates.pdf](https://law.siu.edu/_common/documents/courses/fa12-syllabi/trusts-estates.pdf); Nancy Knauer, Temple University Beasley School of Law, *Syllabus: Wills, Trusts, & Estates* 4 (2013), <https://silo.tips/download/syllabus-wills-trusts-estates-100-250-t-th-spring-2013>.

have studied the 1947 decision from New Jersey’s highest court. The case is presented as a model of the “insane delusion” doctrine—one of the grounds on which a snubbed party can challenge a decedent’s capacity to author a will.<sup>3</sup> Students learn that Louisa Strittmater was an eccentric New Jersey landlady who in 1944 left her estate to the National Woman’s Party (NWP) to further the fight for the Equal Rights Amendment (ERA).<sup>4</sup> Upon her death, estranged relatives quickly surfaced to challenge the bequest, contending that Strittmater’s intense commitment to women’s rights indicated mental incapacity.<sup>5</sup> The court ultimately invalidated her will, agreeing that her views amounted to “feminism to a neurotic extreme” and that her “paranoiac condition, especially her insane delusions about the male” motivated her choice of beneficiary.<sup>6</sup> The casebooks and treatises that cite *Strittmater* offer no commentary or context on its overt sexism, let alone the dramatic shift in perceptions of gender taking place at the time of the decision.<sup>7</sup> New Jersey courts, which have continued to cite *Strittmater* as good law as recently as 2014, are guilty of the same omission.<sup>8</sup>

This is troubling. *Strittmater* should be a well-known case, but not for the proposition that feminism is an insane delusion. In the first half of the 1940s, while the nation was at war, women like Louisa Strittmater gained opportunities on the home front and made strides toward constitutional equality.<sup>9</sup> However, in the war’s wake, the country reversed course, championing domesticity and deeming some women who resisted “insane.”<sup>10</sup> The life of Louisa Strittmater and the litiga-

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3. See, e.g., JESSE DUKEMINIER & ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES 275-77 (9th ed. 2013) (presenting *Strittmater* as the principal case for the “insane delusion” unit).
  4. *Strittmater*, 53 A.2d at 205; see also JANE MANSBRIDGE, WHY WE LOST THE ERA 8-19 (1986) (chronicling the NWP’s introduction of and advocacy for the Equal Rights Amendment).
  5. *Strittmater*, 53 A.2d. at 205.
  6. *Strittmater*, 53 A.2d. at 205-06.
  7. See sources cited *supra* note 2.
  8. See *In re Estate of Malone*, No. A-6147-12T2, 2014 WL 5712975, at \*6 (N.J. Super. Ct. App. Div. Nov. 6, 2014) (relying on *Strittmater* for the proposition that “the caveator must establish lack of capacity at the time that the will was executed”). Recently, some legal historians have exposed modern courts’ practice of routinely citing cases that codify ugly histories. Many courts, for instance, have consistently invoked nineteenth-century property disputes without acknowledging that the property in dispute was an enslaved person. See Justin Simard, *Citing Slavery*, 72 STAN. L. REV. 79, 81-82, 97-99 (2020). Citing *Strittmater* without context reinforces the sort of gender bias that its namesake and the NWP strove to combat.
  9. See discussion *infra* Parts III.A-B.
  10. See discussion *infra* Part III.C.

tion over her estate embody this ignoble turning point in modern American history. The case shows that postwar law and culture were conducive to a strengthening of the longstanding suspicion that feminist critiques of gender inequality were, simply put, crazy.

Most of what we know of Louisa Strittmater appears in the court's records. The dispute over her \$15,000 estate produced more than two-hundred pages of briefs and testimony.<sup>11</sup> Although the record is rich, the evidence is decidedly biased. The caveators—the relatives who challenged the will—had a strong incentive to select the most outlandish evidence and provocative witnesses, such as a female friend with whom Strittmater may have had an affair.<sup>12</sup> We know that Strittmater kept a journal, but the only excerpts that survive are those that the caveators found in her secretary and introduced in court.<sup>13</sup> Witnesses' statements were also partial, guided by their own social backgrounds and constraints.<sup>14</sup> To excavate a fuller and more balanced account of Strittmater's story, this Article admits additional evidence, augmenting the court record with NWP archives, newspapers, census data, and secondary sources. Strittmater lived a modest life, but she managed to weave together a notable cast of characters, including antifeminist female psychologists,<sup>15</sup> prominent New Jersey jurists and politicians,<sup>16</sup> Alice Paul and the feminists of the NWP,<sup>17</sup> and even civil rights leaders like W.E.B. Du Bois.<sup>18</sup>

Despite *Strittmater's* popularity among law professors and practitioners, no scholar has interrogated the case's broader historical background or its namesake's story.<sup>19</sup> A few have written on how inheritance

11. See *Judge Says She Was Crazy*, DECATUR DAILY REV., Sept. 6, 1946, at 30 (highlighting the amount in controversy); *In re Strittmater's Estate*, 53 A.2d 205 (N.J. 1947) (No. 214) [hereinafter *STRITTMATER RECORD*] (collection of case records compiled in N.J. Court of Errors & Appeals, vol. 1825 (1947)).

12. See *infra* notes 259-70 and accompanying text.

13. See Testimony of Ruth Robbins, in *STRITTMATER RECORD*, *supra* note 11, at 47.

14. See, e.g., Testimony of Helen Morse, in *STRITTMATER RECORD*, *supra* note 11, at 52-64 (explaining her tenancy in Strittmater's home as a single mother and disavowing any sympathies to the feminist agenda).

15. See *infra* notes 204-21 and accompanying text.

16. See *infra* notes 179-86 and accompanying text.

17. See *infra* notes 126-31 and accompanying text.

18. See *infra* notes 91-101 and accompanying text.

19. See Kristen K. Tiscione, In *re Strittmater's Estate 53 A.2d 205 (N.J. 1947)*, in *FEMINIST JUDGMENTS: REWRITTEN TRUSTS AND ESTATES OPINIONS* 26, 26-38 (Deborah S. Gordon, Browne C. Lewis & Carla Spivack eds., 2020). The *Feminist Judgments* series rewrites notable judicial decisions on issues of gender justice, and the recent volume on trusts and estates offers a feminist reassessment of *Strittmater*. "Justice" Tiscione's opinion "exposes the deep misogyny driving" the 1947 decision and

law has entrenched racial and gender hierarchies, but many of these pieces examine more contemporary issues and tend to focus on the other strand of testamentary incapacity doctrine—“undue influence.”<sup>20</sup> More generally, feminist legal scholarship on the post-suffrage era tends to center on constitutional issues stemming from the Nineteenth

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concludes that the court should have upheld Strittmater’s will. Lloyd Bonfield & Bridget J. Crawford, *Commentary on In re Strittmater’s Estate*, in FEMINIST JUDGMENTS: REWRITTEN TRUSTS AND ESTATES OPINIONS, *supra* at 17-25. While they may help draw overdue attention to the case, the appellate exercise and attendant commentary only draw from the court records and do not offer this Article’s same engagement with other historical sources. The commentary concedes, “[t]he twenty-first century reader does surmise that there may be more information relevant to Strittmater’s personal story than the court record reveals.” *Id.* at 22. This Article provides the reader with that additional information. Previously, only a handful of other books and journal articles had ever referenced *Strittmater*, and their treatment is uniformly superficial. *See id.* at 17-25; Kevin Bennardo, *The Madness of Insane Delusions*, 60 ARIZ. L. REV. 601, 613-14 (2018); Joshua C. Tate, *Personal Reality: Delusion in Law and Science*, 49 CONN. L. REV. 891, 910-12 (2017); Karen J. Sneddon, *Not Your Mother’s Will: Gender, Language, and Wills*, 98 MARQ. L. REV. 1535, 1576 n.225 (2015); Daniel Monk, *The Pleasures and Perils of Inheritance*, 15 STUD. GENDER & SEXUALITY 239, 241 (2014); Amy Ronner, *Does Golyadkin Really Have a Double? Dostoevsky Debunks the Mental Capacity and Insane Delusion Doctrines*, 40 CAP. U.L. REV. 195, 219-21 (2012); Amy Ronner, *When Courts Let Insane Delusions Pass the Rational Basis Test: The Newest Challenge to Florida’s Exclusion of Homosexuals from Adoption*, 21 U. FLA. J.L. & PUB. POL’Y 1, 12-14 (2010); Claire Steinberger, *Therapeutic Jurisprudence: The “Sanist” Factor—An Interdisciplinary Approach*, 46 N.Y.L. SCH. L. REV. 573, 577 (2003); Gregory Atkinson, *Towards a Due Process Perspective in Conservatorship Proceedings for the Aged*, 18 J. FAM. L. 819, 827 (1979); Edward S. Halsey, *Insane Delusions Affecting Testamentary Capacity*, 2 WYO. L.J. 84, 84 (1948). Lawrence M. Friedman’s comprehensive history of American inheritance law contains one paragraph on *Strittmater*. *See* LAWRENCE M. FRIEDMAN, *DEAD HANDS: A SOCIAL HISTORY OF WILLS, TRUSTS, AND INHERITANCE LAW* 98 (2009).

20. Veena Murthy’s analysis of state appellate-level decisions between 1986 and 1995 reveals that judges were more than twice as likely to overturn wills executed by women than men. Veena K. Murthy, *Undue Influence and Gender Stereotypes: Legal Doctrine or Indoctrination?*, 4 CARDOZO WOMEN’S L.J. 105, 111-14 (1997). For a historical perspective on race and sex in estate law in the nineteenth century, see Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 STAN. L. REV. 221, 225 (1999) (highlighting “the role of private law in negotiating and reconciling what sometimes appear to be contradictory imperatives of preserving private property and maintaining racial hierarchy”). Another line of scholarship looks at “undue influence” charges brought against bequests between same-sex partners. *See, e.g.*, Brian Alan Ross, *Undue Influence and Gender Inequity*, 19 WOMEN’S RTS. L. REV. 97 (1997); Jeffrey G. Sherman, *Undue Influence and the Homosexual Testator*, 42 U. PITT. L. REV. 225 (1981).

Amendment, rather than on private law and local disputes with more tangible consequences.<sup>21</sup>

Historian Lauren MacIvor Thompson's work, which examines the intersection of law, psychology, and gender in the Gilded Age and Progressive Era, is exceptional. "Triangulating" court records, medical texts, and the writings of feminist reformers, Thompson shows that the day's prevailing medical opinions, which cast women as innately unreasonable and susceptible to mental illness, weighed on women's legal status.<sup>22</sup> However, she argues, many judges temporarily set aside psychological rationales for sexism in the name of expanding the pool of productive economic actors and ruled for women.<sup>23</sup> "Triangulating" legal, medical, and activist sources from 1920 to 1950, this Article draws on Thompson's method but departs from her period and her argument. *Strittmater* suggests either that the respect for women's reason and property rights, which Thompson ascribes to the late-nineteenth and early-twentieth centuries, was hollow or that some courts' positions shifted significantly in the mid-1940s.

While Strittmater was undoubtedly eccentric, her case is archetypal. As Jill Lepore has written, microhistories are founded on the proposition that "however singular a person's life may be, the value of examining it lies not in its uniqueness, but in its exemplariness, in how that individual's life serves as an allegory for broader issues affecting the culture as a whole."<sup>24</sup> This microhistory illustrates how social views on gender, psychology, and the law shaped one another in the immediate aftermath of World War II, hampering women's property rights and their efforts to achieve constitutional equality. Part I traces how the legal drama of *In re Strittmater's Estate* unfolded, and Part II uncovers the details of Strittmater's life that the court record omitted or obscured.

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21. See, e.g., LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1998); Ronnie L. Podolefsky, *The Illusion of Suffrage: Female Voting Rights and the Women's Poll Tax Repeal Movement After the Nineteenth Amendment*, 7 COLUM. J. GENDER & L. 185 (1998); Gretchen Ritter, *Gender and Citizenship After the Nineteenth Amendment*, 32 POLITY 345 (2000); Reva Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947 (2002).

22. Lauren MacIvor Thompson, "The Reasonable (Wo)man": *Physicians, Freedom of Contract, and Women's Rights, 1870-1930*, 36 L. & HIST. REV. 771, 782-85 (2018).

23. *Id.* at 776.

24. Jill Lepore, *Historians Who Love Too Much: Reflections on Microhistory and Biography*, 88 J. AM. HIST. 129, 133 (2001). In teasing out the differences between the two historical styles, Lepore also posits that the presence of a judgmental outsider—often a literal judge—is a distinguishing feature of microhistory. See *id.* at 139. This Article, featuring several judges as characters, is another data point proving her proposition.

While traditional legal pedagogy might exclude such broader background, Part III spotlights four intersections between law and society crucial to understanding the period and *Strittmater*'s place within it: (A) women's property rights; (B) the status of constitutional gender equality at the federal and state levels; (C) the rise of popular psychology applied to women's mental state; and (D) the policing of sexual behavior. Read in these contexts, Louisa Strittmater's life and legacy expose the historic conflation of feminism and mental illness and challenge the textbook understanding of “insane delusion.”

### I. *IN RE STRITTMATER'S ESTATE*

Soon after Louisa Strittmater passed away in 1944, her estranged relatives—one uncle and two cousins—filed caveats to challenge the will in the Essex County Orphan's Court.<sup>25</sup> All three had reasons to covet Strittmater's assets: Ruth Robbins was a young mother of three,<sup>26</sup> Francis Strittmater had been drafted into World War II,<sup>27</sup> and Martin Strittmater was an elderly laborer still lodging in others' homes.<sup>28</sup> In the hopes of receiving the estate as her next of kin, they contended that Strittmater lacked the mental capacity to author a will.<sup>29</sup> News of the caveators' challenge caught the attention of the NWP's Executive

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25. The first cousins, Martin Strittmater and Ruth Robbins, filed their complaint on December 11, 1944. *See* Caveat, *in* *STRITTMATER RECORD*, *supra* note 11, at 1-2. Uncle Francis officially joined the suit on June 21, 1945. *Id.*

26. Ruth Mae Strittmater married Vincent Robbins and, by the age of twenty-two, had three children, ages one, five, and seven. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, NEW JERSEY, S.D. No. 1, E.D. No. 17-27, Sheet No. 10A (1940). Although Strittmater bequeathed some personal effects to her, Ruth evidently thought she deserved more. *See* Last Will and Testament of Louisa F. Strittmater, *in* *STRITTMATER RECORD*, *supra* note 11, at 3-4; Advisory Master's Conclusions, *in* *STRITTMATER RECORD*, *supra* note 11, at 5.

27. Francis Strittmater of Wilkensburg, Pennsylvania was drafted into the military in 1942 at the age of forty. *See* U.S. SELECTIVE SERV. SYS., D.S.S. FORM 1, Francis Strittmater Serial No. 2095, Order No. 10704.

28. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, NEW JERSEY, S.D. No. 1, E.D. No. 17-3, Sheet No. 1A (1940). In 1930, Martin had been residing with a different family and working as a laborer for a dairy farm. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, FIFTEENTH CENSUS OF THE UNITED STATES: 1930, NEW JERSEY, S.D. No. 13, E.D. No. 17-23, Sheet No. 5A (1940).

29. Advisory Master's Conclusions, *in* *STRITTMATER RECORD*, *supra* note 11, at 5.



Council, and the party engaged Laurence Semel, who had been Strittmater's attorney, to defend the bequest.<sup>30</sup>

The trial court that first reviewed Strittmater's estate in the summer of 1945 acted according to custom and upheld her will.<sup>31</sup> The Advisory Master, who oversaw the trial and wrote the initial decision, relied on an oft-cited New Jersey case, *Smith v. Smith* (1891), that articulated a stringent standard for "insane delusion" that was typical across the United States.<sup>32</sup> Upholding the will of a man who maintained that his lawful wife was not actually his spouse, the *Smith* court decreed, "A delusion is the mind's spontaneous conception and acceptance of that, as a fact, which has no real existence except in its imagination, and its persistent adherence to it against all evidence."<sup>33</sup> Quoting *Smith*, the Advisory Master hesitated to label Strittmater's beliefs as delusions.<sup>34</sup> Drawing a distinction from medical meanings of insanity, he emphasized "that the law sustains a will made by one of a very low or a very moderate measure of capacity."<sup>35</sup> While characterizing Strittmater as "neurotic, eccentric, sexually perverted, irritable, occasionally violent and at times unduly suspicious," the Advisory Master concluded that her views on men were not "so constructed out of unrealities adhered to against all reason, as to constitute, in a technical sense, an insane delusion."<sup>36</sup> He implied that radical views on social change and animus toward the opposite sex were no reason to disrespect the deceased.<sup>37</sup>

The higher courts disagreed. Highlighting witness descriptions of Strittmater as a sex-crazed spinster, the appellate judge overturned her

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30. National Woman's Party, Minutes of Meeting of the Executive Council (Feb. 4, 1945), in NATIONAL WOMAN'S PARTY PAPERS, pt. 002614, ser. 115, no. 0375, at 1 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002614-115-0375&accountid=14667> (login required); Letter from Burnita Shelton Matthews to Laurence Semel (Dec. 16, 1944), in NATIONAL WOMAN'S PARTY PAPERS, pt. 002611, ser. 084, no. 0004, at 5 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002611-084-0004&accountid=14667> (login required).

31. Advisory Master's Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 14.

32. *Smith v. Smith*, 25 A. 11 (N.J. Prerog. Ct. 1891). For an example of a subsequent application of the *Smith* standard, see *In re Estate of McDowell*, 143 A. 325 (N.J. 1928). Even if other states had their own most-cited precedents, the *Smith* rule was quite typical, since most states' standards contained a clause defining an insane delusion as an acceptance of fact with no evidence to support it. Halsey, *supra* note 19, at 84-85.

33. *Smith*, 25 A. 11 at 12.

34. Advisory Master's Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 5.

35. *Id.* at 14.

36. *Id.*

37. *Id.*

will on September 11, 1946.<sup>38</sup> In a 10-2 per curiam opinion issued on May 15, 1947, New Jersey’s highest court affirmed and transferred the estate to the rebuffed relatives.<sup>39</sup> The decision resolved, “The evidence does not show that she had taken great interest in [the NWP]. . . . [I]t was her paranoiac condition, especially her insane delusions about the male, that led her to leave her estate to the [NWP]. The result is that the probate should be set aside.”<sup>40</sup> Without citing a single case, the judges diverged sharply from precedent and imposed an exceptionally high measure of capacity.<sup>41</sup> Quirks that the trial judge had overlooked became critical character flaws in the eyes of the appellate courts. Reevaluating Strittmater’s “inward life,” these courts recast the decedent’s fierce independence and overt sexuality as evidence of her insanity.<sup>42</sup> From the judges’ perspectives, Strittmater’s insistence on being an economic actor seemingly made her a threat, rather than an asset, to society. The relatives, who struck out in 1945, prevailed in 1947, leaving the NWP with “a lawyer[']s bill and no legacy.”<sup>43</sup>

The final disposition of Strittmater’s case represented a notable break from precedent. Throughout American history, courts have prized independence and private property and typically respected individuals’ right to assign their own assets in death, thus dismissing the majority of insane delusion claims.<sup>44</sup> Even when courts have regarded wills as “deviant,” in that they assert personal preferences contrary to the default statutory norm, respect for free will has usually carried the day.<sup>45</sup> For the

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38. Decree Reversing Decree of Orphans’ Court, in *STRITTMATER RECORD*, *supra* note 11, at 26.

39. *In re Strittmater’s Estate*, 53 A.2d 205, 206 (N.J. 1947). The two justices in favor of reversal, Frederic R. Colie and Harold B. Wells, did not publish a dissenting opinion. *Id.* Wells had served on the court since 1930, and Colie had joined in 1941. *See Among the Alumni*, 30 PRINCETON ALUMNI WKLY. 572, 573 (1930) (commending Wells’s appointment); *Frederic R. Colie is Dead; Former New Jersey Judge*, N.Y. TIMES, June 1, 1974, at 32 (identifying the years of Colie’s service), <https://www.nytimes.com/1974/06/01/archives/frederic-r-colie-is-dead-former-new-jersey-judge.html> [<https://perma.cc/W72V-GTFQ>].

40. *Strittmater*, 53 A.2d at 206.

41. *Strittmater*, 53 A.2d at 206; *see also* Prerogative Court Memorandum, in *STRITTMATER RECORD*, *supra* note 11, 22-24.

42. *Strittmater*, 53 A.2d at 206.

43. Letter from Leslie Black to Burnita Shelton Matthews (May 4, 1945), in NATIONAL WOMAN’S PARTY PAPERS, pt. 02611, ser. 086, no. 0004, at 62 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002611-086-0004&accountid=14667> (login required).

44. FRIEDMAN, *supra* note 19, at 91.

45. *See* Melanie B. Leslie, *The Myth of Testamentary Freedom*, 38 ARIZ. L. REV. 235, 235 (1996); *see generally* Susanna L. Blumenthal, *The Deviance of the Will: Policing the Bounds of Testamentary Freedom in Nineteenth-Century America*, 119 HARV. L. REV.

same reason, courts have historically been extremely unreceptive to insane delusion claims.<sup>46</sup> While medical testimony grew more professional with the development of the field of psychology in the nineteenth century, judges still continued to uphold personal choices and overlook evidence of mental illness, setting a high bar for testamentary incapacity.<sup>47</sup>

Earlier cases in which state courts upheld bequests to feminist causes reveal just how unusually searching the courts' analysis of Strittmater's motives was.<sup>48</sup> Even when a will dispute involved feminist activism, courts typically required only a minimal showing of sanity to defeat a charge of delusion. For instance, in 1909, an Illinois court upheld a woman's bequest to the Women's Christian Temperance Union (WCTU), citing evidence that the deceased was an upstanding, church-going married lady.<sup>49</sup> In Kansas, six years later, slighted sons failed to overturn their father's gift to the WCTU by questioning the sanity of his greater "confidence in an institution managed by women than in an institution managed by men."<sup>50</sup> Meanwhile, in Iowa, a court found a father's fiercely anti-suffragist views insufficient grounds to overturn his will, which coldly excluded his daughters.<sup>51</sup> No three Midwestern cases could be representative of an entire period of American legal history, but they do show that support for women's activism (or intense antagonism to it) had not always been a recipe for invalidation, at least if the deceased was a man or a "respectable" lady.

Given this legal tradition, even eccentric individuals like Louisa Strittmater had good reason to expect that courts would honor their posthumous wishes. She was undeniably unconventional, but her oddity should not have amounted to insanity in the eyes of a court. New Jersey's appellate judges, however, summarily ignored settled practice and

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959 (2006) (excavating how early American judges parsed eccentricity from insanity while heeding the national ideal of personal autonomy).

46. FRIEDMAN, *supra* note 19, at 91.

47. Blumenthal, *supra* note 45, at 179-81. For more on the relationship between law and psychology in the nineteenth century, see generally SUSANNA L. BLUMENTHAL, *LAW AND THE MODERN MIND: CONSCIOUSNESS AND RESPONSIBILITY IN AMERICAN LEGAL CULTURE* (2016); JAMES C. MOHR, *DOCTORS AND THE LAW: MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA* (1993).

48. On Westlaw, I sifted through state court cases between 1900 and 1950 by using combinations of search terms such as "insane delusion," "feminism," "suffrage," "temperance," and "equal rights." I then focused my analysis on a few dozen results that involved a testamentary capacity dispute and contested views on women's status. The three cases discussed, while typical in their outcomes, stand out for their depth of discussion of gender and testamentary capacity.

49. *Drum v. Capps*, 88 N.E. 1020, 1021, 1029 (Ill. 1909).

50. *Wisner v. Chandler*, 147 P. 849, 857 (Kan. 1915).

51. *Kerkhoff v. Monkemeier*, 175 N.W. 762, 766-67 (Iowa 1920).

established a standard for “insane delusion” that welcomed scrutiny of the deceased’s popularity, politics, and adherence to social mores. Yet, even if such an exhaustive character study was to be the new normal, the portrait of Strittmater that they painted was far from complete. The following section uncovers the facts of her life that the courts failed to find.

## II. STRITTMATER’S LIFE

Louisa Frances Strittmater was born in 1896 in New Jersey to German immigrants, Joseph and Josephine.<sup>52</sup> Joseph’s job as a warper in the silk works industry provided his wife and only child with a relatively comfortable life, and he sent his daughter to school until at least the age of fourteen.<sup>53</sup> During Louisa’s youth, the family of three lived in various rented apartments in Paterson, but, by 1923, they purchased a house at 14 Dodd Street in Bloomfield, closer to Newark and routes to Manhattan.<sup>54</sup> Not long after, in 1925, Strittmater joined the NWP.<sup>55</sup> After her parents died—Josephine in 1926, and Joseph in 1928—the house became hers, and she lost contact with most of her extended family.<sup>56</sup>

The house was far from glamorous, but Strittmater took in lodgers as a means to sustain herself without needing to marry or seek outside employment.<sup>57</sup> The building contained four flats: Two had their own

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52. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, TWELFTH CENSUS OF THE UNITED STATES: 1900, NEW JERSEY, S.D. No. 3, E.D. No. 150, Sheet No. 19 (1900) [hereinafter 1900 CENSUS].

53. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, THIRTEENTH CENSUS OF THE UNITED STATES: 1910, NEW JERSEY, S.D. No. 178, E.D. No. 145, Sheet No. 14A (1910) [hereinafter 1910 CENSUS].

54. See 1900 CENSUS, *supra* note 52; 1910 CENSUS, *supra* note 53; BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, FOURTEENTH CENSUS OF THE UNITED STATES: 1920, NEW JERSEY, S.D. No. 7, E.D. No. 125, Sheet No. 13B (1920); BLOOMFIELD, N.J., U.S. CITY DIRECTORY 837 (1923).

55. Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 11.

56. INDEX OF DEATHS IN NEW JERSEY, BLOOMFIELD, N.J., OCT. 1926 (Josephine Strittmater); INDEX OF DEATHS IN NEW JERSEY, BLOOMFIELD, N.J., OCT. 1928 (Joseph Strittmater). The court record repeatedly references Strittmater’s isolation from extended family. See, e.g., Testimony of Ruth Robbins, in *STRITTMATER RECORD*, *supra* note 11, at 42 (describing the small size of the surviving Strittmater family and the infrequency of her visits with her cousin). When asked, sometime around 1940, “Haven’t you any relatives?” Strittmater replied, “They are not interested in me.” Testimony of Mildred V. Palmer, in *STRITTMATER RECORD*, *supra* note 11, at 128. For the dates of Strittmater’s NWP membership, see *id.* at 130-33.

57. See Testimony of Frederick Weber, in *STRITTMATER RECORD*, *supra* note 11, at 142.

bathrooms, and the other two shared a toilet in the cellar.<sup>58</sup> Even if she could not offer much in the way of luxury, Strittmater was able to secure a steady stream of boarders.<sup>59</sup> To maximize the number of tenants, Strittmater resided in the attic.<sup>60</sup> The house was filled with books.<sup>61</sup> As Frederick Weber, president of the local Landlords Information and Protective Association, testified, “She had several book cases filled with books. . . . She would have books open when you get there, she would be reading at the time; she would just have a book in her hand when you could come in.”<sup>62</sup> Studious and frugal, Strittmater also unapologetically defied the era’s standards for femininity. Neighbors gossiped as she stubbornly took care of her own plumbing, wallpapering, and painting.<sup>63</sup> Despite her efforts, the house fell into disrepair toward the end of her life, becoming “truly a ramshackle building,” as an NWP representative observed.<sup>64</sup> Still, in the surge of postwar housing development, the land itself remained valuable as a potential site for an apartment complex.<sup>65</sup> At death, Strittmater’s assets amounted to \$15,000—more than \$220,000 in today’s dollars.<sup>66</sup>

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58. Letter from Leslie Black to Anita Pollitzer (Nov. 1, 1945), in NATIONAL WOMAN’S PARTY PAPERS, pt. 2612, ser. 088, no. 0147 at 8 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002612-088-0147&accountid=14667> (login required).
59. In 1940, for instance, Strittmater was sharing her home with four boarders—two married couples. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, BLOOMFIELD, ESSEX COUNTY, N.J., S.D. No. 10, E.D. No. 7-59, Sheet No. 63A (1940). Two different former tenants, Helen F. Morse and Ida M. Whitson, testified at trial. See Caveat, in *STRITTMATER RECORD*, *supra* note 11, at 52-69.
60. Letter from Leslie Black to Anita Pollitzer, *supra* note 58. Relying upon the income of boarders, Strittmater was part of a long tradition of landladies, some of whom faced stigma for commercializing the domestic sphere and, allegedly, fostering dens of vice. See Nicole M. Martin, *In the Name of the Home: The Politics of Gender, Race, and Reconstruction in Nineteenth-Century America 164-70* (Aug. 2018) (unpublished Ph.D. dissertation, Stanford University) (on file with author).
61. Testimony of Frederick Weber, in *STRITTMATER RECORD*, *supra* note 11, at 148.
62. *Id.*
63. See *Judge Says She Was Crazy*, *supra* note 11, at 8; Caveat, in *STRITTMATER RECORD*, *supra* note 11, at 63, 69, 73, 136 (relaying Strittmater’s handy(wo)man practices).
64. Letter from Leslie Black to Anita Pollitzer, *supra* note 58.
65. In her letter assessing the value of 14 Dodd Street, Leslie Black anticipated that “someday apartments might go up there.” *Id.* Apartments were never built on Strittmater’s lot, but a Google Maps search reveals that the Garden State Parkway went up just a few doors down in the 1950s. Then adjacent to a highway overpass, the building likely became increasingly unglamorous.
66. See *Judge Says She Was Crazy*, *supra* note 11. The value of the estate in 2021 was estimated using the Bureau of Labor Statistics’ CPI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl> (enter “\$15,000.00” for the dollar amount; set

Strittmater was cautious with her finances. Weber favorably described Strittmater as “businesslike” in her dealings with tenants.<sup>67</sup> Either through rents, inheritance, or a combination, she was able to amass a sizable collection of gold coins.<sup>68</sup> When President Roosevelt announced the abolition of the gold standard in 1933, Strittmater was reluctant to surrender her savings.<sup>69</sup> She placed a portion, around \$870, in a Bloomfield bank, but she kept most buried in her basement.<sup>70</sup> As a single woman surviving the Great Depression, Strittmater was likely anxious to protect her financial security. Neighbors offered an alternative explanation, telling the press that “she hoarded her money because she could not find a bank run by a woman.”<sup>71</sup> On this account, the neighbors’ claims may have held some truth.

When it came to medical care—a much more intimate interface than banking—Strittmater did express an aversion to men and commitment to women practitioners. Beginning in 1923, she retained a woman doctor, Sara D. Smalley.<sup>72</sup> A former alumnae association president of the New York Medical College and Hospital for Women, the Newark-based physician had considerable clout within her profession and experience in general practice and gynecology.<sup>73</sup> Whether compelled by a previous traumatic experience or purely by principle, Strittmater’s insistence on women practitioners was provocative and potentially dangerous at a time when the medical profession admitted so few women.<sup>74</sup> On one occasion in 1939, Strittmater consulted her physician about a

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“December” and “1944” as the first date and “January” and “2021” as the second date); then click calculate).

67. Testimony of Frederick Weber, in *STRITTMATER RECORD*, *supra* note 11, at 145.

68. Testimony of Jane M. Beech, in *STRITTMATER RECORD*, *supra* note 11, at 189. In her Last Will and Testament, Strittmater specifically directed “the gold coins which [we]re in [her] house and all of [her] books” to the NWP. See Caveat, in *STRITTMATER RECORD*, *supra* note 11, at 3.

69. Testimony of Jane M. Beech, in *STRITTMATER RECORD*, *supra* note 11, at 189.

70. Testimony of George Davidson, Jr., in *STRITTMATER RECORD*, *supra* note 11, 170-71.

71. *Court Overrules Spinster’s Hate for Mere Males*, *COURIER-POST* (Camden, N.J.), Aug. 30, 1946, at 13.

72. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 84-85.

73. *Id.* at 84; AM. INST. HOMEOPATHY, *TRANSACTIONS OF THE SIXTY-FOURTH SESSION* 252 (1908).

74. By 1949, women comprised only 5.5% of medical school students and 6% of the physician workforce. STAFF CARE, *WOMEN IN MEDICINE: A REVIEW OF CHANGING PHYSICIAN DEMOGRAPHICS 2* (2015); see also MARY ROTH WALSH, “DOCTORS WANTED: NO WOMEN NEED APPLY”: SEXUAL BARRIERS IN THE MEDICAL PROFESSION, 1834-1975 (1977).

serious arm injury.<sup>75</sup> Dr. Smalley, who was about to travel to Guatemala, recommended a male orthopedic specialist.<sup>76</sup> Allegedly, Strittmater was furious and “berated [Dr. Smalley] very badly for having to leave her with a man at that time.”<sup>77</sup>

The few pieces of Strittmater’s writing that survive express her frustration with society’s complacency toward men’s malevolence.<sup>78</sup> For instance, tucked into the pages of a book, Strittmater’s survivors found the handwritten instructions: “Do not let any man, in case of accident, pretend that he is my husband or friend or in any way related or connected with me personally.”<sup>79</sup> Strategically selected by the caveators, these incendiary quotes may not be representative of Strittmater’s typical sentiments, but, together with her relationship to Dr. Smalley, they do indicate a deep-seated distrust of the opposite sex.

Recognizing and resenting men’s power, Strittmater seems to have embraced occasional opportunities to pass as a man.<sup>80</sup> Beginning in the 1930s, American newspapers and magazines reported on stories of “sex changes” and “sex reversals.”<sup>81</sup> Although the terms “transgender” and “transsexual” did not appear in the United States before 1949, individuals like Pauli Murray clearly experimented with gender and sexual identities before and during Strittmater’s lifetime, through dress, naming,

75. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 85.

76. *Id.*

77. *Id.*

78. See Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 7-9.

79. John F. Hinternhoff, *Champion Man-Hater of All Time*, ST. LOUIS GLOBE-DEMOCRAT, Oct. 23, 1946, at 11.

80. The evidence is not strong enough to indicate that Strittmater was transgender in the modern and strict sense of decisively crossing the gender line. Instead, Strittmater’s androgynous actions are more consistent with Susan Stryker’s broad interpretation of the term, as “the movement across a socially imposed boundary away from an unchosen starting place.” SUSAN STRYKER, *TRANSGENDER HISTORY 1* (2008). On mid-century transgender history, see *id.* at 41-50. On the continuing evolution in transgender concepts and terms, see SUSAN STRYKER, *TRANSGENDER HISTORY 1-44* (2d ed., 2017). I take inspiration from Rosalind Rosenberg’s treatment of Pauli Murray’s nonbinary gender identity in her biographical study, especially the prefatory note on pronoun use. ROSALIND ROSENBERG, *JANE CROW: THE LIFE OF PAULI MURRAY* xvii (2017). For the sake of clarity and consistency with my primary sources, which consistently refer to Strittmater as “she,” I will use feminine pronouns throughout this Article. In this paragraph and the next, however, I consciously avoid using pronouns to disrupt the reader’s assumptions and respect Strittmater’s apparent desire to transcend a rigid gender binary.

81. JOANNE MEYEROWITZ, *HOW SEX CHANGED: A HISTORY OF TRANSEXUALITY IN THE UNITED STATES* 15 (2004).

and choice of romantic partners.<sup>82</sup> Strittmater was constantly reflecting on and pushing against a rigid gender binary, through both personal behavior and political activism against gender-based discrimination. In 1935, seemingly concerned about sexual identity, Strittmater consulted a psychologist and conducted a self-psychoanalysis soon after.<sup>83</sup> As the court records explain, the analysis referred “to an incident she had had with a woman in 1929” and in it Strittmater “described herself as a ‘pronounced psychic masochist’”—a term associated with homosexuality, at least in 1948.<sup>84</sup> There is no indication that Strittmater continued to consult a psychologist, but Strittmater did decide to enroll in psychology classes at Columbia University sometime between 1939 and 1941.<sup>85</sup>

When others gendered Strittmater as male, Strittmater did not correct them. In 1940, Strittmater had “hair cut very short,” and an NWP colleague recommended growing it out to look more feminine.<sup>86</sup> Strittmater may have been sporting this boyish cropped cut when the census taker appeared at 14 Dodd Street.<sup>87</sup> The 1940 U.S. Census lists Louisa F. Strittmater, head of household and landlord to four tenants, as male.<sup>88</sup> The crystal clear “M” mark suggests this was not a mere scrivener’s error.<sup>89</sup> Still more telling, an “X” designation appears after Strittmater’s name, which indicates that the respondent furnished their own information, so Strittmater may have been the one who reported the masculine designation.<sup>90</sup> A final example appears in an exchange with W.E.B. Du Bois, in which Strittmater signed off, “L.F.

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82. See ROSENBERG, *supra* note 80, at 31-60; LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH CENTURY AMERICA* 42-45 (1991); JEN MANION, *FEMALE HUSBANDS* 231-57 (2020) (arguing that opportunities for people assigned female to live as men and marry women grew sparser in American at the dawn of twentieth-century).

83. Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 10.

84. *Id.* In his critique of Alfred Kinsey’s studies of homosexuality, Dr. Edmund Bergler accused “the homosexual” of “indulg[ing] in endless self-pity, unconsciously enjoying psychic masochism.” Edmund Bergler, *The Myth of a New National Disease: Homosexuality and the Kinsey Report*, 22 *PSYCHIATRIC Q.* 66, 70-71 (1948).

85. Testimony of Mildred V. Palmer, in *STRITTMATER RECORD*, *supra* note 11, at 128.

86. *Id.* at 130.

87. *Id.* at 130-31.

88. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, *SIXTEENTH CENSUS OF THE UNITED STATES: 1940, BLOOMFIELD, ESSEX COUNTY, N.J., S.D. No. 10, E.D. No. 7-59, Sheet No. 63A* (1940).

89. *Id.*

90. *Id.*



Strittmater.”<sup>91</sup> Du Bois assumed that his correspondent was male and addressed his reply to “Mr. Strittmater,” opening with the salutation “My dear sir.”<sup>92</sup> Strittmater did not correct him in response and again signed off with initials.<sup>93</sup> For Strittmater, embracing androgyny may have been a form of both self-protection and self-expression, a matter of convenience as well as a method of resistance.

These letters to Du Bois, which did not appear in the court record and have never before been cited, offer a rare account of Strittmater’s voice, unfiltered by the press or the caveators. They further show that Strittmater spent the 1930s reflecting both on her individual identity and on strategies for groups combatting discrimination. While many white feminists of her day—including the NWP—systematically excluded Black women and racial justice issues from their organizing efforts,<sup>94</sup> Strittmater engaged with civil rights discourse. She read *The Crisis* magazine “regularly” and Du Bois’s books, *The Souls of Black Folk* (1903) and *Darkwater* (1920), “repeatedly.”<sup>95</sup> There is much to admire about Du Bois’s *Darkwater*, but Strittmater might have especially appreciated chapter seven, “The Damnation of Women.” In his ode to Black women and plea for all women’s liberation, Du Bois declared,

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91. Letter from L.F. Strittmater to W.E.B. Du Bois 3 (July 28, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i051>.
  92. Letter from W.E.B. Du Bois to L.F. Strittmater (Aug. 3, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i052>.
  93. Letter from L.F. Strittmater to W.E.B. Du Bois (Apr. 4, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i053>.
  94. According to Leila Rupp and Verta Taylor, “[i]ntegration never became a public issue” for the NWP, unlike with the American Association of University Women, but they were far from welcoming of Black members, and “pursu[ed] a policy of isolationism” when it came to racial justice and other social movements. LEILA RUPP & VERTA TAYLOR, SURVIVAL IN THE DOLDRUMS: THE AMERICAN WOMEN’S RIGHTS MOVEMENT, 1945 TO THE 1960S 136, 156 (1987). Numerous writers have sought to expose how the women’s movement, before and after suffrage, has continued to sideline women of color and intersectional concerns. See, e.g., Evelyn Brooks Higginbotham, *African-American Women’s History and the Metalanguage of Race*, 17 SIGNS 251, 251-52, 255 (1992); Barbara Smith, *Racism and Women’s Studies*, in ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN: BUT SOME OF US ARE BRAVE 71-73 (Gloria T. Hull, Patricia Bell-Scott & Barbara Smith eds., 1982); LOUISE MICHELE NEWMAN, WHITE WOMEN’S RIGHTS: THE RACIAL ORIGINS OF FEMINISM IN THE UNITED STATES 3-85 (1999); LISA TRETALTY, THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN’S SUFFRAGE MOVEMENT, 1848-1898 19-45 (2014).
  95. Letter from L.F. Strittmater to W.E.B. Du Bois 1 (July 28, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i051>.

"The future woman must have a life work and economic independence. She must have knowledge. She must have the right of motherhood at her own discretion."<sup>96</sup> Strittmater, a financially independent bibliophile who shirked motherhood, may have seen herself reflected in Du Bois's words.

However, Strittmater did not grasp the parallels that Du Bois drew between race and sex discrimination. Reading his commentary on Booker T. Washington in *The Souls of Black Folk*, Strittmater ruminated on the infamous ideological tension between the two Black leaders.<sup>97</sup> As boldly as she defied sex and gender norms, her views on race were more restrained, and she instinctively sided with Washington's accommodationist strategy.<sup>98</sup> Nevertheless, demonstrating characteristic moxie, Strittmater wrote directly to Du Bois in July 1932 to better understand his perspective and hopefully "receive a note of rebuttal."<sup>99</sup> The belittling generalizations about "your own race" that she included quickly revealed her whiteness.<sup>100</sup> She stated, "Your aim, if I interpret it correctly, is not paramountly justice for the Negro, but rather vindication of the Negro."<sup>101</sup> Such "deliberate provocation and vindictiveness," she asserted, was "reaching for the moon" and "mistaken zeal."<sup>102</sup> She contended that interracial understanding had to be an incremental objective: "You cannot bully evolution, nor sentiment . . . [I]t must be bought and paid for, like everything else; and the coin for its purchase, in the absence of power, is conciliation."<sup>103</sup> In his prompt rebuttal, Du Bois did not budge: "Minority must always 'vaunt its powers,' otherwise, it will lose what little power it has, and . . . if what I am writing in THE CRISIS comes under that head, you will, I regret to say, see as

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96. W.E.B. DU BOIS, DARKWATER 164-65 (1920).

97. See W.E.B. Du Bois, *Of Mr. Booker T. Washington and Others*, in THE SOULS OF BLACK FOLK 41 (1903); see also JACQUELINE M. MOORE, BOOKER T. WASHINGTON, W.E.B. DU BOIS, AND THE STRUGGLE FOR RACIAL UPLIFT (2003) (offering a comprehensive survey of the debate between Du Bois and Washington); KEVERN VERNEY, THE ART OF THE POSSIBLE: BOOKER T. WASHINGTON AND BLACK LEADERSHIP IN THE UNITED STATES, 1881-1925 (2001) (examining Washington's life and leadership philosophy in comparison with peers like Du Bois).

98. See Letter from L.F. Strittmater to W.E.B. Du Bois 1 (July 28, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i051>.

99. *Id.* at 3.

100. *Id.* at 2.

101. *Id.*

102. *Id.*

103. *Id.*

much of it in the future as you have in the past.”<sup>104</sup> Strittmater conceded little in her subsequent note and took particular issue with Du Bois’s insistence that Black liberation required “standing up as men instead of crawling like animals.”<sup>105</sup> Voicing her fundamental doubt in male superiority, she wrote, “Standing up as men has no inherent virtue. Manhood, per se, is nothing to boast of. The question is, for what do those men stand?”<sup>106</sup> Du Bois did not bite, and there is no record of further correspondence. This remarkable exchange reveals both Strittmater’s lucidity and the limits of her liberalism.

While chastising Du Bois for his boldness on racial progress, she held views on gender equality that were anything but accommodationist. When it came to women’s rights, she did not shy away from “provocation and vindictiveness” or draw distinctions between “vindication” and “justice.”<sup>107</sup> She advocated immediate, not incremental, change in the form of the ERA, and she regarded the NWP as the most promising agent for the cause. In a 1936 journal entry, she raged,

Not even women’s colleges enlighten women as to the vicious circle of deceptions, delusions and illusions that are foisted upon them concerning that dirty breed of leeches and parasites—the inveterate enemies of women—men—and it remains for feministic organizations like the N.W.P. to make exposure of women’s ‘protectors’ and ‘lovers’ for what their vicious and contemptible selves are.<sup>108</sup>

In Strittmater’s view, achieving women’s liberation would require studied resistance to patriarchy and a radical agenda for reform.<sup>109</sup> By decade’s end, she had made the “feministic organization” more central to her life.

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104. Letter from W.E.B. Du Bois to L.F. Strittmater (Aug. 3, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i052>.

105. Letter from L.F. Strittmater to W.E.B. Du Bois (Aug. 4, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i053>.

106. *Id.*

107. Letter from L.F. Strittmater to W.E.B. Du Bois 2 (July 28, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i051>.

108. Advisory Master’s Conclusions, *in* STRITTMATER RECORD, *supra* note 11, at 7.

109. *See, e.g., id.*

Beginning in 1939, Strittmater made weekly commutes across the Hudson to volunteer for the NWP’s New York branch.<sup>110</sup> She clipped press notices, filed, and typed—any administrative tasks that would advance the Party’s push for the ERA.<sup>111</sup> In 1941, the head of the state branch wrote to the organization’s national executive secretary, “Louise [sic] Strittmater is one of our members in New Jersey who tries constantly to work for the amendment . . . .”<sup>112</sup> Strittmater maintained a “very quiet” presence in the New York office, but she did develop friendships with some of the other activists, discussing museum exhibits they had seen and even confessing her loneliness.<sup>113</sup> Strittmater’s efforts extended beyond the office: She donated some of her book collection to

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110. Testimony of Mildred V. Palmer, in *STRITTMATER RECORD*, *supra* note 11, at 126-27. Strittmater had to journey to New York to volunteer because the local New Jersey branch, like many other state chapters, had shut down due to inactivity. See *THE PIVOTAL RIGHT: COMMEMORATING THE 150<sup>TH</sup> ANNIVERSARY OF THE WOMEN’S RIGHTS CONVENTION AT SENECA FALLS 1*, 18 (Fernanda Perrone & Ferris Olin, curators) (1998). Although Alice Paul, the Party’s founder, was originally from New Jersey, the Garden State branch had recently disbanded after several sluggish years, fading into extinction in the 1930s as the success of the Nineteenth Amendment receded and the National Woman’s Party turned toward federal advocacy for the Equal Rights Amendment. See *id.* While the NWP had focused on state-level advocacy in the 1920s, its agenda shifted in the following decade. See RUPP & TAYLOR, *supra* note 94, at 26. Active state branches remained in Maryland, New York, Ohio, and California, but most of the action took place in Washington, D.C. *Id.* The remaining state branches primarily served a symbolic function, “as names on letterheads” used to reach out to senators and representatives. *Id.*
111. Testimony of Mildred V. Palmer, in *STRITTMATER RECORD*, *supra* note 11, at 126-27. Mildred V. Palmer, the former executive secretary of the New York NWP branch, testified on the party’s behalf at trial. *Id.* at 126-34. Palmer’s appearance was a strategic choice for the NWP: Not only was she one of the few notable members who had known Strittmater personally, but she also exuded a more conventional femininity than other potential NWP witnesses and had a bit of disinterested distance from the outcome. See *id.* at 126-27. During the war, Palmer had resigned her NWP position to serve as program director of the Stagedoor Canteen, so that she could be closer to her enlisted husband. *Id.* Palmer’s testimony should not necessarily be taken at face value, but, together with reference to Strittmater in the NWP’s archives, it suggests the sincerity and consistency of Strittmater’s interest in the party and its core cause.
112. Letter from Mildred V. Palmer to Caroline Babcock (Apr. 8, 1941), in *NATIONAL WOMAN’S PARTY PAPERS*, pt. 2611, ser. 070, no. 0291, at 9 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002611-070-0291&accountid=14667> (login required).
113. Testimony of Mildred V. Palmer, in *STRITTMATER RECORD*, *supra* note 11, at 128-29; Letter from Leslie Black to Burnita Shelton Matthews, *supra* note 43.

the NWP's library and wrote to her congressional representatives to urge adoption of the ERA.<sup>114</sup>

As a stalwart NWP member, Strittmater was unusual among feminists of her day. The NWP in the 1930s and 1940s represented a waning, elitist segment of women's activism.<sup>115</sup> An organization of 60,000 in the final years of the suffrage movement, the NWP's membership had dropped to 4,000 by 1945.<sup>116</sup> These remaining members were overwhelmingly white, wealthy, and over fifty years old.<sup>117</sup> With their elitism and single-issue focus, the NWP alienated other feminist organizations that doubted the ERA's potential to improve women's lives and that practiced intersectional activism, with an eye toward other dimensions of identity like race and class.<sup>118</sup> Back in 1915, suffragist leader Anna Howard Shaw insisted, "The end aim of the suffrage movement is not

114. Mary Elizabeth Downey, *Florence Bayard Hilles Feminist Library*, EQUAL RTS., July-Aug. 1943, at 60; Letter from Mildred V. Palmer to Caroline Babcock, *supra* note 112. The sense of community that the NWP provided may also have inspired Strittmater's service. See Leila J. Rupp, *The Women's Community in the National Woman's Party, 1945 to the 1960s*, 10 SIGNS 715, 720-21 (1985).

115. RUPP & TAYLOR, *supra* note 94, at 25-26.

116. *Id.* The ranks of "active" members—those who continued to pay annual dues rather than those who had enrolled with a flat fee—were even slimmer, down to 627 in 1947. *Id.*

117. Rupp, *supra* note 114, at 719.

118. Many historians have shown the breadth of and conflicts within women's activism between the "waves." See, e.g., JACQUELINE CASTLEDINE, *COLD WAR PROGRESSIVES: WOMEN'S INTERRACIAL ORGANIZING FOR PEACE AND FREEDOM* (2012); DOROTHY SUE COBBLE, *THE OTHER WOMEN'S MOVEMENT: WORKPLACE JUSTICE AND SOCIAL RIGHTS IN MODERN AMERICA* (2003); NANCY F. COTT, *THE GROUNDING OF MODERN FEMINISM* (1987); DAYO F. GORE, *RADICALISM AT THE CROSSROADS: AFRICAN AMERICAN WOMEN ACTIVISTS IN THE COLD WAR* (2011); CYNTHIA HARRISON, *ON ACCOUNT OF SEX: THE POLITICS OF WOMEN'S ISSUES, 1945-1968* (1988); SUSAN HARTMANN, *THE HOME FRONT AND BEYOND: AMERICAN WOMEN IN THE 1940S* (1982); JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT 195-227* (2010); LISA LEVENSTEIN, *A MOVEMENT WITHOUT MARCHES: AFRICAN AMERICAN WOMEN AND THE POLITICS OF POVERTY IN POSTWAR PHILADELPHIA* (2009); JOANNE MEYEROWITZ, *NOT JUNE CLEAVER: WOMEN AND GENDER IN POSTWAR AMERICA, 1945-1960* (1994); ROSENBERG, *supra* note 80; SUSAN WARE, *BEYOND SUFFRAGE: WOMEN IN THE NEW DEAL* (1981); KATE WEIGAND, *RED FEMINISM: AMERICAN COMMUNISM AND THE MAKING OF WOMEN'S LIBERATION* (2001); Nancy F. Cott, *Historical Perspectives: The Equal Rights Amendment Conflict in the 1920s*, in *CONFLICTS IN FEMINISM* 44 (Marianne Hirsch & Evelyn Fox Keller eds., 1990); Joanne Meyerowitz, *Beyond the Feminine Mystique: A Reassessment of Postwar Mass Culture, 1946-1958*, 79 J. AM. HIST. 1455 (1993); Susan Ware, *American Women in the 1950s: Nonpartisan Politics and Women's Politicization*, in *WOMEN, POLITICS, AND CHANGE* 281 (Louise A. Tilly & Patricia Gurin eds., 1990).

to furnish an opportunity for excellent old ladies to be charitable.”<sup>119</sup> Yet, in the decades to follow the Nineteenth Amendment’s adoption, feminist philanthropy remained relevant—the NWP continued to depend upon the generosity of female funders like Alva Belmont—and the “excellent old ladies” held tight to their power, despite mounting opposition to their tactics.<sup>120</sup>

Louisa Strittmater, a woman who lived her life in extremes, may have been drawn to the contentiousness of the cause. Moreover, she planned her will during an unusually optimistic moment for the ERA. First introduced to Congress in 1923, the ERA floundered in its first decades, despite the NWP’s advocacy efforts.<sup>121</sup> However, in 1940, the Republican Party adopted the ERA as part of its official platform, and the Democrats followed suit four years later.<sup>122</sup> In 1942 and 1943, the Senate Judiciary Committee recommended the amendment, passing it onto the full chamber for the first time.<sup>123</sup> Strittmater began contemplating her bequest as early as 1940, when she saw a suggestion to that effect

119. Anna Howard Shaw, *The Fundamental Principle of a Republic* (June 21, 1915), <https://awpc.cattcenter.iastate.edu/2017/03/21/the-fundamental-principle-of-a-republic-june-21-1915/> [<https://perma.cc/RPA6-QBUR>]; see also COTT, *supra* note 118, at 100.

120. Although she did not dare say so, Shaw was also likely eager to be out from under the thumb of big-name benefactors, like Alva Belmont, who expected deference and devotion in return for their financial support. On the influence Belmont wielded over the NWP, see JOAN MARIE JOHNSON, *FUNDING FEMINISM: MONIED WOMEN, PHILANTHROPY, AND THE WOMEN’S MOVEMENT, 1870-1967* 59-69 (2017). Contrary to Shaw’s premonition, female funders, who had been central to the settlement house and suffrage movements, remained vital in the Nineteenth Amendment’s aftermath, giving major gifts to feminist causes like higher education, labor activism, and birth control. See *id.* at 11, 79-138, 169-98; see also, e.g., Kathryn Kish Sklar, *Who Funded Hull House?*, in *LADY BOUNTIFUL REVISITED: WOMEN, PHILANTHROPY, AND POWER* 94 (Kathleen McCarthy ed., 1990).

121. MARY FRANCES BERRY, *WHY ERA FAILED: POLITICS, WOMEN’S RIGHTS, AND THE AMENDING PROCESS OF THE CONSTITUTION* 56-69 (1986).

122. MANSBRIDGE, *supra* note 4, at 9.

123. HARRISON, *supra* note 118, at 15-16. To overcome remaining opposition, especially in the House Judiciary Committee, proponents revised and renamed the proposal. *The History of the Equal Rights Amendment (ERA)*, ALICE PAUL INST., <https://www.alicepaul.org/equal-rights-amendment-2/> [<https://perma.cc/HDA2-CGBX>]. The original amendment had been a boldly affirmative proclamation: “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.” *Id.*; HARRISON, *supra* note 118, at 16. The new version read, “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” ALICE PAUL INST., *supra*. The language echoed the remedial purposes of the Fifteenth and Nineteenth Amendments, which did not create a constitutional right to vote but instead guaranteed that race and sex could not be impediments to the franchise.

in the NWP's magazine, *Equal Rights*.<sup>124</sup> The inspiring article was likely a March 1940 notice of Dr. Elizabeth Woodworth's generous donation, encouraging "more women interested in the work *Equal Rights* is doing . . . [to] back up their approval and their desire to help with a check . . ." <sup>125</sup> In July 1944, Strittmater wrote directly to Alice Paul to seek her advice on how best to fund "women's activities designed to liberate all women from invidious laws, customs and traditions."<sup>126</sup> She expressed her "inten[t] to make the N.W.P. beneficiary of a legal document," but she wanted Paul's input on which "alternative feminist movement" to name in the event the "N.W.P. is dissolved by the time it becomes effective, because its work has been done, and its goal accomplished."<sup>127</sup>

Although she was only forty-eight at the time, Strittmater must have sensed her health was declining rapidly and wanted to get her affairs in order. By late October 1944, her stomach was engorged with a cancerous tumor the size of a "seven-and-a-half-month-old fetus."<sup>128</sup> When she learned that surgery was unavoidable, Strittmater officially drafted her will on October 31.<sup>129</sup> To fund the fight for equal rights, she named the NWP as her executor and primary beneficiary.<sup>130</sup> The cancer progressed rapidly, and she passed away on December 6, 1944.<sup>131</sup>

### III. POSTWAR PATHOLOGIES OF STRITTMATER'S LEGACY

Strittmater's death brought her estranged relatives out of the woodwork. Hearings began on May 3, 1945, just five days before the

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124. Advisory Master's Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 12.

125. *Help Hasten the Day*, *EQUAL RTS.*, Mar. 1940, at 11.

126. Letter from Louisa Strittmater to Alice Paul (July 1, 1944), in *NATIONAL WOMAN'S PARTY PAPERS*, pt. 2611, ser. 081, no. 0344, at 4 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002611-081-0344&accountid=14667> (login required)..

127. *Id.* Florence Armstrong, chair of the NWP's Finance Committee, replied on Paul's behalf, expressing their gratitude and suggesting as an alternative the World Woman's Party for Equal Rights, which Paul also chaired. Letter from Florence Armstrong, Finance Comm. Chair, to Louisa Strittmater (July 11, 1944), in *NATIONAL WOMAN'S PARTY PAPERS*, pt. 2611, ser. 081, no. 0451, at 67 (ProQuest History Vault), <https://congressional.proquest.com/histvault?q=002611-081-0451&accountid=14667> (login required).

128. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 86-87, 92.

129. Testimony of Laurence Semel, in *STRITTMATER RECORD*, *supra* note 11, at 163.

130. *See* Last Will and Testament of Louisa F. Strittmater, in *STRITTMATER RECORD*, *supra* note 11, at 3-4.

131. Advisory Master's Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 6.

nation celebrated V-E Day.<sup>132</sup> Two years later, in May 1947, the case reached New Jersey’s supreme bench.<sup>133</sup> Their decision was final: Louisa Strittmater’s will would no longer stand.<sup>134</sup>

In the course of these few crucial years, gender norms came on trial outside of the courtroom, too. The legal drama unfolded against the backdrop of postwar demobilization, as veterans returned from overseas and the nation embraced a new vision of peacetime order and prosperity—often at women’s expense.<sup>135</sup> An examination of the case’s broader setting renders *Strittmater* a revealing portrait of a particular historical moment when social mores were shifting at a rapid rate. As the subsequent Subparts explore in turn, changes in property law, constitutional rights, psychology, and sexuality fatefully shaped the case’s outcome. These broader contexts elucidate the appellate courts’ stark break from precedent, as well as how the legal system both fashioned and reinforced society’s views on the reasonableness of women’s equality in the immediate aftermath of World War II.

#### A. *Women & Wealth*

The caveators twisted many mundane facts from Strittmater’s life into evidence of her madness, but few loomed larger than her mysterious collection of gold coins. When questioning the witnesses, the caveators’ counsel repeatedly returned to her mysterious trips to the basement.<sup>136</sup> One tenant, Helen Morse, testified, “she had a habit of going down in the cellar some time between twelve o’clock and three in the morning . . . going around with a flashlight.”<sup>137</sup> These “midnight prowls,” Morse attested, “occurred quite frequently.”<sup>138</sup> Morse’s mother, Ida, agreed: “She would come down the stairs and we always said, ‘There goes Lizzie down on one of her prowls.’”<sup>139</sup> The court fixated on

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132. Testimony, Essex County Orphan’s Court, in *STRITTMATER RECORD*, *supra* note 11, at 32.

133. For an overview of the trial proceedings, see Letter from Leslie Black to Burnita Shelton Matthews, *supra* note 43; *In re Strittmater’s Estate*, 53 A.2d 205 (N.J. 1947).

134. *Strittmater*, 53 A.2d at 206.

135. See ELAINE TYLER MAY, *HOMEWARD BOUND: AMERICAN FAMILIES IN THE COLD WAR ERA 19-38* (1988).

136. See Testimony of Helen F. Morse, in *STRITTMATER RECORD*, *supra* note 11, at 57 (direct examination); Testimony of Ida M. Whitson, in *STRITTMATER RECORD*, *supra* note 11, at 67 (same).

137. Testimony of Helen F. Morse, in *STRITTMATER RECORD*, *supra* note 11, at 57.

138. *Id.*

139. Testimony of Ida M. Whitson, in *STRITTMATER RECORD*, *supra* note 11, at 67.



Strittmater's miserly habits.<sup>140</sup> In the caveators' account, Strittmater's relationship to her money was odd, disruptive, and out of step with her times, even before she made the irrational decision to donate to the NWP.

Strittmater came of age when American women had more robust rights to own and alienate property than ever before. Beginning in the mid-nineteenth century, states' adoption of Married Women's Property Acts eroded the convention of coverture and thus permitted wives to retain their legal personhood and property rights.<sup>141</sup> As important as the Nineteenth Amendment granting voting rights, expanding employment opportunities increased women's earnings and assets.<sup>142</sup> In her 1934 study, *Women and Wealth*, Mary Sydney Branch celebrated first among women's recent achievements that "Women can now make wills."<sup>143</sup>

However, the mere right to draft a will did not necessarily mean the right to have the will respected and enforced in court. The judiciary remained male-dominated, and, even if a probate dispute made it before a jury, there were likely few women participants.<sup>144</sup> As of 1947, sixteen states continued to exclude women as jurors, and fifteen of the thirty-

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140. The court record repeatedly returns to discussion of Strittmater's capacity to manage her own finances. See, e.g., Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 111; Testimony of Frederick Weber, in *STRITTMATER RECORD*, *supra* note 11, at 143.

141. See Bernie D. Jones, *Revisiting the Married Women's Property Acts: Recapturing Protection in the Face of Equality*, 22 AM. U. J. GENDER SOC. POL'Y & L. 91, 99-110 (2013) (summarizing the impact of nineteenth-century state statutes removing women's legal and economic disabilities at common law); see also JOAN HOFF, LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN app. 1 at 377-82 (1991) (listing nineteenth-century Married Women's Property Acts); Reva Siegel, *Home as Work: The First Women's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1080-83 (1994) (examining nineteenth-century feminists' push for property acts to account for the worth of women's household labor).

142. See COTT, *supra* note 118, at 117-20; ALICE KESSLER-HARRIS, *OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES* 217-99 (1982).

143. MARY SYDNEY BRANCH, *WOMEN AND WEALTH* 3 (1934).

144. Burnita Shelton Matthews, a primary participant in the NWP correspondence regarding Strittmater's estate, became the first woman in U.S. history to serve as a federal district court judge, appointed in 1949. *Burnita Shelton Matthews*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/Burnita-Shelton-Matthews> [<https://perma.cc/V62G-P6S6>]. A woman did not serve as a trial-level court judge in New Jersey until 1946, and the first woman was not appointed to the state's highest court until 1982. Vicki Hyman, *Trailblazing Female Murray Hill Lawyer, 70, Receives N.J. Bar Foundation's Top Honor*, NJ.COM (June 15, 2011), [https://www.nj.com/news/2011/06/70-year-old\\_lawyer\\_receives\\_nj.html](https://www.nj.com/news/2011/06/70-year-old_lawyer_receives_nj.html) [<https://perma.cc/LHG2-57RX>]; *Justice Marie L. Garibaldi*, NEWARK STAR-LEDGER (Jan. 18, 2016), <https://obits.nj.com/obituaries/starledger/obituary.aspx?n=marie-l-garibaldi&pid=177335917&fhid=11208> [<https://perma.cc/448E-BMNS>].

two states that included women made service voluntary, meaning that they could opt-out without cause or consequence.<sup>145</sup> Thus, even as women gained statutory privileges, persisting inequities in the justice system undercut their willpower.<sup>146</sup> Strittmater lived at a time when women enjoyed expanded property rights and access, but she died at a moment in which the legal system was apparently primed to ridicule and reduce her economic independence. Appraising her financials—ostensibly the core controversy—became pretext for indicting the ERA, which threatened to extend women’s economic independence even further.

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145. Marguerite J. Fisher, *Women as Jurors: The Present Status of Women as to Jury Service*, 33 A.B.A. J. 113, 114 (1947). Jury service was one of feminists’ main advocacy efforts after the vote was won. See Gretchen Ritter, *Jury Service and Women’s Citizenship Before and After the Nineteenth Amendment*, 20 L. & HIST. REV. 479, 503-06 (2002). Ten states quickly held that the new Nineteenth Amendment conferred eligibility for jury service; reform in other states required statutory or state constitutional amendments. Fisher, *supra*, at 114. By the 1940s, progress remained incremental, and New Jersey was one of only seventeen states that had compulsory jury service for women. *Id.* at 114 n.7. In the same year as *Strittmater*, the U.S. Supreme Court implied in *Fay v. New York* that the exclusion or underrepresentation of women on juries did not violate the Constitution. 332 U.S. 261, 289-90 (1947). In many cases, then, women litigants did not get the benefit—and, in criminal cases, the constitutional guarantee—of a jury of one’s peers. See also Richard F. Hamm, *Mobilizing Legal Talent for a Cause: The National Woman’s Party and the Campaign to Make Jury Service for Women a Federal Right*, 9 AM. U. J. GENDER SOC. POL’Y & L. 97 (2001) (chronicling the NWP’s jury service campaign in the 1920s and 1930s).
146. For a summary of women’s changing legal status in the 1940s, see HARTMANN, *supra* note 118, at 127-35. For a survey of gender inequity in family law of the early twentieth century, see Herma Hill Kay, *From the Second Sex to the Joint Venture: An Overview of Women’s Rights and Family Law in the United States During the Twentieth Century*, 88 CAL. L. REV. 2017, 2019-48 (2000). As Kay discusses briefly, the post-World War II years ushered in an era of divorce reform. *Id.* at 2040-48. While marriage policy has traditionally been the purview of the states, the U.S. Supreme Court issued several critical opinions in the 1940s that set national policies on “migratory” divorce, alimony, and child support. See NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 195 (2009). While statutory rape reform efforts had flourished prior to 1920, they became less successful and more suspect in the Nineteenth Amendment’s wake. See ESTELLE B. FREEDMAN, *REDEFINING RAPE: SEXUAL VIOLENCE IN THE ERA OF SUFFRAGE AND SEGREGATION* 211-12 (2013). Sexual violence, especially the marital exemption for rape, “moved to the margins of the feminist political agenda, where it would remain until the 1960s.” *Id.* at 211. Tax law also sharpened gender inequity. See Carolyn C. Jones, *Split Income and Separate Spheres: Tax Law and Gender Roles in the 1940s*, 6 L. & HIST. REV. 259, 273-74 (1988). On post-suffrage feminist legal reform efforts in New Jersey, in particular, see FELICE D. GORDON, *AFTER WINNING: THE LEGACY OF THE NEW JERSEY SUFFRAGISTS, 1920-1947* (1986).

### B. *The Reasonableness of Constitutional Equality*

In challenging Strittmater's parting gift, the caveators contended that constitutional gender equality was an unreasonable objective. At trial, the litigants paid special attention to her proclamation that it was the duty of "feministic organizations like the N.W.P. to make exposure of women's 'protectors' and 'Lovers' for what their vicious and contemptible selves are."<sup>147</sup> To admit the evidence into the court record, one of the attorneys had Dr. Smalley read the passage aloud.<sup>148</sup> Meant for only her own eyes, Strittmater's diary handwriting was apparently poor, and the doctor stumbled over several passages.<sup>149</sup> On first read, the doctor tellingly—and perhaps purposefully—misread the opening epithet as "primitive organizations like the N.W.P."<sup>150</sup> When Strittmater's attorney questioned her reading, she quickly corrected, "I am sorry. I can make an F out of that. 'Feministic organizations.'"<sup>151</sup> Such a disagreement about whether the NWP's aims were fundamentally progressive or barbaric shaped the entire adjudication. Although the appellate judge diminished Strittmater's service to the NWP, remarking that Strittmater had never "taken great interest in it," his assessment of her feminist strategy was part and parcel of his evaluation of her mental condition.<sup>152</sup>

As the case unfolded, the public debated the merits of the ERA, the relevance of the NWP, and the possibility of constitutional equality at the state level. Although the 1940s had begun optimistically for the ERA, support began to fade in the decade's latter half.<sup>153</sup> After receiving support from the major political parties and the Senate Judiciary Committee, Congress finally voted on the ERA for the first time in 1946.<sup>154</sup> However, the amendment fell just short in the Senate of the two-thirds majority needed for passage onto the states.<sup>155</sup>

The ERA's prospects faded soon after this early-1940s highpoint. Formidable opponents within the broader feminist movement contributed to the ERA's slow progress. While the ERA stood for absolute gen-

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147. Brief of Caveators-Appellees, in *STRITTMATER RECORD*, *supra* note 11, at 9.

148. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 95-98.

149. *Id.* at 96-97.

150. *Id.*

151. *Id.* at 97.

152. Prerogative Court Memorandum, in *STRITTMATER RECORD*, *supra* note 11, at 24.

153. See HARRISON, *supra* note 118, at 22.

154. *Id.*

155. *Id.*

der equality, social justice and labor feminists believed that some laws that stipulated differential gender treatment actually benefited women.<sup>156</sup> They stressed that the ERA would outlaw protective labor legislation, thus threatening previous victories concerning women’s wages, hours, and working conditions.<sup>157</sup> High-profile women, like Eleanor Roosevelt and Mary Anderson, director of the Women’s Bureau of the Department of Labor, publicly opposed the ERA.<sup>158</sup> Organizations that embraced the maternalist reform tradition, like the National Consumers’ League and National Women’s Trade Union League, also defended sex-based legislation, arguing that women’s roles as mothers merited differential treatment under law and should be the basis of their social and political power.<sup>159</sup> Amid postwar demobilization that threatened women’s economic advancement, progressive and maternalist reformers amplified their historical opposition to the NWP and its core cause.<sup>160</sup> The conflict among feminist sects grew particularly acute in February 1947, when Congress considered the Women’s Status Bill—labor feminists’ counter to the ERA.<sup>161</sup> The postwar era had just begun, but the NWP portended a looming regression. Proponents began to feel the same sense of urgency that Strittmater’s failing health had provoked in her. At year’s end, the NWP’s executive secretary, Caroline Babcock, pressed, “[We must pass the ERA] before the dreadful anti-feminist reaction we are facing closes all doors to us.”<sup>162</sup> With party membership and congressional support fading at World War II’s end, the NWP scrambled to sneak in a victory.<sup>163</sup>

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156. COBBLE, *supra* note 118, at 59-60.

157. For a long history of sex-based labor legislation, see NANCY WOLOCH, *A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890S-1990S* (2015).

158. See 2 BLANCHE WIESEN COOK, *ELEANOR ROOSEVELT: 1933-1938*, at 78 (1999); Cott, *supra* note 118, at 48.

159. On the maternalist reform tradition, see BERRY, *supra* note 121, at 45-55; KATHRYN KISH SKLAR, *FLORENCE KELLEY AND THE NATION’S WORK: THE RISE OF WOMEN’S POLITICAL CULTURE, 1830-1900* 206-36 (1995); Linda Gordon, *Putting Children First: Women, Maternalism, and Welfare in the Early Twentieth Century*, in *U.S. HISTORY AS WOMEN’S HISTORY* 63, 67-86 (Linda K. Kerber, Alice Kessler-Harris & Kathryn Kish Sklar eds., 1995); Rebecca DeWolf, *The Equal Rights Amendment and the Rise of Emancipationism, 1932-1946*, 38 *FRONTIERS* 47, 62-63 (2017).

160. See COBBLE, *supra* note 118, at 62-63.

161. *Id.* at 63.

162. RUPP & TAYLOR, *supra* note 94, at 22 (quoting Caroline Babcock to Anna Kelton Wiley, Dec. 6, 1947).

163. NWP membership had reached 60,000 in the final years of the suffrage movement but dropped to 4,000 by 1945. RUPP & TAYLOR, *supra* note 94, at 26. The Senate finally passed the ERA in 1950, but only because it included the controversial “Hayden Rider,” which provided that the ERA would “not be construed to impair any rights, benefits, or exemptions now or hereinafter conferred by law upon persons of

Internal feuding within the NWP, as its founding leaders turned over the reins, further weakened its influence. In 1947, NWP leaders hurt their own chances of success by literally closing the doors on a faction of fellow members.<sup>164</sup> The NWP's "1947 schism" was the climax of a long-standing conflict between those loyal to Alice Paul and followers of her rival, Doris Stevens.<sup>165</sup> When Paul resigned as National Chairman in 1945, she hand-picked Anita Pollitzer as her replacement.<sup>166</sup> Stevens bitterly opposed this favoritism and launched a coup to challenge the new regime.<sup>167</sup> Pollitzer's coalition responded by locking the insurgents out of the party's Washington, D.C. headquarters.<sup>168</sup> The Stevens clan filed suit in federal court to seek an injunction against their exclusion.<sup>169</sup> The suit was unsuccessful, but the schism fostered further division among members and fueled newspapers' representations of the NWP as a gaggle of cantankerous old ladies without a clear mission.<sup>170</sup> The 1947 dispute unfolded just as New Jersey's highest court was picking up Strittmater's case. Even if the justices avoided the news coverage, the

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the female sex." MANSBRIDGE, *supra* note 4, at 9; *see also* HARRISON, *supra* note 118, at 31-32. On labor feminists' support of this proviso, *see* COBBLE, *supra* note 118, at 68.

164. *See* RUPP & TAYLOR, *supra* note 94, at 32; Rupp, *supra* note 114, at 729.

165. *See* RUPP & TAYLOR, *supra* note 94, at 28-32. The conflict first erupted in the 1930s when influential benefactor Alva Belmont bequeathed \$100,000 to the cause, but Stevens herself had expected to be the beneficiary. *Id.* at 29; Sylvia D. Hoffert, *Alva Vanderbilt Belmont*, ENCYCLOPEDIA OF ALABAMA (Apr. 12, 2011), <http://www.encyclopediaofalabama.org/article/h-3054> [<https://perma.cc/E2WV-GGY4>]; *see also* Rupp, *supra* note 114, at 727 (outlining that the money was used, in part, to purchase Alva Belmont House—the NWP national headquarters in Washington). Stevens's side also objected to the NWP's increased focus on international women's issues and favored domestic organizing. *See* Martha F. Davis, *Not So Foreign After All: Alice Paul and International Women's Rights*, 16 NEW ENG. J. INT'L & COMP. L. 1, 13 (2010).

166. RUPP & TAYLOR, *supra* note 94, at 28.

167. *Id.* at 28-32; *see also* Judith Sealander, *Feminist Against Feminist: The First Phase of the Equal Rights Amendment Debate, 1923-1963*, in 20 HISTORY OF WOMEN IN THE UNITED STATES: HISTORICAL ARTICLES ON WOMEN'S LIVES AND ACTIVITIES, FEMINIST STRUGGLES FOR SEX EQUALITY 282 (Nancy F. Cott ed., 1994).

168. Rupp, *supra* note 114, at 729.

169. *Berrien v. Pollitzer*, 165 F.2d 31 (D.C. Cir. 1947).

170. *See, e.g., Secession Splits the Woman's Party: Officers Post Guards at Capital Headquarters After Foes Hold Rump Meeting*, N.Y. TIMES, Jan. 14, 1947, at 2. Nearby Trenton, New Jersey, where the state supreme court sat, the *Philadelphia Inquirer* reported on the fight for entry into "the party's \$100,000 colonial mansion" in its "Washington Background" column, which also included a pithy exchange between a "hysterical female" and an army clerk. The *Inquirer* Washington Bureau Staff, *Unionist Says Umbrella Sets Civilization Pattern*, PHILA. INQUIRER, Mar. 18, 1947, at 18.

party rupture and subsequent ridicule certainly soured public sentiment toward the cause.

While *Strittmater* was pending and ERA progress stalled on the national level, New Jersey was actively embracing state constitutional change that had mixed results for women. The viability of the federal ERA colored the reasonableness of Strittmater’s bequest, but the New Jersey constitution directly governed the law that applied to the state court probate dispute. New Jersey started out strong on women’s rights: It was the only original state that did not flatly deny women the right to vote.<sup>171</sup> By extending suffrage to any inhabitant, regardless of sex, who met certain residency and property requirements, New Jersey’s 1776 constitution enfranchised many single women.<sup>172</sup> However, New Jersey’s progressiveness did not last long, and the state legislature restricted the vote to white men in 1807.<sup>173</sup> With the exception of occasional amendments like these, New Jersey retained its 1844 constitution until 1947, when the state conducted a constitutional convention to craft an entirely new document.<sup>174</sup> Groups like the New Jersey State Bar Association’s Committee on the Status of Women participated in the delegates’ debate over gender equality.<sup>175</sup> However, the final document only mentioned sex once: Article X specified, “Wherever in this Constitution the term ‘person’, ‘persons’, ‘people’ or any personal pronoun is used, the same shall be taken to include both sexes.”<sup>176</sup> This promise of gender inclusivity was a small step forward, but the new constitution relegated sex to the realm of semantic interpretation and surely disappointed those who had hoped New Jersey might adopt its own state-level equal rights amendment.<sup>177</sup> Thus, as three tiers of New Jersey judges evaluated the

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171. See Judith Apter Klinghoffer & Lois Elkins, “*The Petticoat Electors*”: *Women’s Suffrage in New Jersey, 1776-1807*, 12 J. EARLY REPUBLIC 159, 159-60 (1992).

172. See *id.* (“New Jersey defined voters as adult inhabitants ‘worth fifty pounds’ who resided in the state for one year. As married women’s property ownership was invariably limited, however, only single women could vote.”).

173. *Id.* at 160.

174. See 1-3 N.J. CONST. CONVENTION OF 1947, <https://historicalpubs.njstatelib.org/> The New Jersey Constitution of 1844 still governed the *Strittmater* decision, which the state supreme court issued on May 15, 1947; the constitutional convention began a few weeks later, spanning June 12 to September 10, 1947. *New Jersey State Constitutions*, N.J. STATE ARCHIVES, <https://www.nj.gov/state/archives/docconstitution.html>.

175. See 3 N.J. CONST. CONVENTION OF 1947, *supra* note 174, at 412-13.

176. N.J. CONST. art. X, ¶ 4 (N.J. State Archives through 1947 amendments).

177. The potency of the new provision was ambiguous at the time of adoption, but, in 1978, the New Jersey Supreme Court interpreted the 1947 revisions as the equivalent of an equal rights amendment. *Peper v. Princeton Univ. Bd. of Trs.*, 389 A.2d 465, 477-78 (N.J. 1978); see also Linda J. Wharton, *State Equal Rights Amendments Revis-*

rationality of Strittmater’s “feministic notions,”<sup>178</sup> the state was engaged in a historic reevaluation of its core principles—and would soon determine that gender equality was not one.

New Jersey’s Chief Justice Clarence E. Case, who attended the constitutional convention the same year that he presided over the final review of Strittmater’s case, did not show the same solidarity toward ERA proponents that he had to suffragists.<sup>179</sup> Case, a long-term Jersey City resident, had started his career as an attorney in 1902.<sup>180</sup> His practice included estate disputes, including one in which he represented plaintiffs challenging the estate of an “eccentric[]” relative with a “mania for making wills.”<sup>181</sup> Case went on to serve as president of the state senate during the climax of the suffrage movement; in fact, he stepped in as acting governor in late January 1920, just a few weeks before New Jersey ratified the Nineteenth Amendment on February 9, 1920.<sup>182</sup> Case lamented that in the moment of victory, despite all of his and his Republican colleagues’ efforts to secure support for the amendment, “the women rushed in and bestowed their kisses upon Governor Edwards,” the newly inaugurated Democrat, “who merely signed the bill.”<sup>183</sup>

On the sixth anniversary of New Jersey’s ratification, Case reflected that “women had probably found by this time they could not accomplish so much as women rallying around women” and celebrated that the “influence of women in politics had been not so much to bring in new things as to revive and reburnish old ideas.”<sup>184</sup> In Case’s estimation—and apparently to his relief—women had not emerged as a radical new voting bloc in the 1920s but instead had had a conservative influ-

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*ited: Evaluating Their Effectiveness in Advancing Protection Against Sex Discrimination*, 36 RUTGERS L.J. 1201, 1233-34 (2005).

178. Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 6.
179. Case also testified at the constitutional convention, weighing in on the restructuring of the judiciary. 4 N.J. CONST. CONVENTION OF 1947, *supra* note 174, at 131-49 (Committee on the Judiciary). The new constitution would transform his twenty-two seat “Court of Errors and Appeals” into the seven seat “Supreme Court.” *Id.* Case, who had a long career in state politics and had been appointed chief justice in 1946, opted not to weather the transition and resigned a few years later. See Justice Clarence Edwards Case, NEW JERSEY COURTS (1950), <https://www.njcourts.gov/courts/supreme/vm/ajdeceased.html> [<https://perma.cc/SJ2V-85FA>].
180. *Gov. Clarence Edwards Case*, NAT’L GOVERNORS ASS’N, <https://www.nga.org/governor/clarence-edwards-case/> [<https://perma.cc/4W74-CSHD>].
181. *Making Wills His Mania*, COAST ADVERTISER (Belmar, N.J.), Sept. 3, 1915, at 6.
182. *Senate Ratifies Woman Suffrage*, ATL. HIGHLANDS J. (N.J.), Feb. 12, 1920, at 3; *144th New Jersey Legislature Opens*, N.Y. TIMES, Jan. 14, 1920, at 32.
183. *Republican Women Hear Address by Senator Case*, OCEAN GROVE TIMES (N.J.), Aug. 27, 1926, at 5.
184. *Id.*

ence on electoral politics.<sup>185</sup> He may have grown to consider “women rallying around women” less rational and worthy of his support.<sup>186</sup>

### C. *Those Feminine Followers of Freud*

Dr. Sara D. Smalley proved to be the caveators’ key witness.<sup>187</sup> Although she had served as Strittmater’s physician for nearly two decades, she showed little fidelity to her patient on the stand.<sup>188</sup> Smalley was an accomplished physician, but psychology was never one of her specialties. She had committed patients to insane asylums but had never studied psychology or been affiliated with any psychiatric hospital.<sup>189</sup> She herself admitted, “I don’t qualify as a mental expert.”<sup>190</sup> Nevertheless, she confidently pronounced her diagnosis of Strittmater: “paranoiac dementia praecox” of “the Bleuler type of split personality.”<sup>191</sup> Swiss psychologist Eugen Bleuler, who was Freud’s colleague and occasional critic, coined the term “schizophrenia” in an influential 1911 study.<sup>192</sup> Yet Bleuler had distinguished schizophrenia, which literally means “split mind,” from the condition of split personality and the increasingly archaic term,

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185. *Id.*; see also COTT, *supra* note 118, at 83-114; see generally Sara Alpern and Dale Baum, *Female Ballots: The Impact of the Nineteenth Amendment*, 16 J. INTERDISC. HIST. 43 (1985) (analyzing women’s voting patterns in the 1920s).

186. *Republican Women Hear Address by Senator Case*, *supra* note 183.

187. See generally Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, 84-118 (encompassing the doctor’s statements at trial). Because truth is sometimes stranger than fiction, New Jersey’s Dr. Sara D. Smalley had a counterpart across the Hudson—Dr. Sarah L. Smalley—who was also something of an anti-female hired gun, serving as an expert witness in legal disputes that hinged on women’s mental competence. See, e.g., *Vetter v. Asphalt Constr. Co.*, 205 393 N.Y.S. (App. Div. 1924); *Setnikar v. Setnikar*, 207 N.Y.S. 918 (App. Div. 1925). This Dr. Smalley was slightly younger but had greater experience in the field of psychology: A 1908 graduate of the University of Michigan, she completed her internship at Central Islip Psychiatric Center and later rose in the ranks to run the hospital’s women’s admission service. MICH. ALUMNUS, Oct. 1913-Aug. 1914, at 232. By 1920, she was among an elite group of New York psychologists who were still invited to attend the State Hospital Commission’s summer institute despite recent budget cuts. *State Hospital Commission*, 32 ANN. REP. 89, July 1, 1919-June 30, 1920, at 107.

188. See, e.g., Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 84-85.

189. *Id.* at 84, 90.

190. *Id.* at 106.

191. *Id.* at 91.

192. See Andrew Moskowitz & Gerhard Heim, *Eugen Bleuler’s Dementia Praecox or the Group of Schizophrenias (1911): A Centenary Appreciation and Reconsideration*, 37 SCHIZOPHRENIA BULL. 471, 471 (2011).



“dementia praecox.”<sup>193</sup> Although English translations did not appear until 1950s, Bleuler’s study made an immediate, international impact at the time of its 1911 publication.<sup>194</sup> Dr. Smalley was clearly familiar with it, but her conflation of three very different diagnoses—the Bleuler type, split personality, and dementia praecox—suggests a superficial knowledge at best.

The Advisory Master was “not impressed” with Smalley’s testimony, given her lack of credentials, but the higher-level courts accepted the doctor’s assessments.<sup>195</sup> The appellate judge, quoted in the supreme court opinion, “regret[ed] not having had the benefit of an analysis of the data by a specialist in diseases of the brain”; nonetheless, he heeded his own inexpert medical instinct and resolved that the “factual evidence justify[d]” her diagnosis.<sup>196</sup> Relying on Dr. Smalley’s inexpert opinion and a heavy dose of his own judicial discretion, the judge concluded that Strittmater’s views on gender were symptoms of her mental illness.<sup>197</sup> In sum, “[s]he regarded men as a class with an insane hatred.”<sup>198</sup>

Americans have always been quick to equate feminism with misogyny and madness. In the nineteenth century, many states empowered husbands to commit their wives to insane asylums with meager evidence.<sup>199</sup> Press ridicule, including allegations of insanity, so intimidated some of the women who signed the Declaration of Sentiments at the 1848 Seneca Falls Convention that many withdrew their support.<sup>200</sup> State statutes that disenfranchised women alongside “lunatics and idiots” bolstered anti-suffragists’ arguments that women innately lacked the mental capacity to vote.<sup>201</sup> The charges of insanity continued

193. *Id.* at 472.

194. And, later, Bleuler’s study “powerfully influenced the first diagnostic manuals developed after World War II.” *Id.* at 471.

195. Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 13.

196. *In re Strittmater’s Estate*, 53 A.2d 205, 205 (N.J. 1947).

197. *Strittmater*, 53 A.2d at 205-06.

198. *Strittmater*, 53 A.2d at 205.

199. See, e.g., Hendrik Hartog, *Mrs. Packard on Dependency*, 1 *YALE J.L. & HUMAN.* 79, 81-83 (1988) (studying one woman’s involuntary commitment and subsequent advocacy for higher evidentiary standards in evidentiary proceedings).

200. HOFF, *supra* note 141, at 34-35. The Seneca Falls Convention was the first gathering dedicated to addressing women’s social and legal disabilities and is considered a major turning point in first-wave feminism.

201. See generally KIMBERLY A. HAMLIN, *FROM EVE TO EVOLUTION: DARWIN, SCIENCE, AND WOMEN’S RIGHTS IN GILDED AGE AMERICA* (2014) (studying the role evolutionary theory played in the nineteenth-century women’s rights movement); Yvonne Pitts, *Disability, Scientific Authority, and Women’s Political Participation at the Turn of the Twentieth-Century United States*, 24 *J. WOMEN’S HIST.* 37 (2012) (describing

through the twentieth century, as suffragists' tactics grew more militant. When Alice Paul was arrested for leading a group of comrades in picketing outside the White House fence, she was placed in the jail's psychopathic ward and threatened with incarceration in an asylum.<sup>202</sup> Paul reflected years later, “[P]eople are so apt to say, ‘Well, this lady unfortunately was very good in her way, but she was mentally unbalanced.’ . . . I *could* have died in [an] institution, and be there this moment.”<sup>203</sup>

Since the early twentieth century, the growing authority of psychiatry has influenced American conceptions of gender, especially in the legal context. By the 1940s, the popularization of Freudian theory in the United States heightened attention to psychosexual interpretations in politics and culture.<sup>204</sup> The decade's bestseller lists included studies like Dr. Helene Deutsch's *The Psychology of Women: A Psychoanalytic Interpretation* (1944) and Dr. Marynia Farnham's *Modern Woman: The Lost Sex* (1947).<sup>205</sup> Although written by women doctors, these books argued that women who resisted domesticity risked their own mental health and threatened the stability of the nation.<sup>206</sup> The psychoanalytic craze

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how anti-suffragists in the late nineteenth century justified women's disenfranchisement by alleging innate biological disabilities).

202. Interview by Amelia R. Fry with Alice Paul, in Berkeley, Cal. (Nov. 24-26, 1972); *Today in History—August 28: Picketing for Suffrage*, LIBR. OF CONG., <https://www.loc.gov/item/today-in-history/august-28#picketing-for-suffrage> [<https://perma.cc/QZ8U-C6LM>].
203. Interview by Amelia R. Fry with Alice Paul, *supra* note 202. As late as the 1950s, Florence Bayard Hilles, an NWP founder, was committed to an asylum, where she died in 1954. See Obituary, *Florence Bayard Hilles*, LIVING CHURCH, July 4, 1954, at 14. Paul speculated that Hilles's daughter and devoutly Catholic son-in-law orchestrated the institutionalization even though “there was absolutely nothing the matter” with her in order to “get possession of her fortune.” Interview by Amelia R. Fry with Alice Paul, *supra* note 202.
204. On the rise of psychoanalysis in the postwar period, see ANNE HARRINGTON, *MIND FIXERS: PSYCHIATRY'S TROUBLED SEARCH FOR THE BIOLOGY OF MENTAL ILLNESS* (2019); ELLEN HERMAN, *THE ROMANCE OF AMERICAN PSYCHOLOGY: POLITICAL CULTURE IN THE AGE OF EXPERTS* (1996); EDWARD SHORTER, *A HISTORY OF PSYCHIATRY: FROM THE ERA OF THE ASYLUM TO THE AGE OF PROZAC* (1998). Several historians of psychology have foregrounded gender in their analysis. See, e.g., ELIZABETH LUNBECK, *THE PSYCHIATRIC PERSUASION: KNOWLEDGE, GENDER, AND POWER IN MODERN AMERICA* (1995); Pitts, *supra* note 201.
205. *Editor's Remarks: "A Book About Women,"* 42 CONTEMP. SOC'Y 151, 154 (2013); *Dr. Marynia Farnham, Author,* 79, N.Y. TIMES, May 30, 1979, at A19.
206. See, e.g., HELENE DEUTSCH, *THE PSYCHOLOGY OF WOMEN: A PSYCHOANALYTIC INTERPRETATION* xii (1944) (“Throughout the ages, the problem of women has puzzled people of every kind—you too will have pondered this question in so far as you are men. From the women among you that is not to be expected, for you are the riddle yourselves.”).

had tangible implications on the legal system, as women struggled to make cognizable claims and avoid being dismissed as crazy.<sup>207</sup> While some feminists embraced and built on Freud's theories, others outright objected to his generalizations about the female sex.<sup>208</sup> By the 1960s, women's rights activists were fed up with doctors who pathologized other women: In *The Feminine Mystique*, Betty Friedan indicted these "feminine follower[s] of Freud" as enemies of their sex.<sup>209</sup>

One of the earliest and most influential advocates of the view of feminism as a mental pathology, Dr. Marynia Farnham, fused psychology and politics. Published in January 1947, just as Justice Case's court turned to Strittmater's case, *Modern Woman* "aroused a storm of controversy" and was an instant best-seller.<sup>210</sup> Regardless of whether the New Jersey justices had read the book, it would have been difficult to avoid Farnham's message in popular culture.<sup>211</sup> Drawing on case studies, the book declared women "one of modern civilization's major unsolved problems—standing in vital importance to everybody, including themselves."<sup>212</sup> Farnham deemed the civilizational problem to be particularly severe in the 1940s, when "being a woman" had become "more of an ordeal than ever."<sup>213</sup> She accused feminists of a nefarious secondary scheme. "[O]n the surface," feminists claimed to focus on women's education, enfranchisement, and property rights, when, in fact, they "were out to get rid of their femaleness and to limit male privilege."<sup>214</sup> The ERA offered the ultimate example of feminists' deceit, she argued, purporting to lay "[c]onstitutional groundwork for . . . equal-pay" while actually advancing "cryptic goals" that "belong in the realm of psychopathology."<sup>215</sup>

207. HOFF, *supra* note 141, at 34.

208. See SIMONE DE BEAUVOIR, *THE SECOND SEX* (1949); see also MARI JO BUHLE, *FEMINISM AND ITS DISCONTENTS: A CENTURY OF STRUGGLE WITH PSYCHOANALYSIS* 206-39 (2000); IN *DORA'S CASE: FREUD-HYSTERIA-FEMINISM* (Charles Bernheimer & Claire Kahane, eds., 2d ed. 1990); SAMUEL SLIPP, *THE FREUDIAN MYSTIQUE: FREUD, WOMEN, AND FEMINISM 190-94* (1993).

209. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 221 (1963).

210. *Dr. Marynia Farnham, Author*, 79, *supra* note 205; see also Margaret Mead, *Dilemmas the Modern Woman Faces*, N.Y. TIMES, Jan. 26, 1947, at BR 18; Philip Wylie, *Masculinesque Womenfolk*, SATURDAY REV., Feb. 1, 1947, at 13-14 (reviewing FERDINAND LUNDBERG & MARYNIA F. FARNHAM, *MODERN WOMAN: THE LOST SEX* (1947)).

211. *Dr. Marynia Farnham, Author*, 79, *supra* note 205 (describing the popular impact of Farnham's bestselling book).

212. LUNDBERG & FARNHAM, *supra* note 210, at 1.

213. *Id.*

214. *Id.* at 168-69.

215. *Id.* at 206.

Farnham reached a wide audience through popular magazines with her message that women's rights had gone too far. For example, her 1948 *Coronet* article, "Who Wears the Pants in Your Family?" directly questioned women's property rights and stoked fears that wives were overpowering husbands and offered advice for recovering the patriarchal status quo.<sup>216</sup> She bemoaned, "When Oscar Wilde quipped that 'All men are married women's property,' he didn't realize that within a few decades his words would become a grim reality."<sup>217</sup> In Farnham's account, the abolition of coverture had not just empowered women to hold and dispose of their assets how they wished; it had also enabled their domination of men.<sup>218</sup> A belligerent "lady generalissimo," intent on conquering male privileges and unwilling to surrender, was "the essence of Feminism."<sup>219</sup> The feminist threat had a diagnosable "psychological reason," Dr. Farnham assured.<sup>220</sup> But treatment was urgent: "[E]verybody would be a lot happier if our women executed a quiet retreat from some of their advanced and indefensible positions while they may still do so gracefully."<sup>221</sup>

Scholars of American women's history have debated the extent to which Dr. Farnham reflected or influenced postwar culture. Earlier accounts labeled *Modern Woman* the "most influential attack on feminism" of the 1940s, citing the concerns of contemporary women who immediately recognized the threat.<sup>222</sup> Trailblazing women's historian Mary Beard, who had recently published her groundbreaking work, *Woman as a Force in History* (1946), feared that Farnham's work ensured that "psychiatrists and sexologists [would] be the victors."<sup>223</sup> The NWP even called an emergency meeting.<sup>224</sup> One member later reported "that the book set the movement back a decade."<sup>225</sup> More recent work, however, argues that Farnham represented only a "distinctive minority" at the "conservative margin."<sup>226</sup> These scholars contend that antifeminist, psychiatric directives for women to retreat into the domestic sphere

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216. Marynia Farnham, *Who Wears the Pants in Your Family?*, CORONET, Mar. 1948, at 10. On the controversy Farnham's article incited, see Meyerowitz, *Beyond the Feminine Mystique*, *supra* note 118, at 1476.

217. Farnham, *supra* note 216, at 10.

218. *Id.*

219. *Id.* at 13-14.

220. *Id.*

221. *Id.* at 14.

222. RUPP & TAYLOR, *supra* note 94, at 19.

223. *Id.*

224. *Id.*

225. *Id.*

226. Meyerowitz, *Beyond the Feminine Mystique*, *supra* note 118, at 1458, 1475.

were relatively rare in the popular press and in “no way dominated mass culture.”<sup>227</sup>

Even if the lasting legacy of Dr. Farnham’s work may be disputable, its immediate relevance to *Strittmater* is certain. In states like New Jersey, the insane delusion standard said nothing of sex; yet the decision regarding Strittmater’s will shows that laws that were facially gender neutral were often biased in application.<sup>228</sup> In their assessments of mental competence, judges embraced the craze for psychoanalysis and “medical” explanations for women’s apparent neuroses and codified them into law.<sup>229</sup>

#### D. Policing Spinster Sexuality

Dr. Smalley dealt a further blow to Strittmater’s testamentary eligibility when she dubbed her a “moral pervert.”<sup>230</sup> Allegations of Strittmater’s perversion saturated the court record. The portrait of Strittmater that the caveators painted embodied the “lady generalissimo” of Dr. Farnham’s needling article, “Who Wears the Pants in Your Family?”<sup>231</sup> They alleged that she stood battle-ready on her New Jersey stoop. A former tenant claimed, “she would sit there on the top step [of

227. *Id.* at 1458. Meyerowitz also names William Henry Chafe’s foundational 1972 study, *The American Woman: Her Changing Social, Political, and Economic Roles, 1920-1970*, as an example of a work that overemphasizes the influence of antifeminists like Farnham and Lundberg. *Id.* at 1456 n.3, 1474.

228. *See supra* notes 32-43 and accompanying text.

229. Furthermore, in later years, gender bias reverberated in assessments of insanity and disability, especially in the graver context of criminal law. *See* Kathleen Darcy, *Medicalizing Gender: How the Legal and Medical Professions Shaped Women’s Experiences as Lawyers*, 4 TENN. J. RACE GENDER & SOC. JUST. 31 (2015). On women and the insanity defense, see generally Christian Breheny, Jennifer Groscup & Michele Galletta, *Gender Matters in the Insanity Defense*, 31 L. & PSYCHOL. REV. 93 (2007); Michele Connell, *The Postpartum Psychosis Defense and Feminism: More or Less Justice for Women?*, 53 CASE W. RES. L. REV. 143 (2002); Deborah A. Denno, *Who Is Andrea Yates—A Short Story About Insanity*, 10 DUKE J. GENDER L. & POL’Y 1 (2003); Catharine A. MacKinnon, *Toward Feminist Jurisprudence*, 34 STAN. L. REV. 707 (1982) (reviewing ANN JONES, *WOMEN WHO KILL* (1980)). For an important body of scholarship examining the intersection of gender identity and disability law, see Ali Szemanski, Note, *When Trans Rights Are Disability Rights: The Promises and Perils of Seeking Gender Dysphoria Coverage Under the Americans with Disabilities Act*, 43 HARV. J.L. & GENDER 137 (2020). For scholarship on transgender individuals within the carceral system, see Lizzie Bright, Comment, *Now You See Me: Problems and Strategies for Introducing Gender Self-Determination in the Eighth Amendment for Gender Nonconforming Prisoners*, 108 J. CRIM. L. & CRIMINOLOGY 137 (2018).

230. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 99.

231. Farnham, *supra* note 216, at 10.

her porch] without any underclothing on exposing herself completely to anybody that might pass along the street.”<sup>232</sup> Literally and metaphorically, then, nobody wore the pants in Strittmater’s family. This Subpart discusses how the caveators presented evidence alleging Strittmater’s resistance to sexual mores, motherhood, and marriage. They contended that Strittmater flaunted her sexuality, in addition to daring to assert her property rights and financial independence. This dangerous combination sounded the death knell of her will.

Panic about the “sexual psychopath” was beginning to sweep the nation.<sup>233</sup> By 1947, the opportunities for sexual freedom that World War II had opened were not completely shut, but a conservative backlash was on the horizon.<sup>234</sup> Popular culture and public policy issued imperatives for personal behavior—propriety, procreation, and consumption were leading tenets—even as Americans responded in diverse ways, depending on factors like age, ethnicity, race, religion, and region.<sup>235</sup> The postwar years were far from chaste—as a generation of Baby Boomers attests—but policing nonmarital sex became a “national obsession.”<sup>236</sup> Alfred Kinsey’s groundbreaking reports on sexual behavior in men and women were not published until 1948 and 1953, respectively, but society’s paranoia about the “Homosexual Menace” was already beginning to mount.<sup>237</sup> Magazines, movies, and a parade of experts stressed that individual moral perversion imperiled the nation.<sup>238</sup>

The push for purity suffused the legal context, too. Since the nineteenth century, doctors and jurists had routinely invoked women’s reproductive functions to explain their erratic mental states and behavior. Women, the argument ran, were “prisoners” of tidal biological processes—puberty, menstruation, pregnancy, and ultimately menopause—

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232. Testimony of Helen Morse, in *STRITTMATER RECORD*, *supra* note 11, at 61.

233. JOHN D’EMILIO & ESTELLE FREEDMAN, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA 275-300* (1988) (chronicling the revival of paranoia about sexual impurity in the postwar period).

234. See ALLAN BÉRUBÉ, *COMING OUT UNDER FIRE: THE HISTORY OF GAY MEN AND WOMEN IN WORLD WAR II* (1990) (spotlighting wartime opportunities for same-sex intimacy); WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET 57-62* (1999) (identifying several examples of postwar homophobic sentiment and policies in place by 1947); FADERMAN, *supra* note 82, at 125-29.

235. For example, movie producers adopted the Hollywood Code in 1930 to appease critics of moral looseness and licentiousness in films. D’EMILIO & FREEDMAN, *supra* note 233, at 280-82. Unsatisfied with this largely symbolic gesture, the Roman Catholic Church intervened by forming the Legion of Decency in 1943. *Id.* at 281.

236. MAY, *supra* note 135, at 94.

237. D’EMILIO & FREEDMAN, *supra* note 233, at 285-86, 288-95.

238. See MAY, *supra* note 135, at 26 (“Postwar America was the era of the expert.”); see also *id.* at 3-15.

that were beyond their ability to control.<sup>239</sup> In the 1940s, such theories gained new salience. More than before or since, litigants in this period invoked menopause in opposing women's claims.<sup>240</sup> "Psychogenic infertility," a newfangled diagnosis attributing a woman's sterility to her emotional state, gained popularity not only among gynecologists but also among lawyers.<sup>241</sup>

Many of the caveators' arguments squared with longstanding stereotypes of feminists, but the court's particular preoccupation with Strittmater's sexuality presaged the ideology of "domestic containment" that would come to pervade the postwar era.<sup>242</sup> 1947 was too early to represent Cold War America, but, in hindsight, Strittmater's case shows inklings of the subsequent turn. Symbolic changes were already afoot: For instance, 1947 also marked the release of Dior's iconic "New Look," which replaced the practical wear of wartime with tiny-waisted, full-skirted gowns.<sup>243</sup> These extravagant designs, which required an abundance of fabric and better befit the lifestyles of homemakers than wage-earners, displayed postwar prosperity.<sup>244</sup> In subsequent years, as the nation strove to contain the Soviet threat abroad, public policy and popular culture promoted the nuclear family as the best bulwark against nuclear destruction.<sup>245</sup> More marriages, fewer divorces, and a baby boom signified prosperity and peace on the home front, even as suburban sprawl simultaneously sharpened racial inequity and women's discontent.<sup>246</sup> Mothers were expected to shoulder the tremendous responsibility of raising well-adjusted sons and maintaining a stable, sexually fulfilled, and shelter-ready home.<sup>247</sup> This midcentury domestic revival was hardly a hegemonic view or universal experience; yet, ideologies of domestic and sexual containment did become part of the postwar zeitgeist and, as this story indicates, permeated the legal process.

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239. Carroll Smith-Rosenburg & Charles Rosenberg, *The Female Animal: Medical and Biological Views of Women and Her Role in Nineteenth-Century America*, 60 J. AM. HIST. 332, 336 (1973).

240. Phyllis T. Bookspan & Maxine Kline, *On Mirrors and Gavels: A Chronicle of How Menopause Was Used as a Legal Defense Against Women*, 32 IND. L. REV. 1267, 1287 (1999).

241. See Randi Hutter Epstein, *Emotions, Fertility, and the 1940s Woman*, 24 J. PUB. HEALTH POL'Y 195 (2003).

242. MAY, *supra* note 135, at 217.

243. JILL FIELDS, AN INTIMATE AFFAIR: WOMEN, LINGERIE, AND SEXUALITY 256 (2007).

244. *Id.* at 257-71.

245. See MAY, *supra* note 135, at 19-38.

246. See *id.* at 3-12.

247. *Id.* at 102-04.

Evidence of Strittmater’s sexuality made a splash at trial. As a local NWP representative reported back to the national office, the trial court recessed after only forty-five minutes so that the estate lawyer could “go through two suitcases of books and papers the other lawyer submitted as evidence of Miss Strittmater’s mental derangement.”<sup>248</sup> That other lawyer must have recognized the persuasiveness of this show-stopping evidence. The suitcases’ scandalous contents included “a note book full of ravings about men” and “books on sex with notations written in the margins.”<sup>249</sup> Although Strittmater was widely read and her library might have been used as evidence to establish her erudition and cognitive depth, the lawyer for the estate failed to respond to opposing counsel’s predictable choice to introduce books with lurid sexual titles, including Iwan Bloch’s *Anthropological Studies in the Strangest Sex Acts* (1935), Ira Wile’s *The Sex Life of the Unmarried Adult* (1934), and an English translation of the Marquis de Sade’s *120 Days of Sodom* (1934).<sup>250</sup> Strittmater’s private musings were no less salacious. In the margins of one treatise, which detailed a sadistic Australian sex practice that was known to kill men, she had scribbled, “Good idea.”<sup>251</sup> Although the Advisory Court Master ultimately sided with Strittmater, he still considered the contents of her sexual library “ample proof of an unwholesome, heated imagination.”<sup>252</sup> According to the NWP observer, the judge clearly found the evidence stimulating, “devouring . . . and apparently reveling in the dirt.”<sup>253</sup> The sexual arguments and innuendos introduced by the caveators at trial clearly affected the final disposition of the case. The highest court opinion concluded, “memoranda and comments written by decedent on the margins of books constitute the chief evidence of her mental condition.”<sup>254</sup>

Strittmater’s marital status was another central theme. In recounting Strittmater’s biography, the appellate judge began: “The deceased never married.”<sup>255</sup> The significance of that fact was hammered home at trial. Strittmater’s former friend, Jane Beech, put it plainly, “[S]he never wanted to meet any man, she had no time for them.”<sup>256</sup> In a testy ex-

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248. Letter from Leslie Black to Burnita Shelton Matthews, *supra* note 43.

249. *Id.*

250. Exhibits, *in* STRITTMATER RECORD, *supra* note 11, at vi, viii.

251. Advisory Master’s Conclusions, *in* STRITTMATER RECORD, *supra* note 11, at 8.

252. *Id.* at 9.

253. Letter from Leslie Black to Burnita Shelton Matthews, *supra* note 43.

254. *In re* Strittmater’s Estate, 53 A.2d 205, 205 (N.J. 1947).

255. Prerogative Court Memorandum, *in* STRITTMATER RECORD, *supra* note 11, at 23.

256. Testimony of Jane M. Beech, *in* STRITTMATER RECORD, *supra* note 11, at 183.



change with Beech, the estate attorney tried to pin Strittmater's mental health on her marital status:

Q. You knew that she was a single woman?

A. Yes, sir.

Q. You knew that had some effect upon her personality, didn't you?

A. No, I didn't.

Q. The fact that she was a single woman?

A. No, I know single women who are perfectly well balanced.<sup>257</sup>

In the end, the caveators' logic prevailed. The appellate judges concluded that Strittmater's singlehood was a symptom of her insanity, not an excuse for her harsh views on men.<sup>258</sup>

Implicit anxieties about Strittmater's potential same-sex attraction also run throughout the court record, typifying long-held stigmas about feminists' unfemininity as well as pathologies of lesbianism unique to the era.<sup>259</sup> In the late nineteenth and early twentieth centuries, Americans had regarded intimacy among women as innocent "romantic friendship"; in the early twentieth century, such behavior assumed the labels of "mannish" and "pervers[e]."<sup>260</sup> By the 1920s, Freud and other sexologists had redefined same-sex intimacy as "morbid and pathological."<sup>261</sup> In the postwar era, historians suggest, "the lesbian 'sicko' became the dominant image . . . and curing lesbians on the couch became a big business in America."<sup>262</sup>

When it came to Strittmater's image, then, the caveators' counsel's examination of Jane Beech proved particularly devastating. Beech testified that the two had become fast friends after meeting at the Bloomfield library in 1929.<sup>263</sup> With her husband frequently traveling for work, Beech would invite Strittmater over to her apartment for extended visits, two or three times a week.<sup>264</sup> When her husband was home—apparently his job as an asbestos salesman had its ups and downs—

257. *Id.* at 195.

258. *See Strittmater*, 53 A.2d at 205-66.

259. *See generally* ALLISON K. LANGE, PICTURING POLITICAL POWER: IMAGES IN THE WOMEN'S SUFFRAGE MOVEMENT (2020) (providing the example of suffragists having to battle popular images that ridiculed them as unladylike and sexually deviant).

260. FADERMAN, *supra* note 82, at 57.

261. D'EMILIO & FREEDMAN, *supra* note 233, at 194.

262. FADERMAN, *supra* note 82, at 130.

263. Testimony of Jane M. Beech, *in* STRITTMATER RECORD, *supra* note 11, at 180.

264. *Id.*

Strittmater made herself scarce.<sup>265</sup> One afternoon, Beech’s husband returned unexpectedly, and, before he could come up the elevator, Strittmater “ran downstairs quick, grabb[ing] her things” without saying goodbye.<sup>266</sup> Much to Strittmater’s disappointment, the Beeches moved to Philadelphia for a few years in the mid-1930s.<sup>267</sup> Strittmater and Beech arranged a weekend visit, but their time together was strained, with Strittmater suffering from anxiety and upset about their differing expectations for their relationship.<sup>268</sup> A respectable married woman, Beech did not dare get more explicit about the details on the stand, but her testimony strongly hinted that Strittmater considered her more than a friend and had behaved like a jilted lover.<sup>269</sup> The estate lawyer did little to rebut these insinuations and focused most of his questions on Strittmater’s financial independence and reliability as a landlord.<sup>270</sup>

The record was also rife with references to Strittmater’s reproductive incapacity and her outlandish views on procreation. Perceived as worse even than rejecting heterosexual marriage was Strittmater’s spurning of the ostensibly natural imperative of motherhood.<sup>271</sup> By the time of her death, the forty-eight-year-old Strittmater had no children and had already gone through menopause.<sup>272</sup> Allegedly, Strittmater objected to men’s essential role in procreation. Ida Whitson, a former tenant, reported that Strittmater had once told her, “[Y]ou know, you don’t have to live with a man to have any children.”<sup>273</sup> The appellate court seized on this statement and cited as evidence of Strittmater’s insanity that she “looked forward to the scientific day when women could bear children without the aid of men.”<sup>274</sup> In a 1937 diary entry introduced at trial, Strittmater had written, “Male lust is a vicious disease, *literally* a cancer in the side of the race.”<sup>275</sup> In 1944, when Strittmater developed a can-

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265. For a record of Beech’s husband’s profession, see BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, SIXTEENTH CENSUS OF THE UNITED STATES: 1940, JERSEY CITY, HUDSON, NEW JERSEY, S.D. No. 14, E.D. No. 24-286, Sheet No. 6B (1940).

266. Testimony of Jane M. Beech, in *STRITTMATER RECORD*, *supra* note 11, at 193.

267. *Id.* at 180.

268. *See id.* at 181-85.

269. *See, e.g., id.* at 186, 189, 193.

270. *See id.* at 194-200.

271. On the national fixation on motherhood in the postwar period, see REBECCA JO PLANT, *MOM: THE TRANSFORMATION OF MOTHERHOOD IN MODERN AMERICA* (2010).

272. *See* Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 93.

273. Testimony of Ida M. Whitson, in *STRITTMATER RECORD*, *supra* note 11, at 66.

274. Prerogative Court Memorandum, in *STRITTMATER RECORD*, *supra* note 11, at 23.

275. Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 8 (emphasis added) (referring to diary entry, Exhibit C-50).

cerous stomach tumor, Dr. Smalley (who well knew Strittmater was too old to conceive a child) described it as the size of a “seven-and-a-half-month-old fetus.”<sup>276</sup> Within months, Strittmater died from this “vicious disease” in her side.<sup>277</sup> While Strittmater’s musings about motherhood without men contributed to the invalidation of her will, Smalley’s testimony suggested that her metaphoric motherhood was literally lethal.



Figure 1: John F. Hinternhoff, *Champion Man-Hater of All Time*, ST. LOUIS GLOBE DEM., Oct. 23, 1946, at 11.

### CONCLUSION

While Strittmater’s story has since been lost to law students and historians, contemporary journalists did take note. The case of the “Champion Man-Hater of All Time” made headlines across the coun-

276. Testimony of Dr. Sara D. Smalley, in *STRITTMATER RECORD*, *supra* note 11, at 92; *id.* at 93 (“I knew she was an old woman and I knew that she wasn’t pregnant. It was so obvious.”).

277. Response Brief, in *STRITTMATER RECORD*, *supra* note 11, at 17 (referring to diary entry, Exhibit C-50); Advisory Master’s Conclusions, in *STRITTMATER RECORD*, *supra* note 11, at 6.

try, and even in Canada.<sup>278</sup> Local New Jersey dailies hailed the appellate decision.<sup>279</sup> “Miss Louisa Strittmater’s last earthly wish, to show her utter contempt for men, was rejected today,” a Passaic paper gloated.<sup>280</sup> In farther-flung cities, some newspapers published lengthy reports, replete with sensational tidbits from the court transcript and mocking cartoons.<sup>281</sup> The *St. Louis Globe Democrat* dedicated the front page of its women’s section to the case, jesting: “Nothing less than Death could have forced Miss Strittmater to leave the ramparts she had so long manned. (Maybe that isn’t the word, but you get the meaning.)”<sup>282</sup> The attendant cartoon (above) cast Strittmater as a belligerent old woman defending her bunker against a male intruder. With an arched brow, high-coiffed hair, and high-backed chair, Strittmater typified the Victorian spinster.<sup>283</sup> A quarter-century after the Nineteenth Amendment’s passage, men could celebrate that frigid first-wave feminists like Strittmater were at last a dying breed. Many younger women also lampooned the older generation for “manning” ramparts that they had opted to abandon.<sup>284</sup> At the close of World War II, as the nation was soon to head “homeward bound,” Strittmater declined to give up her fight.<sup>285</sup>

Strittmater’s story also shows us that social movement mobilization may hinge on an element of delusion. Advocates must convince supporters to suspend rational, self-interested calculations in service of loftier—and maybe less likely—aims. A totally temperate personality rarely lends itself to political radicalism; a dash of eccentricity is often integral

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278. For Canadian coverage, see *Hate*, STAR-PHOENIX (Saskatoon, Sask., Can.), Aug. 30, 1946, at 1, and *Seek to Set Aside Man-Hater’s Will*, EDMONTON J. (Edmonton, Alta., Can.), Aug. 30, 1946, at 11.

279. See, e.g., *Court Overrules Spinster’s Hate for Mere Males*, *supra* note 71, at 13.

280. *Man-Hater Adjudged Paranoiac: Male Kin Share in Her Estate*, HERALD-NEWS (Passaic, N.J.), Aug. 30, 1946, at 3.

281. An article titled *Court Sets Aside Will Typifying Spinster’s Hatred of Men* was published in multiple papers. See *Court Sets Aside Will Typifying Spinster’s Hatred of Men*, OUR S. HOME (Livingston, Ala.), Sept. 26, 1946, at 2; *Court Sets Aside Will Typifying Spinster’s Hatred of Men*, HOPE PIONEER (Hope, N.D.), Sept. 26, 1946, at 7; *Court Sets Aside Will Typifying Spinster’s Hatred of Men*, HARDWICK GAZETTE (Hardwick, Vt.), Sept. 26, 1946, at 7; *Court Sets Aside Will Typifying Spinster’s Hatred of Men*, BEAVER PRESS (Beaver, Utah), Sept. 27, 1946, at 6.

282. Hinternhoff, *supra* note 79.

283. For more on the Victorian spinster or “old maid” archetype, see Anna Lepine, *The Old Maid in the Garret: Representations of the Spinster in Victorian Literature* (2007) (unpublished Ph.D. dissertation, University of Ottawa) (on file with the *Michigan Journal of Gender & Law*).

284. See Rupp, *supra* note 114, at 739-40 (explaining that the NWP of the 1940s and 1950s “only halfheartedly tried” to recruit younger women and ended up alienating many).

285. See MAY, *supra* note 135, 1-18.

to seeing beyond the status quo. Yet, this essential ingredient also invites scrutiny, and allegations of delusion can subvert and dismantle a movement. Perhaps Strittmater knew this when she wrote to Du Bois back in 1932. She contended, “[E]volution . . . must be bought and paid for, like everything else; and the coin for its purchase, in the absence of power, is conciliation.”<sup>286</sup> She had been saving up, hoarding gold coins in her basement, ready to pay a price for progress. But, lacking power or the willingness to compromise, Strittmater could not overcome the stigma of delusion.

More than just a problematic precedent, *Strittmater* exposes a world in which a “Champion Man-Hater” was not only a humorous headline but also a credible threat to the postwar order, which courts sought to help erect. Even if the 1940s did not represent a peak period of feminist mobilization, opponents were on the offensive, policing the bounds of women’s progress and defining the markers of insanity. The nation emerged from World War II eager to reestablish domestic tranquility, but ERA advocates refused to abandon their own battle. This unwelcome war between women’s insistence on equality and the legal system’s resistance to it simmered on low boil. The “man-haters” did not surrender, but they did not walk away champions either.♣

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286. Letter from L.F. Strittmater to W.E.B. Du Bois 2-3 (July 28, 1932) (on file with the Special Collections & University Archives, University of Massachusetts Amherst Library), <https://credo.library.umass.edu/view/full/mums312-b064-i051>.