

# **“You can’t forge a womb”: The 1929 Birth Control Clinic Raid and Changing Notions of Masculinity in Early 20<sup>th</sup> Century America**

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## **Abstract:**

The case of a 1929 police raid of a New York birth control clinic offers a revealing lens into the connection between early 20th-century Americans’ stances on contraception and their underlying assumptions about masculinity. *People v. Sideri* suggests that those who opposed birth control adhered to an antiquated, Victorian construction of savage masculinity, while those who supported contraception held more modern assumptions about gender construction. This story thus helps delineate the slow evolution in 20<sup>th</sup>-century attitudes about the nature of masculinity. To make sense of these changing conceptions, I first describe how perceptions of masculinity developed in the years leading up to the trial. I then present the story of the raid, and the trial that followed, in light of such perceptions. By doing so, I hope to show how the counsel for the doctors and nurses on trial built a non-threatening case for the use of contraception – one based on public health – that reflected real changes in the public understanding of gender roles.

**Keywords:** Contraception, Victorian, immigration, savage masculinity, law, sexuality, obscenity

## “Sahte rahim düzenleyemezsiniz”: 1929 Doğum Kontrol Kliniği Baskını ve Erken 20. Yüzyıl Amerika’sında Erkeklik Nosyonundaki Değişiklikler

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### Özet:

New York doğum kontrol kliniğinin 1929 polis baskını olayı, erken 20. yüzyıl Amerika’sında doğum kontrolü ile bunun altında yatan erkeklikle ilgili varsayımlar arasında bir bağlantı sunar. *People v. Sideriolarak* anılan bu olay eskiye sağdık doğum kontrolü karşıtlarını ve yabani erkekliğin Viktoryen inşasını ortaya koyarken, gebelikten korunmayı destekleyenleri ise toplumsal cinsiyet inşası ile ilgili daha modern varsayımlarla ilişkilendirir. Bu hikâye, 20. yüzyılda erkekliğin doğası hakkındaki tutumların yavaş değişimini tasvir etmemizi sağlar. Düşüncelerdeki bu değişimi anlamlandırmak için öncelikle yıllar içinde gelişen ve duruşmaya zemin hazırlayan erkeklik algılarından bahsedeceğim. Daha sonra yapılan baskının hikâyesini ve onu takip eden duruşma sürecini bu algılarla birlikte ele alacağım. Böylece duruşmadaki doktorların ve hemşirelerin dava vekillerinin, doğum kontrolü için cinsiyet rollerinin kamusal algısındaki gerçek değişikliklerini yansıtan tehditkâr olmayan bir durumu -biri halk sağlığı odaklı- nasıl yarattıklarını göstermeyi umuyorum.

**Anahtar Kelimeler:** Doğum Kontrolü, Viktoryen, Yabani Erkeklik, Hukuk, Cinsellik, Müstehcenlik.

We all want to congratulate you upon the way you handled the case of Mrs. Sanger's Clinical Research Bureau. It certainly was masterly, and you made District Attorney Hogan look like an ape. The poor little creature stuttered around so in his cross examination and showed such a woeful lack of knowledge of anatomy and the sex functions that one might almost have pitied him, unless one realized, as a taxpayer, that he was being paid by all of us.

—Penelope Huse to Morris Ernst, 1929.<sup>1</sup>

On the morning of April 15, 1929, eight uniformed New York City police officers raided the Birth Control Clinical Research Bureau in Manhattan. The police arrested five of the clinic's employees for violating the New York State Obscenity Act, and seized hundreds of items, including confidential medical records (Mrs. Sanger's Birth Control 1929).<sup>2</sup> The case, which became known as *People v. Sideri*, provoked a large public outcry, and hundreds of people appeared at the courthouse in hopes of witnessing the trial.<sup>3</sup> The raid, the subsequent public outrage, and the raucous *Sideri* trial demonstrate how expressions of masculinity were being transformed during the first decades of the twentieth century. The above letter from Penelope Huse, the Executive Secretary for the American Birth Control League, to Morris Ernst, the ACLU attorney who defended those arrested in the raid, highlights this difference. A man like Ernst, who was "masterful" in his "knowledge of anatomy and the sex functions," represented modern masculinity. Those who were ignorant of such matters, Huse suggests, were little better than apes.

The *Sideri* case offers a fascinating glimpse into the connection between early 20th-century Americans' stances on contraception and their underlying assumptions about masculinity. *Sideri* suggests that

birth control opponents adhered to an antiquated, Victorian construction of savage masculinity, while those supporting contraception held more modern assumptions about gender. This case helps delineate the slow evolution in 20<sup>th</sup>-century attitudes about the nature of masculinity. Specifically, *Sideri* illustrates the growing, if grudging, public acceptance of the idea that sexuality and sexual agency was not solely relegated to men. To make sense of these changing conceptions, I first describe how perceptions of masculinity developed in the years leading up to the trial. I then present the story of the raid, and the trial that followed, in light of such perceptions. By doing so, I hope to show how the defense was built a non-threatening case for the use of contraception – one based on public health – that reflected real changes in the public understanding of prescribed gender roles, wherein men could be envisioned as ceding some of their real and presumed sexual authority, and women might be granted greater sexual agency.

### **The narrative of savage masculinity and the call for male self-control**

Only a few decades before Huse ridiculed the simian-like work of the District Attorney, the narrative of men-as-savages (if not apes) still held popular currency. E. Anthony Rotundo has suggested that the 19<sup>th</sup> century American home was conceived as a feminine space, where women would domesticate the wildness of the males in the family. As Rotundo concisely puts it, the nineteenth-century view was that the masculine sphere “depleted” virtue while the feminine sphere “renewed” it (Rotundo 1993, p. 23). In this construction, and in absence of women’s supposed domesticating influence, men could go wild. Jacqueline Moore demonstrates how one American icon, the cowboy, embodied masculine American savagery in the late nineteenth century, as he employed violence to regulate the behavior of women as well as minorities. Cowboy culture “involved conspicuous lack of control over passions” (Moore, p. 32). “Respectable” women were not a presence

at cowboy saloons and taverns (p. 40), presumably because they would be both assumed to be prostitutes and at risk of sexual assault from the untamed cowboys. The shift away from such attitudes may have its origins in the 1890s, a decade that Harry Brod describes as “widely perceived as encompassing an acute ‘crisis of masculinity’ (Brod 1987, p. 47).” Brod and others have suggested that during the late nineteenth century, industrialization, urbanization and the influx of immigrants began to transform how men and women perceived themselves. Fewer men were their own bosses, and this decrease in autonomy influenced the way that Americans would perceive gender in the coming era. As Michael Kimmel explains,

Rapid industrialization, technological transformation, capital concentration, urbanization, and immigration—all of these created a new sense of an oppressively crowded, depersonalized, and often emasculated life. Manhood had meant autonomy and self-control, but now fewer and fewer American men owned their own shops, controlled their own labor, owned their own farms (Kimmel 1996, p. 83).<sup>4</sup>

Assumptions that masculinity was in crisis may have stemmed, in part, from the idea that men were inherently wild beings. Psychologist G. Stanley Hall, who founded the American Psychological Association in 1892 and published the hugely influential two-volume textbook, *Adolescence*, was pivotal in popularizing this perspective (Nye 2005, p. 1945-46). Hall argued that boys were, in fact, essentially savage and needed to be civilized. As Kevin White suggests, the Victorian conception of masculinity assumed sex to be an unfortunate necessity for procreation, since male sexuality was a danger to the family and society (White 1993, p. 3-4). City life, especially, was full of temptation, and so self-control was crucial in forging solid morals. Fears of what Barbara Dafoe Whitehead calls “unruly sexual energies” were predicated on the assumption that masculinity was wild (Whitehead 2000, p. 21). As Allan Brandt has shown, this assumption carried into adulthood, and even informed the way in which early twentieth-century doctors educated and treated both their male and female adult patients. “Just as education

for men followed the Victorian assumption that men were sexually aggressive,” Brandt writes, “instruction for women focused on the notion of the passionless, dutiful woman” (Brandt 1997, p. 28).

According to this narrative, the key to overcoming this savagery was an education in self-control. For instance, a 1920s educational government pamphlet, *Healthy Manhood*, suggested that self-control was crucial for young men to become strong, powerful adults:

Every young man should understand that from a biological standpoint, from the age of 12 to 21 the body of the boy is being made into the man, and that nature has no large amount of vital energy that may be safely wasted in excesses of any kind during the adolescent period, for all the forces of the body are needed for rebuilding. Sexual excesses particularly during that period are certain to be followed by a dwarfing or stunting effect on the mental and physical development of the man. Self-control is necessary (NYS Dept. of Health, undated; p. 13-14).

Similarly, the pamphlet *Manpower*, issued in the 1920s by the United States Public Health Service, promotes this narrative. The cover of *Manpower* has a drawing of a burly, rugged white man who wears outdoorsy hiking clothes; he is pursuing just the kind of healthy physical outdoor activity that the pamphlet claims is necessary to maintain one’s sexual self-control. The man seems to have just conquered a mountain, and as he rolls up the sleeve of his right arm, his left arm in a fist, he seems to be seeking his next conquest (which, readers were led to believe, was assuredly not of a sexual nature). According to *Manpower*, “If a man uses his reason, stops and thinks, he knows that he must either indulge his sex appetite or control it. For an unmarried man indulgence means self-abuse or prostitution, both of which endanger his health and rob him of his self-respect” (U.S. Public Health Service, undated; p. 13). Masturbation is thus likened to prostitution, and “prostitution,” which the pamphlet implies is intercourse with any woman other than one’s wife, inevitably leads to venereal disease (p. 5-11).<sup>5</sup> In addition, the

government's pamphlet suggested that men who do not control their sexual urges before marriage threaten their own manpower. "The man needs the full power of his will to keep his sex desires from leading him into practices that weaken and destroy himself and others," the government warned (p.16).

Contraception challenged these Victorian assumptions about masculinity. Men who mastered self-control in line with the *Manpower* model would direct their energies towards non-sexual activities, and thus would have no need for contraception. If men were inherently savage, had no autonomy, and were increasingly engaging women in the public sphere, then birth control might very well entice men into sinful practices – and could even put mankind at risk. Following an era of increasing waves of immigration, these concerns took on a heightened importance. After *Harper's* published a series of articles defending birth control in 1915, one reader, Dr. R.C. Brannon, wrote a letter warning that birth control "is shortening the lives of the human race, making weaklings in mind and body the children of strong men, and wrecking the nerves and bodies of women who ought to be the proud and happy mothers of a dozen healthy children" (cited in *Battle Over Birth Control 1915*, p. 339)<sup>6</sup> Exactly how birth control made men's children into "weaklings" isn't clear from the physician's comments, but anti-birth control activists frequently presented the Darwinian argument that birth control would dilute the white race and undermine white power, and the doctor's remarks fit this pattern. In any event, it is clear that Brannon saw a definite correlation between contraception and weakness. His implication is that the very act of female control of sexuality could undermine the strength of the family. As Brannon's letter to *Harper's* suggests, racist and nativist fears were often intrinsically linked to perceived threats to masculinity. Those like Dr. Brannon who opposed birth control during this era often invoked fears of a watered-down race or even race suicide.<sup>7</sup>

Coming almost 15 years after Brannon's warning against contraception, the *Sideri* case revealed just how quickly popular assumptions about masculinity were changing. Men, after all, now spent

more time outside the home and were increasingly interacting with women who were not their wives (Rotundo 1987, p. 61). Women who had entered the labor force did not necessarily envision or value self-control in the way that Victorian mores prescribed—indeed, some were immigrants whose ideas about sexual morality differed greatly from the lingering moral influence of the Victorian era. Anxieties over sexual behavior did exist, to be sure. Such anxieties, as Jeffrey Moran argues, were “fueled by middle-class fear of a changing moral and social order.... Uneasiness over the new immigrants was thus bound up with concern for sexual morality, sometimes explicitly” (Moran 2000, p. 29).

But for men like Morris Ernst, who embraced birth control as a public health benefit, concerns about sexual morality were unfounded, based as they were on the assumption that men were inherently savage. Ernst, himself a son of immigrants, sympathized with the outsiders who provoked such anxieties. As he later recalled, “I was told that I was Jewish, and for that reason, inferior” (Ernst 1968, p. 127). In the media coverage Ernst so aggressively sought, journalists invariably mentioned his smallness – though he stood at 5’8” - and alluded to his ethnicity for years to come. *Time* magazine, for instance, drew attention to Ernst’s size, describing him as “swarthy, small and solidly built” (Compact Disgust 1931, p. 55)— “swarthy” being a code word for “non-white”—or as “lively, liberal little Manhattan Lawyer Morris Ernst” (Guild v. AP 1935, p. 57). In 1934, when artist Peggy Bacon included Ernst in *Off With Their Heads!*, her aptly-titled book of portraits, she included a tiny drawing of Ernst as a jack-in-the-box—not an image one would associate with manliness (Bacon). *Life* described Ernst as a “smallish, darkish man” (Rodell 1944, p. 97). Even in a favorable 1938 *Scribner’s* portrait of Ernst, the prominent historian Marquis James described Ernst as a small man (James, p. 57). For men like Ernst who did not fit traditional conceptions of manliness, the debate over birth control provided an opportunity to posit a new ideal of masculinity. After all, arguments against contraception seemed to assume that men were barely-contained savages whose self-control would be overcome by the temptation of consequence-free sexual intercourse that birth control granted. For

Ernst, a less-threatening construction of masculinity – one, that is, which was based on logic, reasoning, and scientific methodology – proved essential to his arguments in favor of birth control. Not coincidentally, such a modern conception of masculinity, which championed civility, education, and wit, also benefited Ernst himself. Those were, after all, qualities that Ernst displayed publically and which enabled him to overcome his own sense of inferiority as a “small” son of Jewish immigrants.

### **Savage masculinity in play: police raid the clinic**

**M**argaret Sanger, the famous birth control advocate and the founder of Planned Parenthood, opened the Birth Control Clinical Research Bureau in 1923 and served as its director. Court documents and initial media reports suggested that the 1929 raid of Sanger’s clinic was facilitated by a woman, identified only as Mrs. Tierney (Birth Control Backers Ready 1929). According to the trial documents, on March 22, 1929, Tierney went to the Birth Control Clinical Research Bureau in Manhattan, with a poignant story that revolved around her alcoholic husband, his low wages as a truck driver and their three children, age one-, three-, and five-years old. Tierney first talked with a nurse, identified in court records as “Jane Doe.” Tierney told Nurse Doe that after having birthed those three children in five years, she worried about the economic consequences of having more (Birth Control and the Law 1929). Her husband, she said, only earned \$40 per week (Court Frees 5 Taken 1929). After the nurse further questioned Tierney about her menstrual cycle and other medical history, she told Tierney to make an appointment for a consultation (Mrs. Sanger’s 1929)

Tierney returned to the clinic on April 3 and, according to the *Herald Tribune*, received contraceptive advice, a tube of medicine, and a “device,” for which she paid five dollars. A nurse told Tierney that the device was a rubber contraceptive which she was to “draw over your womb before sexual intercourse with your husband.” The nurse

explained that the tube of medicine was a jelly “which will kill every living germ that comes from your husband and prevent the pregnancy.” After Tierney received the goods and paid her fee, the nurse instructed her, “Now go into the toilet and take your bloomers off and wait in the adjoining room until the doctor is through with other patients” (*People v. Stone*, Affidavit, n.p.). Tierney returned again by appointment on April 10, at which point the clinic’s director, Dr. Hannah Stone, asked her how she was doing with the contraceptive. “Not very well,” Tierney reportedly replied; she had experienced some difficulty in inserting the device. The doctor examined her, gave her further instructions, and told Tierney to come back to the clinic in six months.

Mrs. Tierney, however, would never again return to the Birth Control Clinical Research Bureau. Tierney’s real name was Anna McNamara, and she was an undercover police officer. On the morning of April 15, 1929, based on McNamara’s investigation, eight uniformed police officers raided the clinic and arrested five of its employees (Mrs. Sanger’s; Garrow 1994, p. 23-24). Assistant District Attorney John Hogan charged Stone, as the clinic’s medical director; Dr. Elizabeth Pissort; and three nurses, Antoinette Field, Sigrid Brestwell, and Marcella Sideri with violating the provisions of Section 1142 New York State Penal Law. All five staff members were accused of the “unlawful distribution of any instrument, article, or any recipe, drug or medicine for the prevention of conceptions” (*People v. Stone*, Affidavit).

In addition to arresting the doctors and nurses, police seized hundreds of items and interrupted the examination of patients, some who were stages of undress. The list of seized objects, according to defense attorneys, included 249 pessaries, then used as a kind of diaphragm, and seven tubes of contraceptive jelly. But police also took speculums and “metal instruments” used for medical examination—items, in other words, that could be found in numerous doctors’ offices. By confiscating legal, widely-used medical equipment, which was indisputably used to examine patients, the police were challenging the authority of doctors everywhere. Even more importantly for the defense’s case, the police seized 150 index cards, each of which

contained private medical information about patients. The idea that the police could indiscriminately seize and view private medical records troubled doctors, nurses, and patients alike (Schur 1929). But it may ultimately have been the image of male policemen trying to barge into examination rooms containing naked women—there were about 30 patients in the clinic at the time—that provoked the greatest outrage and excitement in the community and most damaged the prosecution’s case (Mrs. Sanger’s 1929). One nurse told a reporter, “We had to work to keep (the police) out of the room in which a patient was undergoing an examination, but they finally consented to wait until she dressed before they entered” (Mrs. Sanger’s 1929). Regardless of their position on birth control, many readers must have placed themselves in the position of that undressed patient, or sympathized with her plight in the face of such savage masculinity.

### Masculinity on trial

At the first day of the trial, some 500 women attempted to get one of the 86 seats in the tiny Jefferson Market courtroom (Kuhn 1929). The *Evening World* described the courtroom as “jammed”: “Every seat in Jefferson Market Court was occupied this morning long before the hearing....Standing room was not to be had when the hearing started, six rows of men and women having choked the space between the back of the rear row of seats and the wall” (Court is Jammed 1929). By all accounts, women constituted the majority of those who tried to gain a seat at the spectacle. Some newspapers suggested that the women seeking a spot in the audience were well-positioned economically, if not socially. “Most of the crowd,” reported the *Evening Sun*, “which so filled the room that many were standing around the wall, was made up of women. It was a more distinguished group than attends the average magistrate’s Court hearing” (Birth Control Hearing Ends 1929). The *New York Graphic*, while describing a more heterogeneous crowd, pointedly emphasized that professionals were on the scene: “Scientists, professors,

students of medicine, doctors, laymen and women from all walks of life jammed the court to overflowing numbers crowding on the steps to devour each morsel of testimony as it was passed back in whispers” (Women Jam 1929). The clear message was that most spectators had links to the upper stratum of society and that, despite the eagerness for “each morsel of testimony,” the audience was not present simply for titillation.

Such an audience was quite amenable to the scientific approach Ernst used to defend his client. Science, after all, seemed like an objective and fair measure of reality, and data and statistics seemed to cut through superficial differences. Like Alfred Kinsey, the entomologist-turned-sexologist, Ernst believed that science held the key to demystifying sexuality. Kinsey, after studying thousands of gall wasps and identifying variations in every one, applied this idea of variation to human sexuality (Capshew, Adamson, Buchanan, Murray & Wake 2003). While Kinsey’s findings about human sexuality were published some 20 years after Ernst’s use of scientific evidence during the *Sideri* trial, both men, to some extent, were employing science to liberate sexuality. When Kinsey published his findings about male sexual behavior in 1948, Ernst co-wrote a gushing book extolling the virtues of Kinsey’s research. “The Kinsey Report has done for sex what Columbus did for geography,” exclaimed Ernst and co-author David Loth. “It makes a successful scientific voyage to explore an unknown world which had been open only to speculation and suspicion-the sex life of human beings” (Ernst & Loth 1948, p. 11 ).<sup>8</sup> Though Ernst fully credits Kinsey’s work, the fact that he used science in the courtroom perhaps helped him envision himself as a member of such a historic voyage, if not as Columbus himself. Ernst’s book, entitled *American Sexual Behavior and the Kinsey Report*, did more than report on the highlights of Kinsey’s research. Ernst used the book to discount and discard what they considered antiquated notions about sexual morality. For instance, in discussing Kinsey’s data on extramarital affairs, Ernst and Loth cite Kinsey’s findings that at least one-third of all married men commit adultery. After affirming that marriage is “our avowed ideal,” the authors apply these data in a radical way:

There are also those occasions when extra-marital relations actually save a marriage. This is not supposed according to our customs to be admitted, but it happens. It may quench the man's curiosity or teach him that his wife is a better companion than he thought, or bring him wisdom. Certainly not every adulterous act ends the marriage (Ernst 1948, p. 87).

With evident glee, the authors dismissed practically every Victorian assumption about sexuality with scientific data on homosexuality, the sexual behaviors of single men, divorce, and so forth.

Kinsey's work thus legitimized the longstanding assumptions that Ernst was testing out in the courtroom. If Kinsey's findings normalized certain behaviors, to some extent they also normalized religious and ethnic backgrounds and physical attributes since, presumably, science knew no prejudice. By 1929, Ernst was already relying on the scientific method to make his arguments, both in the courtroom and in his many books. His clients benefited from this strategy, of course – Ernst won almost every case he ever argued – but by endorsing this vision of masculinity as based on rationality, rather than on savagery, Ernst himself earned respectability, popularity, and prestige as well.

Indirectly, then, scientific data could help a once-insecure, cerebral Jewish man like Ernst perceive himself as just as masculine as the nineteenth-century model of the athletic, Christian man. This intimate understanding of sex, together with Ernst's drive to be seen and heard, made Morris Ernst a new kind of man in the twentieth century, even if his contemporaries did not always envision him in masculine terms. Before completely selling the court on science, however, Ernst needed public support and sympathy for the accused, and this he easily secured. Thanks to newspaper reports and editorials, and due in part to Ernst's knack for generating publicity and shaping the news, the public was extremely interested in the story. *Sideri* had all the ingredients of a spicy story: the testimony of a female police officer who had gone

undercover and disrobed; the tales of undressed women; and the gritty details of the goings-on at a birth control clinic where, however clinically, women discussed sex. Certainly the newspapers understood that angle; the *Daily News* reported that McNamara, whom the reporter identified as a “woman sleuth,” herself blushed when questioned about her conversations and experiences at the clinic, and highlighted the blush in its headline to the story (Kuhn 1929).

After the first day of the trial, most newspapers concluded that Ernst’s team had already made a better case for birth control. The *New York World’s* April 20 headline, for instance, was “Birth Controllers Win First Skirmish.” The *World* reported Ernst’s revelation that the birth clinic staff had provided “Mrs. Tierney” with critical advice. At trial, Ernst pointed out that McNamara had told the staff that she had just weaned a child. He then cited statistics showing that infant mortality increased when only one year elapsed between births. There were 146 deaths per 1,000 births when only one year elapsed between births, Ernst said; that figure dropped to 96 deaths per 1,000 when 2 years elapsed between births. The clinical staff had thus given the fictional Tierney information that would have greatly reduced the chances that her next baby would die. This type of matter-of-fact scientific data trumped the prosecution’s claim that the clinic’s activities were obscene. Judge Abraham Rosenbluth would later highlight this same evidence in his ruling. But Ernst also exploited the savage masculinity of the police by asking McNamara to discuss, in graphic terms, her physical examination in front of the mixed courtroom audience of some 200 women and men. “In one part of her testimony,” the defendants’ brief states, “the complainant admitted....that the doctor put her hand inside of the patient’s vagina....” (*People v. Sideri et. al*, Brief of Defendants, p. 6) McNamara’s response to this line of questioning resulted in the famous “blush” reported by the *Daily News* (Kuhn 1929). Her embarrassment at Ernst’s frank discussion of her physical examination helped the defense make the case that authorities had violated patient confidentiality: if an undercover officer felt uncomfortable discussing the results of her investigation, how might the clinic patients have felt after the raid?

The press actively helped Ernst in his endeavor. Newspapers consistently published sympathetic stories about the plight of the clinic's staff and patients. In his column for the *New York Evening Telegram*, Heywood Broun, who was also Ernst's longtime friend and client, personalized the fight and belittled the prosecution: "Young Mr. Hogan, an Assistant District Attorney, is in charge of the case against Doctors Stone and Pissort," wrote Broun. "May I in all charity ask just what on earth young Mr. Hogan knows about the medical issues involved?" (Broun 1929). Broun's acidic comments are especially revealing for two reasons. First, Broun suggests that Hogan is young, innocent and ignorant of medical issues—and, by extension, sexual ones. The condescending tone places Hogan in a camp of less masculine men; someone like Hogan, as opposed to Broun himself, could not be a real man because he was sexually naive. To punctuate this point, Broun then attacked Police Commissioner Grover Whalen, and imagined a future conversation in which "a great and gallant woman" like Margaret Sanger would be remembered while Whalen would be all but forgotten: "Don't you remember that little fellow that was Police Commissioner for a little while? Oh, you know, that fellow that wore a flower in his buttonhole and didn't solve the Rothstein case."<sup>9</sup> Broun dismisses Whalen as a "little fellow," an obvious slight which readers could interpret in multiple ways. In addition, Broun suggests that Whalen is less than manly by using Whalen's attire, ineffectiveness and apparent lack of intelligence as evidence. Though Broun here does not mention Ernst by name, his column sets up a clear contrast between the masculine sexual incompetence of the prosecution and the manly sexual intelligence of the defense.

On the second day of the trial, over 200 people squeezed into the small courtroom (Nichols 1929). The prosecution tried to mitigate the gains the defense had made by drawing from the nineteenth-century sexual strategy of self-control. Yes, the prosecution conceded, there are "some cases where further conception may mean death or create invalidism for the mother." But birth control, the prosecution continued, is not a solution; "there is but one answer to this question," namely,

abstinence (*People v. Sideri*, People's Memorandum, n.p). A contemporary audience could find this approach to be reasonable. After all, it was absolutely true that refraining from intercourse was a surefire way of avoiding pregnancy. The prosecution's next comments, however, reveal how out-of-step the State was with contemporary attitudes about gender roles.

Marital continence ...is the only ethical course for a man when the life of the woman whom he has promised to love and cherish, the mother of his child, is placed in jeopardy. Of course, this is not easy, but to say that is impossible is to deny the heroic in every-day life. Maternity demands heroism, the daily struggle to support wife and children demands heroism. Honesty in business demands heroism....What is needed is self-control, not birth control (*People v. Sideri*, People's Memorandum).

The prosecution focuses on the man as responsible; continence is his "ethical course," and not that of the couple. The long-held assumption revealed in the People's memorandum that sexuality was confined to men had been already challenged throughout the 1920s, especially in New York City, where women and men spoke openly about sex in Village cafes (Stansell 2001). The very idea of self-control as a social mechanism promoted during the Victorian era (which, again, attributed the sexual passion that necessitated such control to men) was also being challenged as new research emerged suggesting that masturbation was not harmful. If many doctors no longer considered masturbation to be dangerous, then perhaps sexual self-control itself was no longer necessary. Modern science had also produced birth control; many contemporaries must have wondered why birth control couldn't replace self-control. Birth control could presumably give women more of a say in the sexual decisions made in the home. In short, the assumptions inherent in the prosecution's brief—that it was the man who ultimately decided whether to impregnate his wife; that the resulting offspring was "his" child; that if the couple abstained from sex it would be the man who was heroic (because, presumably, the wife lacked sexual desire); and even

that the man demonstrated heroism in supporting his family and being honest at work (couldn't wives also be heroic?)— were in tension with the changing realities of 20<sup>th</sup> century life.

Such attitudes clearly touched a nerve in many court spectators and contributed to a charged courtroom atmosphere. As a result, those who had mobbed the courthouse to see or take part in court theater were not disappointed (Ross 1929). Given the fact that Ernst had openly discussed the vagina of a policewoman during prior testimony, one might have expected some nervous giggling or embarrassment. In fact, as one reporter described it, the proceedings devolved into “turmoil.” The solemn atmosphere of the courtroom began to dissipate during the testimony of Dr. Foster Kennedy. Testifying that “too frequent pregnancies imperiled the mother’s constitution” which endangered the unborn, Kennedy affirmed that patients who thus had given birth within a year should be given contraceptive advice (Ernst & Lindey 1940, p. 156). The judge then suggested that some patients might try to deceive doctors to get such advice:

“But what if the patient is lying? Wouldn’t it be better practice to check the official birth records to find out whether the patient is telling the truth?”

“Judge,” replied Dr. Kennedy, “we doctors examine a patient before we prescribe. You can forge a birth certificate but you can’t forge a womb” (156).<sup>10</sup>

The spectators “roared” with laughter, Ernst recalled, and the judge threatened to clear the courtroom if there were further outbursts. Ernst himself provoked the next outburst by gently mocking the judge. The result was, as one newspaper put it, that the trial “waxed uproarious” (Nichols 1929). The outburst and subsequent chaos occurred during the testimony of Dr. Lewis I. Harris, the former Health Commissioner of New York City, who proclaimed the clinic “beyond reproach” and gave his stamp of approval to the doctors’ examination and treatment of McNamara, which he deemed “unusually thorough.” “But isn’t it most important to find out whether the patient is married or not?” Judge

Rosenbluth interrupted. The audience laughed, nearly drowning out Harris's response that doctors were obliged to believe their patients. Then Ernst struck: "Do you know of any situation where a doctor sends out a detective to find out whether his patients are married?" (Ross 1929). By illustrating the absurdity of the marriage requirement and, by extension, the silliness of the judge's question, Ernst enraged Rosenbluth. "Unless there is absolute silence I shall clear the courtroom," said Rosenbluth, whom the *Herald Tribune* described as "annoyed." "On second thought, I shall clear it anyway. Out you go—all of you!" (Ross 1929).<sup>11</sup> As court attendants "herded" spectators out of the courtroom, Kitty Marion, a woman the *Herald Tribune* identified as a veteran birth control advocate, shouted: "Sweet land of liberty—land of dumb, driven cattle!" (Ross 1929). Immediately afterwards, a coalition of "fur and gardenia adorned ladies" drafted a petition and presented it to Chief Magistrate William McAdoo, who reversed Rosenbluth and allowed the spectators back into the courtroom. (Birth Curb Backers 1929). The audience, thus emboldened, did not remain quiet once they returned to their places. On his cross-examination of Pissort, the assistant district attorney's finger-wagging and line of questioning resulted in more laughter. After it emerged that McNamara actually had two children, and that her youngest child was seven years old, Hogan asked Pissort, "Couldn't you tell that this woman had not had a baby a year ago—that, in fact, her last child was seven years old?" all the while, in dramatic fashion, "leaning over the rail and shaking a finger in Dr. Pissort's face." She responded, "How could I?" resulting in another bout of laughter (Birth Curb Backers 1929). The humor here, at least, was at the expense of the prosecutor, not the judge, and the trial continued. Hogan's question suggested that, unlike Ernst, he was not well-versed in reproductive health. This interpretation did not go unnoticed by the press. Like Broun, the *New York World's* Dudley Nichols teased Hogan, describing him as "a pleasant young man who had done a young man's best" (Nichols 1929). The implication was that Hogan was, at best, unsophisticated in matters relating to sexuality.

Despite his earlier outburst, or perhaps because of his embarrassment at being reversed by his boss, on May 14 Judge Rosenbluth ruled in favor of the defendants (Court frees 5 taken 1929). The judge framed his decision around the clinic's diagnosis. The prosecution, he said, had the burden of proof to demonstrate that the diagnosis was made in bad faith. Yet, in response to Ernst's statistics showing how the spacing of births could affect infant mortality, the prosecution failed to present evidence that challenged the clinic's diagnosis. Basing his decision on the precedent of *People v. Sanger*, the judge ruled that "(t)he law is plain that if the doctor in good faith believes that the patient is a married woman, and that her health requires prevention of conception, it is no crime to so advise and instruct therein" (Decision of *People v. Sideri*)

## Conclusion

While the idea of birth control could be threatening to those who clung to traditional nineteenth-century constructions of masculinity, by stressing marriage and health in his ruling, the judge managed to uphold certain components of those constructions. First, since the ruling only applied to married women, single women would not be able to obtain contraceptives and, accordingly, their sexuality would presumably be kept under control. The great fear of vice-societies and others who rallied against birth control was that contraception would lead to promiscuity. There were contemporary critics who warned against the sins of licentiousness which, they claimed, would in turn lead to unwanted children, disease and race suicide. An underlying fear was that men might somehow lose power in the process. So long as women were constantly having and raising babies, they would not be members of the labor force, where they might compete with men (or distract them with their feminine wiles). Birth control, as the argument went, might also allow women to take multiple

partners without fear of getting pregnant. In short, unlimited birth control would burst apart the separate spheres beyond repair.

Second, the ruling focused on the health benefits of birth control, rather than the question of women's authority over their sexuality. Health policy, as Ernst quickly realized, could be quantified, and the data and statistics he cited in trials would bolster his defense by suggesting a degree of neutrality. Science, after all, was neutral, and how could one refute scientific facts that pointed to a healthier, safer society? Indeed, in this case, the prosecution did not challenge Ernst's data on the advisability of spacing births. And in fact, Ernst's approach actually helped to cement certain traditional gender assumptions. Why was it, after all, that infant mortality was higher for women who had births closer together? Under long-held conceptions of women, they were the "fairer sex," a gentle way of suggesting that women were weak—and, by extension, that men were powerful. By framing birth control this way, as a necessary medical treatment, rather than a woman's right, Ernst appealed to the public's sympathy and its assumptions about the relative weaknesses of women, and the judge codified that view.

*Sideri*, in Ernst's own words, "aroused" the medical profession and helped solidify public support for birth control (Ernst & Lindey 1940, p. 157). Arguing this case enabled Ernst to perfect his own masculine model and polish its repertoire of citing scientific data, statistics, and health benefits in defense of his clients. It also placed men like Ernst, who could speak confidently and openly about sex, in stark contrast to men like Hogan, who fumbled nervously when broaching the subject of sexuality. Ernst's own popularity soared, and he moved happily onto other controversial cases, all the while fomenting his image as the modern man confident in his own masculinity. And the case itself helped add credence to the growing sense that Victorian sexual mores and assumptions about masculinity and gender were primitive, antiquated, and a threat to modern progress.

Although the *Sideri* case took place over 85 years ago, it may help shed some light on the reasoning, motives, and values of United States

policymakers and cultural spokesmen who continue to oppose contraception, even today. In 2012, after Sandra Fluke testified before Congress in support of insurance coverage for contraception, the conservative talk show host Rush Limbaugh called her a “slut” and a “whore” (Stelter 2012). While American presidential candidates generally state that they have no opposition to birth control, some politicians embrace “personhood” legislative initiatives, which are ostensibly crafted with the professed intent to ban abortions, but which could also end access to certain types of contraception (Robertson 2014). Modern-day opponents of contraception, and of the women who use it, may be recalling a romanticized era when masculinity was less a function of brainpower than “manpower,” and when science took a backseat to idealized notions of self-control and abstinence. When men and women chose to support the idea and use of contraception in the early 20<sup>th</sup> century, they also chose to accept an image of masculinity that differed from the savage Victorian model. Today, with conservative critics and legislators attacking the legitimacy of contraception, the organizations that provide it, and the women who use it, the 1929 *Sideri* case remains startlingly relevant.

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<sup>1</sup> P.B.P (Penelope) Huse was Executive Secretary for Margaret Sanger's American Birth Control League.

<sup>2</sup> Mrs. Sanger's Birth Control Clinic Raided. (1929, April 16). *New York Herald Tribune*, 1. Print. See also Garrow 23-24.

<sup>3</sup> The full case title, *People of the State of New York v. Marcella Sideri, Sigrid Brestwell, Antoinette Field, Elizabeth Pissort, and Hannah M. Stone*, was also referred to as as *People v. Stone*.

<sup>4</sup> See also Pettigrew (2007) and Murphy (2008).

<sup>5</sup> The pamphlet calls such women "charity girls" or "loose." Over eight decades later, contraception opponents still equate sexually-active single women with prostitution. See, for example, Stelter (2012).

<sup>6</sup> Brannon's letter originally appeared in the October 2, 1915 edition of *Harper's*. For an analysis of the connection between masculinity and racism, see Bederman (1995).

<sup>7</sup> For one case study on how eugenicists used such fears of "racial suicide" in Virginia to justify discrimination in the 1920s, see Dorr (2003)

<sup>8</sup> Ernst, it should be noted, served as Kinsey's attorney.

<sup>9</sup> "Rothstein" was Arnold Rothstein, a Jewish gangster murdered in 1928 who was the inspiration for F. Scott Fitzgerald's character, Meyer Wolfsheim, in *The Great Gatsby*. For more on Rothstein's legacy as "the Moses of the underworld," see Cohen (1998).

<sup>10</sup> Kennedy was Chief Neurologist at Cornell University and, interestingly, an enthusiastic supporter of eugenics.

<sup>11</sup> The press reported that only the lawyers, the accused and the reporters were allowed to stay. Inexplicably, according to Ernst and Lindey, court attendants also allowed Carlo Tresca, "the well-known radical" to stay as well.