
Court Records and the History of Male Homosexuality

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Introduction

Court records have played a central role in research on the history of sex and intimacy between men. They have revealed patterns of policing and punishment in countries where homosexuality has been illegal, and have also allowed historians to reconstruct aspects of men's daily lives in times past. Court documents are important sources in some of the most well-known histories of male homoeroticism, among them George Chauncey's *Gay New York* and the more recent *Queer London* by Matt Houlbrook.¹

I have made extensive use of court documents, too, in my recently published book *Mates & Lovers: A History of Gay New Zealand*.² These records were a key source of information, especially for those years beyond the reach of oral history: in effect, prior to the Second World War. In this article, I reflect upon my use of these sources by posing three sets of questions. First, what is there? What documents survive within the archives, and what are their conditions of access? Second, what types of cultural fragments remain inside the folders in the archives, and what do these reveal about the homoerotic past? Third, I consider whose voices are represented in these records: who is speaking, and under what circumstances?

Court records have been controversial sources for the historical study of sexuality. They are often assumed to privilege official interpretations rather than folk ones, and to suppress the voices of 'ordinary' people under the weight of state sanctions. While the court files certainly do document the 'dominant voices' of society, I suggest that the situation is more complex than this. It is possible to examine the intricate relationships between the dominant and the marginal, and we can recognise the interplay of numerous, interwoven voices. While court records certainly do have their limitations, I suggest they are valuable sources with which to explore the experiences, meanings, identities and social changes that make up (homo)sexual histories.

Holdings and accessibility

Court records are held at Archives New Zealand, and these are subject to various access regimes. In mid-2008, following negotiations between Archives and government officials, all records more than one hundred years old became unrestricted, and these can be viewed by any member of the public. In other cases, the keen researcher must write to the Ministry of Justice to obtain permission to view court materials.³ Ministry officials can grant access to registers and court files between sixty and one hundred years old, but newer records have a stricter access regime: these can only be consulted with the permission of a High Court judge. There are restrictions on subsequent publication, too: typically, the Ministry stipulates that pseudonyms must be used instead of men's and women's real names.

Most searches begin with an examination of Crown Books or Returns of Prisoners Sentenced and Tried, each of which lists - among other things - the prisoner's name, date of trial, crime and a verdict and sentence. While the 'crime' column of each register is indispensable to the researcher, it can be a vaguer guide than we might expect. The offence of 'buggery' included both sodomy (anal sex) and bestiality, and it is impossible to tell in advance whether any given file refers to sex between men, or an incident between a man and a dog, horse or donkey. Up until the First World War, Returns of Prisoners Sentenced and Tried referred to 'indecent assault', which included both same-sex and opposite-sex relations, but after the war they used a new classification - 'indecent assault on a male' - which narrows down the searching considerably.⁴

From the Returns of Prisoners, researchers make their way to the relevant case files. Unfortunately, the holdings of these are patchy. There is little from the Magistrates (later to become District) courts: even though some register books survive, the case files do not. There is but a sample remaining, and only from some courts. Fortunately for the historian of sexuality, cases of buggery and indecent assault were tried in the Supreme (later High) courts until the late 1950s. There are two types of case file - trial files and sentencing files - and these reflect one of two pathways taken by a prisoner. Where a man pleaded not guilty to a charge of sodomy or indecent assault in a Magistrates Court, and there was deemed to be a case to answer, he was committed to the Supreme Court for trial. The subsequent trial file contains the depositions and other miscellany. Other men, though, pleaded guilty in the lower court and were committed to the nearest Supreme Court for sentence. In such cases there is a sentencing file,



The Christchurch Supreme Court, during the late 1950s.

F-61600-1/2, *Free Lance* collection
Alexander Turnbull Library

and these have broadly similar kinds of information to the trial files. I will detail the file contents shortly.

The records of some courts are very incomplete. This is true for all types of criminal cases, and only a single nineteenth century file involving male-to-male sex remains from the Wellington region. Much the same seems to be true for Wanganui, Christchurch and Invercargill. Records of a very few nineteenth century Auckland proceedings survive in Judges' notebooks, which typically detail courtroom testimony.⁵ We fare rather better, though, when it comes to the early decades of the twentieth century. Holdings are still incomplete, but a reasonable proportion of files survive for the Auckland, Wanganui, Wellington and Invercargill Supreme Court. There is a complete set of Dunedin Supreme Court registers and trial files from 1862 onwards. Visitors to the Dunedin archives can follow nineteenth as well as twentieth century men tracking backwards and forwards across pages firmly folded, until now, in their faded pink ribbons. My search was not exhaustive: although I managed to view at least one hundred trial files for courts in Auckland, Wanganui, Wellington, Dunedin and

Invercargill, I have not searched the records for Nelson, Timaru and Christchurch. However, *Gavel and Quill* - Archives New Zealand's guide to holdings⁶ - suggests that some pertinent files may remain in existence for these courts, awaiting the attention of researchers.

These records allow us to explore the lives and trials of rural and small town people as well as those who lived in the urban centres. While the Supreme Courts' jurisdictions included the cities in which they were based, they also took in the surrounding countryside. Men from Northland, Thames, Waihi and Hamilton made their way into the Auckland Supreme Court, for instance; those from Taihape and Ohakune were sent to judges in Wanganui; and the Wellington court tried Manawatu and Wairarapa prisoners. Many international studies - among them *Gay New York* and *Queer London* - focus solely on court records from the largest cities. In New Zealand, though, any researcher exploring the trials of the city courts also finds men from far-flung farms and the tiniest rural hamlets.⁷

There are some limitations, though, in terms of the social groups represented. For instance, the vast majority of pre-1940 cases involve men of European extraction, although Chinese and Maori men occasionally appear in the record. It quickly becomes clear that most of those arrested in this period were working class men. Labourers and other manual workers comprise the bulk of men tried for same-sex activity, and there is a scattering of soldiers, shop assistants and office clerks. The well-off were very rarely tried, which suggests they may have been treated more leniently by the justice system, and never even made it to court. However, it is difficult to speculate in the absence of any firm evidence.

Court documents and the regulation of the sexual past

During the nineteenth century there was a narrow window of illegality in terms of sex between men. The law prohibited only sexual coercion and sodomy (defined as anal penetration with or without 'the emission of seed') until 1893, when the new Criminal Code amended the definition of 'indecent assault' to read '[i]t shall be no defence to an indictment for an indecent assault on a male of any age that he consented to the act of indecency'.⁸ This reference to 'indecency' echoed changes to British law in 1885: the infamous 'Labouchère Amendment' that had similarly broadened the definitions of illegality.⁹ The new British and New Zealand amendments encoded a presumption that all male-to-male sex constituted 'assault', and this meant that oral sex and mutual masturbation joined the list of prohibited sexual practices.¹⁰ The 1893 law also allowed judges to

prescribe flogging and hard labour for prisoners if they so wished, although not all did.

These laws - and their enforcement - gave rise to a range of documents. During the nineteenth century, trial files typically contained a statement by the complainant in a case, recognisances, and witness and police testimony, all in florid script. Occasionally the accused provided a statement, but usually he chose to remain silent. Complainant, police and witness statements allow us to chart policing patterns, among other things. It becomes clear that while the state tightened sexual offences laws, police rarely took the initiative to search men out, at least in the years before the Second World War. Instead, they usually acted on the basis of complaints from members of the public (The 1950s and 60s are much harder to evaluate given the difficulty of accessing the relevant records for the reasons already described).

Several sets of circumstances led men to be arrested for same-sex activity. First, those who persisted in their approaches to unwilling partners might have a complaint laid against them. This happened on the Otago goldfields in 1862, when two miners shared a bed in a Wetherstons Gully hotel, and one of them - pseudonymously referred to here as Albert Smith - ran through his sexual repertoire. On the first occasion Smith masturbated his bed mate and then tried to anally penetrate him, the companion protested, and the other miners brushed off the incident. Several evenings later, Smith and the other man shared a bed once more. This time Smith tried to engage his bed mate in oral sex as a prelude to sodomy, and was charged with making an assault with intent to commit buggery.

A second type of case involved sex in a public or semi-public place where a member of the public complained upon seeing (or hearing) men having sex together, or a police officer happened to walk past. In 1902, for instance, two men shared a cab and then ducked into Auckland's Domain for sex, and they were arrested by a passing policeman. Both were sentenced to seven years with hard labour.¹¹ I have only managed to find one case in which a police officer took it upon himself to burst in on two men in a private place. This singular example - a liaison in a Taihape stable - was the result of poor sound insulation, a problem that rendered the occupants' private activities semi-public in character. One evening in 1928, the sound of two men having sex travelled from the stables out into the street, and piqued the curiosity of a passing policeman. He walked over to the building, peered through a grimy window for an hour, returned to the station for back-up, and then interrupted the pair in flagrante.¹²

It seems as though the vast majority of boarding-house keepers and hoteliers turned a blind eye to men's activities, but very occasionally a nosy and sanctimonious proprietor reported men to the authorities.¹³ Two Auckland men ran into trouble at the Falls Hotel in Henderson one evening in 1894, when the hotelier became suspicious, burst into their room at five o'clock in the morning, and called police.¹⁴

Thirdly – and perhaps most disturbingly – some men doxed their partners in to the constabulary. In Auckland in 1921, two lovers quarrelled over the alleged affair of one of them. The aggrieved party decided to accuse the other of sexual improprieties. He told police that his lover used to 'bring whisky and try to get him drunk and then go to bed with him and tried to do something to him'.¹⁵ Once the court heard that the men had in fact been willing partners, both were found guilty of indecent assault and sent to prison. Such reporting was not always malicious, though. The artist Leonard Hollobon went to police to report a blackmailer, and unwisely passed on to them the name of law clerk Norris Davey, one of his three recent sexual partners. Both men wound up in court. Hollobon was convicted on three charges of indecent assault and received a five year prison term, and Davey – who would later change his name to Frank Sargeson – was released on probation. (Although police followed up Hollobon's revelations with an arrest, they were not unsympathetic; the detective wrote that 'all the men were adults, and that all the acts occurred in the privacy of his [Hollobon's] own room'.¹⁶)

Sexual relations between men and adolescent youths were also more likely to be prosecuted than other cases.¹⁷ In close-knit communities, parents' acquaintances occasionally voiced their suspicions, and sometimes boys reported unwanted advances to their parents. Often an arrest brought to light details of relationships between a single prisoner and several adolescents. The pseudonymous Eldred Smale lived on the outskirts of Clyde during the early 1930s, and he helped local lads with their schoolwork before enticing some of them into his bedroom. Smale provided at least one of the boys with cigarettes, tobacco and a suit of clothes.¹⁸ He was reported to police when one of the younger boys complained to his father; the depositions statements detail a substantial amount of sex between Smale and several youths.

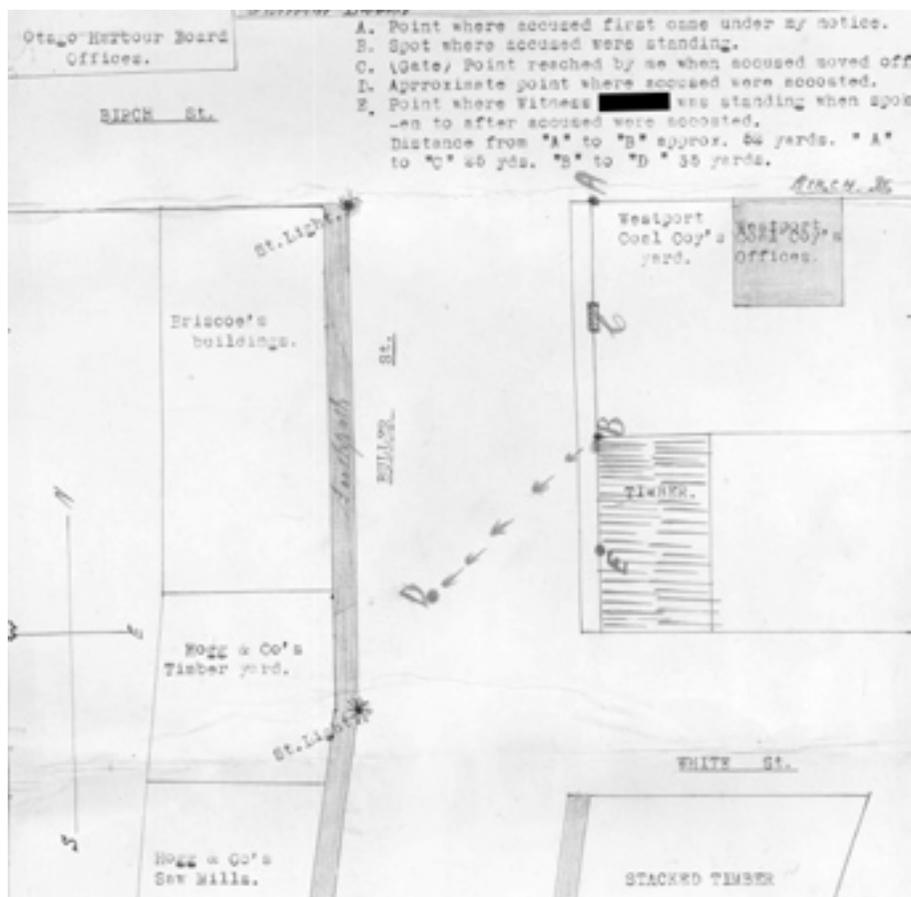
Witness and police statements reveal other details too. For one thing, they chart developing modes of connection between adult men, especially in the cities. From the mid-nineteenth century we read about the alternative uses men made of the streets, hotels, boarding houses and parks, and it is possible to map out the geographies of male same-

sex activity. Otago gold miners bedded down in the corrugated iron hotels, as we have already seen, and nineteenth century town dwellers made tentative approaches in the pubs – once again, not always well received – and picked one another up in the muddy streets.¹⁹

Particular places recurred from record to record: Auckland's Ferry Building, for instance, opened in 1912, and is mentioned repeatedly in the court files, as are Victoria Park and the Domain.²⁰ Aucklanders described meeting others in the street and on the ferry and striking up conversations outside hotels and cinemas. Wellingtonians and Dunedinites also enjoyed the wharves, street corners and town belts. Often sequences of movements around an area are recorded, and we read about men repairing from theatres and street corners to a hotel or apartment.²¹ To study these court materials is to see ways of making contact and of developing a range of casual and more long-term relationships.

Witness and police reports also describe sexual practices in detail, including mutual masturbation, oral, anal and intercrural sex (the rubbing of one's penis between another man's thighs). On one occasion in 1889, for instance, a policeman jotted down the conversation between two labourers behind an Oamaru hedge who attempted – apparently unsuccessfully – to have anal sex together. While most accounts of men's sexual adventures are retrospective, in this case the officer's notes captured authentic, real-time dialogue.²² We also read about sexual accessories. For example, an India rubber 'French letter' used as a sex toy was 'Exhibit A' in a Dunedin case from 1889.²³ Such items were readily available in pharmacies, according to witnesses. Testimony in other cases indicates that hair oil often performed the same lubricating function as the ever-popular Vaseline.²⁴

Too often, suggests *Queer London's* author Matt Houlbrook, histories of sexuality have 'the sex written out'.²⁵ The usual academic focus on regulation, power and identity, Houlbrook writes, tends to subsume the nitty gritty of sexual behaviour. This need not be a problem, though, and complainant and witness statements help us to put together something of a local glossary.²⁶ In the nineteenth century the researcher finds 'I am going to do you over', 'that man tried to bugger me', 'did you ever have a bit before?', 'we'll have a fuck', and 'he tried to have connexion with me'. These all refer to much the same thing – sodomy – although they also imply some differences. A few of them suggest mutuality, while others evoke sex as an action performed by one man upon another, sometimes against his will. Later on – during the early decades of the next century – there were variants and new terms: 'I want to have a bit of you', 'I bummed him'



A police constable made this map after apprehending two men in Dunedin's industrial area. The jury, though, found his quarry not guilty (see page 34).

DAAC D256 338:4 - April 1934, ANZ

and 'I worked myself off into him'.²⁷ Many men said they liked to 'gam' a partner; a reference to oral sex that originates in the French word 'gamahuche'. Sometimes a word we imagine to be recent turns out to have an earlier provenance. 'Cum' - as a verb meaning to have an orgasm - appeared, complete with its informal present day spelling, in 1935, when a complainant said '[the accused] had connection with me until he cum'.²⁸

Other types of documents surface alongside witness and police statements. These tell us more about the beliefs and practices

that governed sexual life in past times. Doctors' testimony and correspondence played an important - and changing - role in the legal process. The 1867 Offences Against the Person Act required 'proof of penetration' if a charge of buggery were to be upheld, and physicians were called upon to furnish it. In 1889, when a young Dunedin man's parents pressed charges against their son's older companion, a doctor told police about his medical examination of the youth. 'I find his generative organs to be normal', the doctor concluded, and 'I do not think penetration had taken place'.²⁹

The 1893 Criminal Code removed the requirement for medical proof of penetration, and the doctor's role changed. By the end of the First World War, doctors and criminologists had begun to see same-sex activity less as a question of wilful wickedness, and more as a matter of mental weakness which they often described in terms of nervous instability. As a result, physicians could be called upon to testify about their charges' psychological motivations.³⁰ This can be seen in the exchange of letters from a 1928 case. A Dunedin lad received treatment at the Rotorua sanatorium for his bad nerves and homoerotic desires, and his file includes a note from a sanatorium doctor to his guardians ('although he had no money I felt I could not send him away from the door of the place most suitable in NZ for the treatment of his condition'). There are also letters from a general practitioner and several specialists. One wrote: 'I have attended L___ W___. He was suffering from anxiety states and phobias. He was a masturbator, had a constant fear of heart failure, cancer and tubercular infection. W___ has been an inmate of a hospital in Rotorua where he was treated for neurasthenia [nervous exhaustion]'.³¹ This young man's court file also contains the prompt for his arrest: the note he wrote soliciting the friendship of an unwilling and suspicious youth who passed the incriminating item on to police. The accused was found guilty and imprisoned for two years, although he was not condemned to flogging or hard labour.

Letters feature in other case files too. In 1940, a young farmhand accused of attempting to seduce another - who objected - wrote to the judge begging to be sent to war rather than to prison:

I am writing a short note to you, to let you understand the way I am viewing my position, and further to make a request. Although I have made a statement, and know I am guilty, and that I have been to the lower court, found guilty, and committed to the Supreme Court for sentencing, I wish to make the following request. Your Honour, I am hereby requesting that I may get a chance to make good. I know as well as anyone else that a small crime leads to a

bigger one, unless one is taught the penalty for wrongdoing, and strives to behave in future. I am not, Your Honour, trying to cry, or plead my way out of the course of Justice. I have a desire to join up in the third echelon and go overseas, to fight for my Country. I personally believe that good strict discipline would do more to make a man of me than some other punishments I know of.³²

The judge did not accede to this man's request, and instead jailed him for a year and nine months.

Sometimes men's cruising spaces were mapped, and the maps included in the case file (*an example is reproduced on page 33*). In 1934 a labourer and a chemist met on various occasions in Dunedin's industrial area, and had sex in darkened corners. The two men were interrupted one night by a suspicious policeman with a torch who caught them with their flies open and their hands in one another's trousers. Back at the station, the detective later made up a map of the scene to take to court.³³ There were photographs in other files, among them police shots of love nests in Dunedin's sand dunes – depressions in the vegetation emphasised for the camera by a policeman's handkerchief tied to a stick – and pictures of the nearby parks used as pick-up spots.³⁴

Not always were photographs surveillance tools, however. Some court files included or referred to images men created for their own use: one Wellington file, for instance, contains a photograph of a youth fellating an older man before the latter was arrested.³⁵ Witness statements reveal that during wartime a Wellington barman chatted up a would-be partner – a draper in a department store – by offering to show him 'some photographs of interest. I told him they were pretty hot'.³⁶ Police in an Auckland case mentioned that their prisoner had purchased a quantity of explicit photographs from 'a sailor on a German boat'.³⁷

Police officers reported that most of these photographs featured female nudes or women having sex with men. In only a few images, they revealed, were men pictured having sex together. Often the accused showed heterosexual imagery to other men or youths in an attempt to arouse them, and then followed up with a sexual proposition.³⁸ Many of those arrested seemed to believe that a man could be aroused by any readily available sexual material and then redirected into homoerotic activity. Not everyone wanted to follow that sexual script, though, and quite a few men ran into trouble when the object of their desire enjoyed the pictures but did not welcome what came next.

Books and magazines also made an appearance as court exhibits, but hardly ever were these retained for posterity. In 1927, a Wanganui local tried to entice potential partners by showing them a copy of *Aristotle's Masterpiece*, an early sex manual and midwife's guide, parts of which date back to mediaeval times. His persistence was rewarded with a complaint.³⁹ Others offered up their copies of *Health and Efficiency*, a well-known British nudist publication, or *Health and Sunshine*, a short-lived New Zealand equivalent from the late 1930s. Reading materials were highly important to many men, as I will soon show in more detail.⁴⁰

Voices, identities, strategies

Changing social beliefs about sex and intimacy also feature in court materials, although as I have already mentioned, some historians retain a certain scepticism in this respect. Some point out that these sources privilege the voices of the socially dominant: police, doctors and court officials. A few scholars have suggested that it can be exceedingly difficult to extract details of non-elite subjects' behaviour and understandings from legal records.⁴¹ According to this view, court proceedings tend to reduce complex subjective realities to bureaucratic and legal terms because people present themselves to the authorities in certain ways in order to protect themselves and incriminate others. In other words, those participating in legal processes reinvent themselves to suit the needs of the moment. There are other objections too. European historian Graham Robb argues that to focus on court documents is to suggest that the past's inhabitants lived in constant fear of the law. Robb, though, doubts that legal constraints always loomed large in most men's everyday lives.⁴²

These are all valid concerns. It is certainly true that court records bear the imprimatur of official knowledge, that legal proceedings mould arguments and actions in particular ways, and that most of those who pursued same-sex pleasures escaped arrest. Yet, it is also true that court documents provide clues about everyday lives, and that some of these details are applicable beyond the case in question.⁴³ Although prisoners and witnesses did tailor their words for official audiences, we can still draw useful conclusions about common meanings and activities. Letters, witness and prisoner statements, for instance, describe events and emotions in men's own words – even if these were sometimes collected under duress – and they offer us a way into the categories, language and conventions of their time.

In 1895, for example, one of the accused at Henderson's Falls Hotel asked of police 'do you for a moment believe I would commit such

an abominable offence', and insisted that the morning kiss he planted on his friend's cheek 'was not such a serious thing against nature at all'.⁴⁴ This exchange illustrates nineteenth century understandings of sodomy as an offence ('a thing against nature'), not an expression of a man's internal sexual disposition. This is a view bolstered by other nineteenth century records, including diaries, letters and official correspondence, none of which bestows a label upon the individual who took part in same-sex intimacies.⁴⁵

Descriptions changed over time, and by the end of the First World War court testimonies begin to refer to the idea of the 'queen'. The first use of this term in the Wellington files dates from 1918. Two young brothers deserted from the Featherston military camp and spent the night in a Woodville hotel under the watchful eye of a nineteen-year-old military policeman who apprehended them in the north Wairarapa town. According to the court files, all three men played billiards and then shared a large double bed, and in the morning the policeman caught hold of one prisoner's penis 'and asked me to stick it into him'. His unwilling prospect said 'What the hell game are you up to?', the officer cheekily taunted 'Won't it rise this morning?', and the aggrieved party told his brother 'I think he is a queen'.⁴⁶

The queen was reckoned to be sexually passive and often effeminate, and he contrasted to the earlier presumption that any man might be an active or passive partner in an 'abominable offence'.⁴⁷ The testimony of everyday and expert witnesses showcases this changing language, and with it a set of new understandings about the meanings and significance of homoeroticism.

Something of the negotiation of sexual identity – along with the increasing use of the term 'homosexuality' – can also be seen in the mid-century case of Ross Jacobson, a pseudonymous Wellington man who worked for the National Broadcasting Service. Jacobson told his younger lover of the value of Leslie Weatherhead's book *The Mastery of Sex*, published in 1931 by the Student Christian Movement. Weatherhead's account of homosexuality was relatively liberal for its time, and it helped Jacobson reconcile himself to his desires. When Douglas Reynolds, Jacobson's lover, approached police in 1944 in order to extricate himself from an increasingly suffocating relationship, he described *The Mastery of Sex* to them. Reynolds' statement read:

I slept with the accused the first night. He spoke that night on religion and sex. I had very little knowledge of sex. The accused told me that he had just the book to enlighten me on it. He told me that the book was *The Mastery of Sex*. One night he explained to me about his affliction as he called it. It was called innate

inversion. He took the book *Mastery of Sex* and read a particular passage to me. When he read it to me I became full of pity for him. The accused told me that it was alright in the eyes of God.⁴⁸

A court witness, a housemate of Jacobson and his partner, also became familiar with Weatherhead's book. He told police: 'I had no knowledge of homosexuality whatsoever until the accused drew my attention to it in the book produced [as] Exhibit A'. While this man's – not to mention Douglas Reynolds' – denial of any prior knowledge may or may not have been accurate, subsequent oral history testimony does support the view that a single book could sometimes be a revelation.⁴⁹

Accounts of sexual awakening were not, however, expressed only in bookish terms. They were often located in men's past experiences and, once again, legal statements provided a forum for men to describe aspects of their lives. Men told 'origin stories' as they sought to explain their desires, and sometimes the authorities were the intended audience.⁵⁰ One man told police about his opportunistic sex with others in the 'bush camps and mills' of the King Country during the 1920s.⁵¹ Another informed the authorities in 1936 that 'he had been practicing masturbation since he had been at College', before adding that 'he had committed acts similar to the present one on different occasions with at least six business men' in Wellington.⁵² The errant Dunedin farmhand told his presiding judge that 'I have come to the conclusion that any bad thoughts I have inherited, have been picked up, while I was in [several state] institutions': Otekaike School near Oamaru, an unnamed Salvation Army facility and then Weraroa Training Farm in Levin.⁵³

Stories about the role of shipboard life in eliciting same-sex desires were quite common: in 1935 a man told police 'that he learned his depraved practices on a Scow' during his adolescence.⁵⁴ Not always were authority figures the recipients of these stories. In 1924 a Cromwell hotel chef told a would-be partner 'that he had yards up him when he was on the Boats'.⁵⁵ He did so, it seems, in order to assure the other man of his experience and expertise in the matter at hand.

As historians have already pointed out, many men carefully managed the ways they presented themselves in front of police constables and judges.⁵⁶ These origin stories are a case in point, and men sometimes used them in an attempt to minimise their guilt. For somebody to argue that the roots of his desire lay in a past beyond his control – as the farmhand did – was to insist that his behaviour was not willfully criminal. For much the same reason, a prisoner might declare his

'addiction' to a 'habit' over which he had little command. A few, among them the King Country labourer, appealed to the ubiquity of same-sex activity – it was 'quite a common practice among the men', he said – but such an argument was not successful in court: the labourer went to prison for eight months.⁵⁷

Complainants also wanted to make their accusations believable, especially if there was a possibility they might end up in trouble themselves. When Douglas Reynolds reported his former lover Ross Jacobson to police, he portrayed Jacobson as the sexually dominant partner who instigated and maintained the relationship against his, Reynolds', better judgment. Reynolds admitted he found a degree of satisfaction in his and Jacobson's sex life, but he claimed Jacobson 'got me into such a state that I was highly strung'. The younger man exempted himself from the category of the guilty, portraying himself as a sexually normal young man who fell under the spell of another fellow: a 'homosexual' with a worrisome 'affliction'.⁵⁸ This particular case shows how one party portrayed events in a way he thought would be favourable to him within the context of his complaint to police. While both men pursued a homoerotic relationship for a substantial period – two years – Reynolds traded on ideas about youthful innocence and the powers of persuasion in order to secure Ross Jacobson's conviction – a two year prison sentence – and then his own freedom.

This case has its limits. Unfortunately, Jacobson either made no statement or it does not survive, so we have no direct access to his version of events. Instead, the primary account is Reynolds's, augmented by the statement of the housemate who revealed what Jacobson had said to him. A detective's statement, though, gives a limited sense of Jacobson's view of himself:

The accused told me that he had been very worried over a long period concerning his sexual feelings and emotions [. . .] He stated that all he wanted to do was to continue to live a Christian life. In regard to the matter where Ross mentioned that the accused had handled his private parts leading up to the commission of the crime of buggery, he stated that Ross was just as bad as himself.⁵⁹

This was a view tailored in the existential confines of the police station, and formulated for official consumption. Nevertheless, we can see Jacobson's reluctance to take all the blame for the couple's transgressive sexual behaviour.

The reports of an Auckland case from the same era tell us still more about how men accounted for their own lives, and also reflect the expansion of homoerotic social worlds. In 1941, having received a

complaint of indecent behaviour, police went on to accuse pseudonymous labourer Bert Simkins of picking up men for sex, and Simkins went before the Auckland Supreme Court.⁶⁰ Police persuaded three men to speak against Simkins and, it seems, offered them immunity from prosecution. A sense of 'groupness' emerges, augmenting the earlier picture of individual men meeting in the interstices of everyday, all-purpose spaces. In court and under questioning from the Crown Prosecutor, grocer's assistant Victor Andrews told of his involvement with a number of other men, including Simkins and shop assistant Bruce Millar. This is a segment of Andrews' courtroom testimony:

CP: How long have you known Millar?

A: About 18 months. I know that he does the same sort of thing as I have done. He told me about it. We have walked a lot together and sat down together, but [done] nothing improper.

CP: Why not?

A: [silence]

CP: You knew he was easy game?

A: He didn't like civilians. He likes the navy. There are others round town doing the air force. I am telling the truth. Millar and I had nothing to do with the army.

CP: You do this as a matter of love more than anything else?

A: Yes. There was no money [involved].

CP: The conversations between you and Millar must have been fairly filthy?

A: Yes.

CP: Were you brother practitioners?

A: [silence]

CP: Were you two queens?

A: That will do. I was known as a bitch. I am not. I haven't been out with anybody [for a while]. I am fighting against [it] and I hope to win.

CP: You used to size men up?

A: Yes.

CP: You used to go round looking for men and picking them up?

A: Yes. [The accused and I] have talked but we never had contact together. I told him about my conquests.

CP: You know, when the Police interviewed you they said they would not prosecute you?

A: Yes. I would not get a shock if I were prosecuted now. I suppose they wanted me to spill the beans.

CP: Will you tell the Jury the names of any other men that you have told the police?

A: I have been with a doctor. There is another chap who is now away in prison. There is a chap working at the post office. There were various sailors. There were lots of chaps who I don't know where they are.⁶¹

Once again, men strategised their arguments. It becomes clear that – initially, at least – Andrews seeks to limit the evidence of his involvement with other men, even as he reveals details of his and his friends' erotic adventures. Here we see a real tension between the legally-imposed obligation to reveal his activities and an obvious wish to keep any admissions of guilt to a minimum. Andrews admitted knowing Millar, but not to having sex with him, even though he conceded their conversations were 'fairly filthy'. At another point in the examination, when asked by the crown prosecutor 'How long have you been going in for this class of thing?', Andrews claimed the defendant in the court case – the man he was called upon to implicate – was 'the first person' although, at the end of the excerpt, Andrews admitted to previously having had sex with a number of different men.

While Andrews tacked backwards and forwards between admission and guilt, in other respects his conversation painted a clearer picture. There was mention of conversational and sexual intimacies, along with links between civilian and military worlds, and Andrews revealed details of a community of men with shared erotic interests. (On one occasion Simkins saw Andrews outside the Ferry Building 'and said he had been to a party and met a marvellous thing'. The 'thing' turned out to be a ship's steward: 'We asked where we could meet him, and the accused said he would take us off and introduce us to him')⁶² We can see another set of tensions, too, this time between knowledge and expertise. The Crown Prosecutor showed his awareness of a number of slang terms – 'queen', 'bitch', 'pick up', 'easy game', 'brother practitioner' – but also sought to elicit more information about the homoerotic culture under investigation.⁶³ How, exactly, he wanted to know, did men relate to one another? While he demonstrated his partial knowledge of the subculture, he knew that only the witnesses could answer this question comprehensively.

This in-court exchange also give us a sense of how men in trouble with the law might resist the imposition of other people's agendas

in some ways, all the while accommodating themselves to them in others. Andrews, for instance, vehemently disagreed with the presumption that he was a 'queen' or a 'bitch', both of which implied sexual passivity. At the same time, he adopted the language of social disapproval of homosexuality, when he said 'I am fighting against [it] and I hope to win'. It becomes clear that homoerotically involved men also jockeyed for position among themselves. While Victor Andrews claimed Brian Millar 'didn't like civilians. He likes the navy', Millar contested Andrews' interpretation. 'I do not confine my attentions to the navy and if Andrews says that I do it is incorrect', he claimed. 'I like civilians.' This assertion seemed to have little to do with the exigencies of the court room, and rather more to do with Millar's standing within his own group of friends.

As these kinds of exchanges demonstrate, to scrutinise New Zealand's legal records is to observe some elaborate processes at work. Defendants and legal officials are engaged in an intricate give and take, where speech competes with silence, admission jostles with concealment, and guardedness gives way to insouciance. While men manage their self-presentation in a legal setting, they also reveal much about their reference points and their social worlds in the process.

Conclusion

Court records offer a rich source of information for a history of homoeroticism, and this is as true in New Zealand as it is in other countries. Interpreting these legal files, though, can be a complex process. As Stephen Robertson has suggested in his work on the USA, any legal record is made up of multiple texts.⁶⁴ To look carefully through these files is to elicit factual data about social phenomena and mediated accounts of action, belief and motivation. While it is difficult – if not impossible – to access accounts of social and sexual life completely uncontaminated by the legal settings in which they appear, it is apparent that these settings by no means swamped prevailing social conventions. As texts, court records provide us with a wealth of information: details of folk and 'expert' language, dominant and alternative uses of public and private spaces, modes of self understanding and explication, people's inspirations and fears. The most official of records can offer up the most intimate of concerns. When we read these documents, we see how people negotiate aspects of their lives as they account for themselves to authority.⁶⁵

Court materials reveal much about their time, of course, and this fact allows the researcher to explore changes as well as continuities across history. As we read men's sexual stories, we can see how they

have changed as society has also changed. For instance, these types of documents reveal the emergence of such categories as 'queen' and 'homosexual'. While such sexual 'types' are nowhere to be seen in the nineteenth century records, they begin to take shape in the materials from the early decades of the twentieth century. The remains of legal proceedings, then, along with other sources, provide us with useful conceptual markers on the map of same-sex desire.

For the scholar of sexuality and intimacy, other possibilities lurk in this body of records. The registers point to a substantial cache of court material on bigamy, for instance, and no doubt the divorce files also have much to say about the sexual mores of their time. There is much on sexual coercion and sexual violence, between males and females as well as between males, and some of this has already been explored.⁶⁶ Files that deal with prostitution, brothel keeping and abortion also await the researcher's keen attention, as do those pertaining to bestiality. Whatever our specific focus, court documents offer up many valuable insights into the sexual lives of our predecessors. Researchers of New Zealand's intimate history would do well to further explore these archival treasure troves.

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- 1 George Chauncey, *Gay New York: The Making of the Gay Male World, 1890-1940*, Flamingo, London, 2005; Matt Houlbrook, *Queer London: Perils and Pleasures in the Sexual Metropolis, 1918-1957*, University of Chicago Press, Chicago, 2005. On Australia, see Clive Moore, *Sunshine and Rainbows: The Development of Gay and Lesbian Culture in Queensland*, University of Queensland Press, St Lucia, 2001; on Canada, see Steven Maynard, "Horrible Temptations": Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935', *Canadian Historical Review*, 78, 2, 1997, pp.191-235.
- 2 Chris Brickell, *Mates & Lovers: A History of Gay New Zealand*, Random House, Auckland, 2008.
- 3 When I researched *Mates & Lovers* during 2006 and 2007, access to all court files required Ministry of Justice permissions.
- 4 The Returns of Prisoners Sentenced and Tried continued to use the broad term 'indecent assault' despite the fact that 'indecent assault on a male' first appears in the Criminal Code of 1893.
- 5 As I wrote this article, Archives New Zealand's staff members were only just beginning to enter holdings of Judges' notebooks into Archway, their online catalogue. Holdings of these items do not appear in *Gavel and Quill*. As a result, it is difficult to ascertain exactly what is held and where, although this information will soon become available.
- 6 National Archives of New Zealand, *Gavel & Quill: A Guide to Court Records at National Archives*, National Archives of New Zealand, 1998.

- 7 For an illuminating discussion of court records and rural sexuality in Sweden see Jens Rydström, *Sinners and Citizens: Bestiality and Homosexuality in Sweden, 1880-1950*, University of Chicago Press, Chicago, 2003.
- 8 Criminal Code, *New Zealand Statutes 1893*, ss.136-37, p.349.
- 9 On the British situation see Morris Kaplan, *Sodom on the Thames: Sex, Love, and Scandal in Wilde Times*, Cornell University Press, Ithaca, pp.171-179.
- 10 For a discussion of the various law changes during the nineteenth and twentieth centuries, see Alison Laurie, 'The Aotearoa/New Zealand Homosexual Law Reform Campaign, 1985-1986', in Lynne Alice and Lynne Star (eds), *Queer in Aotearoa New Zealand*, Dunmore, Palmerston North, 2004, pp.13-34.
- 11 Trial Notes, JJ and HA, Judge's Notebook, 28/11/1901-21/8/1902, pp. 77-83 and pp.114-18, BBAE 304 131, ANZ.
- 12 Trial File, TK, 6 March 1928, AAOG W3559, ANZ. For a more detailed discussion see Brickell, *Mates & Lovers*, pp.175-176.
- 13 For instance, Trial File, AM, 26 November 1924, AAOG W3559, ANZ.
- 14 Trial Notes, BP and WL, Judge's Notebook, 1/12/1894-10/6/1895, pp.182-92, BBAE A304 123, ANZ.
- 15 J Stringer, Notes of Evidence for WS and AE, Criminal, Civil and Circuit, 17 February 1921, vol 1, BBAE A304 884, ANZ.
- 16 Trial File, LH, Case 1, 31 October 1929, AAOM W3265, ANZ. Given the fact that these men's names have long been in the public sphere in connection with this court case and feature as such in *Mates & Lovers* - and following advice from the Wellington High Court (Robert Young to author, 22 November 2007) - I have relaxed the anonymity rule here. On the public debate, see Michael King, *Frank Sargeson: A Life*, Viking, Auckland, 1995, pp.94-95.
- 17 See the discussion in Brickell, *Mates & Lovers*, pp.121-126.
- 18 Sentencing File, ES, 1933, DAAC D256 416 20, ANZ.
- 19 Trial File, AC, 1868, DAAC D256 256 1, ANZ; Trial File, CD, 1889, DAAC D256 308 21, ANZ. For a discussion, see Brickell, *Mates & Lovers*, ch.1.
- 20 Brickell, *Mates & Lovers*, ch.2.
- 21 Brickell, *Mates & Lovers*, ch.2.
- 22 For an account of this conversation see Brickell, *Mates & Lovers*, p.45.
- 23 Trial File, CD, 1889, DAAC D256 308 21, ANZ.
- 24 Sentencing File, FM, 22 May 1935, AAOM W3265, ANZ; Sentencing File, RP, 1931, DAAC D256 414 15, ANZ.
- 25 Matt Houlbrook, 'Sexing the History of Sexuality', *History Workshop Journal*, 60, 1, 2005, pp.216-22, esp. p.217.
- 26 In 1941 the US folklorist Gershon Legman published a glossary of terms related to homosexuality (among them 'camp', 'cruise' and 'come out'): Legman, 'The Language of Homosexuality: An American Glossary', in George Henry (ed.), *Sex Variants: A Study of Homosexual Patterns*, Hoeber, New York, 1941, pp.1149-1179.
- 27 For period-specific mentions and references to particular cases, see Brickell, *Mates & Lovers*, chs.1 and 2.
- 28 Sentencing File, FM, 22 May 1935, AAOM W3265, ANZ.
- 29 Trial File, CD, 1889, DAAC D256 308 21, ANZ.
- 30 Brickell, *Mates & Lovers*, ch.2.
- 31 Sentencing File, LW, 1928, DAAC D256 412 24, ANZ.
- 32 Sentencing File, ET, 1940, DAAC D256 421 11, ANZ.
- 33 Trial File, TP and TR, 1934, DAAC D256 338 4, ANZ.
- 34 Trial File, JB, 1938, DAAC D256 342 5, ANZ.

- 35 Trial File, HR, 18 May 1943, AAOM W3264, ANZ.
- 36 Sentencing File, RS, 13 October 1942, AAOM W3265, ANZ.
- 37 Trial File, WB, May Session, 1933, BBAE 5609 10, ANZ.
- 38 For instance, Trial File, JM, 1924, DAAC D256 329 3, ANZ.
- 39 Trial File, DW, 15 February 1927, AAOG W3559, ANZ.
- 40 See also Houlbrook, 'Sexing the History of Sexuality', p. 217.
- 41 Stephen Robertson, 'What's Law Got to Do With It?: Legal Records and Sexual Histories', *Journal of the History of Sexuality*, 14, 1/2, 2005, pp. 161-185, esp. p. 162.
- 42 Graham Robb, *Strangers: Homosexual Love in the Nineteenth Century*, Picador, London, 2003, pp. 17-18.
- 43 Herbert Puff, 'Early Modern Europe', in Robert Aldrich (ed), *Gay Life and Culture*, Thames and Hudson, London, p. 84.
- 44 J Conolly, Judge's Notebook, 1/12/1894-10/6/1895, pp. 182-92, BBAE A304 123, ANZ.
- 45 One such official source - discovered too late for inclusion in my book - is a letter which refers to the transfer of a prisoner 'addicted to the crime of sodomy' from Addington Gaol to the Lyttelton lockup in 1875: G Reston to R Harman, 19 October 1875, CAAR 19936 CH287 CP166 ICPS 2503/1875, ANZ.
- 46 Trial File, HW, Case 8, May Session, 1918, AAOM W3265, ANZ.
- 47 Brickell, *Mates & Lovers*, ch.1.
- 48 Trial File, RJ, 14 March 1944, AAOM W3265, ANZ. The names I use here are pseudonyms.
- 49 Brickell, *Mates & Lovers*, pp. 254-6.
- 50 On stories of the self - including origin stories - and their uses by individuals and at the broader social level, see Ken Plummer, *Telling Sexual Stories*, Routledge, London, 1995, ch.6.
- 51 Sentencing File, OH, Case 4, June Session, 1932, DAAC 256 337, ANZ.
- 52 Sentencing File, SM, Case 2, July Session, 1936, AAOM W3265, ANZ.
- 53 Sentencing File, ET, 1940, DAAC D256 421 11, ANZ.
- 54 Sentencing File, FM, 22 May 1935, AAOM W3265, ANZ.
- 55 Trial File, JM, Case 3, August Session, 1924, DAAC D256 329, ANZ.
- 56 I offer an extended account of the historical management of self impressions in Brickell, 'A Symbolic Interactionist History of Sexuality?', *Rethinking History*, 10, 3, 2006, pp. 461-78.
- 57 Sentencing File, OH, Case 4, June Session, 1932, DAAC 256 337, ANZ.
- 58 Trial File, RJ, 14 March 1944, AAOM W3265, ANZ.
- 59 Trial File, RJ, 14 March 1944, AAOM W3265, ANZ.
- 60 Trial File, BS, Case 1, May Session, 1941, BBAE 5609 29, ANZ. These names are pseudonyms.
- 61 Trial File, BS, Case 1, May Session, 1941, BBAE 5609 29, ANZ.
- 62 Trial File, BS, Case 1, May Session, 1941, BBAE 5609 29, ANZ.
- 63 The term 'brother practitioner' very rarely appears in New Zealand. It may have its origin in Germany, where the term 'warmer bruder' ('warm brother') has long referred to male homosexuality.
- 64 Robertson, 'What's Law Got to Do With It?', p. 167.
- 65 Brickell, 'A Symbolic Interactionist History', p. 429.
- 66 For instance, see Mary Gillingham, 'Sexual Pleasures and Dangers: A History of Sexual Cultures in Wellington, 1900-1920', MA thesis, Massey University, 1998.

“One Prison Cell per Government Department”?

An overview of the postmodern approach to archival theory*

Virginia Gow

At the beginning of the twenty-first century an article appeared in the *New Zealand Archivist* that provided an alternative starting point for the 'official' history of the National Archives in New Zealand.

In this return to the archive, David Colquhoun¹ drew attention to the story of Augustus Hamilton, who in 1906 made a proposal for a records office that would have responsibility for all non-current records of Government. These records were to remain organised on the principles used by the Departments they came from - a suggestion true to the tenets of archival science as codified in the 1898 Dutch Manual of Muller, Feith and Fruin.²

As Colquhoun notes, Hamilton's efforts were unsuccessful, despite evidence that public records were at significant risk of loss, especially after the fire that destroyed the Parliament building in December 1907. However, in 1909 the Under-secretary of the Department of Internal Affairs gave Hamilton authority to 'receive official records and documents and to place the same in the Mt Cook (Victoria) Barracks for safe custody'.³ The location for Hamilton's endeavours, which in retrospect might be called a pre-paradigm to that of modern archival science in New Zealand, is recorded in the images shown overleaf.

Unfortunately, however, as Colquhoun remarks:

Like many archivists before and since, Hamilton was to find that sound planning meant little if those who create and use the records see the archives authority as an imposition rather than an advantage [. . .]. There was no regulation that compelled [officers] to co-operate and Hamilton's departmental superiors [. . .] rendered

* This paper draws from an essay produced in Summer 2003-2004 for *INFO 534: Introduction to Archives Management*, part of the Master of Library and Information Studies programme at Victoria University of Wellington.

The first record of possible homosexual couple in history is commonly regarded as Khnumhotep and Niankhkhnum, an ancient Egyptian male couple, who lived around 2400 BCE. The pair are portrayed in a nose-kissing position, the most intimate pose in Egyptian art, surrounded by what appear to be their heirs. In regard to male homosexuality, such documents depict a world in which relationships with women and relationships with youths were the essential foundation of a normal man's love life. Same-sex relationships were a social institution variously constructed over time and from one city to another. Perhaps more importantly, historians have been strangely uninterested in such questions. Whilst the history of sexuality is an increasingly vibrant field, Foucault's over-determining influence has focused attention on questions of regulation, power and subjectivity. As a result, ironically, we seem to have a history of sexuality with the sex written out. I don't want to suggest that we can have a history of sexuality that doesn't pay attention to questions of regulation, power and subjectivity. Yet taking as our starting point Homosexuality. Gay and Lesbian Subcultures. For the eighteenth century, the Proceedings provide vibrant and detailed evidence of the sophisticated worlds and subcultures of London's homosexual communities. Until the 1780s trials for sodomy provide extensive accounts of the otherwise hidden world of molly houses and homosexual prostitution. In the last decade of the eighteenth century, and throughout the nineteenth century, however, the details of these trials are censored, and the Proceedings give only the barest facts of each case. From this period onwards, the best details of behaviour and a