

“AGAINST THE ORDER OF NATURE”
CREATING A GAY IDENTITY UNDER THE LAW IN COLORADO, 1880-1914

BY

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INTRODUCTION
Gay Under the Law

In the heart of downtown Denver, Colorado, four months' time and three city blocks separated the 1885 arrests of John Ryan and Charles Howard. Both Ryan and Howard were charged under the sodomy statute for relationships they had with younger males, two of the earliest known applications of the law to same-sex relationships in the state's history.¹ While these two cases appear similar on the surface, they diverged sharply after the initial arrests. Found in a notorious saloon, John Ryan had been detained twice in the prior two weeks, and newspapers disparagingly labelled him a "tramp."² With the public against him and no money or community behind him, Ryan pled guilty to the crime in court. The public wanted more, however, and the *Denver Rocky Mountain News* advocated for his death in a headline.³ Unlike in Ryan's case, however, the police arrested Charles Howard in a pleasant hotel. Howard, who the newspaper labeled a "painter," escaped further public scrutiny; the newspapers never mentioned his crime again.⁴ Many sources depicting gay life in Colorado from before World War I share stories such as these—stories that reveal little about gay life but much about its regulation. Accounts that depict the policing of gay life, however, undoubtedly reveal facts

¹ "Deserves to Be Hanged," *Denver Rocky Mountain News*, June 23, 1885, Colorado Historical Newspapers, Colorado Historical Society; "Buckien's Arnica Salve," *Denver Rocky Mountain News*, October 25, 1885, Colorado Historical Newspapers, Colorado Historical Society.

² "Police Court Points," *Denver Rocky Mountain News*, June 9, 1885, Colorado Historical Newspapers, Colorado Historical Society; "Held For Highway Robbery," *Denver Rocky Mountain News*, June 18, 1885, Colorado Historical Newspapers, Colorado Historical Society; "Deserves to Be Hanged."

³ "Deserves to Be Hanged."

⁴ "Buckien's Arnica Salve."

about the life itself, especially through analysis of targeted people's actions when faced with regulation. With this in mind, it is important to consider what the cases of Ryan and Howard reveal about gay life at the time: why was Howard able to escape the scrutiny faced by Ryan? What are the implications of the increased targeting directed at Ryan? How did these two men respond to the policing they faced?

In his groundbreaking 1897 lecture, "The Path of the Law," Oliver Wendell Holmes reframed society's understanding of the role of the law. In the piece, Holmes pushes back against the idea of the law as a reasoned deduction from "principles of ethics or admitted axioms or what not," instead finding the law to be comprised simply of "the prophecies of what the court will do in fact, and nothing more pretentious." Actors, in response, seek to anticipate to what extent and under what circumstances they can perform an act without coming into contact with the law. Holmes urges the audience to understand the law from the perspective of these actors: "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict."⁵ Holmes thus defines the law as the exact point at which the interests of the state supersede the interests of the "bad man"—a constantly contested equilibrium of sorts. In this model, the law is determined simply by what it lets the "bad man" get away with—how it changes its policing of him. But if, according to Holmes, the law should be understood through the way in which it interacts with the "bad man," conceivably the "bad man" should be understood through the way in which he interacts with the law. In other words, if the law and

⁵ Oliver Wendell Holmes, "The Path of the Law," 10 *Harvard Law Review* 457 (1897), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 31; *Ibid.*, 29; *Ibid.*, 30.

the “bad man” are in a constant struggle at a point of equilibrium (taking the form of arrests, court cases, appeals, etc.), one can understand the “bad man” through the ways in which he pushes back against the law at that point of equilibrium. In order to analyze the contention at this equilibrium point, I refer to the combination of specific laws, courts, police, and political bodies generally as “the law.” I also describe the act of combating “the law” in any way such as through the formation of defense strategies, the hiring of lawyers, the tampering of witnesses, etc., as “interacting with the law.”⁶

The law considered gay people “bad men” based solely on their sexual orientation until the Supreme Court’s decision to strike down Texas’s sodomy statute (and, by extension, all sodomy statutes) in *Lawrence v. Texas* (2003).⁷ Before then, the law participated in the oppression of gay people, legitimizing and formalizing the persecution they faced in their daily lives.⁸ Sodomy laws, which prohibited the “the penetration of a man’s penis inside the rectum of an animal, of a woman or girl, or of another man or boy,” put gay people at the mercy of the statutes and people who exploited the law. William Eskridge explains that sodomy statutes “situated homosexuals outside the normal protections of the law,” which allowed people to “victimize [them] with legal impunity.”⁹ Despite its oppressive tendencies, however, the law also provided a platform through which the lesbian, gay, bisexual, transgender (LGBT) community could and did fight back. Thus,

⁶ I often replace “interacting” with similar words such as “engaging.”

⁷ *Lawrence v. Texas*, 539 U.S. 558, 606, 123 S. Ct. 2472, 2498, 156 L. Ed. 2d 508 (2003).

⁸ Some would argue that this persecution remains today, but I find the sodomy law to be special in that it inherently designated gay men as “bad men” just through the expression of their sexuality.

⁹ William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861-2003* (New York: Viking, 2008), 20; *Ibid.*, 67. Definition of sodomy comes from English common law precedent.

the law—and the sodomy statute in particular—acts as a site of friction between gay people establishing their identity and society attempting to suppress them.

George Chauncey emphasizes that, when examining LGBT history, it is vital to not “construe resistance in the narrowest of terms—as the organization of formal political groups and petitions.”¹⁰ While Chauncey focuses specifically on the expression of internal identity, his suggestion can be applied to a discussion of the law as well. Interaction with the law in the courts and on the streets is an important form of resistance often overlooked when evaluating LGBT history. Simply fighting for freedom against an oppressive law—whether through appealing a conviction, hiring a lawyer, or seeking aid from a community—can also qualify as a form of resistance. And eventually, through years of these small acts of resistance, LGBT people in the United States won, and gay people live under the law without the inherent label of “bad man.” While understanding *Lawrence* as the culmination of this fight makes sense, momentous wins such as this did not materialize out of thin air.¹¹ This thesis explores what came before *Lawrence* and before high-profile setbacks such as *Bowers v. Hardwick* (1986).¹² Just as the 1969 riots at the Stonewall Inn in New York City depended on prior LGBT activists to lay the groundwork that enabled those at Stonewall to come together and act, *Lawrence* depended on generations of LGBT people interacting with and fighting the law as a unified minority intent on shedding the title of “bad man.”

¹⁰ George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 5.

¹¹ Other cases that can be viewed as momentous wins include the following: *Obergefell v. Hodges*, 135 S. Ct. 2584, 2643, 192 L. Ed. 2d 609 (2015) legalized same-sex marriage; *One, Inc. v. Olesen*, 353 U.S. 979, 77 S. Ct. 1278, 1 L. Ed. 2d 1140 (1957) was the first gay rights case decided by the Supreme Court, which ruled in favor of gay magazine One, Inc.

¹² *Bowers v. Hardwick*, 478 U.S. 186, 220, 106 S. Ct. 2841, 2859, 92 L. Ed. 2d 140 (1986), overruled by *Lawrence v. Texas*, 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003). *Bowers* ruled that Georgia’s sodomy statute was constitutional.

In 1974, almost eighty years after Holmes reshaped the way in which people understood the law, Marc Galanter released his seminal *Law and Society* article “Why the ‘Haves’ Come Out Ahead: Speculations on the Limit of Legal Change.” In the article, Galanter explains how certain entities that come into contact with the law are better suited to attain success, separating “claimants who have only occasional recourse to the courts (one-shotters or OS) and repeat players (RP) who are engaged in many similar litigations over time.” Repeat players enjoy many structural advantages over one-shotters, such as their ability to organize, experience navigating the legal system, and focus on a long-term strategy. One-shotters, meanwhile have little interest in making small gains for those who come after them, keeping subsequent actors stuck in futile interactions with the law. But Galanter does not discount the prospect of one-shotters aggregating themselves into repeat players, just as LGBT people eventually did through the formation of groups, such as Lambda Legal, that represented them against the law.¹³ In this thesis, I attempt to pinpoint the early stages of the joint identity that LGBT people developed under the law and their subsequent organization into repeat players.

But researching history through the law presents many challenges. First, queer men and women, before the mid-twentieth-century conceptualization of a gender-inclusive homosexual identity, interacted with the law differently and were targeted by different sets of laws—rendering it impractical to analyze them together. Thus, I explore mostly queer men in this paper, leaving further

¹³ Marc Galanter, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limit of Legal Change,” 9 *Law and Society Review* 95 (1974), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 497; *Ibid.*, 497-501; *Ibid.*, 515; *Ibid.*, 498; *Ibid.*, 529.

development in understanding the way in which queer women interacted with the law to another scholar.

Perhaps the greatest challenge in studying legal records lies in the fact that the law inherently discriminates against persecuted people, conflating all members of a given group with that group's most egregious perpetrators, as noted by Peter Boag.¹⁴ Research is further complicated because entities that constitute the law write legal documents, present cases, and take actions that mirror society's view of the minority group at the time—not necessarily conveying the whole truth. Historian Margot Canaday acknowledges this challenge in her research on early-twentieth-century court-martial trials. She finds that, of the certainly abundant sexual relationships between (and among) soldiers, the court often only policed sex that involved violence. This fact likely evidenced both the difficulty of policing consensual sex (which, like coercive sex, was prohibited by statute) and the law's preconceived notions that unlawful gay conduct likely involved coercion. Thus, as Canaday states, “these cases are a window less into sexual culture than into sexual regulation.”¹⁵ The nature of known sodomy cases, as outlined by Boag, renders it “difficult to distinguish... between those cases involving coercion and those involving free will.”¹⁶ This is not only due to changes in conceptions of consent and acceptable sexual relationships, but also because a claim of coercion at the time absolved the party of blame in the crime of sodomy. Thus, legal documents pertaining to sodomy often provide little ability to distinguish between coercive and consensual acts.

¹⁴ Peter Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest* (Berkeley: University of California Press, 2003), 8.

¹⁵ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009), 84.

¹⁶ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 9.

Given the focus on sex that involves violence, sources frequently depict actions that qualify as monstrous and heinous, and this paper does not attempt to absolve the guilt of the perpetrators of these actions. It is important to understand, however, that when analyzing the actions of defendants in this paper, I examine their circumstances not as perpetrators of sexual assault fighting back against victims (often children), but rather as the main gay targets of policing during the time period. The presence of coercion did not define gay relationships at the time, and yet many cases brought by the state include an element of coercion. These cases still can be analyzed in the context of their relation to gay life, rather than through the lens of the defendants' perceived coercive actions, in order to understand how gay defendants fought back against the law at the time. The importance of framing this thesis's protagonists in this manner comes from the lack of historical sources depicting a largely hidden queer community before the full development of an internal gay identity. Firsthand accounts of queer life around the turn of the twentieth century are exceedingly rare, and those that exist tend to lack specificity. Queer people, however, could not avoid the law, so they appear more frequently in prejudiced, but detailed, legal documents.

Queer Colorado

The roots of gay defendants' eventual transition from one-shotter to repeat player must be unearthed at the local level, where laws and community mores develop and gay men first interacted with the law. In this thesis, I focus on the city of Denver, Colorado and its surrounding region as a case study of how gay men began to form a joint identity under the law. Scholars know little about gay life in the state of Colorado or the Rocky Mountain region before World War I. Thus, in

conjunction with its legal component, this thesis augments the understanding of the geography and character of gay life in the region from 1880 through World War I.

At the beginning of this time period, Denver was a relatively new city, but it transitioned quickly from a frontier, male-dominated mining town to an industrial hub with a very active, reform-oriented progressive movement. These factors combined to make Denver what writer Arthur Chapman described in 1906 as “the most American city”; it operated much like an East Coast city politically and culturally while still exhibiting influence from its frontier past.¹⁷ Denver was located at the crossroads of America in more ways than one, as the city also acted as a major center of tramp life in the West. Josiah Flynt, a sociologist who studied tramps (transient people who performed odd jobs and begged for money) in the late 1800s, found that “if one meets a westward-bound beggar beyond the Mississippi, he may usually infer that the man is on his way to Denver.”¹⁸ Denver’s status as a transportation hub suggests that, while its laws operated locally, its queer citizens and their ideas and actions were likely in constant dialogue with those from around the country. Furthermore, despite Denver’s designation as a center for transient life like San Francisco, its population did not qualify it as a metropolis. Denver provides the perfect case study, as it provides a balance of urban and rural, local and national, East and West.

Much of what prior scholars know about gay life in the state of Colorado comes from activist Terry Mangan’s pioneering 1979 research on the topic.

¹⁷ Arthur Chapman, “Denver, A Typical American City,” *The World Today* (September 1906), quoted in *The Coloradans* by Robert G. Athearn (Albuquerque: University of New Mexico Press, 1976), 223-224.

¹⁸ Josiah Flynt, *Tramping With Tramps; Studies and Sketches of Vagabond Life* (New York: Century Co., 1907), 106.

Mangan identifies the first gay males in the American West: Native American “berdaches,” whose “tradition was both ancient and widespread before any European influence in North America.” Mangan also explores a group of sexually ambiguous cross-dressers in Colorado’s early years as a state and territory, finding that many people lived their lives as a gender different than that corresponding to the sex they were assigned at birth. This gender-bending carried over to the entertainment world, as many professional female impersonators lived and operated in Denver in the late 1800s. Mangan alludes to a world of early gay prostitution also tied gender expression, as “the male prostitutes were attired in the best fashion of ladies apparel.” Most important for the argument of this thesis, Mangan emphasizes the presence of a transient community with a *laissez-faire* attitude toward same-sex relationships in Denver, noting his surprise that this relative openness yielded only few interactions with the law.¹⁹ In her 1997 work “Drag’s a Life: Women, Gender, and Cross-Dressing in the Nineteenth-Century West,” Evelyn Schlatter explores female queerness in the more general region of the West. Relying on many Colorado sources, the work builds upon Mangan’s findings of female cross-dressing, focusing mostly on women who explicitly engaged in relationships with other women.²⁰

Thomas Noel, working almost concurrently with Mangan, published “Gay Bars and the Emergence of the Denver Homosexual Community” in 1978. Noel’s study includes a substantial sociological examination of contemporary gay taverns, including a history of their predecessors. Noel identifies early saloons such as

¹⁹ Terry Mangan, “The Gay West,” Unpublished Article at the Colorado Historical Society, Denver, 1979, 3; Ibid., overall discussion on pages 9-25; Ibid., 21-22; Ibid., 29.

²⁰ Evelyn A. Schlatter, “Drag’s a Life: Women, Gender, and Cross-Dressing in the Nineteenth-Century West,” in *Writing the Range: Race, Class, and Culture in the Women’s West*, edited by Elizabeth Jameson and Susan Armitage (Norman: University of Oklahoma Press, 1997), 338-339.

Moses' Home, which he suggests may have been early gay establishments—a question I consider in Part 1. Noel conducts his study through the lens of gay bars because these establishments allowed patrons to seek refuge from society at-large in a “place where social taboos [could] be violated safely and respectably.” Thus, Noel pinpoints the opening of the first Denver gay bar, The Pit, in 1939 as a monumental event in the development of gay identity.²¹

Gay in History

In this paper exploring gay life in Colorado around the turn of the twentieth century, I use prior understanding of both the development of laws used to target gay men and class distinctions that pervaded gay life as a basis upon which I reconstruct conceptions of identity and geography explored by other scholars in the field of United States LGBT History.

Geography

In order to evaluate how gay men historically interacted with the law, it is vital to understand the geography of gay events. Geography not only enriches the general understanding of gay life, but also exposes the way in which gay men viewed themselves in relation to the law. In his seminal 1994 work *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940*, George Chauncey unearths the pre-World War II geography of gay New York. Chauncey finds “an extensive, organized, and highly visible gay world” centered in enclaves such as the Bowery, the Village, and Harlem. Chauncey describes this world as a “spectacle of the Sodom and Gomorrah that New York seemed to have

²¹ Thomas Jacob Noel, "Gay Bars and the Emergence of the Denver Homosexual Community," *The Social Science Journal* 15, no. 2 (April 1978), 60; *Ibid.*, 59; *Ibid.*, 61.

become” with many “fairies” working “as entertainers” and on display as tourist attractions.²² The work, however, describes the gay male world as a distinctly urban—and a specifically New York—conception. The city and its geography provided the necessary numbers for a gay male population to form and thrive, and many forms of informal policing, such as the metropolitan press, relied on an attentive and discerning urban population. Chauncey’s gay male world arose as a direct result of its setting within New York City. This point is not lost on Chauncey, however, as he calls New York “*prototypical*” rather than “*typical*” and identifies the importance of further understanding the gay population in other cities.²³

Further studies have followed Chauncey’s cue to extend the geographic scope of LGBT historical study, but the end of the twentieth century arrived with Chauncey’s work standing alone in its focus on pre-1930s gay life and comparatively little scholarship on locations west of the Mississippi.²⁴ Written in 2003, however, Nan Alamilla Boyd’s *Wide-Open Town: A History of Queer San Francisco to 1965* transports the discussion of LGBT history to the West Coast’s largest metropolis. Boyd’s depiction of pre-World War II San Francisco recalls much of *Gay New York*. In San Francisco, the Barbary Coast operated much like New York’s Bowery with an abundance of gay clubs. In many ways, San Francisco’s queer community in the late 1800s surpassed even New York’s in its openness. The Dash, one of San Francisco’s most infamous saloons, maintained a

²² Chauncey, 41; Ibid., 33-47; Ibid., 227-267; Ibid., 37.

²³ Ibid., 39; Ibid., 12; Ibid., 28.

²⁴ Marc Stein, "Theoretical Politics, Local Communities: The Making of U.S. LGBT Historiography," *GLQ: A Journal of Lesbian and Gay Studies* 11, no. 4 (2005), 617-618.

connection to the city's government, and the city supported twice the number of saloons per capita than New York or Chicago.²⁵

Like Boyd and Chauncey, this thesis begins to scope out the geographic features of Denver's gay male world around the turn of the twentieth century, focusing on the working class. While the gay male world did not operate as openly or independently as that of New York or San Francisco, gay men in Denver found spaces where they could coexist with other patrons. Additionally, because this thesis explores only the places in which gay men came into contact with the law, it expands the understanding of geography by analyzing it as it relates to the development of gay men into repeat players with a joint identity under the law.

Identity

Scholars have studied LGBT history most commonly through the lens of identity. Elizabeth Lapovsky Kennedy and Madeline Davis's *Boots of Leather, Slippers of Gold: The History of a Lesbian Community*, one of the earliest works in the field, examines the lesbian history of Buffalo, New York and aptly explains a vital development in LGBT history that almost all scholars have since adopted.²⁶ The authors uncover that early gay people identified themselves (and were identified) based on gender, rather than by the modern conception of sexual orientation. People who adopted the stereotypical role of the opposite gender in same-sex relationships—masculine women and feminine men—developed an “identity based on gender inversion.” Their counterparts in relationships, however, were viewed as congruous to straight women and men respectively. In other words, society only considered those who acted counter to the expectations of their sex in

²⁵ Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003), 25-29; *Ibid.*, 26.

²⁶ Stein, 609.

relationships as different—as what we would now call gay. I refer to this model as the gender, or gender-based, model. Over time, however, the classification of queer people began to develop into the “object choice” distinction that exists in twenty-first century society. In this model, both members of a same-sex relationship are considered gay, and gay people are classified as such based on their attraction to men, not their gender expression.²⁷

Chauncey focuses much of his analysis on the gendered presentation of “fairies” in New York both in terms of their self-identification and the conceptions of them formed by the outside world. Society often identified these men as women, and they sometimes adopted female names to either symbolize a full transition to the gay world or separate themselves from their straight lives. These “fairies” did not usually dress as women, but they did adopt gendered markers that ensured it was “clear who would play the ‘man’s part.’” Other gay men at the time differentiated themselves from “fairies” in their gender expression and, as a result, referred to themselves using different words such as “queer,” “trade,” “faggot,” or “punk.”²⁸ This gender-based identity reigned throughout much of the country, including on the opposite coast in San Francisco.²⁹

Some scholars push back against the conclusion that gay men identified themselves based on gender before World War II and object choice after World War II. John Howard, in his book *Men Like That: A Southern Queer History*, challenges the development of the object-choice model. He unites “self-identified

²⁷ Elizabeth Lapovsky Kennedy and Madeline D. Davis, *Boots of Leather, Slippers of Gold: The History of a Lesbian Community* (New York: Routledge, 1993), 324; Ibid., 325. Full discussion of the terms can be found on pages 324-326.

²⁸ Chauncey, 50-51; Ibid., 57. Full depiction of these markers can be found beginning on page 52; Ibid.; 16; Ibid.; Ibid., 15; Ibid., 88. Full discussion of terms that gay men used to identify themselves can be found on pages 14-17.

²⁹ Boyd., 29-38.

gay males” with men “who also engage in homosexual activity or gender nonconformity, but do not necessarily identify as gay,” presenting internal identity as less important to Southern gay life than Northern gay life.³⁰

I, like Howard, find it important to group all men who engaged in same-sex relationships together because the application of sodomy laws did not require targets to be internally aware of their identity. Around the turn of the twentieth century, gay men came into contact with the law mostly due to a sexual relationship with another man. Therefore, the unifying characteristic among protagonists throughout this thesis is not gender expression, but rather the act of sex with another man—even though this would not have unified them internally at the time.

Because of this, I choose to utilize modern, rather than time-specific terms in my discussion. While Chauncey explains that the term “gay” developed in a later period (1920s-1940s) and originally referred to effeminate characteristics of homosexual men, it appears in this paper in accordance with its modern definition.³¹ This thesis refers to all subjects who willingly or regularly engaged in same-sex sexual relationships as gay, even if they would not have viewed themselves that way. Similarly, Chauncey notes that middle-class men who wished to identify themselves based on their same-sex desire rather than their gender expression originally adopted the term “queer.”³² In this paper, however, I use “queer” almost synonymously to the word “gay,” though “queer” more generally refers to acts or people that do not fit society’s expected role. The adoption of modern definitions provides clarity when examining a time period in which

³⁰ John Howard, *Men Like That: A Southern Queer History* (Chicago, IL: University of Chicago Press, 1999), xviii.

³¹ Chauncey, 16-17.

³² *Ibid.*, 15-16.

identities were varied and complex and a region whose specific queer—as I define it, not Chauncey—vernacular has not been uncovered.

Additionally, it is vital to mention people in the West who donned attire not corresponding to their biological sex and faced scrutiny for it—predecessors to their gay counterparts who were targeted for their same-sex relationships. Peter Boag explores the lives of these people in his book *Re-Dressing America's Frontier Past*. The book criticizes historical scholarship that understands cross-dressing—as Boag “regrettably” refers to it—in the West simply as a way to achieve personal advancement and not as a form of queer identity. In response, Boag seeks to “recover” the complex identities and stories of these people and understand how “the transgressive sexual and gender identities they represented have been marginalized, expunged, and forgotten in western history.” Boag parses out the identities of these people, from before a nuanced understanding of cross-dressing, transsexualism, transgenderism, and transvestitism had been fully developed by society or internally by the cross-dressers themselves.³³

Chauncey, Boag, and other scholars effectively explain how different queer male identities, unequivocally distinct and yet inextricably related, developed around the gender systems of the pre-World War II era. Gay men during this time acted as creators of their own identities, displayed acute self-awareness, and held nuanced views of their place in society.³⁴ Chauncey importantly emphasizes that visible identities such as that of the “fairy”—and presumably Boag’s cross-dresser—“provided support to men ostracized by much of society.”³⁵ In sum, these

³³ Peter Boag, *Re-Dressing America's Frontier Past* (Berkeley: University of California Press, 2011), 18; *Ibid.*, 19; *Ibid.*, 8; *Ibid.*, 15-16.

³⁴ Chauncey, 40 (one example).

³⁵ *Ibid.*, 43.

works highlight the importance of and explore the contributing factors to identity formation in pre-World War II gay history. In this thesis, I extend the scholarly understanding of identity development to the legal realm, focusing less on internal identity and more on identity under the law. Gay men themselves forged this identity as part of a larger struggle against an oppressive society, even though many protagonists had yet to develop corresponding internal identities.

Class

The analysis in this thesis operates on the understanding that gay life varied greatly between socioeconomic classes and that the application of the law did not affect all classes of gay men equally. Scholars often frame identity as a product of class. For example, in *Gay New York*, Chauncey finds that the identity of “fairies” aligned less with women as a whole and more with a specific class of women: prostitutes. Chauncey explains that gay men from different social classes created varying versions of a gay identity, noting that the theatrical gay male society of the Bowery “was much more fully and publicly integrated into working-class than middle-class culture.” One reason is that working-class men could not afford to live in spaces that granted them privacy such as apartments and instead were relegated to boarding houses and tenements. Further, gendered notions of sex as defined by the middle class did not pervade the middle class. Middle-class gay men often harbored their own prejudices against “fairies” and did not identify with their effeminacy.³⁶

Peter Boag, in his book *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, concentrates on gay events in Portland—a medium-sized city that shared much in common with Denver. Boag illustrates

³⁶ Ibid., 61; Ibid., 34; Ibid., 35; Ibid., 100-101.

the extensive role of class in shaping the gay experience in a West Coast transient hub. He tracks “at least two distinct male homosexual subcultures in the early-twentieth-century Northwest,” proof that a joint internal identity formed later in the twentieth century. Boag contends that “the construction of the ‘homosexual’ in the Northwest followed a Foucauldian model of the dominant class’s deployment of sexuality,” characterizing the upper and middle classes as cognizant of homosexuality only after “[realizing] that some of their own men engaged regularly in same-sex sexual activities.” In Portland, this realization came after a 1912 scandal at the local YMCA.³⁷ In Denver, the exact moment of realization is not as apparent, though World War I likely played a role.

The makeup of the working class, perhaps the most important of many shared characteristics between Portland and Denver at the time, substantially impacted the development of gay identity in cities that acted as transportation hubs. Both Denver and Portland counted a large population of transient laborers roaming the streets and rooming in boarding houses. Members of this transient labor force often engaged in same-sex sexual relationships. Josiah Flynt, a late-nineteenth-century sociologist, found that “every hobo in the United States knows what ‘unnatural intercourse’ means ... [and] every tenth man practices it, and defends his conduct.”³⁸ These relationships—likely due to the nature of the tramp life—often “paired an adult with a youth,” though this was certainly not always the case. The typical arrangement involved an older male, known as a “jocker” or “wolf,” who physically protected and economically partnered with a younger male,

³⁷ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 6; *Ibid.*, 4; *Ibid.*, 2-3.

³⁸ Josiah Flynt, “Homosexuality Among Tramps,” in *Studies in the Psychology of Sex*, by Havelock Ellis, Appendix A, Vol. 1 (New York: Random House, 1940), 360.

known as a “prushun,” “punk,” or “lamb.”³⁹ Boag traces many aspects of the perception, policing, and development of the gay community to class issues, specifically race- and morality-based campaigns waged by the middle class against the working class.

Boag finds that age-based, working-class gay relationships, not gender-based “fairies” as suggested by Chauncey, constituted “the most visible same-sex sexual subculture” in the region. The “visibility,” Boag continues, resulted from “middle-class white society’s concerted surveillance of the radically diverse working class.”⁴⁰ Thus, sexuality from the 1880s to the early 1910s in the Northwest largely developed as an issue of class and race. Gay life within the working class was the focus of policing until around the 1920s. Because of this, this thesis focuses predominantly on working-class gay life in Denver and its interactions with the law from the 1880s until World War I. Middle-class gay life developed separately and only became the main focus of the law after World War I—the final step of Foucauldian development as outlined by Boag. Two cases involving middle-class gay relationships that were appealed to the Colorado Supreme Court in the 1920s demonstrate this fact.

Law

This paper expands the existing field of LGBT history on the basis of law. Thus, it is imperative to understand the history behind both the laws that targeted gay men and, generally, the laws of Colorado. William Eskridge’s *Dishonorable Passions: Sodomy Laws in America, 1861-2003* comprehensively explains the legal history of sodomy in the United States. Almost every state immediately adopted

³⁹ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 17; Ibid., 25-26.

⁴⁰ Ibid., 3; Ibid.

sodomy laws after entering the Union, and the offense often took the names “‘carnal knowledge’ or ‘the infamous crime against nature,’ the terminology favored by the English jurist William Blackstone.” These terms replaced older terms that occasionally appear in this paper such as “buggery”—the term preferred in Henry VIII’s Act of 1533. Virtually everyone, including “free lovers like [Walt] Whitman and [Elizabeth Cady] Stanton,” would have accepted the constitutionality of sodomy laws during the 1870s, but the understanding of them changed over time.⁴¹

When it came time to create a constitution for the Territory of Colorado in 1861, many men who participated in the constitutional conventions had contributed to the creation of constitutions in other states and territories, most notably Illinois. While the delegates were invested in the creation of government, their focus rested heavily on property and free enterprise.⁴² The Colorado Territory actually lived briefly without a law against sodomy in 1861 after its establishment (its predecessor, the Jefferson Territory, used common law punishments for sodomy). This oversight resulting in apparent legalization lasted only until later that year when the Territory passed a new statute that recriminalized common law crimes. Still later in 1861, the first session of the Territory’s legislature passed a specific statute that outlawed sodomy with a penalty of one year to life—a law that remained in effect until it was amended in 1939.⁴³

While sodomy laws were harsh and serious, they were rarely enforced before the 1880s. As Eskridge points out, police in San Francisco, a city known as “Sodom

⁴¹ Eskridge, *Dishonorable Passions: Sodomy Laws in America, 1861-2003*, 19; Ibid.; Ibid., 38.

⁴² Gordon Morris Bakken, *Rocky Mountain Constitution Making, 1850-1912* (New York: Greenwood Press, 1987), 30.

⁴³ George Painter, "The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States," Glapn.org, 1991-2001.

by the Sea,” arrested only twenty-six people for the crime between 1860 and 1880.⁴⁴ Nan Alamilla Boyd, however, contends that San Francisco did little policing at all of its early queer community. In fact, city residents elected a mayor who ran on a platform opposed to moral reform in 1909, exactly when many other cities were emphatically embracing so-called progressivism. Additionally, many “saw queer entertainments as part of San Francisco’s unique personality” while “extralegal lines of authority” often diminished the role of the police and the law.⁴⁵ This indicates that East Coast ideas about queer people often did not apply to cities in the West.

In most cities, however, the focus on and application of sodomy laws increased between the 1880s and 1920s, a fact that Eskridge attributes to increased urban populations and a “thriving sex business after the Civil War.”⁴⁶ In *Gay Seattle: Stories of Exile and Belonging*, Gary Atkins uncovers arrests made under Washington’s 1893 sodomy law and describes how that particular law predicated society’s widespread early-twentieth-century targeting of urban gay men.⁴⁷ Atkins suggests that this policing played a role the development of gay identity and culture, specifically finding that gay men often defined themselves as precisely contrary to “moral enforcers.”⁴⁸ Thus, as policing increased, gay men’s conceptions of themselves evolved.

Before the 1900s, policing entities often enforced sodomy laws only “to regulate sexual assaults.”⁴⁹ Cases in Colorado from before World War I are often

⁴⁴ Eskridge, 22.

⁴⁵ Nan Alamilla Boyd, *Wide-Open Town: A History of Queer San Francisco to 1965* (Berkeley: University of California Press, 2003), 42; *Ibid.*, 28.

⁴⁶ Eskridge, 50; *Ibid.*, 41; *Ibid.*, 43.

⁴⁷ Gary L. Atkins, *Gay Seattle: Stories of Exile and Belonging* (Seattle: University of Washington Press, 2003), 7.

⁴⁸ Eskridge, 8.

⁴⁹ *Ibid.*, 20.

classified as coercive, though it is important to note that, by the 1900s, sodomy became a way to police the same-sex nature of the crime as well. A quote from noted anti-vice reformer Anthony Comstock evidences this point: “These inverts are not fit to live with the rest of mankind... Instead of the [crime against nature] law making twenty years imprisonment the penalty for their crime, it ought to be imprisonment for life.”⁵⁰ Thus, sodomy laws became the main avenue through which early-twentieth-century law, driven by moral reformists, attempted to levy severe punishment on gay men, especially those in the working class.

Of course, sodomy laws were not the only way to target gay men. Horrifically, some states adopted forced sterilization measures. One, from Iowa, affected inmates who were found to be “moral or sexual perverts.”⁵¹ In the West, less drastic laws allowed police to target men for masquerading in female attire, as Boag explores in *Re-Dressing America's Frontier Past*.⁵² Boag mentions the role of the law on these people only in passing, but this omission is because the law, while an omnipresent threat, was not wielded often and, when it was, resulted in minimal punishment. Judgment from society at-large overshadowed the role of the law in masquerading cases.⁵³ Thus, the distinction this thesis explores is not between queer gender identities and gay sexuality, but rather between cases that policed gender expression and cases that policed same-sex activities. In Part 1 I focus on various masquerading cases in order to recreate the geography of pre-twentieth-century queer life and to provide a foil to cases involving same-sex relationships,

⁵⁰ Ibid., 46 (quoting Comstock).

⁵¹ Ibid., 55.

⁵² Because the law often referred to this in varied terms, I adopt the more general term “masquerading” to evoke a biological man donning woman’s clothes.

⁵³ Peter Boag, *Re-Dressing America's Frontier Past* (Berkeley: University of California Press, 2011), 130-158.

but I do not explore differences in the identities of men accused of masquerading and men accused of sodomy.

Anti-vice reformers realized over time that laws prohibiting the solicitation—not just the act—of sodomy could be applied more comprehensively to target gay men. Sodomy often required proof of penetration, which enforcers found difficult to obtain. To get around this, many places, such as New York, added anti-solicitation measures onto vagrancy or disorderly conduct laws. Thus, at the beginning of the twentieth century, most states “had broad vagrancy statutes, and almost all had public lewdness, disorderly conduct, or indecent exposure laws that were mainly enforced against men behaving lasciviously.”⁵⁴ Vagrancy and disorderly conduct laws legitimized the widespread, speculation-driven targeting of gay men.

Risa Goluboff’s *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* underscores how the application of vagrancy laws in the early twentieth century impacted later periods. Many post-World War II gay organizations, such as the Mattachine Society, advised their members to be cautious of these laws from the early 1900s that empowered the police to entrap and arrest gay men for propositioning sexual acts. Goluboff explains how the laws were often applied as if they outlawed being gay rather than vagrancy.⁵⁵ In California, a 1914 scandal involving police entrapment at two sex clubs in Long Beach resulted in the arrest of thirty-one men. When the state realized that the

⁵⁴ Eskridge, 57; Ibid., 58; Ibid., 59.

⁵⁵ Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York City: Oxford University Press, 2016), 4; Ibid., 93.

actions of the men did not fully qualify as sodomy, it charged them instead with vagrancy, which was a misdemeanor.⁵⁶

These laws had a devastating long-term effect on LGBT people, which is partly due to the fact that they were extremely difficult (and often impractical) to challenge. The vague wording of vagrancy laws allowed police to charge a much larger number of people, and it also gave the law “tremendous discretionary power” in enforcement. This often resulted in smaller penalties, usually monetary.⁵⁷ Thus, the ambiguity of vagrancy laws rendered them harmful to a greater number of gay men. When these men came into contact with the law, however, the penalties were less severe than for the crime of sodomy. For this reason, vagrancy laws often faced less pushback in the legal realm from gay defendants than sodomy laws. The state used vagrancy laws to apprehend vast amounts of gay people who were unlikely to appeal a conviction. This discrepancy between defendant response to vagrancy arrests and defendant response to sodomy arrests is why early twentieth-century legal sources involving sodomy are so much more abundant and detailed than those involving vagrancy (despite far fewer arrests). Thus, studying and analyzing the development in the way that gay men interacted with the law is most fruitful when examining defendants arrested for sodomy; these defendants, if they had the means or support, had greater motivation to push back against the law.

A New Identity

The most common approach to studying pre-World War II gay life involves researching the formation of internal identity and the configuration of local groups

⁵⁶ Eskridge, 51.

⁵⁷ Ibid., 67.

based on that identity. An exploration of changes in the policing of gay men often accompanies this identity-based approach: Boag explains how “society reacted with increasing ferocity against men convicted of same-sex sexual crimes.”⁵⁸ Atkins explores the State of Washington’s increased application of its sodomy law.⁵⁹ Chauncey discusses the actions of various groups that policed gay activity and passed moral reforms in the city. However, Chauncey understands best the implications of exploring this development in policing: “for in its policing of the gay subculture the dominant culture sought above all to police its own boundaries.”⁶⁰ While understanding changes in policing aids scholars in uncovering the experiences of queer people from around the turn of the twentieth century, it tells us more about the dominant culture than the queer people who society sought to police. Or, in Holmes’ words, it tells us more about the law than the “bad man.”

In this thesis, I develop a deeper understanding of the “bad man” by examining the way in which he—or working-class gay men in Colorado from 1880-1914—pushed back against changes in the law that other scholars have so effectively uncovered. I do so not by exploring internal identity—the sources do not lend themselves to this type of finding—but rather by tracking a more abstract form of shared identity: a shared identity under the law. How did they way gay men interacted with the law change from before the turn of the twentieth century to after? How did gay men view themselves and organize under the law in response to increased policing in the early twentieth century?

⁵⁸ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 201.

⁵⁹ Atkins, 3-33.

⁶⁰ Chauncey, 137-141; *Ibid.*, 25.

To answer these questions, I divide the time period spanning from 1880 to 1914 into two. The use of legal documents renders it difficult to track changes in the actions and community of gay men at the time except with regard to their interactions with the law. Thus, these subsections correspond less to developments in the gay community, and more to changes in the application of the sodomy statute.

Part 1 focuses on 1880-1900, a time period defined by decentralized power, a flourishing saloon scene, and a sporadic application of the law. Because this time period predated (but prompted) increased targeting of working-class gay men, I explore both working-class and middle-class gay life. Chapter 1 relies on arrest records and newspaper accounts to present a geographic study of the era's class-divided gay community, which—while not as open or theatrical as that of New York or San Francisco—was lively, complex, and dynamic. Working-class gay life, however, remained integrated with the geography of other vices, and gay men, as a result, did not conceive of their interactions with the law as distinct from those stemming from other vices. Chapter 2 examines specific interactions between gay men and the law. There were no same-sex sodomy cases appealed to the Colorado Supreme Court during this time, and the implementation of the law remained localized and infrequent. This resulted in a lack of a joint identity under the law, as all gay men positioned themselves under the law as unaffiliated one-shotters.

Part 2 focuses roughly on 1900-1914, a time period characterized by increased scrutiny of gay acts and moral vices as a whole, especially those performed among the working-class or immigrant communities and those performed with children. In past histories examining sodomy statutes and early gay life in Colorado, researchers have found *Wilkins v. Colorado* (1922) to be the

first sodomy case appealed to the Colorado Supreme Court.⁶¹ In Part 2, however, I share findings of two earlier sodomy cases that were appealed in the state—though on grounds other than the application of the sodomy statute itself.⁶² Part 2 focuses on the facts of the cases as well as contemporary accounts of other gay men. It explores the specifics of working-class gay life and tracks the ways in which gay life survived and changed in the face of targeting from the law.

The presence of cases that divulge an abundance of details allows Chapter 3 to build on Chapter 1's findings by exploring in-depth the way in which working-class gay life entered private quarters in response to increased policing, which prompted gay men to view their crimes as distinct.⁶³ Chapter 4 examines how uniform application of the law during this time period gave rise to connections formed among defendants, which ultimately resulted in the organization of gay men into small-scale repeat players under the law. Chapters 5 and 6 examine developments in the way that working-class gay men interacted with the law, focusing extensively on the parties involved in the first two sodomy cases appealed to the Colorado Supreme Court. Chapter 5 discusses how developments in methods of adjudication and prosecution increased the stakes for gay men facing the law and provided an incentive to fight back in an organized and effective manner. Chapter 6 illustrates the subsequent response that gay men staged in the courts. Through in-depth analysis in these chapters of lawyers, judges, witnesses, and defendants, I find connections that suggest that, while many gay men surely did not share the same internal identity, working-class gay men began to grasp a shared

⁶¹ Painter.

⁶² These cases were previously unknown, so this thesis qualifies as the first time they have been examined.

⁶³ In this paper, I refer to dwellings, hotels, and flophouses as private locations, while public locations are places that were at least relatively open from the street such as saloons or the streets themselves.

identity forged by the oppressive nature of the sodomy statute, organizing themselves into small-scale repeat players to fight back in the legal realm.

Together, policing of gay men and scrutiny directed at their nascent Colorado community increased as a result of the progressive moral reform movement. This policing, spotty in the nineteenth century, focused mostly on immigrant, working-class, and transient communities in the early twentieth century. As a response to the increased scope and force of the law, working-class gay men began engaging in an increasingly cognizant and effective response to the law, through which they began to develop a shared identity. This identity had little to do with internal conceptions of sexuality, but rather resulted from their shared status as “bad men” under an oppressive law.

PART 1

“A Queer Case, This”

1880-1900

In 1859 around 100,000 people set off over land toward the shadows of the Rocky Mountains. This contingent more than doubled in size the group that traveled to California ten years earlier in search of the same precious commodity: gold. Men made up almost all—perhaps 96 percent—of those that made the trek, often settling in single-gender camps.¹ While the initial rush largely proved to be a bust, gold and other metals found throughout the State drew people (mostly men) to Colorado from the East through the 1860s. The decision by the Union Pacific Railroad to connect the coasts through Wyoming instead of Colorado, however, put the state’s future in peril. In response, Colorado citizens mobilized, raising funds for the construction of the Denver Pacific Railway by 1870, which connected Denver to the transcontinental railroad in Cheyenne.² The construction of the railroad salvaged the future of Denver and the Colorado Territory as a whole. The year the railroad opened, Colorado’s population numbered only 39,826 with Denver’s a mere 6,829.³ In the subsequent thirty years, however, both Denver and Colorado grew substantially as people continued to move west via the railroad.

¹ Elliott West, *The Contested Plains: Indians, Goldseekers, & the Rush to Colorado* (Lawrence: University Press of Kansas, 1998), xv; *Ibid.*, 147.

² Louisa Ward Arps, *Denver in Slices* (Athens, Ohio: Swallow Press, 1959). 16-18.

³ Ancestry.com, *1870 United States Federal Census* [database on-line] (Provo, UT, USA: Ancestry.com Operations, Inc., 2009).

In this part I introduce queer people into the narrative of Colorado's 1880-1900 social culture through analysis of newspaper accounts and arrest records, examining instances in which gay men came into contact with the law and their actions as a result. The vagueness and brevity of the sources, however, renders it difficult to make judgments about the sexual nature of the people and events they chronicle—thus the world I illustrate is more aptly described as queer than gay according to my definitions. Additionally, while the geography and application of the law described in this part allude to the class distinctions that play a large role in the rest of the thesis, the law appears to have largely stayed out of the lives of both working-class and middle-class gay men. While this thesis explores the development of a joint working-class gay identity under the law, I do not think that working-class gay men had developed an identity under the law distinct from their middle-class counterparts during the late-nineteenth-century time period. While police applied sodomy laws more to working-class than middle-class gay men, I contend that working-class gay men did not begin their organized response to this application of the law until the 1900s. Thus, I explore both working-class and middle-class gay men and establishments in this section to set up a sort of control (middle-class gay men) and experimental (working-class gay men) group for the following sections in which increased scrutiny and policing affected the experimental group, but not the control group.

Despite challenges within the sources, this section establishes many geographical landmarks of Colorado's pre-twentieth century queer history, finding queer life to thrive in a world in which leniency reigned within the law. This openness does not suggest that queer lives were easy; in fact, queer people were, in some ways, less understood and more alienated than their twentieth-century

counterparts. While middle-class gay life occupied mostly private spaces, working-class gay life, as suggested by Chauncey, often operated publicly. But perhaps the publicity of working-class gay life rendered it unlikely that gay men would separate their own actions from the vices occurring alongside them when they came into contact with the law. The openness of the law enabled them to live in relative freedom from substantial legal repercussions, but it also kept them from developing a united identity under the law. Instead, gay men remained unaffiliated one-shotters, as explained by Galanter, through the nineteenth century. Thus, Part 1 presents a basis for Part 2's exploration of the early-twentieth-century time period: a depiction of queer life before increased policing and scrutiny from the law elicited an organized, effective response from those it affected.

CHAPTER 1

A Public Life

By 1880, ten years after the construction of the Denver Pacific Railway and four years after Colorado attained statehood, the population of Denver had ballooned from less than 7,000 in 1870 to 38,665.⁴ Denver had grown in numbers and had developed into a modern, industrial city. Not surprisingly, a lively culture of vice accompanied this growth. Louisa Arps describes that, during this time period, “from coast to coast Denver-town was known as wide-open.”⁵ In Denver, vice and crime ran rampant, and many took advantage of this looseness. Thomas Noel, a scholar who began pioneering work on early gay life in Colorado in the late 1970s, found that juvenile gangs, such as the River Front bunch, “hung around bars plotting mischief and crimes.” Saloons provided not only a place to drink, but also a space to indulge in more serious vices such as prostitution.⁶

The geography of vice included many saloons, bordellos, theaters, and other establishments, most of which were located on Market Street between Nineteenth and Twenty-Third—a red light district known as “the line” in the late nineteenth century.⁷ Union Station, the main transport hub at the time, sat on Wynkoop Street between Sixteenth and Eighteenth, four blocks away from this center of vice. Just to the southwest of “the line” and east of Union Station, between Blake Street and

⁴ Ancestry.com, *1870 United States Federal Census*; Ancestry.com and The Church of Jesus Christ of Latter-day Saints, *1880 United States Federal Census* [database on-line] (Lehi, UT, USA: Ancestry.com Operations Inc., 2010).

⁵ Arps, 23.

⁶ Thomas J. Noel, *The City and the Saloon: Denver, 1858-1916* (Lincoln: University of Nebraska Press, 1982), 89; *Ibid.*, 87-89.

⁷ *Ibid.*, 87-89.

Wazee Street and above Sixteenth, a group of Chinese people settled after finishing work on the railroads in the early 1870s.⁸ But where did queer people socialize and go to find sexual partners?

There is no question that Colorado had male prostitutes that likely worked alongside their female counterparts. In a speech given at the 1882 Colorado State Medical Society Annual Convention held in Pueblo, George Cox addressed “a class of individuals who, for want of a better name, I shall designate as male prostitutes.”⁹ His acknowledgement of male prostitutes in a larger discourse about female prostitution suggests that male and female prostitutes lived similar lives. It is probable that many of the prostitution houses located on “the line” offered the services of male prostitutes that contributed to the “wanton of the French colony who trade upon unnatural practices and bestiality of the most degraded character” reported by the *Denver Rocky Mountain News* in 1895.¹⁰ The Sanborn maps of Denver at the time, however, designate nearly all of the buildings located on the four block strip of Market Street known as “the line” as places for “female boarding.”¹¹ Of course, men could have (and probably did) live in the same dwellings as female prostitutes, but much of gay life operated outside of this female-dominated section of town.

In fact, much of the gay activity that can be mapped occurred not on “the line,” but rather south and slightly east of it, centered on Fifteenth and Sixteenth

⁸ Arps, 23; Refer to Figure 14 in the Appendix for a full map of the area.

⁹ George W. Cox, M.D., “The Social Evil,” in *Transactions of the Colorado State Medical Society at Its Twelfth Annual Convention Held in Pueblo* (Denver, CO: Edwin Price & Co., 1882), 75.

¹⁰ “Cannot Be Suppressed,” *Denver Rocky Mountain News*, June 9, 1895, Colorado Historical Newspapers. Colorado Historical Society.

¹¹ Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 64b, Vol. 2, 1890-1893, Digital Sanborn Maps, 1867-1970. Sanborn Maps were a set of maps created by the Sanborn Map Company to for the purposes of calculating insurance.

Street from Blake to Curtis and on Larimer Street from Eleventh to Nineteenth.¹² This seemingly arbitrary geographical tendency actually points to a larger pattern within gay life. Not only do many gay events occur close to the city's main transportation hub, Union Station, but they also follow the cable car routes of the 1880s. In 1880, Denver had only a limited streetcar route network powered by steam power or pulled by horses.¹³ Two of the main lines, however, extended north-south on Larimer Street and east-west on Sixteenth Street—reflecting the pattern of gay activity.¹⁴ While it is unclear whether this parallel comes primarily from the police's propensity to monitor along the streetcar routes or of gay men to act along them, it is important to note that a significant amount of gay activity occurred along these two corridors during the late 1800s and through whole time period on which I focus. The proximity of gay acts to these busy streetcar routes suggests that gay life flourished in public spaces, as opposed to only in secluded areas. This public gay life mirrors what Chauncey finds in New York, as straight people often interacted with gay life and could easily gain admission to gay establishments such as Paresis Hall (known officially as Columbia Hall).¹⁵

While most establishments in Denver likely did not serve an exclusively queer clientele, queer people certainly were welcome at many. Noel explains the loose divide between saloons and houses of prostitution at the time, and presumably sex that did not involve prostitution claimed a home in saloons as well.¹⁶ Saloons acted as a place for people of all sexualities to seek out relationships. John Ryan,

¹² Refer to Figure 14 in Appendix to see pattern visually.

¹³ Arps, 21.

¹⁴ Ryan Keeney, "The History of Denver's Streetcars and Their Routes," Denver Urbanism August 9, 2017; Refer to Figure 14 in Appendix for routes.

¹⁵ George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 33.

¹⁶ Noel, *The City and the Saloon: Denver, 1858-1916*, 87.



Clark's old stand, shown in the photograph, was at 1307 Fifteenth street, where the Pioneer building now stands. The photograph of the building was taken more than twenty years ago. To the left of the Clark shop was a shooting gallery, run by Hugh Woods, who later went to California and became very wealthy, and to the right was a saloon, known as Moses' Home.

Figure 1: A gun shop on Fifteenth and Larimer, with Moses' Home barely visible on the right, taken around twenty years before being printed in the *Denver Post* on May 23, 1911. On the same block stood Big Casino Saloon. (Source: *Denver Post*, May 23, 1911, Colorado Historical Newspapers, Colorado Historical Society.)

whose story with which I begin this thesis, allegedly committed an act of forcible sodomy on a teenager in 1885.¹⁷ The alleged victim recounted that a man met and propositioned him at the Big Casino Saloon on Fifteenth Street between Larimer and Holliday (Holliday later became Market—home of “the line”).¹⁸ Police then found and detained Ryan at Moses' Home, “a Fifteenth Street saloon” on the same block as Big Casino.¹⁹

Inside saloons such as Moses' Home one would possibly have found female impersonators, a variation of Chauncey's New York-based discovery that “fairies were also tolerated at many working-class dance halls and other meeting places where they were not made an official part of the ‘show,’ but interacted more

¹⁷ “Deserves to Be Hanged,” *Denver Rocky Mountain News*, June 23, 1885, Colorado Historical Newspapers, Colorado Historical Society.

¹⁸ “City Brevities,” *Denver Republican*, February 11, 1882, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 15 in Appendix.

¹⁹ “Deserves to Be Hanged”; Refer to Figure 1; Refer to Figure 15 in Appendix.

casually with other patrons.”²⁰ While it is difficult to unearth what went on inside exact saloons, the arrest of Robert Evans for vagrancy and drunkenness in 1898 uncovers overall trends. The officer in the case explained that Evans “hangs about saloons, especially Castle Garden. He sings songs of all sorts in them and is called a female impersonator.” Evans defended himself by suggesting that “the officers are down on me because I sing in the saloons.”²¹ First, the officer’s testimony pointed out at least one saloon, Castle Garden, in which Evans performed as a “female impersonator.” The saloon only appeared in Denver newspapers in one other instance, and what remains visible of the address suggests that the saloon stood at the corner of Larimer (or Lawrence) Street and Twentieth Street.²² The officer specifically singled out Castle Garden, suggesting that it may have catered to a notoriously queer patronage. Difficult as it is to determine the extent of female impersonation at Castle Garden, Robert Evans certainly performed there regularly.

Additionally, the statements of both the officer and Evans himself suggest that other saloons, perhaps Moses’ Home and Big Casino, hosted many such performances. Evans, instead of highlighting a single performance or a single saloon, stated that he “sing[s] in saloons.”²³ Likely, many saloons across the city accepted, or even embraced, the presence of female impersonators. According to Evans, the fact that he performed in saloons directly caused the officers to condemn him. The direct causal relationship implies that the officers had encountered female impersonators in saloons before and had an expected response to them—proving that female impersonators appeared in many Denver saloons.

²⁰ Chauncey, 58.

²¹ “Female Impersonator Evans,” *Denver Post*, January 3, 1898, Colorado Historical Newspapers, Colorado Historical Society.

²² “Tenderloin Reawakened,” *Denver Rocky Mountain News*, August 30, 1897, Colorado Historical Newspapers, Colorado Historical Society.

²³ “Female Impersonator Evans.”

However, same-sex sexual activity likely could not have flourished at every saloon. Newspapers continually reported on strange occurrences at Moses' Home, suggesting that it served as a center of all vices—a fact that likely enabled same-sex relationships to transpire. In 1887, the police fined owner Sned McCarthy “\$100 for keeping a disorderly house, and \$30 for selling liquors unlawfully.”²⁴ In 1888, a man from Sweden died in the saloon, likely as a result of drinking or drug use.²⁵ The next year, a man “took a quarter of an ounce of morphine... and was discovered lying on the floor in an apparently drunken condition.”²⁶ The nature of these incidents, as well as the fact that one of them undoubtedly involved an immigrant man, points to the fact that Moses' Home likely catered to a working-class clientele and was one of the most open of Denver's many saloons.

Further, violent outbursts among the clientele at certain saloons points to the fact that they may have been especially notorious. These venues constituted places where men could go if they wanted to seek out sexual partners, which may have been facilitated by obscure crevices and back alleys where fights could also occur. Just one month before Ryan's proposition at Big Casino, “a man drew a razor on two or three other men with whom he had a quarrel.”²⁷ The exact same month, a riot nearly broke out in a vacant lot that sat behind Moses' Home on Fifteenth Street and three other saloons on Larimer Street, “just such a place as a lot of desperate men who wanted to fight would choose.”²⁸ If the lot's seclusion

²⁴ “Local Brevities,” *Denver Rocky Mountain News*, February 11, 1887, Colorado Historical Newspapers, Colorado Historical Society.

²⁵ “Died in a Saloon,” *Denver Rocky Mountain News*, January 3, 1888, Colorado Historical Newspapers, Colorado Historical Society.

²⁶ “A Dose of Morphine,” *Denver Rocky Mountain News*, September 18, 1889, Colorado Historical Newspapers, Colorado Historical Society.

²⁷ “A Twilight Tussle,” *Denver Rocky Mountain News*, May 12, 1885, Colorado Historical Newspapers, Colorado Historical Society.

²⁸ “Almost a Riot,” *Denver Rocky Mountain News*, May 25, 1885, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 15 in Appendix.

made it ideal to house a fight, it certainly provided the privacy necessary to engage in sexual relationships. In the case of John Ryan, the police immediately knew to search for a suspect at Moses' Home, and John Ryan felt comfortable enough to proposition the boy in Big Casino and return to Moses' Home after the incident, suggesting that the police and gay men themselves understood these saloons to welcome gay activity.

Incidents involving middle-class gay men occurred in different types of establishments. Thomas Ryan, not to be confused with John Ryan, may have been involved in a same-sex sexual relationship with a man named John Peters that occurred at the Washington House on Fifteenth and Wynkoop Street in 1882, very close to Union Station. Ryan stole "a number of articles of clothing and underwear from John Peters, and also some blankets from" the establishment. While the same-sex relationship between the two cannot be confirmed, police found Ryan in the same Big Casino Saloon where John Ryan propositioned the teenager three years later, in 1885.²⁹ Additionally, Ryan clearly was inside the room of Peters given the intimate nature of the stolen items. From newspaper accounts, the Washington House, or Washington Hotel, often housed "pleasant reception[s]" and was a constant target for theft, suggesting that thieves such as Thomas Ryan found what was inside the hotel worth stealing.³⁰ One newspaper account described a man staying at the Washington House that "was nicely dressed and bore the appearance

²⁹ "A Change of Linen," *Denver Rocky Mountain News*, March 22, 1882, Colorado Historical Newspapers, Colorado Historical Society; "Coming Events," *Denver Republican*, November 17, 1882, Colorado Historical Newspapers, Colorado Historical Society.

³⁰ "In Honor of Miss Hoffman," *Denver Rocky Mountain News*, July 19, 1885, Colorado Historical Newspapers, Colorado Historical Society; "Police Pickings," *Denver Rocky Mountain News*, January 13, 1882, Colorado Historical Newspapers, Colorado Historical Society; "16 Pages Every Sunday," *Denver Rocky Mountain News*, February 15, 1884, Colorado Historical Newspapers, Colorado Historical Society.

of a man of means.”³¹ Williams House, the site of an alleged 1885 “assault to commit a crime against nature,” catered to a similarly middle-class clientele.³² Located on Larimer Street between Twelfth and Thirteenth, the establishment came under the proprietorship of Fred Merz in 1883, who “refitted, refurnished, and put it in complete order, so that it looks like a different building. Fine Sunday dinners will be a special feature.”³³ The defendant in the 1885 case, Charles Howard, was a painter in his fifties—clearly of a middle-class background.³⁴

Perhaps the most paradoxical establishment in late-nineteenth-century Denver, the Palace Theater on the corner of Fifteenth and Blake Street housed professional female impersonation performances that both formed part of the mainstream and clearly constituted a queer space.³⁵ Throughout the 1880s, famous female impersonators such as J. Arthur Doty, St. Leon, and Gus Mills repeatedly appeared at the Palace Theater.³⁶ These professional female impersonators, however, differed greatly from those such as Robert Evans who appeared in saloons interacting with customers. Coverage deliberately presented the professional

³¹ “The Laudanum Line.” *Denver Rocky Mountain News*, March 23, 1884. Colorado Historical Newspapers. Colorado Historical Society. Keyword: Washington House.

³² “Buckien’s Arnica Salve,” *Denver Rocky Mountain News*, October 25, 1885, Colorado Historical Newspapers, Colorado Historical Society.

³³ Illegible Title Third Column from Left on Page 5, *Denver Rocky Mountain News*, March 29, 1885, Colorado Historical Newspapers, Colorado Historical Society; “The Williams House,” *Denver Rocky Mountain News*, March 25, 1883, Colorado Historical Newspapers, Colorado Historical Society.

³⁴ “Buckien’s Arnica Salve.”

³⁵ Refer to Figure 2 on following page. Many professional female impersonators at the time also were involved in horribly racist blackface minstrelsy shows that propagated many of the harmful racial stereotypes that black people have dealt with throughout history.

³⁶ “Palace Theatre,” *Denver Rocky Mountain News*, May 22, 1881, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Rocky Mountain News*, February 10, 1881, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Republican*, May 31, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Republican*, October 11, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Republican*, September 26, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Republican*, August 25, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Amusements,” *Denver Republican*, July 21, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Palace Theater,” *Denver Rocky Mountain News*, July 14, 1886, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 15 in Appendix.



Figure 2: “Men, women, and a girl pose outdoors near the Palace theater at 15th (Fifteenth) and Blake Street in downtown Denver, Colorado” (Source: *Palace Variety Theater*, 1870-1880, Photographs – Western History, Denver Public Library, Denver, CO.)

performers both as professionals and as men, praising the outrageousness of “makeup and wardrobes” and referring to Gus Mills as “Mr. Gus Mills.”³⁷ At the same time, the Palace Theater clearly catered to a queer audience. In 1890, the theater advertised an event that brought together the “Big Chiefs of the Comedy World,” and the list of performers included women, men, and female impersonators—a progressive contingent for the time.³⁸ Queer people likely attended these shows that featured professional female impersonators. This is not only due to the fact that they could see people representative of themselves in certain ways, but also because the theater was located along the same Fifteenth Street corridor as other gay establishments, less than two blocks from Big Casino and Moses’ Home. These establishments contributed to a late-nineteenth-century

³⁷ “Amusements,” February 10, 1881; “Amusements,” October 11, 1882.

³⁸ “The Laughing Days Are Here!” *Denver Rocky Mountain News*, December 15, 1890, Colorado Historical Newspapers, Colorado Historical Society.

gay life in Colorado that was lively and seemingly unconcealed, though intertwined with the area's working-class culture and culture of vice.

Through these sources it is clear that establishments that housed middle-class same-sex affairs differed greatly from those that housed working-class gay relationships. While working-class gay men operated largely in saloons and public spaces, middle-class gay men tended toward hotels and private dwellings. The presence of separate working-class and middle-class gay spaces during this time period points to Peter Boag's idea that gay identity and actions developed separately in working-class and middle-class communities.³⁹ The fact that they both appear in legal documents and newspaper accounts of arrests, however, suggests that the law did not go out of its way to target one space over another as emphatically as it did in the subsequent time period. Working-class same-sex relationships that caught the attention of the police almost exclusively occurred in public or semi-public spaces alongside other so-called vices, while middle-class gay men found sexual partners mostly in private spaces. This suggests that while working-class gay men came across each other often, they would have struggled to separate their actions from other vices that occurred in the same streets they roamed and the same saloons they frequented. It is not surprising then that, when working-class gay men came into contact with the law, they did not conceptualize their actions as part of a distinct unified movement against the law.

³⁹ Peter Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest* (Berkeley: University of California Press, 2003), 6.

CHAPTER 2

Leniency in the Law

When a group of men wrote the laws of the Colorado Territory in 1861, they unsurprisingly based their ideas in the principles of the territory's formation. A territory established on the basis of "economic belief," Colorado adopted a constitution that valued private property and attempted to "maintain[] the fluidity of market processes unhampered by what delegates considered unwarranted interference by interests operating in the legal system."⁴⁰ This premise carried into the first four decades of Colorado's existence, as the law exhibited leniency and attempted to stay out of the private lives of citizens.

As a result, many gay people did not have to fear repercussions under the law as much as their twentieth-century successors. William Eskridge finds that sodomy laws during this time were often only utilized in cases related to sexual assault. Of course, this fact likely had little to do with an acceptance of same-sex relationships. Instead, it reflected the difficulty in proving consensual sodomy cases as "a man could not be convicted of Sodomy based on testimony of a sexual partner who was his 'accomplice,' a willing adult partner."⁴¹

It is important to note, however, that while gay men did not have to fear excessive targeting under the law, their personal lives were more complicated. In New York, a queer person who attended college and, in prep school, "attained the

⁴⁰ Gordon Morris Bakken, *Rocky Mountain Constitution Making, 1850-1912* (New York City: Greenwood Press, 1987), 30.

⁴¹ William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861-2003* (New York City: Viking, 2008), 20.

highest scholarship in the history of the school,” lived a life split between at least three aliases at once: Earl, Ralph, and Jennie. While each alias could not remain completely separate, the author expressed the necessity of hiding Jennie—the “fairie” [*sic*] identity in “every-day” life: “Inside I had the reputation of being an insignificant, puritan, unpractical bookworm and Mollie Coddle who knew nothing of life and human nature.” Of course, this allusion could be shed in the presence of those like the author: “Outside I achieved wide notoriety as an amateur actor—or, properly speaking, actress.”⁴² This duality of existence did not manifest in all queer people. In 1870, Charles Emerson moved to the Colorado mines from Maine, alluding to relationships with men in much of his correspondence. While those who surrounded him, including his family back home, did not endorse his actions, they maintained relationships with him and “vowed to keep perfectly quiet about [his]... habits with other men”—relatively progressive for the time.⁴³ While Emerson’s friends and family looked down on his actions and desired to keep them secret, they also acknowledged that his queerness was a private matter and did not let it jeopardize their relationships with him. Even considering the quasi-accepting family of Charles Emerson, it appears that, during the late nineteenth century, judgment from those in queer peoples’ personal lives had a greater impact than judgment from the law.

⁴² Earl Lind, *The Female Impersonators* (New York: Arno Press, 1975), 82; *Ibid.*, 86-96; *Ibid.*, 87; *Ibid.*

⁴³ “Charles Emerson to unknown correspondent, Portland, Maine, 4 March 1870,” Emerson Family Papers (EFP), Western History Collection, Beinecke Rare Books and Manuscripts Library, Yale University in Robin Courtney Henry, *Criminalizing Sex, Defining Sexuality: Sodomy, Law, and Manhood in Nineteenth-Century Colorado* (PhD diss., Indiana University, 2006, ProQuest Dissertations & Theses Global), 128; “10 March 1874 Charles M. Harris to Edwin Emerson,” EFP, Beinecke in *Ibid.*, 154.

Applying the Law

While same-sex affairs were not viewed positively by the state, they often avoided the amount of scrutiny that would come to accompany them in the twentieth century. When a Colorado State Board of Charities and Corrections Report investigated the State's prison system in 1895, it found poor management that led to a variety of negative effects such as "unnatural practices" between inmates.⁴⁴ While the report clearly looked down on these gay relationships, it presented them as just one of many negative results of managerial oversight. The report does not seem to express surprise at the instances of same-sex relationships nor does it seem intent on addressing them apart from other issues within the prison.

Even when states passed laws attempting to crack down on vice during the late 1800s, the enforcement arm of the law avoided enforcing them. In Denver, when laws ordered establishments to close, owners often paid off the police and remained open. Perhaps not coincidentally, many gamblers such as the infamous con artist 'Soapy' Smith also provided campaign contributions to officials running for city office.⁴⁵ The police and the law did little to crack down on centers of vice within the city, and this leniency was hardly a secret. In New York, one of the most notable advocates for stringent obscenity laws, Charles Parkhurst, stated that "the guilt of the [vice] proprietors is not nearly so great as the guilt of a police system that tolerates and fosters guilty proprietorship. It is our police system that is the supreme culprit..."⁴⁶ A similar sentiment pervaded those that supported more

⁴⁴ "Colorado Condensed," *Eastonville World*, April 6, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁴⁵ Arps, 23-24.

⁴⁶ Parkhurst to Police Commissioners, 16 Jan. 1894, MP 89-GTF-14, in Timothy J. Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex, 1790-1920* (New York: W. W. Norton, 1992), 185.

active policing in Denver. In an 1899 account of Market Street after the passage of an ineffective “midnight closing ordinance,” the *Denver Rocky Mountain News* found that “between the law-breakers of the ‘row’ [another name for ‘the line’] and the police offices there is a tacit understanding that the former shall not be punished no matter how flagrant the violations of the ordinances.”⁴⁷ Perhaps this disinterest in enforcement of the law resulted from the fact that many of the police officers at the time were beat officers and maintained close ties to the neighborhoods they patrolled. No matter the cause, these corrupt arrangements, and a greater disinterest in moral policing, allowed less visible crimes like sexual relationships between two men to remain mostly unencumbered by the law.

Some people who expressed their queerness in public, however, did not escape the law as easily, as policing public queerness did not interfere with the private property focus of Colorado law or agreements between business proprietors and police. In 1870, at least a decade before Denver became an established, modern city, “two young men named Haskill and Melville, were arrested... while masquerading in female apparel, and will probably go to the penitentiary.”⁴⁸ When Denver became a larger and more established city, the instances of arrests for masquerading in a woman’s clothes increased and were accompanied by vivid descriptions in some cases, emphasizing the public nature of the crime.

In 1883, the *Denver Republican* reported on “the greatest sensation ever created in Denver.” The architect of this “sensation,” a man known as Frederick Osten (he presented his name as Edward Martino—Martine in some accounts—

⁴⁷ “Lawlessness of the Row,” *Denver Rocky Mountain News*, August 18, 1899, Colorado Historical Newspapers, Colorado Historical Society.

⁴⁸ “General News,” *Denver Rocky Mountain News*, November 3, 1870, Colorado Historical Newspapers, Colorado Historical Society.



Figure 3: “View of the Windsor Hotel at 18th (Eighteenth) and Larimer Streets in Denver, Denver County, Colorado”—Visible is the shade under which Osten “making innumerable ‘mashes’ on the hearts of the tender young men (Source: Jackson, William Henry, *Denver - Windsor Hotel*, 1882-1900, Photographs - History Colorado, Denver Public Library, Denver, CO.)

and his real name remained a mystery) faced arrest for “masquerading in attire other than that worn by his sex.”⁴⁹ A few days prior, police took note of his presence in the city and decided to monitor him before making an arrest. During the police observation, Osten entered a building near the corner of Nineteenth and Lawrence Street, located one block off the corridor of gay activity established earlier in this chapter. Soon he emerged from the building “dressed in a rich costume, and carrying a fan in the most approved fashion.” The newspaper, relaying the views of the police, continued to rave about Osten’s appearance: “he certainly made a very handsome looking woman and had made himself up in a most ravishing and fascinating style.” When on the streets, Osten flamboyantly interacted with those around him, “making innumerable ‘mashes’ on the hearts of the tender young men who hang around the shade of the Windsor Hotel of summer evenings.” He

⁴⁹ “The Mystery of a Miss.” *Denver Republican*, July 3, 1883. Colorado Historical Newspapers. Colorado Historical Society. Keyword: Female Impersonator.

defiantly paraded down Nineteenth Street, “flirt[ing] in a manner that nearly drove two or three young men of the dude order into hysterics.”⁵⁰ While the newspaper description likely intended to taunt Osten, it also conveys the pride with which Osten must have carried himself, and, while some of the men—those “of the dude order”—acted uncomfortable in his presence, he openly strutted the streets of the city for days before the police decided to make its move.

While Osten’s parade around the city undoubtedly turned heads, his courtroom appearance, according to the newspaper account, may have been an even more lavish scene. The description of the event is best left to a *Denver Republican* reporter’s theatrical account:

The court room was crowded with sweltering humanity. Men stood on chairs, leaned on the railing of the bar, crowded, jostled and pushed each other in their eagerness to catch a glimpse of Frederick Osten, alias Edward Martino, a prisoner under arrest for masquerading in woman’s costume. Miss or Mr. Osten was led into court by Sergeant Phillips, who looked as flush and excited as a bashful groom leading a bride to the altar.⁵¹

The account depicts the courtroom not only as teeming with people, but also as a sort of dramatic performance akin to Osten’s masquerading around the city. This demonstrates that, while the people of Denver found his presence outrageous and unwelcome, they preferred to playfully belittle him in the public sphere rather than to impose the full power of the law. In the end, the Judge fined Osten a total of \$29 for his crime, and Osten appears to never have interacted with the law in Colorado again.⁵²

But what made this event ripe for such an ostentatious depiction in the newspaper? The *Denver Rocky Mountain News* article following the same event

⁵⁰ “In Female Attire,” *Denver Rocky Mountain News*, July 2, 1883, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 3 for Windsor Hotel; Refer to Figure 17 in Appendix.

⁵¹ “The Mystery of a Miss.”

⁵² Ibid.

stated the reason plainly: “It is a very uncommon thing for men to be caught in Denver masquerading in the clothes of a woman.”⁵³ Boag points out that, in reality, quotidian life probably featured more instances of biological males donning female attire that the reporter led the public to believe.⁵⁴ That said, the reporter’s naïveté indicates that masquerading cases less overt than Osten’s often escaped the attention of both the public and the law.

While people arrested for masquerading were not necessarily gay, the public in some ways conflated those who exhibited queer gender expression with those that engaged in same-sex relationships. The *Denver Republican* reporter made it clear that society did not treat the man as a practical joker like it did professional female impersonators at the Palace Theater. In another outrageous depiction of the courtroom happenings, the reporter noted that the Judge asked the defendant: “‘Pull off your hat’... as a shade of judicial dignity lingered on his cheek, like the last kiss of sunset on the bosom of a mountain lake.”⁵⁵ While it makes sense that the judge would ask the defendant to remove his hat, the singling out of the act in the newspaper account accompanied with its comically melodramatic tone suggests a deeper meaning to the request. Many gay men at the time distinguished themselves with physical markers in their facial grooming, commonly taking the form of plucked eyebrows. In New York, almost forty years after the Osten case, a detective removed the hat of an Italian man and his friend and found tweezed eyebrows, and immediately stated: “You are fairies.”⁵⁶ It is possible that the judge or reporter knew that hats allowed “fairies” to obscure their identities and live

⁵³ “In Female Attire.”

⁵⁴ Boag, *Re-Dressing America's Frontier Past*, 63.

⁵⁵ “The Mystery of a Miss.”

⁵⁶ Chauncey, 54 (quoting the officer).

among their straight peers. It is more likely, however, that the reporter picked up on the fact that Osten did not only masquerade as a woman on those few days in Denver, but rather identified on a deeper level—even without the disguise of the hat—as something other than a man simply wearing woman’s clothing. The reporter then emphasized the point, stating that Osten’s “whole bearing is that of a man lacking in virility and given to indulgences in filthy and abominable practices.”⁵⁷ Whether the “filthy and abominable practices” refer only to the clothes Osten chose to wear is unclear, but the use of such words falls more in line with the way people would describe those who committed a much greater crime: sodomy.

Another event involving a man named Joe Gilligan in April 1895 portrays this evocation of sexuality in cases that otherwise had little bearing on it. Described in the *Denver Post* as “A Queer Case, This,” the occurrence involved an arrest made on Gilligan and his “companion” Elmer Brown.⁵⁸ Police arrested the two for burglary and forgery, and found a wardrobe full of female attire and love letters exchanged with prominent men from around the country in the pair’s room.⁵⁹ Despite the charges not having anything to do with queer gender expression or sexuality, the newspaper alludes to the sexual relationship between the two, as it refers to Gilligan as “the Colorado Oscar Wilde” and names the event Denver’s “‘Cleveland street’ scandal.”⁶⁰ The *Denver Post* had just reported on the Wilde trial, so it appears logical that the newspaper related the event involving Gilligan

⁵⁷ “The Mystery of a Miss.”

⁵⁸ “Gilligan is Held,” *Denver Post*, April 26, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁵⁹ “A Queer Case, This,” *Denver Post*, April 25, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁶⁰ “Gilligan is Held”; “A Queer Case, This.”

to that involving Wilde.⁶¹ Interesting, however, is the fact that the newspaper connects the gay nature of the two incidents despite the fact that Wilde faced the law due to his involvement in a same-sex sexual relationship while Gilligan faced the law due to his involvement in a fraud involving furniture and pianos.⁶² The public's perception of Wilde's sexuality came from a designation forged by the law, while the law had little impact on the public's view of Gilligan's sexuality. Instead, as Boag points out, the public and the press "suspected a corollary between a fellow's (homo)sexuality and his effeminate behaviors, actions, and appearance."⁶³ This comparison between the treatment of Oscar Wilde and "the Colorado Oscar Wilde" demonstrates that the trials queer people faced based on their identities and actions in late-nineteenth-century Colorado came mostly from public opinion—not the law. If the law did not prosecute even Denver's own "Oscar Wilde" for his sexual relationships, many gay men during the time clearly escaped repercussions under—and thus interaction with—the law.

Even when publicly-assumed queer men like Osten and Gilligan faced the law for crimes other than sodomy, they did not have to discuss their sexuality in court. In fact, the *Denver Republican* article that offered the superfluous account of Osten's trial even stated that "his trial and subsequent proceedings are all that have any bearing upon the case."⁶⁴ Thus, when gay men faced the law—perhaps all statutes except sodomy—in the late nineteenth century, they did not defend

⁶¹ "There Was No Libel," *Denver Post*, April 5, 1895, Colorado Historical Newspapers, Colorado Historical Society; "Wilde on Trial," *Denver Post*, May 22, 1895, Colorado Historical Newspapers, Colorado Historical Society. (Examples of Wilde reporting)

⁶² "Goes to the Reformatory," *Denver Post*, May 23, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁶³ Boag, *Re-Dressing America's Frontier Past*, 79.

⁶⁴ "The Mystery of a Miss."

their sexuality in court and thus could not have established a joint identity under the law.

As evidenced in the Osten case, even when the law pinpointed queer gender expression or queer sexuality, the nature of the resulting penalties likely kept gay men from fighting back in the courts. Osten, like many others who faced the law for their expression of queerness or association with queer people, received a punishment in the form of a fine.⁶⁵ A judge fined Robert Evans, the female impersonator who performed in saloons such as Castle Garden, “\$3 and costs for drunkenness and \$25 and costs for vagrancy,” and, if Evans provided proof of “any respectable occupation,” the judge would have dismissed the vagrancy penalty.⁶⁶ These punishments from the law were likely not severe enough to warrant pushback; for queer people, it would have been easiest (and probably less humiliating) to just pay a fine and escape the public eye.

In many instances, the law did not even levy these fines directly on queer perpetrators. As mentioned earlier, the law dealt with the vice of Moses’ Home not by targeting its patrons, but by fining the proprietor.⁶⁷ Furthermore, Rev. Thomas Uzzell attempted to undermine the success of Market Street establishments by “mak[ing] their nefarious business so costly for them in the way of heavy fines that they would be compelled to abandon their vice practices or leave the city.”⁶⁸ The default legal punishment that affected queer men during the late 1800s took the form of fines assessed to them either directly or indirectly. As a result, interactions between queer men and the law often were short and rarely resulted in prison time

⁶⁵ “The Mystery of a Miss.”

⁶⁶ “Female Impersonator Evans.”

⁶⁷ “Local Brevities,” *Denver Rocky Mountain News*, February 11, 1887.

⁶⁸ “Cannot Be Suppressed.”

or appeals. Thus, queer men likely felt no need to pursue further interaction with the law or develop a unified front to fight it.

A Crime Against Nature

Gay men who came into contact with the law on the charge of sodomy (also known as the crime against nature) faced greater penalties and were forced to discuss their sexuality in court, unlike their queer counterparts accused of other crimes. However, the late 1800s featured far fewer charges of sodomy than the early 1900s, and many of the cases failed to feature gay defendants.⁶⁹ As a result, gay men accused of sodomy during this time period could not develop a joint identity under the law because the sodomy law did not exclusively target gay men, and its application lacked uniformity.

In the late 1800s, application of the sodomy statute had yet to imply the presence of gay defendants. Early reporting of sodomy cases often did not specify whether or not the crime featured a same-sex or opposite-sex incident. In 1880, the *Denver Rocky Mountain News* reported a sodomy charge against Philip Koerper and provided no other information in the issue or any subsequent issue regarding the nature of the crime.⁷⁰ One of the next reported cases of the crime, an 1884 crime against nature charge against Thomas Crosby, similarly received little attention in the newspaper.⁷¹ The fact that the *Denver Rocky Mountain News* reported these cases with few detail suggests that society cared little about sodomy cases and that

⁶⁹ Eskridge, 50.

⁷⁰ "Golden," *Denver Rocky Mountain News*, September 7, 1880, Colorado Historical Newspapers, Colorado Historical Society.

⁷¹ "Meretricious Display," *Denver Rocky Mountain News*, March 16, 1884, Colorado Historical Newspapers, Colorado Historical Society.

the application of the sodomy law did not automatically signify the same-sex nature of the case.

Commonly, the law applied to the rape of young children, especially outside of Denver. In 1892, John Webb was charged, and eventually discharged because the “jury disagreed,” for committing a crime against nature against his adopted child in Colorado Springs.⁷² Prosecution for the crime of bestiality also often fell under the umbrella of sodomy. One of the first cases appealed to the Supreme Court of Colorado involving sodomy or the crime against nature, *Benedict v. Colorado* (1896), dealt with bestiality.⁷³ Even sodomy trials in lower courts reflected this pattern. In 1885, George Green, originally charged with the crime against nature, pled guilty to the “charge of cruelty to animals and was sent to the county jail for six months.”⁷⁴ The case of Green illustrates two important facts about pre-twentieth-century application of the sodomy law. First, Green was able to plead to a lesser crime during this period of relative leniency in the law. Second, sodomy had not yet adopted its exclusively gay connotation, and gay men did not constitute the law’s exclusive targets.

Even though the sodomy law did not target a specific group in the late-1800s, it occasionally was applied to police a sexual relationship between two males. Due to sodomy’s greater penalties and sexual nature, any gay man accused of sodomy may have interacted with the law more than their queer contemporaries accused of other crimes. Notably, two of the very few sodomy cases that involved a

⁷² “Criminal Division,” *Denver Rocky Mountain News*, March 31, 1892, Colorado Historical Newspapers, Colorado Historical Society; “May Get Hot,” *Denver Rocky Mountain News*, March 25, 1892, Colorado Historical Newspapers, Colorado Historical Society.

⁷³ *Benedict v. Colorado*, 23 Colo. 126, 46P.637 (1896).

⁷⁴ “Cases Set for Trial,” *Denver Rocky Mountain News*, September 2, 1885, Colorado Historical Newspapers, Colorado Historical Society; “Criminal Cases,” *Denver Rocky Mountain News*, September 9, 1885, Colorado Historical Newspapers, Colorado Historical Society.

same-sex coupling took place during the same year and in very close spatial proximity to each other. If defendants would have forged a connection based on their analogous positions, they could have formed a joint identity under the law.⁷⁵ The factors that divided the incidents, however, rendered it unlikely that the defendants would have, in any way, conceived of their situations as related. Thus, they remained disassociated one-shotters with little chance to effectively challenge the law.

The first sodomy case I find to undoubtedly feature a relationship between two males occurred in 1885. In a two week span between June 9 and June 23, police arrested John Ryan for three crimes: vagrancy on the ninth, robbery on the eighteenth, and sodomy on the twenty-third.⁷⁶ The crime as described certainly qualified as heinous. Ryan, as discussed in Chapter 1, allegedly propositioned Walter Hill, a teenager, inside the Big Casino Saloon. After Hill refused, Ryan lured Hill to another part of town where he “knocked him down with a club” and raped him.⁷⁷ Just four months later, as examined in my introduction, police arrested Charles Howard, age fifty-six, “for an alleged assault to commit a crime against nature” against “a boy named George Simpson.”⁷⁸ Notably, these two arrests

⁷⁵ The only other case from before 1900 I could find that unequivocally dealt with a same-sex coupling was that of George Sutherland, who was convicted of buggery with a fifteen-year sentence in Leadville in 1892. I decided not to include this case, however, because it was an anomaly among sodomy cases at the time. It featured not one but six different boys, some of them as young as ten, who accused Sutherland of rape. This perhaps explains the police response and relatively drastic (for its time) punishment. The age of the victims and serial nature of the crime makes it abnormal and overshadows the same-sex nature of the crimes, thus I do not consider it in this analysis. The newspaper articles that deal with Sutherland’s crimes are: “Lower Than a Brute,” *Leadville Daily/Evening Chronicle*, March 12, 1892, Colorado Historic Newspapers Collection; “Was Forced to Steal,” *Denver Post*, December 2, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁷⁶ “Police Court Points,” *Denver Rocky Mountain News*, June 9, 1885, Colorado Historical Newspapers, Colorado Historical Society; “Held For Highway Robbery,” *Denver Rocky Mountain News*, June 18, 1885, Colorado Historical Newspapers, Colorado Historical Society; “Deserves to Be Hanged.”

⁷⁷ “Deserves to Be Hanged.”

⁷⁸ “Buckien’s Arnica Salve.”

occurred in the same year and only three blocks apart, but Ryan and Howard had little in common personally and certainly interacted with the law differently. A “tramp” who likely could not afford to hire a lawyer or appeal and had little interest in doing so, Ryan pled guilty in court.⁷⁹ Ryan had no other choice—his place in society and history of publicized crimes likely sealed the outcome of the case even if Ryan had the means to fight back. His existence as a tramp ensured that he interacted with the law as a one-shotter with little expertise or backing. Howard, on the other hand, did not appear in the newspaper again. As a presumably middle-class painter, Howard may have had the means to interact with the law. He may not have, however, either for fear of retribution from society or because the penalty levied against him from the charge of assault (rather than the crime against nature itself) was not severe enough to warrant appeal. Thus, while these two cases came to light in remarkably close proximity based on both geography and time, the disparate nature of the defendants and their position in society kept them from joining together to effectively interact with the law as joint repeat players.

Even if defendants desired to form a joint identity, it would have been largely impossible due to the rarity of the sodomy’s prosecution. Much like the hyperbolic coverage of the Osten trial, the *Denver Rocky Mountain News* described the Ryan case as “one of the most revolting crimes ever committed in Denver,” suggesting that sodomy cases involving same-sex couplings were

⁷⁹ “Deserves to Be Hanged”; “Three Cases,” *Denver Rocky Mountain News*, September 19, 1885, Colorado Historical Newspapers, Colorado Historical Society.



Figure 4: Mug shot of John Short, arrested for the crime of larceny; Complexion, Eyes, and Hair are listed as “Mullatto” (Source: *John Short #1859*, 1892, Corrections Records, Colorado State Archives, Denver, CO.)

relatively unheard of in society.⁸⁰ If this case involving forcible sodomy qualified as one of the most heinous in Denver’s history, and, as Eskridge explains, cases of forcible sex made up almost all sodomy prosecutions in the late nineteenth century, then evidently the law did not wield the sodomy statute very often against gay men at the time.⁸¹ In fact, the month of Ryan’s arrest featured only one arrest for sodomy—his—but 107 arrests for vagrancy.⁸²

Additionally, the story’s headline, “Deserves to Be Hanged,” suggests a disregard for rule of law and due process when it comes to cases of sodomy.⁸³ The newspaper diminished the importance of the law in levying a punishment, instead suggesting a punishment of death. This recommendation is reminiscent of other

⁸⁰ Ibid.

⁸¹ Eskridge, 20.

⁸² “The Following Were the Arrests,” *Denver Rocky Mountain News*, July 2, 1885, Colorado Historical Newspapers, Colorado Historical Society.

⁸³ “Deserves to Be Hanged.”

extralegal actions taken during the time such as race-based lynching, indicating society's belief that in the inadequacy of the law's punishment. Those accused of sodomy did face the law, but contempt from the public far outweighed punishment from the law. Proving the relative leniency of the law, Ryan was free by 1887, when police arrested him for attempted murder—ironic considering the public outcry for his death.⁸⁴

A similar pattern pervades the cases of John Short and George Hooker, both of whom were arrested for the crime against nature between 1889 and 1890.⁸⁵ While it is unclear whether or not the cases involved same-sex couplings, the law had little effect on the lives of the defendants. Short received a sentence of only one year in prison in 1889 and, by 1892, he had already been arrested for highway robbery and grand larceny.⁸⁶ Hooker, arrested for the crime against nature in 1890, had already started and been arrested for conducting a fake auction business by 1893.⁸⁷

If a lack of policing defined the city during the late 1800s, the surrounding mines were a virtual free-for-all. Denver newspapers portray few accounts of queerness in the mines. In her book *Roaring Camp: The Social World of the California Gold Rush*, Susan Johnson explores the queer life of the California mines in the mid-nineteenth century. As part of her larger study, Johnson recounts same-sex relationships that wavered precariously between homosexual and homo-social.

⁸⁴ "Before the Bar," *Denver Rocky Mountain News*, January 23, 1887, Colorado Historical Newspapers, Colorado Historical Society.

⁸⁵ "Criminal Court," *Denver Rocky Mountain News*, January 3, 1889, Colorado Historical Newspapers, Colorado Historical Society; "Local Brevities," *Denver Rocky Mountain News*, July 25, 1890, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 4.

⁸⁶ "Criminals Sentenced," *Denver Rocky Mountain News*, January 6, 1889, Colorado Historical Newspapers, Colorado Historical Society; "Who They Are," *Denver Rocky Mountain News*, June 6, 1891, Colorado Historical Newspapers, Colorado Historical Society; "Towns Around Salida," *Salida Mail*, January 26, 1892, Colorado Historic Newspapers Collection.

⁸⁷ "Snide Watch Fakers," *Denver Rocky Mountain News*, February 17, 1893, Colorado Historical Newspapers, Colorado Historical Society.

Her protagonists lived in a setting “characterized by the presence of curious young men and lonely husbands, by close dancing and hard drinking, by distance from customary social constraints and proximity to competing cultural practices.” In this environment, Johnson spins complex webs of ambiguous relationships between men—“Moody and John, Newt and Moody, John and Young, Doten and Newt, Doten and Jimmy, Doten and Dr. Quimbly”—doubting that “Allkin was the only man in the Southern Mines who ever reached for a friend in the heat of the night.”⁸⁸ Johnson’s account aptly conveys the often confusing sexual nature of men who lived in small, rural communities almost completely devoid of women—a fact likely duplicated in the Colorado mines of the later nineteenth century.

The homo-social environments of rural Colorado mining camps likely gave rise to an abundance of gay relationships. In 1880, just under 61 percent of people that lived in Denver were male. However, men made up nearly 68 percent of all people living outside Colorado’s capital and largest city. In Leadville, a booming silver mining town, almost 78 percent of residents were male.⁸⁹ In other words, for every woman there existed around one and one-half men in Denver, but over two men elsewhere in Colorado including over three men in Leadville. The exact nature of same-sex relationships within these mines is difficult to discern, but they usually escaped the attention of the law. In one of the only cases of sodomy involving a miner reported in the Denver press, Charley Purmost of Boulder County pled guilty in 1890 to “assault and battery rather than be tried for the original offense”

⁸⁸ Susan Lee Johnson, *Roaring Camp: The Social World of the California Gold Rush* (New York City: W. W. Norton, 2000), 174; Ibid.

⁸⁹ Ancestry.com and The Church of Jesus Christ of Latter-day Saints, *1880 United States Federal Census*. Actual population numbers: Colorado—194,471 (129,276 M, 65,590 F); Denver—38,665 (23,536 M, 15,218 F); Leadville—23,571 (18,292 M, 5,313 F).

of sodomy. As a result, Purmost “was fined by \$75 and costs.”⁹⁰ While the exact nature of the crime is unclear, the relatively few women in the mines suggest that Purmost’s case involved a same-sex relationship. This case proves that those accused of sodomy could often plead down to a lesser charge and avoid jail. Evidence of the fact that Purmost worked as a miner comes from 1895, when Purmost, still a miner in Boulder, had become one of the “leaders of the miners in that section.”⁹¹ Thus, same-sex relationships, while likely commonplace in rural mining communities, rarely faced the law and had minimal effect on a person’s standing in the mines even if they did.

By 1900, gay men in Colorado had not formed a joint identity under the law. But while relatively lenient policing contributed to this lack of unification, some of the nineteenth-century sodomy cases involving gay men allude to the increased scrutiny and policing that came after the turn of the century. The cases of both John Ryan and Charles Howard featured aggressive police tactics uncommon in the nineteenth century. In the 1885 case of Ryan, Officer Ehman first arrested the defendant on suspicion of vagrancy in Moses’ Home. When Walter Hill provided a description of his assailant, police decided that Ryan, already in jail for vagrancy, best fit the description, and Hill confirmed.⁹² The actions of the police in the case appear to be arbitrary; the chance that the correct suspect would have been jailed between the time of the incident and the time that Hill’s brother reported it to the police that same day appears minute. If Ryan truly did commit the crime, either the police made a lucky guess or had just done a clean sweep of

⁹⁰ “News at Boulder,” *Denver Rocky Mountain News*, February 22, 1890, Colorado Historical Newspapers, Colorado Historical Society.

⁹¹ “Angry Miners,” *Denver Post*, May 28, 1895, Colorado Historical Newspapers, Colorado Historical Society.

⁹² “Deserves to Be Hanged.”

vagrants in the area—demonstrative of aggressive policing to come. But Ryan may have truly been innocent—suggesting the manipulation engaged in by both the law and those that took advantage of it in the 1900s.

The Charles Howard case from the same year shockingly suggests an even more advanced method that the police used to target gay men in the 1900s: entrapment. Interestingly, the same officer who initially arrested Ryan also arrested Howard, but not for crime against nature. Instead, Officer Ehman arrested Howard “for an alleged assault to commit a crime against nature.”⁹³ Thus, Howard did not commit the crime, but rather “assaulted” to commit it. This wording perhaps signified a very early incarnation of the anti-solicitation laws that targeted gay men in the twentieth century, as explained by Eskridge.⁹⁴ A similar wording appears in a more mysterious 1888 case involving Thomas Halen, on trial for “attempt to commit buggery.”⁹⁵ Although the exact nature of Halen’s crime is unclear, he could have fallen victim to the same form of police manipulation. In order to catch gay men soliciting sex, police would entrap men they suspected to be gay by posing to be gay themselves or using a decoy. Exactly this occurred in the Howard case: the complainant, George Simpson, “was decoyed into the Williams house on the West side.”⁹⁶ This has startling implications. First, the police likely understood Williams House as a place to catch gay men. Second, entrapment, largely a twentieth-century development, had roots in certain instances of nineteenth-century policing. These inventive forms of policing may have been the brainchild of Officer Ehman. They may have been more widespread than newspaper accounts led the public to believe.

⁹³ “Buckien’s Arnica Salve.”

⁹⁴ Eskridge, 59.

⁹⁵ “Justice Dormer’s Court,” *Denver Rocky Mountain News*, December 21, 1888, Colorado Historical Newspapers, Colorado Historical Society.

⁹⁶ “Buckien’s Arnica Salve.”

Whatever the case, prominent twentieth-century forms of policing that led to increased interaction between gay men and the law can be traced back in Colorado to the 1880s.

Class- and race-based policing that defined twentieth-century targeting of gay men also drew its roots to the nineteenth century. George Cox's address underlined one key difference in working- and middle-class same-sex sexual relationships. In his discussion of "male prostitutes," he identified the suggestive name many of them received—"head-artist"—suggesting a focus on oral eroticism.⁹⁷ Cox likely intended to refer only to middle-class gay men in his discussion, as middle-class gay men preferred oral eroticism while working-class gay men largely avoided it.⁹⁸ Cox emphasized his point by stating that "it seems to require both age and intellect to make a first class 'artist.'"⁹⁹ Thus, medical discourse often centered on middle-class gay men. The law, however, took the opposite route. Sodomy, until later in the twentieth century, only applied to anal penetration. As a result—and perhaps also a cause—of this definition of sodomy, the law focused extensively on working-class gay men, a trend that became more evident after the turn of the century.

These class distinctions already appeared in many cases from this chapter. In the case of Frederick Osten, newspaper coverage described the defendant as using "elegant language," designating him as "nobility fallen low."¹⁰⁰ This description demonstrates that while upper- and middle-class gay men occasionally came into contact with the law, their queerness sacrificed their class status, forcing

⁹⁷ Cox, 75.

⁹⁸ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 118.

⁹⁹ Cox, 75.

¹⁰⁰ "The Mystery of a Miss."

them to “fall[] low.” More often, however, the law targeted working-class gay men. Coverage of John Ryan singled him out as a “tramp,” a designation that became increasingly important in the 1900s.¹⁰¹ Perhaps most telling, the judge in the Robert Evans case offered to lower the penalty to a paltry \$3 fine if the defendant could “prove that he is not a vagrant,” essentially removing all punishment if the defendant proved himself as part of the middle class.¹⁰²

Similar to class-based designations, classifications of race played an important role in pre-twentieth-century cases involving gay men and became even more of a factor after the turn of the century. White gay men born in the United States almost never faced the charge of sodomy, and newspaper coverage almost always “added ethnic and racial identities to nonwhite” queer men that came into contact with the law.¹⁰³ Newspapers ensured that their readers knew that Frederick Osten was “a Spaniard,” and, as pointed out by Boag, presented him “along the lines of the period stereotype of the Mexican *senorita*.”¹⁰⁴ Often mockingly, newspapers shared the races of black defendants such as George Green and John Short, the latter of whom police even made the point to specify as biracial. In these cases, the defendants’ race contributed to the newspaper’s amplification of the vileness of their crimes.¹⁰⁵ As the law began to focus more on gay men in the 1900s, these class and race distinctions became even more important in determining the targets of the law.

¹⁰¹ “Deserves to Be Hanged.”

¹⁰² “Female Impersonator Evans.”

¹⁰³ Eskridge, 23; Boag, *Re-Dressing America's Frontier Past*, 140.

¹⁰⁴ “In Female Attire”; Boag, *Re-Dressing America's Frontier Past*, 148.

¹⁰⁵ “Drove Off the Buggy,” *Denver Rocky Mountain News*, July 14, 1893, Colorado Historical Newspapers, Colorado Historical Society; “Four Bold Bandits,” *Denver Rocky Mountain News*, November 21, 1894, Colorado Historical Newspapers, Colorado Historical Society; “The Montclair Terror,” *Denver Rocky Mountain News*, November 22, 1894, Colorado Historical Newspapers, Colorado Historical Society; “Criminal Cases.”

This part has defined the geography of late-nineteenth-century queer Colorado and explored the interactions between queer men and the law during the same time. The truth, however, is that most queer people of the late 1800s never came into contact with the law. It is unclear, based on his address, whether George Cox considered all gay men “male prostitutes”—Cox acknowledged that the group he described did not have a name—or just those that received compensation for sex. He claimed, however, that they “have organized themselves into societies for self-protection and mutual benefit.”¹⁰⁶ Unfortunately, legal documents and newspaper coverage of court cases from the time do not provide accounts of this group of unified “male prostitutes.” The lack of source material, of course, does not prove that organized groups of gay men did not exist; in fact, it could imply the opposite. If these groups attained success in their intentions as portrayed by Cox, they would not appear in legal records due to a high degree of “self-protection.” Thus, Cox’s description suggests that the police either did not attempt or did not succeed in targeting these “male prostitutes,” which did not come into contact with the law (or, if they did, remained quiet about their unified backing).

One of these men may have been Richard de Bonair, or “Pretty Dick,” a dressmaker and female impersonator who committed “suicide by inhaling chloroform” in 1895.¹⁰⁷ De Bonair had moved to Pueblo from Denver (a common travel route for people at the time and gay men in particular) two years before his death, residing on Larimer Street while in Denver.¹⁰⁸ The newspaper provided a thinly veiled account of de Bonair’s relationships with men, stating that “he had

¹⁰⁶ Cox, 75.

¹⁰⁷ “Suicided with Chloroform,” *Colorado Weekly Chieftain*, August 1, 1895, Colorado Historic Newspapers Collection; “Suicide at Pueblo,” *Denver Rocky Mountain News*, July 28, 1895, Colorado Historical Newspapers, Colorado Historical Society.

¹⁰⁸ Refer to Figure 17 in Appendix.

made a very warm friendship with S. W. Chidester” of Milwaukee that involved exchanging letters “full of brotherly love.”¹⁰⁹ The interpretation of these letters can lead two ways, but both likely allude to de Bonair’s gay sexuality.

In one scenario, the declaration of the “friendship” in the newspaper, with no mention of others, suggests a singular depth and potentially romantic nature; Chidester and de Bonair may have shared more than just a friendship. The other scenario suggests that de Bonair’s awareness of his queerness, and society’s disapproval of it, may have caused a depression within him that led him to take his own life. The article described de Bonair’s reason for committing suicide as “despondency on account of an incurable disease.”¹¹⁰ The exact nature of the “incurable disease,” however, remains a mystery, but could have alluded to de Bonair’s same-sex attraction, especially considering the development of the medical discourse on the topic around the turn of the century as evidenced by the Cox address.¹¹¹ The newspaper placed emphasis on the “Christian advice” in letters between Chidester and de Bonair, and neo-Puritan Christianity often provided the basis on which people formed beliefs about queerness and vice. Chidester could have been providing advice based in Christianity to de Bonair about his “disease,” contributing a form of “brotherly love” absent from de Bonair’s prior, immoral relationships with men.

Either scenario points to the dichotomous nature of gay life during the late nineteenth century. On the one hand, queer people largely lived their lives free of interference from the State and escaped serious repercussions under the law. De Bonair appears to have never been arrested despite his apparent integration into

¹⁰⁹ “Suicided with Chloroform.”

¹¹⁰ Ibid.

¹¹¹ Cox, 75.

gay life: not only was he a female impersonator, but, when in Denver, he resided on the same Larimer Street corridor that housed much of Denver gay activity. On the other hand, an oppressive society either hid the true nature of queer people or forced them to suppress it themselves. Still, queer people attempted—sometimes successfully and sometimes tragically—to find ways to grapple with their identities and live their lives in an oppressive society.

PART 2

Gay vs. The Law

1900-1914

If the late 1800s saw Colorado grow from a decentralized frontier territory to a full-fledged, if messy, industrial state with Denver at its heart, the early 1900s acted as a time for Colorado to solidify its position by engaging in state-building and further developing Denver as a progressive American city.¹ Various aspects of Colorado's nineteenth-century economy and society became unsustainable and faced scrutiny in the early twentieth century. Many of the state's mining camps had become ghost towns by 1900, as Colorado's economy pivoted away from mineral production. On the urban front, the rapid growth of the industrial and transport hub of Denver toward the end of the nineteenth century "had generated the kinds of social problems associated with large cities" such as the need for hospitals, an overabundance of saloons, and juvenile delinquency. These factors compromised Denver's "image as an attractive place to visit and perhaps to live." The politics of the state also required modernization. The same men who saved Denver in the 1870s after a decrease in mining production—the "Seventeenth Street Crowd"—remained in power at the dawn of the new century. Many of the city's residents expressed a desire to cleanse the city's politics of corruption by infusing it with "honest politicians" on both a state and local level.²

¹ Some of the work from this part was submitted as a final paper in Professor Hendrik Hartog's class American Legal Thought. This includes some of the introduction and much of the analysis of John DeWeese in Chapter 6.

² Robert G. Athearn, *The Coloradans* (Albuquerque: University of New Mexico Press, 1976), 225-226; *Ibid.*, 216; *Ibid.*, 219; *Ibid.*; *Ibid.*, 218.

The development of Denver played a key role in the modernization of the state. Politically, this took the form of Article XX of the Colorado Constitution, which gave Denver home rule, and the charter adopted by the city in 1904. Aesthetically, the city received an upgrade when Mayor Robert Speer, elected in 1904, brought City Beautiful urban planning to Denver from his time in Dusseldorf and turned the city into a modern, visually-pleasing hub.³

Emergent political progressivism informed the city's modernization efforts. This political movement flooded Colorado and the rest of the United States during the early twentieth century and profoundly affected the state's politics. This era introduced a slew of urban social reform initiatives such as the inauguration and expansion of Judge Ben Lindsey's juvenile court and the attempted cleansing of religious-based vices such as prostitution and drunkenness.⁴ While some of the developments of the progressive era proved beneficial to oppressed people in the long run, they often did not bode well for those living contemporaneously. William Eskridge and Margot Canaday explain that, as progressives began to focus on purification measures, sexual minorities faced much of the movement's scrutiny. This made up a "pseudoscience of degeneracy" that tied together society's conceptions of black men as predatory toward white women and working-class, nonwhite gay men and women as predatory toward children. Reformists acted on these perceptions fervently, as an anxiety pervaded society that the presence of these "predatory degenerate[s]" threatened distinctions in class and morality.⁵ My

³ Louisa Ward Arps, *Denver in Slices* (Athens, Ohio: Swallow Press, 1959), 33-36.

⁴ Ben B. Lindsey, "Report of Hon. Ben. B. Lindsey: Chairman of the Committee on Juvenile Courts," Report (1914), *The Mothers' Congress*, Washington, D.C, in *Colias v. Colorado*, 60 Colo. 230, 8172 (Colo.1915), 3-5; Thomas J. Noel, *The City and the Saloon: Denver, 1858-1916* (Lincoln: University of Nebraska Press, 1982), 88-91.

⁵ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009), 29; William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861-2003* (New York City: Viking, 2008), 40; *Ibid.*, 41.

research demonstrates this shift in focus to working-class, immigrant, and nonwhite gay relationships. Not a single case I uncover from the time period features a relationship between two middle-class men.

Thus, while Part 1 proves that middle-class and working-class gay life developed separately, this section examines society's increased targeting of working-class gay relationships between the turn of the century and World War I. In this time period, as Peter Boag finds, "working-class, racial minority, and immigrant" men overwhelmingly became the victims of policing. Because the law tied the sexuality of these men to their distinct class, it focused overwhelmingly on behavior that the middle-class "viewed as the most outrageous aspect of working-class practices: sexual relations with 'children.'"⁶ This held true in the case of Denver, perhaps to an even greater extent due to the influence of Ben Lindsey's juvenile court. This phenomenon explains why so many of the cases involving gay men during the time period dealt with defendants accused of sexually assaulting children. The law focused on these same-sex relationships practiced within the working class because they viewed them as distinctly working-class relationships. This does not mean that these types of relationships pervaded all of working-class gay life; the focus on them is purely the result of stereotyped beliefs within the middle-class. In this chapter, I grapple with the effects of this era on working-class

⁶ Peter Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest* (Berkeley: University of California Press, 2003), 4.



Figure 5.1: Mug Shot of Peter Horons, arrested for the Crime Against Nature—For reverse, See Figure 22 (Source: *Peter Horons* #7435, 1909, Corrections Records, Colorado State Archives, Denver, CO.)



Figure 5.2: Mug Shot of John Chemgas, arrested for the Crime Against Nature—For reverse, see Figure 21 (Source: *John Chemgas* #7436, 1909, Corrections Records, Colorado State Archives, Denver, CO)

gay men, specifically in the way they interacted with the law. How did working-class gay men respond to increased scrutiny under the progressive-era law?

In this part, I examine contemporary newspaper accounts of gay men interacting with the law. I also explore in-depth the first two sodomy cases appealed to the Supreme Court in the state. The first case, *Chemgas v. Tynan* (1911), involved an ultimately failed application for a writ of *habeas corpus* against the prison that held two men convicted of sodomy (John Chemgas and his co-defendant Peter Horons).⁷ The defendants filed the writ on the grounds that the case information left off the phrase “against the peace and dignity of the State.”⁸ At the district court level, the case took the form of *Colorado v. Peter Horons & John Chemgas* (1909) and featured two Greek men accused of assault and the crime against nature against Ralph Frost occurring in a room above Market Street

⁷ *Chemgas v. Tynan*, 51 Colo. 35, 52, 116 P. 1045, 1051 (1911), dismissed, 223 U.S. 744, 32 S. Ct. 532, 56 L. Ed. 639 (1912), Colorado State Archives. The other defendants’ case was also appealed as *Horons v. Tynan*, 51 Colo. 53, 53, 116 P. 1051 (1911), dismissed, 223 U.S. 744, 32 S. Ct. 532, 56 L. Ed. 639 (1912). A decision was only handed down in *Chemgas*. Thus, I refer to *Chemgas* through this paper; Refer to Figures 5.1 and 5.2.

⁸ *Chemgas v. Tynan*, case information from Westlaw.

in downtown Denver.⁹ The facts of the case appeared to favor the prosecution, and the court convicted the defendants with ten- to twenty-year prison sentences.¹⁰

The second case, *Colias v. Colorado* (1915), involved an appeal on jurisdictional grounds, as it was originally tried in 1913 in Judge Ben Lindsey's famed Juvenile Court of Denver despite the offender not being a minor or in the custody or control of the minor plaintiff. The defense argued that the juvenile court did not have jurisdiction over the case, but Attorney General Fred Farrar disagreed. Ultimately, this jurisdictional challenge succeeded after the defendant appealed his conviction to the Colorado Supreme Court. The upper court agreed that the juvenile court did not have jurisdiction over the adult defendant, and the judgment was reversed.¹¹

These cases not only prove vital to understanding early queer activity in Colorado, but also revealed an eye-opening relationship to each other. First, both cases concern Greek defendants and exhibit similar patterns among both the defendants and plaintiffs. Second, the same lawyer—John DeWeese—represented the defendants in both cases.¹² What is the significance of the shared features of these cases? What do these cases and other incidents from the time period suggest about the way in which gay men interacted with the law?

⁹ District Court case: *Colorado v. Peter Horons & John Chemgas*, Colo. 2d Dist., Case Number 18819 (1909). Throughout this paper, I refer to the transcripts of *Chemgas* and the second sodomy case appealed to the Colorado Supreme Court, *Colias*. The transcript for *Chemgas* includes the account of the District Court case, but for the sake of clarity, the citations will just refer to it as *Chemgas* because the District Court case can only be accessed through the transcript of the Colorado Supreme Court case. When I designate numbers next to cases, I refer to section number listed on the left side of the document that follow throughout the District and Supreme Court cases.

¹⁰ *Chemgas v. Tynan*, 88-103; *Ibid.*, 58; *Ibid.*, 75.

¹¹ *Colias v. Colorado*, 60 Colo. 230, 153P.224, Case Number 8172 (1915), Colorado State Archives; *Ibid.*, Information from Westlaw; *Ibid.*, 12; *Ibid.*, Farrar Brief; *Ibid.*, Opinion by Teller.

¹² *Ibid.*, 34-76; *Ibid.*, 13; *Chemgas v. Tynan*, 13.

In this section I find that, in response to changes in policing and targeting of gay men in early-twentieth-century Colorado, working-class gay life moved off the streets and into private spaces, a phenomenon explored in Chapter 3. As a result, gay men conceptualized their actions as distinct from the other vices among which they operated in the late nineteenth century. These private spaces often faced invasion from the law, however, and Chapter 4 explores how consistent application of the law to a defined segment of the population expanded the presence of the law in the lives of working-class gay men. The resulting shared experiences of gay defendants allowed them to organize into small-scale repeat players under the law or cohesive groups that attacked the law together. Chapter 5 explains how changes in theories of adjudication and an increase in the severity of punishments provided gay men with awareness of the scrutiny they faced as perpetrators of gay acts. These factors also provided working-class gay men incentive to fight back against the law in the courts, which they did both formally and informally, as examined in Chapter 6. The resulting organized and effective defense indicates that they had formed a nascent shared identity under the law.

Chapter 3

A Private Life

Working-class gay life in late-nineteenth-century Colorado was comprised of establishments such as saloons and theaters that, while welcoming to queer people, did not serve an exclusively queer clientele. These establishments housed much of Denver's gay activity at the time, acting as places for gay men to seek out sexual partners and watch queer performances. This differed greatly from middle-class gay life, which housed itself in private spaces such as hotels, but in the same part of the city. In the early twentieth century, however, the closing of saloons and places of vice altered the geography of working-class gay life, which entered private dwellings. While George Chauncey suggests that public establishments "afforded a degree of privacy unattainable in the patrons' own flophouses and tenements," I find this only to be true before increased targeting from the law, which forced gay men to sacrifice a level of privacy from other men in order to attain privacy from the law.¹³ This transition from public to private spaces not only spread out working-class gay life, but also established extra barriers through which gay people had to transcend in order to find sexual partners.

Before the turn of the century, events that caused gay men to come into contact with the police, and the subsequent interaction with the law, almost always took place in public—either on the streets or in an establishment. Divergences from this pattern usually only arose under unforeseen circumstances, such as in the case

¹³ George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994), 148-149. Chauncey explores how anti-vice campaigns led to the closing of many gay establishments such as Bowery resorts; *Ibid.*, 42.



Figure 6: Mug shot of John O'Hare, arrested for the Crime Against Nature (Source: *John J. O'Hare #5762*, 1903, Corrections Records, Colorado State Archives, Denver, CO.)

of Joe Gilligan. In the early 1900s, however, almost all cases featured events that occurred in private quarters. These private quarters almost exclusively consisted of shelters known as flophouses that housed many working-class men in a single room. David Scheyer, writing in 1934, listed “homosexuals” on a list of frequenters of flophouses, so he would not express surprise that many events involving gay men occurred there.¹⁴

In Denver, many of the flophouses that housed gay acts that caught the attention of the law were located around Stout Street, east of the corridor of gay life established during the late nineteenth century.¹⁵ In a 1903 crime against nature case involving John O'Hare, Jack Logue, and James Reed, the defendants took the victim, Jacob Foreman, to a “room” on either Eighteenth Street between Stout and California or Eighteenth Street and Champa (depending on the account) and sexually assaulted him. Neither address is more than one street either east or west

¹⁴ Scheyer, David. “Flop-House.” *The Nation* 139, no. 3607 (August 22, 1934), 216.

¹⁵ Refer to Figure 18 in Appendix.

of Stout Street.¹⁶ At that time, John O'Hare lived at 1300 Stout Street, down the street from the scene of the assault.¹⁷ On the same street, at the Ila Rooming House at 1451 Stout Street, the defendant in *Colias* (one of the early cases appealed to the state supreme court) offered Earl Dunlap, the complainant, a place to sleep.¹⁸ Similarly, transient worker Phillip Garland, arrested in 1903, had stayed at the Belmont Hotel at 1723 Stout Street.¹⁹

Perhaps telling, Sanborn insurance maps from the time depict the Belmont Hotel as a bicycle shop. The building at 1541 Market Street, where M. E. Hanrahan lived when police arrested him and Ben Smith for crime against nature, is listed as storage.²⁰ These flophouses' designation as hotels was somewhat of an exaggeration, as they mostly consisted of large, shared rooms resting on other shops.

While gay life appears to have centered around Stout Street in the early twentieth century, this pattern likely resulted more from changes in policing and increased scrutiny from the law than a new and lively gay culture drawing them to the area. Increased scrutiny directed at working-class gay men drove them to seek shelter in their most private spaces, flophouses, where police then turned their

¹⁶ "What Politician Will Defend Them—What Judge Condone?" *Denver Post*, February 26, 1903, Colorado Historical Newspapers, Colorado Historical Society; "Boy Enticed to Room and Seriously Beaten," *Denver Rocky Mountain News*, February 26, 1903, Colorado Historical Newspapers, Colorado Historical Society; Refer to Figure 6 on previous page.

¹⁷ Denver, Colorado 1903 City Directory, Ancestry.com, *U.S. City Directories, 1822-1995* [database on-line] (Provo, UT: Ancestry.com Operations, Inc., 2011), 868.

¹⁸ *Colias v. Colorado*, 81-82.

¹⁹ "Prisoners Present Pleas for Pardon," *Denver Post*, March 28, 1904, Colorado Historical Newspapers, Colorado Historical Society; "Victim of a Human Fiend," *Denver Post*, April 20, 1903, Colorado Historical Newspapers, Colorado Historical Society.

²⁰ Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 177, Vol. 2, 1903-1904, Digital Sanborn Maps, 1867-1970; "George C. Jones," *Denver Rocky Mountain News*, August 29, 1903, Colorado Historical Newspapers, Colorado Historical Society; Denver, Colorado 1902 City Directory, Ancestry.com, *U.S. City Directories, 1822-1995* [database on-line] (Provo, UT: Ancestry.com Operations, Inc., 2011), 497; Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 157, Vol. 2, 1903-1904, Digital Sanborn Maps, 1867-1970.

focus. In the late nineteenth century, gay men did not have to worry about their private relationships, as almost no incidents from the private sphere resulted in arrest. In the early twentieth century, however, most of the cases that caught the attention of the police occurred in private spaces, which caused law enforcement to subsequently enter these places. In *Colias*, Lee Gates, a boarder in the flophouse at which the alleged abuse occurred, heard of Colias's arrest the following day when he returned to the establishment, suggesting either that the arrest itself or a police search had occurred there.²¹ In the O'Hare, Logue, and Reed case, after the assault, Jacob Foreman, the victim, led the police to find Reed in the same room in which the assault occurred. Once there, the police forced Reed to lead them to Logue and O'Hare at the Armour Rooming House at 1609 Welton Street, two blocks from Stout Street.²²

In the late 1800s gay men could conceive their interactions with the law as akin to the interactions of others that performed crimes of vice due to their geographical proximity. This changed in the twentieth century. The invasion of law enforcement into the private lives of working-class gay men surely made it clear that they faced prosecution for their private relationships rather than public affiliations. In other words, late-1800s gay men arrested in the back alley of a saloon such as Moses' Home for vagrancy or sodomy probably viewed themselves as similar to a straight man arrested for drunkenness in the same saloon or for assault from a fight started in the same alley. This notion likely changed, however, when law enforcement entered the private dwellings of working-class gay men, at which

²¹ *Colias v. Colorado*, 106-109.

²² "What Politician Will Defend Them—What Judge Condone?"; "Young Girl's Life Full of Mystery," *Denver Rocky Mountain News*, February 25, 1904, Colorado Historical Newspapers, Colorado Historical Society.

point gay men must have conceptualized their crimes as distinct from other crimes of vice.

Due to changes in the geography of gay life in early-twentieth-century Colorado, gay men faced new obstacles in finding sexual partners. Gay life in the prior century had relatively low barriers to entry; gay men knew where they could find sexual partners and see queer performances. Once gay men entered certain saloons and canvassed the area frequented by others like them, they had a certain level of freedom in acting the way they desired. In the twentieth-century, however, increased scrutiny introduced additional steps that made it more difficult to be gay. In the 1903 O'Hare, Logue, and Reed case, the defendants found Foreman at either West Denver Turner Hall or East Denver Turner Hall depending on the account. It does not entirely matter which, as both resided at least seven blocks from the room located at the intersection of Champa Street and Eighteenth to which the three men brought the victim later that night.²³ The location of especially East Denver Turner Hall at Market Street and Twentieth—right on “the line” as described in Chapter 2—suggests that gay life probably did not fully abandon the environment in which it thrived in the late 1800s.²⁴

Significant, however, is that before the turn of the century, O'Hare, Logue, and Reed likely could have engaged in sexual activity in or near the place they apprehended Foreman. In the early years of the progressive movement, however, they felt the need to transport the victim no less than seven blocks to a private room in order to have sex with him. Similar, in *Colias*, the complainant met a Greek man

²³ “What Politician Will Defend Them—What Judge Condone?”; “Boy Enticed to Room and Seriously Beaten.”

²⁴ “Turner-Coogan Contest,” *Denver Rocky Mountain News*, May 5, 1899, Colorado Historical Newspapers, Colorado Historical Society; For location of West Denver Turner Hall, see “Arabian Nights by German Theater Society,” *Denver Post*, October 30, 1904, Colorado Historical Newspapers, Colorado Historical Society.

working a popcorn wagon at the corner of Curtis Street and Fifteenth who then sent him to Colias to obtain a place to stay for the night. The alleged sexual relationship occurred later that night when Colias returned to the room.²⁵ In both cases, the sexual encounter required multiple extra steps to reach fruition than would have been required in the prior century. At each additional step, gay men had to become more deliberate with their actions and potentially more cognizant of how the law took aim at their unique situations—a precondition of developing a joint identity under the law.

However, gay life did not simply disappear from the public sphere. Some arrests—interestingly only those that did not make the newspaper—did, in fact, take place along the same corridor of gay life described in Chapter 2. Arrest records from the time portray multiple incidents, though infrequent, on the streets in this area. One arrest for the crime against nature occurred on Larimer Street and Eleventh in March 1902.²⁶ The next year, three arrests for sodomy occurred on the same day in September 1903—one on Larimer Street and Eighteenth, and two on Curtis Street and Sixteenth. The arrest on Larimer and Eighteenth happened five minutes before those on Curtis and Sixteenth, suggesting a connection between the three cases and perhaps a pursuit that began with one arrest and ended with the other two.²⁷ Not until nine years later, in July 1912, does it appear that another arrest for sodomy occurred in the area. Also located at Larimer Street and

²⁵ *Colias v. Colorado*, 42-46; *Ibid.*, 48-54.

²⁶ City and County of Denver Dept. of Safety and Excise Police Dept. Records, 1900-1982, 1902 March 8, MSS. WH 931, OV Folio 1 p. 67, Western History Collection, Denver Public Library, Denver, CO.

²⁷ City and County of Denver Dept. of Safety and Excise Police Dept. Records, 1900-1982, 1903 September 3, MSS. WH 931, OV Folio 1 p. 41, 53, Western History Collection, Denver Public Library, Denver, CO.



Figure 7: “View of the Barclay Block building at 1751 Larimer Street in Denver, Colorado”—This building likely housed the Turkish Baths, whose entrance would have been on the right side of the building based on the view in this picture (Source: *Barclay Block. 1910-1915*, Photographs – Western History, Denver Public Library, Denver, CO.)

Eighteenth, police originally designated the case as a crime against nature before replacing it with vagrancy.²⁸

While the presence of gay relationships in the area suggests that the geography of gay life had not completely moved to new and exclusively private spaces, a closer examination could imply the opposite. Four of five arrests recorded from the time period in the Larimer Street area at least originated at the corner of Larimer Street and Eighteenth. This corner happens to be the same corner from Part 1 at which Richard de Bonair, the dressmaker who maintained a “very warm friendship” with another man, lived while in Denver two years before committing suicide in 1895 in Pueblo.²⁹ The exact corner also appeared in the 1883 case of

²⁸ City and County of Denver Dept. of Safety and Excise Police Dept. Records, 1900-1982, 1912 July 5, MSS. WH 931, OV Folio 4 Vol. 31, p. 3, Western History Collection, Denver Public Library, Denver, CO.

²⁹ “Suicided with Chloroform,” *Colorado Weekly Chieftain*, August 1, 1895, Colorado Historic Newspapers Collection.

Frederick Osten, who paraded around this part of downtown “making innumerable ‘mashes’... around the shade of the Windsor Hotel,” also located at Larimer Street and Eighteenth.³⁰ At that corner also stood the Turkish Baths, which an anonymous scholar from Denver discussed in a letter to Dr. Magnus Hirschfeld.³¹ The scholar found the Turkish Baths of Denver less accommodating to gay men in Denver than other large cities, yet the baths were still the only specific place even mentioned by the scholar, who adds that most of the masseurs were likely gay themselves. The author explained the baths as semi-private spaces for gay people in which they likely did not face “blackmail”—an important factor in early-twentieth-century gay life discussed in Chapter 4.³² While the baths were located along the late-nineteenth-century corridor of public-oriented gay life, arrests there pointed to twentieth-century police propensity to enter private gay spaces, as Turkish Baths were likely relatively private spaces at the time.

It is unlikely that all of working-class gay life entered private spaces in the early twentieth century. However, uncovering the public, or semi-public, spaces that catered to working-class gay men during this time presents challenges. Perhaps one hint as to where working-class gay men spent time in public lies in the 1901 arrest of Caesar Attell on the charge of grand larceny for “stealing a valise full of... feminine accessories.” The *Denver Post* account pinpointed Attell as a female impersonator at the “hootchie-kootchie show at Nineteenth and Market”—just one block from the Larimer Street corridor.³³ The same newspaper portrayed

³⁰ “In Female Attire,” *Denver Rocky Mountain News*, July 2, 1883, Colorado Historical Newspapers, Colorado Historical Society.

³¹ For a map of the area, refer to Figure 17 in the Appendix; Refer to Figure 7 on previous page.

³² Magnus Hirschfeld, *Die Homosexualität des Mannes und des Weibes* (Berlin: Louis Marcus, 1914), 550-554, translated by James Steakley in Katz, Jonathan Ned. *Gay American History: Lesbians and Gay Men in the U.S.A.* (New York City: Thomas Y. Crowell Company, 1976), 50.

³³ “Bag of Feminine Gear,” *Denver Post*, September 8, 1901, Colorado Historical Newspapers, Colorado Historical Society.

Attell as “the gayest footlight favorite... whose audacious kicking and abbreviated skirts provoked most applause.”³⁴ His arrest shares much in common with those from the late-1800s: the geographic location, the popular—but not legal—focus on the defendant’s queerness, the setting in a saloon. Perhaps this arrest stood at the threshold of the two eras. The police had just shut down the theater at which Attell performed because it “had become too risqué even for even the ‘red light’ district”—an example of progressive-era attempts to shut down places of vice.³⁵ But where did queer people like Caesar Attell go?

Notably, Caesar Attell’s brother, Abe Attell, was a famous prize fighter known as the “Little Hebrew.”³⁶ By 1904, the same Abe Attell that had been called a “peach” by the *Denver Post* in 1901 had developed into a boxer as well and fought at the world championship event in San Francisco.³⁷ Jack Logue and John O’Hare, two of the men accused of assaulting Jacob Foreman in 1903, also boxed.³⁸ The *Denver Post* alluded to Logue’s success by referring to him as a “prize fighter” after a separate 1909 crime against nature arrest.³⁹ East Denver Turner Hall, the initial point of contact in most accounts of Logue and O’Hare’s capture of Foreman,

³⁴ “Paris Theater Kicking Soubrette Proved to Be Young Caesar Attell,” *Denver Post*, September 10, 1901, Colorado Historical Newspapers, Colorado Historical Society.

³⁵ Ibid.

³⁶ “Abe Attell Thinks He Will Defeat Broad,” *Denver Post*, March 18, 1902, Colorado Historical Newspapers, Colorado Historical Society.

³⁷ “Paris Theater Kicking Soubrette Proved to Be Young Caesar Attell”; “Merciful Eddie Graney,” *Denver Post*, March 1, 1904, Colorado Historical Newspapers, Colorado Historical Society; “White Knocked Out, Say Referee and Naughton,” *Denver Rocky Mountain News*, May 6, 1905, Colorado Historical Newspapers, Colorado Historical Society.

³⁸ “Hypnotic Stare Replaces Wallop,” *Denver Post*, August 1, 1914, Colorado Historical Newspapers, Colorado Historical Society.

³⁹ “West Side Gang Has Long List of Murderous Crimes,” *Denver Post*, October 27, 1909, Colorado Historical Newspapers, Colorado Historical Society.



Figure 8: Caesar Attell from his boxing days (Source: *Caesar Attell*. 1917-1919. San Francisco Historical Photograph Collection, San Francisco History Center, San Francisco Public Library, San Francisco, CA.)

housed boxing matches, including one in 1899 in which the ring was “pitched in the center of Pandor hall on Market street, just above Twentieth, in old East Denver Turner hall.”⁴⁰

These scenes recall the paintings of New York artist George Bellows, who depicted early-1900s boxing matches. Most boxers came from working-class, racial minority, and immigrant backgrounds, and the boxing ring represented one of the few places in which they could gain a semblance of equality in a world filled with racial and xenophobic prejudice.⁴¹ But these boxing matches did not simply present a way for working-class people to gain renown. Bellows himself viewed the ring as a subversive location: “let me say that the atmosphere around the fighters is a lot

⁴⁰ “Turner-Coogan Contest.”

⁴¹ Robert Torchia, “George Bellows/*Both Members of This Club*/1909,” *American Paintings, 1900–1945*, NGA Online Editions.



Figure 9: George Bellows, *Both Members of this Club* (1909) (Source: Bellows, George. *Both Members of This Club*. 1909, American Paintings, 1900-1945, National Gallery of Art, Washington, D. C. In National Gallery of Art.)

more immoral than the fighters themselves.”⁴² The boxing ring acted as a place for men to grapple with their identities as oppressed people and find others like them that had been forced out of the streets and saloons by the burgeoning progressive movement.

This occurred not only for Jewish men like Abe Attell and black men like Jack Johnson, but potentially for gay men such as John O’Hare and Jack Logue. When Bellows work is viewed through the lens of these men, the boxing ring also exudes homoeroticism. Bellows presents the scene as if the viewer of the painting sits among the crowd, gazing at the nearly naked, beautifully sculpted, and strikingly powerful male bodies in the center of the ring. The viewer, intently watching the bodies of the sportsmen, sits among men also unable to look away.

⁴² Letter from Bellows to Katherine Hiller, 1910, quoted in Thomas Beer, *George W. Bellows: His Lithographs* (New York, 1927), 15, in *Ibid*.

The boxers themselves appear to want to touch, held apart by arms that they attempt to overpower. The tension in the painting, between separation and embrace, action and idleness, violence and eroticism, acceptance and separation, allowed participants and viewers of social events such as boxing to consider the tension between them and society and fight back literally and figuratively against increased scrutiny.

As in the relatively open streets and saloons of Denver in the prior century, gay men could attend events such as boxing matches to socialize and watch queer performances in the early 1900s. Undoubtedly, gay men could also find sexual partners in these homo-social environments, just as Jack Logue and John O'Hare did. However, these gay spaces differed greatly from those in the nineteenth century. Fights that broke out in late-1800s saloons would often feature a private tussle predicated on private disputes between patrons. Boxing matches, on the other hand, positioned society as a common opponent. For example, a black prize-fighter fought not only against his opponent, but also for respect in the face of the extreme racism of the progressive movement. Thus, spaces to which gay life pivoted after the turn of the twentieth century likely provided them with a more nuanced view of society's prejudices, a precondition to forming a joint identity fighting against these societal views. Thus, the transition of gay geography during the early twentieth century from public to private spaces and from spaces characterized by vice to spaces characterized by prejudice formed the foundation upon which gay men could conceive themselves as distinct under the law.

CHAPTER 4

Uniform Application

In the late-nineteenth-century, inconsistent application of the sodomy statute ensured that gay men interacted with the law as individual one-shotters, unable to form groups due to the fact that they did not conceive of their plight as influenced by the same-sex nature of their cases. During that time period, the sodomy statute in Colorado was applied both to bestiality and to sexual affairs between men (and occasionally even relationships between men and women), often with little distinction. The early 1900s, however, saw the law almost exclusively applied to same-sex relationships.

One 1903 case alludes to this shift, as newspapers listed M. E. Hanrahan and Ben Smith together as “guilty of an infamous crime against nature”—another name for sodomy.⁴³ Whether police arrested Hanrahan and Smith for a sexual relationship they had with each other—as opposed to with a third person—is unclear, but the case could indicate that the sodomy statute had begun to focus on both members of a gay relationship. This mirrors the findings of Margot Canaday in her examination of court-martial trials in the World War I era. These trials began to view sodomy as a crime committed by both parties in a same-sex relationship, rather than simply the penetrating partner.⁴⁴ During this time period, the element requiring a same-sex relationship had supplanted the element of violence or coercion as the main feature of a sodomy charge. While the sodomy

⁴³ “George C. Jones.”

⁴⁴ Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2009), 80-81.

statute was still often applied to regulate sexual assaults, once in the courtroom, the law designated the crime against nature first and foremost as a gay crime.

In *Chemgas*, the first sodomy case appealed to the Colorado Supreme Court, one of the jury instructions read by the court defined the crime against nature as “a male person putting his penis into the rectum of another male person, with or without such person’s consent... as provided in the statute.”⁴⁵ This instruction indicated to the jury that any sexual relationship between men, regardless of whether an assault also occurred, met the definition of sodomy. These jury instructions present sodomy as a distinctly gay crime. Similarly, in *Colias*, the information introducing the charge against the defendant emphatically stated that the defendant “feloniously did make an assault, and then and there feloniously and against the order of nature carnally know the said Earl Dunlap.”⁴⁶ The information designated the assault and the crime against nature as separate. Thus, in order to be acquitted at trial, the defendant was required to establish that the sexual encounter did not exist, not simply that it was consensual. The law’s separation of the violence of the crime from its gay nature would have made it clear to defendants that they faced punishment not only for a violent crime, but also for a gay one.

As the sodomy statute’s application narrowed to include only gay acts, the law targeted only a uniform subsection of gay men: transient, immigrant, and racial-minority men, as noted by Boag, Canaday, and Eskridge.⁴⁷ Most of those charged with the crime fit into at least one of these groups. Nonetheless, Josiah Flynt reported around the turn of the twentieth century that, instead of an increase

⁴⁵ *Chemgas v. Tynan*, 347.

⁴⁶ *Colias v. Colorado*, 5.

⁴⁷ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 4; Canaday, 29; Eskridge, 40-41.

in same-sex relationships between transient men and “prushuns,” he had “been told lately by tramps that the boys are less numerous than they were a few years ago.”⁴⁸ The legal sources from the time tell the exact opposite story. Of all known cases involving gay men in the late nineteenth century, only that of John Ryan—who the *Denver Rocky Mountain News* declared to be a “tramp”—explicitly referenced a transient worker.⁴⁹ Around 1900, however, many cases involving gay men began to identify the defendants as transient workers. Thus, while legal documents point to an increase in transient gay relationships after the turn of the twentieth century, the law’s awareness of this specific class of same-sex relationships likely signifies an increased targeting of them rather than an increase in their presence. In fact, Flynt found that tramps had conceived that it was “now a risky business to be seen with a boy.”⁵⁰ Tramps understood that the law had begun to target them for their same-sex relationships and, as a result, they likely abandoned or hid these relationships.

Colias, the second case involving sodomy appealed to the Colorado Supreme Court, evidences the scrutiny faced by tramps as well as by immigrant men who also qualified as racial minorities. First, I explore the transience of the parties. The transcript reveals that the defendant, Bill Colias, moved around the United States in his six years since moving from Greece, never staying in one place for more than a few months.⁵¹ But the transient status of the plaintiff, Earl Dunlap, played an even larger role in the trajectory of the case. Dunlap claimed that he “never lived in Denver before,” and had come to Denver the day of his alleged sexual affair with

⁴⁸ Josiah Flynt, “Homosexuality Among Tramps,” in *Studies in the Psychology of Sex*, by Havelock Ellis, Appendix A, Vol. 1 (New York: Random House, 1940), 363.

⁴⁹ “Deserves to Be Hanged,” *Denver Rocky Mountain News*, June 23, 1885, Colorado Historical Newspapers, Colorado Historical Society.

⁵⁰ Flynt, “Homosexuality Among Tramps,” 363.

⁵¹ *Colias v. Colorado*, 118-121.

Colias. In his description of the day's events, he claimed to have met a Greek man, George Pierce, at the Daniels & Fisher Tower at the corner of Arapahoe Street and Sixteenth. Pierce then referred Dunlap to another Greek man, Bill Colias, who had a place for Dunlap to stay the night. Dunlap found Colias manning a popcorn wagon on the corner of Curtis Street and Fifteenth, and Colias sent him to a room at a flophouse at the corner of Stout Street and Fifteenth, where the alleged assault occurred. After Dunlap's detailed description of these events, the defense attorney, John DeWeese, undermined Dunlap's credibility by noting: if Dunlap had only been in Denver for a few hours, how was he so familiar with its streets and landmarks?⁵²

Dunlap claimed to have come from Pueblo where he stayed with his father—another instance of the common Denver-Pueblo corridor traveled by many gay men at the time. Before Pueblo, he had been in El Reno, Oklahoma. Dunlap stated that his trip to Denver was “the first time [he] caught trains before.” However, other moments from the trial suggest that he was familiar with the life of a tramp. Famed juvenile court judge Ben Lindsey, who oversaw the trial, asked Dunlap if he had “been a tramp, running around box-cars.” While Dunlap answered in the negative, the judge's question evidences his skepticism. In Dunlap's account of the night's events, Colias arrived at the room late at night after Dunlap had arrived. Upon entering, Colias expressed his desire to have sex with Dunlap: “Come here you little darling; ain't you going to let me punk you?” Dunlap declined, stating that he “wasn't used to doing such unnatural things.” But Dunlap's account again raised questions. If Dunlap was just a boy that had run away from home, how would he know what the word “punk” meant? When DeWeese posed a similar

⁵² Ibid., 38; Ibid., 42-46; Ibid., 66-68.

question, Dunlap explained that he “heard other boys speak of it,” suggesting a familiarity with life on the road.⁵³

These attempts by the defense to discredit Dunlap’s testimony did not sway the jury, but they proved prescient, as research reveals that Dunlap did indeed lead an eventful life as a tramp. For example, in 1911, two years before the events in *Colias*, police in St. Louis arrested Dunlap on his admission that he had run away from his home in Bloomington, Illinois; he was only twelve years old. At the time of his arrest he possessed a monkey he had stolen from a passing circus parade and was accompanied by a companion his same age, Frank Bell, who was African American.⁵⁴ This incident proves that Dunlap had been tramping on the trains for years.

Writing in 1924, P. R. Vessie stated that a tramp “resents the restraint of organized society and to him the law of the land is a persecution to be evaded.”⁵⁵ Dunlap’s constant attempts to evade the law through the use of transportation in the decade following the *Colias* trial proves this point and establishes that he was, in fact, a tramp. Dunlap encountered the police in multiple cities, beginning in Denver immediately following *Colias*. The officer “who had [Dunlap] in charge” for his appearance in *Colias* at the juvenile court was in the process of transporting Dunlap to the State Industrial School in Golden when Dunlap, “imitating the art of desperadoes who have escaped from custody by leaping from moving trains... escaped from an Intermountain electric car.”⁵⁶ After a short search, police arrested

⁵³ Ibid., 39-41; Ibid., 50-51; Ibid.; Ibid., 49; Ibid., 50-51; Ibid.

⁵⁴ “Monkey and Pickaninny, Stars in a Boy's Circus, Are Arrested With Him,” *St. Louis Post - Dispatch* (1879-1922), May 30, 1911, ProQuest.

⁵⁵ P. R. Vessie, “The Wanderlust Impulse,” *Medical Journal and Record*, UCLA LD Biomedical Library, July-December 1924, 20-22.

⁵⁶ “Youth Hurls Self From Car Window to Escape Guard,” *Denver Post*, December 14, 1913, Colorado Historical Newspapers, Colorado Historical Society.

Dunlap in Pueblo less than a week later.⁵⁷ In 1915, however, Dunlap appeared in Sacramento after having escaped from the state penitentiary in Folsom, California.⁵⁸ Almost two months later, police arrested Dunlap again in Tehama, California for pilfering, but he evaded detention.⁵⁹ Later that month, authorities finally captured him in Salt Lake City. He appeared in Salt Lake City again in 1922 as a member of “one of the ‘fastest’ gangs of shoplifters in the West.”⁶⁰

Colias also evidenced the scrutiny directed at immigrant communities at the time. The most obvious example of this was defendant himself, who was from Greece. In reporting *Colias*’s decision to appeal his trial court conviction, the *Denver Rocky Mountain News* ran a story emphasizing that the defendant was “a Greek” intent on “test[ing] the juvenile court.”⁶¹ This story presented his immigrant and racial status as central to the case. Both Canaday and Boag, in their explorations of immigrant policing, find ample instances of Greek men facing the law for same-sex relationships.⁶² A disproportionate number of Greek men faced the law for crimes involving same-sex sexual activity despite the fact that, of 91,972,266 people living in the United States according to the 1910 census, only 101,282—or around one-one-thousandth of one percent—were born in Greece.⁶³

⁵⁷ “Boy is Recaptured,” *Rocky Mountain News*, December 18, 1913, Colorado Historical Newspapers, Colorado Historical Society.

⁵⁸ “Eludes Pursuers,” *Riverside Independent Enterprise*, November 30, 1915, America’s Historical Newspapers.

⁵⁹ “Superior California Brevities,” *Sacramento Bee*, January 17, 1916, America’s Historical Newspapers.

⁶⁰ “Earl Dunlap Captured,” *Salt Lake Telegram*, January 29, 1916, America’s Historical Newspapers; “Trio Arrested as Fast Workers in Shoplifters’ Gang,” *Salt Lake Telegram*, May 11, 1922, America’s Historical Newspapers.

⁶¹ “To Test Juvenile Court,” *Denver Rocky Mountain News*, October 2, 1913, Colorado Historical Newspapers, Colorado Historical Society.

⁶² Canaday, 40; *Ibid.*, 48; *Ibid.*, 51-52; Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*; 45-86.

⁶³ Campbell J. Gibson and Emily Lennon, “Nativity of the Population and Place of Birth of the Native Population: 1850 to 1990,” Historical Census Statistics on the Foreign-born Population of the United States: 1850-1990, March 9, 1999; Campbell J. Gibson and Emily Lennon, “Region and Country or Area of Birth of the Foreign-Born Population, With Geographic Detail Shown in Decennial Census Publications of 1930 or Earlier: 1850 to 1930 and 1960 to 1990,” Historical

The impetus for the law's aggressive targeting of Greek immigrants is difficult to discern, but the patterns of Greek migration may provide a hint. In 1900, only 8,515 Greek immigrants lived in the United States, notably the fewest of any European nation for which data exists besides Spain and Luxembourg.⁶⁴ The massive wave of Greek immigrants in the first decade of the 1900s like caused them to remain ostracized from society. In Denver specifically, a 1989 sociological study by George Patterson finds that Denver's Greek community remained largely unassimilated for many decades.⁶⁵ Greek immigrants were newer and less integrated than immigrants from all other European nations. As a result, any attempts to target immigrant men would likely have concentrated first and foremost on the Greek community.

Scrutiny of immigrant men was not only a prosecutorial tactic. In an attempt to turn the jury against the plaintiff in *Colias*, defense attorney DeWeese attempted to prove that Earl Dunlap associated with immigrant men throughout his life. When Dunlap testified that he had traveled to Denver from El Reno, Oklahoma and Pueblo, DeWeese asked him if there were "many foreigners" in either of the two places.⁶⁶ DeWeese employed the same tactic in *Chemgas*. He repeatedly called witnesses who testified that they often saw Dunlap around the Greek area of town.⁶⁷ Association with immigrant communities, therefore, implied a sort of

Census Statistics on the Foreign-born Population of the United States: 1850-1990, March 9, 1999.

⁶⁴ Gibson and Lennon, "Region and Country or Area of Birth of the Foreign-Born Population, With Geographic Detail Shown in Decennial Census Publications of 1930 or Earlier: 1850 to 1930 and 1960 to 1990."

⁶⁵ George James Patterson, Jr., *The Unassimilated Greeks of Denver* (New York: AMS Press, 1989), 24-35.

⁶⁶ *Colias v. Colorado*, 63-64.

⁶⁷ *Chemgas v. Tynan*, 167-168; *Ibid.*, 197-205.

sexual promiscuity and could be invoked to question the innocence and credibility of a party or witness.

The increase in targeting of gay acts within this specific subgroup of society—transient, immigrant, and racial minority men—manifested itself in the actions of not only the entities that made up the law, but also victims who understood its power. In Chapter 1, I briefly explore the case of Thomas Ryan, a man who stole multiple intimate items from the hotel room of John Peters in 1882.⁶⁸ The exact nature of the relationship between Ryan and Peters remained unknown, and police arrested Ryan for larceny. In the early twentieth century, however, increased focus on sodomy led parties to understand that accusing a defendant of sodomy had the power to both blackmail the defendant for money and exonerate the accusing party.

In *Chemgas*, defense attorney DeWeese repeatedly attempted to prove that the plaintiff, Ralph Frost, had solicited other men for sex and then extorted money from them by threatening prosecution. Peter Horons, one of the defendants, testified that Frost asked for money and had “done the same thing before at different times.”⁶⁹ Even if Horons’s account is not true, the fact that DeWeese crafted a defense based on the idea that an accusation of sodomy could be a form of blackmail suggests that such acts of extortion did exist.

In February 1909, immediately following the arrest of John Chemgas and Peter Horons, Curt Hayes accused another Greek, John Galinas, of sodomy. The fact that Hayes accused Galinas of “the same crime that Ralph Frost accused a number of Greeks of committing a few weeks ago” appeared a bit too fortuitous to

⁶⁸ “A Change of Linen,” *Denver Rocky Mountain News*, March 22, 1882, Colorado Historical Newspapers, Colorado Historical Society.

⁶⁹ *Chemgas v. Tynan*, 117-121; *Ibid.*, 276.

the *Denver Post*, which indirectly questioned the case's legitimacy by focusing on its parallels to *Chemgas*. The newspaper headlined an article "Boy Meets Theft Charges by Having Accuser Arrested," noting that "it was not until a few days ago that the boy opened his mouth about the crime he charges the Greek laborer with." Newspaper coverage, ordinarily fixated on the same-sex nature of a sodomy charge, instead highlighted the fact that Hayes may have made the allegation in response to Galinas suing him for stealing \$110.⁷⁰ It is difficult to discern whether the sexual encounter actually occurred, but the allegation did result in a dismissal of the charge of theft against Hayes.⁷¹

The events of *Colias* portray a similar awareness of the power of the sodomy law. During examination by the prosecution, Earl Dunlap claimed to have taken various items from the defendant while he slept, including two revolvers to protect himself. When the defense cross-examined Dunlap, however, he admitted to stealing only one revolver, \$27, "a watch and a billy, a pocket book and a pocket knife." When defense attorney John DeWeese pressed Dunlap on the implication that he took only one revolver, Dunlap admitted that he left one of the two in the room, odd considering that he claimed to have stolen the guns for self-protection after an assault. Furthermore, Dunlap did not attempt to escape *Colias*'s room after the alleged assault, and instead left the bedroom to go "out in the toilet" only to return.⁷² Based on the cross-examination, Dunlap appeared to be less intimidated by his alleged attacker than he originally claimed.

⁷⁰ "Boy Meets Theft Charges by Having Accuser Arrested," *Denver Post*, February 15, 1909, Colorado Historical Newspapers, Colorado Historical Society.

⁷¹ "Boy is Sent to Jail by Court, Then Forgotten," *Denver Post*, April 2, 1909, Colorado Historical Newspapers, Colorado Historical Society.

⁷² *Colias v. Colorado*, 55; *Ibid.*, 72; *Ibid.*, 70-73; *Ibid.*, 70.

Dunlap's actions after he left Colias's room further complicate the understanding of what happened the night of the alleged assault. DeWeese successfully proved through his cross-examination of Dunlap that a telegraph operator at the train station expressed suspicion over Dunlap's actions and the items in his possession, asking Dunlap if he had "done something that the police was after [him] about?" Dunlap then boarded a train, but had yet to reach Pueblo when police arrested him. His account of the moment demonstrates the power he understood an accusation of sodomy to have: "When I saw I was arrested I told the whole thing." The defense understood the implications of Dunlap's statement. DeWeese accused him of telling the story of rape "to cover this other thing [the theft] up."⁷³ Whether or not the relationship between Dunlap and Colias involved sexual assault is unclear, but as a reform-oriented society pushed police to target working-class gay acts, alleged victims certainly understood that they could use the sodomy statute for personal gain. This breed of accusations that resulted from either blackmail or self-preservation contributed to a feedback loop that increased the frequency with which working-class gay men faced the law.

Dunlap had a tendency to lie to the police, establishing a fairly extensive criminal history after *Colias*. For example, after escaping from prison in California in 1915, the *Sacramento Bee* reported that he was "a young convict from San Joaquin County."⁷⁴ When police eventually captured him in Salt Lake City, he claimed the city as his home, but he was "unable to tell the names of his parents."⁷⁵ In *Colias*, however, he named St. Louis, Missouri as his hometown.⁷⁶ These facts

⁷³ Ibid., 72-73; Ibid., 74-75; Ibid., 76.

⁷⁴ "Young Convict Makes Getaway," *Sacramento Bee*, November 30, 1915, America's Historical Newspapers.

⁷⁵ "Earl Dunlap Captured."

⁷⁶ *Colias v. Colorado*, 18.



Figure 10: Mug Shot of Phillip Garland, arrested for the Infamous Crime Against Nature (Source: Phillip Garland alias Rooney #5737. 1903. Colorado State Archives. Denver, CO.)

lend themselves to the conclusion that Dunlap was likely not a novice in manipulating the legal system at the time of the *Colias* hearing.

Because targeted men came into contact with the law more often and uniformly in the twentieth century, they could unite under shared experiences, even if queerness was not the basis of the connection. In 1903 police arrested Phillip Garland on a charge of the crime against nature.⁷⁷ Fourteen-year-old complainant John Morton portrayed their intimate relationship as a “jocker”-“prushun” pairing between transient males gone awry. The two came together to Denver from San Francisco, a common route that connected the West’s two largest hubs of transient workers. In Denver, Garland did not have a steady job but “pose[d] as a fortune teller and clairvoyant.” Always kept closely under Garland’s watch, Morton attempted to escape his situation, but Garland caught and beat him. Eventually, Morton made it to the police and turned in Garland for kidnapping (though he was ultimately charged for sodomy).⁷⁸

⁷⁷ “Prisoners Present Pleas for Pardon”; Refer to Figure 10.

⁷⁸ “Victim of a Human Fiend.”

In a society that equated queer sexualities to gender inversion, coverage of Garland from after his arrest clearly conveyed understanding of his sexual orientation. After his arrest, the *Denver Post* reported that “Garland sits in his cell in the city jail sobbing and denying in a high falsetto voice the truth of the charges.”⁷⁹ More important, however, is the connection that Garland forged with those incarcerated with him. In jail, Garland shared a cell with John Watkins, William, Baxtor, and Robert Hubbard because “Jailer Hudson’s quarters are a bit cramped.” The “cramped” quarters suggests the increase of policing during the time period. Additionally, Garland’s cell mates were all black men, pointing to the targeting of both transient and racial minority actors.⁸⁰

As a result of the close quarters, Garland and his cell mates formed a bond in the form of a singing group. The *Denver Post* reported that Garland had expressed a desire to “get up a quartet.” In response, Watkins, Baxtor, and Hubbard all said they could sing (the newspaper qualifies their skill with the racist stereotype that “they have that melody so common with a colored singer”). The four men subsequently formed a quartet and performed in the jail “each day at noon.”⁸¹ Perhaps the most interesting aspect of the quartet were the lyrics they sang. The newspaper waxed poetic in its description of the scene and the lyrics:

“Oh, where is my wandering boy tonight?”

Wild and strong the words went hurling, shattering against the massive walls of the county jail, filtering their way through the iron bars into every nook, by their force alone, raising every prisoner within the law’s castle to their feet.

“The boy that I love so well.”

⁷⁹ “Victim of a Human Fiend.”

⁸⁰ “Power of Music Shown at Denver County Jail,” *Denver Post*, May 24, 1903, Colorado Historical Newspapers, Colorado Historical Society.

⁸¹ *Ibid.*

Sobbing, as it were, the words softened, trembled and went echoing on and on until the last notes died away and a silence—a silence that could be felt—prevailed.⁸²

The candid depiction of the song indicates that reporters and readers remained oblivious to what undeniably inspired Garland to vocalize these lyrics: his relationship with John Morton. The newspaper would have refrained from reporting on the story had it recognized the lyrics as a romantic ballad intended for a same-sex lover. Thus, the account unintentionally provides a window into Garland's feelings for Morton. The expression of these profound feelings while in jail suggests that Garland understood the source of his current situation: he faced the law as a result of his illicit same-sex relationship.

Furthermore, the formation of the quartet symbolizes the camaraderie that people with a common trait or interest could form when targeted by the law. In the case of Garland, it is difficult to discern whether Watkins, Baxtor, or Hubbard shared Garland's sexuality or simply his affinity for song. Regardless, the widespread, uniform targeting of transient, immigrant, and racial minority men allowed defendants to connect with other men who came into contact with the law. While Garland's relationship with Watkins, Baxtor, and Hubbard proves that these connections could form between any person that came into contact with the law, connections that formed between gay men (even if the source of the connection was not a shared sexuality) allowed them to conceive of their positions under the law as analogous, which led them to organize themselves into repeat players.

In 1909, John Chemgas and Peter Horons appeared in court on the charge of sodomy committed against Ralph Frost. Both defendants had recently emigrated from Greece and worked in the Contos Brothers grocery store, bakery, and saloon

⁸² Ibid.

at 1729 Market Street.⁸³ Four years later, Earl Dunlap accused Bill Colias, another Greek immigrant and the operator of a popcorn wagon, of committing the same crime of sodomy.⁸⁴ Early-twentieth-century sodomy cases that featured working-class defendants such as these almost always played out in one way: defendants, not organized enough to join together and not wealthy enough to retain capable counsel or appeal a decision, inevitably faced immediate conviction and a prison sentence. However, despite their obvious working-class background, the defendants in both *Chemgas* and *Colias* received backing from the Greek community which enabled them to form complex defense strategies and appeal their convictions to the Colorado Supreme Court. This backing effectively positioned them as the first gay repeat players in the state.

Notably, Portland experienced its own “Greek scandal” in 1913, which Peter Boag explores in-depth. Boag views the scandal through its demonstration of “middle-class anxieties over the sexuality of racial minorities.”⁸⁵ Here, however, I analyze how Denver’s Greek community subsequently interacted with the law after the arrests of three of its gay members.

According to George Patterson’s 1989 study of the early Denver Greek community, Greek immigrants first established a “colony” in the city around 1905. These Greek men, new to the United States, largely stuck together and opened coffeehouses or *kafeneion* that acted as the center of their community.⁸⁶ The facts of both *Chemgas* and *Colias* demonstrate how integral the Greek community was to the lives of the defendants. Patterson explains that, upon settling in Denver,

⁸³ *Chemgas v. Tynan*, 4; *Ibid.*, 173; *Ibid.*, 197; *Ibid.*, 275; *Ibid.*, 189.

⁸⁴ *Colias v. Colorado*, 5.

⁸⁵ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 3.

⁸⁶ Patterson, 24; *Ibid.*, 53-54.

many Greek men followed the occupational patterns of their fellow countrymen. He specifically discusses how Peter and Gus Damaskos, Greek immigrants who arrived in Denver in 1900 and 1903 respectively, pioneered a string of Greek men that ran popcorn wagons and opened candy shops.⁸⁷ In *Colias*, the plaintiff originally met a Greek man, George Pierce, who was “a pop-corn man.” To find a place to sleep for the night, Pierce referred him to the defendant in the case, Bill Colias, who also ran a popcorn wagon at a different corner.⁸⁸

In *Chemgas*, the defendants worked for a firm run by Nick Contos, who the Denver Post described as “leader of the local Greek colony.”⁸⁹ The defendants propositioned Ralph Frost on Market Street between Seventeenth and Eighteenth and invited him to a room over 1733 Market Street, which was a *kafeneion*.⁹⁰ One witness, James Contos (the other Contos brother), testified that he had seen the alleged victim near “the Greek places there,” suggesting that the area housed much of Greek life.⁹¹ In fact, Patterson pinpoints the location of “the original Greek Town” as from Seventeenth to Twentieth Street and from Market to Curtis Street, situating the events of *Chemgas* in the center of the Greek community.⁹² In *Colias*, many of the same names appear throughout the case, including Nick Contos. After the defendant, Bill Colias, realized that Earl Dunlap stole money from him, Colias went “to find Nick Kontas [*sic*] to get [his] money, and Nick told [him], all right I will get it.”⁹³ Greek men knew Contos would help them to navigate a new country, and the Greek defendants in these cases clearly interacted extensively with the

⁸⁷ Patterson, 25-26.

⁸⁸ *Colias v. Colorado*, 44-45.

⁸⁹ “Federal Grand Jury Returns 12 True Bills and Is Then Excused,” *Denver Post*, December 30, 1917, Colorado Historical Newspapers, Colorado Historical Society.

⁹⁰ *Chemgas v. Tynan*, 88-93; *Ibid.*, 110.

⁹¹ *Chemgas v. Tynan*, 205.

⁹² Patterson, 35; Refer to Figure 16 in Appendix.

⁹³ *Colias v. Colorado*, 124.

established Greek community in Denver in order to adapt to life in the United States.

It is not surprising then that when these defendants came into contact with the law, they turned to the Greek community for help. Robert Gordon explains that “the full-scale criminal trial, with its magnificent regalia of constitutional protections, has been priced out of the range of all but very rich defendants.”⁹⁴ But the defendants in *Chemgas* and *Colias* both engaged in a trial and appeal process that lasted multiple years and retained the ostensibly expensive services of an acclaimed lawyer. In this way, the gay defendants in *Chemgas* and *Colias* differed greatly from other gay defendants during the time period, especially those from the late nineteenth century who presented themselves in court as disassociated one-shotters.

The same defense attorney, John DeWeese, represented the defendants in both cases. While Chapter 6 explores how DeWeese’s presence and stature as a lawyer impacted the court proceedings and rulings, here I examine what his presence implies about how the defendants positioned themselves in court. It is highly unlikely that Chemgas, Horons, and Colias hired the same defense attorney by chance, and the prohibitive costs of hiring esteemed counsel suggests that the defendants likely did not pay out of pocket for his services. Instead, powerful members of the Greek community likely subsidized the defendants in both *Chemgas* and *Colias* so that they could meaningfully engage with the law. Indeed, after the Colorado Supreme Court denied their petition for a *writ of habeas corpus*, Chemgas and Horons fled to Greece, and the court ordered that the three

⁹⁴ Robert W. Gordon, “The Legal Profession,” in *Looking Back at Law’s Century*, edited by Austin Sarat, Bryant Garth, and Robert A. Kagan (Ithaca, NY: Cornell University Press, 2002), 299-300.

“bondsmen” for the defendants, including Nick Contos, “pay up.”⁹⁵ This suggests that powerful members of the Greek community, including Nick Contos, were integral in funding the criminal defense in *Chemgas* and *Colias*, likely including the hiring of an attorney.

Marc Galanter explains that repeat players have access to skilled attorneys who are dedicated to the cause of clients who they know will seek additional services in the future.⁹⁶ As explored in Chapter 6, John DeWeese’s strategy certainly positioned the defendants in *Chemgas* and *Colias* as effective repeat players in court. But the Greek community itself was integral in laying the groundwork that allowed DeWeese’s courtroom strategy to be so effective.

DeWeese represented Greek defendants in cases other than *Chemgas* and *Colias*. In 1912, DeWeese defended a Greek man accused of murder, and, in 1916, he represented another Greek man accused of assault.⁹⁷ These instances suggest that people within the Greek community shared suggestions of legal counsel, and some members of the community such as the Contos brothers may have even paid to retain skilled attorneys such as DeWeese.

However, it is important to note that even though DeWeese represented other Greek defendants, his presence in *Chemgas* and *Colias* was not simply an indication of all Greek men forming themselves into repeat players. The two other cases involving Greek defendants in which DeWeese appeared came after his initial

⁹⁵ *Chemgas v. Tynan*, opinion of Judge Garrigues; “Farrar Demands Bondsmen Pay Up,” *Denver Post*, May 25, 1915, Colorado Historical Newspapers, Colorado Historical Society.

⁹⁶ Marc Galanter, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limit of Legal Change,” 9 *Law and Society Review* 95 (1974), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 516; *Ibid.*, 498.

⁹⁷ “Clark Pleads Guilty to Embezzling \$87.15,” *Denver Rocky Mountain News*, November 10, 1912, Colorado Historical Newspapers, Colorado Historical Society; “Greek Who Sought Revenge for Brothers Faces a Jail Sentence,” *Denver Post*, February 25, 1916, Colorado Historical Newspapers, Colorado Historical Society.

appearance as the defense attorney in *Chemgas*. His 1916 assault case took place after the widely-covered trials of both *Chemgas* and *Colias*. Thus, while the Greek community played a key role in presenting the defendants in *Chemgas* and *Colias* as repeat players through the representation of DeWeese, *Chemgas* and *Colias* likely drove the connection between DeWeese and the Greek community rather than vice versa. This suggests that the distinct nature of the charges against the defendants in *Chemgas* and *Colias* played a large role in the focus they received from the Greek community and the decision to hire the same lawyer in each case. In other words, people such as Nick Contos did not appear to have a lawyer on retainer that represented Greeks in every case. Instead, the Greek community appeared to view the specific cases of *Chemgas* and *Colias* as distinct and worthy of an organized and effective defense.

While it is difficult to determine exactly what caused DeWeese's retention in *Chemgas*, one possible explanation lies in the most infamous Denver sodomy case of the decade up to that point. As I discuss in Chapter 6, coverage of the 1903 sodomy case against Jack Logue, John O'Hare, and James Reed exploded when police arrested a former city detective, Samuel Emrich, for kidnapping the complaining witness in the case.⁹⁸ DeWeese defended Emrich against the charge of kidnapping in the subsequent trial, which also received significant newspaper coverage.⁹⁹ Whether DeWeese's representation of Emrich precipitated his retention in *Chemgas* is difficult to ascertain, but it appears that those in the Greek community understood the connection between *Chemgas* and *Colias* as cases

⁹⁸ "Emrich Charged with Kidnapping," *Denver Post*, May 28, 1903, Colorado Historical Newspapers, Colorado Historical Society.

⁹⁹ "Emrich and Foreman Case," *Denver Post*, June 19, 1903, Colorado Historical Newspapers, Colorado Historical Society.

involving same-sex relationships. As a result, the defendants in the cases were conscientiously formed into effective repeat players through the retention of a consistent lawyer.

Once in court, members of the Greek community attempted to further influence the outcome of cases through both conventional and illicit methods. For example, the Greek community presented an expansive network of witnesses that legitimated the accounts of defendants. Nick Contos appeared as a witness in *Colias* while his brother, James appeared as a witness in *Chemgas*.¹⁰⁰ Many members of the Greek community appeared as witnesses in *Chemgas* to testify on the defendants' behalf.¹⁰¹ It appears that not all attempts to influence the cases were legal, as I explore in-depth in Chapter 6. In *Colias*, for example, the defense called an interpreter, James Magnolias—who supposedly did not know the defendant—to translate the defendant's testimony from Greek, but the prosecution claimed to have seen defense attorney DeWeese, defendant Colias, and interpreter Magnolias scheming in a private room.¹⁰² More egregious, three Greek men attempted to kidnap Ralph Frost, the complaining witness in the *Chemgas* case. In its coverage of the kidnappers' trial, the *Denver Post* described the scene: "the court room looked like a Greek colony. Fully 150 natives of the far away country were present to hear what would be said."¹⁰³ Clearly, in both *Chemgas* and *Colias*, the Greek community worked both to corroborate the defense's account and to influence the prosecution. This enabled gay defendants in the case to present themselves as unified repeat players under the law.

¹⁰⁰ *Colias v. Colorado*, 145; *Chemgas v. Tynan*, 197.

¹⁰¹ *Chemgas v. Tynan*, 163-319.

¹⁰² *Colias v. Colorado*, 143-144.

¹⁰³ "3 Kidnapping Greeks All Plead Guilty," *Denver Post*, March 3, 1909, Colorado Historical Newspapers, Colorado Historical Society.

Citing newspaper coverage of the Frost kidnapping, the defense in *Chemgas* filed a motion for change of venue because “the inhabitants of the City and County of Denver are prejudiced against the defendants so they cannot have a fair and impartial trial at this time.”¹⁰⁴ One of the many Greek witnesses who signed an affidavit in support of this motion was L. G. Skliris. In signing the affidavit, Skliris swore under penalty of perjury that “he is a resident and citizen of the City and County of Denver and the State of Colorado; that he has lived in the City and County of Denver for more than three years last past.”¹⁰⁵ While this event may not appear noteworthy, newspapers at the time reveal that Skliris attestation was inaccurate; he did not, in fact, live in Denver. Instead, Skliris ran a very influential and controversial labor agency out of Salt Lake City.¹⁰⁶ His work caused many strikes and eventually resulted in an attempt on his life.¹⁰⁷ Furthermore, Skliris acted as a de-facto leader of the Greek community throughout the entire West. In 1907, Skliris celebrated the naturalization of 600 Greek immigrants in the *Salt Lake Telegram*, stating that “Greeks are true to Uncle Sam.”¹⁰⁸ In 1916, Skliris was “appointed general purchasing agent for the Greek government in the United States,” certainly a high honor.¹⁰⁹ So what brought Skliris to Denver in 1909 for the *Chemgas* trial?

¹⁰⁴ *Chemgas v. Tynan*, 37.

¹⁰⁵ *Ibid.*, 35.

¹⁰⁶ “Laying Mile and Half Daily on W.P.,” *Salt Lake Telegram*, March 30, 1909, America’s Historical Newspapers; “Railroad Notes,” *Salt Lake Telegram*, October 15, 1909, America’s Historical Newspapers.

¹⁰⁷ “May Take Action Against Skliris,” *Salt Lake Telegram*, March 22, 1906, America’s Historical Newspapers; “Greeks Fight Skliris Agency,” *Sacramento Bee*, September 27, 1911, America’s Historical Newspapers; “D. & R. G. Contractor Is Shot by Laborer,” *Denver Rocky Mountain News*, April 6, 1915, Colorado Historical Newspapers, Colorado Historical Society.

¹⁰⁸ “Greeks Are True to Uncle Sam,” *Salt Lake Telegram*, December 10, 1907, America’s Historical Newspapers.

¹⁰⁹ “Skliris to Act for Greek Government,” *Salt Lake Telegram*, April 7, 1916, America’s Historical Newspapers.

In his discussion of Portland, Boag finds that “Portland’s Greek scandal... erupted at a time of virulent anti-immigrant and particularly anti-Greek sentiment in the Northwest.”¹¹⁰ While the event in Portland happened four years after the *Chemgas* trial, 1909 proved a volatile year for Greeks in Denver and the surrounding region. In February of that year, an anti-Greek riot broke out in Omaha, Nebraska, with L. G. Skliris speaking out on behalf of the Greek community in response.¹¹¹ At the same time, Greeks in Denver staged a large “movement” throughout the State of Colorado to secure citizenship. Skliris came to Denver in support of that movement as well after his success in Utah. The newspaper coverage that announced the movement also acknowledged its inspiration: “Colony aroused by recent conviction in Frost case.”¹¹²

The statement not only conveys the united front that Greek men displayed against the law, but also reveals the reason why Nick Contos, L. G. Skliris, and the rest of the Greek community invested so much into *Chemgas*. It is apparent that Greek men felt that cases such as this unfairly targeted their community, so they staged an effective and united response through the law. While the newspaper explicitly stated this in the case of *Chemgas*, it is no doubt equally applicable to the case of *Colias*. Uniform application of the sodomy law during the time to working-class, and especially immigrant, communities gave rise to connections formed between defendants—even if the connections did not explicitly involve sexuality. In the case of Colorado, this held especially true when the law targeted those within the Greek community. In response, the connections formed between Greek

¹¹⁰ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 3.

¹¹¹ “Omaha Anti-Greek Riot Instigated by Foreigners,” *Denver Post*, February 24, 1909, Colorado Historical Newspapers, Colorado Historical Society.

¹¹² “2,500 Greeks of Denver Want to Become Voters,” *Denver Post*, February 17, 1909, Colorado Historical Newspapers, Colorado Historical Society.

immigrants facilitated the consolidation of gay Greek defendants into organized and effective repeat players under the law.

CHAPTER 5

Prosecuting Gay

When working-class gay men came into contact with the law in the early twentieth century, they faced a framework of adjudication that differed from that of their late-nineteenth-century predecessors. During the progressive period, developments in theories of adjudication shifted the role and tendencies of judges. Oliver Wendell Holmes, in the same article in which he coins the term “bad man,” opines that “judges themselves have failed adequately to recognize their duty of weighing the considerations of social advantage.”¹¹³ This idea informed a new breed of judges, called legal realists. Once gay men set foot in many twentieth-century courtrooms, they faced these legal realist judges that did not apply one set of rules evenly, but rather exercised discretion in weighing what they thought benefitted society most, often through the use of “social-science-based expertise.”¹¹⁴ This “expertise” included the “pseudoscience of degeneracy,” as described by Canaday and Eskridge and explored earlier, which designated working-class, same-sex relationships as especially harmful to society.¹¹⁵ As a result, gay men became cognizant of their unique positions as gay offenders under a powerful law.

One of the most prominent enforcers of this new form of adjudication resided in Denver. In 1899, Ben Lindsey established Denver’s juvenile court, one of the first of its kind in the nation. The court effectively enforced crimes related to

¹¹³ Oliver Wendell Holmes, “The Path of the Law,” 10 *Harvard Law Review* 457 (1897), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 35.

¹¹⁴ Gordon, 312.

¹¹⁵ Canaday, 29; Eskridge, 40-41.

the morality of children.¹¹⁶ Despite his 1906 run for governor as a Democrat, Lindsey was a political outsider—popular among the public but disliked by Republicans and Democrats alike.¹¹⁷ A 1904 *Denver Post* long-form article wondered: “Shall he fall because he’s honest?”¹¹⁸ The article acted as a harbinger, as Lindsey never was elected to office.

Nationally, however, Lindsey found renown and prominence for his juvenile court. Will Rogers noted that “outside Colorado nobody knew anything about Denver except that Judge Lindsey worked there.”¹¹⁹ When Denver received the rights to name an emergency fleet corporation ship, the *Denver Post* urged the city to consider the judge:

Call it the ‘Ben B. Lindsey’ and the four corners of the earth will know it is not only an American ship but was named by Denverites... Send it to Italy and children will crowd about the docks and throw flowers on the deck. Send it to Japan, China, or the Indies and the natives will recognize the name emblazoned on its bows. Send it to law-making England and Londoners will honor America’s pioneer in juvenile court circles. Send it to France and the orphans will know the man as the friend of little children everywhere.¹²⁰

This testimony epitomizes not only the importance of the judge in reforming the judicial system as it applied to children, but also placed Denver at the center of this movement. While Lindsey did not have political allies in the progressives, the changes he implemented in the judicial system certainly increased enforcement of the law as it related to gay men. The newfound focus on morality-based crimes,

¹¹⁶ Ben B. Lindsey, “Report of Hon. Ben. B. Lindsey: Chairman of the Committee on Juvenile Courts,” 4.

¹¹⁷ “Judge Lindsey is a Candidate,” *Denver Rocky Mountain News*, August 23, 1906, Colorado Historical Newspapers, Colorado Historical Society.

¹¹⁸ Paul Thielman, “Rise of Ben Lindsey in Denver Politics,” *Denver Post*, October 7, 1904, Colorado Historical Newspapers, Colorado Historical Society.

¹¹⁹ Charles Larsen, *The Good Fight: The Life and Times of Ben B. Lindsey* (Chicago, IL: Quadrangle Books, 1972), 55-82; *Ibid.*, 83.

¹²⁰ “Name Ship for Ben Lindsey Whole World Knows Him,” *Denver Post*, November 27, 1918, Colorado Historical Newspapers, Colorado Historical Society.

especially those related to children, led to an uptick in sodomy cases. This likely arose from society's association of working-class sexuality with same-sex relationships involving children, as explained by Boag.¹²¹ Additionally, while Lindsey held progressive views on marriage, he still believed it to be, along with childbearing, "cornerstones of the health of society," as explained by scholar Jennifer Terry. Therefore, he inherently viewed homosexuality as a threat to society.¹²²

Progressive-era judges such as Lindsey that subscribed to Holmes's enlightened view of adjudication carried their views over to the bench of the court. Judge Lindsey's juvenile court served as the venue in *Colias*, and, when issuing his decision, Lindsey stated not only that he believed the plaintiff's testimony, but also that the defendant's "crime is one of the most shocking and degrading ones this court has any experience with."¹²³ After the defendant, Bill Colias, appealed the case to the Colorado Supreme Court, claiming that the juvenile court lacked jurisdiction over adults, Attorney General Fred Farrar and Assistant Attorney General Clement F. Crowley submitted a brief outlining the benefits of the juvenile court. In it, they noted that 126 cases of rape appeared in front of the juvenile court in the prior sixteen months.¹²⁴ It is telling that, out of 126 cases, Lindsey singled *Colias* out as "one of the most shocking and degrading ones." Lindsey clearly viewed it as separate from and more heinous than cases involving the rape of a female victim.

¹²¹ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 4.

¹²² Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago, IL: The University of Chicago Press, 1999), 123. Terry talks mostly about lesbianism but her idea holds when considering gay men.

¹²³ *Colias v. Colorado*, 70.

¹²⁴ *Ibid.*, Farrar Brief 23.

This method of adjudication clearly deviated from that of late-nineteenth-century judges. During the late 1800s, judges applied the law as written and assessed cases purely through reason and without any consideration of social benefit—the method of adjudication that Holmes criticizes in “The Path of the Law.” Lindsey, however, did consider social benefit when he differentiated the crime in *Colias* from the 125 others brought under similar charges. Thus, gay men facing progressive-era judges would have been keenly aware of the distinct nature of their cases, as methods of adjudication and actions of judges varied based on the same-sex nature of the case.

Additionally, it defies credulity that Lindsey remained impartial in court proceedings over which he presided. Lindsey’s life work hinged on the idea that children could be reformed but adults could not.¹²⁵ He developed such a connection to the children of his court that, upon his retirement, he purged the courthouse of its records and burned them in a public display of defiance. As he did so, he declared that “they are my own personal records and never will serve the selfish ends of any person.”¹²⁶ Lindsey’s advocacy on behalf of children certainly had a long-term positive impact, but his method of adjudication led to an unfair treatment of gay men as compared to their straight counterparts. As a result, gay men could conceive of their cases as distinct from crimes involving opposite-sex sexual crimes.

Despite changes in adjudication, early-twentieth-century courts occasionally handed down punishments that mirrored those from the previous century, especially outside of Denver. In 1908 Durango, police arrested E. J. Fuller, “a

¹²⁵ Benjamin B. Lindsey and Harvey J. O’Higgins, *The Beast* (Boulder: University Press of Colorado, 2009), 91-103.

¹²⁶ “Lindsey Burns Disputed Records,” *Denver Rocky Mountain News*, September 16, 1927, Denver Public Library.

prominent hardware dealer,” on the charge of “buggery” [*sic*]. Fuller pled guilty to the lesser charge of assault, and the court levied a fine of \$100 and costs as punishment.¹²⁷ As discussed in Chapter 2, it was not uncommon in the nineteenth century for gay defendants, even those facing the charge of sodomy, to quietly plead their cases down to a lesser charge and avoid substantial jail time, just as Fuller did. In the case of Fuller, however, neither the court nor the defendant escaped criticism for the apparently lenient penalty. In response to the plea, the *Durango Democrat* reported that the plaintiff’s father became “irate” that the defendant did not receive a greater penalty. The newspaper opined that “the scandal is terrible and goes to suggest, if true, that Fuller should be in the asylum at Pueblo, instead of at large.”¹²⁸

The newspaper’s offering of an alternate punishment recalls the 1885 *Denver Rocky Mountain News* headline related to the case of John Ryan explored in Chapter 2. That headline proclaimed that the defendant “deserves to be hanged,” an extralegal punishment that indirectly acknowledged the leniency of the law and deficiency of legal punishments at the time.¹²⁹ In the case of Fuller, however, the suggested punishment invoked the “pseudoscience of degeneracy” without denouncing the role of the law in the punishment of the defendant. The newspaper article accepted the law’s punishment but censured its implications—the defendant’s freedom. Instead of suggesting a punishment that exceeded the law’s scope such as in the case of John Ryan, the *Durango Democrat* offered a punishment much less severe than a court would offer at the time, suggesting that

¹²⁷ “Spicy,” *Durango Democrat*, February 5, 1908, Colorado Historic Newspapers Collection.

¹²⁸ *Ibid.*

¹²⁹ “Deserves to Be Hanged,” *Denver Rocky Mountain News*, June 23, 1885, Colorado Historical Newspapers, Colorado Historical Society.

the defendant “seek seclusion in unknown fields where Oscar Wilde’s practices are less revolting”—barely a punishment at all.¹³⁰ Both the father of the plaintiff in the Fuller case and the newspaper denounced the court’s sentence without undermining the court’s role in levying a punishment. In perhaps the most explicit example of this sentiment, the father of the plaintiff, instead of proposing extralegal action as the newspaper did in the Ryan case, “threaten[ed] further prosecution.”¹³¹ Thus, even when early-twentieth-century courts handed down penalties reminiscent of their late-nineteenth-century counterparts, society expected the courts to scrutinize gay defendants in sodomy cases and relied on them as the main source of punishment in such cases.

For the most part, however, punishments handed down by courts against gay defendants increased in the early twentieth century, providing them with incentive to fight back in the courts. Before the turn of the twentieth century, gay men most commonly faced punishment in the form of a fine, as discussed in Chapter 2. Those convicted for sodomy, including John Short, John Ryan, and George Hooker, usually spent less than three years in prison. By the 1900s, however, those convicted of the crime against nature rarely faced penalties amounting to less than five years in prison. In 1907, Frank Quarrel received a sentence of five to eight years in the state penitentiary for sodomy committed against Hyser Clark.¹³² In 1911, Walter Evans also received a five to eight year sentence—what appears to be the standard punishment for same-sex sodomy at the time. John Chemgas, Peter Horons, and Bill Colias, the defendants in *Chemgas*

¹³⁰ “Spicy.”

¹³¹ Ibid.

¹³² “Quarrel Sent to Pen,” *Denver Rocky Mountain News*, December 11, 1907, Colorado Historical Newspapers, Colorado Historical Society.



Figure 11: Mug Shot of Walter Evans, arrested for Sodomy—For reverse see Figure 20 (Source: *Walter B. Evans* #8101, 1911, Corrections Records, Colorado State Archives, Denver, CO.)

and *Colias*, all received ten- to twenty-year penalties for their crimes more than double the standard five- to eight-year penalty.¹³³ These increased penalties demonstrate a more forceful targeting of gay men in comparison to the prior era, a fact that surely yielded increased interactions with the law. When facing sentences of no less than five years, gay men would be more likely to appeal a decision and hire a lawyer. It is telling that the cases that featured the most severe punishments, *Chemgas* and *Colias*, were also the first two appealed to the Colorado Supreme Court.

The fact that defendants in both *Chemgas* and *Colias* received such severe punishments for sodomy during the time has interesting implications. Most cases involving sodomy violations were not appealed, so it is difficult to ascertain their true nature, but reduced punishments suggest that they presented fewer exacerbating factors. *Chemgas* and *Colias* both featured immigrant defendants charged with coercive sodomy against younger white males. One explanation for the disparate punishments is that other cases may have involved males engaging in

¹³³ *Colias v. Colorado*, opinion of Judge Teller; *Chemgas v. Tynan*, 75.



Figure 12: Mug Shot Frank Quarrell, arrested for Indecent Liberties—For reverse, see Figure 19 (Source: *Frank Quarrell* #6964, 1907, Corrections Records, Colorado State Archives, Denver, CO.)

sodomy with a female rather than a male. This scenario appears unlikely because society had already begun to view sodomy as a gay crime at the time, as discussed in Chapter 4. If true, however, disparate punishments demonstrate that the enforcement and punishment of sodomy increased if it involved gay defendants. Second, the coercive component of *Colias* and *Chemgas*—the fact that both cases presented a sexual assault rather than consensual sex—could have resulted in more severe punishments. This possibility suggests that cases prosecuted during the time did not always involve coercion. If true, the targeting of gay relationships without a claim of coercion would qualify as a departure from pre-twentieth-century policing, causing more gay men and more gay relationships to come into contact with the law. Either of these patterns exemplify the separation of gay defendants from others in the application of the sodomy law, prompting gay men to conceive of their situations as distinct.

A final explanation for the divergent punishments could lie in the racial and class makeup of each specific case. Frank Quarrel and Walter Evans, the two

defendants sentenced to five to eight years, both appear to be white, working-class, native-born defendants. The description accompanying Quarrel's mug shot lists him as white, Evans's designates him as having light complexion, and neither mention national origin.¹³⁴ The omission of a recorded national origin likely indicated native-born Americans, as the mug shots of Chemgas and Horons specifically classify them as Greek.¹³⁵ While all defendants qualified as working-class, only Chemgas, Horons, and Colias were immigrant men, a factor that exposed them to stricter scrutiny under the law as explained by Canaday and may explain the increased severity of their sentences.¹³⁶ Increased punishments for all gay men, including especially severe ones levied against immigrant men, gave defendants plenty of incentive to respond to the law.

Furthermore, as Canaday explains, "aliens were occasionally excluded or deported for sexual perversion during the early twentieth century," although exclusion occurred on a more widespread level later in the twentieth century.¹³⁷ In the case of *Chemgas*, as explored in Chapter 4, Greek men even sought citizenship in response to the court's conviction of the defendants. Immigrant gay men often had more at stake than a prison sentence, further increasing motivation to push back against the law. These factors likely provided the catalyst for Chemgas, Horons, and Colias's decisions to appeal their convictions to the Colorado Supreme Court. Investing years of time and resources to push back against severe punishment, defendants viewed their cases as significant enough to warrant an

¹³⁴ Refer to Figure 12 above; Refer to Figure 19 in Appendix; Refer to Figure 11 above; Refer to Figure 20 in Appendix.

¹³⁵ Refer to Figure 21 in Appendix; Refer to Figure 22 in Appendix.

¹³⁶ Canaday, 19-54.

¹³⁷ *Ibid.*, 21.

organized and effective response to the law resulting in the first two Colorado Supreme Court cases involving same-sex sodomy.

Chapter 4

Fighting the Law

In the late nineteenth century, gay defendants who appeared in court rarely engaged the law meaningfully. Newspapers seldom mentioned lawyers hired by gay men during the time period, and it appears that defendants appealed few, if any, cases to higher courts. Early-twentieth-century changes in methods of prosecution and adjudication, however, exacerbated the effects of the law on gay men, especially those in the working class. As a result, gay men could no longer remain the disassociated one-shotters under the law they had been in the late nineteenth century. In order to defend themselves from amplified scrutiny of same-sex relationships and increased punishments, gay men had to effectively and deliberately engage with the law, which could be done both formally and informally. This chapter explores the ways in which working-class gay men defended themselves in court both formally and informally. I begin by examining informal defense mechanisms, including illicit attempts to undermine the prosecution's case, namely through the intimidation and tampering of witnesses. I then explore more formal methods of defense: the hiring of a qualified defense attorney and the crafting of a subsequent defense strategy. Through these actions, gay men positioned themselves as repeat players and began to form a common identity under the law.

The Informal Fight

Many working-class gay men did not have access to sufficient resources required to appeal their cases to the Colorado Supreme Court, but they understood the need to defend themselves against the law and did so through other means. As discussed in Chapter 2, in the late nineteenth century, ordinances passed in order to curb moral vices often targeted specific locations or establishments. The proprietors of affected establishments then bribed police to refrain from implementing any applicable law.¹³⁸ When working-class gay life moved out of specific saloons and into private quarters in the early 1900s, establishments could no longer obfuscate the efforts of law enforcement to secure freedom for their patrons. As a result, some gay men took on the role of late-1800s proprietors and pursued their own shady alliances in order to defend themselves against the law.

The February 1903 crime against nature case involving Jack Logue, John O'Hare, and James Reed received relatively routine coverage in the newspaper in the days that followed the arrest. However, one particular passage appearing in the *Denver Post* foreshadowed a twist in the case. The newspaper described defendant Logue as “a vagrant,” stating that he had avoided conviction of any serious crime because “heretofore whenever Logue [had] been arrested his political backers [had] found means to secure his release.” The title of the article downplayed the prospect of Logue’s allies’ ability to look past his most recent crime, asking “What politician will defend them—what judge condone?” Due to the nature of the crime, the *Denver Post* expected the conviction to be routine, stating that “this time the police will make an effort to bring [Logue] to justice.”¹³⁹ In hindsight, however,

¹³⁸ Arps, 23-24; “Lawlessness of the Row,” *Denver Rocky Mountain News*, August 18, 1899, Colorado Historical Newspapers, Colorado Historical Society.

¹³⁹ “What Politician Will Defend Them—What Judge Condone?”

the newspaper miscalculated the depth of Logue's connections, and the case became one of the most widely covered sodomy cases of the Pre-World War I era.

In late April 1903, Jacob Foreman, the plaintiff in the case, mysteriously left town, sending a letter to his mother explaining that threats made by former city detective Samuel Emrich had forced him to flee to Philadelphia. Emrich "admitted to knowing Logue and his friends" but "denied forcing Foreman to leave town."¹⁴⁰ On May 28, one month later, police charged Emrich with kidnapping Foreman. Foreman told his side of the story to the court, accusing Emrich of "lock[ing] him up" in a room at the Colorado Hotel on Larimer Street. Foreman allegedly fell asleep immediately after eating the first meal Emrich provided him, waking up in a train bound for Chicago from Omaha on March 17, the day of the trial against the original defendants (Logue, O'Hare, and Reed). Foreman then received an envelope from the conductor sending him to Philadelphia, where he had told Emrich he had family.¹⁴¹ In conjunction with the kidnapping charges against Emrich, the police charged William Reed, the father of defendant James Reed, for "assisting Emrich in kidnaping the boy."¹⁴² The attempts to interfere with the prosecution of the case did not end there. W. H. Lewis, a prospective juror, revealed that a man approached him on the street and offered him money if he "gave a proper verdict."¹⁴³ The defendants clearly had a complex system in place in order to keep them from facing punishment under the law.

¹⁴⁰ "Accuses Emrich," *Denver Post*, April 29, 1903, Colorado Historical Newspapers, Colorado Historical Society.

¹⁴¹ "Emrich Charged with Kidnapping," *Denver Post*, May 28, 1903, Colorado Historical Newspapers, Colorado Historical Society; "Young Boy Says He Was Kidnaped," *Denver Rocky Mountain News*, May 28, 1903, Colorado Historical Newspapers, Colorado Historical Society.

¹⁴² "The Foreman Outrage," *Denver Post*, June 1, 1903, Colorado Historical Newspapers, Colorado Historical Society.

¹⁴³ "Says Bribe Was Offered in the Emrich Case," *Denver Rocky Mountain News*, June 19, 1903, Colorado Historical Newspapers, Colorado Historical Society.

However, it is unclear the extent to which the defendants succeeded in influencing the case. On June 19, around three weeks after the initial report of the kidnapping charge, the *Denver Post* introduced evidence that Foreman made the decision to leave town on his own accord, though only as a result of Emrich's statement that he may be killed if he testified against the original defendants.¹⁴⁴ The first trial against Emrich featured a hung jury, and at the retrial, held after coverage had died down, the prosecutor "suggested a nolle prosequi and the court acquiesced," ending the prosecution of the case.¹⁴⁵ Whether Emrich's acquittal stemmed from actual innocence, internal political connections, or success in intimidating jury members in addition to W. H. Lewis is ambiguous. Clear, however, are the conscious attempts by the defendants to impact the way in which they interacted with the law.

The kidnapping of Foreman in the Logue, O'Hare, and Reed case did not qualify as the only informal (and unlawful) attempt by gay litigants to defend themselves in court. As discussed in Chapter 4, in the lead up to the 1909 *Chemgas* trial, a Greek man, John Kusjkulis, kidnapped the plaintiff, Ralph Frost, "under the glare of the electric lights and in plain view of the scores of pedestrians at Seventeenth and Curtis streets." Kusjkulis forced Frost to accompany him, along with two other Greek men, on a train to Kansas City "under penalty of death," but police apprehended two of the perpetrators and "rescued" Frost.¹⁴⁶

¹⁴⁴ "Emrich and Foreman Case."

¹⁴⁵ "The Emrich Jury Disagreed---Logue and O'Hara Sentenced," *Denver Post*, June 20, 1903, Colorado Historical Newspapers, Colorado Historical Society; "Fails to Agree," *Denver Rocky Mountain News*, June 21, 1903, Colorado Historical Newspapers, Colorado Historical Society; "The Emrich Case," *Denver Post*, September 27, 1903, Colorado Historical Newspapers, Colorado Historical Society.

¹⁴⁶ "Kidnaped on Denver Street, Man is Rescued by Kansas City Police," *Denver Rocky Mountain News*, January 29, 1909, Colorado Historical Newspapers, Colorado Historical Society.

In both the Logue, O'Hare, and Reed case and *Chemgas*, gay men used illicit methods to influence the outcomes of cases against them in court. Based on the sources, the tactics often did not succeed. After the kidnapping of Frost, the *Chemgas* trail continued as planned and the defendants were convicted and sentenced to prison. Similarly, O'Hare and Logue each received three- to six-year prison sentences for their crime. Nevertheless, while the original *Denver Post* headline in the Logue, O'Hare, and Reed case correctly doubted that the defendants' political allies would be able to save them from punishment, it certainly underestimated the lengths to which gay defendants would go to fight back against the law.¹⁴⁷

Representing Gay Offenders

While illicit actions such as witness tampering certainly influenced the outcome of individual cases, developments in how gay men engaged more conventionally in litigation illuminate a shared gay identity under the law. This shared identity paved the way for an effective recourse under the law that eventually resulted in *Lawrence*. In the early twentieth century, gay men only conceived of themselves as gay (or at least joined with other gay men) when interacting with the law, and gay defendants had little agency in the process of litigation except in the hiring of lawyers. Thus, I argue that in order to understand how gay men viewed themselves in relation to the law and each other, it is vital to consider the way in which they chose to represent themselves against the law through the retention of counsel and the crafting of a strategic defense. Recent

¹⁴⁷ "The Emrich Jury Disagreed---Logue and O'Hara Sentenced."

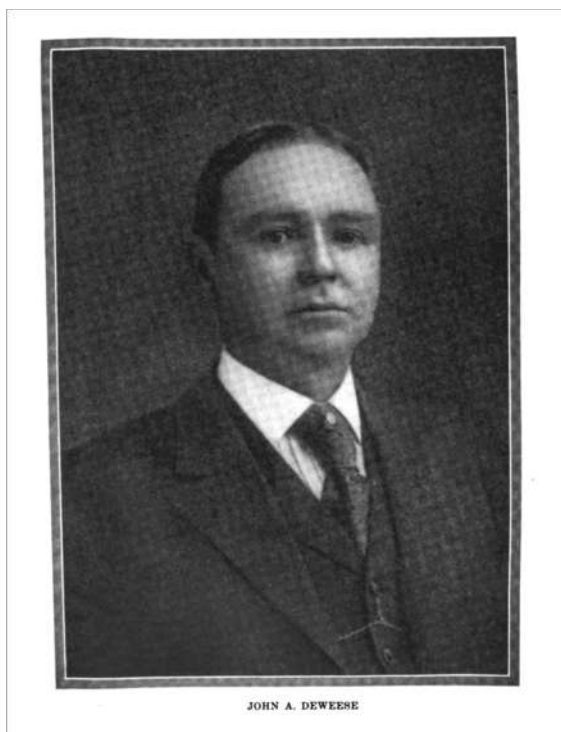


Figure 13: John DeWeese (Source: Wilbur Fiske Stone, *History of Colorado*, Vol. III, (Chicago, IL: The S. J. Clarke Publishing Company, 1918), 326.)

scholarly work, such as that produced by Kenneth Mack, proves the usefulness of examining lawyers present in the courtroom and their relationship to the movements of those they represent.

In *Chemgas* and *Colias*, the first two sodomy cases appealed to the Colorado Supreme Court, defendants retained the services of the same defense attorney: John DeWeese. In order to analyze the implications of DeWeese's presence as defense attorney in the two cases, I apply a theoretical framework laid by various scholars—Marc Galanter, Robert Gordon, and Kenneth Mack—who enhanced the way in which scholars understood the lawyer's role in a case. Oliver Wendell Holmes's conception of the law as simply the way in which courts decide cases altered American legal thought, turning attention toward diverse approaches to

both arguing and deciding cases on the part of lawyers and judges, respectively.¹⁴⁸ The result has been an extensive discourse on understanding the legal profession and the role of individuals within it.

Marc Galanter further develops understanding of the role of the lawyer in a given case in his article “Why the ‘Haves’ Come Out Ahead: Speculations on the Limit of Legal Change.” On top of defining the one-shotter (OS) and repeat player (RP) lens through which I have examined gay men interacting with the law around the turn of the twentieth century, Galanter explores the structural advantages repeat players have over one-shotters in the form of legal counsel. In the legal realm, “the rules are sufficiently complex and problematic...that differences in the quantity and quality of legal services will affect capacity to derive advantages from the rules.” Lawyers available to repeat players with greater experience and funds can invest more time into each case and use the rules with which they are familiar to their client’s advantage. This expertise results in increased effectiveness for a client, especially in the pursuit of a long-term goal, as they “can adopt strategies calculated to maximize gain over a long series of cases, even where this involves the risk of maximum loss in some cases.”¹⁴⁹ In this chapter, I refer to both repeat player claimants and their lawyers as repeat players (and will adopt the shorthand RP henceforth).

While Galanter explains that certain litigants position themselves with more experienced lawyers committed to their specific cause, Robert Gordon lays out the history of the lawyers traditionally relegated to each type of client in his 2002

¹⁴⁸ Holmes, 31.

¹⁴⁹ Marc Galanter, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limit of Legal Change,” 9 *Law and Society Review* 95 (1974), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 516; *Ibid.*, 498.

article “The Legal Profession.” Gordon describes a legal profession in which “the lowest-status lawyers have throughout been those who practiced on their own or in small partnerships representing individuals in trouble and without much money” like “people accused of crimes.” Gordon also highlights how lawyers typically associate with their client’s causes, a phenomenon either embraced and facilitated by the lawyer himself or imposed on the lawyer by a society that looks down on those he represents.¹⁵⁰

Kenneth Mack continues the discussion of the role and significance of lawyers in his 2012 book *Representing the Race: The Creation of the Civil Rights Lawyer*. Mack grapples with the question of what it means for a lawyer to represent a client. He emphasizes the importance of studying lawyers not only as courtroom representatives of their clients, but also as representatives in their professional lives of the movement for which they advocate in court. Specifically, Mack focuses on how mid-twentieth-century black lawyers “wrote their own professional lives into the core narrative of American history.”¹⁵¹ Due to the personal nature of sexuality as opposed to race, this paper applies Mack’s method to analysis of the lawyer’s personal, as well as professional, life.

Application of these sources in the case of John DeWeese gives rise to many questions. What does DeWeese’s personal life and role within the legal world demonstrate about early gay defendants and society’s views of same-sex relationships at the time? What does DeWeese tell us about the way in which gay men interacted with the law? First, DeWeese’s messy personal life demonstrates the formalization of sexual outsiders’ interests into movements in the face of

¹⁵⁰ Gordon, 289; Ibid., 291; Ibid., 301.

¹⁵¹ Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer* (Cambridge, MA: Harvard University Press, 2012), 2.

rampant targeting from anti-vice campaigns. Second, DeWeese's position as an esteemed lawyer and member of society, the result of a response to anti-vice campaigns, suggests a slight movement toward the legitimization under the law of those that engaged in same-sex relationships. The continuity of DeWeese's representation in both cases supports the conclusion that the defendants in *Chemgas* and *Colias* were RPs, affirming the findings of Chapter 4. Their positioning as such resulted in effective representation and eventually a long-term win for the movement in the form of checks on an overreaching juvenile court, perhaps the first step in a joint recourse to the law that resulted in *Lawrence*.

The lawyer's personal life, while seemingly unrelated to the immigrant Greek men he represented, offers glimpses into how those who participated in same-sex relationships situated themselves within society. Wilbur Fiske Stone's 1918 *History of Colorado* presented the biography of many prominent early people of Colorado including John DeWeese. Stone painted an overly positive picture of DeWeese (he was still alive at the time). However, Stone appears to have ignored or intentionally obscured some facts in his depiction of the lawyer. Stone routinely relayed that "Mr. Deweese was married in 1884 to Miss Kate Murphy...and they have become the parents of two children."¹⁵² This declaration alters the truth, and, although Stone may have made an honest mistake, he may have deliberately covered up an unsavory aspect of DeWeese's past. While the 1920 census reported a John and Katherine DeWeese living at 3135 S. Acoma Street, the 1900 census claimed that John was married to Martha A. DeWeese with two children living at

¹⁵² Wilbur Fiske Stone, *History of Colorado*, Vol. III, (Chicago, IL: The S. J. Clarke Publishing Company, 1918), 326.

1765 Lafayette Street.¹⁵³ In fact, DeWeese divorced his first wife, Aurelia M. (likely Martha) Lipscomb, on June 11, 1912, marrying Kate M. (likely Murphy) Trowbridge eleven days later on June 22, 1912.¹⁵⁴ Both events occurred in Utah, the closest divorce haven to Colorado at the time.¹⁵⁵

All aspects of the divorce did not escape the public eye, however, when a story shared by Aurelia and the DeWeeses' son John Jr. made its way to the front page of the *Denver Rocky Mountain News* on November 16, 1908. The article claimed the lawyer was "smitten by the affinity bug," adding that he had "neglected his family for the past four years" and had "introduced this [new] woman in several cities as his wife." The irony of the elder John's notoriety in the field of divorce law was not lost on Aurelia or John Jr., who stated that "he does not practice what he preaches."¹⁵⁶ That same day in the *Denver Post*, the lawyer refused to reply to the accusations, stating "I shall never say anything against the one who is the mother of my children."¹⁵⁷

DeWeese's divorce qualified as noteworthy during the time period, as separation was not as common or easy as it is today.¹⁵⁸ The fact that the DeWeeses had to go to Utah to secure a divorce (with John staying to get remarried)

¹⁵³ Ancestry.com, *1900 United States Federal Census* [database on-line], Denver, Arapahoe, Colorado, Roll 118 (Provo, UT: Ancestry.com Operations Inc., 2004), 6B; Ancestry.com, *1920 United States Federal Census* [database on-line], Englewood, Arapahoe, Colorado, Roll T625_155 (Provo, UT: Ancestry.com Operations, Inc., 2010), 16A.

¹⁵⁴ Ancestry.com, *Colorado, Divorce Index, 1851-1985* [database on-line] (Provo, UT: Ancestry.com Operations, Inc., 2015); Ancestry.com, *Utah, Select County Marriages, 1887-1937* [database on-line] (Provo, UT, USA: Ancestry.com Operations, Inc., 2014).

¹⁵⁵ Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2002), 265. Other divorce havens in the West at the time included Illinois, Iowa, South Dakota, and Arizona.

¹⁵⁶ "DeWeese Has an Affinity, Says Wife," *Denver Rocky Mountain News*, November 16, 1908, Colorado Historical Newspapers, Colorado Historical Society.

¹⁵⁷ "Attorney DeWeese Makes No Reply," *Denver Post*, November 16, 1908, Colorado Historical Newspapers, Colorado Historical Society.

¹⁵⁸ Judge Ben Lindsey, who presided over *Colias*, radically advocated for more lenient divorce in his book *The Companionate Marriage*.

exemplifies this difficulty. In addition, Stone's depiction of DeWeese written just six years after the finalization of his divorce likely intended to cover up an aspect of his life that created embarrassment and compromised his role within society—it is hard to believe that such an expert of early Denver would simply overlook or forget DeWeese's most notable front page headline. The DeWeeses' divorce and subsequent cover-up suggests that divorce, especially as a result of adultery, rendered a person at least somewhat of an outcast in the public's eyes, though not nearly to the same effect or in the same way as a same-sex relationship. While DeWeese remained a respected lawyer, newspapers no longer mentioned him as a prominent player in the Republican Party—a defining factor of his life as relayed by Stone.¹⁵⁹ I believe that DeWeese, in his representation in both *Chemgas* and *Colias*, could have at least partially identified with his clients as a sexual outsider himself in his personal life, fighting against systematic condemnation of those who did not fit society's exact mold (notwithstanding the divergent degrees of society's alienation of the two parties).

This shared affiliation between lawyer and client would not be out of the ordinary. Gordon finds that “private lawyers performed quasi-public tasks in their ordinary practice roles... advis[ing] clients” in many decisions, not solely legal ones.¹⁶⁰ Many lawyers often became associated with the goals and actions of their clients, sometimes identifying with those they represented. As an esteemed lawyer—a fact explored later—DeWeese likely could choose his clients, lending even more credence to the idea that he identified with them on some level.

¹⁵⁹ Stone, 326.

¹⁶⁰ Gordon, 305.

Mack explores this cohesion of goals shared between a movement and lawyers representing those within the movement in the context of civil rights cases. This chapter does the same in the context of cases involving early-twentieth-century gay defendants, though the stage of movement described here is different than that laid out by Mack. Mack traces a movement through its lawyers with the end in sight, whereas I pinpoint the beginning of a movement through the study of lawyers in its earliest cases. Mack's study bases itself on the exploration of how the legal profession and identity of those involved in cases "help construct one another."¹⁶¹ Perhaps the most interesting and fundamental difference between the protagonists of Mack's study and those of this one is their progress in the formation of an identity. Mack's characters have a fully-developed identity informed by centuries of oppression and a distinct physical characteristic. Those in this study, however, participate only in the beginning of the formation of an identity; therefore, identities are messy and undeveloped, but share certain aspects. This has interesting implications in terms of both the identity itself and the application of the law. On one hand, DeWeese's presence in the courtroom did not in and of itself constitute an act of the movement. On the other hand, he did not have to worry that his identity would negatively impact the treatment of his clients.

A key component of Mack's study is the paradox faced by black lawyers in civil rights litigation: how to represent both the race and the client in court.¹⁶² Charles Houston, a prominent civil rights attorney, expressed the desire to "work to advance the race rather than serving the status quo."¹⁶³ For John DeWeese,

¹⁶¹ Kenneth W. Mack, "Civil Rights History: The Old and the New," 126 *Harvard Law Review* 238 (2013), 260.

¹⁶² *Ibid.*

¹⁶³ Mack, *Representing the Race: The Creation of the Civil Rights Lawyer*, 44.

however, the “status quo” for the defendants—a fair trial with competent counsel making effective arguments—was the most radical and effective way for the movement to be propelled forward. His presence, however, did not have the same effect as the presence of civil rights lawyers discussed by Mack. When Charles Houston appeared in Loudoun County, Virginia in 1932 to argue in defense of George Crawford who “had been accused of murdering the socially prominent Agnes Ilesley and her maid,” Houston’s “own race constituted an attack on segregated public spaces, as did his principal legal argument.”¹⁶⁴ Houston’s race and argument worked in conjunction to make the case for the vindication of his client and movement. In this way, black lawyers during the civil rights movement and their specific identities worked together to achieve progress for the movement. DeWeese, on the other hand, could not have this dual effect for his gay clients. His presence does, however, demonstrate something intriguing. Mack’s lawyers worked on behalf of both their identity and their client, and DeWeese likely did the same. Thus, it is possible to deduce a connection between the sexual outsider-identity of DeWeese and the sexual outsider-identity of the defendants in both *Chemgas* and *Colias*. Their connection and joint pursuit of a common goal suggest the early stages of a joint identity formed between sexual outsiders targeted by campaigns of moral reform and the cleansing of sexual degenerates. The emergence and formalization of this early, joint identity constitutes, in and of itself, the progress achieved by the movement in these early cases.

The disparity in identity between DeWeese and his defendants had coincidental benefits. Black lawyers such as Charles Houston often needed to compromise their arguments in order to appear polite and avoid confrontation.

¹⁶⁴ Ibid., 88.

Specifically, Houston barely attempted to prove George Crawford's innocence, instead focusing on an emotional and ultimately successful plea to save the defendant from the death penalty.¹⁶⁵ DeWeese, as an already-esteemed, white, straight lawyer, did not have to police his actions, as he was routinely able to stand up to the District Attorney. This demonstrates the disparity of the experience between those who were black or accused of participating in a same-sex relationship and those whose "offenses" were not as extreme in the eyes of society. In this way, the study of the role of DeWeese's personal life in early Colorado sodomy cases builds upon studies such as those performed by Mack that examine lawyers involved in the later stages of a movement's quest for legal protection and legitimacy.

Despite complications in his personal life, DeWeese by all accounts was and remained a respected lawyer. It is thus somewhat incongruous that he represented three working-class immigrants accused of "feloniously, wickedly, diabolically" committing a crime so horrible that people referred to it with a euphemism.¹⁶⁶ This fact complicates the view laid out by Robert Gordon, shedding light on the time period and the defendants' position within it. Gordon notes the derision aimed at practicing criminal defense law, stating that "its prestige is low," especially when representing blue-collar clients that lacked wealth.¹⁶⁷ This was not the case for John DeWeese, however. Stone painted an exceedingly positive picture of DeWeese, and, while Stone's depiction of DeWeese's personal life is questionable, his declaration of DeWeese's position in society is corroborated both by newspaper coverage of him at the time as well as his presence in Stone's history. Stone

¹⁶⁵ Ibid., 101-106.

¹⁶⁶ *Chemgas v. Tynan*, 4.

¹⁶⁷ Gordon, 289-290.

introduced DeWeese as “one of the old-time lawyers of Denver, known to its oldest and most prominent citizens and familiar with every phase of the city’s development and progress through the years,” closing with the statement that “he is numbered among Denver’s honored pioneers.”¹⁶⁸ While the source is undoubtedly biased, it is clear that DeWeese was an important lawyer in Denver society.

What does the fact that he accumulated so much prestige as a defense attorney reveal about the time? The newspaper announcement of his marriage to Aurelia Lipscomb in 1884 called DeWeese “a young attorney of great promise,” and he became a mainstay in Colorado newspapers as a defense attorney from around 1895 to 1920, a time of rampant progressive moral reform efforts.¹⁶⁹ Because increased targeting designated many people as criminals, defense attorneys—like John DeWeese—proved vital in combating anti-vice campaigns. Interestingly, Gordon acknowledges that, while criminal defense isn’t a prestigious field to enter in and of itself, lawyers do “hold up the model of criminal defense as the paradigm of what they do: the aggressive protection of private rights against an overarching state.”¹⁷⁰ During the early twentieth century in Denver, however, the model could be directly applied, as the state expanded its reach into the private lives of citizens. Due to this newfound focus on securing private rights, it became possible, and seemingly profitable, for a lawyer like John DeWeese to enter the criminal defense field. He gained prestige through the substantial attention paid to

¹⁶⁸ Stone, 324-326.

¹⁶⁹ "DeWeese-Lipscomb," *Denver Rocky Mountain News*, June 4, 1884, Colorado Historical Newspapers, Colorado Historical Society.

¹⁷⁰ Gordon, 290.

the cases for which he argued and people whom he represented; many of these cases rose out of the need for defense against anti-vice campaigns.

The notoriety gained by DeWeese had implications for those he represented. DeWeese's prestige as a lawyer was at least partly related to his role in the Republican Party. In 1882, he—as a Republican—ran for and won a seat on city council against a Democratic incumbent.¹⁷¹ In 1906, three years before *Chemgas*, Republican Governor Jesse Fuller McDonald appointed him to go to Washington, D.C. as one of three delegates to participate in “the drawing up of uniform divorce laws,” a fact that appeared to honor DeWeese's work in the field and surely proved his stature.¹⁷² DeWeese affiliated himself with the more reform-oriented Republicans of the early 1900s led by Theodore Roosevelt, a fact that renders his role as defense attorney in *Chemgas* and *Colias* even more surprising. However, his paradoxical presence proved beneficial.

Robert Gordon illustrates the reluctance of lawyers to represent clients outcast from society, pointing out that “in most of the Jim Crow South...white lawyers could not take on civil rights cases for blacks without risking loss of all their clients.”¹⁷³ However, DeWeese's longstanding commitment to the Republican Party, paired with the respect many had for him, may have had the opposite effect. Instead of compromising DeWeese's career, it may have worked to turn the attention away from the sexuality of those he represented, thus humanizing them and legitimizing their practices under the law. This is especially discernable in the case of *Colias*. Whereas newspapers almost always explicitly labeled sodomy cases

¹⁷¹ “Sixth Ward,” *Denver Republican*, October 25, 1882, Colorado Historical Newspapers, Colorado Historical Society; “Fight on Credentialts [*sic*],” *Denver Rocky Mountain News*, September 29, 1893, Colorado Historical Newspapers, Colorado Historical Society.

¹⁷² “Colorado News Items,” *Las Animas Leader*, January 26, 1906, Colorado Historic Newspapers Collection.

¹⁷³ Gordon, 301.

as such in the newspaper, the reporting of *Colias* differed greatly. Based solely on newspaper sources, one would be hard-pressed to find evidence that the case involved a same-sex relationship. Newspapers published at least six articles throughout the case's duration and in its aftermath, but none mentioned the same-sex nature of the crime. One article, in mentioning the implications of the case, even stated that "the decisions of the court will open the way for the release of all those sentenced by Judge Lindsey on charges or offenses against girls"—ignoring the fact that the case involved a male.¹⁷⁴ While fully understanding the reason behind this omission is difficult, the fact that DeWeese was a respected lawyer seriously and effectively arguing this case could have caused those covering the case to overlook the fact that it involved a same-sex relationship.

Additionally, it is likely that DeWeese's professional background and stature within the legal community rendered him one of the few people capable of successfully challenging Judge Ben Lindsey's Juvenile Court of Denver. In *Colias* that is exactly what happened. Through the achievement of such a consequential result in a case that featured a defendant facing increased scrutiny due to his sexuality, expert representation in *Colias* proved that gay defendants could be seen as equal to their straight counterparts in the enforcement of a specific law. In other words, gay defendants could meaningfully interact with the law without the same-sex nature of their case inherently undermining an appeal. Thus, if gay men conceived themselves as gay under the law, they could effectively push back against it. It is vital to understand, however, that the legitimization that occurred in this

¹⁷⁴ "Juvenile Court's Right to Act in Most Criminal Cases Denied," *Denver Post*, November 1, 1915, Colorado Historical Newspapers, Colorado Historical Society.

case did not manifest itself in the form of vindication, but rather an early baby step toward a fairer application of existing law.

DeWeese's stature, and his presence in both *Chemgas* and *Colias*, positioned him and his clients as repeat players (RPs), which had tangible consequences for the movement. The defendants in both *Chemgas* and *Colias* were working-class Greek immigrants. Chemgas and Horons worked at a Greek restaurant on Market Street and Seventeenth, while Colias worked selling popcorn out of a wagon on Curtis Street and Fifteenth. Each defendant struggled to speak English, suggesting that they had emigrated from Greece recently. There is no indication that they had past run-ins with the law.¹⁷⁵ Taken together, these factors point to their status as OSs based on Galanter's definition. Galanter did outline, however, a way in which disparities in the legal system between one-shotters and RPs may be mitigated, suggesting "the organization of 'have-not' parties (whose position approximates OS) into coherent groups that have the ability to act in a coordinated fashion, play long-run strategies, benefit from high-grade legal services, and so forth." He continued to point out formal ways in which this may occur, such as through organizations like the NAACP or trade unions.¹⁷⁶ In fact, informal methods of organization existed before the rise of formal groups. Chapter 4 explores the formation of informal RPs out of many apparent OSs, including the one examined in this chapter, and explains their significance to early-twentieth-century interactions between gay men and the law. The lawyer retained in both early cases played a role as well, cementing the long-shot, immigrant defendants as

¹⁷⁵ *Chemgas v. Tynan*, 88-335; *Colias v. Colorado*, 38-168.

¹⁷⁶ Galanter, 528; *Ibid.*, 529.

a formidable RP, a development with vital consequences for the advancement of their cause.

While the defendants in *Chemgas* and *Colias* appear to fit the description of OSs, they operated as RPs through their counsel. Instead of receiving representation from an overworked and underpaid lawyer completely unfamiliar with their case, the defendants retained the services of well-known defense attorney John DeWeese. Stone, in his biography of DeWeese, paints him as

an earnest, hard-working lawyer and discriminating student of the principles of jurisprudence...His preparation of a case is always comprehensive and full, his presentation clear and cogent, and the court records bear testimony to his ability in the many favorable verdicts which he was won for his clients.¹⁷⁷

These facts are evident in his competent and complete defense of the defendants in *Chemgas* and *Colias*, even resulting in a monumental victory in the latter.

In the two cases, DeWeese crafted a broad defense, even making overtures he likely knew would be unsuccessful. He filed a motion in *Chemgas* for a change of venue from Denver as “the inhabitants of the City and County of Denver are prejudiced against these defendants.” DeWeese claimed that this prejudice stemmed from coverage in the press concerning an independent event in which another group of Greeks kidnapped the alleged victim in *Chemgas*, Ralph Frost, after he pressed charges against the two defendants.¹⁷⁸ Whether DeWeese truly believed that this kidnapping episode itself or the efforts of social reformers to police the sexual lives of others was the true source of prejudice is unclear, but the motion for change of venue was destined to fail, and it did. Nevertheless,

¹⁷⁷ Stone, 324.

¹⁷⁸ *Chemgas v. Tynan*, 22; *Ibid.*, 23.

DeWeese's motion demonstrated a keen awareness of the disadvantage faced by the defendants, and he thought it beneficial to bring to the attention of the court.

During the *Chemgas* trial, DeWeese discredited the testimony of the principal witness, Ralph Frost, by demonstrating that he was acquainted with the defendants. DeWeese systematically undermined most of the prosecution's witnesses, including forcing a doctor to admit that apparent rectal damage to the plaintiff seemed to result from activity engaged in multiple days after the plaintiff claimed he was assaulted.¹⁷⁹ Nevertheless, the jury convicted the defendants. DeWeese's defense in *Colias* was equally adept. Most effectively, he undermined the testimony of the alleged victim, Earl Dunlap, by proving that, despite his testimony to the contrary, he was not new to Denver. This cast doubt on his reliability and the plausibility of his story, as explored in Chapter 4.¹⁸⁰ Despite the facts of the case favoring the defense far more than in *Chemgas*, the jury also convicted *Colias*, illustrating the work yet to be done.

The most creative and effective aspect of DeWeese's defense in both cases, however, was his method of appeal. It is telling that scholars had not uncovered a sodomy case appealed to the Colorado Supreme Court from before 1922, yet *Chemgas* and *Colias* were hiding in plain sight, appealed to the state's supreme court on other grounds. This was likely not a coincidence. Galanter suggests that "RPs can select to adjudicate (or appeal) those cases which they regard as most likely to produce favorable rules. On the other hand, OSs should be willing to trade off the possibility of making 'good law' for tangible gain."¹⁸¹ RPs position themselves to challenge a law or norm over a long period of time, as opposed to

¹⁷⁹ Ibid., 104-105; Ibid., 149-150; Ibid., 137.

¹⁸⁰ *Colias v. Colorado*, 66-76.

¹⁸¹ Galanter, 499.

searching for the best results for each case. This is exactly what happened in these two cases.

Newspapers reported DeWeese's appeal in *Chemgas*; the *Denver Rocky Mountain News* worried in a headline that the defendants "May Escape 20-year Term; Complaint Shy Ten Words."¹⁸² While the appeal ultimately failed, it is clear from this headline that the creative attempt to free the defendants, while unconventional, conceivably could have worked. DeWeese's strategic acumen reaped benefits in *Colias*, however. DeWeese was crafty enough to proficiently challenge Lindsey's Juvenile Court of Denver that previously "[had] met with no serious opposition."¹⁸³ The challenge to the juvenile court, and especially the success of the challenge, no doubt qualified as a monumental event. On the front page of the November 1, 1915 issue of the *Denver Post*, a headline exclaimed: "Juvenile Court's Right to Act in Most Criminal Cases Denied," and the article continued to express concern that offenders could seek freedom through *habeas corpus* proceedings.¹⁸⁴

Whether or not criminals could be set free, the implications of the outcome were extensive. As an instrument of social reform, the juvenile court was much more efficient than criminal courts in achieving convictions for sex crimes. Attorney General Fred Farrar and Assistant Attorney General Clement F. Crowley, in a petition for a rehearing of the case, found that juvenile court achieved a 44.6 percent conviction rate (49 convictions) while the criminal court achieved only a 12.8 percent conviction rate (22 convictions).¹⁸⁵ While the juvenile court is a

¹⁸² "May Escape 20-year Term; Complaint Shy Ten Words," *Denver Rocky Mountain News*, September 12, 1910, Colorado Historical Newspapers, Colorado Historical Society.

¹⁸³ Lindsey, 4.

¹⁸⁴ "Juvenile Court's Right to Act in Most Criminal Cases Denied."

¹⁸⁵ *Colias v. Colorado*, Farrar Brief, 22-27.

venerable and enduring development from the Progressive Era, it also acted disproportionately as an affront in its early years to those designated as degenerates by society, including working-class gay men.

DeWeese, as an RP, likely understood the unlikeliness of a positive result if he were to appeal either *Chemgas* or *Colias* on the basis of the sodomy statute, so he creatively formed arguments and appeals that gave his defendants a chance to succeed. This may not have been possible if defendants in *Chemgas* and *Colias* had remained OSs and retained shortsighted, inexperienced counsel. As it stands, however, the results of the cases worked to check the growing power of the juvenile court, clearly delimiting the scope of its jurisdiction. This ultimately benefited many actors in same-sex relationships and provides an early example of gay people achieving success as joint RPs under the law. DeWeese's presence signified the beginnings of joint gay identity under the law in Colorado that would eventually reach all the way to *Lawrence* on a national scale.

Mack laid the groundwork for studies like this one in which the close examination of a legal figure gives rise to truths about a movement with which the legal figure was associated. He found that stories of these lawyers' professional lives were in and of themselves vital to understanding the movement. This chapter approaches the subject of early gay defendants in Colorado in a similar way that Mack approached studying the civil rights movement, but with different implications. Because I examine the very early stages of a movement, a time when the professional identity of the lawyer and the identity of his clients are necessarily distinct, I come to different conclusions regarding the role of the lawyer. While DeWeese's presence is still vital to consider, he works less as a creator of the history of a movement, and more as a foil for the discovery of truths about the movement.

He worked on behalf of the movement, but his presence in the courtroom (unlike that of the civil rights lawyers) was not in and of itself an act of the movement. Thus, while this chapter examines the life of John DeWeese, its true function is to uncover facts about those whom he represented, those who pursued tangible results under the law and began an effective and unified recourse to the courts.

CONCLUSION

Gay Through History

Mark Stein's broad 2005 historiographical study of United States LGBT History identifies John D'Emilio's 1983 *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* as perhaps the first major foray into the field.¹ D'Emilio's work explores gay life before the Stonewall riots of 1969, pinpointing World War II as a critical turning point in LGBT history and "something of a nation-wide coming out experience." On a macro level, D'Emilio's work proves the presence "of a much longer historical process through which a group of men and women came into existence as a self-conscious, cohesive minority."² Thus, *Sexual Politics, Sexual Communities* has prompted historians to clarify and expand the narrative both in time and place. But, as Stein explains, *Sexual Politics, Sexual Communities* has, in some ways, pigeonholed historians into examining LGBT history through the lens of a "self-conscious" gay identity and community formation.³

This thesis advances research in the field of U.S. LGBT History in two directions. First, it follows D'Emilio's framework by examining previously untapped sources depicting gay life in Colorado between 1880-1914. Analysis of these sources expands the understanding of gay life during the pre-World War I

¹ Marc Stein, "Theoretical Politics, Local Communities: The Making of U.S. LGBT Historiography," *GLQ: A Journal of Lesbian and Gay Studies* 11, no. 4 (2005), 606.

² John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (Chicago, IL: University of Chicago Press, 1983), 24; Ibid, 4.

³ Stein, 606.

time period, an era not widely studied among LGBT historians.⁴ In addition, the sources enrich the understanding of gay life in the State of Colorado, a location not widely represented in current LGBT historical research. As the pioneering work of both D’Emilio and George Chauncey suggests, it is necessary to extend the geographic understanding of gay life to diverse locales in order to compare different events and tendencies and develop a more complete picture of how gay men lived historically throughout the United States.⁵ Conducting studies on a local level is vital when researching persecuted minority groups, especially those such as the LGBT community, whose members remained hidden from society at-large out of fear for their safety and of alienation from society. Gay men first formed connections and conceived of themselves as a community on a local level; even large-scale LGBT advocacy groups that formed after World War II such as the Mattachine Society began as small, local organizations with membership steeped in secrecy.⁶

Perhaps more important, this thesis complicates the framework laid by D’Emilio and presents a new lens through which scholars can assess LGBT history. Peter Boag, acting within D’Emilio’s “self-conscious” framework, stated about Portland: “I do argue... that Portland’s modern ‘gay’ male subculture did first emerge within a middle-class and white racial framework, largely separate

⁴ Two of the main works that I examine from this time period are George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994) and Peter Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest* (Berkeley: University of California Press, 2003)

⁵ Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940*, 28.

⁶ D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970*, 58-62.

from the working classes and the racial and ethnic minority communities.”⁷ Boag’s conclusions likely held true for Denver when utilizing D’Emilio’s framework.

This thesis, however, focuses on a different form of identity—one that stemmed from the designation of gay men as “bad men” under the law as a result of mostly sodomy laws, but also female-impersonation laws and vagrancy laws. If the law is understood as the point when the interests of the state supersede the interests of the “bad man,” as Oliver Wendell Holmes explains, one form of the “bad man’s” identity can be deduced through examining the way in which he pushes back at the point of contention between the law and his actions—a phenomenon I have referred to as interacting with the law.⁸ Thus, this thesis asks not when and how gay men conceived of an internal gay identity and formed groups based on this identity, but rather when and how gay men understood themselves as “bad men” as a result of their sexuality. This identity under the law manifests itself in the ways in which gay men fought back against the law. This conception of identity, unlike that explored by Boag and those who came before him, did not require a “self-conscious” understanding of one’s self as gay, as men who came into contact with the law for same-sex relationships did not have to view themselves analogously in order to understand their similar positions under the law.

This thesis traces the early formation of gay identity under the law in the State of Colorado. Part 1 explores the late nineteenth century when leniency in the application of the sodomy law allowed men to engage in gay activity without fear

⁷ Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 6.

⁸ Oliver Wendell Holmes, “The Path of the Law,” 10 *Harvard Law Review* 457 (1897), in *The Canon of American Legal Thought*, edited by David Kennedy and William W. Fisher III (Princeton, NJ: Princeton University Press, 2006), 29-31.

of extensive legal punishment. Within Part 1, Chapter 1 explores the geography of gay acts before the turn of the twentieth century. Many of the incidents that caught the attention of the police took place in semi-public locations of vice along the busy streetcar routes of downtown, ensuring that gay men did not conceive of their interactions with the law as distinct from those of others who engaged in the time period's many vices. Chapter 2 examines instances when gay men came into contact with the law, finding that the law's narrow application and lenient punishments ensured that gay men remained disassociated one-shotters against the law.

Part 2 explores the time period from 1900 to 1914 when increased targeting resulted in the formation of working-class gay defendants into small-scale repeat players with joint identities under the law. Thus, working-class gay men drove the conception of identity present in this paper, whereas the "self-conscious" conception of identity as explained by Boag appeared first among the middle class. Chapter 3 examines how increased targeting led police to infringe on the private lives and spaces of working-class gay men, forcing them to understand the uniqueness of their interactions with the law. Chapter 4 explores how uniform application of the law enabled gay men to form connections with others facing the law, eventually leading them to organize into repeat players under the law. Chapter 5 explains how changes in methods of adjudication and prosecution forced gay men to conceive of their crimes as distinct from those of their straight counterparts, while Chapter 6 explores how the subsequent response to these changes necessarily forced gay men to conceive of a gay identity under the law through their defense.

From 1880 to 1914, working-class gay men, as a result of targeting they faced from the progressive moral reform movement, engaged in increasingly cognizant, meaningful, and effective interactions with the law. Through these

interactions, it is possible to observe the beginning stages of the consolidation of gay men into effective repeat players operating with a shared gay identity under the law.

But this history does not end here. This thesis identifies the early stages of working-class gay male conceptions of a shared identity under the law in Colorado, providing a starting point for other studies to build on in any direction. One could apply the same framework to another location, or to interactions between gay women and the law. One could examine sodomy cases from after World War I. The 1920s in Colorado featured the first two sodomy cases appealed to the state supreme court on the basis of the sodomy statute itself. These two cases signified a distinct departure from pre-World War I cases.

First, both cases featured white, middle-class defendants. In *Wilkins v. Colorado* from 1922, the plaintiff, Elmer Clayton, attended school as did Kirkland Springer, the plaintiff in the 1927 case *Koontz v. Colorado*.⁹ The defendant in *Koontz* worked as a dentist, a middle-class profession, and lived outside of downtown, where he brought the plaintiff to have sex. Additionally, the defendant in *Koontz* appealed on the ground that the sodomy statute did not apply to oral sex, which Boag finds to be “the favored sexual practice” of the middle and upper classes.¹⁰ Eskridge explains how application to oral sex became the largest issue of sodomy in the first third of the twentieth century, a fact that *Koontz* corroborates. But interestingly, while many states relied on “dynamic police and judicial interpretation of existing laws” that expanded the definition of sodomy to include

⁹ *Wilkins v. Colorado*, 72 Colo. 157, 159, 209 P. 1047, 1048 (1922), Colorado State Archives, 33; *Koontz v. Colorado*, 82 Colo. 589, 598, 263 P. 19, 23 (1927), Colorado State Archives, 93.

¹⁰ *Koontz v. Colorado*, 95; *Ibid.*, 231; *Ibid.*, 7; Boag, *Same-Sex Affairs: Constructing and Controlling Homosexuality in the Pacific Northwest*, 5.

oral sex, the Colorado Supreme Court recognized that it could not extend the definition of sodomy on its own, expressing “regret” and “hope” that the legislature would take action.¹¹ The legislature obliged, but not until 1939.¹²

Furthermore, the relationships in *Wilkins* and *Koontz* were not depicted as coercive. In *Wilkins*, the prosecution made no attempt to prove assault, and instead relied upon the frequency of the sexual acts between defendant and plaintiff as further proof of the crime.¹³ The plaintiff in *Koontz* described that his relationship with the dentist qualified as a “mutual homosexual relationship.”¹⁴ The use of the word “homosexual” also conveys an internal identity absent in the pre-World War I cases.

These cases introduce a plethora of new people, places, and tendencies to study, such as the Colonial Picture Show on Curtis Street and Sixteenth.¹⁵ Furthermore, some figures undoubtedly tie the post-World War I era to the time period I examine in this thesis. In 1926, the arrest of Kirkland Springer, a student at East Denver High School and the plaintiff in *Koontz*, caused Ben Lindsey to further investigate the crime and those attached to it.¹⁶ His findings offer an even more detailed account of gay life in Denver at the time, and introduce a shocking claim that could have interesting implications. After Springer had been with Koontz for a few days, Mrs. Finley, a “friend of Kirkland Springer,” inquired with East High School about his whereabouts. She contacted Mr. Spitler, the Dean of Boys at the school, and threatened Spitler by stating: “If I can’t reach Kirk, I am

¹¹ William N. Eskridge, Jr., *Dishonorable Passions: Sodomy Laws in America, 1861-2003* (New York City: Viking, 2008), 51; *Koontz v. Colorado*, opinion of Judge Butler.

¹² George Painter, “The Sensibilities of Our Forefathers: The History of Sodomy Laws in the United States,” Glapn.org, 1991-2001.

¹³ *Wilkins v. Colorado*, 28-29.

¹⁴ *Koontz v. Colorado*, 101.

¹⁵ *Wilkins v. Colorado*, 57.

¹⁶ *Koontz v. Colorado*, 124.

going to take this to the District Attorney's Office or the Juvenile Court." Spitler's response, later reneged officially, is telling: "Mrs. Finley, from what the boys tell me, Judge Lindsey is one of them, too"—"them," of course, referring to "homosexuals."¹⁷

In these sources lie answers to many questions about how gay men lived and interacted with the law. These questions are not new, but have existed in the minds of gay people throughout history. They inspired Terry Mangan, founder of the Gay Coalition of Denver and one of Colorado's most prominent gay rights activists, to begin pioneering research of Colorado's LGBT history.¹⁸ They also have informed efforts throughout history, as explained by Chauncey, to "construct a gay historical tradition," a tradition that extends from Caesar to Shakespeare, Joan of Arc to Thomas Mann, Michelangelo to Napoleon.¹⁹ Thus, accounts of LGBT life exist not only to enrich the historiographical understanding of the past, but also to communicate to LGBT people everywhere that they have a history.

¹⁷ Box 213, Ben B. Lindsey Papers 1838-1957, The Library of Congress. <http://hdl.loc.gov/loc.mss/eadmss.ms014025>; Memorandum Taken in Judge Lindsey's Chambers Related by Mrs. Findley [*sic*], 3 March 1926, Box 213, Ben B. Lindsey Papers, 1838-1957, The Library of Congress, 2; Reneged in Clark Spitler to Ben Lindsey, 13 March 1926, Box 213, Ben B. Lindsey Papers, 1838-1957, The Library of Congress.

¹⁸ Beth Chayim Chadashim and Gerald A. Gerash, "The Origins of the Center—How and Why It Came About," *Denver Gay Revolt*, October 12, 2001.

¹⁹ Chauncey, 283; *Ibid.*, 283-286.

APPENDIX

Maps in this appendix assist in understanding the geography of gay life in Denver. Through examining them, it is possible to track patterns that gay men followed and deduce how gay life moved and developed over time.

To make the maps, I superimposed dots corresponding to events or locations important in the Colorado's gay community from 1880-1914 onto preexisting Sanborn Maps. On this page is the key that applies to all maps presented. There are keys that exist within some of the maps. Those keys do not apply to the findings I present, and thus can be ignored.

Additionally, this Appendix includes the reverse side of various mug shots discussed throughout the body of this thesis. These mug shots present evidence and act as a resource for the reader.

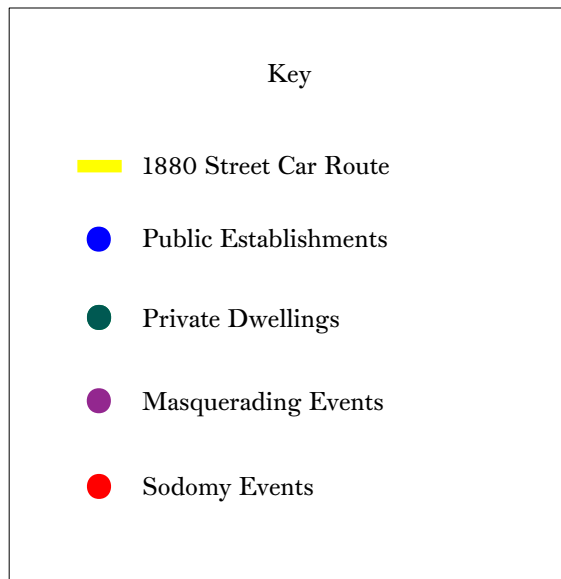




Figure 15: Map of Pre-Twentieth Century Gay Establishments—Fifteenth Street from Larimer to Wazee (Source: Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 26, Vol. 1, 1887, Digital Sanborn Maps, 1867-1970.)

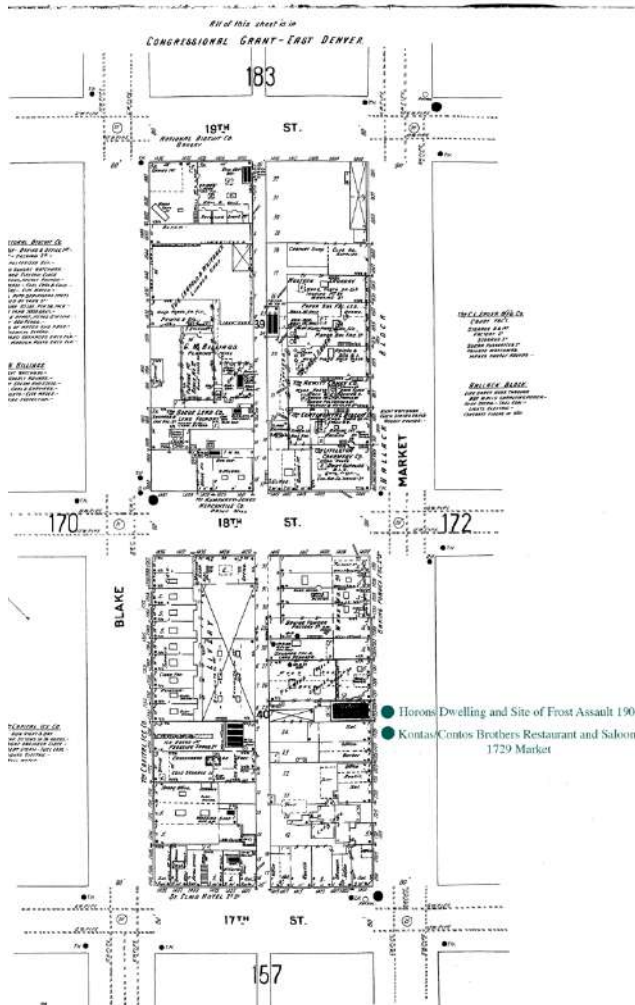


Figure 16: Greek Establishments in Twentieth Century Denver—Market and Blake Street from Seventeenth Street to Nineteenth Street (Source: Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 171, Vol. 2, 1903-1904, Digital Sanborn Maps, 1867-1970.)

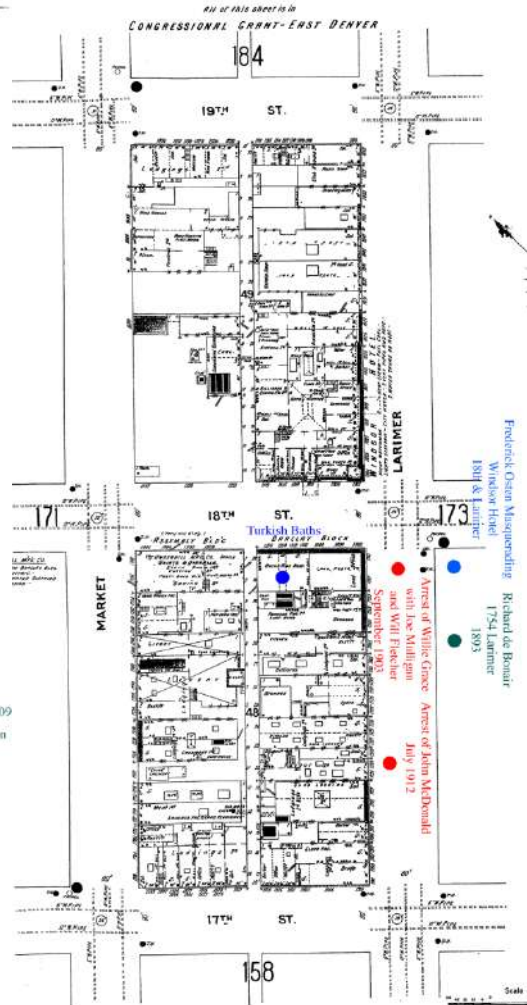


Figure 17: Eighteenth Street and Larimer, One of the Busiest Corners in Pre-World War I Gay Life (Source: Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 172, Vol. 2, 1903-1904, Digital Sanborn Maps, 1867-1970.)

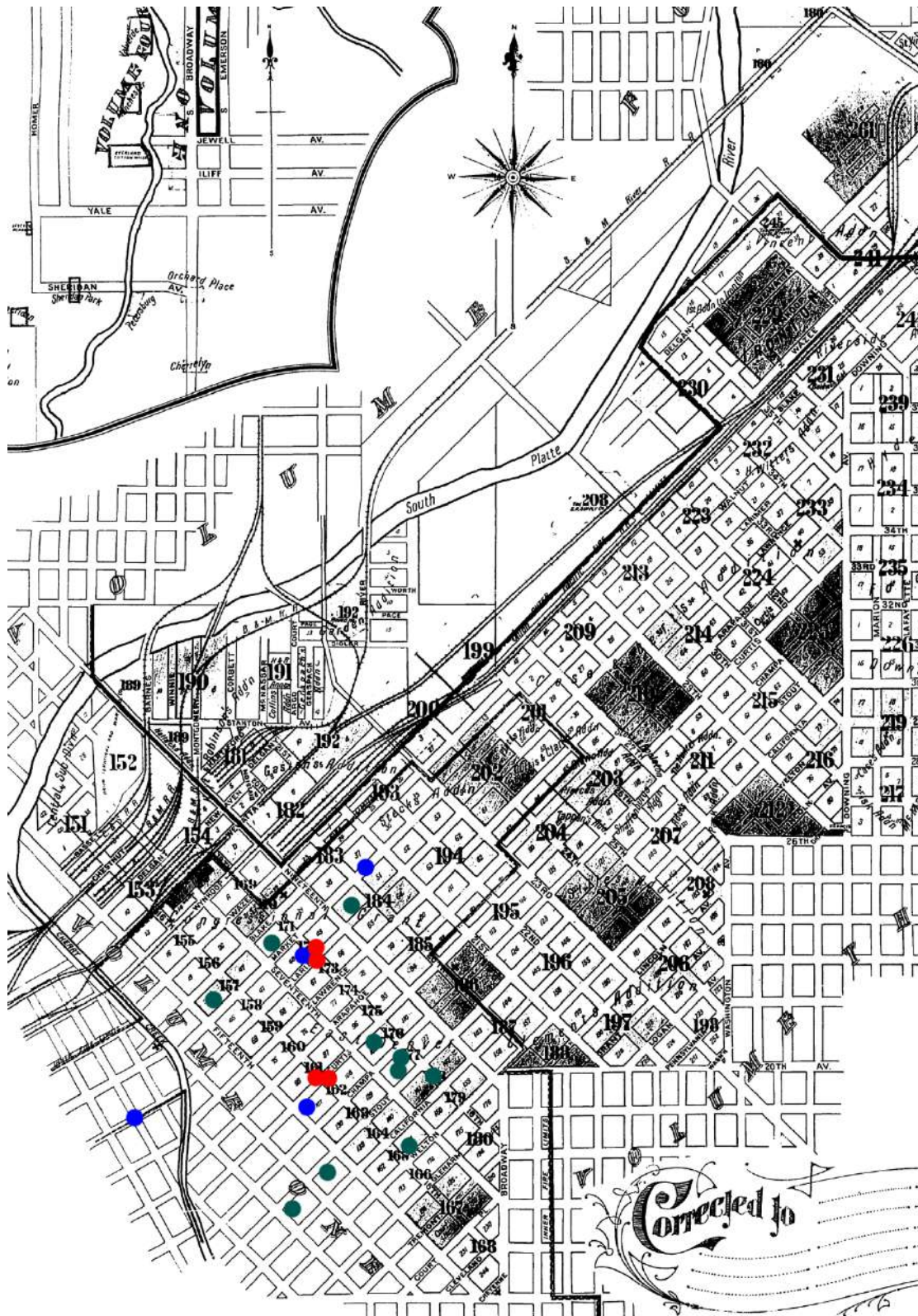


Figure 18: Map of Early-Twentieth-Century Gay Life (Source: Sanborn Fire Insurance Map from Denver, Colorado, Sanborn Map Company, Sheet 0b, Vol. 2, 1903-1904, Digital Sanborn Maps, 1867-1970.)

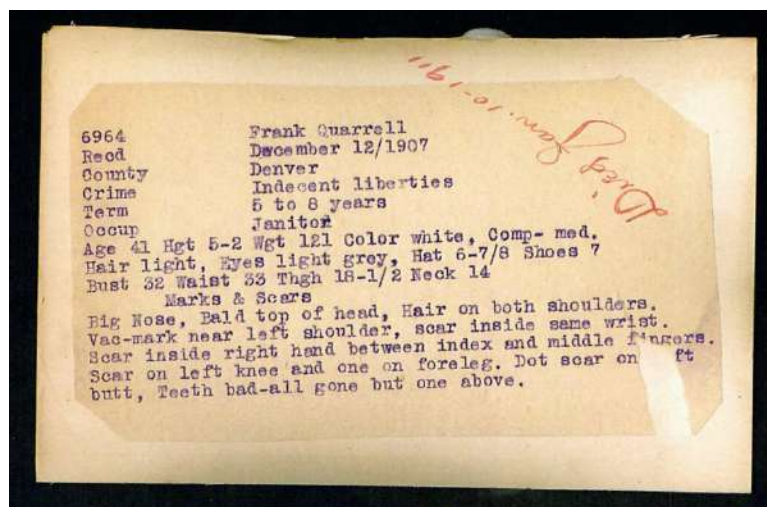


Figure 19: Mug Shot of Frank Quarrell—Reverse Side (Source: *Frank Quarrell #6964*, 1907, Corrections Records, Colorado State Archives, Denver, CO.)

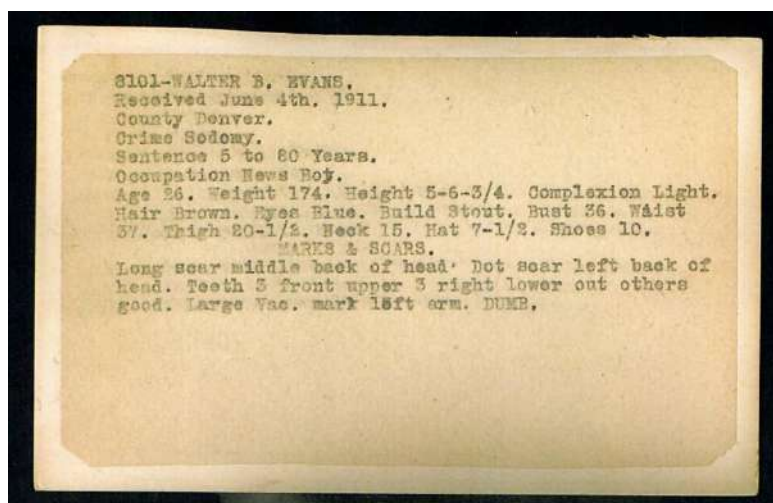


Figure 20: Mug Shot of Walter B. Evans—Reverse Side (Source: *Walter B. Evans #8101*, 1911, Corrections Records, Colorado State Archives, Denver, CO.)

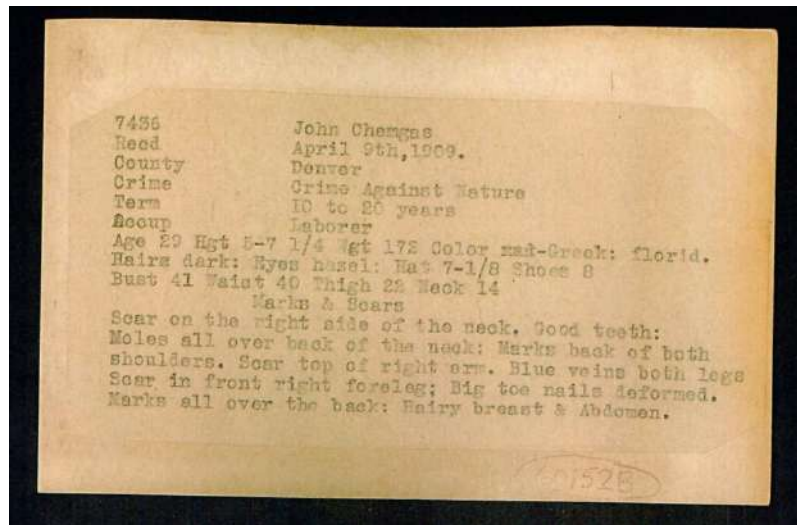


Figure 21: Mug Shot of John Chemgas—Reverse Side (Source: *John Chemgas* #7436, 1911, Corrections Records. Colorado State Archives, Denver, CO.)

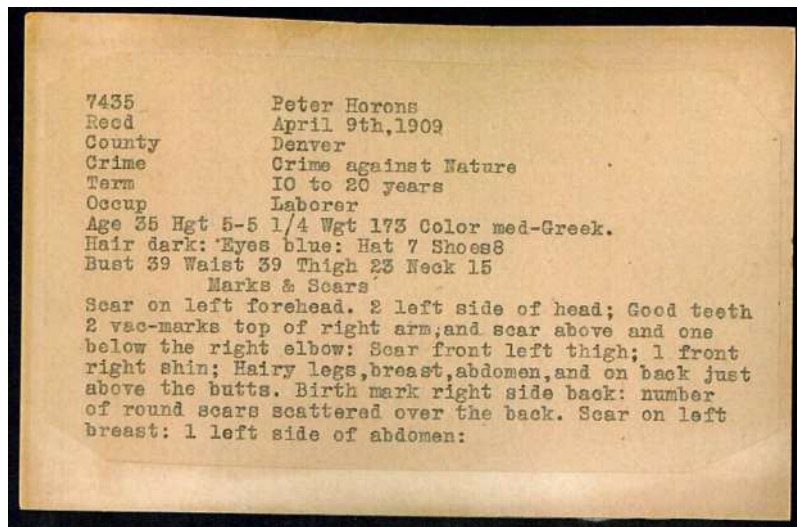


Figure 22: Mug Shot of Peter Horons—Reverse Side (Source: *Peter Horons* #7435, 1911, Corrections Records. Colorado State Archives, Denver, CO.)

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