

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT OF BARCLAY D. JOHNSON

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AFFIDAVIT OF BARCLAY D. JOHNSON

(Sworn September 2, 1992)

I, BARCLAY D. JOHNSON, of the City of Ottawa, in the Regional Municipality of Ottawa-Carleton, MAKE OATH AND SAY:

1. I am a sociologist employed in the Department of Sociology and Anthropology at Carleton University.
2. I received an A.B. from Harvard University in 1960, an M.A. from the University of California (Berkeley) in 1964 and a Ph.D. from the University of California (Berkeley) in 1975.
3. Attached hereto and marked as Exhibit "A" to this my Affidavit is my summary of interpretations and evidence bearing on the question, "Are Homosexuals an Historically Disadvantaged Group?"
4. Attached hereto as Exhibit "B" to this my Affidavit is a copy of my Curriculum Vitae.
5. I make this Affidavit for no improper purpose.

SWORN before me at the City of)
 Ottawa, in the Regional Muni-)
 cipality of Ottawa-Carleton, this)
 2 day of September, 1992.)

Barclay D. Johnson

 BARCLAY D. JOHNSON

Francis D. McLaughlin
 Commissioner for Taking Affidavits

ARE HOMOSEXUALS AN HISTORICALLY DISADVANTAGED GROUP?

Are homosexuals in Canada an "historically disadvantaged group?" I have been asked, as a sociologist, to prepare this statement indicating how my field might answer this question. The answer to the question must be yes. This report contains my grounds for reaching this conclusion, based upon my examination of work of sociologists which relates to prejudice and discrimination toward homosexuals.

This general conclusion must be accompanied by four disclaimers.

First, I am not a specialist in the sociology of homosexuality, although there are actually very few of these. I have published in fields of which that small subspecialty is a part, as I indicate in the note on my background which is appended.

Second, Canadian data and commentary bearing on the question are limited. Since the social situation of homosexuals in Canada and in the U. S. are similar, I will take characterizations of the U. S. as also broadly true of Canada.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF *Barclay D. Johnson*
SWORN BEFORE ME THIS *2* DAY
OF *September* 19*72*

[Signature]
A Commissioner, etc.

Third, in what follows I make no attempt to identify trends over time. I will regard what I report as descriptive of the recent past. A more elaborate examination would no doubt be able to pinpoint changes in the social position of homosexuals in recent years. I trust that this is satisfactory, given the reference to historical disadvantage.

Fourth, this memorandum is meant to be an objective summary of material from different social scientists, whose views are not always the same. It is meant to be what Max Weber called "value-neutral." This means, ideally, that the report would be the same, whatever the compiler's view of the morality of homosexuality. The report gives evidence that homosexual behaviour is deviant. But this assertion is not the author's own moral judgment. It is a statement of fact about the attitudes of the people he studies, in this case the majority of Canadians. The same may be said of the conclusion that homosexuals are socially disadvantaged. This conclusion also is an empirical one, and in itself it does not justify the value judgment that such conditions should be eliminated.

The sociologist, in his role as a social scientist, makes no moral judgments about homosexuality. A study is mentioned in this report, or omitted, on the basis of its contribution to our knowledge of homosexuality in society, and not on the grounds that it has implications favourable or unfavourable to ideas of certain homosexuals.

Thus, this document is not propaganda for homosexuals. The ideological commitments of those who requested it have had no effect on its contents.

1. Social inequality exists in all but the simplest societies.

Some claim that social equality is to be found in nonliterate societies. But without doubt all others exhibit inequalities of wealth, power, and prestige. People acquire these rewards because of certain other attributes which they have, such as the social rank of their parents, their race, or their national ancestry, and also because of their own abilities and efforts.

The North American ideal of equality of opportunity means not that everyone should enjoy equal rewards, but that his personal characteristics other than ability and effort should not affect his social rank. This abstract ideal has of course never been fully realized, and in our time social movements working for greater "equality" have attempted to reduce or eliminate the effects of these "other characteristics" on the rewards which people enjoy. Homosexuality has been seen by homosexuals as one such "other characteristic."

2. **Homosexuality is disapproved.**

Homosexuals confront hostility which is both widespread and intense. ✓

"Engaging in homosexual acts, as we all know, constitutes a form of deviant behavior. In some ways, it provides an almost perfect or 'ideal' model for what deviance is all about. In many social circles homosexual practices are an abomination;- people who engage in them are regarded as outcasts. Wisely, most who do so keep the fact hidden from the heterosexuals they know. ... Some of the most derogatory words in the English language address themselves to known or suspected homosexuals..." (Goode, 1978:358)

"When he asked a sample of respondents to name persons they regarded as deviant, Simmons (1965) found that the most common response (49 percent) was 'homosexuals.' Of all the deviant groups listed, the sample was most intolerant of, and wanted to place the most social distance between themselves and, homosexuals. ('Lesbians' were next and 'prostitutes' ranked third most rejected.) The characteristics attributed to homosexuals were by far the most negative and the most consistently stereotyped; 72 percent of the sample said that homosexuals were 'sexually abnormal,' 52 percent felt that they were 'perverted,' and 40 percent agreed

that they were 'mentally ill.'" (Simmons, 1969:33, 28). (Goode, 1978:359)

"In a study based on a nationally representative sample of over 3,000 adults ('Public Attitudes Toward Homosexuality') two-thirds of all Americans regard homosexuality as "very much obscene and vulgar," two-thirds say they have never liked homosexuals... A clear majority disapproved of decriminalizing homosexual acts. Nearly half agreed that "homosexuality is a social corruption which can cause the downfall of civilization." (Levitt and Klassen, 1974, quoted in Goode, 1978:358)

"For nearly all heterosexuals, the inherent superiority of heterosexuality is unquestioned, taken for granted." (Goode, 1978:358)

3. Homosexuals Conceal Their homosexuality.

The distinguished sociologist Erving Goffman writes of persons with "discredited" social characteristics (which includes "visible minorities" such as blacks and the physically disabled) and others with "discreditable" characteristics (such as the retarded, ex-convicts, and homosexuals). (Goffman, 1963:41-2) The social movements representing both groups try to reduce discrimination and the disadvantages caused by social reactions to their conditions. But these disadvantages are not imposed on the two in the same way.

The members of a discredited group are immediately known to be what they are, and may be immediately denied employment, promotion, or housing. The discreditable know that so long as their discrediting characteristic is unknown, disadvantages will not occur.

"Given the widespread hostility, fear and denunciation that faces known homosexuals, it is no surprise that most keep their sexual preference hidden from heterosexuals. Contrary to popular stereotypes, most gays, male or female, are not readily spotted by straights as gay. Their sexual orientation is typically accepted as 'normal' by themselves, is usually known to their gay friends, but hidden from the heterosexual community. Much of what the homosexual does--and this is true of most self-admitted 'deviants'-involves deception, play-acting, an elaborate presentation of self to the outside world. Most gays pass as straight. The typical homosexual must negotiate and interact in a world of (usually correctly) imputed hostility." (Goode, 1978:360-1)

"Most homosexuals keep their sexual preferences hidden even from the heterosexuals they are close to. In one study of male homosexuals, only slightly more than a quarter of the sample (27 percent) said that their mother "definitely knows" that they are homosexual; only one fifth of the fathers definitely knew. ... (Weinberg and Williams, 1974:105) When asked, 'From how many heterosexuals do you try to conceal your

homosexuality,' 30 percent said all, 38 percent said most; only one in ten said "only a few (10 percent) or "none" (9 percent). This secrecy and deception is based on a solid foundation. (Weinberg and Williams, 1974:0106)... A quarter of this sample (26 percent) said that "most people" feel disgusted or repelled by homosexuals; 4 out of 10 (40 percent) said that most people simply "dislike" homosexuals." (Goode, 1978:361)

4. Discrimination Toward Homosexuals: Views of a Social Commentator.

If we turn from public attitudes toward homosexuals toward actual acts of discrimination against them, we may begin with the informed social commentary of Richard Mohr:

"...people are largely unaware of the many ways in which gays are subject to discrimination in consequence of widespread fear and hatred.

Contributing to this social ignorance of discrimination is the difficulty for gay people, an invisible minority, even to complain of discrimination. For if one is gay, to register a complaint would suddenly target one as a stigmatized person, and so, in the absence of any protections against discrimination, would in turn invite additional discrimination." (Mohr, 1988:27)

"...discrimination against gays, like rape, goes seriously underreported. What do they experience? First, gays are subject to violence and harassment based simply on their perceived status rather than because of any actions they have performed. A recent extensive study by the National Gay and Lesbian Task Force (1984) found that over 90 percent of gays and lesbians had been victimized in some form on the basis of their sexual orientation. Greater than one in five gay men and nearly one in ten lesbians had been punched, hit, or kicked; a quarter of all gays had objects thrown at them; a third had been chased; a third had been sexually harassed and 14 percent had been spit on--all just for being perceived to be gay." (Mohr, 1988:27-8)

Of specific forms of discrimination, Mohr discusses queerbashing and the anti-homosexual biases of police, and then mentions others:

"Gays are subject to discrimination in a wide variety of other ways, including private-sector employment, public accommodations, housing, immigration and naturalization, insurance of all types, custody and adoption, and zoning regulations that bar 'singles' or 'non-related' couples." (Mohr, 1988:28-30)

5. Why Evidence of Acts of Discrimination is Hard to Acquire.

There are various reasons why quantitative data bearing directly on discrimination against homosexuals are limited. (1) Because only a small percentage of North Americans are homosexuals, a national sample of Canadians or Americans will not include enough of them to permit many inferences. (2) Sexual orientation is rarely asked about in national surveys. (3) Such surveys of homosexuals as have been made have sometimes been from atypical populations (such as the residents of the San Francisco Bay Area), from which extrapolation might not be justified. (4) Surveys by ideologically-committed groups such as the National Gay and Lesbian Task Force may not be entirely objective. (5) Information about the historically disadvantaged status of homosexuals is limited further in that no surveys on any topic were conducted until recent times.

The invisibility of the homosexual, and his desire to remain so, is itself a barrier to the collection of evidence. Some acts of discrimination against homosexuals may happen to come to light, but it is difficult to study discrimination which merely might occur if the homosexuality of certain persons became known.

6. Discrimination: Evidence from National Samples.

One way to gain evidence of this potential discrimination is to turn from data drawn from homosexuals, the potential victims, to studies of national samples, some of the members of which might be in a position to impose discrimination. One American study, with a very large sample (30,018 persons), provides evidence of attitudes not merely hostile to homosexuals but explicitly supportive of acts of discrimination against them:

"The public's bias against homosexuals extends beyond mere moral disapproval. The data...indicates the extent to which the public would bar the homosexual from employment in certain significant professions and occupations. Substantial majorities agree that homosexual men should be allowed to work in the arts and in artistic occupations, but almost equally large majorities believe that they should not be permitted to engage in professions of influence and authority. Three-quarters would deny to a homosexual the right to be a minister, a schoolteacher, or a judge, and two-thirds would bar the homosexual from medical practice and government service. ..." (Levitt and Klassen, 1974:30-2)

"Nearly 60 percent believe that more than half of all homosexuals are high security risks in government jobs (most of these, or 43 percent of the sample, hold this to be true of all or nearly all homosexuals. Whether they suppose homosexual activity is a more serious basis of risk than heterosexual activity cannot be answered with these data). Almost two out of five feel that more than half of the homosexual population tend to corrupt their co-workers (about 23 percent believe they nearly all do). More than one out of six still suppose it to be true of more than half of the homosexual population that they will victimize women when they fail to find male partners; there are even 7 percent who believe this to be true of nearly all homosexuals. (Levitt and Klassen, 1974:32)

"This prevalence of fears, and the tendency of the general population to set the homosexual apart as 'something else,' something different, raise questions about what rights this society is prepared to grant homosexuals. The data...give additional evidence of their offensiveness, in the public's overwhelming objection to homosexuals' dancing with each other in public places--55 percent strongly object, and nearly three-quarters have at least some objection. Nearly one-half (46 percent) do not agree that homosexuals should be allowed to organize for social and recreational purposes (32 percent object strongly), and 43 percent would not permit bars serving homosexuals (27 percent feel this strongly)." (Levitt and Klassen, 1974:35)

"There is a substantial majority, however, 74 percent, that will grant homosexuals the right to organize to deal with their social problems (presumably short of flagrant public activism, though our question did not tap this), and nearly 80 percent disagree with the notion of excluding homosexuals from membership in churches and synagogues. Two assumptions may be implied here: homosexuals will not flaunt their offensive sexual preferences there, and they might be exposed to the more acceptable moral influences ascribed to the religious segment of the population." (Levitt and Klassen, 1974:35)

7. **Discrimination: Evidence from Homosexuals.**

If we turn our attention from the attitudes of people in general to reports by homosexuals about their work experience, it becomes apparent that even widespread hostility does not necessarily make success in a career impossible:

"With regard to how stable homosexual men's and women's work histories are likely to be, the evidence is not at all clear-cut. One investigator found that the employment records of homosexual men were no less stable than those of their heterosexual counterparts (Liddicoat, 1956). In another

study, however, homosexual men were found to have held more full-time jobs, and to have been fired more often, than were the heterosexual men with whom they were compared. (Saghir & Robins, 1973) Interestingly, relatively few of those who had been fired reported that it had something to do with their homosexuality. These investigators also found greater job instability among lesbians than among heterosexual women, a finding [also reported] by Kenyon. (1968a) These data, however, do not agree with those of Simon and Gagnon (1967), who reported that lesbians are more seriously committed to work than other women are and tend to have relatively stable work histories." (Bell and Weinberg, 1978:142)

"...In another study, about two-thirds of the homosexual men reported that their homosexuality had little to do with their occupational choice and that it was not a disruptive influence on their work performance (Westwood, 1960). In a study of lesbians, many stated that their employers knew about their homosexuality and considered it an advantage in the belief that homosexual women, compared with heterosexuals, would be more dependent on their income and better able to adapt to such unusual working conditions as split shifts and travel (Bass-Hass, 1968). Seventy percent of the homosexual men in Weinberg and Williams' study (1974, 1975a) reported few or no job problems arising from others' knowing or suspecting that they were homosexual. Wolff (1971), however, reported that

significantly more of the lesbians than of the heterosexual controls in her sample had difficulties relating to their colleagues, a function of many lesbians' need to keep their homosexuality a secret." (Bell and Weinberg, 1978:142)

In Bell and Weinberg's (1978) own study of homosexuals living in six counties of the San Francisco Bay Area,

"More than three fifths of the homosexual male respondents believed that their homosexuality had had no particular effect upon their careers. However, about a quarter of the white homosexual males thought that it had had a harmful effect, while 11 percent believed that it had actually been helpful to them in some way. ... Some said that they had lost or almost lost their jobs because of their homosexuality. ... [However, t]he homosexual men did not show evidence of greater job instability than did their heterosexual counterparts." (Bell and Weinberg, 1978:143, 145)

8. **Discrimination: A Comment About the Business World**

I know of no quantitative data regarding negative feelings and discrimination toward homosexuals in the business world. But one commentary is of interest:

"Homosexuality in business is still largely an unmentioned and unexplored problem. Companies themselves do not officially recognize its existence..." (Zoglin, 1979:68)

"Getting hard facts and statistics on homosexuals in business is a difficult task. Even the most liberated gay executive--one whose homosexuality is common knowledge in the company--is very cautious about discussing the subject with an outsider.... Since no data are kept on the subject, all we can do is rely on the more or less educated guesses of homosexual executives themselves." (Zoglin, 1979:69)

"Clearly, despite the reassurances of their uncloseted colleagues, most gay executives retain a vague fear that letting their homosexuality be known will damage their career. Few expect that they would actually be fired. But discrimination can take more subtle forms--such as passing over the gay employee for raises or promotions." (Zoglin, 1979:74)

"Aside from actual discrimination, gay executives often express a fear of the effect disclosure of their homosexuality might have on the attitudes of their co-workers and superiors." (Zoglin, 1979:74-5)

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