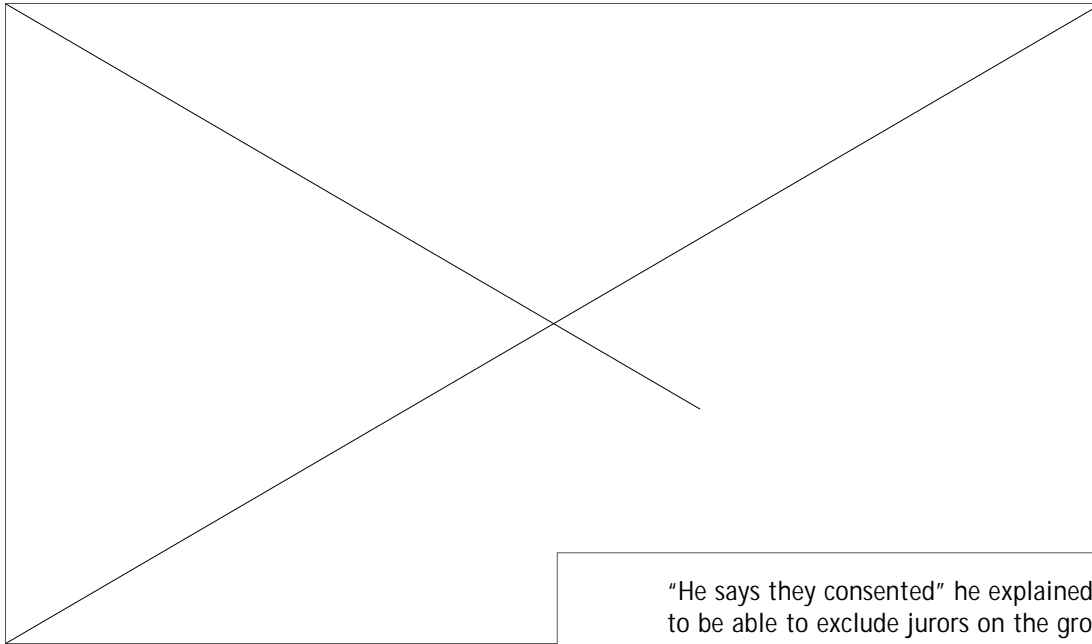


MY EXPERT WITNESS CAREER

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With thanks to Stephen Leacock

When I go into a court room I get nervous. The judge makes me nervous, the portrait of Queen Elizabeth makes me nervous, the sight of police officers and people accused of crimes makes me nervous. Everything makes me nervous.

So it was with considerable trepidation that I walked through the doors of the Frontenac County Courthouse (in Kingston) one Monday morning. The defence lawyer, who had invited me there, had told me in passing that we were to gather in Sir John A. MacDonald's former courtroom. This did little to calm me.

I was there to parlay my knowledge of the history of sexuality in Canada into expert testimony on the witness stand. Twenty years of study, research, writing and teaching were about to provide me with special insights into one specific question: did homophobia exist in Frontenac County? I was pretty certain that it did, so I took the gig.

The defence lawyer who contacted me acknowledged – and he was clearly rather embarrassed about this – that this was a really silly task. His client was charged with a range of sexual offences which occurred while he was an inmate in prison. He assured me I didn't want to know the details of these allegations and I had no trouble agreeing with him on this score.

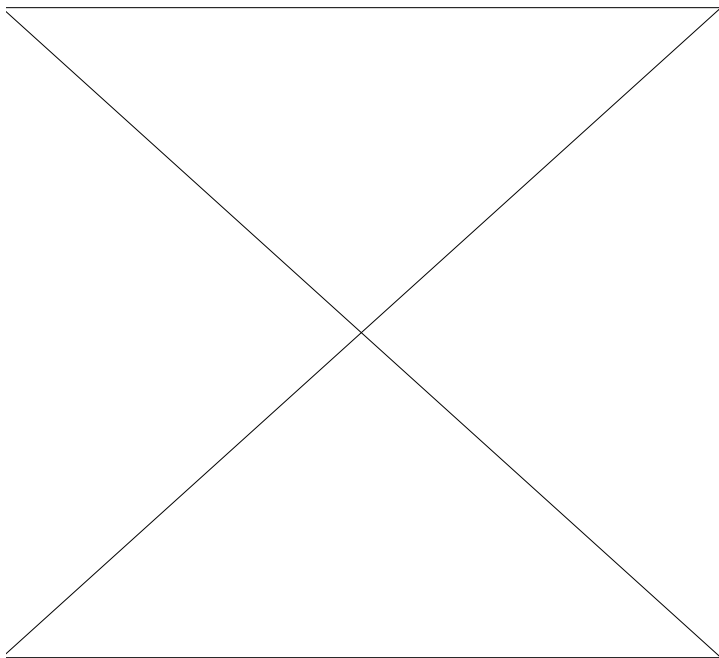
"He says they consented" he explained. Therefore, he wanted to be able to exclude jurors on the grounds of homophobia, much like jurors in race-related crimes can be excluded due to racism. What he needed was an "expert" to tell the court that social and cultural prejudices against homosexual men exist, and might cloud some potential jurors' objectivity. In other words, if you could not imagine sex between men without crossing your legs or running quickly to vacuum your car, perhaps this wasn't the jury for you.

I didn't have a lot of time to get nervous about this, but the night before my performance, (as I thought of it) I was strangely restless. My anxiety focused on the accused. You hear alleged prison rapist, you think big, mean, scary. My experience with big, mean and scary was pretty limited, so simply being in the same room – let alone on the same team – was enough to set my stomach churning a bit. I decided I would try very hard not to look at him.

I took the stand. The defence lawyer asked a few questions about my claims to expert status, mostly by taking me through the CV I had provided him. Books, articles, research grants, teaching, supervision of graduate student research were duly noted. Then the big question: did it seem reasonable to me that in a room full of potential jurors, some of them would harbour homophobic attitudes. "Yes," I said, as expertly as I could manage. By this time of course I was staring openly at the accused, who astonished me by looking less like one of Tony Soprano's crew and more like French philosopher Michel Foucault; slight, bald, intellectual. Then it was the Crown Attorney's turn. I had been warned

by the defence lawyer that the Crown would likely question my credentials. The Crown rose and peered at me. "Miss Dubinsky" he began "you really are simply a historian, aren't you?" I barely had time to decide which part of this question was more insulting (even my students generally manage a "Professor," "Doctor" or even a "Ms") before he was on his way. How could a historian make any claims about the present? How could I claim expertise on social attitudes about homosexuality when none of my books or articles contained the word "homophobia" in the title? What polling data had I personally conducted?

I found no voice to speak. I was flummoxed, and remained so for about an hour. I had expected some questions about how one defines or quantifies or detects homophobia. I had expected I might wow them with the research one of my students had done about the history of homosexuality in this very town, in fact, how the parking lot of the courthouse we



were currently in had served as a place for gay men to find each other – and occasionally for other men to beat the crap out of them – for decades. I expected I might have even been able to sneak in the tales unearthed by another student, from long forgotten love letters between male prisoners confiscated by guards, which have lain dormant in a university archives for decades.

Instead what I got were increasingly hostile and occasionally sarcastic questions which derided my "expertise" and opinions at once. Of course its likely that the hostility increased when I ignored the defence lawyers advice and got angry, which for me often takes the form of overt schoolmarmishness. I couldn't help it, I corrected his mispronunciation of a (pretty common) word. I felt momentarily better but that didn't really help. I might take the small rounds but the big picture belonged to the Crown. This was a language, a cosmos, a way of explaining who you are and what you think that I just could not penetrate. Whatever the truth of my research or the range of my knowledge, I convinced no one that I had anything to offer the proceedings in Sir John A's courtroom. Finally, squashed like a bug, I was permitted to leave the witness stand. Homophobia would have to be fought another day.

Like Leacock leaving the bank, I imagined I could hear a roar of laughter as the big door swung behind me. I vowed I would expert no more. I would keep my knowledge rolled up in a sock where it belongs, in a seminar room.

And so the story would have ended until I received a call a couple days later from the defence lawyer. "We won that round" he told me, sounding as surprised as I felt. The judge had in fact granted his request to challenge jurors for homophobia. It was mostly older men who doubted their ability to set aside their prejudices against homosexual men, he said, and quite a few of the were rejected. The relief on their faces, the lawyer told me, was palpable. Mine too.