1
The Law

Sodomy on the Mudflat

In Seattle, as elsewhere, the legal exile of homosexuals would take many forms. Men holding hands in public could be threatened with disorderly conduct. Those waiting too long at a particular corner on the mudflat known for pick-ups could be accused of loitering. Anyone who publicly wore clothing presumed to belong to the opposite gender could be subjected to harassment. Those in darkened theaters who kissed or touched too sensually might be prosecuted for indecent behavior.

The most extreme legal weapon, however, was the one applied to Collins and Layton: the 1893 sodomy law that made it a crime to engage in certain sexual behaviors regardless of the age of the individuals, the level of consent, or the privacy of the circumstances.

Presumably, the police never detected most sodomy since it occurred between consenting adults in closed bedrooms. In fact, the number of prosecutions in Seattle in the two decades after 1893 seems relatively small (about sixty), and those cases included a range of circumstances. Because the single legal term "sodomy" described a variety of sexual crimes, it lumped all homosexual sex together with such widely varying acts as adults molesting children, adults having sex with animals, and heterosexuals engaging in disapproved behaviors such as oral or anal intercourse. However, even if the police only infrequently used the law, an accusation of sodomy provided the cornerstone of the sexual imagination that defined all homosexuals as criminals, either because they desired forbidden sex or because they had already had it. As such, the law was the foundation for an expansive list of discriminations—for who would want a sexual lawbreaker as a police officer, a teacher, a mother, or a legislator?

It is difficult to learn much from King County's court records about the individual histories of those in Seattle who were arrested once the sodomy law began to be deployed. The existing files retain descriptions only erratically. Partly, that is an effect of the routine purging of information, but it may also be the result of a squeamishness about describing, for the record, what types of sex happened. There is, however, a detectable thread of a story, and one of the elements is that those who were prosecuted and about whom there are details most often seemed to be working-class and somehow associated with the mudflat. Presumably, sexual

touch and romance between men and between women also sometimes occurred in Seattle's respectable middle and upper classes, as it may have with Sarah Yesler and Eliza Hurd. Those, apparently, were not discovered, or at least not prosecuted.

For the four decades from the 1850s until the 1890s, the territorial and then state legislatures seem to have been content to limit morals legislation to regulating marriage, adultery, fornication, and the male seduction of women—in other words, those areas that most directly relate to the management of procreation. It was not until March 1893 that the regulation expanded, when the state's third legislative session suddenly, with what appears to have been very little if any debate, made sodomy a crime. The new law was evasive about what, exactly, constituted the prohibited behavior. "Every person," it said, "who shall commit the infamous and detestable crime against nature, either with mankind or with any beast, shall be deemed guilty of sodomy." The most it explained was that "any sexual penetration, however slight, is sufficient to complete the crime against nature."

What was very clear was the severity of the punishment—"hard labor in the state penitentiary for not less than ten nor more than fourteen years"—and the urgency of state legislators in putting the law into effect: "Whereas, there is not now any statute of this state providing for the punishment of the crime against nature, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage."

The codifiers placed the new law at the top of the list of crimes against morality and decency, its punishment far stiffer than for those other sex offenses. Bigamists, for example, could be sentenced to only three years in prison; adulterers, to two.

What exactly was the "crime against nature" that could not be defined? Two legal scholars, Karl Bowman and Bernice Engle, have written that "of the body of sex laws, sodomy laws are the most confused and vague." Among Christians, they pointed out, the crime was "peccatum illud horribile"—too horrible to be mentioned—and so, in the law, it simply was not. Wayne and Alice Bartee note in *Litigating Morality* that "courts and legislators agreed that the crime of sodomy was of such a 'disgusting nature' that a description of it in detail in either a law, in a criminal indictment, or in a court opinion would constitute obscenity."[1] That may be one reason the surviving King County court records are so spartan in their descriptions.

Sir Edward Coke, who presented a legal treatment of the subject in his essay "Of Buggery, or Sodomy" in 1628, had focused on defining the word as meaning sex with animals or anal intercourse. However, since nineteenth-century religion and medicine (and thus law) tended to assume that the only natural sexual instinct was a desire for procreation, to pursue any other sexual desires—for pleasure, intimacy, or just physical release—was also considered perverse. Broadly speaking, then, the "detestable crime against nature" could include almost any form of non-

procreative sex, be it bestiality, anal sex, or ordinary oral sex. Turn-of-the-century courts in America adopted what the Bartees call a "decorous language" approach that allowed them to expand the definition as they wished, without having to graphically describe specific behaviors.

Washington's first law could have been applied equally to oral and to anal sex, although the law was sufficiently unclear that this may have been a matter for local prosecutors to decide. It also did not make any distinctions about the sexual orientation of the offenders. It applied to heterosexuals as well as to homosexuals. However, at least in Seattle, a survey of court records indicates that the early arrests and prosecutions were overwhelmingly of males having or attempting anal sex with males.

Exactly why Washington State legislators decided to add the law in 1893 is not at all clear. Neither the legislative journal for the state house of representatives nor that for the state senate describes any debate. Nor do any legislative committee records survive at the state archives. The Seattle newspapers do not appear to have printed any stories about the new law or why it might have been needed.

What is known is that the house Judiciary Committee initiated the bill under the chairmanship of Albert E. Mead, then a youthful thirty-one-year-old from rural Whatcom County next to the Canadian border. Mead, who represented an area of logging camps and small farms, would later become governor and a significant figure among the moralists who wanted to eliminate the state's saloons. The full house passed the main clause on February 28, by a vote of seventy to one, the sole dissenter being a representative from tiny Garfield County in southeastern Washington. His "nay" was not explained, and, defeated on the main vote, even he joined to make the passage of the emergency clause unanimous. The bill was then adopted by the state senate at the last minute on the final evening of the session, March 9, 1893. Twenty-five senators voted for it; nine others either abstained or were absent.[2]

The unanimity underscores just how powerful the religious heritage against nonreproductive sexual behaviors was at the time, even in what had been a remote hinterland. The religious proscriptions passed easily into law.

But why 1893, and not earlier?

Perhaps the legislature simply noticed a criminal code oversight already addressed by Eastern states and decided to play catch-up. The Northwest was undergoing a transformation from its frontier nature toward a more urban and industrial society by then, and as historian Carlos Schwantes observed, "the last thing many a northwestern urbanite wanted was to be viewed as an uncouth country bumpkin by easterners."[3] Schwantes was not referring to the sodomy law specifically, but the control of sexual behaviors could certainly be considered part of becoming a more settled and "civilized" society.

Perhaps, too, the arrival of the state's second transcontinental railroad—the Great Northern in Seattle on March 2, 1893—prompted nervousness about how

a railroad moves not only products but immigrants and, with them, passions. Historian Norman Clark, in *The Dry Years,* notes that the coming of the transcontinental railroads transformed Washington's population and industry enormously: In Seattle alone, the population would almost double between 1890 and 1900, from about 42,000 to 80,000. That pattern would accelerate in the following decade; by 1910, the city held almost 240,000.

Certainly, in 1893 the sexual and emotional climate in the Northwest was tightening as medical doctors began making more warnings about how the new urban middle class should properly raise children. In mid-February 1893, for example, the *Seattle Press-Times* carried a caution against two persons habitually sleeping in the same bed "no matter who they are." That had been customary on the frontier. The article specifically pointed to two sisters, ages fifteen and seventeen, who had usually fallen asleep in each other's arms. A medical doctor had put an end to that, and the article noted approvingly that "two pretty brass bedsteads side by side offered propinquity . . . but prevented contact" between the two girls. Another article helpfully warned that holding and rocking babies could lead to liver and kidney disease and quoted a doctor as saying that "thousands of people are being rocked to death, slowly but surely." Friendly touching, sexual or not, was being constrained in accord with Victorian concepts more established in the East (though already being challenged there by the emergence of those popular urban leisure pastimes of going to the movies and climbing on roller coasters).[4]

Finally, perhaps the early indicators were clear enough that later in the year the United States would suffer its greatest economic collapse thus far, the panic of 1893, and that the Northwest and Seattle would be especially hard hit. Just three weeks before the senate passage of the sodomy bill, the *Press-Times* had carried a story about panic on Wall Street and a rush to sell railroad securities. Soon enough, thousands of men who went to the mudflat in search of entertainment would have no jobs. It was a world, in other words, where everything seemed to be shifting, and order appeared to be in short supply.

Six months after the state legislature adopted the law, Seattle saw what was apparently its first sodomy prosecution—or at least the first where records have survived.[5] These particular records are sparse in their details, noting only that a man named Charles Wesley was accused of the "intent to know" Eddie Kalberg, "a male person." Convicted on October 25, 1893, Wesley was sentenced to seven years "at hard labor" at the new state penitentiary in eastern Washington. The punishment was actually less than the ten-year minimum specified in the law, so, based on comparisons to issues that arose in later sodomy trials, it is possible to speculate that Wesley and Kalberg had engaged in an act of consensual sex and possibly one or both had been drinking. Juries in later cases would sometimes express uncertainty about how responsible they should hold drunk defendants. The sodomy may have only been attempted, but not completed. There might have been a dispute about what actually constituted "penetration, however slight." Later court debates cen-

tered on whether a penis lying between buttocks, or touching an anus but not actually inside, or touching lips but not actually in a mouth, constituted penetration. Perhaps, as was common in that day, the two men had shared a bed in a cheap boardinghouse and one had mistaken the other's intent in a groggy hug. Or, since the boardinghouses offered little privacy, Wesley and Kalberg may have actually been enjoying themselves when they were discovered by one of the two witnesses who testified before the grand jury (the defendants' testimony is not in the record).

In 1895, two months before the sailor Collins and young Layton ever met each other, the problem of defining a "good" sodomy case became apparent in a charge against Oscar Brunson, described in the court records as a "deep sea sailor in this port," and a friend of his named J. P. MacKendray. The two met on the mudflat and, according to a prosecution memo, "together they went about from one saloon to another, indulging in social drinks." That night, they returned to MacKendray's shack on the mudflat, and Brunson drank another beer. For the court, Brunson would later claim that the final drink was the one that "occasioned a state of stupefaction that grew upon him after retiring," a stupefaction that made him unable to resist MacKendray who "during the night had carnal knowledge of [Brunson] against the order of nature." The type of "knowledge"—oral, anal, or simply masturbatory—is not specified in the record.

Three days later, again drunk and having second thoughts about what had happened, Brunson visited the prosecutor, who was not impressed by his story. But rather than stop there, Brunson then forced the issue by filing a complaint in justice court. The prosecutor still lacked enthusiasm for the case, even though here there was a willing complainant, something that would be missing two months later with Collins and Layton. The problem as the prosecutor saw it: Brunson was six feet tall and weighed more than two hundred pounds. MacKendray, on the other hand, was "undersized," according to a memo asking that the case be dismissed. Brunson, the prosecutor reasoned, was well able to defend himself against whatever had happened. Although the state law technically allowed no exceptions, in this case, the prosecutor seems to have reasoned that no judge or jury would convict since the sex could be construed as consensual, even if Brunson now felt guilty about it.

MacKendray spent a month in jail waiting for the prosecutor to decide.[6]

As well as attracting pragmatic businessmen and transient male laborers, Seattle from the start of its history also tended to draw a third type of immigrant: idealists who saw in the remote beauty of the Northwest the potential for utopia. One of the earliest proponents of the idea that the Northwest could be a new city on a hill was Theodore Winthrop, the great-great-great grandson of the first Puritan governor of Massachusetts. In 1853, twenty-five years old and with a Yale degree in hand, he traveled through the region, rhapsodizing in his book *Canoe and Saddle* that with "great mountains as companions of daily life," those who lived in the

Northwest would carry "to a newer and grander New England of the West a full growth of the American Idea." That new western utopia, he believed, would one day "crystallize" and then would "elaborate new systems of thought and life." Toward those voices already in the land—the Native Americans, for example, or sailors and loggers wandering about as a male fringe group driven by testosterone—Winthrop held a kind of anthropological bemusement at best and, more commonly, derision. The Klallam guide who helped him navigate Puget Sound and who later became the tribe's chief, Winthrop caustically dubbed a drunk and a scoundrel. The Klallams themselves were "bow-legged" and "a sad-colored Caravaggio brown, through which salmon-juices exude." In general, the actual people of the Northwest smelled of too much smoke from too many campfires and were permanently grunged from the rain. After a journey that lasted all of eleven days, Winthrop left the task of cleaning up utopia to others.[7]

Some of those who later followed Winthrop's trek to the Northwest practiced separatism, withdrawing into their own communal retreats in the forests or the cities to create different sorts of relationships or economics. That was a theme that would be important a century later to the city's separatist lesbians and radical gay men. They also would set up either farm communes or urban collectives based on analyses that rejected capitalism and evaluated monogamous heterosexual marriage as a capitalistic institution.

Other idealists turned into fervent crusaders, seeking to ensure that Seattle would be a New Jerusalem rather than a Babylon. Norman Clark and other historians have pointed out that as one century ended and another began, these moral crusaders were able to capitalize on the growing middle-class angst about order in Seattle. The public talk was not focused directly on sodomy, of course—since it was a crime not discussed publicly. Rather, the talk focused more on who was and was not to be considered a desirable citizen. In the campaigns, the symbolic target—the metaphor for all evil, whether gambling, drinking, or sex—became the very institution that would one day provide the foundation for a public gay community in Seattle: the saloon. And among the most fervent of the anti-saloon crusaders would be a young man who arrived in Seattle in 1884, George Cotterill.

Cotterill had emigrated from England, and as a youth in a New Jersey high school had watched the skyline of New York City take shape. He was particularly impressed by two pieces of architecture, the Trinity Church spire and the Tribune Tower. They were symbolic of the religion and public politics that would characterize his life. Cotterill was bright, articulate, and well educated. He had been valedictorian of his high school class and had trained as a surveyor. He would eventually write a book called *Climax of a World Quest,* in which, like Winthrop three decades earlier, he would portray the Northwest's waters and mountains as a kind of ultimate moment of divine creation. Historian Roger Sale notes that Cotterill's writing "is redolent with the conviction that this area [the Northwest] was created by God to be the best that Europeanized white people . . . would ever know." At first, Cotterill

sought to create order in the Northwest through civil engineering, but when that was not enough, he turned to politics as a way to engineer social behavior.[8]

An entry in Cotterill's personal papers chronicles his journey west and his arrival in the Northwest: "With Horace Greeley's urge—'Go West Young Man'—armed with three years surveyor's training and a high school diploma, I followed the new 'Iron Trail' of the Northern Pacific to the 'jumping off place.'" That happened to be the town of Tacoma, thirty miles south of Seattle. There, he helped lay out the town cemetery, but, he sniffed, "Unfortunately my employer in that enterprise collected the entire compensation and deposited it in all the saloons of Tacoma and vicinity." Even as a teenager, Cotterill disliked saloons.

On December 31, 1884, when he was just eighteen and one of those young men drifting around the Northwest, Cotterill climbed aboard a tugboat for the three-hour ride north from Tacoma to Seattle. As he rounded a point into Elliott Bay and saw the city, he would later write, "Seattle seemed indeed a queenly crown of brilliancy, suddenly revealing a thousand gems against the background of fir-clad hills."

Utopia. Except for one thing.

"The south side of the wharf was a motley array of waterfront 'hotels,' lodging houses, saloons, etc., a line of shacks perched on piles, forming a gauntlet from the wharf to the shore, to be run by all going or coming from the steamers."[9] As Winthrop had before him, Cotterill felt he was beholding a paradise—except for that sullied geography below the Deadline and the gauntlet that ran up Washington Street.

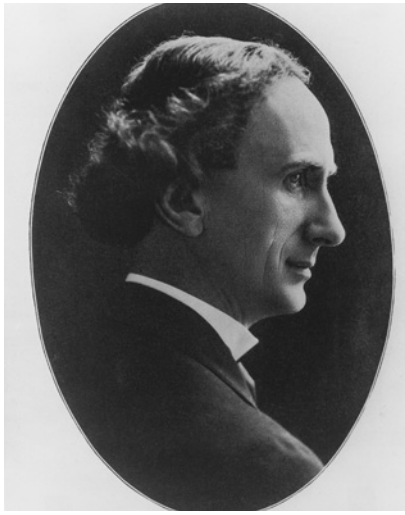
At first he became an assistant city engineer, designing more than twenty-five miles of bike paths that, with the advent of the car, would eventually become the basis of Seattle's boulevards. But he longed to have even more impact, and so in 1900 Cotterill ran for mayor. One of his cards from a later campaign shows how he liked to promote himself: "Every good citizen movement," it said, "every contest for the people's rights against the abuse of special interests, every struggle for law and order against vice and crime, every election where moral issues were at stake—in all these . . . George F. Cotterill has tried to do a man's work wherever duty called for service or sacrifice."

A few years earlier, Cotterill might have won, but by 1900 the ever-shifting battle over morality in Seattle—which had produced the earlier victories for the more respectable classes—had dramatically shifted toward a new embrace of the saloon and all the evils it represented.

Enter a second settler, of a very different type.

John Considine was born in Chicago in 1868 and drifted into Seattle in 1889, just five years after Cotterill had arrived. Historian Murray Morgan notes that at the time, Considine was like the city: "young, tough, promising, and nearly broke." He was a Catholic, schooled by nuns and priests, a graduate of St. Mary's College in Kansas. He had wanted to be an actor.[10]

First and foremost, John Considine was about style and show, quite a contrast



Four men's actions set the stage for Seattle's homosexual citizens. Clockwise from upper left: State Rep. Albert E. Mead chaired the house Judiciary Committee that wrote the first Washington sodomy law in 1893; State Sen. George Cotterill revised it in 1909; the Rev. Mark Matthews crusaded against sex and drink in Pioneer Square; John Considine operated the raucous People's Theater. *(MSCUA, University of Washington Libraries, UW18857; Museum of History and Industry, Seattle; MSCUA, University of Washington Libraries, UW 18856; Museum of History and Industry, Seattle)*

to his now twenty-something peer in town, Cotterill. A later photograph published in a copy of *Washington Magazine,* after he had become successful, shows Considine looking like a round-faced altar boy with slicked hair and a babyish soft jaw. For the photographer, he dressed conservatively in a dark bow tie and pin-striped suit, but when he walked the streets, according to Morgan, Considine knew the value of accessories: sparkling ties, white gloves, brown derbies, gray rain capes, and, to top it all off, a brindle bulldog attached to a silver chain. He was, Morgan wrote, "a showman," "a good talker," "a hard man to forget." Even though he would run saloons, he shied from gambling himself and preferred ice water and chewing gum to liquor.

By 1891, Considine had started managing the People's Theater, underground at the corner of Washington and Second. When, in 1894, the Seattle City Council passed its barmaid ordinance declaring that women could not be employed where intoxicating drinks were sold, Considine fled to Spokane to continue to run the combined saloon/theaters. After the legislature followed with a similar statewide law, Considine challenged its constitutionality. He lost. But then one of those quirks of history made the loss—as well as the enforcement of the barmaid laws and George Cotterill's hopes of reforming Seattle—temporarily irrelevant.

Gold.

As quickly as the panic of 1893 had destroyed the Northwest's economy and encouraged the moralist crackdown on the mudflat, the Klondike gold rush of 1897 restored wealth and exploded prohibitions, especially in Seattle, which would become the major embarkation point for the miners headed north. Suddenly, the mudflat boomed again. Young men crammed into the hotels until there were no more beds. They thronged the saloons. Morgan described John Considine's return from his Spokane exile to the People's Theater, now run by Mose Goldsmith, in late December 1897:

> He paused for a moment . . . to watch the men going down the steps into the People's Theater. Even on a miserable midwinter night, the place was drawing well: young sports out on the town, loggers in for the holidays, businessmen, and most of all, lonesome Easterners waiting for ships bound for Alaska. . . . He went down the steps, paid fifty cents for a seat near the stage, ordered a glass of "water, plain unadorned water," from an amazed waitress, and turned his attention to the crowd. The place was full. The bar, which stretched along one wall, was crowded; three bartenders were kept busy. Nearly every table was occupied. Women with painted cheeks and skirts nearly up to their knees roamed the room, smiling at the patrons; from time to time the girls went to the stage and sang a loud song or danced an awkward dance. From the curtained box seats in the low balcony came laughter and shouts and giggles and, most important, a steady ringing of bells as the box-hustlers summoned waiters with drinks.[11]

Forty years later, it would be the city's gays and lesbians who would be cramming that basement and crowding the bar, and a hundred years later it would be

the city's "goths" and industrial music rockers. Drink, show, and sexual challenge—everything that settlers such as Cotterill disliked—were what that underground basement would come to represent in the city's history. For the moment, Considine wanted the People's back. Morgan notes that Goldsmith, who had reopened the theater, had spent about three thousand dollars cleaning it up, and had already netted that amount in two weeks of catering to the gold rushers. But Goldsmith held only a verbal contract with the building's owners. Considine instead negotiated a written contract and was back in business by February 1898. By July 1899, the *Post-Intelligencer* observed of the corner at Washington and Second that business had boomed and "every evening, week in and week out, the beauties of the drama are unfolding to the admiring gaze of audiences." Admittance cost ten cents.[12]

According to Morgan, Considine's secret for success was to separate the tasks of acting and of serving drinks, rather than having the same waitresses do it all. In his darkened underground, he staged shows that sometimes featured national attractions, like the famous "coochee-coochee" dancer and stripper Little Egypt, who had perfected the art of the shimmy dance, wriggling her body to slinky music.

Considine also created another not-so-secret reason for success. The barmaid ordinance was still on the books. To ensure that it would not be enforced against the People's, he started paying the police patrol officers for their "tolerance."

As far as is known, Considine was heterosexual—he married and began a theatrical lineage that continued right down to his grandson Tim Considine, an actor in Walt Disney's *Spin and Marty* series in the 1950s as well as television's *My Three Sons.* Yet John Considine became important to the story of Seattle's homosexuals, for four reasons: First, historically, he believed that there was an imaginative role for sex and theater on the mudflat far different from the one propounded by moralists like George Cotterill. Second, geographically, Considine more than anyone else launched the corner at Washington and Second into its role as a sexual and social meeting place. Third, Considine mothered in Seattle the particular type of entertainment laced with sexuality that the city's gay men and women would eventually use to move from their individual feelings of exile toward more public networks of belonging—the communication called vaudeville. Finally, he helped initiate the police payoff schemes that, decades later, would at first protect the emergent gay underground on the mudflat and then actively attempt to manage it.

As the century turned, John Considine, at age thirty-two, represented one imagination about the role of sex in Seattle; George Cotterill, at age thirty-four, another.

Gold had made too much of a difference for Cotterill to win his bid for mayor. Too few wanted to risk the city's new prosperity, which was based not only on the sales of outfitting equipment to the miners but on their entertainment while they waited for ships. The impact on law enforcement, including sodomy enforcement, was immediate. Richard Berner observed in *Seattle 1900–1920* that "after the gold rush . . . mechanisms for maintaining law and order broke down. Political lead-

ers hesitated to exercise their public responsibility. The police department, when not directly in league with the 'vice lords' simply found itself outnumbered."[13]

During this period, the nature of the sodomy charges prosecuted in the city's courts seems to have changed. For two years, 1897 and 1898, for example, there is no record of any sodomy prosecution whatsoever in King County, even as thousands of young men jammed the mudflat's hotels, gambling halls, theaters, and brothels. That the Seattle police could not find a single case of oral or anal sex to prosecute, whether consensual or nonconsensual, homosexual or heterosexual, begs for incredulity.

From 1899 until 1904, once the initial rush had passed, nineteen cases of sodomy or attempted sodomy were docketed, but most of those involve specific statements that a child, often a preadolescent child, was the victim. Typical, for example, was a prosecution against a man named Andrew Cleary who was said to have "with a nickel enticed a six year old girl" into an alleyway behind a saloon in an apparently unsuccessful attempt to get her "to suck his penis." That was a great distance from the sex that had happened between Collins and Layton, Wesley and Kalberg, or MacKendray and Brunson—an indication of just how flexible the charge of sodomy could be and just how adaptable it was to the ever-changing social and economic climate.

Although Cotterill was not elected mayor in 1900, the moralist forces did succeed in provoking the city council into an investigation of the city's tolerance of the gold rush vices. A new Seattle police chief, William Meredith, who had once been John Considine's friend but had fallen out with him, had begun enforcing the barmaid ordinance—but, according to Morgan, only on John Considine's side of Washington Street. Incensed, Considine told the council committee that he had paid one of Meredith's officers five hundred dollars and then had followed the man and seen him give the money to the police chief. Meredith counterattacked by testifying that Considine was a bad influence on young women. When the council eventually dismissed Meredith for overseeing a department where officers accepted bribes, he bought a sawed-off shotgun, stalked Considine to a drugstore just north of the People's Theater, and tried to kill him. Considine's brother, Tom, instead killed Meredith first.

After that brief and violent emergence of the payoff scheme into public view, it went back underground. For his part, Considine began to diversify and buy more respectable properties north of the Deadline.

In 1902, George Cotterill tried for a congressional seat, campaigning again on an anti-saloon platform. Again, he lost. For the moment, Cotterill and others who stood against the saloons and the denizens south of the Deadline needed help in Seattle's seesaw battle with morality. They were about to get it.

Style could be met with style.

He was six-foot-five and some say never weighed much more than about 160

pounds. He dressed in long black waistcoats, more like a preacher of the eighteenth century. He left his curly hair long beneath his black hat. As one of his biographers noted, Mark Matthews knew how to use both his body and his voice. Even before the members of Seattle's First Presbyterian Church met him in 1901, Matthews had cut a reputation as a southern preacher through Georgia and Tennessee. He was called a "prince of platform speakers," a man whose sermons fairly bubbled with denunciations, humor, and rebuke. The church, as he was fond of saying, was his "force" and not his "field," by which he meant that parishioners were not in church simply to be an audience. They were his army; he was the general.[14]

He arrived in the Northwest in 1902. Seattle, Matthews fervently believed, had the most important spiritual role of any city. "Ours is the greatest field for Christian work on the continent," he would say in a sermon in 1906. "This is the gateway and through our gates thousands are marching to and fro. . . . More good things could be successfully launched in this city without opposition than in any other city in the world."

His target was clear: "Regarding the saloon, the gambling den . . . and the house of prostitution . . . they are sin's coffin houses where souls, bodies and minds are consigned to an everlasting and horrible death. . . . Victims fill niches in the chambers of death. . . . So it is without question the duty of upright citizens to exterminate these dens of vice."

Again: "The liquor traffic is the most fiendish, corrupt, and hell-soaked institution that ever crawled out of the slime of the eternal pit."

To anyone who opposed his vision of a moral Seattle, Matthews thundered: "We have a great city and we are going to build a much greater one. . . . No one dare raise his hand or voice in opposition to our future work or to the city's progress. Should a croaker be found or a pessimist discovered, let him be taken without the walls of the city and there executed. He has no right to live among such progressive people." Quiet compromise in the style of Denny and Maynard was not Matthews's "progressive" approach.

Under Matthews's guidance and his command, the First Presbyterian Church in what was still a remote northwestern corner would become the largest in the world. Those who wanted a more respectable city had found their voice, and the results would soon show.

In May 1902, just a few months after Matthews arrived in the city, the *Seattle Times* published a full-page article on the necessity of the "removal of the Tenderloin," which it identified as an area of the mudflat south of Yesler Way, north of Jackson Street, and between First and Third Avenues. That included places like the People's, Madame Lou's brothel, and the old Canal Saloon where Collins and Layton had found a respite. "Within that district," the newspaper noted, "are located all the larger public gambling houses and kindred resorts of the city of the more noto-

rious character, and within it has gathered for the past six years that motley class of men and women who are attracted by the glamour, the fascination or viciousness of such surroundings."

By 1905, encouraged by Matthews, evangelists such as the Reverend Wilbur Chapman were organizing tent revivals on the northern edge of the Deadline and sending waves of marchers into the red-light district. The *Times* reported in April that "thousands of pure-minded men and women from homes on the hills viewed for the first time in their lives the haunts of the low and the depraved." "The preachers," the *Times* said, "with uncovered heads and uplifted eyes led their followers right into the very core and heart of the vicious and depraved part of Seattle."[15]

By 1906, Cotterill was running for election again, and this time he won, voted the state senator for a Republican-heavy district on Queen Anne Hill even though he ran as a Democrat. The area was then just developing as a middle-class neighborhood peering down on the raucous waterfront from a safe distance to the north. To the city's middle class, the *Seattle Mail and Herald* proclaimed, Cotterill was "a ray of light," one of the "friends of reform and purity."

Indeed, city historians have usually referred to Cotterill and Matthews as part of the Northwest's version of the nationwide "Progressive Movement." The two men urged and engineered the state's adoption of the tools of direct democracy, the initiative and referendum processes by which majorities of citizens could directly write or overturn legislation. Cotterill supported women's suffrage. Matthews promoted programs to help the poor. But sometimes their zeal for regulating behavior through law could become embarrassing, with Matthews hiring private detectives to spy on government officials or, in his later years, going so far as to twice ask J. Edgar Hoover, the director of the Federal Bureau of Investigation, for an FBI badge that he could use to "assist" the bureau, presumably in making his own arrests. Hoover tactfully declined.

Opponents of the two men had a different view of them. The *Seattle Patriarch* denounced Cotterill as a "demagogue" and a "tool of degeneracy," a fanatic bent only on seizing power over individual lives. "Pretensions for purity," the paper sniffed in November 1907. By 1909 and 1910 it was attacking Cotterill for his "squeaky voice," which, it suggested, meant "a sneaky character." Even Cotterill's facial hair came under attack, as the paper printed satirizations referring to him as a "bearded effeminate." For those on the mudflat, Cotterill and Matthews represented trouble because so many of the reforms they sought—whether women's suffrage or letting majorities of voters ban liquor—pointed in only one direction: creating a majority vote that would eliminate alcohol and the saloons.[16]

Public pronouncements from Cotterill and Matthews presumed that vice in Seattle was heterosexual. For example, Matthews's sermons—although full of warnings about how drink, smoke, and sex in general could lead one astray—do not explicitly target homosexual sodomy in the way that conservative ministers in the city

would by the 1960s. The silence is not surprising, of course, since to have been explicit about sodomy would have required describing a crime that was "peccatum illud horribile."

Slowly, though, after 1904, Seattle's prosecutors seem to have turned more vigilantly against men having sex with men. At the very least, they learned two lessons about prosecuting sodomy cases where both parties had consented. First, they began collecting physical evidence. The court records indicate that the Seattle police scavenged in bedrooms, gathering circumstantial evidence such as sheets and jars of lubricant that might serve as corroborative physical evidence of male sex.[17] They also started putting the "innocent victims" in jail right alongside the alleged criminals to keep the future Benjamin Laytons from hopping the next freight out of town. That jailing of both men became a strong incentive to turn consenting participants into stool pigeons, willing to provide state's evidence against bed partners.

The change coincides with the election of Kenneth Mackintosh as prosecutor in 1904 and his selection of George Vanderveer as his deputy prosecutor. Mackintosh and Vanderveer had attended Stanford Law School together, and Vanderveer would develop a reputation for prowling below the Deadline. His biographers Lowell Hawley and Ralph Potts note in *Counsel for the Damned* that Vanderveer was fascinated by what Mark Matthews had taken to calling the Skid Road district of Seattle. "He studied its people," they wrote, "and tried to understand them: how they lived and how they operated and how they looked upon life." But this was not an attempt to truly understand their perspectives. Instead, Hawley and Potts add, it was to understand "how they planned and executed crimes." The authors also suggest that even Vanderveer "never could have told just how much of his interest was inspired by his desire to gather knowledge for the better execution of his job, and how much of it was inspired by personal fascination and morbid curiosity."[18]

Mostly, Vanderveer waged a public crusade against political graft and illegal gambling, but, along the way, he seemed to come across more sodomy cases than his predecessors had. In November 1904, for example, a man named Pat Morrow was arrested for having what was called "a venereal affair" with seventeen-year-old Alfred Franseen. The fact that Franseen was not a preadolescent child may in itself indicate a shift in prosecution focus, as do the details of what was clearly a consensual affair—if it was an affair at all. Vanderveer told the court in an affidavit that he had a witness who would testify that he had found Morrow and Franseen in a bed in the downtown Phoenix Hotel. The witness "examined the sheet on the bed where Franseen was lying and found a damp stain of Vaseline and semen, and he found Vaseline on said Franseen's rectum." (The court records do not explain how the witness came to examine Franseen's rectum.) The witness had the sheet and the bottle of Vaseline, Vanderveer said, and would produce them for the court. Clothes had also been seized as evidence.

Both Morrow and Franseen were held in jail for three months. Then, in February 1905, Vanderveer's boss, Mackintosh, reluctantly reported to the court that Franseen "has always persistently stated that no crime was committed and that his prior contradictory statements to the police officers were extorted from him by threats and duress." The prosecutor's office had "tried in every legitimate manner to persuade said Alfred Franseen to confirm the story which he heretofore told the police officers, but has been unable to do so." Even the sheets and clothes did not help. "Extensive analytic and microscopic examination" had been made, but the sodomy charge was impossible to prove.

The court dismissed the case, noting that Franseen should be paid $150 for the ninety-six days he had been locked up as a so-called "witness."[19]

Later, the police and prosecutors had better luck. First, in 1906, they arrested and successfully convicted a man from Portland, Philip McGuire. He had sodomized a "male child" named Herbert Carpenter—his age is not given, but he may have been a teen from the mudflat since the two were found in a downtown hotel about 1 A.M.[20]

A few months later, in 1907, police arrested Thomas Longbottom, a worker for the Great Northern Railroad. From the testimony on his behalf, Longbottom appears to have been a rather pleasant worker at the freight yards. The court records do not tell his age, but they do say that he often paid social calls to a single mother by the name of Jenner who was raising several sons and daughters and living in a working-class neighborhood north of downtown Seattle. One of the woman's children, a fourteen-year-old named Albert, often visited Longbottom at the freight yards, sometimes skipping school to do so.

On a Monday afternoon, February 25, 1907, young Albert was there when two police officers suddenly appeared and forced Longbottom to jail. Curious, Albert followed along. Longbottom would later say that in the jail, he was subjected to curses from the police officers who ordered him to plead guilty to sodomy. According to the somewhat redundant charges, Longbottom did "wickedly, diabolically, and against the order of nature . . . commit and perpetrate feloniously, wickedly and diabolically the detestable crime of nature" with a teen named Leroy Spink. While the descriptions of the criminal behavior were not getting any more specific, the condemnatory rhetoric surrounding them had definitely grown more Matthews-like.

Spink was described in the court papers as a "thoroughly incorrigible, dishonest, and bad boy" who had been convicted of breaking and entering a store and sentenced to a reform school. But he was being presented as a credible witness anyway.

"You'd better plead guilty or we'll make it hot for you," Longbottom claimed one of the officers told him. When he asked what would happen if he confessed, the officer supposedly answered, "I'll fix it so you'll only get a short sentence."

At first, Longbottom refused to plead guilty. In an affidavit sworn later, he said

that one of the officers then struck him across the side of the face with his fist and continued to curse him. Eventually, under the pressure, Longbottom relented and agreed to plead guilty. He was never allowed to contact an attorney during the initial questioning.

Outside the jail, young Albert Jenner had made the mistake of trying to see what was happening to his friend. A police officer named Corbett saw the opportunity to corner him and demand that he testify against Longbottom or else be sent to reform school. The potential charge: Albert had skipped school both when he played at the freight yards and when he followed his friend Longbottom to the jail.

Frightened, Albert quickly agreed to testify that Longbottom had also had sex with him. The testimony from the two young men, Jenner and Spink, was recorded at the arraignment and in affidavits. At the trial, a judge sentenced Longbottom to twelve years in the state penitentiary.

A few days afterward, now free from police detainment, Albert recanted his testimony. He swore another affidavit in which he said that Longbottom had "never committed any indecent assault upon me or any assault anytime . . . [and] never used any bad words to me or in my presence." In fact, Albert said, Longbottom had always been a "kind" man.

It was too late. There is no indication in the court records that Longbottom's sentence was ever reconsidered.[21]

By 1908, significant political control had returned to those urging more respectable morality in Seattle and in the state. George Vanderveer would replace Kenneth Mackintosh as chief prosecutor. Mark Matthews had established himself as Seattle's most powerful crusader. George Cotterill was one of the leaders of the state senate. Albert Mead, who had chaired the judiciary committee that had written the state's first sodomy law, was governor. And an organization called the Anti-Saloon League, supported by all of them, was about to engineer the defeat of many of its legislative opponents who had been resisting the idea that local communities should be allowed to go dry.

Meanwhile, the upper floors of the building that housed the People's Theater had been gutted by fire, and John Considine, perhaps wisely sensing that his future lay elsewhere, had already made a deal with New York politico Tim Sullivan to create a national chain of vaudeville theaters.

The corner at Washington and Second was quieting down.

When the 1909 state legislature convened, two issues dominated the agenda: the Anti-Saloon League's plan to give each county the right to vote dry and thereby eliminate saloons, and a proposed revision of the state's criminal code. The successful anti-saloon effort has drawn the most attention from regional historians, since it was one more step toward statewide and then national Prohibition. Cotterill helped craft that new law. Less commented on has been Cotterill's other effort: a new criminal code that contained many provisions putting the state in firm con-

trol of sexual expression. Vanderveer had chaired a commission to propose changes; Cotterill took charge of pushing the changes through the legislature.[22]

The new code Cotterill proposed in 1909 was remarkable for its scope of sexual and moral prohibitions. It outlawed all forms of abortion and made anyone assisting or participating, including doctors, midwives, or the pregnant women themselves, subject to five years in the state penitentiary. It instructed saloon owners to keep their interiors visible from the street so the police could watch the activities of those inside. It made boisterous sports games on Sundays a crime. It defined "lewdness" as a felony and redefined all public nudity, whatever the context, as lewd and indecent—a break with custom and privacy in a wilderness society where it had always been permissible to at least swim naked at an isolated lake or river. It declared common-law heterosexual marriages "lewd and vicious," even though they were rather customary in a frontier society. The code revisions also punished any male seduction of an unmarried female, even if she was an adult and even if she consented. The offending male in the relationship could be sentenced to five years in the state prison unless he agreed to properly marry the woman and stay with her at least three years. If he left her sooner, he could still be sent to prison.

Cotterill did not neglect the definition of sodomy either. New wording was added to the law, going into much greater detail than the 1893 legislation that had simply banned the "crime against nature." Section 204 of the new code read: "Every person who shall carnally know in any manner any animal or bird or who shall carnally know any male or female person by the anus, or with the mouth or tongue; or who shall voluntarily submit to such carnal knowledge; or who shall attempt sexual intercourse with a dead body, shall be guilty of sodomy and shall be punished by imprisonment in the state penitentiary for not more than 10 years."

In one respect, Cotterill's provision was progressive. It now spelled out exactly what the crime of sodomy was. That specificity would make Washington one of only three states that, even as late as 1956, detailed the previously unspeakable crime.

On the other hand, Cotterill and his allies precluded the possibility that judges and juries of the future might gradually narrow the vague definition as sexual customs and tolerance changed. And, just in case there had been any doubt about whether the original sodomy law meant to criminalize oral as well as anal sex, Cotterill and his allies specified that both were illegal. They also removed the need to prove penetration, a requirement that had bedeviled prosecutors. It was enough, now, if the partners simply "knew" one another "by the anus, or with the mouth or tongue." A wrongly placed kiss or positioning of an erection was all that was technically needed.

Although the punishment for sodomy, at a maximum of ten years, was slightly reduced from that allowed by the 1893 law, it was still greater than the punishment for forcibly raping a woman, which earned only half as much time in jail.

Finally, as if banning the acts themselves was not enough, Cotterill's new code

also prohibited any printed discourse on them. Section 209 warned that those who published "any detailed account" of "the commission or attempted commission" of sodomy, or other sex crimes like adultery or seduction, were guilty of a misdemeanor. That included any publication about "evidence of indecent, obscene or immoral acts" offered during a trial or prosecution.

If the surviving records about Seattle's early homosexuals are slender, then, that could be because no one could legally write about the subject—at least, not about the sexual behaviors themselves.

In the moral heat of the day, the new criminal code containing the sodomy law—initiated in the state senate this time—passed thirty-two to seven on March 1, 1909. The state house of representatives passed the bill three days later by a vote of seventy-four to five. The discussions and dissents focused on other sections of the omnibus bill. No one in either the house or senate seems to have questioned the section on sodomy or the prohibition on published accounts of disapproved sexual behaviors. As with the 1893 law, each chamber's journal is silent about sections 204 and 209, and there are no surviving committee reports at the state archive.[23]

Ironically, George Cotterill—ever the idealist—would vote against the criminal code bill because he had lost the battle over one other section that still permitted private gambling in homes and apartments. He indignantly puffed that that single section was a "blot upon the statute books of the state of Washington."

Still, he and his allies had now won a more precisely engineered intrusion into state control of sexual expression.

It did not take long for the effect to show. For 1910, the year following the new code's enactment, the docket for King County's superior courts is filled with charges related to Sabbath breaking, obscured views of saloons, seduction of females, adultery, and "lewd and vicious cohabitation" of men and women—charges that simply do not appear on the earlier dockets. These were not misdemeanors either; they were felonies requiring a new array of defense attorneys and court trials.

In May 1910, the Reverend Matthews dispatched members of his church on a fact-finding mission below the Deadline. In their report, the vice committee said that "one respectable man" saw conditions so disgusting "that we had to dispense with his company during the latter part of the evening." Except for one pointed reference to San Francisco as the "sodem [*sic*] of the Pacific Coast," most of the descriptions were of scantily clad women and carefully skirted any too specific wording about sex acts, since that would have been criminal. But the report contained what may have been a veiled reference to the oral sodomy Cotterill's new law now specifically outlawed. "[Girls] are all in their little $1 cribs," the committee said, "and any of them will do anything the depraved nature of the most depraved creature on earth might suggest. They not only are on to the French ways of doing things terrible with all that word means but they will simply do

anything for $1 with anybody no matter what his condition as to sobriety or sanity might be."[24]

Among the first men in Seattle to feel the sting of Cotterill's new code was a man known in the court records as "Antone Mor," or, intriguingly, "A. Mor" for short. According to a memo from prosecutor Vanderveer, Mor and Robert Timmons checked into the Peerless Hotel in Pioneer Square in March 1910, intending sodomy. Timmons claimed the two had sex, while Mor consistently denied that any sex had occurred. For whatever reason—the court records are silent—the jury chose to believe Mor instead of Timmons.[25]

A month later, the Seattle police arrested another man, Frederick Evans, who may have been the target of a relationship gone sour. Evans was charged with "knowing" a man named Dan Paxman "in the anus" two years earlier, in 1908. Evans had lived for a considerable time at a downtown boarding room run by the Young Men's Christian Association, and the two men supposedly met and had sex there. The records indicate that their relationship lasted for some time, and when the two men quarreled Paxman threatened to reveal to the prosecutor that they had had sex. When he did so, Evans vehemently denied sex had occurred.

The judge told the jurors they could take into account the two men's "manner of consorting," certain photographs, and "medical testimony . . . as to the present condition of the anus" of Paxman. Apparently whatever condition Paxman's anus was in was not sufficiently convincing. Also, Paxman's "manner of consorting," according to Evans's attorney, included appearing as a female impersonator in the "vicious theaters" of Pioneer Square. Evans's attorney also argued that Paxman had engaged in the same "degenerate practices" he had accused Evans of, and that he "had been degenerate from his youth." "The habits of his life and immoral practices of said Paxman have so broken down his moral character that he is unable to make any elections in favor of the truth," the defense argued. Given those factors, the jury decided to acquit Evans, but the police soon arrested him again. This time Vanderveer charged him with sodomy that had supposedly occurred with Paxman three years earlier, in 1907, at a cabin on nearby Mercer Island. Eventually Vanderveer dropped the second charge against Evans, but only after five months of harassing him.[26]

In November 1910, as Vanderveer ended his term, the prosecutor's office would win two other sodomy cases, including one against a youth named Harry Douglass. Douglass was probably a teenager, since according to a handwritten memo in the court file the jury recommended that both Douglass and his "victim," Russell Spitler, be treated as "boys" who should be "instructed in right ways and not left at large to contaminate other poor boys."[27]

The prosecutor's office would lose a different kind of sodomy case—this one the first in the court records against two consenting heterosexuals, Charles

Morrhauser and Ora May Spriggs. The sodomy that occurred was described as "the touching of the female sexual organs with the mouth or tongue." "Any touching," the prosecutor's office insisted, "however slight, is sufficient to complete the crime." Morrhauser was found not guilty.[28]

In 1912, Cotterill decided to run for mayor of Seattle once again. His friend Reverend Matthews provided more than a ringing endorsement from the pulpit. "Save the city's reputation," he urged. "Prove to the world that this community will never become an asylum nor the home of the lawless." A vote against Cotterill, Matthews said, would be "an enemy's bullet fired directly at the heart of the city." The moralists still intended to clean out those they considered undesirable citizens and the acts they believed immoral. The saloon was still the most public symbol of moral corruption.

Finally, fourteen years after his first attempt, Cotterill won the mayoralty of the city. Two years later, in 1914, the Anti-Saloon League also triumphed, using the initiative process Cotterill and Matthews had promoted to force a statewide vote on Prohibition. The League won, with farmers and anti-drinking forces in the cities overwhelming those who wanted to keep the saloons. At least ostensibly, Washington State would go dry.

Two seesaw decades after their first major triumphs in 1893 and 1894, the moralists had finally won the victory they had aimed for all along.

Cotterill congratulated his police chief, Claude Bannick, for his crusade against the evil that seemed to be everywhere and for bringing moral order to Seattle. "It is to your lasting credit," Cotterill wrote to Bannick, "that you have steadily faced and trodden your path of duty, paying no heed to the yelps of the hurt horde of vice coyotes haunting in the shadows. . . . Human life has been safe and peace and good order have been preserved in Seattle."[29]

Then, of course, as the gold rush before had done, a world war and a Great Depression changed everything again.

Historians still have work to do to discover how many, if any, homosexuals from Seattle actually ended up in Walla Walla or other jails simply for making love to one another, particularly after 1914. However, for homosexuals themselves, it was never the actual number of prosecutions that was important. Rather it was the particular imagination about sex criminalized by the law that turned the city's homosexuals into outcasts. It was the threat of prosecution, not the actual enforcement, that sealed one's sexual desires outside the bounds of acceptable citizenry. The state prison at Walla Walla was well known as a warren for the state's worst armed robbers, drug addicts, and murderers, a place where the state pressed 1,300 inmates into cells intended for 750, where a riot over bad food in 1934 led guards to machine-gun the inmates, and where a judge in 1953 called the living conditions "intolerable and impossible."[30] Even the possibility of that vivid nightmare coming true because of a playful or loving act of mutually agreed upon sex built a closet that,

in turn, was reinforced by the additional criminal prohibition for even describing those acts. Federal constitutional protection for descriptions of disapproved sex was still five decades in the future.

The climax of Cotterill's quest thus limited the only legal sex to vaginal intercourse between a husband and wife who had been duly married and issued a license by the state. All other desires, all other relationships, needed to be kept silent. In that silence rested the first method of exile, and both the silence and the sodomy law that grounded it would need to be removed before Seattle's homosexuals could ever really feel they belonged again as respectable citizens.