

Abortion

in the Old West

**The Trials of
Dr. Edwin S. Kellogg
of Helena, Montana**

by Todd L. Savitt

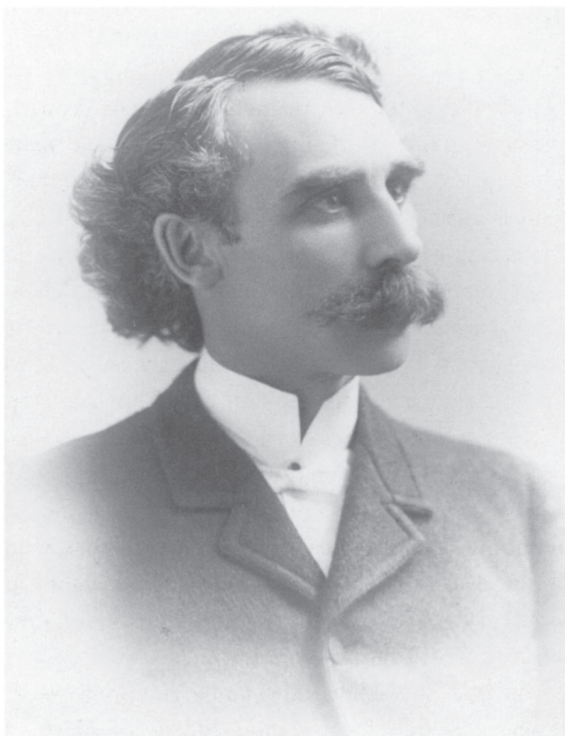
At 4:40 on Saturday afternoon, March 4, 1893, Dr. Edwin S. Kellogg walked into the furnace room at the rear of Helena's Masonic Temple carrying a paper-wrapped parcel. "Have you got a good fire going?" he asked William Biggerstaff, the fireman on duty that afternoon. Receiving an affirmative answer, Kellogg walked over to the furnace, opened its door, took a shovel and used it to throw the bundle in, closed the door, and left. Biggerstaff, suspicious because a former fireman had mentioned to him that Kellogg, who had an office in the building, sometimes disposed of dead fetuses in the furnace, opened the furnace and removed the parcel, which had been thrown toward the back, on some dead ashes. Inspection of the package's contents revealed a headless fetus. Biggerstaff stored the remains in a box over the weekend and on Monday took the package to Dr. Moses Rockman, secretary of the Helena Board of Health, who sent him and his package to two other local physicians, Charles Knox Cole and William R. Bullard, both members of the State Board of Medical Examiners. Now both the local health authorities and the state licensing board had been drawn into the case. The next day Cole and Bullard informed the Lewis and Clark County coroner, Dr. Thomas H. Pleasants, about the incident. Pleasants quickly convened a coroner's jury and held an inquest on

Wednesday evening, March 8, with Dr. Kellogg as a witness and probable defendant in a case of suspected abortion. Thus began the second of at least seven legal encounters Dr. Kellogg had with authorities over allegations that he was an abortionist.¹

Edwin S. Kellogg was born in Worcester, Massachusetts, in 1850 and attended school in Brattleboro, Vermont. He entered Dartmouth College in 1872 but left before completing his second year. He studied at New York Medical College, a homeopathic institution, and also at Philadelphia's Hahnemann Medical College, another homeopathic school, before moving to Walla Walla, Washington Territory, where he practiced for eight years, six of them as county physician. Then, sometime between March and December 1884, he arrived in Helena, Montana Territory. His practice in Helena was marred from the beginning by difficulties encountered within the medical community and with the public at large. His homeopathic background at a time when there was keen rivalry between "irregular" practitioners and allopaths (regularly trained physicians) may have contributed to some of those difficulties, but his reputation for performing abortions did not help matters. And there were legal problems over other issues as well. One Helena judge reportedly observed, "We are having our annual Kellogg trial."²

Despite all this legal activity and though he was occasionally convicted by coroner's juries, Kellogg was never convicted in a court of law for any abortion-related offense. Though there was substantial evidence of "criminal" activity, the women of Helena, and for miles around, knew to go to him when in need, and a good portion of the community silently accepted what he did until the issue was forced into the open, as occurred in the headless fetus case in 1893 and several other times before his death in 1915.

Dr. Edwin S. Kellogg arrived in Helena to practice homeopathic medicine in 1884. By the early 1890s, he had developed a reputation for performing abortions. Even though abortion had been illegal in Montana Territory since 1864, local authorities usually turned a blind eye to the practice. Nevertheless, Kellogg had at least seven encounters with the law between 1893 and 1915 over allegations that he was an abortionist. This photograph of Kellogg was taken on on October 8, 1890.



Dana, photographer, MHS Photograph Archives, Helena, 943-068

Though Edwin Kellogg was practicing medicine in a remote western setting, his experiences with patients, authorities, and fellow physicians in Helena were typical of the experiences of physicians who performed abortions in the rest of the United States at the time.³ He was reviled by some and strongly, though often quietly, supported by others.

From the very beginning of Montana's existence as a territory in 1864 until the 1973 U.S. Supreme Court ruling in *Roe v. Wade*, abortion was illegal. Even so, abortions were performed at least since 1882. From the records of eight Montana communities, historian Diane Sands identified over thirty "professional" abortionists practicing between 1882 and 1973, a number of them physicians. Every major town in the state had at least one abortionist, and some had more. Most never ran afoul of the authorities, who usually turned a blind eye to the practice. As Sands suggests, "Abortion was an unpleasant but necessary community service." Over the ninety-one-year period studied, she found only seven abortionists who faced law enforcement officials, five of whom were brought to trial. Among those five was Edwin S. Kellogg.⁴

Performing abortions had only recently been made a criminal offense in the U.S. when Kellogg began his medical career in the late 1870s. During colonial times and on into the early nineteenth century, the common understanding of pregnancy was that up until the time of quickening (when the mother first felt life in the womb, usually during the fourth or fifth month of pregnancy), a missed menstrual period could signify obstructed menses and thus an imbalance within the body that could lead to sickness. No one, not even officials in the Catholic Church, held the view that human life began at conception or before quickening, which was the "official" start of pregnancy. Before quickening, women could, and did, with impunity, regulate their bodily functions—and fertility—by using drugs or instruments to "unblock" the menstrual flow. The term "abortion" was not applied to such miscarriages.⁵

It was mid-nineteenth-century physicians who led the movement to outlaw abortions at any time during pregnancy. When "regular" physicians organized themselves into the American Medical Association (AMA) in 1847, they found abortion a useful issue. They consolidated their power by attacking midwives and homeopaths who performed abortions, and they



J. P. Ball and Son, photographer, MHS Photograph Archives, Helena, 957-610

In 1893, William Biggerstaff, the fireman at the Masonic Temple building where Kellogg had his office, took to a Helena Board of Health official the contents of a box that Kellogg had thrown into the building's furnace. It contained a headless fetus.

gained allies in the civic realm by playing on growing anti-immigrant, anti-feminist feelings among many white males. Women who used the services of abortionists were primarily married, white, native-born, Protestant, and upper or middle class. As more and more immigrants from Catholic and non-English-speaking countries came to the U.S., some white males feared that birth rates would leave native-born Americans in the minority and thus hoped to stop abortions among native-born women. Some also supported the anti-abortion campaign in response to the growing independence of women in many spheres, including the biological and medical. Those who opposed women physicians and midwives found it useful to accuse them of being abortionists, and they began to label abortion as immoral.

As the anti-abortion campaign progressed, spokesmen like Dr. Horatio Storer of Harvard

257

EDWIN S. KELLOGG, M. D.,
SURGEON.

HARRIET A. THAYER, M. D.,
Resident Physician and Manager.

KELLOGG SANITARIUM

29 N. BENTON AVENUE.

HELENA, MONTANA

FOR THE TREATMENT OF . . .

. . . Surgical Diseases,

. . . Obstetrics,

. . . Diseases of Women,

AND ALL
CHRONIC AILMENTS.

The only private Hospital in the city. New and complete in all its appointments, with Faradic Electric Baths. Established exclusively for the sick, affording careful nursing and the comforts of a home.

Terms Reasonable. Correspondence Solicited.

In the mid-nineteenth-century, abortion became politicized as fears about immigration and the growing biological and medical independence of women led to its criminalization. But some medical practitioners made performing abortions a part of their practice, acting discreetly to avoid running afoul of the law. Kellogg's 1897 ad (left) especially solicits female clients.

life of the mother. By the time of Montana's 1895 compilation of state statutes, the abortion laws had become a little more specific. Not only was the person administering the medicine or using the instrument punished, so too was the woman who solicited or took the abortion-producing substance or who submitted "to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage." In addition, it was now a misdemeanor to compose or publish "any notice or advertisement of any medicine or means for producing . . . abortion" or to offer abortion services.⁶

Despite criminalization of abortion in Montana and across the country, women continued to employ it during the nineteenth century and on into the twentieth, either by

Medical School attacked the concept of quickening, saying it was based on a subjective feeling of the pregnant woman and not on a medical diagnosis. The AMA also attacked the practice of allowing women to do what they wished to restore menses before quickening. Taking measures to reestablish menstrual flow within the first few months after the last period, they argued, was no different from inducing a miscarriage after quickening. It was, in other words, infanticide. Such arguments gained the attention of local legislators and, between 1860 and 1880, stimulated the passage of laws in every state prohibiting abortion at any point in pregnancy. Only in order to save the life of the mother could therapeutic abortions be performed.

Montana's territorial statutes (1864–89) punished people for administering abortion-producing medicines or causing them to be administered or for using abortion-producing instruments or causing them to be used. Physicians were excused from prosecution only if they induced the miscarriage in order to protect the

self-induction or with the help of others, including physicians. When they wanted to end a pregnancy, whatever the reason—because of fear of death during childbirth, concern for the well-being of their other children, the burdens of housework and childcare, the anger of husbands at the prospect of adding another child to the family, or for single women, the shame of a pregnancy out of wedlock or the fear of being forced into marriage—women knew where to go. They exchanged information about methods and people who could help. They did not speak about abortion as shameful, but, as one historian has written, as "part of female life and conversation."⁷

Physicians were drawn into the abortion process both willingly and unwillingly. Some, like Kellogg, made it part of their calling, acting discreetly so as not to run afoul of the law. Others were reluctant to perform abortions for both medical and legal reasons: tissue tears, severe hemorrhage, and generalized sepsis (blood poisoning) in the days before antibiotics made such cases difficult to care for medically,

and death was a common outcome. Legally, a physician who cared for an abortion patient, even if it was only in the aftermath of a procedure performed by the patient or by another practitioner, ran the risk of being implicated in the performance of the abortion itself. If the physician then failed to report the case to the authorities, prosecution could follow.

Women were loyal to their abortion-performing physicians or midwives and concealed their names from the authorities as much as possible. Some patients, however, especially if encouraged by authorities to provide deathbed confessions, revealed the name of the abortionist and the circumstances under which the abortion had been performed. Because the sympathetic attitude of citizens toward abortion and the reluctance of many physicians to testify against fellow doctors made successful prosecution of an abortion case notoriously difficult, prosecutors chose their cases carefully. Even when presented with substantial evidence, juries tended to acquit abortionists. Historian Leslie Reagan has found that across the country “publicly, the leaders of the medical profession opposed abortion; privately, many physicians sympathized with women’s need for abortions, performed abortions, or referred patients to midwives or physicians who performed them.”⁸

Much of Edwin S. Kellogg’s experience in Helena matches the situation nationwide, but with a twist or two, as seen in the “headless fetus” case and two other cases, one in 1900 and the other in 1914–15, shortly before the doctor’s death.

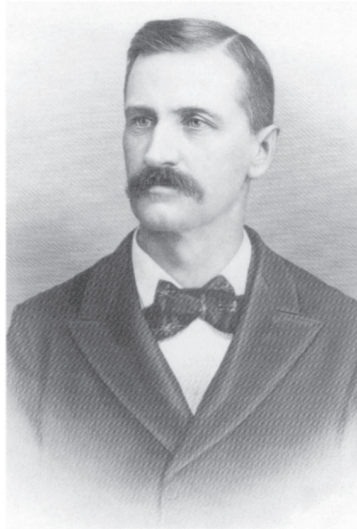
The Case of the Headless Fetus, 1893

Once the word was out about the inquest into the headless fetus, both leading Helena newspapers—the *Independent* and the *Herald*—covered the story. According to the *Herald*: “A little ripple of excitement comes of an inquest originating in the disposal by

Dr. Kellogg, the homeopathic physician, of an infant foetus by incineration.” That Helena was experiencing “a little ripple of excitement” was, of course, an understatement. In reality, Helenans were abuzz with the news. In an interview with a *Herald* reporter at his office, Kellogg vehemently denied that he had done anything wrong, so “there was nothing to conceal.” And he explained his reasons for using what the *Herald* provocatively called “incineration” to dispose of the fetus: “It is objectionable to bury such product [premature birth remains],” he asserted, “and often inconvenient at this time of year [when the ground is frozen]. To destroy by fire is preferable to depositing in sink hole or [water] closet.”⁹

Several of Kellogg’s colleagues testified against him in the hearing before the coroner’s jury—Dr. Thomas Pleasants, the county coroner; Dr. Moses Rockman, secretary of the local board of health; and two members of the State Board of Medical Examiners, Drs. Charles Cole and William Bullard. These men believed—and the complaint sworn out against Kellogg charged—that the doctor had tried to hide the birth of a seven-month fetus by attempting to destroy its (headless) body and by failing to register the child, as

required by a City of Helena ordinance, within ten days of its birth. Drs. Cole and Bullard were both convinced from their inspection of the corpse that the fetus was at least six months old. The umbilical cord had been tied off, showing, Dr. Cole testified, that “the foetus has been delivered with some care and was probably not an emergency in the sense that [spontaneous] abortion occurs.” This was no mere stillborn baby but a baby aborted by a trained practitioner. Dr. Rockman felt that the condition of the lungs at autopsy indicated that the child had been born alive. No witness called against Kellogg could explain why the infant’s head was cut off nor did any of them think it “proper for a doctor to incinerate dead foetuses.”¹⁰



Joaquin Miller Art Illustrated History of the State of Montana (Chicago, 1894), opp. p. 146

When Kellogg was brought before a coroner’s jury, local doctors, including State Board of Medical Examiners member Dr. William R. Bullard (above), testified that the fetus was aborted and six or seven months old. Kellogg claimed that the fetus was just three months old and stillborn.

Kellogg's attorney, Joseph W. Kinsley, defended the physician's right to refuse to identify the mother, first to protect her and later on the grounds that he might incriminate himself. Earlier in their careers, the two men had both rented offices in the Masonic Temple building; their adjacent ads appeared in the 1886-87 city directory (right).

Kellogg explained, under oath before that same coroner's jury, that he had first been called to see the pregnant woman earlier on the day in question. He was under the impression that another physician had been treating the woman "with electricity to stimulate [the] womb." The child, Kellogg said, was born dead—"had been dead four or five days when taken [from the womb]." Its head "was in part detached" but was still on the body when he delivered the fetus, which he estimated to be three months and one week old rather than six or seven months as the previous physician-witnesses had testified. He did not know why the fetus was without its head when discovered by the fireman at the Masonic Temple. Regarding the incineration of the body, he stated, "I put the foetus in the furnace to save [the] trouble of burial. . . . I put the foetus in [the] furnace [the] same way as I put a leg in [the] furnace. . . . The leg and foetus [are] . . . not all I have thrown in the furnace, others consisting of tumors, etc."¹¹

One other piece of testimony, from a former fireman at the Masonic Temple, corroborated Kellogg's statement that he had previously disposed of body parts by burning them in the temple's furnace. James H. Fulkerson testified that he had first learned of Kellogg's use of the furnace for incinerating body parts in May 1892 when the doctor had appeared in the temple's basement with a package he said was "too large to go through the water closet and asked me if I had a hot fire." When Kellogg left, Fulkerson pulled the parcel from the fire and found "a baby about six inches long." He kept the baby for a few days, then buried it in an ash pile and sent it off with

the garbage. Since that incident Fulkerson had seen Kellogg "throw a great many bundles in the furnace, always asking if I had a hot fire."¹²

The issue of confidentiality surfaced early in the hearing. When Kellogg himself took the stand and was asked to name the mother, he first responded that he needed to consult with the woman or her husband, who was a lawyer, and from then on he steadfastly refused to reveal the name of the mother, despite repeated requests by the coroner and the secretary of the board of health. He claimed that "the patient from whom the foetus was taken asked not to have her name made known." In an interview with a *Helena Daily Herald* reporter, Kellogg said: "My patient is a highly respected lady, and I will professionally protect her and her husband from any aspersion that any one may attempt to put upon them."¹³

Frustrated and stymied by Kellogg's refusal to name the mother, coroner Thomas Pleasants gave Kellogg one more opportunity to answer the question. To his surprise and anger, this time Kellogg took a very different stance, refusing to answer on the grounds that he might incriminate himself. This response caused new arguments by the county attorney, Cornelius Nolan, and Dr. Kellogg's attorney,

82 HELENA CITY DIRECTORY.

E. S. KELLOGG, M. D.,
Surgeon and Homœopathic Physician.
 Office and Residence, Masonic Temple,
 Helena, Montana.
 HOURS:—8 to 10 A. M., 2 to 4 and 7 to 9 P. M.

Dr. Kellogg, during the past two years, has especially fitted himself to treat diseases of the Eye, Ear, Throat and Chest of Women and Children, Rectal and Specific Diseases, in their multiple forms, and all those suffering with Chronic affections, heretofore considered incurable, are especially invited.

J. W. KINSLEY,
 ATTORNEY-AT-LAW,
 OFFICE MASONIC TEMPLE BUILDING, HELENA, M. T.
 ADJUSTER OF FIRE INSURANCE LOSSES.

Joseph Kinsley, over whether the doctor could belatedly reverse his position. The question was turned over to Judge William Hunt of the district court, and the coroner's jury adjourned for a week while the issue was in front of Hunt.¹⁴

The Kellogg case had by now gained notoriety outside Helena and was being followed with interest in some of the state's other newspapers. The editor of the *Anaconda Standard*, for example, was skeptical of Kellogg, owing to an 1889 run-in the physician had had with the medical board.¹⁵

When the coroner's jury reconvened on March 21, Kellogg was resolute when asked again for the mother's name: "The person whose name you ask for has left the state of Montana and is without [outside] the jurisdiction of any court of the state of Montana," he replied. "Without the presence of that person to explain and certify [as] to her condition at the time the foetus was taken from her, my answer . . . would incriminate me and be testimony against myself." He was cited for contempt and detained in the custody of the Lewis and Clark County sheriff. Kellogg's lawyer immediately filed a writ of habeas corpus.¹⁶

The habeas corpus case was argued in Judge Hunt's district court on Wednesday, March 22. On Friday, Hunt announced his decision, both on the habeas corpus request and on the larger issue of Kellogg's refusal to name the mother. He explained that if he required Kellogg to reveal the name of the woman, she could then implicate Kellogg in the murder of the child (if it had been born alive, as Dr. Rockman claimed) or in an abortion (if the child had been born dead). In effect, Kellogg would be incriminating himself. Because the U.S. Constitution protects against self-incrimination, Judge Hunt concluded, Kellogg had the "inalienable right and privilege to refuse" to name the mother. Thus Kellogg, the judge ruled, was being held illegally and should be released from custody.¹⁷

The coroner's jury finally reconvened on Saturday afternoon, March 25, exactly three weeks after Kellogg had deposited the fetus in the furnace, and issued a strongly worded verdict concluding that "the crime of abortion has been committed in this case." Though it neither indicted nor exonerated Kellogg,

the verdict urged that "the proper officials use every endeavor to bring the perpetrator to justice." An editorial in Sunday's *Independent* stopped just short of concluding that Kellogg was that perpetrator, saying instead that the verdict was "entirely justified by the circumstances as shown" and the cause of the crime "a revulsion in the mind of every good man and woman. It is the taking of a helpless life under conditions which, if indorsed, would destroy all society but the lowest."¹⁸

Clearly, some suspected Kellogg of assisting the mother in aborting her child. Not surprisingly then, within a month of the decision, on April 19, Dr. S. C. Baldwin of Helena filed a complaint with the State Board of Medical Examiners charging Kellogg with "unprofessional, immoral, and dishonorable conduct."

Kellogg once again called in J. W. Kinsley to defend him.

The board met on May

2 and two days later revoked Kellogg's certificate to practice medicine and surgery in Montana.¹⁹

Undeterred, Kinsley obtained a suspension of the Board of Medical Examiners' ruling from Judge Hunt until Kellogg could appeal the ruling to the district court and have a judgment rendered. Legal wrangling delayed the hearing for ten months. Then, in March 1894, Judge Hunt and Judge Horace W. Buck, co-presiding, affirmed the ruling of the medical board revoking Kellogg's certificate to practice medicine in the state. Kellogg now appealed the ruling to the state's supreme court and, when the district court refused to stay the execution of the suspension of his license, continued practicing medicine anyway. For this act he was brought back to district court and convicted of practicing without a license. He was therefore in the unique position of having two convictions and two appeals in front of the supreme court simultaneously, one for unprofessional conduct and one for practicing medicine without a medical certificate.²⁰

Thomas J. Walsh, then a little-known Helena lawyer but soon to be a statesman of national prominence, had joined Kinsley in defending Kellogg in the proceedings before the district court and now took over as Kellogg's counsel in the cases before the highest court in the state. The three supreme court justices received case transcripts and briefs in early May 1894 and heard arguments two weeks later. On

"My answer . . . would incriminate me."



Judge William H. Hunt, above on right, ruled that Kellogg had the “inalienable right and privilege to refuse” to name the mother and released him from custody. Kellogg later appeared before Montana Supreme Court justices William H. DeWitt, left, and William Y. Pemberton, center, when the State Board of Medical Examiners refused him a medical license for “immoral and unprofessional behavior.” The justices were photographed circa 1895 in the Lewis and Clark County Courthouse.

June 4, 1894, the court handed down its verdict. In a split two-to-one decision, the justices reversed the district court’s ruling and acquitted Kellogg. Writing for the majority, Justice William H. DeWitt concluded that the complaint “does not set forth facts specifying immoral, unprofessional, or dishonorable conduct, . . . and is a fascicle of hints, inferences, innuendos, and gossip, with the wraith of an abortion hovering over all.” Chief Justice William Y. Pemberton concurred in the decision. Justice Edgar N. Harwood submitted a strong and lengthy dissent: How could the majority opinion hold that an innocent man could have acted as Kellogg did? As far as Harwood was concerned, “Professional conduct which will not bear investigation without criminating the author of it must be dishonorable and unprofessional.”²¹

The decision made Kellogg’s conviction in district court for practicing medicine without a license moot, and the court so ruled that same day. Edwin Kellogg had won his case. The news of the decision, reported the *Helena Daily Herald*, “was received by the many friends and admirers of the doctor in the city with satisfaction and approval.”²² The good doctor could now continue to practice medicine without fear of arrest—for a while. The medical community and civil authorities would be watching his actions closely. Twice now, Kellogg had roused the suspicions of his colleagues. Five years before, in 1889, the newly established State Board of Medical Examiners had refused to issue him a medical license for unspecified “immoral and unprofessional behavior,” presumably because he was suspected of

having performed abortions. He defiantly practiced medicine anyway for about two years without a license and ultimately won the court case that forced the State Board of Medical Examiners to issue him a certificate to practice in Montana.²³

Then, as now, there was no actual proof that he was an abortionist. Thus the state board could only bring him up on charges of unprofessional conduct that, in both instances, had been overturned in the court system. Still, the threat of more accusations and more court cases hovered over Kellogg.

The Case of the Deathbed Declaration, 1900

Sometime around 1895 a young woman of Hungarian descent arrived in East Helena. Twenty-two-year-old Sophie (maiden name not known) was pledged to marry Peter Hrella, also a Hungarian immigrant and a saloonkeeper. Between the time of her arrival in town and her wedding day, Sophie stayed with Anna Sabados, a housekeeper, nurse, and midwife, who, too, was Hungarian. In the first five years of their marriage, Peter and Sophie Hrella had three children.²⁴

Sometime in late January or early February of 1900, Sophie began complaining to her husband of an “unspecified illness.” She was, in fact, missing her “monthly flow,” though she first told Peter that she thought she had caught a cold, that it was getting worse, and that a physician could help her. She told her husband she wanted “to go uptown and see a doctor.” Peter readily agreed and gave her money for the trip to town and for the doctor fees.²⁵

On the afternoon of February 24, Sophie took the streetcar into Helena and went to Dr. Kellogg’s office.

*“So many children, so many children,
so I kind of feel ashamed.”*

According to Dr. Kellogg himself, she told him she had come because she had not become “unwell” that month and wanted him to bring on her “sickness.” Kellogg did not examine her but gave her a prescription for an emmenagogue, a drug that induces menstrual flow. He also filled the prescription and charged her \$2.50, which she paid on the spot. During the course of the visit, Kellogg later recalled, the woman—who never stated her name and whom he

identified in his records only as “Russian woman”—asked him what sort of “hook” women used. Kellogg answered that he did not know.²⁶

The story Sophie told her husband that evening was very different from Dr. Kellogg’s recollection. According to Peter Hrella, “[Sophie] told me that she was at Dr. Kellogg’s and that Dr. Kellogg told her he could cure her for twenty-five dollars, but he said he would have to do some operation on her.” Even though the doctor had told her she “wouldn’t be sick at all,” Sophie was reluctant to return for the procedure, and Peter reassured her, saying that if she had any fears about it, he would discourage having the operation but the decision was up to her. In any event, the next day, by Peter’s account, Sophie took thirty dollars and went to Helena. Upon her return, she told Peter that Dr. Kellogg had “put an instrument in her” and had afterwards told her she would get well in a short time. She handed her husband the money she had left after paying Dr. Kellogg and buying “one dollar and a half’s worth of things for the children [and] dry goods.”²⁷

Anna Sabados, the housekeeper-nurse-midwife friend of the family, filled out the story a bit more in her testimony to the coroner’s jury. She testified that she had visited Sophie in St. John’s Hospital after the young mother was admitted, deathly ill from the effects of a septic abortion. According to Mrs. Sabados, Sophie explained why she had wished to end this pregnancy: “I got three little children. . . . So many children, so many children, so I kind of feel ashamed. So I went to Dr. Kellogg’s office and I say, ‘Doctor, can’t you help me?’ and Doctor asked me ‘What?’ I told him I am three months in a family way.” Again, according to Sabados, the doctor agreed to help her,

even urged her to undergo the abortion. When Mrs. Sabados queried Sophie on exactly how Kellogg had performed the abortion, the dying woman recalled that he had used “[s]ome kind of an instrument” and he “used twice his hand.”²⁸

The night after the purported abortion—Dr. Kellogg claimed Sophie Hrella had visited him only once, on February 24, and never returned to the office—Sophie told her husband she was “flowing” but was

feeling all right. According to Peter, she went to bed about 8:00 or 9:00 P.M. The next morning, however, she was passing “a lot of blood,” and Peter stayed home with her. As his wife’s condition worsened, he became increasingly concerned. Before dawn on March 4, he went to William O. Hutchinson’s drugstore in East Helena and called Dr. Kellogg. Kellogg agreed to come to the house (the family home was at Peter’s place of business, the Front Street Saloon), arriving at about 10:00 A.M.²⁹

According to Kellogg’s own testimony, it was then that he recognized Sophie as the “Russian woman” of the February 24 office visit. Sophie told him that she had been “suffering all that night” with intense chest pains, and he treated her with hot applications for what he diagnosed as “pleura pneumonia.” He further testified that on a return visit, he realized that she was having problems other than respiratory and “asked her what she had done and she said, ‘I made it come from me, I made it come.’” He thereupon examined her pelvic area and discovered that “she was flowing considerably.” Recognizing that she was miscarrying, he “used a little carbolic acid in hot water” to flush “any septic matter remaining.”³⁰

Late on Thursday evening, March 8, Sophie’s condition worsened significantly, and Peter, not wanting to leave his wife, asked someone to use the telephone at Hutchinson’s drugstore to summon Dr. Kellogg or, failing that, any physician. Unable to reach Kellogg, the person acting on Peter’s behalf called Dr. Ben C. Brooke Jr. and asked him to come to East Helena right away to see a woman who had been suffering from pneumonia for several days. When Brooke learned that the woman was one of Kellogg’s patients, he responded that he “didn’t care to have anything to do with the case” but would try to locate Kellogg. At that point, druggist Hutchinson intervened, saying he would consider it “a personal

favor” and would guarantee the bill if Brooke would make the visit.³¹

Having done all he could, and still failing to locate Kellogg, Dr. Brooke made the trip to East Helena himself. There he found Sophie Hrella “delirious,” with a “high temperature” (106.5 degrees) and “a very rapid feeble pulse.” Upon examination of her chest, he found “no evidence whatever of pneumonia”; however, examination of the patient’s abdomen revealed evidence of “puerperal septicaemia.” Dr. Brooke reported these findings to the women in the sickroom and to Peter. He also conveyed his doubts that Sophie “would live until morning.” Even so, he had Mrs. Sabados summoned to place “hot applications to the abdomen” through the night and advised Peter that if Sophie was still alive in the morning, he should contact Dr. Kellogg.



In 1900, Dr. Kellogg had his next run-in with the law after treating Sophie Hrella of East Helena. Returning home from her appointment with Kellogg, she became “delirious” with a “high temperature” and “a very rapid pulse.” When Kellogg couldn’t be reached, another doctor, Ben C. Brooke Jr. (above, 1910), was summoned. Brooke determined that she suffered from blood poisoning resulting from a miscarriage or abortion and would likely die.

Though Brooke clearly wanted nothing to do with the case, he reluctantly returned to East Helena the next morning. Though he found that Sophie’s temperature had gone down, he advised Peter

to get her to St. John’s Hospital in Helena “where she would get suitable nursing.”³²

At the hospital later that same day, Brooke made a more thorough examination of Sophie Hrella and concluded that she suffered from blood poisoning as the result of a miscarriage or abortion. On March 10, the day after admission to St. John’s, Sophie regained consciousness. It was then that Dr. Brooke purportedly asked her “if she had had an abortion performed or had a miscarriage or something of that kind and she told me that she had and that it was done by Dr. Kellogg.”³³

Sophie Hrella lingered for another five days. In the early evening of Thursday, March 15, Dr. Brooke and County Attorney Odell W. McConnell went to her bedside and, in the presence of Anna Sabados, informed her that she was dying. Under questioning by McConnell as to the cause of her illness, Sophie

St. John's Hospital
 "CATHOLIC"
**Catholic Hill,
 Helena, Mont.**

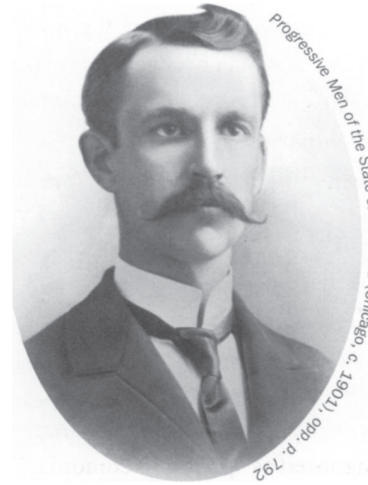
Conducted By The Sisters Of Charity
ESTABLISHED 32 YEARS.

The New St. John's Hospital is one of the finest in the State, can now accommodate over 200 patients. The rooms and wards are spacious and cheerful; nothing has been left undone to make the patients comfortable while sick or convalescent.

The building is heated with hot water, lighted with gas and electricity and ventilated by the latest improved system. The operating room is one of the best in the State. An elevator run by electricity is in the center of the building.

**Only First Class Physicians
 are in Attendance**
 Terms on application at the Hospital.
Sister MARY LAWRENCE.

On March 9, Sophie Hrella was admitted to St. John's Hospital (left), where on her deathbed she told Dr. Brooke and county attorney Odell W. McConnell (below) that she had had an abortion performed by Dr. Kellogg. After Hrella's death on March 15, Brooke and McConnell, armed with her dying declaration, charged Kellogg with murder.



know about Sophie's deathbed declaration when he took the stand as the first witness. Under close questioning by Brooke and McConnell, Kellogg vigorously denied having performed any operation on the decedent or of having seen her more than once in his office, on February 24, when he prescribed the emmenagogue and told

asserted that she had gone to the office of Dr. Edwin S. Kellogg "during the month of February, 1900, . . . for the purpose of having him perform an abortion, and . . . right there in his office, he then used his hands upon her parts and performed said abortion." When she had completed the statement, Dr. Brook read it back to her, with Mrs. Sabados repeating the words in Hungarian. Saying it was "perfectly true," Sophie Hrella put her mark to it. She died later that night.³⁴

Brooke, now acting as county coroner rather than as Sophie Hrella's physician, summoned a coroner's jury to investigate the cause of the woman's death. Armed with that dying declaration and with Peter Hrella's and Anna Sabados's testimony, he and the county attorney intended to prosecute Kellogg for murder, once the coroner's jury had returned a guilty verdict.

The inquest took place Friday and Saturday evenings, March 16 and 17. Apparently, Kellogg did not

her he knew nothing about using hooks for ending pregnancies. He argued that she was in a "confused state" during his later visits to her home and that "her husband . . . was right there [in the sick room]" to see that everything he did constituted "a straight legitimate practice." If he had anything to do with the alleged abortion, it would have been when he was flushing the "septic matter" during his home visit.³⁵

Throughout the two nights of the inquest, Kellogg cross-examined every witness. But his fate was sealed by the testimony of the physicians who had performed the autopsy. Ben Brooke led off and stated that Sophie Hrella had died of septicemia: "This blood was taken up in the uterus or [its] appendages and deposited in the lung" and "the uterus itself had the appearance that instruments had been used." The only possible conclusion was that the primary cause of Sophie Hrella's death was "probably an abortion."³⁶

Dr. Leo Hagenburger followed Brooke on the witness stand. To refute Kellogg's claim that Mrs. Hrella had told him she had "made it come from me"—that she had induced the abortion herself after asking Kellogg about using a hook—Hagenburger explained that a woman trying to induce an abortion by herself could not have produced the amount of uterine dilation Mrs. Hrella's autopsy had revealed. She could insert a catheter, a piece of wire, or a lead pencil, but such instruments would not produce any such dilation as was found in this case. Hagenburger's conclusion: someone other than Sophie Hrella had induced this abortion.³⁷

The coroner's jury, not surprisingly, found that Sophie Hrella died from an illegal operation alleged to have been performed by Edwin S. Kellogg. Kellogg was arrested, charged in court on Monday, March 19, and released on bail of a thousand dollars. He retained as his attorneys Thomas J. Walsh, who had

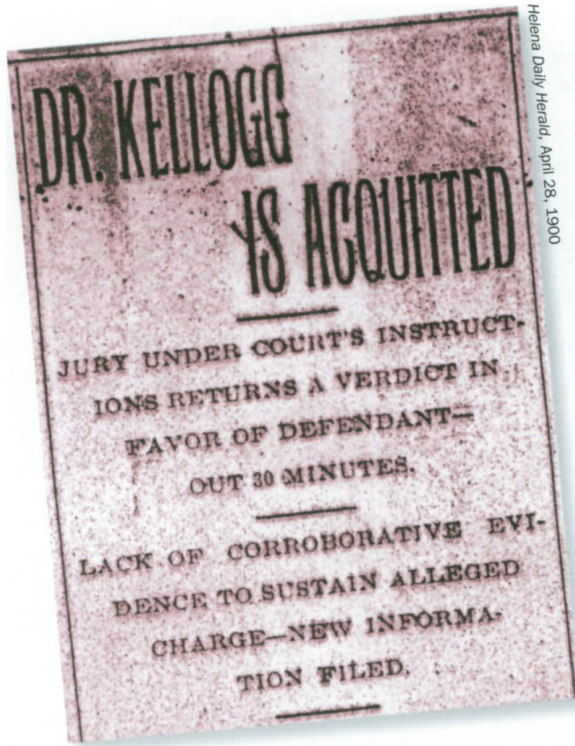
defended him before the state supreme court six years earlier, and James M. Clements.³⁸

The trial, which began in late April, generated so much publicity that Judge Dudley Dubose decided to sequester the jury for the duration, against the chance that they "might converse with some one that was influenced either for or against the accused." For the next four days the jury heard testimony, much of it similar to that presented at the coroner's inquest. Local citizens, characterized by a reporter for the *Helena Daily Herald* as "the morbidly curious," packed the courtroom. Readers who could only follow the trial in the newspaper were denied much of Dr. Brooke's testimony because of its "delicate nature," relating as it did "to the woman's condition and the causes that might have led up to it."³⁹

The trial did not go well for the prosecution. Attorney Walsh convinced the judge that without



At his trial, Kellogg's attorney convinced the judge that without corroborative evidence to back up Sophie Hrella's testimony, there was no proof that a crime had been committed. Kellogg was exonerated again. Pictured here looking south from Fifth Avenue and Ewing Street are the Lewis and Clark County Courthouse (with clock tower) and the stone jail to the left of the courthouse, sites of Kellogg's trials and incarcerations.



Helena Daily Herald, April 28, 1900

corroborative evidence to back up Sophie Hrella's dying declaration, there was no proof that a crime had been committed or that Dr. Kellogg had acted criminally. Furthermore, the charge submitted by the prosecution stated that the abortion had been committed through the use of drugs *and* instruments, yet there was no proof to show that there had been a joint use of both. Without evidence to support such claims, the judge had no choice but to instruct the jury to find for the defendant. Kellogg did not need to take the stand in his own defense, nor did the defense need to offer any testimony. On Saturday, April 28, the jury returned a verdict of not guilty.⁴⁰

The *Herald* reported the decision in large-font headlines: "DR. KELLOGG IS ACQUITTED." "The prosecution," the paper reported, "was beaten upon their own evidence, Judge Dubose deciding that there was no testimony connecting Dr. Kellogg with the case in any way in a criminal manner." The editor observed, "The general feeling throughout the city seems to be that the instruction of the court and the verdict of the jury was in line with what the evidence tended to prove and that another attempt at persecution [of Dr. Kellogg] has ignobly failed."⁴¹

As other jurisdictions around the country had learned, convicting a physician of abortion in turn-of-

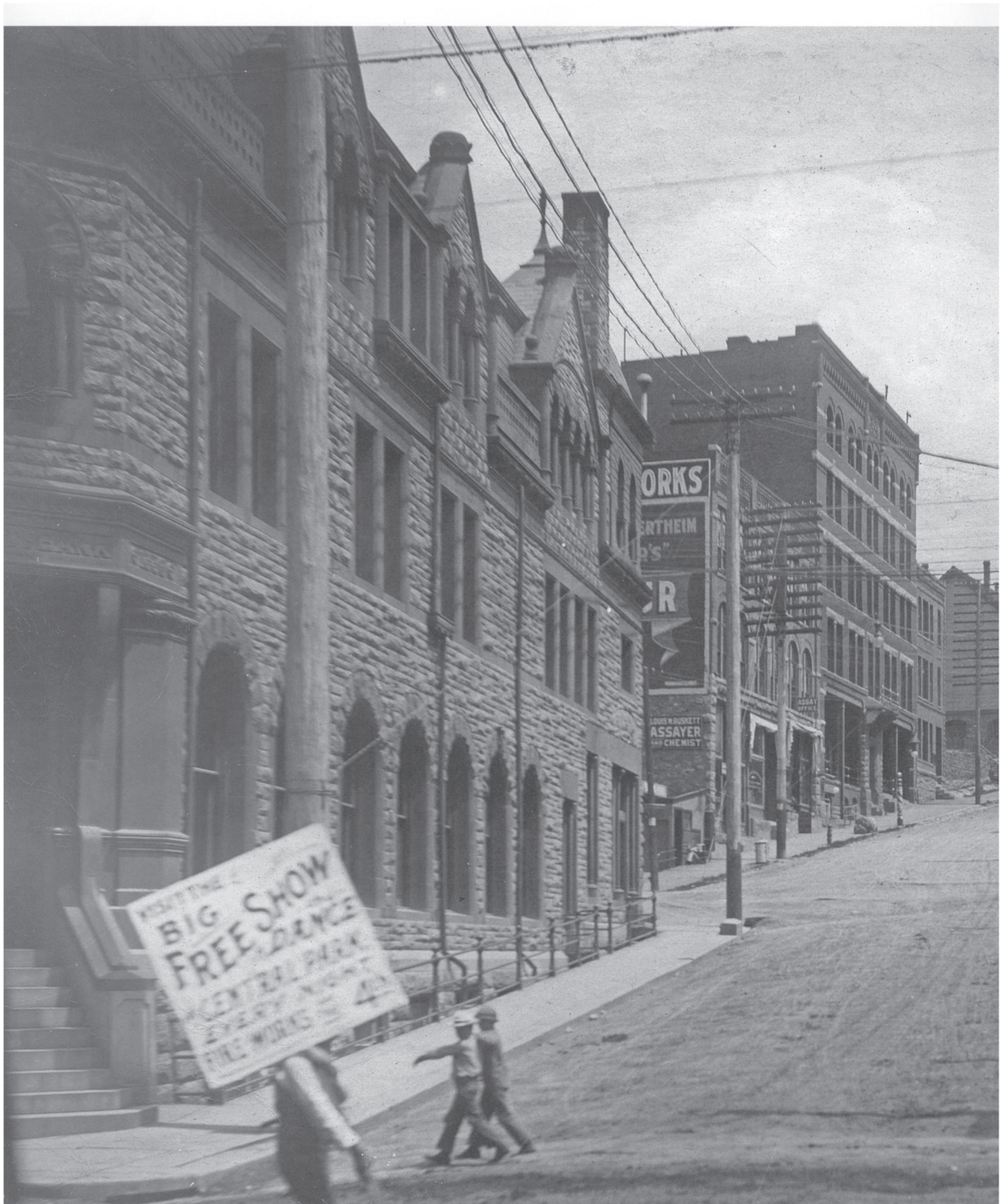
the-century America was difficult. Despite a physician-led national campaign to outlaw and prosecute abortions at any stage of pregnancy, citizens generally favored leaving the issue alone. Even so, in this instance in Helena, Montana, it is a bit puzzling that the medical and civil authorities, working together, could not build a strong enough case. All evidence pointed to Kellogg's guilt, and, as in the headless fetus case, the ruling of the coroner's jury suggested that Kellogg had performed an illegal abortion. Yet the judge and the jury found otherwise. And the general public accepted the acquittal. Did they simply recognize the community's need for practitioners like Kellogg?

The Case of the Waffling Witness, 1914–1915

The last of Edwin Kellogg's seven court cases involving abortion occurred in the last year of his life. The case is of special interest because the key witness for the state told the authorities two different stories, one shortly after the alleged abortion had occurred and the other as the case was about to go to trial.

In late summer of 1914, Lydia and E. A. Johnson were living with their four children on a ranch six miles from the town of White Sulphur Springs, about seventy-five miles east of Helena. For some weeks after discovering she was pregnant, Lydia importuned her husband to "allow her to go to Helena to see Kellogg for the purpose of having that child removed." Countering E. A.'s protests—he feared "the danger attendant thereto"—Lydia named "several ladies in the community who had been to see [Kellogg] . . . for the purpose of undoing their pregnancy," and all of them were in fine health. Johnson ultimately acquiesced, and, according to his testimony at the inquest, on Friday, September 25, 1914, the couple went to Helena.⁴²

The Johnsons first saw Dr. Kellogg at his sanitarium—located just a few blocks from his office—where he explained the procedure to Mr. Johnson and discussed the financial arrangements. Later that same day, the couple called at Kellogg's office, where the doctor "then and there did insert into the womb of the said Lydia Johnson a certain instrument, which he [Mr. Johnson] described as a stiff rubber tube." On Saturday, Kellogg repeated the treatment, telling





At the turn of the century, convicting a physician of performing abortions was difficult. In spite of the trials and bad publicity, Kellogg maintained a prosperous medical practice. By 1908, he kept an office in the Thompson Block at the corner of Main and Grand streets. Note his sign on the corner of the building on the right in this photograph taken looking east on Grand.

MHS Photograph Archives, Helena, 954-190

the husband it was “a hard case, as the womb would not contract.” He advised Johnson that his wife would do well to remain at the sanitarium for five days, and Johnson agreed. He paid Kellogg ninety dollars, which reportedly covered the procedure and the hospitalization. At the end of the third day, however, Kellogg told E. A. that he could take Lydia home. Johnson hesitated. He had paid for the full five days of treatment at the hospital and did not want to endanger his wife by taking her home too soon. When Kellogg assured him that there was no danger, Johnson took Lydia home to the ranch. However, she was no sooner home than she became ill with blood poisoning. She died at her home on Saturday, October 3, a week after the surgery.⁴³

On October 7, Dr. B. V. McCabe, the Lewis and Clark County coroner, and J. P. Donnelly, the deputy county attorney, traveled to White Sulphur Springs “for the purpose of performing an autopsy on the body of one Lydia Johnson” and interviewing E. A. Johnson about the circumstances surrounding his wife’s death. The results of the autopsy presumably showed that Mrs. Johnson died from the effects of an induced abortion, and Johnson decided to press charges against Kellogg. However, two months passed before Lewis and Clark County authorities filed papers with the district court and arrested Kellogg. Within hours, the doctor was free on a five-thousand-dollar bond.⁴⁴

Kellogg requested that the trial not be scheduled until spring because, according to the local newspaper, “some of his most important witnesses were now in New York” and would not be returning to Helena until April. The trial was set for mid-May. But just ten days before the case was to go to court, County Attorney A. H. McConnell moved for dismissal because his star witness, E. A. Johnson, “has sworn to an affidavit exonerating the defendant herein from any crime, which affidavit is absolutely contradictory to the statements heretofore given my office.” Though he still believed Kellogg was guilty of the crime of abortion, McConnell could not proceed with the trial because Johnson “has destroyed his usefulness as a witness for the State.”⁴⁵

What had happened to E. A. Johnson? Sometime after charges were filed in December 1914 and before April 18, 1915, Kellogg’s attorney, E. A. Carleton, was able to obtain from Johnson an affidavit

that “refuted and contradicted” the story that he had given Donnelly the previous October. When McConnell learned of this new affidavit in mid-April, he arranged a meeting with Johnson, and on May 5, county attorney McConnell, Lewis and Clark County sheriff Duncan, and Meagher County sheriff Magus (White Sulphur Springs is in Meagher County) interviewed Johnson at his ranch. They received a very different version of the events leading up to Lydia Johnson’s death.

His wife had experienced difficulty in her four earlier pregnancies, Johnson now said, and each delivery had required the use of instruments. On September 20, 1914, he and Lydia had gone to Helena to the state fair. The next day, when she complained of pains in her head and “some kind of discharge from the uterus,” he went alone to Dr. Kellogg’s office and described his wife’s symptoms. Kellogg told him “that there was nothing the matter with her and that she needed no treatment and that said pains were natural to one in her condition.” Two days later—the couple was still in Helena—Lydia Johnson began to experience intense abdominal pain. After examining her in his office, Kellogg told Johnson that his wife had had a miscarriage and he would have “to curette and scrape her womb.” This Kellogg did in Johnson’s presence. After the procedure, Lydia Johnson accompanied her husband to the state fair. But when she complained once more of severe abdominal pain, Johnson took her back to Kellogg’s office. This time he left her under the doctor’s charge for a few days, after which the couple returned home.⁴⁶

Several days after they arrived home, Johnson continued, Lydia was operated on by a doctor in town “for some kind of womb trouble, the exact nature of which was . . . unknown, and . . . she later died.” Johnson denied to McConnell “that he had ever discussed the matter of performing an abortion” with Dr. Kellogg or that Kellogg “had ever performed an operation on his wife.” In effect, Johnson had “contradicted and denied practically every statement that he had heretofore made to Mr. J. P. Donnelly,” and McConnell had no choice but to drop the charges against Kellogg.⁴⁷

Was Johnson telling the truth in the first affidavit or the second? Why did he change his story—and change it so radically? Clearly many women in White Sulphur Springs knew of Dr. Kellogg and his abortion

EDWIN S. KELLOGG, M. D.,
SURGEON.

HARRIET A. THAYER, M. D.,
RESIDENT PHYSICIAN AND MANAGER.

KELLOGG SANITARIUM.

29 N. Benton Avenue, HELENA, MONTANA.



FOR THE TREATMENT OF
**Surgical Diseases, Obstetrics, Diseases of Women and all
CHRONIC AILMENTS**

The only Private Hospital in the city. New and complete in all its appointments, with Faradic Electric Baths. Established Exclusively for the sick, affording careful nursing and the comforts of a home.

ALSO A COMPLETE X-RAY APPARATUS

Terms Reasonable.

Correspondence Solicited

A few blocks from his downtown office, Dr. Kellogg ran the sanitarium where he allegedly performed an abortion on Lydia Johnson in 1914. Her subsequent death and husband's testimony seemed the perfect opportunity to finally convict Kellogg. But this time efforts to prosecute him were thwarted when Lydia's husband, E. A. Johnson, recanted his original story.



In a small town in the northern Rockies, as in large and small cities around the country, women sought doctors who were willing to circumvent the law. Edwin S. Kellogg, pictured here in 1891, was one such physician.

work. Did some of those women talk to Johnson after his wife's death and convince him to change his story to protect the one physician women of the region could rely on for needed services? Or did Kellogg's lawyer somehow convince Johnson to withdraw his testimony? These are questions for which there are no answers.

There are other as yet unanswered and perhaps unanswerable questions about the Kellogg story: Why were Helena physicians and some attorneys so concerned to have Kellogg prosecuted, almost from the beginning of his practice in Helena? Did they see Kellogg—a homeopath—as a renegade, someone who would willingly and repeatedly break the rules of professional conduct? Did they see abortion as a moral issue? And what was Kellogg's motivation? He had a large medical practice, and he had a reputation as an excellent surgeon. Why would he risk his career? Did he think the laws against abortion were wrong? He was married to a woman who had strong views about women's rights. Delia Kellogg was an advocate

of women's reproductive freedom and a member of the Helena Equal Suffrage Association. Perhaps Edwin Kellogg was encouraged by his wife to support women's rights by ensuring they could end unwanted pregnancies.⁴⁸

Whatever the case, the experiences of Edwin Kellogg's patients in a remote northern Rockies town echo those of women who lived in larger, more cosmopolitan communities in the late nineteenth and early twentieth centuries. For a variety of reasons, some women, both married and single, felt the need to end their pregnancies and could always find physicians who were willing to circumvent the law to provide that service. Edwin S. Kellogg of Helena, Montana, was one such physician.

Todd L. Savitt is a historian of medicine at the Brody School of Medicine at East Carolina University in Greenville, North Carolina. He has published books and articles on southern, African American, and Montana medical history.

Notes

Abortion in the Old West

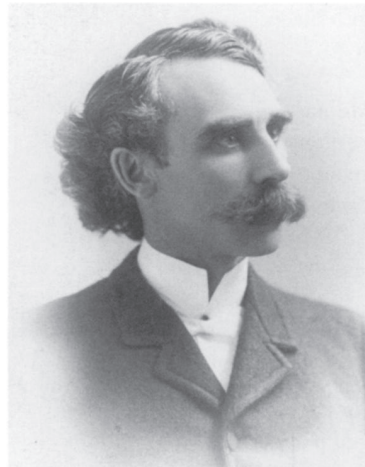
1. "Found in the Furnace," *Helena (Mont.) Daily Independent* (hereafter *HDI*), March 9, 1893, p. 5; "Facts about a Foetus," *Helena (Mont.) Daily Herald* (hereafter *HDH*), March 9, 1893, p. 4. The list of city officers for 1892-93 is found in *Revised Ordinances, City of Helena* (Helena, Mont., 1892), 222.

2. "Call Comes to E. S. Kellogg," *Helena (Mont.) Montana Daily Record* (hereafter *MDR*), October 8, 1915, p. 10; "Dr. Kellogg Is Called by Death," *HDI*, October 9, 1915, p. 10; Paul C. Phillips, *Medicine in the Making of Montana* (Missoula, Mont., 1962), 203-5. The judge's quote comes from Phillips, *Medicine in the Making*, 204. At a coroner's inquest on March 16, 1900, Kellogg stated that he had practiced in Helena for "almost 16 years." He was already living in Walla Walla when he submitted his dissertation ("Inaugural Dissertation on Bioplasm," copy in Drexel University Archives, Philadelphia) to the faculty of Hahnemann Medical College in 1878. His graduation date from Hahnemann is given as March 11, 1878. Thomas Lindsley Bradford, *Biographical Index of the Graduates of the Homoeopathic Medical College of Pennsylvania and the Hahnemann Medical College and Hospital of Philadelphia* (Philadelphia, Penn., 1918) 182.

3. On the history of abortion at this time, see Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley, Calif., 1997), 1-131.

4. Diane Sands, "Using Oral History to Chart the Course of Illegal Abortions in Montana," *Frontiers*, 7 (1983), 32-37. For early Montana abortion laws, see *Acts, Resolutions and Memorials, of the Territory of Montana, Passed by the First Legislative Assembly. Convened at Bannack, December 1864* (Virginia City, Mont., 1866), Criminal Practice Acts, sec. 41, p. 184; *Revised Statutes of the Territory of Montana Embracing the Laws of a General and Permanent Nature in Force at the Expiration of the Eleventh Regular Session of the Legislative Assembly, on the 21st Day of February, A.D. 1879* (Helena, Mont., 1880), Criminal Laws, secs. 41-42, pp. 469-70; *Codes and Statutes of Montana in Force July 1st, 1895*, vol. 2 (Anaconda, Mont., 1895), Crimes against

Public Decency, title IX, chap. III, secs. 480, 481, 568, pp. 840, 848; *Revised Codes of Montana of 1907*, vol. 4 (Helena, Mont., 1908), Crimes against Public Decency, part I, title IX, chap. III, secs. 8351, 8352, pp. 590-91; *Revised Codes of Montana of 1907*, vol. 4 (Helena, Mont., 1908), Criminal Procedure, part II, title VIII, secs. 9286, 9287, pp. 794-95. According to Paula Petrik, "The Bonanza Town: Women and Family on the Rocky Mountain Mining Frontier, Helena, Montana, 1865-1900" (PhD diss., State University of New York at Binghamton, 1981), 282n.46: "Helena had two abortionists: Dr. Napoleon Salvail and Dr. Edwin S. Kellogg. Dr. Salvail catered to middle-class women, and Dr. Kellogg dealt with lower-class women." According to Dr. Volney Steele, *Bleed, Blister, and Purge: A History of Medicine on the American Frontier* (Missoula, Mont., 2005), 195: "[Napoleon Salvail], trained at McGill University in Montreal, performed abortions but, unlike Kellogg, apparently avoided any prosecution."



5. Reagan, *When Abortion Was a Crime*, 8.

6. See specific statutes cited in note 4.

7. This discussion of the history of abortion through the end of the nineteenth century is derived from Reagan, *When Abortion Was a Crime*, 8-44, quote p. 22; and James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy 1800-1900* (New York, 1978).

8. Leslie Reagan, "'About to Meet Her Maker': Women, Doctors, Dying Declarations, and the State's Investigation of Abortion, Chicago, 1867-1940," *Journal of American History*, 77 (1991), 1247-55, quote p. 1251.

9. Not only was the term "by incineration" provocative, so too was the use of the label "homeopathic physician" at a time of widespread rivalry between allopaths and homeopaths. "Facts about a Foetus," *HDH*, March 9, 1893, p. 4.

10. *Board of Medical Examiners v. Edwin S. Kellogg* (hereafter *BME v. Kellogg*), Cases before the Supreme Court of Montana, Court Case #540, hand-numbered pages 44-46, Montana Supreme Court Records, Record Series 114, Montana Historical Society Research Center, Helena.

11. "Record of Proceedings at Inquest, Exhibit 'B'" in *BME v. Kellogg*, pp. 44-45. Electrotherapy was quite popular in the late nineteenth century.

12. *BME v. Kellogg*, 50. Fulkerson's wife, when told of the fetus, advised him "to say nothing about it," presumably because she either wanted to protect the physician or perhaps did not want her husband to get involved in such a case. "Facts about a Foetus," *HDH*, March 9, 1893, p. 4.

13. "Found in the Furnace," *HDI*, March 9, 1893, p. 5; *BME v. Kellogg*, 46; "The Name Not Revealed," *HDI*, March 11, 1893, p. 5; "Facts about a Foetus," *HDH*, March 9, 1893, p. 4.

14. *BME v. Kellogg*, 47-48, 51-52; "Record of the Courts," *HDI*, March 12, 1893, p. 5; "Name Not Revealed," *HDI*, March 11, 1893, p. 5.

15. *HDI*, March 14, 1893, p. 4; article reprinted from the *Anaconda (Mont.) Standard* in *HDI*, on March 13, 1893, p. 4, under the title, "The Kellogg Case."

16. *BME v. Kellogg*, 52-53; "Before Judge Hunt," *HDI*, March 22, 1893, p. 5.

17. "Kellogg Case Argued," *HDI*, March 23, 1893, p. 5; "Jottings about Town," *HDI*, March 24, 1893, p. 8; "The Dr. Kellogg Matter," *HDI*, March 25, 1893, p. 5.

18. "A Crime Committed," *HDI*, March 26, 1893, p. 8; "The Kellogg Case," *HDI*, March 26, 1893, p. 4.

19. *BME v. Kellogg*, unpaginated;

"Before the Examiners," *HDI*, May 2, 1893, p. 5; "Two Licenses Revoked," *HDI*, May 5, 1893, p. 5.

20. "Kellogg and the Board," *HDI*, May 6, 1893, p. 8; "The Case of Dr. Kellogg," *HDI*, May 7, 1893, p. 5; "The Case of Doctor Kellogg," *HDI*, May 23, 1893, p. 5; "The Kellogg Case," *HDI*, May 18, 1893, p. 5; *State Ex Rel Kellogg v. District Court of First Judicial District* (no number in original) (1893), 13 Mont. 370; *State of Montana v. Edwin S. Kellogg*, District Court Case #328; *Board of Medical Examiners, Respondent, v. Kellogg, Appellant* (1894), 14 Mont. 243. Judge Hunt's full order suspending the board's suspension of Kellogg's certificate to practice medicine appears in "The Case of Dr. Kellogg," *HDI*, May 7, 1893, p. 5.

21. *State Ex Rel Baldwin, Respondent, v. Kellogg, Appellant* (1894), 14 Mont. 426, pp. 426-27, 432-50.

22. *State, Respondent, v. Kellogg, Appellant* (1894), 14 Mont. 451; "Dr. Kellogg's Case," *HDH*, June 5, 1894, p. 4. See the *Independent* editorial of March 26, 1893 and note the difference in perspective of the two daily papers.

23. "Professional Unpleasantness," *HDH*, June 20, 1889, p. 8; "The Doctors in Court," *HDH*, June 27, 1889, p. 8; "Kellogg Acquitted," *HDH*, July 1, 1889, p. 8; "Kellogg Acquitted," *Helena (Mont.) Journal*, July 2, 1889, p. 5; "The Kellogg Case," *HDH*, July 8, 1889, pp. 4, 5.

24. "Re Coroner's Inquest on Body of Sophia Hrella, deceased, held at the Undertaking Parlors of Hermann & Company by Coroner Ben C. Brooke, at Helena, Montana, March 16 and 17, 1900" (hereafter Hrella Inquest), Case 577, p. 12, in Office of Clerk of District Court, Lewis and Clark County Courthouse, Helena, Montana (hereafter Clerk's Office, LC Courthouse, Helena). Peter Hrella is listed as the saloonkeeper at the Front Street Saloon in Helena's *Polk City Directory* of 1900.

25. Hrella Inquest, 16-17. The streetcar ride into Helena cost ten cents each way; Kellogg's fees were reportedly twenty-five dollars.

26. Hrella Inquest, 2, 5. It is not known how or why Sophie Hrella chose to see Dr. Kellogg.

27. *Ibid.*, 17, 18, 23. Peter Hrella testified that the return visit to Dr. Kellogg was made on February 28, though if Sophie's first visit (Dr. Kellogg's records) occurred on February 24, then this second visit—if it occurred—would have been on February 25.

28. *Ibid.*, 10-11.

29. *Ibid.*, 18, 23, 20, 2, 15, 3.

30. *Ibid.*, 3, 7, 20, 8, 5. Note that Peter Hrella testified that his wife never complained of chest pains and did not have a

cough or a cold during the days after her return from Kellogg's office.

31. *Ibid.*, 24-25.

32. *Ibid.*, 25. Brooke testified to making repeated calls to Kellogg's office and sanitarium that night in an attempt to get him to make the visit to East Helena.

33. *Ibid.*, 26.

34. *Ibid.*, 28-29; Lewis and Clark County Coroner's Records, Coroner's Office, Helena, Montana.

35. Hrella Inquest, 5-7, 13-15, 22, 30.

36. *Ibid.*, 43, 44. Three physicians performed the autopsy—Drs. Ben Brooke, Leo Hagenburger, and Thomas Tuttle. All three testified at the hearing.

37. *Ibid.*, 50.

38. "Three Informations Filed," *HDH*, March 19, 1900, p. 5.

39. "Interposed Objections," *HDH*, April 23, 1900, p. 5; "The Jury Is Regular," *HDH*, April 24, 1900, p. 8; "Gave Fisher \$500—Kellogg Case Continues in Department 1—Brooke on Stand," *HDH*, April 26, p. 8.

40. "Dr. Kellogg Is Acquitted," *HDH*, April 28, 1900, p. 8.

41. *Ibid.* The editor took the authorities to task: "Thus ends another phase of the persistent fight that has for so many years been waged against Dr. E. S. Kellogg, for which Lewis and Clark county has been compelled to shoulder the expense."

42. "Mrs. E. A. Johnson Dies Saturday Evening," *White Sulphur Springs (Mont.) Meagher Republican*, October 9, 1914, p. 1; deposition of A. H. McConnell (hereafter McConnell Deposition), May 7, 1915, Lewis and Clark County District Court, First Judicial District, in Case 1312 (hereafter Case 1312), in Clerk's Office, LC Courthouse, Helena; affidavit of J. P. Donnelly (hereafter Donnelly Affidavit), May 7, 1915, *ibid.* The *Helena Daily Independent* for December 18, 1914, p. 2, erroneously reported the date of the alleged surgery as September 22.

43. Donnelly Affidavit. When Johnson asked for a refund for the "corresponding portion of the fee," Kellogg refused, saying that "sometimes complications set in and in that event it would be necessary to treat longer than the five days." Dr. Kellogg's sanitarium was located at 29 North Benton, his office in the Masonic Temple building.

44. "Kellogg Faces Serious Charge," *HDI*, December 18, 1914, p. 2. The results of the autopsy were not included in the case papers preserved in court records. The *Independent* of December 18 reminded readers that "Kellogg has stood trial on similar charges on a number of occasions," the most recent of which had been heard the previous winter.

45. "Kellogg Refuses to Enter a Plea," *HDI*, December 20, 1914, p. 2; "Calendar

Is Set by Judge Smith," *HDI*, January 13, 1915, p. 8; "Kellogg Case to Be Tried May 18," *HDI*, April 13, 1915, p. 2; "Kellogg Case Is Not to Be Tried," *HDI*, May 9, 1915, p. 6; Motion [by A. H. McConnell] in Case 1312.

46. McConnell Deposition.

47. *Ibid.*

48. "Professional Unpleasantness," *HDH*, June 20, 1889, p. 8; William C. Campbell, *From the Quarries of Last Chance Gulch, Volume II* (Helena, Mont., 1964), 125, 130; Petrik, "Bonanza Town," 257. In 1895, Delia Kellogg was the corresponding secretary of the Helena Equal Suffrage Association.

George 'Montana' Oiyé

1. Thelma Chang, *I Can Never Forget: Men of the 100th/42nd* (Honolulu, 1994), 26; George Oiyé, interview by author, San Jose, California, June 26, 2002.

2. Oiyé interview.

3. Paul R. Spickard, *Japanese Americans: The Formation and Transformations of an Ethnic Group* (New York, 1996), 122.

4. Bill Hosokawa, *Nisei: The Quiet Americans* (New York, 1969), 68; Michael P. Malone, Richard B. Roeder, and William L. Lang, *Montana: A History of Two Centuries*, rev. ed. (Seattle, 1991), 184; Robert Wilson and Bill Hosokawa, *East to America: A History of the Japanese in the United States* (New York, 1980), 68; U.S. Department of the Interior, Bureau of the Census, *Report on the Population of the United States at the Eleventh Census: 1890*, pt. 1, 397; U.S. Department of the Interior, Bureau of the Census, *Twelfth Census of the United States Taken in the Year 1900: Census Reports Vol. I: Population*, pt. 1, cxxii.

5. U.S. Department of the Interior, *Twelfth Census*, 492; U.S. Department of Commerce, Bureau of the Census, *Thirteenth Census of the United States: 1910 Vol. 2: Population 1910: Reports by States, with Statistics for Counties, Cities, and Other Civil Divisions: Alabama-Montana*, 1147. California, Oregon, and Washington had between seventeen and thirty males for every female, and even Idaho's ratio was half that of Montana's.

6. Oiyé interview.

7. *Ibid.*; "James Breen Dead," *Helena (Mont.) Independent*, August 12, 1925, pp. 1-2, copy in James Breen folder, Vertical Files, Montana Historical Society Research Center, Helena (hereafter MHS); Edwin A. Mohler, *Cultural Features Found at the Paupers Dream Mine Project Site, Lewis & Clark and Jefferson Counties, Montana* (Helena, Mont., 1987), 1-3. Breen owned and frequented hotels in cities throughout