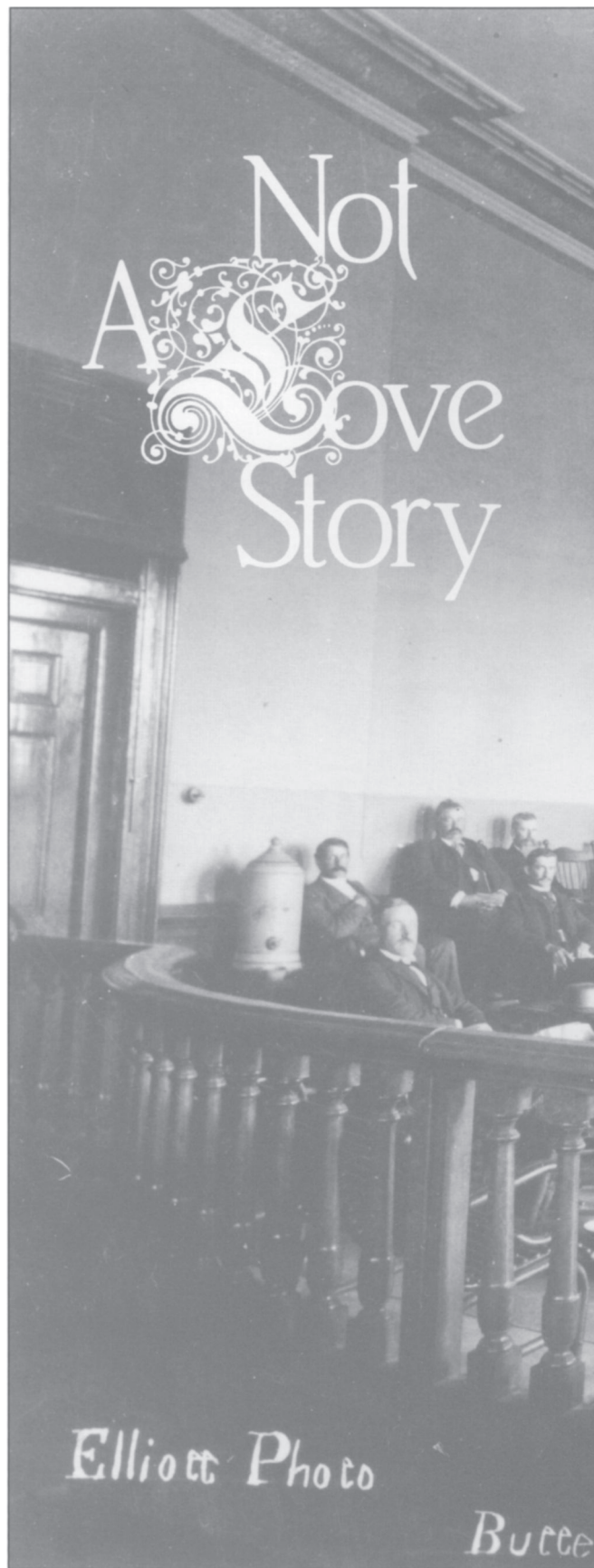


One way American society has confirmed definitions of womanhood has been to encode them in the legal canon. Based upon cultural perceptions of womanhood, these restrictive definitions are familiar to historians studying the relationship between women and the law in the nineteenth century. Although most states adopted laws to safeguard women's legal rights in particular situations, women's prospects in divorce courts were problematic. Divorce generally was for women of means far into the nineteenth century.

The exception to these generalizations centered in the Rocky Mountain West. From 1850 to 1900, western states had the highest *per capita* divorce rate according to the Bureau of Labor Statistics. *Bordeaux v. Bordeaux*, a protracted turn-of-the-century Butte divorce case, illustrates how gender, class, and legal context influenced divorce cases involving middle-class women in Silver Bow County and, by extension, suggests how these variables operated in similar litigation in other jurisdictions.

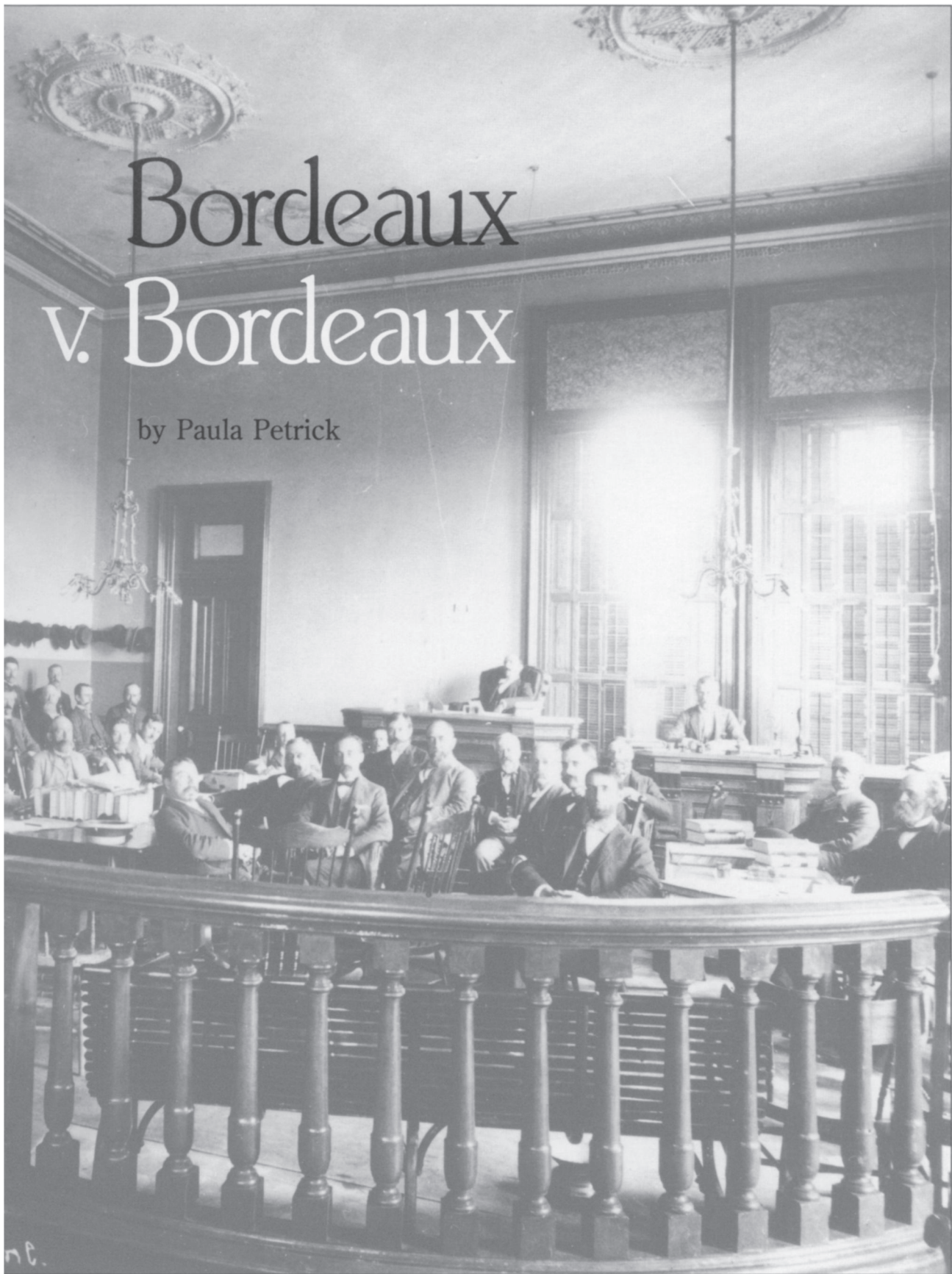
John Bordeaux and Ella Bordeaux née Driggs were married in Butte, Montana, on June 2, 1886. John Bordeaux was roughly thirty-six years old and Ella was eighteen, an unusual age difference for couples marrying in the late nineteenth century.¹ Ella and John exchanged equal marital dowries. Ella Driggs, the offspring of old Butte pioneers, bartered her social standing for her husband's new money; John Bordeaux, a Butte parvenu, swapped his bright prospects for entrée into Butte society. The deal struck, the couple jogged along until November 1889 when Ella returned to her parents' home because of her husband's harsh treatment. A few days later, John Bordeaux went down on bended knee to ask forgiveness, and the couple reconciled. This time all went well for a decade until John filed for divorce in Silver Bow County on January 26, 1899, claiming that his wife had deserted him on January 23, 1898.²

Much of the legal parrying in *Bordeaux v. Bordeaux* took place in a setting similar to the Butte district courtroom of Judge John J. McHatton, who resigned from the bench in 1897 to return to private practice.



Bordeaux v. Bordeaux

by Paula Petrick



MHS Photograph Archives

John's action was fairly common in Montana. Desertion accounted for two-thirds to three-quarters of the divorces, depending on the period. Most desertions were fairly straightforward physical abandonments of a spouse. Critical to a desertion charge was the requirement that the plaintiff, the deserted party, wait a year before filing a divorce action. John Bordeaux was extraordinarily prompt, filing almost a year to the day after his wife's alleged desertion.

Unlike most defendants who did not bother to contest a divorce suit predicated on desertion, Ella responded on February 11, 1899, denying her husband's charges and filing a cross-complaint. Ella asserted that on January 23, 1898, John Bordeaux had ceased to live with her. Ella, moreover, reproached John with extreme cruelty, accusing him of "threatening conduct and language" and "abusive and intimidating behavior." The result of his behavior had caused Ella "great mental pain and anguish" and "disturbed her peace of mind." John Bordeaux had literally driven her from her home by his continual threats against her life with "loaded firearms."

Fearing for her life, Ella contended that she had been compelled against her will to leave her home for the safety of her parents' house in Salt Lake City. Immediately after her leave-taking, according to Ella, her husband had dismantled the family dwelling and, since that time, had failed to provide a suitable residence for them. Because Ella had enjoyed a wide circle of friends and acquaintances among the "best people of Butte," her humiliation had been all the more acute, causing "lasting injury and destruction of her peace of mind and enjoyment of life." Ella's complaint detailed John Bordeaux's property holdings: interests in the Mountain View, Prairie Flower, and St. Lawrence mines; ownership of several town lots; and proprietorship in additional but unknown mining claims. Valued at \$100,000, these properties, Ella and her attorneys believed, provided a monthly income of \$1,500, far in excess of the \$90 to \$120 monthly earnings of an average Butte craftsman or miner. Ella claimed all the property was acquired jointly during their marriage. She petitioned the court for a restraining order to prevent her spouse from disposing of any property, for support of \$500 each month while the suit was pending, and \$5,000 in counsel fees.³

Ella Bordeaux's cross complaint indicated what was at risk in the case and suggested the premises on which she based her claims. Framers of Mon-

tana desertion law understood that desertion was not always as simple as a husband's or wife's packing and leaving. They understood that one person might intrigue and create circumstances that would force the other to leave the marital home.

Ella's claim rested on this interpretation of the law, but she went further by claiming mental cruelty. Mental cruelty had been a feature of Montana law since *Albert v. Albert* (1885), in which the state supreme court had outlawed physical cruelty of any kind. Lower courts had elaborated on the court's ruling by extending the definition of cruelty to encompass mental cruelty—at least for divorcing middle-class couples.⁴ Few people contested a divorce suit; only when there was something to fight over such as property or money did the titans of the middle or upper class clash in court.

On March 1, 1899, John Bordeaux denied all of his wife's charges. After Ella had voluntarily left the couple's home, he had stored the family furniture with her uncle and had sent her \$75 each month that she resided in Salt Lake City. Bordeaux claimed to have "introduced her into the best society in Butte, . . . until she by her own acts and conduct . . . alienated her former friends and acquaintances."⁵ While Bordeaux admitted that he owned the city property mentioned in Ella's cross action, he denied owning the more valuable mining property. His holdings he estimated at \$33,000 and his monthly income at \$517. He admitted that the property had been acquired since the couple's marriage but declared that Ella had never contributed "one cent."⁶

On February 25, 1899, John Bordeaux upped the ante by filing an amended complaint, reiterating his earlier charge of desertion and adding adultery. Specifically, he alleged that his wife had committed adultery with an unknown man at a host of specified and unknown locations and times between August and November 1897.⁷ Ella and her attorneys replied that the court had no authority to allow an amended filing, but the judge overruled

1. *U.S. Manuscript Census, 1880, U.S. Manuscript Census, 1900, U.S. Manuscript Census, 1910*, Probate No. 10950, Office of the Clerk of Court, Silver Bow County, Butte, Montana. It is difficult to gauge John Bordeaux's age. In the 1880 census tabulation, he listed himself as twenty-eight years old; in the 1900 census he told the enumerator that he had been born in April 1844; his brother averred that he had been born on July 4, 1850. Based on this data, John Bordeaux could have been as young as thirty-four or as old as forty-two at his marriage.

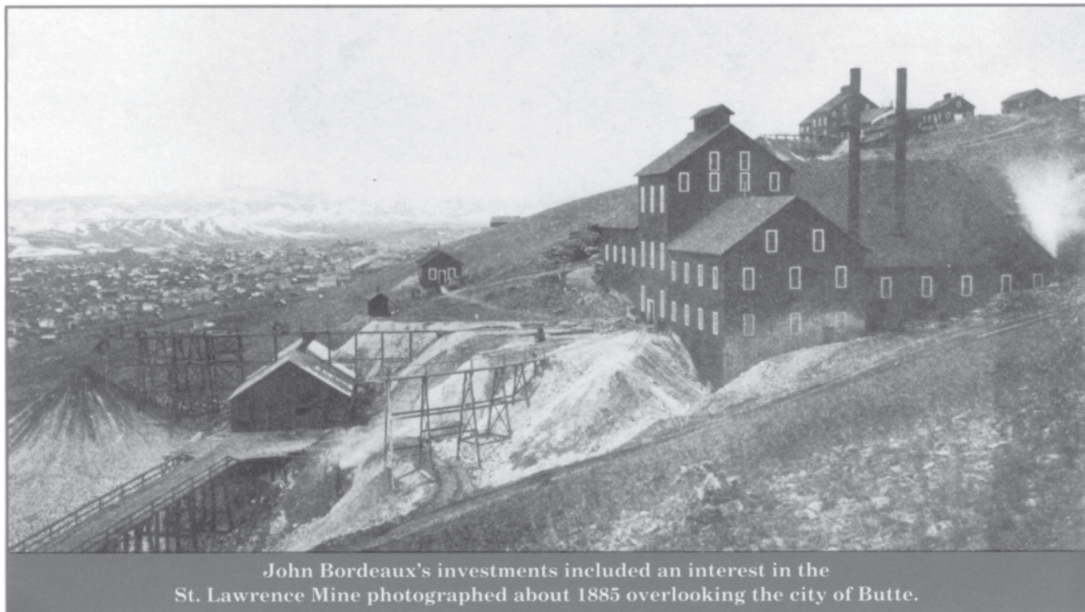
2. Supreme Court Case No. 1787, *Bordeaux v. Bordeaux* (1902), Transcript, 2-3, 585-86, Montana Historical Society, Helena, Montana (hereafter, *Bordeaux v. Bordeaux*).

3. *Ibid.*, 3-11.

4. Paula Petrik, "If She Be Content: The Development of Montana Divorce Law, 1865-1907," *Western Historical Quarterly*, 18 (Summer 1987), 261-91.

5. *Bordeaux v. Bordeaux*, 18-19.

6. *Ibid.*, 18-21.



John Bordeaux's investments included an interest in the St. Lawrence Mine photographed about 1885 overlooking the city of Butte.

MHS Photograph Archives

the motion. Ella's attorneys promptly filed a demurrer, arguing that the amended complaint was vague, insufficient in its statements of facts, and ambiguous in that times and places for a majority of the charges were not specified. The judge agreed.⁸

Bordeaux and his lawyers returned to court on March 3, 1899, to detail the times and places of Ella's alleged adulteries. These occasions included, among others, adultery with Lyman Sisley on September 21, 1897, in an unfinished house at 825 West Broadway, another liaison with Sisley at 825 or 827 West Park Street, another assignation on November 30, 1897, with Sisley at the Weyerhorst Block, and numerous illicit liaisons at the Bordeaux house. Again, Ella's attorneys demurred on the same grounds as before, but this time the court disagreed and overruled the defense demurrer.⁹

Two months later Ella answered the amended complaint by denying *in toto* her husband's charges of adultery. She augmented her earlier complaint of mental cruelty with additional charges of physical cruelty, citing an incident in November 1889, others during the summer of 1894, and numerous other unspecified occasions. Finally, she added false accusations against her chastity. All of these things had contributed to her general humiliation and to the breakdown of her physical and

mental health.¹⁰

John Bordeaux challenged all of her statements and amplified his earlier claims, insisting he had not made false charges against his wife's chastity because she had been unchaste. Her health had in no way been injured. He claimed that Ella "was an extraordinarily good sleeper," often keeping to her room and sleeping until 11 A.M. or very often until noon or 1 P.M. She was healthy enough "at any time to walk for hours with Lyman Sisley around the town of Butte." Not only had Ella not contributed toward the accumulation of the couple's estate, she had "never sought to save or economize or assist [Bordeaux] in any way whatever, but on the other hand [had] always been worthless and idle, and [had] spent thousands of dollars uselessly and unnecessarily."¹¹

When the flurry of legal maneuvering ended, John and Ella Bordeaux had accused one another of the worst that a husband and wife could do. From Ella's perspective her husband violated his marriage vows by forcing her from her home, accusing her of infidelity, and beating her. From John's viewpoint, Ella had violated her marital contract by her lewd and lascivious unfaithfulness and her failure to fulfill her wifely role because of laziness and profligacy. Both financially and socially much was at stake. The goal for John Bordeaux was to extricate himself from his marriage with the least possible economic liability; Ella's goal was the restoration of her good name and a goodly share of the couple's estate.

On August 15, 1901, roughly three years after filing of the initial complaint, court proceedings began in *Bordeaux v. Bordeaux* before Judge William Clancy. Described by one historian as a "political accident," Clancy was a slovenly, casual

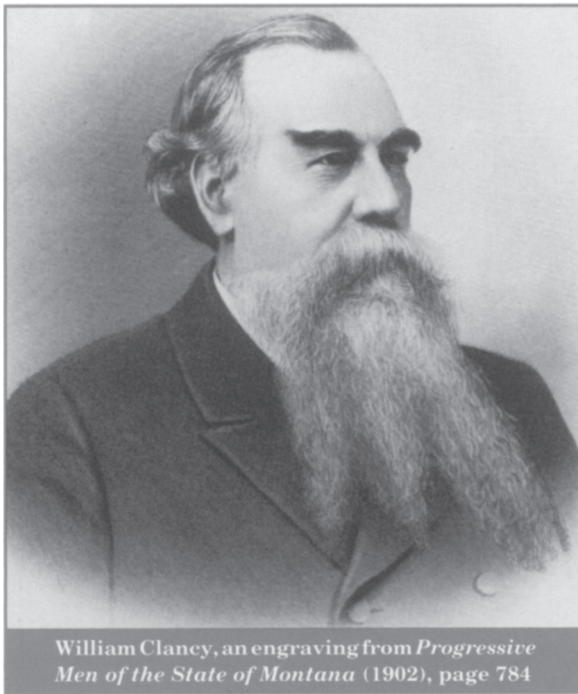
7. *Ibid.*, 24-25.

8. *Ibid.*, 29-31.

9. *Ibid.*, 33-39. Ella Bordeaux's alleged sexual transgressions were many but clustered in 1891 and between August and November 1897. Only those that figure in the subsequent divorce trial are included here.

10. *Ibid.*, 40-54.

11. *Ibid.*, 54-68.



William Clancy, an engraving from *Progressive Men of the State of Montana* (1902), page 784

MHS Photograph Archives

jurist who often fell asleep during testimony. Representing John Bordeaux, the plaintiff, were the firms of Stapleton & Stapleton, Breen & Mackel, and B. S. Thresher. Representing Ella Bordeaux, the defendant, was the firm of McHatton & Cotter. George W. Stapleton, John J. McHatton, John W. Cotter, and Judge Clancy all were involved in the legal wranglings between F. Augustus Heinze and Amalgamated Copper.¹²

Because nineteenth-century divorce law involved assigning blame or fault, contested divorces were tried before a jury. Unlike criminal proceedings in which juries were constrained to return a unanimous verdict beyond a reasonable doubt, only eight members of a divorce jury had to be convinced by a *preponderance* of evidence. The first order of court business was the selection of a jury, and opposing counsels agreed upon twelve predominantly Catholic, working-class men.¹³ Next

12. Many of the biographical details of the principals come from "mug" books. While the accounts are generally accurate factually they are less believable in assessing the subjects' honesty and skill. On William Clancy, see Michael P. Malone and Richard B. Roeder, *Montana: A History of Two Centuries* (Seattle: University of Washington Press, 1976), 172-74; Michael P. Malone, *The Battle for Butte: Mining and Politics on the Northern Frontier, 1864-1906* (Seattle: University of Washington Press, 1981), 168-75; Helen Fitzgerald Sanders, *A History of Montana* (3 vols., Chicago: Lewis Publishing Company, 1913), 3:1520; *The Butte Miner*, October 31, 1912. On John J. McHatton see, *A Newspaper Reference Work* (Butte, Mont.: Butte Newswriters' Association, 1914), n.p.; *Montana Standard*, March 18, 1944. On John W. Cotter see, Joaquin Miller, *An Illustrated History of the State of Montana* (Chicago: Lewis Publishing Co., 1894), 756-57; *The Butte Miner*, July 30, 1903; *The Butte Inter Mountain*, July 30, 1903. On George Stapleton, see Joaquin Miller, *An Illustrated History of the State of Montana* (Chicago: Lewis Publishing Co., 1894), 302-3; *Butte Inter Mountain*, April 25, 1910; *The Butte Miner*, April 25, 1910. Other lawyers associated with the Bordeaux team were less important and probably acted as "window dressing."

day, before a courtroom audience including many women, *Bordeaux v. Bordeaux* began. In an unusual maneuver, John McHatton moved to have all witnesses excluded from the courtroom except when testifying. Clancy denied the motion, and John Bordeaux's lawyer called his first witness.¹⁴

Robert Campbell summarized what he had seen at 825 West Broadway. He had watched the couple from the back door of the unfinished building.

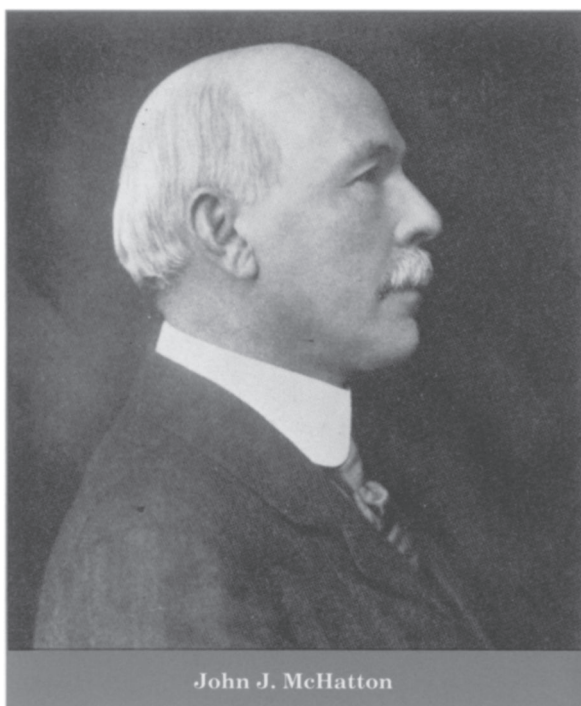
They were enjoying each other's company; he laid her down on the bench there, and pulled up her clothing; she had on a dark suit of underwear; it looked to me like a dark suite of combination underclothing; from where I was I could see that they were in the act of sexual intercourse.¹⁵

He had seen Tom Bordeaux, John's brother, jump from under the carpenter's bench and exclaim, "I have got you dead to rights," and immediately had seen Sisley run from the building, heading across Broadway and then southwest. Ella Bordeaux got up, put on her hat, and set off east on Broadway toward home.¹⁶

Under cross-examination, Campbell admitted that he had both a social and business relationship with John Bordeaux. He explained that he had been in the neighborhood of the Broadway house looking after business and had run into Tom Bordeaux, who asked him to go to the 825 address. He had known what the purpose was because Tom had intimated in a conversation the month before that Ella Bordeaux "was doing what was not right." McHatton questioned Campbell about the structure of the home. How had Ella Bordeaux entered the building? Why had Campbell ended up at the back door of 825 West Broadway? Easily enough, answered Campbell. Tom Bordeaux had told him that he had witnessed the couple going in the unfinished house on other occasions. McHatton quizzed Campbell closely about the condition and description of the house and asked him to sketch the rough dimensions of the floor plan and indicate the placement of windows and doors.¹⁷

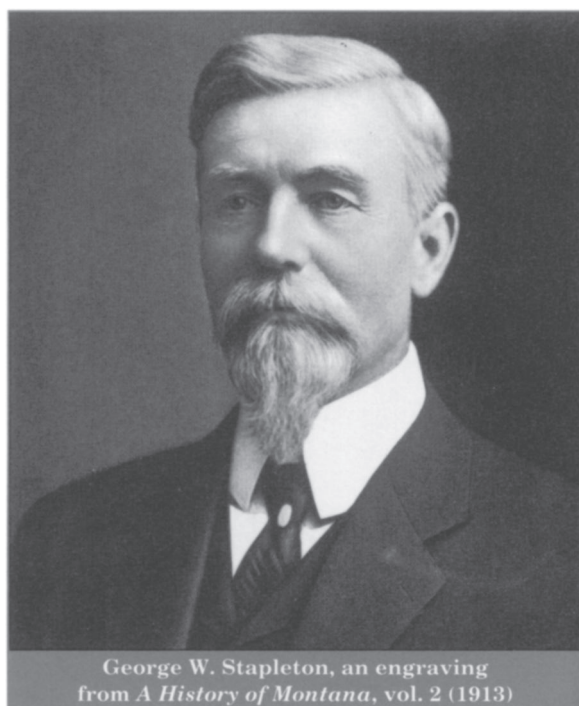
According to Campbell, Sisley arrived dressed in a dark suit, probably a Dunlap hat, and a light shirt and tie. Under continued questioning, Campbell insisted the evening was balmy, very pleasant. He testified that he had waited a moment or two before following Tom and Ella Bordeaux

13. Members of the jury included: Daniel Thomas, a miner or carman; J. P. Reins, miner; John Sullivan, miner; Richard Goldsworthy, occupation unknown; Darby Hastings, miner; John McKenna, miner; Jasper Elliott, grocery driver for Lutey Brothers; Andy Carroll, laborer; Mike Shea, miner; John Archibald, miner; James Shepard, shoemaker; and Joseph Massa, saloon owner. Except Joseph Massa, most of the jurors were in their late thirties or early forties, married, with families, miners or mine workers, Irish, and property owners. Massa was married, childless, and Italian. See *U.S. Manuscript Census, 1900; Butte City Directory, 1900* (Butte: R. L. Polk & Co., 1900); *Butte City Directory, 1901* (Butte: R. L. Polk & Co., 1901).



A Newspaper Reference Work (1914)

John J. McHatton



MHS Photograph Archives

George W. Stapleton, an engraving
from *A History of Montana*, vol. 2 (1913)

east on Broadway. Mrs. Bordeaux had stepped along briskly. McHatton asked Campbell, “did she [Ella] have her hat in her hand?” Campbell responded that Ella put a small-brimmed straw sailor hat on her head as she walked away.¹⁸

Next McHatton asked about Ella Bordeaux’s underwear, and Campbell acknowledged that it was a dark union suit. Campbell detailed his movements after the incident and mentioned that he had seen Charles Barnaman on the south side of Broadway. Before going home, Campbell had played a few hands of cards at a friend’s house. Responding to McHatton’s questions about the date, Campbell replied that he was sure of the date because he had made a note of the incident in his memorandum book. McHatton was incredulous that Campbell had noted an adultery with other entries pertaining to business.¹⁹

From Stapleton’s and Thresher’s perspective, Campbell had done a credible job. He had shown himself to be a solid citizen with human strengths

and weaknesses—faultiness of memory, curiosity, fellowship—who had become mixed up in an unpleasant matter. He had remained disinterested and disavowed any opportunity for gain. A reluctant witness, he maintained ignorance of his central role in the case until the summons arrived at his ranch on the Big Hole. Instead of testifying, he indicated he should be cutting hay.

In McHatton’s view, Campbell’s testimony had gone as he expected. His cross-examination of Campbell and other witnesses concentrated on four issues: (1) What was the nature of the relationship between John Bordeaux and the witness? (2) Why did the witness follow Ella Bordeaux and Lyman Sisley on the evening of September 21, 1897, and how did the witness know that the couple would rendezvous at 825 West Broadway? (3) What was the condition of the house? (4) What was the weather? and (5) How were Ella Bordeaux and Lyman Sisley dressed?

As credible as Campbell was, when he left the stand, McHatton had accomplished a good deal. He had established that Campbell’s relationship with the Bordeaux brothers was more than casual, and he had elicited from Campbell numerous details that would set the standard for succeeding corroborating testimony. Finally, however slightly, McHatton had suggested the possibility of a conspiracy.

14. *Bordeaux v. Bordeaux*, 164-65; *Butte Inter Mountain*, August 15-17, 26-28, 1901; *Butte Miner*, August 16, 27, 1901. Ella Bordeaux was not present during jury selection, arriving in court when testimony began. She did not sit with her attorneys but rather beside Mrs. Lyman Sisley. A. E. Driggs, her father, occupied the chair customarily assigned to the defendant. After extensive coverage of the trial on August 16 in which witnesses detailed the adultery at 825 West Broadway, the *Inter Mountain* of August 17, 1901, referred only to McHatton’s motion for legal fees. The paper quoted Stapleton: “It looks like an attempt to bleed the plaintiff of every dollar possible before the completion of the trial.” With that the *Inter Mountain*’s coverage of the trial unaccountably ceased until it announced the verdict on August 24, 1901. The *Inter Mountain*’s reportage left the public with a singularly biased impression of the trial and Ella Bordeaux’s culpability; neither the revelations following the weekend nor Ella’s defense appeared. The *Butte Miner*’s reportage was the barest. The *Miner* noted the trial’s beginning and end, nothing more.

15. *Ibid.*, 168.
16. *Ibid.*, 166-69.
17. *Ibid.*, 169-70, 175-77, 180, 182-88.
18. *Ibid.*, 192, 198.
19. *Ibid.*, 199-207.

The second witness to take the stand was Charles L. Barnaman who testified that he had seen Ella Bordeaux and Lyman Sisley walking west on Granite Street sometime between 8:00 and 8:30 P.M. on September 21, 1897. He followed them down Excelsior Street to West Broadway where he lost sight of them. Barnaman lingered on the south side of Broadway and, a short time later, saw Lyman Sisley hurriedly leave an unfinished house and take off toward Alabama Street. Shortly afterward, Ella Bordeaux left the house and turned east on Broadway, fixing her hat as she went. Tom Bordeaux followed closely on her heels. Then Robert Campbell came around the side of the house and trailed after the Bordeauxs.²⁰

In cross-examination Barnaman admitted he had been to John Bordeaux's house and had been friends with Tom Bordeaux for some time, although he qualified the exact nature of their association curiously. "We have been together considerable" he said, "... we have met on the street considerable ... but haven't been around a great deal."²¹ Barnaman testified he had happened onto Tom Bordeaux at the corner of Granite and Washington streets. McHatton asked how Bordeaux had told Barnaman he needed his help.

He just whistled to me ... I sometimes respond to whistles of that kind. ... It did not occur to me as being strange that he whistled for me, because that is a signal some people have when somebody is crossing the street. ... I have had people whistle to me that way in the night many a time before that. Tom Bordeaux did it before several times ... so I recognized his whistle.²²

Barnaman followed along behind Bordeaux and Robert Campbell. Didn't it seem peculiar, asked McHatton, that Tom Bordeaux would want Barnaman to follow persons on the street?

It did not strike me as being peculiar. ... I sometimes follow people around town because someone suggests that they want to know where they go. ... I sometimes make that a kind of a business.²³

According to Barnaman, Sisley was dressed in dark clothes and wore a hat. He did not think Sisley wore an overcoat.²⁴ Barnaman, too, admitted to writing about the evening's events in his memorandum book, which, unfortunately, had been misplaced. McHatton quizzed Barnaman about the book. Did he usually note occurrences of that kind? Sometimes, Barnaman admitted, he did.²⁵

The plaintiff's legal team was pleased with Barnaman's testimony, which corroborated Robert Campbell's version of the events. But McHatton was also gratified. He had enticed Barnaman into making some altogether outlandish admissions. Barnaman revealed himself to be a shady character, just the right sort to take part in a conspiracy.

On Friday afternoon, August 16, 1901, Tom Bordeaux took the witness stand.²⁶ John Cotter directed the cross-examination. He inquired into Tom Bordeaux's employment record in an effort to connect him with Barnaman and Campbell. Tom Bordeaux had arrived in Butte in 1890 and had been engaged in collecting city poll taxes. After that he worked for his brother buying city warrants and witness fees. In 1895 he was elected



Granite Street, ca 1900, looking west from Main Street towards Washington Street where some of the activity described by witnesses at the trial occurred. The courthouse clock tower rises above surrounding buildings at center right.

According to John Bordeaux's complaint, one of his wife's liaisons occurred in the Owsley Building on West Park Street in 1891, about the time this photo was taken of the building.



MHS Photograph Archives

constable and remained in office until 1897. From January 1897 until September 1897, he had been a collection agent for a local butcher.²⁷

Tom Bordeaux's rendition of what had occurred coincided with that of other witnesses, but Cotter wanted to know why Bordeaux entered 825 West Broadway when his quarry was standing on the opposite corner. Tom Bordeaux did not answer directly except to say that he and Campbell entered the house from the rear, and he had watched Sisley's movements through the front door from under the bench. He was satisfied from his observations that Sisley was coming toward the house. Why he undertook the project in the first place, Tom Bordeaux said: "My object in going there was just as I told you—just to see if there was anything wrong; I was gratifying my curiosity to that extent, at least when I was in the front of the building and saw Mr. Sisley headed toward the building." Cotter ended his cross-examination by going over the condition of the building, and Bordeaux affirmed the details of the construction outlined by previous witnesses. "[It] was dry weather," Bordeaux added, "she didn't have on gum boots."²⁸

When court recessed for the weekend on Friday afternoon, Ella Bordeaux's case appeared bleak. Yet, the defense had scored against her husband's legal team by assembling evidence for business and social relationships connecting the plaintiff's principle witnesses. Charles Barnaman was a distinctly suspicious character, and Tom Bordeaux, as a constable and collection agent, had

plenty of opportunity to meet Butte's petty underworld citizens, and he seemed entirely too involved in his brother's personal life. The defense also established details of the house under construction. Over and over again, they asked where were the doors, the windows, the carpenter's bench.

On Monday morning John Cotter resumed his cross-examination of Tom Bordeaux continuing his quiz about the dwelling. Cotter attempted to demonstrate how little Bordeaux could have witnessed from under the carpenter's bench asking, "You saw a woman sitting on a carpenter's bench in the room; you saw a man standing in that room beside her; and you go on the witness stand now and testify she was guilty of a criminal act?" Tom Bordeaux answered, "That is the way I look at it."²⁹ Cotter next asked when Tom Bordeaux had told his brother about the incident at 825 West Broadway. This led to a discussion of the date of the adultery and the amazing disclosure by Bordeaux that the event actually had occurred on December 23 and not some three months earlier.

Startled, Cotter asked if Tom Bordeaux had testified the previous Friday that the adultery had occurred on September 21, 1897? Tom Bordeaux

20. *Ibid.*, 208-11.
21. *Ibid.*, 211.
22. *Ibid.*, 215.
23. *Ibid.*, 219.
24. *Ibid.*, 225.

25. *Ibid.*, 234.
26. *Ibid.*, 235-40.
27. *Ibid.*, 240-41.
28. *Ibid.*, 270-71, 273, 273-74, 256.
29. *Ibid.*, 281.
30. *Ibid.*, 284. In point of fact, Tom Bordeaux had likened the weather to that during the trial. In other words, on Friday, he had described the weather as summery; by Monday, he described it as wintry.

replied, "I said it was cold weather."³⁰ How, continued Cotter, could he have made such an error? Had he consulted with the plaintiff's attorneys? Thresher objected. Any question regarding what Tom Bordeaux had related to his brother's attorneys was improper. Judge Clancy roused himself to ask, "What attorneys?" Cotter answered helpfully, "The attorneys for the plaintiff." Judge Clancy noted that client-attorney privilege was involved. When, Cotter inquired, had Bordeaux discovered his error? Tom Bordeaux explained that he had examined his memorandum book the previous evening and realized his mistake. He had brought it along. When Cotter asked to see the book, Peter Breen suggested the defense attorneys examine only the relevant portions. Cotter asked about the adultery entry and learned that the book was empty except for the notation about Ella.³¹

Cotter queried Bordeaux: Did he now wish to change his entire testimony to reflect the change in dates? Bordeaux answered affirmatively. McHatton then asked to know more about the notebook, its timely appearance, and its revelatory information. Why, McHatton wondered aloud, had Tom Bordeaux chosen that evening to refresh his memory? Had someone told him something very important about 825 West Broadway? Tom Bordeaux responded, "They might have suggested something to me as to the condition of that building over there at that date—September 21."³² Under further questioning, Bordeaux admitted that his brother had suggested he look into the house business. Cotter asked if Tom Bordeaux had tailored his evidence to the complaint or if he had testified to what he had actually seen. Judge Clancy said Bordeaux had already answered sufficiently.

Tom Bordeaux's testimony revealed several important points. First, although Cotter intended to show that Bordeaux could have seen only two pairs of feet from under the bench or, later, a man and a woman in a room, the jurymen likely agreed with Bordeaux that what he had or had not seen in the way of criminal activity was immaterial; Ella Bordeaux had been in the wrong place at the wrong time.

Second, McHatton's cross-examination allowed the jurymen to hear *ad infinitum* the damaging details of the event at 825 West Broadway and permitted them ample time to reflect on them. McHatton's cross-examination technique was purposeful, however. The witnesses had thoroughly

elaborated, detailed, and corroborated each other on all points. Much of their credibility rested on their agreement over the state of the house. But what if the house did not exist? Undoubtedly, McHatton planned to produce the building permit, like a rabbit out of a hat, to demonstrate that no such house, finished or unfinished, existed at the Broadway location in September 1897. Without the house, there could be no crime of adultery, and, in turn, without the adultery, John Bordeaux's case would collapse. The taint of conspiracy would have affected the other allegations of adultery, too, rendering them suspect. Between the adjournment of court on Friday, however, and its opening on Monday, someone—a courtroom spectator, one of the band of Barnaman-like Butte ferrets, an observant builder or contractor, a county official involved with the building trades—had indicated to John Bordeaux that the building dates were awry.

Third, Judge Clancy's rulings on the defense's various legal maneuvers tended to favor the plaintiff. His willingness to accept Tom Bordeaux's change in testimony was most obvious. Finally, the Monday testimony represented a setback for McHatton and Cotter, who, in a very brief time, had shifted from laying an effective trap to determining the harm dealt to their client's case.

Following Tom Bordeaux, W. A. Ellsworth took the stand and testified that sometime around December 20, 1897, he too, had seen Ella Bordeaux and Lyman Sisley in the act of sexual intercourse. Upon completing his explicit description, Ellsworth added: "From where I was, I think I could have reached them with my hands."³³

McHatton and Cotter returned to their original plan of delineating the relationship between the witness and the plaintiff. Ellsworth admitted that he had been a constable in Meaderville in 1897 and had seen Tom Bordeaux frequently. He also had sold script to John Bordeaux. Most of Ellsworth's testimony was suitably ambiguous. What was the weather? Ellsworth was not sure. He was equally vague about the circumstances of his meeting with Tom Bordeaux. On several points Ellsworth contradicted his own testimony and that of previous witnesses. Although he was not sure of his route or how the other parties had arrived on the scene, Ellsworth was sure of who and what he had seen in the unfinished house and of its exact location.³⁴

Of all the plaintiff's witnesses, Ellsworth proved the least credible. His testimony supported Tom Bordeaux's revised date, however, and added a

31. *Ibid.*, 287.

32. *Ibid.*, 288, 289-93, 293.

33. *Ibid.*, 299-300.

34. *Ibid.*, 303, 306-30.

particularly graphic description of the couple's illicit liaison. McHatton and Cotter called attention to the critical inconsistencies between Ellsworth's statements and those of the other witnesses and underscored the impression that W. A. Ellsworth's testimony was just too coincidental. At this point in the trial the defendant's lawyers suspected that the conspiracy against Ella Bordeaux, no matter how jerrybuilt, would succeed. Accordingly, McHatton and Cotter began laying the foundation for an appeal to the state supreme court, and their exceptions increased apace.

The plaintiff's attorneys introduced evidence to support other allegations of adultery, but the incident at 825 West Broadway remained best documented and the most critical to the plaintiff's case. After they had refreshed their memories, both Campbell and Barnaman returned to the stand with their notebooks to correct earlier statements about the date.³⁵

Finally, John Bordeaux took the stand and testified that he had heard about the West Broadway incident during the latter part of December from witnesses clustered around the house. Had he heard anything about his wife's conduct before December 1897? John Bordeaux replied:

I just don't say when because I can't say. At first when I was informed of these various acts, I didn't believe; along towards the last they came so often until I had to; that was somewheres about the first of the year 1898. Since that time I have not lived or cohabited with her as my wife or otherwise.³⁶

McHatton opened his cross-examination asking if John Bordeaux had read, verified, and filed the complaint, attesting that his wife had committed adultery in September 1897? John Bordeaux excused his ignorance, "Oh, once in a while . . . say persons will bring in a paper and say it is so and so, and say you are to sign it, and you will not be particular in reading over everything, do you?" Was he willing to say he did not know what was in the complaint when he signed it, asked McHatton. Bordeaux said he knew the complaint's contents. Was not the information, McHatton continued, that John Bordeaux had given his attorneys stated in the complaint? Could he explain to the jury how he had sworn to certain dates in August and September of 1897 as part of the initial complaint? Could John Bordeaux account for this

discrepancy? John Bordeaux supposed it was an error. McHatton proved relentless. How could this be when Bordeaux had his books for reference? "A man often has books and still makes an error, too," responded Bordeaux.³⁷

McHatton switched to the notebooks and reminded Bordeaux that he had examined his memoranda in preparation for conferences with his attorneys. Did he provide them with any dates other than those appearing in the complaint? McHatton then redirected his questions to discover if John Bordeaux had visited the owner of the house at 825 West Broadway over the weekend to determine the construction date and had changed the date accordingly. Objection. At this juncture, Judge Clancy invited the plaintiff's lawyers to change the complaint to conform to the new date. The complaint was altered, and McHatton objected.³⁸

From the outset, John Bordeaux's attitude toward the proceedings indicated a lack of seriousness. He treated McHatton and Cotter with a masculine bonhomie normally reserved for business or social occasions. Both McHatton and Cotter quickly showed Bordeaux that he and they were on opposite sides of the fence. The trial was not simply another instance of a bunch of the boys getting together at the Silver Bow Club to resolve a pesky problem. Bordeaux, in response, resorted to personal calumny, intimating that, at one time, Cotter was in Bordeaux's pocket. Although Cotter protested this characterization, it was McHatton who indicated he meant business and that he disliked Bordeaux.

Although defense lawyers introduced a cavalcade of witnesses to refute evidence for the adulteries and substantiate the conspiracy theory, the three most important witnesses were Ella Bordeaux; her uncle, William Farlin; and her father, A. E. Driggs. Farlin testified that he had stayed at the Bordeaux home the two evenings before Ella's departure because, according to Farlin, she had feared for her life. He stated the couple had shared a bedroom with one bed. A. E. Driggs related how in the fall of 1898 he had met Bordeaux in an upstairs room at Lynch's Saloon for a man-to-man talk. The substance of the conversation was, according to Driggs, that Bordeaux's detective work had yielded nothing against his wife. Driggs also substantiated Ella's leaving her husband earlier in 1889 on account of his cruelty.³⁹

38. *Ibid.*, 461-63.

39. *Ibid.*, 555-60, 584-89. Of all the witnesses, perhaps the saddest was Lyman Sisley, Ella Bordeaux's alleged correspondent. Also engaged in mining brokerage and connected with *Western Mining World*, Sisley had the misfortune of meeting Ella Bordeaux at the racetrack and on the street. From the plaintiff's perspective he probably made a good "patsy." See 590-606.

35. *Ibid.*, 408-24.

36. *Ibid.*, 446-47.

37. *Ibid.*, 453, 455, 461-63.

Both Farlin and Driggs bolstered Ella's defense because their integrity and standing in Butte society and among businessmen were unimpeachable. Driggs's conversation with Bordeaux testified to his uprightness and earnest interest in getting at the truth of his daughter's behavior. He had, moreover, confronted Bordeaux in an honorable and gentlemanly manner, face-to-face and without the aid of shady operatives. Unfortunately, both Farlin and Driggs were relatives; no independent witnesses were on hand to substantiate Driggs's or Farlin's version of the events.

Despite Farlin's relationship with the defendant, his testimony was significant for another reason. He furnished evidence that John Bordeaux had spent the nights immediately before his wife's departure in her company in a room with one bed. At issue here was the legal concept of condonation, defined by Montana civil law as the "conditional forgiveness of matrimonial offense constituting a cause of divorce." In essence once a husband or wife knowingly occupied the same bed with an unfaithful partner, the courts inferred sexual relationship and, by extension, condoning and forgiveness as well as restoration to marital rights. Surprisingly, plaintiff's counsel did little to contradict the evidence of condonation. Perhaps overly confident, they disregarded the small detail of a room with a single bed.

On Friday, August 23, 1901, Ella Bordeaux took the stand. In effect she outlined for the jury the events leading to her separation in 1889. According to Ella, in the first three years of their marriage, John had beaten her with a stick kept in the bathroom for that purpose, choked her, and abused her verbally. At the end of November 1889, she had sent for her father to bring her home. John Bordeaux had come to her parents' home to plead on his knees for her return. The couple lived peaceably for several years after their reconciliation, but in 1894, John Bordeaux had beaten her so severely that she had been lame for three days. She recalled: "I didn't leave him at that time . . . because I didn't like it to be known to the public, and . . . I was afraid of him because he had threatened me so many times that he would kill me if I left him."⁴⁰

Although Ella had heard reports of his efforts to find something against her character, she remained silent until one afternoon shortly before she left Butte. With a servant as a witness, John Bordeaux forced Ella to swear on her knees that there was

nothing between Sisley and herself. Ella denied anything improper. A few days later in the couple's bedroom, with a gun on the bed beside him, John Bordeaux again put Ella on her knees and interrogated her about her relationship with Sisley. Her husband suggested that Ella leave the city. "I told him no," Ella testified. "I didn't think so; that if such reports were getting around, I thought it better for him to go and see those parties and get it straightened out and satisfy himself there was nothing in it, and it was his duty to do that."⁴¹ Ella denied categorically any improper liaisons with Sisley, characterizing their relationship as simply social, having occurred in public in the presence of other ladies and gentlemen. Ella added that she had slept in the same room as her husband until the time she left.⁴²

B. S. Thresher began Ella's cross-examination by returning to the disposition of the couple's furniture and worked his way toward questioning Ella about her lifestyle as John Bordeaux's wife. Ella acknowledged that the Bordeaux home was furnished nicely and that she received a generous allowance. When Thresher moved on to quizzing Ella about her housework, McHatton objected, arguing that opposing counsel's questioning was immaterial. On the contrary, Thresher rejoined, Ella's cross-complaint raised the issue of cruelty, and the character of her husband's treatment of her was clearly important. McHatton was dumbfounded by Thresher's logic.

Why may it please the court, many people have been cruelly murdered in the most elegantly furnished houses in the world. Does that in any wise extenuate or excuse or mollify or is it any defense to the act of murder committed? . . . No man with a retinue of servants is entitled or will be permitted to commit acts of cruelty against his wife.⁴³

Ella's testimony revealed steady employment of a servant and described the couple's domestic routine. The servant prepared breakfast and, when the couple ate together on those few occasions Ella joined her husband, they ate between 9:00 and 11:00 A.M. Ella said her husband gave her jewelry at Christmas and on her birthday. As to its value she was unsure; her only knowledge came from Bordeaux, who estimated the price of all the jewelry at about \$1,350. When Thresher asked Ella whether she needed such things, she responded, "*As to whether these were things that I needed, I will say that I think I did.*" [Italics mine].⁴⁴ She testified further that she arose frequently after 9:00 A.M.,

40. Ibid., 610-11, 611-12.

41. Ibid., 614.

42. Ibid., 615-22.

43. Ibid., 617.

44. Ibid., 631.

rarely joined her husband for lunch, regularly went out in the afternoon, sometimes ate dinner with Bordeaux, and routinely visited with her mother in the evening.

From McHatton's perspective Ella Bordeaux's testimony was a disaster. Her task was to portray herself as a true woman replete with all the qualities associated with woman's role in the nineteenth century—selflessness, submissiveness, self-sacrifice, and domestic dedication. She had to convince the jury, first, that she was not the kind of woman who would enter into an illicit sexual relationship and, second, that her husband had treated her with such cruelty that she had to leave her home. During McHatton's questioning, Ella did very well. Her testimony reflected her efforts to keep her marriage together and to maintain the privacy of the family. Her descriptions of the confrontations between John and herself were dramatic and detailed.

Thresher's cross-examination undermined Ella's earlier self-portrait, and played on class differences between Ella and the jury. She was portrayed as spoiled, lazy, treacherous, indifferent, and a poor domestic manager. The jurymen could easily compare Ella's domestic efforts and her rewards with those of their own wives. To the working-class jurymen, Ella was a "bad wife."

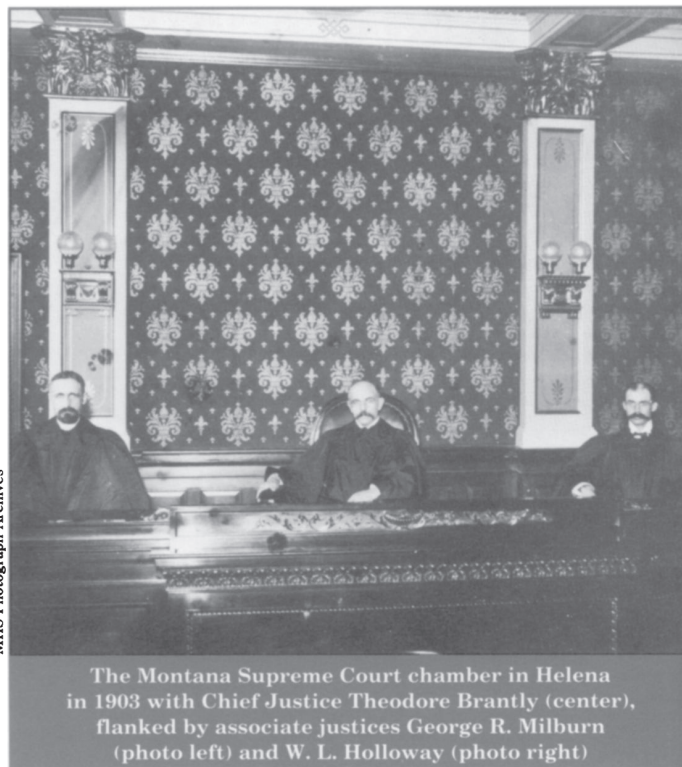
In rebuttal John Bordeaux emphasized Ella's domestic failures, her indifference to him, her leisurely lifestyle, and her generally willful, peevish disposition. In addition, his attorneys carefully recorded that the Bordeauxs had no children—yet another indication of Ella's marital shortcomings. In his cross-examination, McHatton adroitly suggested to the jury that Bordeaux had accepted his wife's domestic failures without argument, but Bordeaux was equally successful in countering McHatton by saying that he was willing to indulge Ella up to a point. When it came to "running around with other men, he drew the line."⁴⁵

On August 26, 1901, nine of the twelve jurymen decided against Ella Bordeaux, finding her guilty

45. *Ibid.*, 654-71. A number of witnesses took the stand during the plaintiff's rebuttal. Like Bordeaux, they either served to confirm Ella's domestic failures or they countered the defense's efforts to prove a conspiracy.

46. *Butte Miner*, August 27, 1901.

47. *Bordeaux v. Bordeaux*, 84-135. A. H. Nichol offered the most interesting of the affidavits. In his statement he outlined how Charles Barnaman, the witness stationed at the back door of 825 West Broadway, had confessed in writing to him that he had been in charge of rounding up members of the conspiracy and schooling them in order to fix the trial.



MHS Photograph Archives

The Montana Supreme Court chamber in Helena in 1903 with Chief Justice Theodore Brantly (center), flanked by associate justices George R. Milburn (photo left) and W. L. Holloway (photo right)

of adultery with Lyman Sisley on several occasions.⁴⁶ John Bordeaux had his divorce.

McHatton and Cotter petitioned for a new trial immediately on the basis of affidavits of several people involved in the case. The affidavits provided convincing evidence of a conspiracy among John Bordeaux's people and suggested jury tampering, but Judge Clancy denied the motion for a new trial.⁴⁷ McHatton and Cotter appealed to the state supreme court on this and other issues.

The Montana Supreme Court first heard appeals involving Ella Bordeaux's petition for temporary alimony, suit money, and attorney's fees during the March 1902 term and decided the legal issues on June 2 and 5, 1902. The court dismissed Ella Bordeaux's appeal on the grounds that state law did not grant the supreme court the power to award monies prayed for; such power resided in the original Silver Bow County jurisdiction.⁴⁸

In February 1904, the high court heard arguments regarding the legal fees and substance of the case. Commissioner John Clayberg prepared an opinion for the court that addressed the three principal errors McHatton and Cotter urged on the court, the most important of which was condonation.⁴⁹ Clayberg rightly pointed out that John Bordeaux had known about his wife's infidelity almost

48. 26 *Montana*, 533-40; Montana Supreme Court Case numbers 1787, 1770, 1806. *Bordeaux v. Bordeaux* (1902).

49. 30 *Montana*, 36-47, *Bordeaux v. Bordeaux* (1904); Montana Supreme Court Case No. 1787. The first legal issue involved the question of suit money, and the second issue involved a procedural question.

immediately after December 23, 1897, yet, he continued to live with her until January 1898. Under the circumstances and the weight of judicial precedent, John Bordeaux was not entitled to a divorce. Clayberg continued:

We cannot refrain from saying that the record discloses in many instances a most reckless disregard for the truth on the part of some of plaintiff's witnesses, and also the character to some of plaintiff's witnesses which is not enviable to say the least.⁵⁰

The supreme court granted rehearing and remanded the case for a new trial in Silver Bow County.⁵¹

In 1905 the supreme court entertained arguments—yet again—involving the Bordeaux divorce to contemplate the same three questions Commissioner Clayberg had addressed earlier. It was on the third question—condonation—that the court's finding was most critical. It found that Judge Clancy's court had erred in its failure to deny John Bordeaux a divorce because Bordeaux had condoned his wife's infidelity by sleeping with her in the same bed.

The high court recognized condonation as a delicate issue. State supreme courts were (and are) normally not in the business of reevaluating evidence. Their role was and is to safeguard procedure. Condonation was a special defense, and the defendant had to plead condonation initially, which Ella Bordeaux had not done. The justices conceded this but said the evidence in the testimony compelled them to consider condonation anyway. They based their rationale on a consideration of public interest, precedent, and statute.

Of the three, the justices' recourse to statute proved the most decisive and difficult. Although John Bordeaux's lawyers had argued that the evidence for condonation was conflicting and that the court had no business arriving at its own conclusions regarding the evidence, the justices looked to statute to support their right to do precisely that. In 1903 the Montana legislature had vested in the supreme court the power to examine questions of law *and fact* in equity cases. Such power gave the court the right to review the evidence and derive its own conclusions in light of a preponderance of evidence. With due warning to those who might construe the justices' pronouncement as a thor-

50. *Ibid.*, 43-46.

51. *Ibid.*, 47. The reasons for the rehearing seem to stem from the fact that John Bordeaux's attorneys did not appear nor did they file a brief on his behalf.

oughgoing precedent, the court recapitulated the evidence and found overwhelming evidence of condonation—that is, that John Bordeaux had condoned his wife's behavior.

In an interesting aside, the court added:

We have, for the purposes of this discussion, assumed that the evidence fully established the guilt of the defendant of the acts of adultery found by the court. We do not care to be understood, however, as making this assumption for any other purpose. The evidence in the case is not of a satisfactory character, and we would hesitate to reach the conclusion arrived at by the district court in this record. Indeed, there are many features of the evidence introduced by the plaintiff which justify a very strong suspicion, to say the least, that the charges of adultery are the result of a conspiracy on the part of the plaintiff and some of his witnesses to establish a false charge against the defendant.⁵²

Justice Theodore Brantly reversed the judgment of the lower court and remanded the case to Silver Bow County, directing the court to dismiss the action.

Despite the supreme court's ruling and the strong language accompanying its opinion, John Bordeaux reinstated his divorce suit in March 1907, claiming he had sought a reconciliation with Ella on March 15, 1906, and had been (perhaps understandably) spurned. Bordeaux sued on grounds of desertion, but the petition languished. The Bordeauxs remained married, and Ella kept alive her financial claims on her husband. In 1909, John Bordeaux revived his suit; Ella responded with the usual denials and complement of demands for legal fees. In May 1910 another jury heard the Bordeaux case but was discharged when it failed to agree on a verdict; the court then ruled that neither party was entitled to a divorce and dismissed the case.⁵³ As a result, the Bordeauxs returned to the supreme court. *Bordeaux v. Bordeaux* finally ended in 1911 when the high court rejected Ella's financial claims one last time and directed the Silver Bow County Court to find in John Bordeaux's favor on the basis of his wife's desertion.⁵⁴

For the Bordeauxs, final disposition meant a mix of success and failure. John Bordeaux escaped his marriage without having to pay alimony, but

52. *Ibid.*, 165-66, 167-69. The special legislative session responsible for this statutory change stemmed from Amalgamated Copper Company's attempts to break the legal impasse blocking its consolidation of Butte Hill. To accomplish this, they closed the mines and banked the smelter fires in October 1903. With a majority of the state's work force idle, the company brought the state to its knees and forced the governor to call a special session of the legislature to deal with company demands.

53. Civil Case No. A1767, Office of the Clerk of Court, Silver Bow County, Butte, Montana.

54. *Montana, Bordeaux v. Bordeaux* (1911): 102.

in the process had paid large sums to his successive groups of lawyers. Ella Bordeaux was vindicated, but she had not punished her husband as she had envisioned. They had spent the best years of their lives fighting with one another.

Any reasonable jury member would be hard put to find in favor of John Bordeaux on the basis of evidence presented in the case. As the supreme court underscored in two opinions, the plaintiff's case smacked of conspiracy. The alteration of the date of the Bordeaux/Sisley liaison alone suggested that the plaintiff and his cronies had concocted the incident on West Broadway. Other salient details such as Ella's straw hat and her dark underwear indicated that Bordeaux's confederates had made foolish errors in fabricating their story. No nineteenth-century, middle-class woman would have worn a straw boater in September, much less December, nor would she have sported dark underclothes. To understand why the case ended as it did is to conclude that Ella was innocent of adultery but guilty of being a bad wife.

John Bordeaux's attorneys introduced damaging evidence of Ella's total dereliction as a wife. Such a perception made it easier for the jury to believe in the possibility of Ella's moral failure. While the jury might perceive that the adultery incident at 825 West Broadway was phony, they could easily discount particular inconsistencies and contradictions on the supposition that, given Ella's general wifely conduct, she could be capable of adultery. The muddled incidents disclosed at the trial, counterfeit as they were, simply indicated Ella's undetected sexual indiscretions. In combination with reports of Ella's domestic failure, tales of her adulteries tended to cast Ella as a wife capable of the worst marital errors. It was immaterial that the adultery at 825 West Broadway had not happened exactly as witnesses testified or even that it occurred at all, because Ella had certainly trespassed in thought, if not fact.

Social class further complicated Ella's position and helped the jury rationalize its findings. Clearly, two views of womanhood—one explicit, the other tacit—influenced courtroom proceedings. Both groups ostensibly espoused companionate marriage, a relationship characterized by mutual affection, respect, consideration, and responsibilities. They differed, however, on the definition of mutual responsibilities and appropriate response to default on these responsibilities.

For both the upper and working classes, men

were the breadwinners and women were the household captains. But the role of the upper-class wife was less household labor and more household management; she was less a partner in a joint enterprise and more an affectionate companion. With a servant carrying out much of the domestic routine, Ella, and women like her, functioned in part as symbols of their husbands' status and success. When Ella responded to Stapleton's question regarding her entitlement to her husband's largesse by avowing her worthiness, she merely affirmed a class expectation. From her perspective, her rank in Butte society demanded that she maintain her status among her peers, and the requisite jewelry was only what a woman in her position deserved. To members of a working-class jury, however, Ella's response to this and questions dealing with the time she spent with her husband indicated her gross indifference to even a minimal role as a marital companion to her husband. Indeed, Ella's estimate of her just deserts painted her as an insolent, ungrateful wife.

Class considerations also tended to undermine Ella's claim that John Bordeaux had treated her with extreme cruelty. On the one hand, upper- and middle-class expectations decreed that men did not strike or otherwise abuse their wives. No provocation or reason could justify such behavior and, as McHatton said, no material circumstances, no matter how opulent, rationalized abuse. Ella's lawyer asserted that a husband's duties exceeded breadwinning. John Bordeaux's attorneys, on the other hand, developed an idea they believed, rightly or wrongly, would appeal to the working-class jurymen. Largely by implication, Bordeaux's attorneys promoted a view that a husband need only provide material comforts. Comforts, however, demanded reciprocal wifely behavior. A wife's failure to comply with the "contract" could provoke her "correction."

John Bordeaux had upheld his part of the marital bargain by providing a substantial house, elegant household furnishings, clothes, generous amounts of pin money, a servant, and presents for his wife. From the perspective of the working-class jury, Ella had defaulted entirely on her part of the marital deal, and her conduct compared unfavorably with the jurymen's personal experience. Their wives labored long and hard in their homes, carrying out domestic tasks and raising children. Acknowledging their wives' contributions to familial well-being with presents of expensive jewelry was beyond the financial ability of most of them. Yet Ella Bordeaux, who did nothing, reaped rewards far beyond her merit and, apparently, did

55. I am grateful to the Honorable Henry Loble for sharing this particularly apt description of Butte litigation.

not appreciate them. Any man in John Bordeaux's situation, his attorneys hinted, would be frustrated—perhaps to the point of physical violence.

The Bordeaux divorce case also played out in the context of the War of the Copper Kings. Beginning with the infamous feud between Marcus Daly and William A. Clark, unethical and unprofessional shenanigans marked mining and financial litigation in Silver Bow County before the turn of the century and continued unabated until Amalgamated Copper Company succeeded in consolidating Butte Hill. As a Butte attorney recalled, "The only fair trial in Butte was where the fix was on—on both sides."⁵⁵ When John Bordeaux undertook his divorce suit, he naturally used legal flim-flam—bribery, perjury, subornation—so familiar to Butte litigants. By the time the Bordeauxs went to court, Butte had divided into two warring camps: those who allied themselves with Amalgamated Copper Company and those who supported F. Augustus Heinze, Amalgamated's nemesis. The competing groups squared off in *Bordeaux* and resumed their opposition in another venue. John Bordeaux had interests in several mines associated with Amalgamated. Stapleton & Stapleton, long associated with Clark, came into the Amalgamated fold when Clark allied himself with the giant copper company. Opposing them was the McHatton & Cotter firm, chief counsel for the Montana Ore Processing Company, Heinze's flagship firm. Both legal teams faced Judge William Clancy, Heinze's pocket judge, who might

have favored the McHatton team had he not been a jurist of such flexible loyalties.

Despite the mixed quality of Ella Bordeaux's legal victory, the supreme court's decision represented a *personal* triumph for her. By fighting John Bordeaux to a standstill she had, in a sense, won. *Bordeaux v. Bordeaux* represented a gloss on women's role in the operation of divorce law. Many women took the initiative and successfully obtained divorces from their husbands; many women, albeit fewer, found themselves in precisely Ella's position. Like other women who fought back, Ella adamantly refused to let her husband define their marriage even in its dissolution. She challenged directly her husband's estimate of her womanhood and sought to make him pay for his error. Ella was, in short, an "uppity" woman. While Montana women fared well generally when they approached the court for a divorce, an "uppity" woman who wanted more than a simple divorce could plan on obstacles, setbacks, and a long campaign. Yet, women like Ella Bordeaux were responsible for pushing the Montana Supreme Court to interpret divorce law in ways ultimately beneficial to all women. *M*

PAULA PETRIK is associate professor of history and associate dean in the College of Arts and Humanities in the University of Maine in Orono. She is the author of *No Step Backward: Women and Family on the Rocky Mountain Mining Frontier, Helena, Montana 1865-1900*, published by the Montana Historical Society Press in 1987.

Working-class jurymen, with their long hours, often dangerous work, low pay, and set notions about a woman's place in a marriage, had little understanding of and no sympathy for what they perceived as the frivolous life of Ella Bordeaux.



N. A. Forsyth, photographer, MHS Photograph Archives