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Cover Photograph: James P. de Mattos stands in front of his abstracting business in Bellingham, Washington, early May 1905. (Courtesy, Whatcom Museum of History & Art, Bellingham, Washington)

JAMES P. DE MATTOS:
FEISTY FRONTIER LAWYER
AND POLITICIAN EXTRAORDINAIRE

DAVID J. LANGUM, SR.

What good in perpetuating a grouch? If some of those who are calling for another term for Mayor de Mattos will explain what the little fellow has ever done for this city. . . . He has kept in the limelight by some of his freakishness and his characteristic lampooning of persons whose enmity he engendered twenty years ago. . . . He has generally opposed the things important to the advancement of the city. Yet his opposition has benefited nobody. It has been inspired by personal dislike for someone, not by a desire to serve the public.

—Editorial opposing de Mattos's bid for eighth term as mayor. *The American Reveille* (Bellingham, Washington), November 3, 1915

Frontier lawyers are staple subjects of historical writing. In many ways James P. de Mattos's career is characteristic of countless frontier lawyers: migration to mining camp or new booming city looking for the main chance of economic fortune, then repeated many, many times. Yet he is different in at least two respects. First, de Mattos left behind enough records so we can judge his personality and character; he is not just a stick figure moving about. Second, after brief residences in numerous mining camps he ultimately found a real niche in Bellingham, Washington, as an extraordinary local politician, elected that municipality's mayor for seven terms. Yet traces of the earlier instability remained. For

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example, while at the midpoint of his long political and legal career in Bellingham, he suffered a financial embarrassment. His response was a five-year flight, wandering all over the West until he returned and virtually picked up his career as though he had never left.

James P. de Mattos was born on February 20, 1854, in Jacksonville, Illinois, the son of Antonio J. and Isabella (Paterson) de Mattos. His father hailed from Madeira, Portugal, and served as the pastor of a group of Presbyterian Portuguese exiled from Roman Catholic Madeira who had taken refuge in Jacksonville and Springfield, Illinois. Isabella came from Saint John, New Brunswick, the daughter of a Scottish schoolmaster. The couple named their first child James Paterson, after her father.¹

James de Mattos grew up in Jacksonville, along with his younger brothers Frederic, with whom, in young adulthood, he had a distant yet cantankerous relationship that mellowed in later years, and Hewitson, who died in 1865 at age nine. From a young age, James was stubborn and self-reliant. His father described James at age thirteen as independent, "out all day being, of *course*, his own boss," and taking a class at the Illinois College preparatory school in Jacksonville.²

Isabella de Mattos died on Christmas Day, 1867, while visiting her parents in Saint John. After Antonio returned from Saint John with James and Frederic in March 1868, the boys lived with their father in Springfield. Because Victorian custom dictated a year of mourning before considering remarriage, James became deeply angered by his father's remarriage in September 1868 and fled his father's home to live with his maternal grandparents in Saint John. He completed his secondary education in Saint John and then, seeking advancement, moved to Washington, D.C., in fall 1871, entirely on his own at age seventeen.³

¹The author is preparing for publication a book-length manuscript on the life of Antonio de Mattos, the exile of the Madeiran Protestants, and their colony in Illinois. Many of the original papers on which that manuscript and this article are based were donated by the author to the Illinois State Historical Library, Springfield, Illinois, and are contained in the de Mattos Family Collection. The library recently changed its name to the Abraham Lincoln Presidential Library, an unfortunate change because it is not truly a presidential library in the traditional sense, and that designation denigrates the more than twelve million non-Lincoln items for which it serves as a repository. Most of the family letters contained in the de Mattos Family Collection were preserved by James P. de Mattos in the first instance, then passed to his nephew, and in turn to the author, who is the grandson of James P. de Mattos's nephew.

²Antonio de Mattos to Eliza Paterson, May 1, 1867 (emphasis in original), in de Mattos Family Collection.

³This information is based on a composite of many letters in the de Mattos Family Collection.

Some of James de Mattos's later instability could be ascribed to the early loss of his mother and the scarring caused by his father's remarriage. The bitterness was permanent. In early January 1877, Antonio wrote James a letter from Madeira, where the father was again residing. James had a custom of endorsing the date of receipt and the date of his reply on incoming letters. Although this letter from his father had asked specific questions about Colorado and Georgetown, and had requested a photograph, James's endorsement on the bottom of the letter was a terse "no ans req'd."⁴ When Antonio died in 1891, James disclaimed any inheritance.⁵ A year later, while mayor, he remarked in a speech, according to a newspaper account, that "if there was anything good in his composition it came from his mother, and if there was anything bad it came from his father even if he was a preacher."⁶

Before he had moved to Washington, James de Mattos had completed one other matter in New Brunswick, of no small importance to him in later life: he had switched church denominations. However, instead of converting from Presbyterian to Anglican, as his brother Frederic would, James converted from Presbyterian to Baptist.⁷ That conversion served him well in an immediate sense, because it gave him contacts in Washington, D.C.

Once in Washington, de Mattos clerked for an attorney, whose connection was through the Baptist Church, and then immediately enrolled in law school, then a one-year course.⁸ He graduated from the Law Department of Columbian College, now George Washington University, on June 12, 1872,⁹ becoming a member of the Bar at the age of eighteen. He continued with his studies and obtained a second law degree in May 1873 from National University, also in Washington, D.C.¹⁰

⁴Antonio de Mattos to James P. de Mattos, January 2, 1877, de Mattos Family Collection.

⁵J.P. de Mattos to J.B. Wilbor, March 11, 1891, accompanying F.S. de Mattos to J.B. Wilbor, March 1891, Dispatches from United States Consuls in Lisbon, Portugal, 1791–1906. General Records of the Department of State, Record Group 59, National Archives, Washington, D.C.

⁶*The Daily Reveille* (Bellingham, Washington), January 5, 1892. I am indebted to Jeff Jewell of the Whatcom Museum Archives, Whatcom Museum of History and Art, Bellingham, Washington, for this reference.

⁷M.R. Gaylord to James P. de Mattos, January 1, 1871, de Mattos Family Collection.

⁸This information pieced together through three letters: William Stickney to James P. de Mattos, January 15, 1877; James P. de Mattos to Frederic Sandeman de Mattos, March 15, 1879; and James P. de Mattos to Mrs. William Stickney, November 25, 1881, de Mattos Family Collection.

⁹Graduation program, de Mattos Family Collection.

¹⁰Graduation program, de Mattos Family Collection, and diploma in possession of the author.

National University, founded in 1869 and now merged into George Washington University, was a curious yet important institution. From its earliest years it sponsored a law school designed to cater to men earning their living in government jobs. Both the faculty and the administration served part time, and classes met in the evening.¹¹ Yet National University was not a struggling night school of dubious quality. It was perfectly respectable and provided training, especially in the law school, for many men who later achieved eminence in public life.¹² Several presidents of the United States—Grant, Hayes, Garfield, Arthur, and Cleveland—served as ex-officio chancellor of National University's during the terms of their offices. The marine band regularly participated in its graduation ceremonies, and sometimes the U.S. president himself handed out the diplomas. President Grant gave de Mattos his.¹³ Actual working chancellors of the law school, not ex-officio, included such prominent men as an associate justice of the U.S. Supreme Court and the chief justice of the Court of Appeals of the District of Columbia.¹⁴

Even while studying law and clerking with a law firm, de Mattos aspired to a more stable position with a government agency. Just after he arrived in Washington, D.C., he wrote to a man in the Superintendent's Office of the Illinois Department of Public Instruction, asking for a reference to an Illinois senator. This man, whom he apparently had met while in Springfield, sent him a letter of introduction at the end of October 1871, along with some pointed advice. First, de Mattos was enjoined to "state your case clearly and *briefly* to the Senator & do not take up any more of his time than is necessary." Second, he admonished, "You should try to *write* a little more legibly—you *can*, &, for a clerkship, it will be very important."¹⁵ This last advice de Mattos totally ignored, as judged by his relatively few remaining manuscript letters.

¹¹*Washington: City and Capital*, American Guide Series of Federal Writers' Project of Works Progress Administration (Washington, D.C., 1937), 516–17; Constance McLaughlin Green, *Washington: Village and Capital, 1800–1878* (Princeton, NJ, 1962), 378; Green, *Washington: Capital City, 1879–1950* (Princeton, NJ, 1961), 59.

¹²*Ibid.*, 415.

¹³Announcement of Graduation of Law School of National University, May 28, 1873, de Mattos Family Collection.

¹⁴"A Brief History of the National University," in "Schools That Are Now Part of GW" [George Washington], www.gwu.edu/~archives/other.

¹⁵Newton Buleman to James P. de Mattos, October 31, 1871 (emphasis in original), de Mattos Family Collection.

Actually, this patronage may not have been necessary. De Mattos took a civil service qualifying examination for the Treasury Department on October 11, 1872. He passed with a score of 79.32, not sufficiently high for immediate employment.¹⁶ However, he did obtain work in the Mail Division of the Treasury Department by the summer of 1873. When he resigned in June 1875, his division chief praised de Mattos's performance and lauded his honesty, conscientiousness, faithfulness, and integrity.¹⁷

In June 1875, de Mattos left Washington, D.C., for Georgetown, one of Colorado's mining boomtowns, where he practiced law and made investments. Apparently, he was there for awhile, then left, and returned in spring 1878. But things did not go well for him in Georgetown. He wrote Frederic that he planned to move in April 1879 to "a new mining camp about 40 miles from here [i.e., Leadville] as I have not made expenses since I came back and am worth \$1200 less than at this time last year."¹⁸

When de Mattos arrived in Leadville in April 1879, this major mining town was in the middle of its boom years of 1877–81. Leadville was notorious for violence, lynchings, and vice. The 1880 census, attacked contemporaneously by Leadville residents as a low count, showed a total population of 14,809—10,783 men and 4,026 women. Among the men, about 4,000 were employed in mining and allied fields. Yet there were also 148 lawyers.¹⁹ De Mattos formed a partnership with an exceedingly tall man, and the disparity between their heights gave them a brief moment of national publicity.

Leadville was an object of considerable national interest, and many newspapers carried sensational journalistic letters about the town. The little town of Leadville boasted no fewer than thirty male journalists and one female journalist in 1880.²⁰ One such letter published in a Washington, D.C., newspaper claimed that "Elisha Brearly was 6 feet 4 inches in height and had formed a law partnership with Jas. P. DeMattos

¹⁶Treasury Department, Board of Civil Service Examiners to James P. de Mattos, November 4, 1872, de Mattos Family Collection.

¹⁷William B. Morgan, to James P. de Mattos, June 7, 1875, de Mattos Family Collection.

¹⁸James P. de Mattos to Frederic Sandeman de Mattos, March 15, 1879, de Mattos Family Collection.

¹⁹Eugene F. Irey, "A Social History of Leadville, Colorado During the Boom Days, 1877–1881" (Ph.D. dissertation, University of Minnesota, 1951), 338, 369–72, 365.

²⁰Ibid., 365, 373.

who was 4 feet 6 in and they were know[n] by the Leadvillians as the 'big & little giants of the bar.'"²¹ De Mattos was in fact very short, and was often referred to as "little" throughout his career, but he was not *that* diminutive. In an insurance application made the year before in Georgetown, he described himself as 116 pounds in weight and 5 feet 5 inches in height. He also stated he had never been in better health, and used no alcohol or tobacco excepting "an average of one or two cigars per week."²² Whether the newspaper report of his height was precisely accurate did not matter; the association between de Mattos and Breairely brought them talk, and therefore free publicity.

It is difficult to know the effect that de Mattos's diminutive stature had on his somewhat touchy, acerbic character. The newspaper accounts from his later career as a politician in Bellingham, particularly hostile papers, often mentioned his physical size, calling him the Little Mayor, the diminutive executive, the little fellow, and Little Mike (where the Mike came from is a mystery). None of his interviews or letters address this. Nevertheless, he did have a very sensitive side to his character when he felt that his own status was at issue. For example, on March 15, 1879, he wrote his younger brother the following:

I received your interesting letter some days since inquiring why I did not answer your last letter. I desire to say that in my last letter to you, I gave you advice such as an elder brother should give a younger in the circumstances that you are placed. . . . [F]rom the very fact that you stated in a rather impertinent manner that you would follow my advice as far as you saw fit, I did not think your letter deserved my notice.²³

While in the chaotic atmosphere of Leadville, de Mattos was elected justice of the peace in 1879. It was, perhaps, an exciting time to be a judge or lawyer. According to a much later (and therefore prone to be exaggerated) account, on one occasion de Mattos had to talk down some vigilantes intent on a lynching. Another time, two lawyers appearing before him drew guns on each other, and de Mattos leaped from the bench, separated the two attorneys, and wrestled the gun from

²¹George E. Lemon to James P. de Mattos, August 4, 1879 (emphasis in original), de Mattos Family Collection.

²²"Petition for Membership" and "Medical Examiner's Blank," September 13, 1878, de Mattos Family Collection.

²³James P. de Mattos to Frederic Sandeman de Mattos, March 15, 1879, de Mattos Family Collection.

one lawyer's hand. Even while an attorney, de Mattos held a gun while litigating a case involving especially desperate characters.²⁴ Contemporary newspaper accounts do not corroborate these events. One consequence of serving as a justice of the peace was that de Mattos acquired the sobriquet of "Judge," and was, for the rest of his life, usually referred to as "Judge de Mattos."

In fall 1879 and throughout 1880, de Mattos served as a justice of the peace. Several JPs served Leadville simultaneously, each elected in specific precincts. It was a full-time job, and income came from fines, costs, and notary fees. A local newspaper opined in January 1880 that "an energetic Leadville justice of the peace can legitimately clear seven thousand dollars a year out of his office."²⁵ The newspaper carried small, calling card advertisements of lawyers and abstracters, but de Mattos did not appear in those during 1880.

The Leadville justice of the peace enjoyed a modest civil jurisdiction, handling money demands up to several hundreds of dollars, plus such miscellaneous matters as replevin and unlawful detainer. On the criminal side, the JP undertook preliminary examinations for serious crimes and tried misdemeanors that were more serious than the drunk and disorderly offenses handled by the police court. Nothing noteworthy or particularly exciting appears in the few newspaper accounts of his cases, although one case does provide an insight into his common-sense handling of matters. An article of March 11, 1880, states,

A case was heard before Justice De Mattos yesterday . . . obtaining goods to the extent of \$68.35 under false pretences. . . . The justice dismissed the case, holding it was a matter of debt alone. The justice says that it is becoming quite common to have persons arrested on charges of false pretense when they fail to pay their bills, and he will use every means at his disposal to put a stop to it.²⁶

De Mattos did serve as a delegate to the first Leadville Republican convention, in March 1880,²⁷ but generally speaking he kept a low profile during his Leadville days. As 1880

²⁴Obituary, "Judge J.P. DeMattos, First Mayor of Whatcom, and Six Times Later Elected Executive, Dies Suddenly Here Sunday," *Bellingham Herald*, January 14, 1929, p. 1.

²⁵*Leadville Daily Democrat*, January 28, 1880, p. 8.

²⁶*Leadville Daily Democrat*, "The Crime of Poverty," March 11, 1880, p. 8.

²⁷*Leadville Daily Democrat*, March 16, 1880, p. 5.

ended, his position became less desirable. First, the county commissioners began to cut back on payments of fees to the justices of the peace and also proposed cutting their number.²⁸ Second, confusion arose as to the length of his term of office, and de Mattos was under legal challenge that his term had expired.²⁹ Last and most important, the Leadville boom was fading.

De Mattos retired from his judicial position on January 3, 1881, and left town. A local newspaper observed that "the judge's administration has been universally satisfactory, but three cases out of nearly a thousand having been reversed by the superior court. He has large interests here, so that his absence will be only temporary."³⁰ However, de Mattos never again lived in Leadville. During the remainder of 1881 and 1882, he lived briefly in several Colorado communities—Georgetown, Durango, Pukin, Ashcroft—and began to dabble in a minor way in Republican Party politics.³¹ At the end of 1882, he decided to move further westward. On December 13, 1882, he arrived in Tacoma, Washington, but on January 12, 1883, he settled in his permanent home—Bellingham, Washington.³²

Technically, it was not Bellingham yet, because in 1883 Bellingham was just the name of the bay—a small part of Puget Sound—located in the northwest corner of Washington, just south of the Canadian border. Three small communities that later became the city of Bellingham lay scattered along Bellingham Bay. Whatcom sat to the north, more or less corresponding to the location of what is now downtown Bellingham. Whatcom itself went through several incorporations and reincorporations, and was sometimes separately known as New Whatcom or Old Whatcom. Fairhaven, a separate community that still has a distinct business district today, lay several miles south of Whatcom, and a third community, Sehome, occupied the space between Whatcom and Fairhaven. There was also a fourth tiny, never-incorporated hamlet that bore the name Bellingham, but this community was a failure and merged into Fairhaven in 1890. The three surviving towns merged in 1903 to become the city of Bellingham, named after the bay.

²⁸*Leadville Daily Herald*, "They Consult," December 2, 1880, p. 1; "Want Them Bounced," December 9, 1880, p. 4.

²⁹*Leadville, Daily Herald*, "Wants Him Bounced," December 2, 1880, p. 4.

³⁰*Leadville Daily Herald*, January 4, 1881, p. 4.

³¹*Rocky Mountain News*, February 4, 1881, p. 3; May 18, 1882, p. 2; September 16, 1882, p. 1.

³²Edmond S. Meany, "Living Pioneers of Washington," *Seattle Post-Intelligencer*, February 22, 1916.

De Mattos entered vigorously into the practice of law in Whatcom, and announced his availability not only as a lawyer, but also as a real estate broker, notary public, and title examiner, who made "contests at Land Office a specialty."³³ The news columns of this small frontier community reveal that de Mattos actually did other legal work as well, the staples of small town practice: divorces and collections. The commitment to title contests led to his establishment of an abstract company, and abstracting became one of his two principal professions for many years.

De Mattos's other profession in Whatcom was politics, and he began early. After residing in this small community for only months, he was invited to give, and in fact did deliver, a rousing Fourth of July speech.³⁴ In his first year in Whatcom he also helped found a local Masonic lodge and became active in it, and drafted the constitution for a local hook and ladder company.³⁵ In the fall of the same year, he ran for mayor.

Tiny Whatcom had just incorporated, and the December 1883 local election was the city's first opportunity to choose a mayor and council. A new factor had entered Washington politics. The territorial legislature had, only weeks earlier, granted women the right to vote, and de Mattos, as a bachelor candidate, played skillfully to this new constituency. William H. Harris, a fellow attorney and later probate judge, recalled in his memoirs,

There are born poets, artists, etc., but de Mattos was a born mayor. Nothing, but death, could prevent the fulfillment of his aspirations. . . . The little Judge was the candidate of the ladies on a dry platform. . . . The Judge worked at his job as candidate with vigor early and late.³⁶

Of the 171 total votes, females cast 43. According to the local newspaper, no particular issue dominated the election other than "a question of personal favor," and de Mattos "appeared to be the choice of that new element in politics—the ladies."³⁷ Certainly de Mattos concurred in that judgment. Virtually the entire community attended the counting of the ballots. After the count was complete and de Mattos was declared the first mayor of Whatcom, Harris recalled,

³³Whatcom *Reveille*, June 15, 1883.

³⁴Ibid., July 13, 1883.

³⁵Ibid., November 30, 1883 and July 27, 1883.

³⁶William H. Harris, *The Harris Journal* [a memoir written by Harris in the 1920s], 2nd ed. (Bellingham, Washington, 1981), 18.

³⁷Whatcom *Reveille*, December 14, 1883.

Congratulations followed with much talk and laughter, and de Mattos was much excited. He gave a double swing to his arms, his body a left twist, and a compound rear kick upwards with his left leg—habits of his when excited—and in earnest tones exclaimed: "God bless the ladies!"³⁸

Reputedly, de Mattos was the first Portuguese-American mayor in the United States.³⁹ And assuredly, he played shamelessly to the new female constituency. In his inaugural address he praised

that new (and not uncertain) element in politics, the ladies. God bless them! But for them your presiding officer would not be with you to-night. Not an uncertain element, I say, because they will always be found sustaining the cause that has right, truth and justice as its foundation. I hope and trust that I shall never prove false or recreant to the confidence imposed in me, especially after such a fierce and bitter personal campaign as we have just passed through: for when the ladies are satisfied that no shaft of calumny or any other trick or artifice finds a secure lodgment on its object, then the balance of the community should rest content.⁴⁰

Politics was a rough and tumble business in those days. Most information about de Mattos's one-year administration comes from the *Whatcom Reveille*, a newspaper owned by a political rival, so it is difficult to judge his success. De Mattos may have made promises of reform—the dry platform Harris mentioned—that he just could not fulfill. For example, he could not and did not close the saloons. In the next mayoral election, in December 1884, de Mattos lost by seven votes.⁴¹

When he left office, de Mattos issued a bombastic statement criticizing his opponent and attacking the "'goody-goody' element of the city . . . [who] claim to be dissatisfied with the retiring Mayor." Could that have been the ladies? In return, the *Reveille* charged that de Mattos could not conceal "the gall and wormwood of his sordid nature. Too small of body to contain a large soul, too narrow of mind to be courteous to an

³⁸Harris, *The Harris Journal*, 18.

³⁹Joao Ferreira, "Portuguese progress in politics," *New Bedford, Massachusetts Standard-Times*, September 10, 2000 ("South Coast Today").

⁴⁰*Whatcom Reveille*, December 14, 1883.

⁴¹Harris, *The Harris Journal*, p. 67n29.

adversary."⁴² William Harris, a neutral in these disputes, recalled years later that de Mattos "gave faithful attention to his official duties, and his administration was satisfactory."⁴³

After losing the mayoral election, de Mattos served as city attorney of Whatcom until October 1885, when it was discovered that his residence was outside the city limits. In the years following his defeat, de Mattos continued to run for office, but did not succeed until late 1890, when he was elected mayor of New Whatcom, a city created when the courts declared the incorporation of the Sehome community invalid. The corporate histories of the three towns that merged to become the city of Bellingham form a study in confusion.

Unfortunately for de Mattos, the new little city of New Whatcom existed for only months, until mid-February 1891, when it merged into the older Whatcom to form a consolidated New Whatcom. De Mattos served as mayor this time around for only a month and two weeks before being defeated as mayor of the new consolidated city of New Whatcom. Practicing law and working diligently at his lucrative abstracting business, he kept running for office and biding his time. Eventually he succeeded, winning election as mayor of New Whatcom for the one-year terms of 1896 and 1898,⁴⁴ after running, as he always did, as a progressive Republican.

Bellingham Bay boomed with economic and population growth and began to attract outside attention, first in the Seattle newspapers but eventually nationally. In 1890, the New York *Evening Sun* carried a major article on the Bellingham Bay cities that included a considerable discussion of de Mattos. It described him as "enjoying a lucrative law practice," and stated he had become "very wealthy" from investments, and that he "only lacks one thing, a wife."⁴⁵

Ribbing about his marital status became a constant theme in de Mattos's life. After he won his first mayoral race with the help of the female vote, the rival newspaper noted that "now that the little Mayor has enjoyed the vote of the ladies, he should leave celibacy and show as much confidence in them as they have shown in him."⁴⁶ In addition to inquiries about

⁴²Both references in Whatcom *Reveille*, December 26, 1884.

⁴³Harris, *The Harris Journal*, p. 18.

⁴⁴Information as to city attorney, 1896, and 1898 mayoral victories is from Henry C. Beach, "Corporate History of the City of Whatcom," (1903), found on whatcomhistory.net.

⁴⁵"Four Thriving Cities," New York *Evening Sun*, April 19, 1890, p. 7.

⁴⁶Whatcom *Reveille*, December 14, 1883.

western economic opportunities and solicitations for jobs, his incoming correspondence from friends and acquaintances in other states often included questions as to whether he was still a bachelor, or gentle admonitions that he ought to marry.⁴⁷

De Mattos certainly did not dislike women. His personal correspondence included several women, and he sent his photograph to at least one.⁴⁸ From time to time in his correspondence he indicated he might marry, never specifying a candidate and often saying he had not yet accumulated enough capital. However, he never did marry.

People remembered James P. de Mattos, without doubt a good thing for a politician. When articles about him appeared in newspapers in Seattle or elsewhere, he occasionally received letters from old classmates. For example, on July 7, 1890, Lee Pitner wrote, "Many years ago I went to school in Jacksonville, Ill, with a very bright little fellow whom we called—if I remember right—Jimmy De Mattos. I have often wondered what had become of him. To-day I saw your name in the paper. . . . Are you Jimmy De Mattos of Jacksonville?"⁴⁹

Always a good correspondent, de Mattos answered letters promptly, conscientiously marking on the reverse of each incoming letter the date of his reply. This careful cultivation of correspondence only makes more forceful the rejection of his father, by his callous notion of "no ans reqd." to the 1877 letter from Antonio de Mattos.

In addition to electing de Mattos mayor of New Whatcom in 1896 and 1898, the voters chose him—running as a "Silver Republican"—to represent Whatcom in the state legislature for the spring 1897 term.⁵⁰ Since the time of his initial election as mayor in 1883 with the help of the female voters, the legislation permitting women to vote had been struck down as unconstitutional under the Washington constitution. Ever faithful to that constituency, de Mattos, in his first act as state legislator, introduced a bill requiring a vote on a constitutional amendment granting suffrage to women. The amendment passed the legislature but was rejected by the statewide male electorate.⁵¹

⁴⁷This is based on several dozen incoming letters to James P. de Mattos, de Mattos Family Collection.

⁴⁸E. Russel to James P. de Mattos, March 28 [1890], de Mattos Family Collection.

⁴⁹Lee J. Pitner to James P. de Mattos, July 7, 1890, de Mattos Family Collection.

⁵⁰Secretary of State, State of Washington, leg.wa.gov/legis/memleg.

⁵¹"James Paterson deMattos, Pioneer Lawyer and Magistrate," *Bellingham Herald's Chronological and Biographical History of Northwestern Washington* (1910), 32; "Judge J.P. de Mattos ... Dies Suddenly Here Sunday," *Bellingham Herald*, January 14, 1929.



The construction of the de Mattos Block, above, in downtown Bellingham caused de Mattos a major financial setback. (Original photograph in collection of the author)

In the late 1890s, de Mattos was holding his own politically, but in spring 1899 he left Bellingham in disgust, partly because of yet another political loss, and traveled about the West for five years before returning. A more important reason for his departure may have been economic reversals that caused him personal humiliation. By the late 1880s and early 1890s, de Mattos had accumulated considerable wealth. He invested much of it in the 1890 construction of a three-story brick and stone office building, the "Sunset Block," sometimes called the "de Mattos Building" or "de Mattos Block." At the time, it was the largest brick building in Bellingham, with a contract price of \$23,650—around \$400,000 in 2005. After beginning construction, his contractors walked away from the project, and de Mattos was left to complete it at considerable expense.

Then, in the Panic of 1893 and the several years of depression that followed, de Mattos came under considerable financial stress. Mortgages were called, liens imposed, and he lost the "Sunset Block." De Mattos filed a procedurally tangled lawsuit against the contractors' sureties. One surety actually sued de Mattos, lost at trial, and prevailed on appeal with a

split decision of the supreme court of Washington, on the theory that when de Mattos called on him to make payment to the unpaid workmen, he had not understood he was being called upon as surety but thought he was merely being asked to make an advance that de Mattos promised to repay.⁵²

Next, de Mattos sued all of the sureties on their indemnity contract. He lost at trial on the basis that there had been changes in the construction plans since the sureties had entered into the agreement, and that these changes nullified the surety contract. Then de Mattos appealed and won a unanimous decision to reverse for a new trial. However, the Washington State Supreme Court pointed out that under the contract, the sureties became liable only for expenses for labor and material incurred by the owner that were audited and certified by the project's architect. That opinion was handed down on October 9, 1896.⁵³ In fact, the architect's certificate was dated May 6, 1897, years after the default, although it recites that the architect prepared an earlier certificate that he was not sure had been delivered to de Mattos. It recited a total construction cost of \$32,062.57.⁵⁴

De Mattos prevailed on the retrial of the major suit against all the sureties. But a unanimous Washington State Supreme Court reversed. It rejected de Mattos's argument that the architect's certification could be oral, and held that a written certificate furnished several years after the completion of the work and after the commencement of the lawsuit was insufficient.

With this decision of December 5, 1898, de Mattos finally lost his case against the sureties and, in fact, lost everything arising out of his large venture.⁵⁵ It is curious why de Mattos omitted the crucial step of supplying the architect's certificate at a much earlier date. Perhaps because the sureties had taken the initial position that his construction alterations had voided the suretyship contract—a technical suretyship defense—de Mattos thought that the sureties had waived the necessity for the architectural certificate. Indeed, de Mattos raised that issue in his last appeal to the Washington State Supreme Court. However, he was too good a lawyer, one

⁵²*Dibble v. De Mattos*, 36 Pacific Reporter 485 (1894).

⁵³*De Mattos v. Jordan*, 46 Pacific Reporter 402 (1896).

⁵⁴Affidavit of W.A. Ritchie, architect, May 6, 1897, de Mattos Family Collection.

⁵⁵*De Mattos v. Jordan*, 55 Pacific Reporter 118 (1898). Considerable numbers of papers, pleadings, depositions, and similar, related to this lawsuit and other lawsuits pertaining to this building, foreclosing mechanics' and materialmen's liens, are located in the de Mattos Family Collection.

would think, not to understand that the sureties could raise inconsistent and alternative defenses, that is, first, the surety contract had been voided by the owner's alterations, and second, if it had not been voided, then the owner materially breached it by failing to provide the certificate. Perhaps in the chaos of the contractor's failure and the need to finish his building on his own, de Mattos did not think as clearly about these legal niceties as he should have.

It was probably the humiliation of this turnabout of personal fortune more than any political loss—which had happened many times before—that caused de Mattos to be dissatisfied with Bellingham. He left in spring 1899 and wandered all over the West, settling in one place for a few months, sometimes practicing law, then moving on. In Republic, Washington, a mining camp north of Spokane, he ran for and lost a race for mayor in May 1900.⁵⁶

Next came Teller City, a mining camp in Colorado.⁵⁷ In 1902, de Mattos settled in Tishomingo, Indian Territory. That prompted a friend who had kept up with de Mattos's peregrinations to write lightheartedly that Tishomingo seemed to him "to be so wise a selection among the various places visited. I'm sure Tish. is OK—its name is all there is agin it. . . . Yours is also one of those countries where a well known law of compensation obtains i.e. the rich have ice in the summer and the poor have it in *winter*."⁵⁸ In March 1903 de Mattos practiced law in Denver.⁵⁹ Then he decamped for Bisbee and Douglas in far southern Arizona.⁶⁰

In scorching Bisbee he began to think that he ought to return to mild weather and comfortable Bellingham. The advice of a longtime friend from his Jacksonville childhood strengthened his resolve. Fred A. McDonald lived in Seattle and had corresponded with de Mattos throughout his travels. After de Mattos had confided to McDonald his thoughts of returning, McDonald sent him a candidly encouraging letter on January 8, 1904 that only a real friend could have written:

I was pleased to receive your letter of the 19th of Dec.
and glad to know you are well—if not fat—and that there

⁵⁶Rootsweb.com/~waferry/repub2.htm.

⁵⁷F.A. McDonald to James P. de Mattos, January 8, 1904, de Mattos Family Collection.

⁵⁸Fred A. McDonald to J.P. de Mattos, October 29, 1902 (emphasis in original), de Mattos Family Collection.

⁵⁹Fairhaven Times, March 28, 1903.

⁶⁰F.A. McDonald to J.P. de Mattos, January 8, 1904, de Mattos Family Collection.

is a dawn of returning reason. Let us call the roll—
Republic—Teller City—Tishomingo—Denver—Bisbee—if
that does not call to mind mountain and plain—cold &
heat—north & south—populous city and mining camp. . . .
So it took five years of time and wanderings in many
climes to satisfy you that pride never filled an empty
stomach. Well Jim the fatted calf was killed when the
original prodigal ret'd but if you come back there will be
no free veal for you. The band will not torture the balmy
air of Bellingham Bay. . . . No booming cannon
bombarding the air—no braying of the bugle when
Patterson [sic] patters back to the Bay—but for all that
there is where you belong old man. You know the
climate and like it—you know large numbers of people—
you know the condition of titles—you know you can
make a comfortable living and in all likelihood get on yr.
feet again. Pride alone can prompt you to stay away.⁶¹

McDonald probably did not know the curious situation that
had actually made pride a reason for de Mattos to *return* to
Bellingham. In early 1903 de Mattos discovered that, fourteen
years earlier, before he had begun his travels, and supposedly
unbeknownst to him, he had been ejected from the Baptist
Church of Whatcom (later First Baptist Church of Bellingham),
which he had helped to found.

At one point during his travels, de Mattos tried to affiliate
with a Baptist church but learned that he could not obtain the
needful letter of dismissal from his old church in Whatcom
because he had been excluded from membership on June 1,
1889, fourteen years earlier. Furthermore, as the pastor put it,
“when at last he [de Mattos] left the City it was under a
cloud.”⁶² De Mattos immediately sent demands to the pastor
for reinstatement or a church trial, so that he could join
another Baptist church, and also wrote influential friends. He
claimed he had never been given any notice of charges pressed
against him or of a pending expulsion. One friend expressed
great sympathy, but pointed out how odd it seemed that de
Mattos could be expelled from a church for fourteen years, live
in the same town for ten of those years, and not know of it. He
urged de Mattos to join a different denomination where no
letter of dismissal from a Baptist church would be expected.⁶³

⁶¹Id.

⁶²James P. de Mattos to Roger Shreener, May 29, 1903, de Mattos Family
Collection.

⁶³Granville Malcolm to James P. de Mattos, May 25, 1903 and June 29, 1903,
de Mattos Family Collection.

But de Mattos showed his true temperament by fighting instead of quitting. This was an assault on his character and personal stature, and de Mattos displayed his usual sensitivity to this form of slight. He needed to restore his pride by trying to obtain reinstatement in the Bellingham church and then a letter of dismissal. Pride motivated him to return to Bellingham, as much as earlier pride had driven him out. An examination of this effort in some detail illustrates his character.

De Mattos returned to Bellingham and persistently demanded reinstatement or trial from each new pastor who came and left, and made much public noise, often in a bombastic and somewhat vituperative style. After one-and-a-half years of effort, he finally discovered who had preferred charges, and pressured him to retract them.

The Bellingham Baptist Church appointed an advisory committee to investigate, and in June 1905 the church's governing body issued a curious resolution based on the committee's investigation. The resolution said that the original accuser, W.R. Eaton, had withdrawn his charges, which had never actually been stated formally, although he insisted they were still true. However, de Mattos had admitted a failure to "walk in fellowship" [i.e., he did not come to church] for three years before and ten years after his exclusion. Since he claimed he did not know of the exclusion, he could not use that as an excuse for his absence. The failure to walk in fellowship constituted a separate basis for denying the reinstatement, as was the "vindictive and un-Christian spirit" of his attack on them.⁶⁴

De Mattos then circulated a three-page open letter to the members of the First Baptist Church, under the title "Wanted! A 'Square Deal,'" that detailed this history and sharply criticized the pastor, threatening additional revelations and, if necessary, "another epistle which will disclose many things ancient and modern, and so deftly will some hypocrites be X-rayed that you will recognize them without having to ask your neighbor."⁶⁵

A major newspaper article followed, with the arresting headline, "Heavy Shot for First Baptist Church: Judge De Mattos, Deposed, Says He Will Use Grape and Canister." In this 1906 article, de Mattos charged that the true reason for his exclusion was pure politics; he believed the reason given

⁶⁴Resolution, June 8, 1905, Church Minutes of First Baptist Church of Bellingham, Washington [formerly Whatcom], copy in de Mattos Family Collection. I am grateful to the First Baptist Church of Bellingham and its minister for providing me with a copy of this resolution.

⁶⁵Open letter to members of the First Baptist Church, November 1905, copy in de Mattos Family Collection.

by his accuser in the exclusion proceeding—but unstated in the church records—was that de Mattos had lived with a kept woman in the late 1880s. De Mattos denounced that as something even his personal and political enemies would know to be a lie. Aside from de Mattos's recitation of the charge, there is not a scintilla of evidence to support the allegation. As de Mattos is quoted in the article, "Every old-timer knows that my ideas and practices are the opposite."⁶⁶

Despite more threats by de Mattos of additional sensational disclosures, matters remained at a standstill for four additional years, until 1910. However, another factor by then had entered the picture. Notwithstanding his five-year absence, and despite the opposition of the local Bellingham newspapers, de Mattos worked his old political magic and regained the mayor's seat of the now-consolidated city of Bellingham for a two-year term, 1908 to 1909, and was reelected for 1910–1911; after being out of office for 1912–1913, he was again reelected for 1914–1915. Between early January 1908 and January 1916, de Mattos served three terms and was Bellingham's mayor for six of those eight years. Counting the four earlier terms as mayor of Whatcom and New Whatcom, the people elected de Mattos mayor of Bellingham for seven separate terms.⁶⁷

In March 1910, Billy Sunday, a nationally popular evangelist, planned to hold a crusade in Bellingham. When A.P. Gill, an advance man for Sunday, arrived in town to make arrangements for a suitable hall and other facilities, he held a meeting with a delegation of local ministers and Mayor de Mattos. According to a newspaper account, de Mattos "severely grilled the ministers of the city for failing to aid him in his fight to receive justice from the Baptists." Gill pressured the local ministers of other churches, and they in turn pressured the Baptists. Under the fig-leaf excuse of a new application, the first de Mattos had ever made to the congregation as a whole rather than to the Baptist deacons, the congregation promptly voted to restore the mayor's membership in the First Baptist Church. This was front-page news in the largest local newspaper.⁶⁸

⁶⁶"Heavy Shot for First Baptist Church," *The Puget Sound American*, July 30, 1906.

⁶⁷"J.P. deMattos, First Mayor of City, Now Serving Fifth Term as Executive" [actually a long political history of Bellingham], *Bellingham Herald*, December 19, 1908; "James Paterson deMattos, Pioneer Lawyer and Magistrate," *Bellingham Herald's Chronological and Biographical History*; "Judge J.P. DeMattos . . . Dies Suddenly Here Sunday," *Bellingham Herald*, January 14, 1929.

⁶⁸"Mayor Is Reinstated in Baptist Church; Controversy of Years Finally Ended," *Bellingham Herald*, March 18, 1910.



James P. de Mattos served as mayor of Whatcom, New Whatcom, and Bellingham for seven separate terms. (Original photograph, c. 1908, in collection of the author)

Immediately thereafter, several prominent members of the First Baptist Church invited de Mattos to services, but he refused to reenter that church, instead demanding a letter of dismissal so he could join the Second Baptist Church in a different part of town. He received the good-standing dismissal letter promptly,⁶⁹ and apparently joined a different church altogether, called the First Christian Church.⁷⁰ Ultimately, however, he had a change of heart and there was a full spiritual reconciliation. His 1929 obituary noted that de Mattos was a member of the First Baptist Church, not the Second or any other church, and that the pastor of the First Baptist Church would officiate at his funeral.⁷¹

In his service as Bellingham's mayor, de Mattos concerned himself with local issues such as electrification, pothole repairs, street paving and construction, and water service—all matters that directly touched people's lives. His papers illustrate that he was a hard worker; his stirring speeches display plenty of the flowery bombast that was then popular. He made the right political statements. For example, in a speech welcoming a new Presbyterian minister, he mentioned that he was the son of a Presbyterian minister and the grandson of an elder in the Established and later Free Church of Scotland.⁷² In a city proclamation honoring the Norwegian day of national celebration (*Syttende Mai*), de Mattos showed a very accurate understanding of Norwegian history and played to the large number of Norwegian-Americans living along Puget Sound, many in his own city: "The God of nations might possibly have caused a better class of emigration to this country than the Norwegian, but he never has." The same document contains an example of his flowery bombast:

"SONS OF THE NORTHLAND, men of physical power and strong physiognomy typical of the mountains of the country which gave you birth; DAUGHTERS OF THE LAND OF THE MIDNIGHT SUN, whose winsome faces and fair physique reflect the grandeur and beauty of the majestic cascades and snow-clad peaks of the land where you first saw light, I welcome you."⁷³

⁶⁹"Mayor Secures Letter from Baptist Church," *Bellingham Herald*, March 26, 1910.

⁷⁰De Mattos appears in a 1914 group photograph, "Loyal Men, First Christian Church, Bellingham, Wash.," held by Whatcom Museum of History and Art, Bellingham, Washington.

⁷¹"Judge J.P. DeMattos . . . Dies Suddenly Here Sunday."

⁷²"Unification of Goodwill Spirit Is City's Need," unidentified newspaper clipping dated May 21, 1915, de Mattos Family Collection.

⁷³Draft of proclamation, May 17, 1914, de Mattos Family Collection.

Of the very few of de Mattos's private communications have survived, some are slightly sharp and sardonic. He certainly had his political detractors as well as supporters. The different newspapers editorialized both for and against him at election time, and he diligently saved some negative as well as affirmative evaluations.

In politics de Mattos was a progressive, Roosevelt-style Republican. Yet he was a very pragmatic sort of progressive. The issue of prostitution is a good example. In the early twentieth century, the various progressive vice commissions, aided by white slavery hysteria, forced the closing of the red light districts that had openly existed in American cities throughout the nineteenth century. The fines collected from regularly scheduled raids were an excellent form of municipal taxes. The mayors and councils of countless American cities caved in to reformist pressures during the time in the early twentieth century when de Mattos was serving as mayor of Bellingham.

In 1909 Bellingham's Municipal Association, a local do-gooder organization, pressured de Mattos to order the police to close the brothels in Bellingham's red light district. In his budget address for 1910, he agreed to close the brothels so long as Bellingham residents clearly understood that in a \$150,000 annual municipal budget, the prostitution industry paid \$17,000 in fines or taxes. De Mattos pointed out that closing down the red light district would force the city to forgo two fire trucks.⁷⁴

But the do-gooders, more concerned with hookers than hook and ladders, continued to pressure de Mattos. So on April 1, 1910, he ordered the police to close the brothels. City statistics show that the arrests of prostitutes and others who were designated collectively as the "Sporting Element" averaged around 800 per annum from 1905 through 1909, then plummeted to 131 in 1910, and none from 1911 through September 1913.⁷⁵

In mid-May 1910, the mayor of another Washington city wrote de Mattos to inquire how it had gone, specifically whether the prostitutes had left or simply scattered throughout the city. De Mattos's reply illustrates his realistic attitude. He wrote that the Bellingham

⁷⁴Bonnie Hart Southcott, "Prostitution had a place in the city—and its budget," *Bellingham Herald*, October 20, 2003. See, generally, Curtis F. Smith, *The Brothels of Bellingham: A Short History of Prostitution in Bellingham, WA* (Bellingham, WA, 2004).

⁷⁵"Comparative Statement of Arrests Made for Various Causes from January 1, 1905 to September 30, 1914," a typewritten report apparently compiled by the police for the mayor's office, de Mattos Family Collection.



Mayor de Mattos, right, and President Taft sat together during the president's visit to Bellingham in 1912. (Original photograph in collection of the author)

restricted district was abandoned on April 1st, owing to the demand of a Municipal Association. A member of the council at the last meeting asserted that the women formerly there are scattered throughout the city in the hotels and lodging houses. The Police department report that they have been [un]able to catch any of them openly plying their 'business', and have been unable to secure any legal evidence that will justify arrests.

As a result of this lack of arrests, the city might have a serious revenue shortfall. He added that "personally, I would like to abolish them [the brothels], but regard it as an absolute impossibility to effectuate what hundreds of other Mayors from the year one have failed in."⁷⁶ The calm, realistic way he viewed and dealt with this political problem contrasts sharply with his fierce reactions to anything touching on his own personal character or stature.

Another example of de Mattos's pragmatic method of dealing with a political issue is his 1915 veto of an ordinance that would have provided a minimum fine of \$25—about \$300 in 2005—for littering a street or sidewalk. The previous

⁷⁶James P. de Mattos to L.I. Wakefield, May 21, 1910, de Mattos Family Collection.

penalty had been a minimum of \$5, but the police judge was granted judicial discretion to increase the fine to \$50. In his veto message, de Mattos reasoned that "a nominal fine in a case of this character is a good lesson that generally lasts for all time. Nearly every offense of this kind is committed thoughtlessly, or through ignorance, and very seldom intentionally." If the police judges were required to impose a harder levy, defendants would likely appeal to the "upper court," and a jury there would "almost invariably acquit and the city will be out the costs. In this day and age a law that does not temper justice with mercy becomes a dead letter, because it does not meet a reciprocal response [i.e., by the juries] in the conscience of the average law-abiding citizen."⁷⁷

Defeated in the December 1915 election, de Mattos retired from politics. "Political Acrobat Is Down and Outer," trumpeted an opposition newspaper. "Farwell [sic] little fellow: rest in peace."⁷⁸ De Mattos had many friends and acquaintances on Puget Sound, and had some contact with family. A distant cousin lived in nearby Everett. His closest relative, nephew Dunbar W. de Mattos, Frederic's son, came out with his wife Phyllis for occasional visits, including one specifically in 1927. De Mattos was also in correspondence with Virginia A. de Mattos, Dunbar's young daughter.⁷⁹ One letter to her, written only two months before his death, illustrates his slide into older, grouchy bachelorhood. The ten-year-old Virginia had apparently written him about a school athletic event in which she had done well. Her great uncle responded, "I notice that you are very much interested in athletics, which I think is all very good in its place. . . . I think that you should pay full attention to books so that when you grow up you may be able to hold your own in any conversation that may take place among those with whom you associate."

This same letter reveals that de Mattos, then 74, was still active. He looked forward to a summer vacation in California in the coming year, and in just a few days he planned an automobile trip to Portland. He wrote on election day 1928, and mused a bit about politics:

I must go to the polls and vote for Hoover, in whose election I am much interested although I have not attended any political or other meetings for nearly 5

⁷⁷Veto message of May 8, 1915, in unidentified newspaper clipping dated May 14, 1915, de Mattos Family Collection.

⁷⁸Unidentified newspaper clipping, November 12, 1915, de Mattos Family Collection.

⁷⁹And later, the author's mother.

years past. Practically drawn into my shell as it were, which I never expected to do, but I suppose that I am a creature of change.⁸⁰

Although he had lost interest in politics as he aged, de Mattos continued to practice law and engage in title work. At the time of his death he was owed fees from current practice and had accumulated a net worth of \$80,000, about \$1 million in today's values.⁸¹ Following a business trip at the beginning of January 1929, he became afflicted with a choking condition in his throat. Friends advised him to take a few days of rest. However, he replied that "he had so much work to do he could not spare the time. As usual, as for years past, he had been going to his abstract office at 6 a.m. or earlier."

Within days, on January 13, 1929, James P. de Mattos died of a stroke.⁸² De Mattos had never forgotten his old Illinois hometown, and had visited Jacksonville several times over the years, even while living in Bellingham. Pursuant to a request he had made to his nephew, his remains were laid to rest in the mausoleum of Diamond Grove Cemetery in Jacksonville, Illinois.⁸³

Judge de Mattos was one of the most active men in public affairs that Bellingham Bay has ever known. No other man was so often mayor of its cities.

—Obituary, *Bellingham Herald*, January 14, 1929

⁸⁰James P. de Mattos to Virginia A. de Mattos, November 6, 1928, de Mattos Family Collection.

⁸¹Estate of J.P. de Mattos, Superior Court of the State of Washington for Whatcom County, No. 6977 (1929).

⁸²"Judge J.P. De Mattos . . . Dies Suddenly Here Sunday."

⁸³Estate of J.P. de Mattos, Superior Court of the State of Washington for Whatcom County, No. 6977 (1929). Receipt for mausoleum space, de Mattos Family Collection.



Delbert E. Wong

JUDGE DELBERT WONG: AN ORAL HISTORY

In 1959, Delbert Wong was appointed to the Los Angeles Municipal Court, becoming the first Chinese-American judge in the nation. Born in Bakersfield, California, in 1920, Wong graduated from Kern County Union High School and enrolled in Bakersfield Junior College. Two years later, he transferred to the University of California at Berkeley. He joined the Army Air Corps during World War II, earning the Distinguished Flying Cross for his thirty missions over Europe as a B-17 navigator. After graduating from Stanford Law School, he worked in the Office of the Legislative Counsel in Sacramento and as a deputy attorney general before his appointment to the bench. In 1961, Judge Wong was elevated to the Los Angeles County Superior Court. When he retired in 1982, he was the senior judge on that court in length of service. He continues to work as a mediator for complex litigation.

The following is an excerpt of an oral history recorded by his son, Marshall Wong, begun in 1998. This interview is significant, not only because Judge Wong has been a pioneer, but because it gives insight into both the judicial process and the turbulent decades of the 1960s and 1970s. The transcript has been edited for publication. The original is part of the Ninth Judicial Circuit Historical Society's oral history collection.

Marshall Wong: When you look back on your years in the Superior Court, are there certain cases that stand out that you are most proud of?

Delbert Wong: I would say that . . . the case of *People v. Cohen* is an interesting case for several reasons: First, as a judge of the lower court, we sometimes are not aware of which case may become a significant case in the future. For example, the case of *People v. Cohen* commenced in the Los Angeles Municipal Court. It was a conviction of a defendant for a misdemeanor, disturbing the peace. He was wearing a jacket while he walked through the corridors of the courthouse, bearing the words "fuck the draft." This was during the Vietnam conflict, and feelings were high in the community concerning the draft and our participation in the war in Vietnam. There were many school demonstrations at the time, resulting in arrests of students . . . for unlawful assembly and so forth. This is one of a series of cases that came up through the courts. At that time I

was sitting in the Appellate Department of the Superior Court. We had jurisdiction of approximately thirty-four municipal courts throughout the county of Los Angeles. [In] this particular case, the defendant wore a jacket bearing the words "fuck the draft," walked into the courthouse, took it off before going into the courtroom to observe proceedings against some of his fellow students. As he left the courtroom, he put the jacket back on and walked through the corridor, and was arrested by a police officer and charged with disturbing the peace. He was ultimately convicted and sentenced to thirty days in jail. He appealed the conviction and the case came before us. This was in about 1967 or '68—could have been '69. I was sitting with Judge James White, who was the presiding judge, and Judge Beach Vasey. The three of us heard the oral argument, and after the oral argument, we discussed the case. I was of the opinion that this was not a proper disturbing the peace case and that we had First Amendment and free speech considerations in the matter. My colleagues agreed with me, and we reversed the conviction on the basis that it violated free speech.

MW: Was there automatic agreement among the three of you?

DW: No, we had many discussions on this. We had many briefs. Ultimately, I persuaded my two colleagues that the judgment should be reversed. So after we reversed the conviction, the people filed an appeal to the court of appeal. The court of appeal, upon hearing the case, affirmed the conviction, contrary to our ruling, and the vote there was three to nothing. The case then went to the California Supreme Court, a seven-judge court, and they voted four to three not to hear the case. Then the case went on to the United States Supreme Court. Interesting thing is, in the United States Supreme Court, the vote was five to four to reverse.

During the process of this case, twenty-two appellate court judges heard the case, and they stood exactly eleven to eleven. But because five of the twenty-two were sitting on the United States Supreme Court, the judgment was ultimately reversed. Mr. Justice John Harlan wrote the majority opinion, a very persuasive opinion—at that time, when it got before the United States Supreme Court, it was called *Cohen v. California*. That case is reported in 403 U.S. 15. Justice Harlan, in reversing the conviction after reviewing the case, stated, "One man's vulgarity is another man's lyric." As you know, Justice Harlan wrote many, many fine United States Supreme Court decisions. And yet, when he died, the newspapers cited the *Cohen* case and stated that in this case, Mr. Justice John Harlan, in a very fine opinion concerning freedom of speech, stated, "One man's vulgarity is another man's lyric."

The court pointed out that the defendant did not engage in or threaten to engage in, nor did anyone as a result of his conduct, commit or threaten to commit a violent act. The defendant did not make any loud or unusual noises, nor is there any evidence that he uttered any sound prior to his arrest. Pointed out that clearly the conviction rests upon the offensiveness of the words Cohen used to convey his message to the public. The only conduct the state sought to punish is a fact of communication. We have here then a conviction resting solely upon speech.

MW: May I ask, was the charge of obscenity ever raised?

DW: No. No, of course not. He was convicted of disturbing the peace.

MW: But in the discussions, the arguments put forward in the court, was the actual fact that it was a profane word raised as a way of trying to sway the justices?

DW: Obscenity was not the basis for the conviction. I think the court correctly pointed out that these were not fighting words. Fighting words could cause a breach of peace.

MW: So do you think that, given the tenor of the times, had his jacket said "down with the draft," that it would have become such a significant case?

DW: No. No, it was because of the word "fuck" the draft. I believe that that itself was the motivation for the arrest and for the conviction also. So when we got down to it, it was just pure speech that was being punished. And for that, the case was reversed.

MW: How did the papers report on it? Did they actually quote what the jacket said?

DW: Oh yes, they did. I think the interesting thing is that on this occasion, the defendant's conviction was reversed. On many of the student demonstration cases where there was peaceful conduct, the court never saw fit to address the free speech issues, and a series of cases of student demonstration at the colleges resulted in convictions for purely symbolic free speech.

For example, *People v. Uptgraph* was another case in a series where students at Northridge College actually held a demonstration in what the college faculty and administration set out as a free speech area.

MW: So what happened there?

DW: The students held demonstrations out on the free speech area, and the college president told them to disperse and they refused to do so, so they called the police. About a hundred policemen descended on the campus and arrested the demonstrators for refusing to disperse—notwithstanding the fact that all of this was recorded by the television stations showing that the demonstration was indeed peaceful. Yet the students were convicted of failure to disperse and unlawful assembly, and some got sentences of as much as six months in jail, and served the time. They appealed, of course, and in those cases our court affirmed the conviction on a split vote, two to one, and I was the dissenting judge on the case.

MW: Did that one go higher?

DW: No, that did not go higher. It never got to the court of appeal.

MW: Just out of curiosity, with the *Uptgraph* case at Northridge, is it known who called the police in?

DW: Oh, yes, it was the administration.

MW: Was it explained at all as to what their rationale was? Was there something occurring there that they found particularly heinous?

DW: Well, actually there had been, about six weeks earlier, another demonstration that became unruly and the police had to be called in. This time, however, it was completely peaceful. But because the administration feared that violence would break out later, [they] thought they would nip it in the bud. So they suppressed this peaceful assembly, which resulted in the arrests.

MW: Was that also free speech related to the war in Vietnam?

DW: Yes, it was also a demonstration concerning protesting the war in Vietnam.

MW: Back to the *Cohen* case. I'm curious. This was something that normally would have been dispensed with at a very, very low level, and yet the young man involved—I assume he was young. . . .

DW: Yes. Well, he appealed, and I think the difference was that the Appellate Department, in that case, reversed the conviction, and the people decided to take it up.

MW: Who was representing him, do you recall?

DW: Oh, yes!

MW: Were they volunteer attorneys?

DW: I believe the [American] Civil Liberties Union represented him.

MW: Okay, so he had pro bono support because they saw this as a real test case.

DW: Yes.

MW: And did they fight it all the way up to the Supreme Court?

DW: Yes. Yes, I believe so. It's rather interesting that this case should end up in the United States Supreme Court. Usually the court only accepts seventy cases a year, roughly. That's a little more than one case per state. So for them to pick this case . . . to be reviewed by the court indicates the significance. So far as the justices were concerned, this was an important free speech issue.

MW: Not to jump around too much, but during that time when it went up to the U.S. Supreme Court, how many of the justices . . . were Republican versus Democratic appointees? I mean, was it split?

DW: Well, there was a split. Mr. Justice John Harlan wrote the opinion, and joining him were . . . well, I can tell you those who . . . Justice Blackmun dissented, and joining him in the dissent were Mr. Chief Justice Berger, Mr. Justice Black, and Mr. Justice White. Those were the four who dissented.

MW: Did it surprise you that Berger dissented on that one?

DW: No, the dissent, the fact that Black and Berger and White joined too. I was a little surprised that Justice Black would join them, but he did.

MW: Did you anticipate the decision by the Supreme Court?

DW: No. I'd not been following the case once it passed the California Supreme Court. I knew it was pending, but it wasn't until the decision was handed down in 1971 that I was aware that they had reversed.

MW: And when it was debated in the highest court of the land, to what degree did they wind up citing some of the rulings by lower courts, or did they simply use other cases to establish precedent?

DW: Oh no, they cited cases in the California courts first, interpreting the California statute—there was free speech statute. They did discuss some of the prior California cases. For example, they did cite the case of *People v. Bushman*, where Chief Justice Traynor stated, "One may be guilty of

disturbing the peace through offensive conduct, if by his actions he willfully, maliciously incites others to violence or engages in conduct likely to excite violence." So that's the distinction: If the speech is to incite violence, then it could be disturbing the peace.

MW: Was this pretty cut and dried when it came before you, or did you have to. . . .

DW: Oh, no, no, it was a close case, and it was complicated. As I said, of the twenty-two justices who sat on it, they split eleven to eleven as to whether or not this constituted disturbing the peace.

MW: So you actually had to do some internal wrestling?

DW: Oh, yes. Yes, we discussed it a long time before we decided that it was *not* disturbing the peace. If you interpret this type of conduct as disturbing the peace, that would then violate the First Amendment of the United States Constitution.

MW: At the time, did it seem like a rather low-stakes case, or did you have a sense that regardless of how high up it was going to go, it was significant in terms of setting precedent?

DW: No, at the time it came before us, we thought that the only person involved was Mr. Cohen, because we felt that this statute was improperly used, that he was *not* disturbing the peace within the statute. We never could dream that the case would wind up in the United States Supreme Court.

MW: Do you happen to know whether or not it's been—when it became the law of the land—it's been used or cited in other kinds of rulings?

DW: Oh yes, certainly. I think that limited the disturbing-the-peace statutes throughout the country, because sometimes law enforcement has used that—disturbing the peace—as kind of a catchall: Any time some conduct occurs that they don't like, they would say, "disturbing the peace." So this narrows the scope of that type of statute.

MW: When this was a local case, was there much attention? Were there op-ed pieces appearing, or little guest commentaries?

DW: I think the interest in the case built as it went through the judiciary. The higher the court, the more. . . . Once it got to the court of appeal, California Supreme Court, law review articles started popping up, discussing the *Cohen* case. And then after the United States Supreme Court came down with the decision, of course . . . this was just the ideal topic for law school discussions and for the text writers too.

MW: It's taught frequently in constitutional law classes.

DW: Yes, that's right, it is now one of the cases they cite in constitutional law classes, which brings me to another case that I handled as a trial judge, *People v. Spriggs*. This was in my early days as a judge on the Superior Court. I had a narcotics case where the narcotics were found in the bushes in front of the defendant's dwelling. The facts are these: The defendant was arrested when the police officers found narcotics in a bush in his front yard. At the time of the arrest, the defendant's girlfriend said, "That stuff is mine." During the trial, the defendant tried to get that statement into evidence, the statement of his girlfriend saying, at the time of the finding of the narcotics, "That stuff is mine." So there was an evidentiary problem as to whether or not that was admissible.

At that time, declarations against pecuniary interests *were* admissible. For example, if a person made a statement that would be contrary to his pecuniary interests, that statement would be admissible. However, declarations against penal interests—someone would make a statement that would have subjected him to a penal statute—was *not* admissible. So at the time of the trial, I pointed out to the attorneys that under the present law in California, declarations against penal interests are not admissible, I will have to sustain the objection. However, I told them that I remembered in my law school class, professors in evidence roundly criticized this law as being inconsistent. You could permit hearsay statement of a third party, [and] because it was against his pecuniary interests, no one would make a statement which would detract from his ownership of property or would reflect badly upon his pecuniary interests. But this hearsay statement would be admissible. On the other hand, if it were just against his penal interests, it would *not* be admissible. There was just no rhyme or reason for it. And so I indicated that was the only reason that I would sustain the objection, because as a trial judge, I was bound to follow the law.

Well, the defendant took the case up on appeal, and ultimately wound up in the California Supreme Court in the case of *People v. Spriggs*. This was a 1964 case, reported in 60 Cal 2d 868. In that case, the Supreme Court, with Mr. Justice Traynor, held that the defendant should have been permitted to—and this is on cross-examination of police officers—the hearsay evidence of defendant's companion, [who] had admitted to the officer that the heroin found on the ground belonged to her. And that exclusion of such evidence was prejudicial. So the Supreme Court then changed the law based upon this ruling. As a young Superior Court judge, I was fairly pleased with the fact that because I took time to explain my ruling to

the attorneys, [that] gave them a good basis to taking up the appeal. And then having the Supreme Court reexamine that erroneous existing law and reverse it and change it.

MW: And it could only have been done at that level.

DW: It could only be done by the California Supreme Court, yes. So that was another case that made me very pleased that a ruling I made was able to effectuate a change in the law—and I say to the better, because the law on hearsay is consistent now. The declaration against penal interests is admissible; a declaration against pecuniary interests is admissible.

MW: This is going to be a different kind of question. These cases that were coming before you were a reflection of tremendous public controversy at the time, and a society that was going through some real convulsions around major issues related to constitutional law. You were a Democratic appointee and more liberal than many, many of your colleagues. How did you negotiate that? How were you able to be aware of your own personal views, understand the very divergent personal views of many of your colleagues, and somehow try to come together in a way which was supposed to be divorced from that?

DW: I think each judge brings to the bench his own training, his experience, and his background. And it's true that when I was sitting on the Appellate Department, I happened to be a Democratic appointee, whereas my two colleagues were appointed by—I believe both of them were appointed by Governor Earl Warren at that time. So Governor Earl Warren appointed both Jim White and Beach Vasey, and the two of them were more conservative than I, but still we were able to work as a team. I'm sure that working with them as a team, each case came up on its own merits, and sometimes we agreed, sometimes we disagreed. In those instances where we disagreed, sometimes we could find some common meeting ground so that we could come up with a result that we could all live with. But there were times when we just could not bring ourselves to agree, at which time the dissenter would file a dissenting opinion.

MW: But when you were involved in those discussions, both in formal meetings as well as during your lunch hour, walking the halls, did you exchange personal views?

DW: Oh, of course. I mean, we would exchange our personal views and indicate why we felt this and the reasons for it. We would, of course, look for precedent in support of our views.

MW: So, for example, in a case like this, did your other colleagues who voted with you have to set aside personal feelings about anti-war protestors, or about the actual language on the jacket?

DW: I think yes. I think as judges we tried to follow the law. There's actually a case of auto equities which compels a lower court judge to follow the rulings of the higher courts. If you had anything less than that, you would have chaos. I mean, you have to have predictability in the law, and the law says that if there are any major changes, they're going to have to be made at the top. It's different if a statute had never been ruled upon. Then the first trial judge who gets it would get it as a case of first impression, and would rule upon it.

This was true, for example, in the case of nude pornography when it first came out. This was about the same time, too, when I was sitting in the Appellate Department. This was a growing law, fast-developing. The first arrest would be processed through the municipal courts. Then the appeals would come to us very early. So [in] the earliest pornography cases, appellate decisions on pornography came out of our court, because. . . .

For example, L.A. County included the film industry and Hollywood, where many of the pornographic films were being made and being distributed. There was a body of law being developed, and those who were charged with pornography, of course, were riding the free speech protection, seeking free speech protection, and many of the attorneys and law firms that were handling it were very fine law firms. Many of the early United States Supreme Court cases involving pornography arose out of our Appellate Department. At one point in time, our Appellate Department was a court of last resort. This is before the law was changed at the time of *People v. Cohen*, where they went up to the Court of Appeal and then the California Supreme Court. But before that, when pornography cases first came through, the Appellate Department was the court of last resort so far as California was concerned. Any appeals from the Appellate Department would have to go directly to the United States Supreme Court. And that's where many of our early pornography cases arose.

MW: So the *Cohen v. California* case, when it finally was settled by the U.S. Supreme Court, was a real milestone as far as interpretation of free speech and constitutional law. Can you just say a little bit about your own feelings during that time, and what were the feelings of your peers with regard to the public controversy about the Vietnam War and about the numerous protests against the war?

DW: Yes, I think that the feelings were extremely high at the time—particularly on the college campuses and on the high school campuses. The young people were almost uniformly against the Vietnam War. They were against the draft. They didn't want to participate in such an unpopular war. On the other hand, the politicians and the adults in the community felt that it was important to obey the draft laws, and it was important to back the soldiers who were going to Vietnam and sacrificing their lives and so forth. For example, during the Century City demonstrations, my daughter [Shelley], who was about fifteen or sixteen at that time, was among those who were demonstrating at the time that President Johnson was coming to the Century Plaza Hotel to make a speech. When Shelley was out there, she saw Governor Brown's limousine driving up to the Century Plaza, so she rushed out there and passed a leaflet to Governor Brown and said to the governor, "I'm Del Wong's daughter. Please give this to President Johnson." And Pat Brown responded, "I think my daughter is out here, too."

Another example of the protests—down in the high school area was my son Duane, part of an underground newspaper. At John Marshall High School, the school newspaper was called *The Blue Tide*. The alternative newspaper, which was banned from the campus, was called *The New Improved Tide*.

MW: Why did they ban the alternative newspaper?

DW: Because of the expressions against—the anti-Vietnam stance of the newspaper, the anti-administration stance. They didn't like the idea of having recruiters come on campus to recruit for the [armed] services. So the newspaper itself was banned, so the underground newspaper had to be printed off campus, distributed off campus, and they were entirely written and edited and read by a majority of the students.

MW: Can you tell me about some of the other significant cases that you tried?

DW: I think probably a case of general importance was the so-called Guest Statutes. Over the years, there has been a great deal of controversy concerning whether or not the owner of a vehicle who loans his car to another person may sue the driver because of negligence. The reason is, insurance companies don't like this type of case, because they feel that there's a good chance of fraud: when you permit an owner of a car who lends his car to someone else, and that person is negligent, whether or not the owner of the car can sue the driver for injuries to himself. Because of this feeling, there have been exceptions to the rule, for example when there's a "share the

ride," or when it is for compensation. For example, when the owner of a car hires someone to drive, should the owner be able to sue the paid driver?

MW: In the event of an accident?

DW: In the event of an accident. And then another step would be, suppose it's a "share the ride" plan. Three friends decide they're going to take the car across the country, and they would share the expenses, and they get in an accident due to the negligence of their driver. Can the owner of the car sue the driver? After all, the owner of the car permitted the driver to drive the car. Third parties could sue the driver of the car, because he loaned the car to a passenger. Well, anyway, because of this uncertainty of the law, insurance companies persuaded the legislature to pass a statute, Vehicle Code 17158, which provides that [when] a person permits someone else to drive the car in which he's an occupant—and that person is negligent—the owner may not sue the driver. The exception is if the driver was intoxicated or was guilty of gross negligence or willful misconduct. Then the owner of the car could sue the driver.

Well, the constitutionality of this statute was presented to the Supreme Court back in 1976, in a case called *Schwalbe v. Jones*. In that case, the Supreme Court held that the law was unconstitutional, and that the owner of a car who was a passenger in his own vehicle and was injured due to the negligence of the driver may sue the driver for ordinary negligence.

About that time, in 1975 or '76, I was trying a case in the Los Angeles Superior Court involving the same situation, where the owner of the car, a Gertrude Cooper, who was an elderly woman, had her car regularly serviced at this particular gas station for over ten or fifteen years. But on this particular day, after the servicing was completed, the owner of the service station came to return the car, had Mrs. Cooper get in the car as a passenger, and while they were driving back to the gas station, they got in an accident due to the negligence of Mr. Bray, who owned the service station, and a third party, named Ruth Tashma. At the time we started the case, I indicated to the lawyers that I was going to instruct the jury on ordinary negligence law, because I felt that the Supreme Court case of *Schwalbe* held that Section 17158 was unconstitutional. However, before the case ended, we got word that the Supreme Court had granted a rehearing in the *Schwalbe* case, which meant that they were going to reexamine that premise as to whether or not the statute was unconstitutional. So here I'm left with a decision to make. Should I permit the case to go to the jury on the basis of ordinary negligence, or should I

tell them that under the law, the vehicle code, the owner of a vehicle may not sue the driver if he owns the car. So I decided that I would instruct on ordinary negligence. The jury returned a verdict, a substantial sum of money for Mrs. Cooper and against the owner of the service station, and against Arco, which also had an interest in the station.

MW: And her injuries had been severe?

DW: And her injuries were severe. The case went up to the court of appeal, and by that time, the *Schwalbe* case, on rehearing, had reversed their original decision, holding the statute was constitutional. Therefore, my instruction to the jury was incorrect. So that case went up to the Supreme Court. And for the third time, within a period of three years, the court reexamined the validity of that vehicle code section. In a six-to-one decision, they firmly held that the statute was unconstitutional because it violates the equal protection clause. In other words, there was no rational basis for treating owners of cars any differently from anyone else. So long as they were in the vehicle and they were injured because of the negligence of the driver, they could sue the driver. That is now the settled law in California, and remains the law.

FEDERAL RECOGNITION OF NATIVE AMERICAN TRIBES: THE CASE OF CALIFORNIA'S AMAH MUTSUN

E. RICHARD HART

The efforts of Native American tribes to gain legal recognition by the federal government often have involved a long, arduous process. Although the unusual history of California Indians has further complicated the recognition process, this same history produced documentary evidence that can be used in addressing the criteria established by the United States for legal recognition. This article examines the case of one California tribe, the Amah Mutsun of Mission San Juan Bautista.

Under Spain, California tribes were "missionized," but rights to tribal land were protected under Spanish law. Under Mexican law, land grants to Mexican citizens were not supposed to include territory used by tribes, but much tribal aboriginal territory was nevertheless granted. Some California Indians continued to live in their aboriginal territory under Spain and then Mexico, working in virtual bondage on mission lands or on land grants to individuals. After California was acquired by the United States, eighteen treaties were negotiated with California tribes in the 1850s. However, California interests were able not only to prevent the treaties' ratification but also to have them sealed in secret Senate files. As a result, many California tribes, including the Amah Mutsun were deprived of their aboriginal lands and were not brought under the jurisdiction of the United States Bureau of Indian Affairs.

E. Richard Hart, who provides historical, ethnohistorical, and environmental historical services and expert testimony, is the author of eight books, the most recent of which is the award-winning *Pedro Pino: Governor of Zuni Pueblo, 1830-1878*. He is a consultant for the Amah Mutsun of San Juan Bautista on federal recognition.

Because they were not assigned to a reservation and were not under the authority of Indian agents, records of these tribal groups are especially sparse, making historical analysis difficult. Cultural continuity is an important criterion for federal recognition. Twentieth-century materials related to court actions regarding the nineteenth-century treaties and land grants provide considerable primary historical evidence that documents the cultural continuity of the Amah Mutsun of Mission San Juan Bautista.

FEDERAL RECOGNITION AND THE AMAH MUTSUN OF SAN JUAN BAUTISTA

The purpose of federal recognition is to acknowledge the existence of a particular tribe and to establish a government-to-government relationship between the United States and that tribe. A tribe can become recognized through an act of Congress or through the Bureau of Indian Affairs acknowledgment process. Regulations have been established for determining acknowledgment, a process that is carried out by the Office of Federal Acknowledgment, formerly known as the Branch of Acknowledgment and Research (BAR) in the Bureau of Indian Affairs.¹

A number of criteria set out by BAR test whether a tribe existed historically at first contact with the United States and has continued to exist, both politically and culturally, to the present day. For example, a tribe must show that its "membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity."² The tribe must also show that it "has been identified as an American Indian entity on a substantially continuous basis since 1900"; that the "predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present"; and that the "petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present."³

More than 250 letters of intent and petitions from tribal groups have been submitted to BAR, which has a limited staff

¹25 Code of Federal Regulations (CFR) Section 83.

²25 CFR 83.7 (e).

³25 CFR 83.7 (a), 25 CFR 83.7 (b), and 25 CFR 83.7 (c).

and reviews only a few petitioners at a time. Petitioning tribal groups first must achieve the status of "Ready for Active Consideration," after which they eventually may be classified as under "Active Consideration." Thus far, only a handful of tribal groups have completed the entire process and have become recognized. Typically, it takes years for a tribe to receive a final determination. Tribal groups seeking recognition, as well as the General Accounting Office, have criticized BAR for not processing petitions for acknowledgment expeditiously. The Bureau of Indian Affairs has defended itself by claiming that the process is fair but is slowed by a lack of adequate funding.⁴ Regardless of the reasons, the fact remains that tribes face a long and uphill battle to gain recognition through BAR.

The descendants of Mutsun who, during Spanish rule, were placed under Mission San Juan Bautista today are seeking federal recognition as a legitimate tribe. Calling themselves the Amah Mutsun, this tribal group—all of whom can prove they had Indian ancestors who were under Mission San Juan Bautista prior to the United States' occupation of California—had regularly met informally throughout the twentieth century. Work on the California Indian census from the 1920s to the 1970s prompted tribal leaders to investigate the recognition process, and formal meetings were begun in 1989. The tribe ratified a tribal constitution in 1991, filed a notice of intent to apply for recognition in 1995, and, after receiving and responding internally to two technical assistance letters from BAR, submitted a completed petition in 2002. Recently, the tribe ratified a new constitution, which, among other things, bans gaming. The Amah Mutsun Tribe has now been certified by BAR as "Ready for Active Consideration."⁵ But three tribes are currently under "Active Consideration," and eleven tribes are ahead of the Amah Mutsun in the "Ready for Active Consideration" queue, which means it could be quite some time before the tribe reaches "Active Consideration" status.

In order to meet the criteria necessary to achieve recognition, tribes must submit considerable historical evidence. Throughout much of the period in question, United States

⁴Neal A. McCaleb, "Strategic Plan: Response to the November 2001 General Accounting Office Report," September 12, 2002, Department of the Interior, Bureau of Indian Affairs (BIA), Office of Tribal Services, Branch of Acknowledgment and Research; McCaleb, assistant secretary of the interior for Indian affairs, to Dan Burton, chairman, Committee on Government Reform, House of Representatives, September 30, 2002.

⁵Amah Mutsun Tribal Band, Petition for Acknowledgment, submitted by The Amah Mutsun Tribal Band, Irenne Zwierlein, Amah Mutsun Tribal Band chairperson, April 26, 2002. Submitted to the Branch of Acknowledgment and Research, BIA; director, Office of Tribal Services, to Zwierlein, May 22, 1996; director, Office of Tribal Services to Zwierlein, February 16, 1999.

policy towards Indians was aimed at eliminating traditional tribal political leadership, acculturating tribal members into white society, removing tribes from their aboriginal homelands, and even terminating the special relationship that existed between the government and the recognized tribes. Thus, providing the necessary evidence for recognition obviously is difficult for a tribe such as the Amah Mutsun. Had the Amah Mutsun been recognized, the Bureau of Indian Affairs would have kept many government records relating to the tribe. Without those records, the tribe must look elsewhere.

SPANISH RECORDS

When Spanish colonizers arrived to settle Alta California in 1769, probably between 300,000 and 350,000 native inhabitants lived there, speaking more than three hundred different linguistic dialects.⁶ The central California region to the southeast of San Francisco Bay was one of the most densely populated areas. Native people occupied at least twenty villages in the San Pajaro and San Benito drainages, including some located in the vicinity of today's Gilroy, San Felipe, Mission San Juan Bautista, and Sargent Station. Their language, Mutsun, was one of eight that make up the Costanoan language family, spoken by tribes in the area from what is now San Francisco south past Monterey Bay to the Salinas River. It has been estimated that at the time of the arrival of the Spaniards, some 2,700 Mutsun speakers lived in the villages in the Pajaro River drainage.⁷

⁶Robert F. Heizer, "Treaties," *Handbook of North American Indians*, vol. 8, California (Washington, DC, 1978), 701, estimated 350,000 California Indians in 1769; Sherbourne F. Cook, "Historical Demography," *Handbook of North American Indians*, vol. 8:91, estimated a total of more than 300,000; Edward D. Castillo, "The Impact of Euro-American Exploration and Settlement," *Handbook of North American Indians*, vol. 8:99, also provided an estimate of 300,000 California Indians in 1869, and reported that there were more than 300 different native dialects.

⁷William F. Shipley, "Native Languages," *Handbook of North American Indians*, vol. 8:81, 84, 89; Richard Levy, "Costanoan," *Handbook of North American Indians*, vol. 8:486, provided the estimate of Mutsun population; John M. Martin, "Mission San Juan Bautista, California: The Causes and Effects of Its Rise and Decline," Ph.D. dissertation (University of Santa Clara, 1933), 35, described a notebook of Fr. Felipe Arroyo de la Cuesta in which he listed twenty Mutsun villages; Alex S. Taylor, "California Notes," *The Indianology of California*, second series, 1860, Bancroft Library, University of California, Berkeley, microfilm, identified fifteen "rancherias" of the San Juan Bautista Indians; Thomas Savage, "Mission San Juan Bautista," 1878, C-C 44,

After Juan Rodríguez Cabrillo sailed into San Diego Bay on September 28, 1542, Spain claimed California by right of discovery, but it was not until 1765 that Spain determined to systematically occupy and defend Alta California and to place the Indians there under Catholic dominion. The resulting military expedition was led by Gaspar de Portolá in 1769. The zealous Franciscan, Junípero Serra, accompanied the expedition and immediately began to establish a string of missions. Portolá failed to find Monterey Bay in 1769, but the following year he established a mission and presidio at Monterey Bay, the coastline of Mutsun territory. Monterey became the capital of one of the four districts of Spanish Alta California.⁸

Spanish expeditions in the 1770s reported large villages in Mutsun territory. Two expeditions led by Pedro Fages passed through Mutsun territory in 1770 and 1772. Mutsun villagers living in the San Benito and Pajaro River drainages saw Europeans for the first time when Fages passed by their villages, including one on the banks of San Felipe Lake. The villages he described may have included Ausaima and Unijaima.⁹ A priest who traveled with Fages reported that the San Benito River

Bancroft Library, microfilm, listed nineteen villages in the San Juan Valley that were taken into Mission San Juan Bautista; C. Hart Merriam, personal research papers, film 1022, reel 8, series N, "List of Bands, Tribes, or Villages," Bancroft Library, listed twenty-one San Juan Bautista villages; Zephyrin Engelhardt, *Mission San Juan Bautista: A School of Church Music* (Santa Barbara, California, 1931). Engelhardt, drawing on the early nineteenth-century work of Felipe Arroyo de la Cuesta, found twenty-one villages listed in the books of Mission San Juan Bautista.

⁸David J. Weber, *The Spanish Frontier in North America* (New Haven, CT, 1992), 41, 238–43; Ivy B. Ross, *The Confirmation of Spanish and Mexican Land Grants in California* (San Francisco, 1974, originally a thesis at the University of California, 1928), 1–3; Castillo, "The Impact of Euro-American Exploration and Settlement," 99; Robert G. Cowan, *Ranchos of California: A List of Spanish Concessions 1775–1822 and Mexican Grants 1822–1846* (Los Angeles, 1977), 2.

⁹Weber, *The Spanish Frontier in North America*, 246–48; Randall Milliken, ch. 1–3, in *Archaeological Test Excavations at Fourteen Sites along Highways 101 and 152, Santa Clara and San Benito Counties, California: Volume 2: History, Ethnohistory, and Historic Archaeology* (Davis, California, 1993), 63–65, in which he identifies Ausaima and Unijaima as tribes rather than villages. In any case, they were Mutsun speaking; Leslie A.G. Dill, Kara Oosterhous, and Charlene Duval, *Santa Clara County Heritage Resource Inventory Update: South County* (Los Gatos, California, 2003), 9; John Peabody Harrington, "The Papers of John Peabody Harrington in the Smithsonian Institution, 1907–1957," National Anthropological Archives, Smithsonian Institution, microfilm, 1984, reel 41, frames 74–78, notes both names in San Juan Bautista mission books, identifying them as Mutsun "rancherías"; Savage, "Mission San Juan Bautista," listed Ausaima and Unijaima as villages taken into the mission; Engelhardt, *Mission San Juan Bautista: A School of Church Music*, also lists Ausaima and Unijaima as villages.

was named during the 1772 expedition for St. Benedict, on whose birthday the river was encountered. The same priest recalled meeting Indians who had what may have been a bird-hunting decoy:

We saw in this place a bird which the heathen had killed and stuffed with straw. To some in our party it looked like a royal eagle. For this reason some of the soldiers called the stream "Río del Pajaro" and I added "La Señora Santa Ana del Río del Pajaro."¹⁰

The Rivera expedition of 1774 encountered a Mutsun village of at least three hundred people. The Anza expedition of 1776 discovered Mutsun rabbit hunters and may have named today's Carnadero for the place where the animals were slaughtered. This party also described seeing villages in Mutsun territory, including one near the mouth of Pescadero Creek, which may have been the village known as Huris-tak (or Juristac).¹¹

The Spanish exploring expeditions of the 1770s provided considerable information indicating a large Indian population in Mutsun territory (and among their neighbors). This was important information to the Franciscans, who planned to gather Indians into missions and end native life. During the next thirty years, Spain established another six missions in Costanoan territory, culminating with the founding of Mission San Juan Bautista at a beautiful spot called "Papeloutchom" by the Mutsun. The Mutsun village of Xisca was less than a mile to the south on San Juan Creek beneath a mountain sacred to the tribe.¹² Mission San Juan Bautista was founded in 1797. Construction of the church that stands on the mission grounds today was begun in 1803, and the church was dedicated in 1812. The mission has been in continuous use ever since.

¹⁰Marjorie Pierce, *East of the Gabilans* (Santa Cruz, 1976), 12.

¹¹Milliken, *Archaeological Test Excavations*, 49, 64–68. Milliken concluded that Juristac "is certainly a Costanoan village name," and reported a 1798 baptism record of a child born at the "Ranchería Jurestaca"; Dill et al., 9; Weber, *The Spanish Frontier in North America*, 250–53.

¹²Milliken, *Archaeological Test Excavations*, 49–51, 73; Sunset Books, *The California Missions: A Pictorial History* (Menlo Park, California, 1964), 235; California State Parks, *San Juan Bautista State Historic Park* (Sacramento, 2004); Pierce, *East of the Gabilans*, 1–2 and 9; C. Hart Merriam to J.P. Harrington, September 8, 1929, with attached notes from Harrington's consultation with Ascención Solórsano. Harrington, "Papers," reel 41, frames 74–78; Hildegard Hawthorne, *California's Missions: Their Romance and Beauty* (New York, 1942), 176, noted that the Mutsun had a sacred mountain two miles to the southeast of the mission.

Mission San Juan Bautista was established in the center of Mutsun territory in order to convert Indians to Christianity. Believing that they could do so most effectively by gathering Indians into a Spanish-style village, Spaniards removed the Indians from their traditional villages and assembled them at the mission under the authority of the priests. The Indian converts or "neophytes," as they were called, were not allowed to leave the mission or its ranchos and were subject to physical punishment if they disobeyed the priests, whose law was enforced by soldiers from the presidios.¹³

In the early nineteenth century, the non-Indian population of California was relatively small. Mutsun villages were a source not only of converts, but of labor as well. Mutsun peonage was used to build Mission San Juan Bautista, to grow its crops, and to look after its stock. As historian Albert L. Hurtado has observed,

The missions and Indian labor were the basis for California's economy. Neophytes constructed the buildings, herded the cattle, worked the fields, and did whatever was required to keep the missions running.

Under Spain the neophytes had certain at least nominal legal rights, but it was an unequal system, and they had no choice about the work that the mission required.

Indians were recognized as human beings with souls and certain civil rights, yet the crown and its representatives granted to conquistadors *encomienda* rights to labor and tribute from the conquered Indians.¹⁴

Prior to the arrival of the Spaniards, the Mutsun Indians had enjoyed a largely peaceful existence, in a territory rich with animal and plant life. They subsisted on roots, berries, acorns, fish, and small and large game, while living in tule homes in

¹³Castillo, "The Impact of Euro-American Exploration and Settlement," 101-102.

¹⁴Albert L. Hurtado, *Indian Survival on the California Frontier* (New Haven, 1988), quoted at 24; S. Lyman Tyler, "The Zuni Indians Under the Laws of Spain, Mexico, and the United States," in *Zuni and the Courts: A Struggle for Sovereign Land Rights*, ed. E. Richard Hart (Lawrence, Kansas, 1995), 61-64, described the "well-developed plan" of Spain to use missions and presidios to secure title to territory in the Americas; Tyler, *A History of Indian Policy* (Washington, 1973), 24, observed that under Spanish law Indians were "fellow subjects and as 'free persons' with legal rights." However, the Indians were subject to many strict rules that determined the manner in which they actually survived; Hawthorne, *California's Missions: Their Romance and Beauty*, 177.

villages along rivers, streams, and lakes.¹⁵ But within a few short decades after the establishment of Mission San Juan Bautista, the Mutsun had been "missionized," living as workers at the mission or on the mission's ranches and farms. Between 1797 and 1834, more than three thousand Indians were forced to leave their villages and move to the mission.¹⁶ At the peak of Mutsun population at Mission San Juan Bautista in 1823, reportedly 1,248 Mutsun lived at the mission or on the mission's ranchos.¹⁷ However, the death rate among the Mutsun from smallpox and other European diseases was disastrous.

By about 1810, the Mutsun had been fully missionized.¹⁸ Their lands had been taken over and they had become bound in servitude by the mission and the Spanish Crown.¹⁹ During the first two decades of the nineteenth century, "hundreds of individual and collective units of Mutsun Indian housing were constructed . . ." near the mission and at the ranchos.²⁰ Yet, despite the decades of servitude and the yoke of oppression under Spain, the Mutsun did not give up their tribalism, abandon their traditional activities, or discontinue use of their aboriginal homeland.

Felipe Arroyo de la Cuesta was a priest at Mission San Juan Bautista from 1808 to 1832. He saw to it that the Indians were taught Spanish at the mission, but Arroyo de la Cuesta also understood that he needed to learn Mutsun in order to com-

¹⁵Felipe Arroyo de la Cuesta, "Repuesta" ["replies" to the Interrogatorio], May 1, 1814, translated and reprinted in: Engelhardt, *Mission San Juan Bautista: A School of Church Music*, 18; Alfred L. Kroeber, *Handbook of the Indians of California* (New York, 1976, originally published as *Bulletin 78* of the Bureau of American Ethnology, Smithsonian Institution, 1925), 462-73; Levy, "Costanoan," 485-86.

¹⁶J. N. Bowman, "The Number of California Indians Baptized During the Mission Period, 1770-1834," *The Historical Society of Southern California Quarterly* 43:3 (September 1960): 273-77.

¹⁷Engelhardt, *Mission San Juan Bautista: A School of Church Music*, 36; Alex S. Taylor "Precis India Californicus," Bancroft Library, microfilm, p. 32; Pierce, *East of the Gabilans*, 3-4, reported that a total of more than 4,000 Indians are buried in the Mission San Juan Bautista Indian cemetery.

¹⁸Levy, "Costanoan," 486.

¹⁹Castillo, "The Impact of Euro-American Exploration and Settlement," 101-104, reported that there were unsuccessful Costanoan revolts against Spanish rule; Milliken, *Archaeological Test Excavations*, 78, reported, "By the end of 1805, the tribal villages of the *Unijaimas* and *Ausaimas* were abandoned, though members of those groups were still being baptized at least until 1812." He also reported on Mutsun conflict with the Spaniards.

²⁰Ruben G. Mendoza, *San Juan Bautista: An Archaeologist's View of an Early California Mission* (Sacramento, 2002), 2.

municate with the Indians under his charge. In order to learn their language, he collected nearly three thousand Mutsun phrases, which he published in 1815.²¹ Arroyo also translated prayers, songs, doctrines, confessions, acts, and other vocabulary into Mutsun and drafted a prayer book titled *El Oro Molido* (ground up gold), which linguist J.P. Harrington called "the most important Indian document from the Franciscan period of California history."²²

In the late eighteenth century, Junipero Sierra, a Mutsun named for the famous Spanish Junípero Serra, took on a role of leadership among his people. Arroyo de la Cuesta and Spanish authorities at the mission recognized his authority, and he became *alcalde* (a secular official) of the mission. Although the exact dates of his birth and death are not known, his tenure must have spanned the Spanish period, the Mexican period, and perhaps the early years of United States rule. His granddaughter later recalled his leadership role and the authority vested in him by Spanish administrators.²³ Traditional Mutsun leadership carried with it responsibilities to care for the less fortunate and to practice traditional medicine.

The earliest extensive record of Mutsun culture was recorded by Father Felipe Arroyo de la Cuesta in 1814. On October 6, 1812, the Spanish government sent out a questionnaire, or *interrogatorio*, to all of the civil and ecclesiastical authorities in Spanish California. The priests running the various missions were asked to answer thirty-six questions regarding the Indians in their jurisdictions. The questionnaire did not reach San Juan Bautista until early in 1814, and Father Arroyo de la Cuesta signed a response to the questions and submitted it on May 1, 1814.²⁴ In his response, he reported that the Mutsun people told traditional stories to their children and maintained traditions about hunting, games, and utilitarian affairs. Mutsun people who had been forced under the control of the mission continued to pass on these tradi-

²¹Arroyo de la Cuesta, Ab. Ar. Yo, *Alphabs. Rivulus Obeundus, Exprimationun Causa, Horum Indorum Mutsun, Missionis Sanct. Joann. Baptistae*. Conveniunt Rebus Nomina Saepe Suis, 1815.

²²Elaine L. Mills, ed., *The Papers of John Peabody Harrington in the Smithsonian Institution, 1907-1957*, vol. 2, "A Guide to the Field Notes, Native American History, Language and Culture of Northern and Central California" (White Plains, NY, 1985), 94-95, provides the quotations; Engelhardt, *Mission San Juan Bautista: A School of Church Music*, 16, 125-26, also discusses the publication.

²³Harrington, "Papers," reel 58, contains information on Sierra, including, for example, frames 314 and 328.

²⁴Arroyo de la Cuesta, "Repuesta," 15.

tions.²⁵ Father Arroyo was careful not to appear too interested in Indian traditions and downplayed their importance, saying the Indians'

history amounts to ridiculous fables, which are passed from generation to generation, and [that they] relate them only for the purpose of passing the time, laughing, or to entertain the boys. . . . The whole scientific knowledge of these people consists in the better way of telling the stories or in a greater aptitude in hunting and fishing.²⁶

Although the missionaries were attempting to teach the people agriculture, Arroyo said the Indians continued to collect and eat traditional foods:

They have in their little cabins an abundance of acorns and wild seeds—their ancient food. They will not let a chance pass by to catch rats, squirrels, moles, rabbits and other animals, which they were wont to eat, and eat even now, for which reason it is not easy to compute their daily amount of food.²⁷

The traditional village sites of the Mutsun quite naturally were situated in prime locations that contained an abundance of water, game, and other resources. It is no surprise, then, that Mission San Juan Bautista should appropriate these lands for its own use. The mission established at least six ranchos—some at Mutsun village sites—where cattle, horses, and sheep were raised, and agricultural land was cultivated. As at the mission itself, Indians did most of the work at these ranchos. Thus some Mutsun were able to continue to work at or near their traditional village sites, within their aboriginal homeland. For example, the land around the Mutsun village of Huristac, or Juristac, became the mission rancho called La Brea, named for the tar (natural asphalt) seeps located on what is now Tar Creek, which parallels Pescadero Creek and flows into the Pajaro River.²⁸

²⁵Martin, "Mission San Juan Bautista, California," 58–60, described the flogging and other punishments inflicted on Indians who tried to escape from the mission.

²⁶Arroyo de la Cuesta, "Repuesta," 22.

²⁷Arroyo de la Cuesta, "Repuesta," 15, 18. "Cabins" was the translation for the tribal members' living structures. The same translation was used for pre-Spanish, traditional structures.

²⁸Milliken, *Archaeological Test Excavations*, 77.

Under Spanish law, theoretically at least, converted Indians had the right to all the land they could effectively use and occupy. The mission was to hold the land until such time as the Indians, who were kept under the authority of the mission, were prepared to take possession. At the same time, the Crown had delegated the authority to make land grants, or "concessions," to viceroys and other officers in America. Aimed at encouraging settlement, these grants often were given to retired military officers. Such grants were not supposed to impinge on lands necessary for the future of the missions and the Indians under the authority of the missions.²⁹

The first Spanish grant of land to an individual in California was to Manuel Butrón, a soldier from the Monterey presidio who had married a baptized Indian woman. Father Serra approved of Spaniards marrying converted Indian women and supported Butrón's petition for a grant of land. In 1775, Butrón was granted a small concession in the Carmel Valley.³⁰ Interestingly, although he seems eventually to have lost his land grant, a number of Mutsun today can trace ancestry back to the Butrón family.³¹

In 1794, new Spanish regulations permitted presidio commanders to issue land grants, which had the potential to put

²⁹Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 1–5. The king of Spain delegated authority to officers in America in 1680, but it was not until 1773 that special authority was provided to allow grants in Alta California; Cowan, *Ranchos of California*, 3. Officials dealing with the Pueblo Indians in New Mexico also concluded that Indians had the right to all the land that they could effectively use and occupy. See Myra Ellen Jenkins, "Spanish Land Grants in the Tewa Area," *New Mexico Historical Review* 47:2 (April 1972): 113–16; Will M. Tipton, "Memorandum of the Contents of Those Spanish Archives in the U.S. Surveyor General's Office, at Santa Fe, New Mexico, that relate to lands of the Pueblo Indians," prepared by order of the secretary of the interior, for the use of the special attorney for the Pueblo Indians of New Mexico, 1911–1912. Mss., record group (RG) 75, Denver Federal Center, 62; Santiago Oñate, "Memorandum on Water Rights of Indian Communities in New Mexico (With Special Reference to the Jemez Valley)," United Mexican States, Federal District City of Mexico, Embassy of the United States of America; expert testimony submitted in behalf of the U.S. Department of Justice, 1987, 14–17; Floyd A. O'Neil and E. Richard Hart, "Fraudulent Land Activities by United States Officials Affecting Title to Zuni Lands," expert testimony submitted to the Committee on Interior and Insular Affairs, U.S. House of Representatives, 101st Congress, 2^d sess., July 12, 1990, 1.

³⁰Cowan, *Ranchos of California*, 4, 112; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 5.

³¹See, for example, Reginald and Laverne Alvarado, application 10559, RG 75, entry 576, National Archives; Rosalia Gilroy, application 10496, RG 75, entry 576, National Archives. These Mutsun descendants identified the name of the grant as "Rancheria del Carmelo Los Virgines."

additional pressure on Mutsun lands. Only one grant seems to have been given in all of California to an individual by a viceroy, but that grant took up a central portion of Mutsun land. Although Spanish concessions were not supposed to encroach on Indian rancherias, or on lands held by missions for the benefit of Indians under their jurisdiction, in 1802 Mariano Castro, a soldier planning to retire, requested a viceregal grant for Rancho La Brea. The lands for which he petitioned included the rancho of the same name used by Mission San Juan Bautista for its cattle.³²

Concerned about the potential loss of their La Brea grazing lands, the fathers at Mission San Juan Bautista protested to Governor Don José Joaquín de Arrillaga. They claimed that the mission urgently needed the La Brea tract because La Brea and Ausaimas (another Mutsun village location) were the only two places where they could graze their stock. To reinforce their claim, in 1803 the mission built a house for the Spanish foreman and the Indian field hands at Rancho La Brea.³³

In 1808, Governor Arrillaga sided with the mission and directed Castro to make another selection. Castro chose an area that came to be known as Rancho Las Ánimas. This rancho was located to the north of the land claimed by the mission and included the lands of the Mutsun village located at what is now Carnadero. The rancho may have been named for that village, Unijaima. In 1810, Viceroy Francisco Javier de Lizana y Beaumont augmented the Las Ánimas rancho with an addition that was called Sitio de la Brea. Eventually, in 1835, Rancho Las Ánimas was regranted by the Mexican government to Castro's widow.³⁴ Even though this addition was named for the nearby asphalt seeps in Tar Creek canyon,

³²Clyde Arbuckle and Ralph Rambo, *Santa Clara Co. Ranchos* (1968; San José, CA, 1973), 19–21; Pierce, *East of the Gabilans*, 169–72 and map; Cowan, *Ranchos of California*, 15; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 10; Dill et al.; Chester D. King, "Appendix I: Documentation of Tribelet Boundaries, Locations and Sizes," in *The Southern Santa Clara Valley, California: A General Plan for Archaeology* by Thomas F. King and Patricia R. Hickman (San Francisco: National Park Service, 1973), appendix, I-3-4, believed Las Ánimas ("The Spirits") was actually named for Unijaima, which sounded to the Spaniards like Ánimas.

³³Milliken, *Archaeological Test Excavations*, 77.

³⁴G.W. Hendry and J.N. Bowman, "The Spanish and Mexican Adobe and Other Buildings in the Nine San Francisco Bay Counties, 1776 to about 1850," part 7, *Santa Clara County*, in vol. 4, mss., Bancroft Library, 970; Arbuckle and Rambo, *Santa Clara Co. Ranchos*, 19–21; Pierce, *East of the Gabilans*, 169–72 and map; Cowan, *Ranchos of California*, 6, 15; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 10; Dill et al.; King, "Appendix I: Documentation of Tribelet Boundaries, Locations and Sizes."

it did not include that portion of the mission's La Brea rancho. For the time being, the mission fathers had been able to prevent encroachment on the lands around the former Mutsun villages of Juristac and Ausaimas, but they were unable to prevent private grants of other lands in the vicinity.

In 1808, Rancho San Ysidro was granted to Ygnacio Ortega, whose close ties to the local Mutsun is evident in a baptismal entry of the same year, in which he is listed as the godparent to an Unijaima man. Ortega's grant encompassed more than thirteen thousand acres of land in the area of what is now Gilroy, and included prime Mutsun land. Through marriage, Scotsman John Gilroy eventually acquired a portion of this rancho. Gilroy's son married a Mutsun woman, as did his grandson. Some of today's Mutsun of San Juan Bautista are descended from those families.³⁵

Spanish land grant records help to establish Mutsun aboriginal territory and village locations and also provide evidence of continuing Mutsun interaction within their aboriginal territory. Mission records, which establish dates of birth and death, identifying tribal members and often providing the name of the individual's village, have facilitated production of genealogical charts and trees.³⁶ The Mutsun are fortunate because Fr. Felipe Arroyo de la Cuesta not only kept meticulous birth and death records, but extensively documented Mutsun culture and language.³⁷ His records provide a cultural benchmark that helps research into later cultural continuity.

³⁵Dill et al., 9–10; Adela Gilroy, interview by E. Richard Hart, May 24, 2004, Redwood City, CA; King, "Appendix I: Documentation of Tribelet Boundaries, Locations and Sizes"; Milliken, *Archaeological Test Excavations*, 78.

³⁶Milliken has done extensive research in Mission San Juan Bautista's registers of birth and death records for Indians. He has also reconstructed village locations and possible tribal boundaries from the mission records. See, for example, Milliken, *A Time of Little Choice: The Disintegration of Tribal Culture in the San Francisco Bay Area, 1769–1810* (Menlo Park, CA, 1995), e.g., 237, 258; Milliken, *Archaeological Test Excavations*, Chapter 1.

Earlier work with the mission records was done by the following: Savage, "Mission San Juan Bautista"; C. Hart Merriam, personal research papers, film 1022, reel 8, series N, "List of Bands, Tribes, or Villages," Bancroft Library; Harrington, "Papers," reel 41, frames 74–78; King, "Appendix I: Documentation of Tribelet Boundaries, Locations and Sizes."

³⁷Arroyo de la Cuesta, "Repuesta"; Arroyo de la Cuesta, *Alphabs. Rivulus Obeundus, Exprimationun Causa, Horum Indorum Mutsun, Missionis Sanct. Joann. Baptistae*; Arroyo de la Cuesta, *Vocabulary or Phrase Book of the Mutsun Language of Alta California* (New York, 1862).

MEXICAN RECORDS

Although Spanish military officer Agustín de Iturbide had declared Mexico's independence from Spain in early 1821, it was not until April 1822 that California's military and political leaders, after meeting with Catholic priests from the missions, took an oath of allegiance to the new government. The new government declared Catholicism to be Mexico's only religion, but plans to secularize the missions' holdings soon began to take shape.³⁸ To the new Mexican leaders, the key to the future stability of California was secularization of the missions, which would allow settlement and economic growth, and would prevent other nations from seizing the coast.³⁹

In the early 1820s, Mexican emigrants began moving into the San Juan Valley, but nearly a decade would pass before they acquired title to most of the lands around the mission. The Mexican colonization law of 1824 and subsequent 1828 regulations governing colonization of the territories made issuance of Mexican land grants possible. But it was not until 1833, when a bill secularizing all missions in Alta California was signed into law, that the Mexican government began issuing grants in the Mission San Juan Bautista region.⁴⁰

By 1830, Felipe Arroyo de la Cuesta was the only missionary left at Mission San Juan Bautista. After twenty-five years at the mission, he had learned the Mutsun language, had spoken to the Indians in their own tongue in his church, and had worked to create a Mutsun dictionary. But that era was ending. The mission ranchos, including La Brea, continued to be run by the mission, but Arroyo now had Mexican families living on the ranchos to organize the work and supervise the Indian labor. Some of the Mutsun now lived in small villages on the area ranchos.

As "juez de campo" of Rancho La Brea, Antonio German, a former soldier, was in charge of running the ranch and caring for the mission's cattle, as well as supervising the Indian workers. In 1830, with the secularization of the mission now determined, Arroyo "loaned" Rancho La Brea to Antonio German and his brother Faustino. Before reluctantly departing

³⁸David J. Weber, *The Mexican Frontier, 1821-1846: The American Southwest Under Mexico* (Albuquerque, 1982), 1-7.

³⁹*Ibid.*, 60-63.

⁴⁰Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 11; Weber, *The Mexican Frontier, 1821-1846*, 64; Milliken, *Archaeological Test Excavations*, 87.

San Juan Bautista in 1833, he recommended to authorities that the rancho be granted to the brothers. Almost certainly, Arroyo intended to put the rancho under someone who, like him, had some empathy and concern for the Indian workers. Although the Mexican missionaries who replaced Arroyo favored the Mexican policy of "emancipation" of the Indians, which has been said to translate in reality to pauperization, Arroyo's actions may have made life somewhat better for the Indians who formerly had been under Mission San Juan Bautista.⁴¹

Under Mexican law, lands used by Indians were supposed to be protected, but no real steps were taken to preserve any Mutsun land for the tribe. Between 1833 and 1843, at least eleven Mexican grants created new ranchos in Mutsun territory. With these new grants almost all of Mutsun territory was now carved up into ranchos that had been conveyed to Mexican citizens. Many of these grants were centered on old Mutsun village sites. Rancho Ausaymas y San Felipe, created with grants of 1833 and 1836, was named for the Mutsun village of Ausaimas. After padres at Mission San Juan Bautista told authorities they no longer had any claim to Rancho La Brea, it was granted, under the name Juristac, to the German brothers in 1835. Juristac was the name of a Mutsun village located on the rancho boundaries.⁴²

As the mission's property was privatized and its ranchos were granted to Mexican citizens, the lives of the Mutsun people changed. Formerly, they had been housed only at the mission and at mission camps on the ranchos. Now the

⁴¹Hubert Howe Bancroft, *History of California*, vol. 3, 1825–40 (San Francisco, 1886–90), 674, 711–17, 755; California Board of Land Commissioners, "Transcript in Case No. 62," *Juristac, Antonio and Faustino German vs. the United States*, case 9, 1852–53, mss., Bancroft Library; Hendry and Bowman, "The Spanish and Mexican Adobe," 979; Milliken, *Archaeological Test Excavations*, 88; Ruben G. Mendoza, *San Juan Bautista: An Archaeologist's View of an Early California Mission* (Sacramento, CA, 2002), 2, reported that Fray Felipe Arroyo de la Cuesta made every effort to stay at Mission San Juan Bautista, even requesting to change Franciscan orders, but he was unable to do so. Mendoza also reported that Arroyo was well liked by the Mutsun Indians; Hawthorne, *California's Missions: Their Romance and Beauty*, 179, noted that in his later years at the mission, Father Arroyo, crippled by arthritis, went out to Mutsun villages to carry out church activities.

⁴²Arbuckle and Rambo, *Santa Clara Co. Ranchos*, 13–39; Cowan, *Ranchos of California*, 12–109; Pierce, *East of the Gabilans*. The additional Mexican land ranchos, with the dates of the grants authorizing them, were Ausaymas y San Felipe (1833, 1836); Bolsa de San Felipe (1836, 1840); Ciénega de los Paicines (1842); Juristac (1835); La Ciénega del Gabilan (1843); Llano del Tequisquite (1835); Los Vergeles (1835); Rancho Lomerias Muertas (1842); San Antonio or San Juan Bautista (1839); San Joaquin or Rosa Morado (1836); and Santa Ana Y Quien Sabe (1839).



Diseño (ca. 1830) for the original Juristac (Rancho La Brea) land grant. Land Case Map D-307, Diseño for Rancho Juristac, ca. 1830, mss., Bancroft Library. The location of Rancho La Brea was the location of a Mutsun village.

mission was a town, owned privately, and although the Mutsun were no longer ruled by the mission priests, they were under the control of the rancho owners. In most of California, the rancheros treated the Indians even more harshly than the missions had treated them. Historian James J. Rawls described their plight:

The rancheros were in absolute control over their workers and used several means of coercion—persuasion, economic pressure, violent force—to recruit and maintain their labor supply.

A typical rancho in California might use as few as twenty or as many as several hundred Indian workers.⁴³ Violence became common against Indians, whether they had been baptized or

⁴³James J. Rawls, *Indians of California: The Changing Image* (Norman, OK, 1984), quoted at 20; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 17–18.

not. Indians attempting to escape from ranchos, or trying to live on their aboriginal land, were often hunted down and killed. Mass executions of California Indians took place under Mexican rule.⁴⁴

A few Mutsun people remained in the pueblo of San Juan Bautista, finding work where they could.⁴⁵ Others worked like indentured servants on the ranchos that had been given to Mexican citizens through land grants.⁴⁶ At the former mission rancho of La Brea, now Rancho Juristac, Indians worked under Antonio and Faustino German. The Germans constructed houses for their families and Indian workers near the sites of old Mutsun villages.⁴⁷ The Mutsun there may have received some solace from the fact that they continued to work on their aboriginal lands and continued to live at the sites of their former villages.

It is impossible to know exactly how much the Mutsun population diminished under Spain and Mexico, but we do know the decline was dramatic. Mission records indicate that only 875 Indians were released from Mission San Juan Bautista when it was secularized in 1835.⁴⁸ Under Spain, the overall Costanoan population had been reduced by at least 80 percent.⁴⁹ During the Mexican period, there was a further severe decline of the California Indian population. Robert F. Heizer estimated that between 1769 and 1846, the population of California Indians fell from 350,000 to 100,000.⁵⁰ It is believed that a significant percentage of the Indian population of California was killed during Mexican raids.⁵¹

Mexican land grant records help to establish Mutsun aboriginal territory and village locations and to provide evidence of continuing Mutsun interaction within their aboriginal territory. Legal proceedings dealing with Mexican land grants (and earlier Spanish grants) in the area show that ranchos were frequently located at or very near to Mutsun village sites, and in fact were sometimes named, like Juristac,

⁴⁴Castillo, "The Impact of Euro-American Exploration and Settlement," 105–106.

⁴⁵Levy, "Costanoan," 486. Mills, *The Papers of John Peabody Harrington in the Smithsonian Institution, 1907–1957*.

⁴⁶Levy, "Costanoan," 486.

⁴⁷Hendry and Bowman, "The Spanish and Mexican Adobe," 973, 979–83; Cowan, *Ranchos of California*, 43.

⁴⁸Milliken, *Archaeological Test Excavations*, 89.

⁴⁹Levy, "Costanoan," 486.

⁵⁰Heizer, "Treaties," 701.

⁵¹Castillo, "The Impact of Euro-American Exploration and Settlement," 106–107.

for the village where the rancho was located.⁵² Records of the Mission San Juan Bautista ranchos that became land grants, such as Juristac, Las Ánimas, and Ausaymas y San Felipe, indicate that throughout the first half of the nineteenth century, at least some of the Mutsun Indians, who had been gathered and placed under the control of the mission, continued to work on the ranchos, which were within their traditional aboriginal territory. Demonstrating a strong attachment to their aboriginal territory, Mutsun also continued to work on and use their aboriginal land after the mission was secularized.⁵³

UNITED STATES RECORDS

Manifest Destiny had a dramatic effect, not only on the Mutsun but on their Mexican masters. A whole new social hierarchy was established at the close of the Mexican War, this one even more brutal than anything that had existed under Spain and Mexico. The United States declared war on Mexico on May 13, 1846. After occupying and establishing a civil government in New Mexico, Brigadier General Stephen Watts Kearny turned his attention to California, joined by forces under Commodore Robert F. Stockton. In early January 1847, they defeated the Mexican army in Los Angeles. By September, the American flag was flying over Mexico City. A treaty ending the war was signed at the village of Guadalupe Hidalgo on February 2, 1848. A little more than a month later, the Senate ratified the treaty.

⁵²For example, see the following, which, when compared with mission records and other analyses, show rancho structures built at Indian village sites: "Diseño al Rancho de las Ánimas," ca. 1835, mss., Bancroft Library; land case map E-1442, "Juristac," A. & Faustin [sic] German, claimants, filed February 26, 1861, mss., Bancroft Library; land case map D-307, Diseño for Rancho Juristac, mss., Bancroft Library; Hendry and Bowman, "The Spanish and Mexican Adobe," provided an analysis showing where early rancho structures were located.

⁵³Hendry and Bowman, "The Spanish and Mexican Adobe," 973, reported that the original La Brea grant petition discussed housing built in 1803 for the Indians working the mission ranch there; and p. 972 indicated similar housing for Indians on the Ánimas grant; Arroyo de la Cuesta, "Repuesta," 18, reported that Mutsun returned to their aboriginal lands to gather acorns and other traditional foods; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 16–18, reported on the Indians working the mission ranchos and, after secularization, returning to live in their aboriginal territory; Milliken, *Archaeological Test Excavations*, 77. In both drives, the aged and infirm, the sick, and women with babies and little children who could not keep up, were put out of the way—some shot with pistols, some clubbed over the head, and some beaten until they fell and never got up.

The subsequent treatment of Indians in California under United States rule has been widely condemned. Indians were hunted down and shot as though they were game. They were sold as slaves. Large numbers of Indians were gathered and killed. Historian Hubert Howe Bancroft said in 1890,

It was one of the last human hunts of civilization, and the basest and most brutal of them all.

Anthropologist C. Hart Merriam, in testimony to Congress, described some of the roundups of Indians:

In both drives, the aged and infirm, the sick, and women with babies and little children who could not keep up, were put out of the way—some shot with pistols, some clubbed over the head, and some beaten until they fell and never got up.

It was in this "hellish" environment that the Mutsun Indians managed to subsist and survive on the ranches and in the towns around San Juan Bautista during the last half of the nineteenth century.⁵⁴

With the end of the Mexican War and the signing of the Treaty of Guadalupe Hidalgo, the United States explicitly guaranteed that legitimate Spanish and Mexican land grants should be honored by the United States. Congress also acted quickly to obtain a cession of tribal aboriginal territory. These two actions would have important impacts on California Indians in general, and on the Mutsun Tribe in particular.

Because of the Gold Rush, California quickly became a state in 1850. United States law and policy required that aboriginal title be extinguished so that non-Indians could settle on the California public domain. President Millard Fillmore appointed three commissioners to negotiate treaties with the Indians of California. Between 1851 and 1852, the three commissioners met with 402 Indian leaders and executed a series of eighteen treaties, which came to be known

⁵⁴Bancroft, *History of California*, vol. 7, 474–80, quoted at 475; Heizer, *The Destruction of California Indians* (introduction by Albert L. Hurtado) (1974; Lincoln, NE, 1993), especially, 219–71. Hurtado uses the word *hellish* in his introduction on p. ix; C. Hart Merriam, "Statement of C. Hart Merriam, Washington, D.C., Before subcommittee of House Committee on Indian Affairs, May 5, 1926," microfilm, Banc film 1022, reel 80, Bancroft Library, quoted at 4; Roy Nash, superintendent, Sacramento Indian Agency, "The Government Service Program—It's [sic] Objectives," address to Western Regional Conferences of the National Fellowship of Indian Workers," Galilee, Lake Tahoe, Nevada, August 14, 1940.

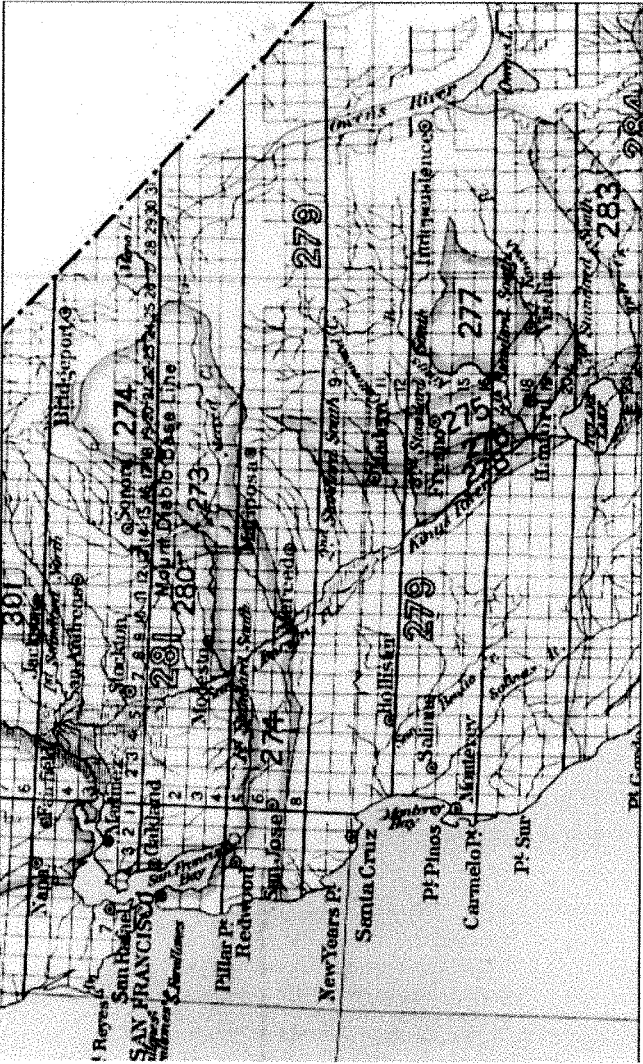
as the Barbour Treaties. Under the terms of these treaties, the Indians ceded aboriginal title to some seventy-five million acres in exchange for eighteen reservations with a total acreage of 8,518,900, and promises of implements, livestock, and clothing.⁵⁵

Four of the 1851 treaties were intended to cede Mutsun lands and create relatively large reservations to the east, where Mutsun should have been allowed to settle with support from the government.⁵⁶ However, by late 1851 the *Los Angeles Star* was already editorializing against Indian reservations in California. In early 1852, the state legislature, pressured by California miners and settlers, appointed a committee to "instruct" California's "Senators in Congress the course this Legislatures desires them to pursue in relation to the confirmation of the treaties. . . ." The majority report of that committee called for rejection of the treaties and was delivered to Congress, where the state's senators, led by Senator John B. Weller, succeeded not only in preventing the ratification of the treaties but in having them classified as confidential and sealed in the U.S. Senate's secret archives.⁵⁷ Eventually, the U.S. Court of Claims determined that even though these treaties were never ratified,

⁵⁵BIA, *Indians of California* (Washington, DC, 1966), 7-8; Robert W. Kenny, attorney general of California, *History and Proposed Settlement: Claims of California Indians* (Sacramento, 1944; facsimile reprint by Coyote Press, n.d.), 2-11.

⁵⁶Charles C. Royce, *Indian Land Cessions in the United States*, extract from the *Eighteenth Annual Report of the Bureau of American Ethnology*, part 2 (Washington, DC, 1899), 780-83 and California 1 map. Royce shows Mutsun territory being ceded under treaties M, A, B, and N; Heizer, "Treaties," 701-704. Heizer concluded that M was with Sierra Nevada tribes, in which case A, B, and N were the treaties that impacted Mutsun territory, all signed between April and May 1851; Charles J. Kappler, *Indian Affairs: Laws and Treaties*, vol. 4 (Laws) (Washington, DC, 1929), 1981-1096, reprints treaties M, A, and N; Alban W. Hoopes, "The Journal of George W. Barbour, May 1, to October 4, 1851," *Southwestern Historical Quarterly* 40:2 (October 1936): 145-53, and 40:3 (January 1937): 247-61; George Gibbs, "Journal of the Expedition of Colonel Redick M'Kee, United States Indian Agent, Through North-Western California. Performed in the Summer and Fall of 1851," in Henry R. Schoolcraft, *Information Respecting the History, Condition and Prospects of the Indian Tribes of the United States...* (Philadelphia, 1853), 99-177; William H. Ellison, "The Federal Indian Policy in California, 1846-1860," *The Mississippi Valley Historical Review* 9: 1 (June 1922): 37-67.

⁵⁷W.H. Ellison, "Rejection of California Indian Treaties: A Study in Local Influence on National Policy," *The Grizzly Bear* (May 1927), 4-5 and 86; *ibid.* (June 1925), 4-5; *ibid.* (July 1925), 6-7; BIA, *Indians of California*, 9; Kenny, *History and Proposed Settlement: Claims of California Indians*, 13-17; Kenneth M. Johnson, *K-344 or the Indians of California vs. The United States* (Los Angeles, 1966), 46-59; Rawls, *Indians of California*, 144-46.



Charles C. Royce. *Indian Land Cessions in the United States*. Extract from the *Eighteenth Annual Report of the Bureau of American Ethnology*, part II, 1899, California I map. Cession area 279 covered Mutsun territory. Royce said treaties N, A, and B ceded the land in area 279 and created reservations 275-78. Treaty M ceded area 274, which may have contained a small amount of Mutsun territory and created reservation 273.

seventy-five million acres of Indian lands, including all of Mutsun territory, had been ceded to the United States.⁵⁸

In 1926, anthropologist C. Hart Merriam, who in the early 1900s had conducted field work with a Mutsun elder named Barbara Solórsano, was asked by a congressional committee to identify the signers of the eighteen treaties by tribe. Using his analysis as well as additional work carried out by Robert Heizer, and secondary sources in the Smithsonian Institution's 1978 *Handbook of North American Indians* California volume, it is possible to identify which tribes were represented in the cession treaties, designated A, B, M and N—the treaties that ceded Mutsun territory. At least twenty-eight signers were Yokuts Indians (including Foothill Yokuts), six were Miwok, and six were Monache. Three others were either Yokuts, Miwok, or Monache. All of these tribes lived to the east of the Mutsun. None of the signers of the four treaties were Mutsun. No Mutsun signed treaties to cede their land, and there is no evidence to suggest that any Mutsun ever took any action showing intent to cede Mutsun aboriginal territory.⁵⁹

Although the treaties called for cession of all Mutsun land, the cession did not include Spanish and Mexican land grants, so the

⁵⁸Court of Claims of the United States, "No. K-344," decided October 5, 1942, Records of the United States Court of Claims, General Jurisdiction Files, box 4116, file K-344, National Archives; "Indians of California," K-344 claim, map, 1928, RG 123, box 4115, National Archives. The cession and reservation lines drawn on the court's map are the same as those found in Royce, attorney general of the state of California, "Petition," *The Indians of California vs. The United States*, No. K-344, Records of the United States Court of Claims, General Jurisdiction Files, , RG 123, box 1117, National Archives; Assistant Secretary of the Interior Chapman to the attorney general, "No. K-344, The Indians of California vs. The United States. Report of the Interior Department," Records of the United States Court of Claims, General Jurisdiction Files, RG 123, box 1117, National Archives.

⁵⁹Merriam, "Analysis of the 'tribal' names appearing in the 18 unratified California treaties of 1851–1852," C. Hart Merriam Papers, microfilm reel 80, Bancroft Library, mss 80/18 c., provided a tribal designation for nearly every signer of the four pertinent treaties; Merriam, Testimony. Indian Tribes of California. Hearing Before a Subcommittee of the committee on Indian Affairs on HR 8063 and HR 9497, May 5, 1926. U.S. House of Representatives, 69th Congress, 1st sess. (Washington, DC, 1926), 6, 9–10, 25, believed that 56 of more than 200 California tribes were represented and 70 villages, but that many of the Indians named in the treaties could not be identified. He noted the Olhonian, or Costanoan tribes, which would have included the Mutsun; Heizer, "Treaties," 701–704, testified that there were 67 "tribelets" and 45 villages represented in the treaties, with many California tribes not represented; Heizer, "The Eighteen Unratified Treaties of 1851–1852 between the California Indians and the United States Government," Archaeological Research Facility, Department of Anthropology, University of California, Berkeley, 1972, mss., Bancroft Library. Here Heizer ridiculed the commissioners' work, saying they hadn't "the slightest idea of the actual extent of tribal lands of any group they met with," and calling the treaty process "poorly conceived" and undemocratic.



Barbara Sierra Solórsano at Mission San Juan Bautista in September 1902. (Photograph by C. Hart Merriam; Lowie Museum negative 23204)

status of Juristac and other grants in Mutsun territory would have remained unchanged even if the treaties had been ratified.⁶⁰

At about this time, Barbara Sierra inherited a primary Mutsun leadership role from her father, Junipero Sierra. As traditional leaders, she and her husband, Miguel Solórsano, both full-blood Mutsun Indians, preserved both the Mutsun language and an expansive knowledge of tribal culture.⁶¹ Barbara was born in the middle of the Mexican period, in 1836, and lived through the difficult years of Mexican and early United States rule. She died in 1913.⁶²

During the remainder of the nineteenth century, the Mutsun were left to work, mostly as servants and laborers, around Mission San Juan Bautista and on the land grant ranchos in their aboriginal territory. But despite the commitment by the United States to honor the grants that had established these ranchos, the land quickly began falling into American hands.

During the same year that the treaty commission was established, 1851, the United States established the California Land Claims Commission. The commission was created to determine the boundaries and legal ownership of Spanish and Mexican land grants. But the process was "long, cumbersome, and expensive" and often actually "insurmountable" for Mexican owners. As a result, early American entrepreneurs acquired many of the grants.⁶³ The documentary record created by the Land Claims Commission provides important details concerning Mutsun who continued to use the heart of their

⁶⁰Hoopes, "The Journal of George W. Barbour," 145–53; and no. 3 (January 1937), 247–61, describes the negotiations for treaty N. There is no indication that the status of land grants was discussed; Gibbs, "Journal of the Expedition of Colonel Redick M'Kee," 99–177; William H. Ellison, "The Federal Indian Policy in California, 1846–1860," *The Mississippi Valley Historical Review* 9:1 (June 1922): 37–67; Royce, *Indian Land Cessions in the United States*, 780–83 and California 1 map; Kappler, *Indian Affairs: Laws and Treaties*, vol. 4 (Laws), 1981–1096, reprints treaties M, A, and N.

⁶¹Information on Miguel Solórsano and Barbara Sierra can be found in both the works of Harrington and Merriam, including, for instance, the following: Harrington, "Papers," excerpts from "Interviews with the San Juan Indians," microfilm, reel 58, for example, frames 263, 264, 273, 274, 275, 315–16.

⁶²Merriam to Harrington, September 8, 1929, with attached notes from Harrington's consultation with Ascención Solórsano. Harrington, "Papers," reel 41, frames 74–78. Merriam was amazed, in 1902, to locate Barbara and to learn that she was thoroughly knowledgeable about the culture and language of the Mutsun people. He obtained linguistic and cultural information from Barbara Sierra during the years 1902 to 1904; Harrington, "Papers," excerpts from "Interviews with the San Juan Indians." This material is found in Harrington's "San Juan Report" in frames 240–996 of roll 58 and frames 1–1126 of roll 59; Theodora Kroeber and Robert F. Heizer in *Almost Ancestors: The First Californians*, ed. F. David Hales (San Francisco, 1968), 22 and 166.

⁶³Dill et al., 12.

aboriginal homeland. Father Arroyo and the mission had used Spanish and Mexican law to help protect the Indians' working relationship with the ranchos. The documentary record created by the Land Claims Commission provides insights into how the intentions of Arroyo were eventually thwarted.

The history of the Rancho Juristac grant, containing more than four thousand acres in the heart of Mutsun aboriginal territory, exemplified the problems Mexicans had in trying to hold onto their property. On March 3, 1851, Congress established the "United States Board of Land Commissioners to Ascertain and Settle the Private Land Claims in the State of California." Antonio and Faustino German, owners of the Juristac grant, filed their claim with the board quickly, on February 21, 1852. The board determined that the necessary *expediente* (the Mexican file of official papers) was in order, with authentic signatures. They also found that there was an official *diseño* (a map, or, more precisely, a drawing of grant boundaries). There were no conflicting claims from other parties, and the board interviewed individuals who confirmed that the Germans had been living on the grant and had improved it by building houses, cultivating land, and constructing corrals. The board determined that all its questions concerning the grant had been answered except one. That question was whether the grant encroached on lands claimed by the mission. But in the *expediente* was a letter from Father Arroyo de la Cuesta, confirming the Germans' report that the mission had first loaned the ranch to them in 1830 and that the priest later had recommended to authorities that it be granted to the Germans. With all its questions answered, the board promptly rendered a decision confirming the grant to the Germans on December 18, 1852.⁶⁴

But if Antonio and Faustino German sensed victory, they were sadly mistaken. Under the law establishing the land board, Congress allowed either party (claimant or United States) to appeal first to federal district court and then to the Supreme Court. A total of 809 claims were presented to the board, of which 604 were confirmed. Of these, all but three

⁶⁴California Board of Land Commissioners, "Transcript in Case No. 62"; Bancroft, *History of California*, vol. 3, 1825-1840, 712; land case map D-307, *Diseño for Rancho Juristac*, mss., Bancroft Library. The *diseño* grant was for one league or 5,000 varas, which equaled about 4,439 acres; "Diseño al Rancho de las Ánimas," ca. 1835, mss., Bancroft Library. This *diseño* also locates the boundary of the mission lands, confirming the Germans' claims; Robert F. Heizer, Robert F. Almquist, and Alan J. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico, and the United States to 1920* [Berkeley, 1971], 150.

were appealed to U.S. District Court. The Justice Department appealed 114 of the cases to the Supreme Court. Unfortunately for the Germans, the decision of the board on the Rancho Juristac grant was one of those appealed both to district court and to the Supreme Court.⁶⁵

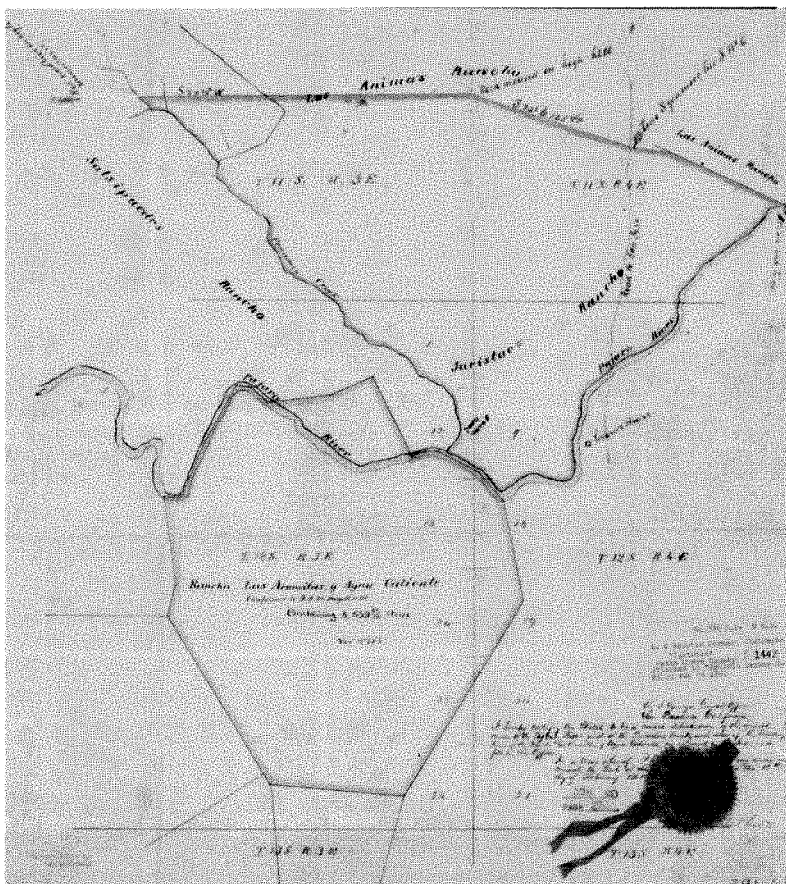
Grant holders had the burden of proof under this system—a requirement severely criticized by historians, who have called it appallingly expensive and unjust. Claimants generally were forced to defend their title in from two to six trials. It is hard to justify the United States' actions in appealing nearly every case to federal district court and then the Supreme Court. Claimants not only had to pay attorneys' costs; they were forced to pay appellate fees and to survey their grants at their own expense. Only one year after the Land Claims Board was in session, 10 percent of the value of the claims had already been paid out to attorneys.⁶⁶ The net result of this system was that grant lands moved from Mexican to American ownership. By 1856, the Germans seemingly were left with no other choice but to sell their grant.

In 1855 Antonio German sold his half of the Juristac Rancho to R.S. Carlisle, and in February 1856 Faustino sold his half to Jacob L. Sargent.⁶⁷ Although the Germans had been granted more than four thousand acres with abundant water and grazing land, the system the United States established to confirm the grants had broken them completely. Bancroft's *History of California* stated that the brothers lost their land to American "sharpers," but there is no supporting evidence to suggest that Sargent and Carlisle were swindlers. Nevertheless,

⁶⁵California Board of Land Commissioners, "Transcript in Case No. 62"; Crisostomo N. Perez, *Land Grants in Alta California: A Compilation of Spanish and Mexican Private Land Claims in the State of California* (Rancho Cordova, CA, 1996), 45–47, 70. The Juristac case was Northern District case 9; *German v. United States*, 72 U.S.825; 18 L. Ed. 502; 5 Wallace 825; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 38–39, had slightly different totals for the number of claims filed and confirmed by the board, but agreed on the salient points.

⁶⁶Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 47; Charles C. Baker, "Mexican Land Grants in California," *Publications of the Historical Society of Southern California*, vol. 9 (1914), 236–43; Paul W. Gates, "Adjudication of Spanish-Mexican Land Claims in California," *The Huntington Library Quarterly* 21:3 (May 1958): 213–36. Gates argues there was no discrimination against Mexican grantholders, but his view is not shared by most scholars who have looked at this issue.

⁶⁷Hendry and Bowman, "The Spanish and Mexican Adobe," 981–83.



The original United States survey of the Juristac Land Grant. Land Case Map E-1442, "Juristac," A. & Faustino German, Claimants, filed February 26, 1861, mss., Bancroft Library.

the Germans, wealthy under Mexico, were now reduced to poverty. Faustino died penniless at San Juan Bautista in 1883.⁶⁸

The sale of the Juristac grant also impacted the Mutsun Indians who continued to live on and near the rancho, some of whom had continued to work on the ranch through the Mexican period. Father Arroyo de la Cuesta had suggested and approved of the grant to the Germans in order to look after the

⁶⁸Bancroft, *History of California*, vol. 3, 1825–40, 755. In researching the book, José de los Santos German, the son of Antonio, was interviewed and may have been the source of the comment concerning American sharpers.

interests of the mission, including its Indians. Ever since Junípero Serra had begun the process of missionizing the Indians, he and the authorities, partly because of the shortage of European women, had encouraged soldiers to marry baptized Indian women. With this in mind, and considering the fact that the Germans had a close working relationship with the Mutsun workers and that many of those workers' families had lived on the ranch throughout its existence, it is not surprising that Antonio German's son Juan married a Mutsun woman. Even today, Mutsun descendants recall what they regard as their former ownership of "Rancho La Brea."⁶⁹

Documentary records indicate that Mutsun Indians continued to work on Rancho Juristac after its purchase by Sargent and Carlisle.⁷⁰ During district court proceedings in 1860, Jacob L Sargent's brother James P., along with Carlisle, represented their interests in the Juristac grant. To comply with federal law, Sargent and Carlisle had the grant surveyed and the surveyor general certified its location.⁷¹ District court upheld the decision of the Land Claims Board and allowed an appeal in 1864, but the United States prevented final confirmation of the grant for another three years. In 1865, the United States appealed the decision to the Supreme Court, but the appeal was dismissed two years later because it had been filed late.⁷²

A mutual sense of place is a traditional cement that helps hold a culture together. Thus, for the Mutsun recognition process it becomes important to document continuing knowledge and use of the tribe's aboriginal home. The area that had now become Sargent Ranch had been a central portion of Mutsun territory—the location of several villages and the focus of much knowledge about useful flora and fauna. Mutsun continued to use the land when it was the Juristac land grant, and also later when it became Sargent Ranch, despite the dramatic political and cultural changes in the world around them.

⁶⁹Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 5; Bancroft, *History of California*, vol. 3, 1825–40, 755, reported that Juan was born in 1820; Yriberito Herman, application number 8084, RG 75, entry 576, National Archives. In 1930, Herman—his name now spelled with an "H"—testified that his great-grandfather, Juan, owned Rancho La Brea and that his father was born on the rancho. His testimony was supported by two prominent non-Indians who were long-time residents of San Juan Bautista.

⁷⁰Yriberito Herman, application number 8084, RG 75, entry 576, National Archives, with accompanying correspondence in the file.

⁷¹California Board of Land Commissioners, "Transcript in Case No. 62," 75–77; land case map E-1442, "Juristac."

⁷²*German v. United States*; 72 U.S. 825; 18 L. Ed 502; 1866 U.S. Lexis 987; 5 Wallace 825.

Throughout the remainder of the nineteenth century, Mutsun Indians continued to live near Rancho Juristac, which now became known as Sargent Ranch. They watched as the Americans expanded operations. The ranch included approximately sixty acres of tar springs, and as early as 1860 the owners began to mine the oil and asphalt seeps along La Brea Creek. They shipped the tar from Sargent Station (which later was called simply Sargent) on the Monterey Road to San José. There the tar was used to pave streets. By 1864, an oil and kerosene distillery was in operation at Sargent Station, where a small colony of Mutsun Indians continued to live.⁷³

In 1869, when the Santa Clara & Pajaro Railroad finished a rail line that reached Sargent Ranch, Sargent Station became a railway stop, near the mouth of Pescadero Creek. A year later the line was purchased by Southern Pacific. Finally, in 1871, Sargent, his brother, and their partner succeeded in obtaining a patent to Rancho Juristac, nineteen years after the German brothers submitted their grant to the Land Claims Board for confirmation. The 4,540-acre grant now became known officially as Sargent Ranch, with a stop on the Southern Pacific Railroad. J.P. Sargent now owned one of the largest cattle ranches in the region.⁷⁴

Yet the Mutsun Indian presence continued in the area. After the railroad reached Sargent Station, near a small Mutsun colony, a man named Mark Regan established a stage line and made a good living taking people from Sargent Station to San Juan and Hollister. As he drove the stage along the difficult road from Sargent to Mission San Juan Bautista, Regan would tell passengers stories he had learned from the Indians in the area.⁷⁵ The Indian community called its little village Sargenta,

⁷³Dill et al., 14–15, 17, 19–20. The Watsonville Oil Company began pumping oil from the Sargent Ranch oil field around the turn of the century. By 1948, when the company ceased operation, it had shipped 780,000 barrels of oil from Sargent Station. Most of the oil was pumped from wells three miles west of Sargent Station; Pierce, *East of the Gabilans*, 150–51.

⁷⁴Perez, *Land Grants in Alta California*, 70. The claim was patented on November 13, 1871; Dill et al., 9–15. The special court patented the grant in case 0009 ND; Erwin G. Gudde, *California Place Names: The Origin and Etymology of Current Geographical Names*, 4th ed., revised and enlarged by William Bright (1949; Berkeley, 2004), 351.

⁷⁵Isaac L. Mylar, *Early Days at the Mission San Juan Bautista* (1929; Fresno, CA, 1970), 63, 139–40, 154–55, 173–74, and 193; Charles W. Clough, *San Juan Bautista: The Town, the Mission & the Park* (Fresno, 1996), 63, 75, and 95. Mark Regan later became a conductor on a local train. In 1916, Helen Hunt Jackson, author of an important work on Indian history, *Century of Dishonor*, took Regan's stage to San Juan, there to continue her work on *Ramona*.

located where they people could still harvest the many plants found within the ranch boundaries.

By the end of the nineteenth century, Mutsun were living by wage labor and residing near Sargent Station, where a resort with a hotel, saloon, picnic ground, and open-air dance floor, ringed with torches for dancing at night, was constructed in 1896. Hunters and fishermen now arrived by rail, stayed in the hotel, and vacationed in the core of Mutsun aboriginal territory, an area rich in natural resources.⁷⁶ Still, the heart of that territory, which had once been Mission San Juan Bautista's Rancho La Brea, then the Juristac land grant, and eventually the Sargent Ranch, remained relatively untouched and undeveloped.

Small communities of Mutsun lived in several locations in San Benito County, including one at Sargent—or Sargenta, as the Indians called it—and one called Indian Corners, near Mission San Juan Bautista. Mutsun continued to gather medicinal herbs and foods in their aboriginal territory, including at Sargent Ranch.

The Mutsun population was further decimated during the second half of the nineteenth century under the United States. At the end of the Mexican period, the California Indian population had been about one hundred thousand. By 1900, the total California Indian population had dropped to about twenty thousand, less than 10 percent of what it had been one hundred years earlier. One scholar concluded that 12 percent of that population loss under the United States was caused by military or vigilante campaigns against Indians.⁷⁷

No culture is static; it must change in order to adapt to historic developments, and Mutsun culture is no exception. Nevertheless, it is important to note that the Mutsun perpetuated many traditional aspects of their culture, and some of those elements involved tribal leadership. Well before the deaths of her parents—Barbara Sierra and Miguel Solórsano—Ascención Solórsano had become a leader among the Mutsun of San Juan Bautista, or the San Juaneños, as they were often now called. She had learned the Mutsun language from her father and mother, and she worked systematically to preserve

⁷⁶Dill, et al., 17 and 19–20; Pierce, *East of the Gabilans*, 149–52. J.P. Sargent died early in the twentieth century, and title passed to his daughter, Ida Sargent Blanding. After Sargent's death, Joe Ayer of Milpitas leased the ranch until 1954. When Ida Blanding died in 1956, the ranch passed to family attorney Ed Rea and Robin Anderson, a stepson of Ida.

⁷⁷Cook, "Historical Demography," 91; Castillo, "The Impact of Euro-American Exploration and Settlement," 106–109.



Ascensión Solórsano, daughter of Barbara Sierra and Miguel Solórsano, became a leader of the Mutsun of San Juan Bautista. (Photograph by J.P. Harrington, taken between August 1929 and January 1930. OPPS negative no. 81-11249, Smithsonian Institution, National Anthropological Archives)

the tribal traditions of her people.⁷⁸ She also had studied and learned healing practices coming out of Mutsun shamanistic curative leadership tradition dating to pre-Spanish times, and she carried them forward into the twentieth century.

Mutsun leadership roles and culture had survived a century of brutal rule by three different nations. That leadership would now have to deal with completely new challenges and issues in the twentieth century. The laws and policies of Spain,

⁷⁸For example, see Harrington, "Papers," reel 58, frames 263, 264, 273, 274–75, 294, 300, 302, and 303. When John Peabody Harrington began interviewing her in the 1920s, she was able to provide a veritable treasure of information about the Mutsun people—culture, language, and biographical information.

Mexico, and the United States in the nineteenth century did much to direct the course of Mutsun tribal life in the twentieth century and on into the twenty-first century.

There has long been scholarly interest in the Mutsun language. Linguistic studies of Mutsun have been carried out from 1815 to the present. The results of these studies have demonstrated that Mutsun was a separate language, spoken in villages within a distinct region.⁷⁹ These studies help to document cultural continuity. Full-scale ethnological inquiries can provide substantial evidence of tribal cultural continuity, but it was not until the early twentieth century that systematic ethnological studies of Mutsun began to take place.

In 1902, ethnologist C. Hart Merriam interviewed Barbara Solórsano, who was living near Mission San Juan Bautista. She identified her tribe and sold Merriam an example of her people's basketry. She told him her people had "occupied San Juan Valley long before the Padres came."⁸⁰ Merriam conducted some limited fieldwork with Barbara Solórsano and with her daughter Ascención over the next three years and made linguistic notes on the Mutsun language.⁸¹

⁷⁹For example, see Arroyo de la Cuesta, *Alphabs. Rivulus Obeundus, Exprimationun Causa, Horum Indorum Mutsun, Missionis Sanct. Joann. Baptistae*; Arroyo de la Cuesta, *Vocabulary or Phrase Book of the Mutsun Language of Alta California*. In 1862, Cramoisy Press in New York reprinted de la Cuesta's original 1815 publication under the auspices of the Smithsonian Institution and as a part of Shea's Library of American Linguistics, vol. 8; Albert S. Gatschet, "Indian Languages of the Pacific States and Territories," *Magazine of American History* 1:1: 145-71; Gatschet, "Specimen of the Chumêto to Language," *American Antiquarian* 5:1 and 2 (1883); Bancroft Library; John Wesley Powell, "Annual Report of the Director," *Sixth Annual Report of the Bureau of Ethnology to the Secretary of the Smithsonian Institution, 1884-85* (Washington, DC, 1888), xxxi; J. Alden Mason, "The Mutsun Dialect of Costanoan Based on the Vocabulary of de la Cuesta," *University of California Publications in American Archaeology and Ethnology* 11:7 (Berkeley, March 9, 1916), 399-472; Shipley, "Native Languages," 81, 84, 89; Harrington, "Papers," reel 41, frames 92, 94, 95, and 101; Heizer, "California Indian Linguistic Records: The Mission Indian Vocabularies of H.W. Henshaw," *University of California Anthropological Records*, 15:2 (Berkeley 1955): 85-202; Levy, "Costanoan," 485.

⁸⁰Merriam, "Ethnographic Notes on California Indian Tribes III. Ethnological Notes on Central California Indian Tribes," *Reports of the University of California Archaeological Survey* 68:3 (Berkeley, December 1967): 371.

⁸¹Merriam to Harrington, September 8, 1929, with attached notes from Harrington's consultation with Ascención Solórsano. Harrington, "Papers," reel 41, frames 74-78.

But it was John Peabody Harrington, working closely with Ascención starting nearly twenty years later, who provided the first comprehensive, in-depth view of Mutsun culture.⁸² Harrington interviewed Ascención extensively in 1921 and 1929, living in the Solórsano household for an extended period during the latter year while Ascención was dying of cancer. Harrington called Ascención Solórsano's knowledge of Mutsun language and culture "astonishing." Of the hundreds of thousands of pages of Harrington's papers that were micro-filmed, at least twenty-three rolls of microfilm—more than twenty-five thousand pages of material—relate to Ascención Solórsano, Mutsun Indians, and the Mutsun language. These materials include vocabularies, geographical place names, and cultural details on language, jewelry, face-painting, kinship terms, material culture, minerals and paints, myths, people, clothing, religion and philosophy, the San Juan Bautista Mission, songs, riddles, sayings, stories, swimming, other tribes' names, cooking baskets, fiestas, hunting and fishing, historical anecdotes, and war. This remarkable material provided to Harrington by Ascención Solórsano constitutes an important record of Mutsun culture in all its diversity.

The kind of traditional leadership provided by Ascención Solórsano, as well as her mother and grandfather, would prove critical in helping the Mutsun react to United States' policy in the twentieth century and in maintaining Mutsun organization and collective identity.

As noted above, three of the 1851 treaties would have ceded Mutsun lands and created relatively large reservations to the east of their traditional territory, where Mutsun should have been allowed to settle with support from the government. However, the California State Legislature, pressured by miners and settlers, was vehemently opposed to the treaties. California's senators succeeded not only in preventing the ratification of the treaties, but in having them classified as "confidential" and sealed in the U.S. Senate's secret archives. Eventually, the U.S. Court of Claims determined that even though these treaties were never ratified, seventy-five million acres of Indian lands, including all of Mutsun territory, had been ceded to the United States.

In 1905, Senate clerks rediscovered the eighteen treaties, and the Senate removed their confidential status and revealed them

⁸²Les Field et al., "A Contemporary Ohlone Tribal Revitalization Movement: A Perspective from the Muwekma Costanoan/Ohlone Indians of the San Francisco Bay Area," *California History* (fall 1992): 412–31, who note Harrington's work and also address the efforts of Costanoan/Ohlone tribes, including the Amah Mutsun, to obtain recognition.

to the public. Both in California and nationally there was considerable public sympathy for California Indians and outrage at the actions of the Senate and the California legislature. Instead of dissipating over time, those concerns grew, until in 1927 the California legislature passed legislation authorizing the state attorney general to represent California Indians in a lawsuit against the United States. A year later Congress authorized the U.S. Court of Claims to "adjudicate California Indian claims in accordance with the provisions of the 18 unratified treaties of 1851 and 1852, allowing full payment of specified benefits, as if the treaties had been ratified."⁸³ A short time later, Congress amended that act to authorize the compilation of a census of all Indians in California who should share in any judgment. In order to qualify for enrollment, California Indians had to have been alive at the time of the original act, 1928, and they had to establish that they had ancestors who were in California in 1852, at the time of the signing of the last of the treaties.⁸⁴

In August 1929, the original petition was filed in the Court of Claims by California Attorney General U.S. Webb (who held that office from 1902 to 1939!). It would be twenty-six years before a final resolution of the case, which during ensuing years came to be known by its Court of Claims docket number, "K-344." Two subsequent attorneys general would continue the work begun by Webb. In November 1938, Earl Warren, the district attorney of Alameda County, was elected attorney general. He took office in early 1939 and continued pushing the case forward. In 1942, Warren was elected governor of California, and Robert W. Kenny was elected to the office of attorney general. In that same year, after the court ruled that the United States was liable, Kenny led negotiations to determine the value of the settlement.⁸⁵

In the meantime, the government moved forward in an effort to identify who would be eligible to receive a share of any possible compensation. In 1930, Fred A. Baker, who had extensive experience in enrolling Indians in censuses, was directed by the Bureau of Indian Affairs to compile the needed California Enrollment Census.⁸⁶

⁸³BIA, *Indians of California*, 13.45. Stat., 602.

⁸⁴*Ibid.*, 13.46. Stat., 259.

⁸⁵Kenneth M. Johnson, *K-344 or the Indians of California vs. The United States* (Los Angeles, CA, 1966), 67–75. The 1942 court ruling denied just compensation and allowed only compensation for an equitable claim.

⁸⁶Indians of California Census Rolls, Authorized under the Act of May 18, 1928 as amended, approved May 16–17, 1933. Introduction compiled by Larisa K. Miller. Microfilm M1853, National Archives, Northwest Regional Repository, Seattle, Washington.

Ascención Solórsano died in the same year and was buried at Mission San Juan Bautista in the Old Indian Cemetery, where so many of her ancestors were also buried. Father F.J. Caffrey, a priest who had been in charge of the Indian Mission of San Juan Bautista, reported, "It was one of the largest funerals in the history of the County."⁸⁷ Solórsano was widely known for her knowledge of Mutsun language and culture, as well as for her work as a traditional doctor, or *curandera*. Dignitaries from throughout the state attended the funeral, alongside many Mutsun Indians. It was reported that the governor was among those attending. Father Caffrey stated, "We were paying honor not to one person only, but to the entire tribe."⁸⁸ With the passing of Ascención Solórsano, it would be up to a new generation of Mutsun leadership to deal with the California claims process.

Fred A. Baker, assigned to carry out the census, developed a plan to identify Indians in California. Those individuals who were certified as Indian would be eligible to receive a share of the judgment from the K-344 case then being heard in the Court of Claims.

The plan adopted was somewhat unique in the enrollment of Indian tribes. Its main features were, first, to retain control over the issuance of the blank forms of applications for enrollment so as to avoid a flood of spurious and doubtful claims being filed; secondly, it was decided that the enrolling agents should visit personally the various Indian communities throughout the State of California and assist each individual applicant in the preparation of his claim.⁸⁹

In order to certify individuals as Indians, Baker first identified prominent Indians throughout the state.

Names of prominent Indians in each district were obtained and special notices sent to them with instructions to give the matter widespread publicity in their districts.

⁸⁷Engelhardt, *Mission San Juan Bautista: A School of Church Music*, 118–20.

⁸⁸*Ibid.*, 120; Joseph Mondragon, interview by E. Richard Hart, October 15, 2002, San Francisco; Harrington, Photographs of the Funeral of Ascención Solórsano. OPPS 91-30402 and 30403, National Anthropological Archives, Smithsonian Institution; Mendoza, *San Juan Bautista: An Archaeologist's View of an Early California Mission*, 32.

⁸⁹Baker to commissioner of Indian affairs, September 30, 1932, RG 75, Central Classified Files, 053-11626-1929, General Services, pt. 4, National Archives.

Then hearings were held in the communities where the Indians lived.

All persons were enrolled in a public hearing, each person had to pass the careful scrutiny of the Indians of the local community. A committee of old Indians acted, in many instances, as witnesses to the authenticity of claims, and as to the fact of claimants being recognized as persons of California Indian descent. Unless a person were [sic] in fact of Indian blood, he would tend to hesitate to run the gauntlet of the old Indians present at the hearings.⁹⁰

Baker visited Mutsun communities in July and December 1930, enrolling San Juaneños in the towns of Hollister, Gilroy, and San Juan Bautista.⁹¹ He identified Mission San Juan Bautista Indians that could testify to the Indian ancestry of individuals, establishing what amounted to a committee of Mutsun Indians. These included María Antonia Sánchez Solórsano, Claudia Corona, Theresa Gómez, Frank and Pete Moreno, and especially María Dionisia Mondragon, daughter of Ascención Solórsano.⁹²

The enrollment applications, testimony, correspondence, census rolls, and other documentary materials associated with the California Enrollment Census provide a great deal of information about Mutsun cultural life in the twentieth century, including evidence of Mutsun Indian ancestry, Mutsun tribal organization, and non-Indian awareness of San Juan Indian tribal status.

It is safe to say that because of the policies of Spain, Mexico, and the United States, fewer than half of California's tribes were placed under the jurisdiction of the United States. These tribes were not placed on reservations in California and did not come under the authority of United States Indian agents. Both Spain and Mexico had attempted to destroy tribal culture and had treated Indians as little more than slaves. The United States continued and even exacerbated the disgraceful treatment of Indians. By sealing the eighteen treaties with California tribes, the United States attempted to deny these tribes' very existence. Nevertheless, a number of the tribes, like the Mutsun, persisted

⁹⁰Baker to commissioner of Indian affairs, March 8, 1933, RG 75, Central Classified Files, 053-11626-1929, General Services, pt. 5, National Archives, pp. 15 and 22.

⁹¹Baker to commissioner of Indian affairs, January 5, 1931, RG 75, Central Classified Files, 053-11626-1929, General Services, pt. 3, National Archives.

⁹²Selected applications, RG 75, entry 576, National Archives.



María Dionisia Mondragon, daughter of Ascención Solórsano, holds her son Victoriano Mondragon in a woven basket cradle. (Photograph by J.P. Harrington, ca. 1922. OPPS neg. no. 91-30352, Smithsonian Institution, National Anthropological Archives)

into the twentieth century, and eventually participated in litigation related to the loss of their aboriginal territory and the failure of the United States to establish the 1851 treaty reservations. As the Mutsun of San Juan Bautista sought their share of the judgments from this litigation, they began to understand the meaning of federal recognition and eventually began to seek it.

The records associated with the litigation over the eighteen 1851–52 unratified treaties are scattered across the country in archives from Washington, D.C., to San Bruno and Berkeley, California.⁹³ They provide abundant historical evidence of Mutsun in the second half of the nineteenth century and document aspects such as degree of Indian blood; tribal affiliation; tribal organization; awareness by the non-Indian community that the people were, indeed, Indian; and continued association with their aboriginal territory. A selective review of the 1933 California Enrollment Census applications and final roll shows that at least seventy-nine Mutsun, or Mission San Juan Bautista, Indians were enrolled—families could enroll all of their names on one application. Mutsun individuals were listed on thirty-eight approved applications.

The applications included a space where individuals could provide their degree of Indian blood. The degree of Mission San Juan Indian blood varied from 1/16 to full blood. Some applicants provided genealogical charts showing their ancestors for many generations. There were at least thirteen full blood Mutsun enrollees.⁹⁴

Individuals were required to provide considerable additional information on the six-page application, including where they lived on May 18, 1928; their place of birth; the name of "the Tribe or Band of Indians" to which they belonged; names of ancestors who were alive on June 1, 1852 and where they were living then. Applicants were asked, "[W]hat lands in the State of California do you claim were taken from you or your California Indian ancestors by the United States without compensation?"

Most people of Mutsun descent called themselves Mission Indians, because they had been under Mission San Juan Bautista. Some, however, called themselves Mutsun or Ama. Almost all the applicants said that their tribe had lost land that was located in San Benito County. Some also said that their tribe lost land in Santa Clara and Monterey Counties. Many Mutsun descendants said that their ancestors were born and married at Mission San Juan Bautista and named the particular ancestors who were living in what is now San Benito County in 1852. Four people of Mutsun descent submitted applications on which they said their parents had been married by "Indian custom." Today, members of the Amah

⁹³Records cited in this paper were located in the National Archives in Washington, D.C., in the National Archives branch in San Bruno, California, and at the Bancroft Library at the University of California, Berkeley.

⁹⁴Applications 8056, 8058, 8079, 8113, 8141, 8144, and 8145, RG 75, entry 576, National Archives.

Mutsun Tribe explain that among their people "Indian custom" simply meant moving in together.⁹⁵

Mutsun individuals whose names were placed on the California Enrollment Census waited, to no avail, through the 1930s for payment. Finally, in 1944, K-344 was settled, but it took Congress until 1950 to pass an act authorizing an update to the census roll to enable payment. In the early 1950s, Mutsun people again corresponded with Bureau of Indian Affairs officials and filled out applications, particularly for members of their families born since 1928. All of the applications that were approved made up the 1955 California Enrollment Census. Again applications included extensive documentation of tribal ancestry. Some people provided genealogical charts showing their ancestors for many generations, back to the early eighteenth century. Mutsun people described ancestors who were alive in 1852 and living in the area around Mission San Juan Bautista. Again, most people described themselves as Mission Indians from San Juan Bautista, although some used the term *Mutsun*.⁹⁶

A selective review of the 1955 California Enrollment Census applications shows considerable interaction by Mutsun people with Bureau of Indian Affairs officials, both in submitting applications and in correspondence. At least eighty-one Mutsun individuals were listed in the census records. At least thirty-one Mutsun who had been on the 1933 roll were still alive and re-enrolled on the 1955 census roll. There were forty-one new enrollments, mostly children of those who had been on the 1933 census, but also some, like

⁹⁵Selected applications, RG 75, entry 576, National Archives; Melvin M. Ketchum, Martha M. Ketchum, and Harold M. Ketchum, interview by E. Richard Hart, with Irenne Zwierlein, May 26, 2004, Woodside, California; Adela Gilroy, interview by E. Richard Hart, with Irenne Zwierlein, May 24, 2004, Redwood City, California.

⁹⁶RG 75, BIA, Sacramento Area Office, California Judgment Enrollment, 1937-52, Accepted New (1955), box 25, series 1 and 2, applications 8119, 8121, 8383, 10045, 10046, 11107, 9942, 13566, Manuel A. Sotelo; RG 75, Sacramento Area Office, California Judgment 1937-55, Deceased Enrollees, boxes 302, 382, 387, 376, 302; Cleo D. Caudell to John E. Wallace, June 9, 1953, RG 75 Sacramento Area Office, California Judgment 1937-55, Deceased Enrollees, boxes 302 and 387; RG 75, BIA, Sacramento Area Office, California Judgment Enrollment, 1937-55, 1933 Enrollees' Reapplications, box 202, applications 3951, 3952, 3953, 8119, 8120, 8121, 8122, 10045, 10046, 13331, 13332, 13333, 13334, 13336, 13566, 13567, 13568, 13571, 13572, 13573, 13536, 13538, 18587; RG 75, BIA, California Judgment and Enrollment, Accepted New (1955), 1937-52, series 1, box 2, files 48-126; RG 75, BIA, Sacramento Area Office, California Judgment Enrollment, 1937-52, Accepted New-1955, series 2, boxes 86 and 78.

Elario Sotelo, who had been eligible for the 1933 roll but had failed to apply. The census listed at least nine Mutsun who had died since 1933.

Liability of the government had been established by the U.S. Court of Claims in 1942. California Attorney General Kenny then worked for two years to reach a settlement with the United States on the value of the claim, and in 1944 the resulting stipulation was accepted by the court. It took Congress until 1950 to pass an act appropriating the settlement funds, and then several years more to settle the census roll. Finally, in 1955, checks for K-344 were sent out to those Mutsun enrolled on the California Enrollment Census. After twenty-seven years of litigation, years of filing applications, arranging witnesses, and corresponding with the BIA, individuals on the census roll received a check for \$150.⁹⁷

The work of enrolling was not over, however. After the filing of the California case in 1947 before the Indian Claims Commission, Mutsun Indians would again have to file the necessary papers, prove their Indian ancestry, and work with BIA officials to ensure they were enrolled. This case was litigated through the 1950s and finally settled in 1964. Congress again passed legislation calling for an update to the California Enrollment Census. Again correspondence, applications, and other documents show Mutsun people proving their Indian ancestry. Indians who had established themselves on the previous rolls, as well as those who wished to newly establish their ancestry since 1852 in California had a short, one-year filing period, between 1968 and 1969. Finally, in 1972 each enrolled tribal member received a check for \$668.51. Some Mutsun people who had not learned of the filing period in time and had filed late received no payment.⁹⁸ The documentary record produced as a result of K-344 demonstrates that Mutsun people aggressively worked to prove their tribal ancestry and heritage during the entire period from 1928 to 1972.

These records also provide evidence of continuing Mutsun organization and leadership. María Dionisia Mondragon, daughter of Ascención Solórsano, helped organize the Mutsun

⁹⁷"An Act to provide for a per capita payment from funds in the Treasury of the United States to the credit of the Indians of California," May 24, 1950 [64 Stat., 189]; Johnson, *K-344*, 75–80.

⁹⁸Adela Gilroy, interview by E. Richard Hart, with Irenne Zwierlein, May 24, 2004, Redwood City, California. She recalled that several of her relatives did file on time and received a check.

people to file their applications.⁹⁹ Baker, who recognized her as an authority, attached notes to her application that included the names, addresses, and ages of other Mutsun people she had identified so that Baker could contact them. This led to the enrollment of five others. One of those was Santos Corona.¹⁰⁰ In a letter that Baker wrote to Corona from Sacramento on March 5, 1931, Baker emphasized Mondragon's leadership role and knowledge.¹⁰¹

María Dionisia Mondragon helped organize the San Juan Bautista Indians to come in and meet with Baker in July and then December of 1930. As a result, most of the San Juan applications were grouped together sequentially. Mondragon witnessed at least seventeen different applications and certified that the individuals named on the applications were Indian.

Claudia Corona had been a member of the Mutsun committee that helped enroll San Juaneños in the 1933 census. Her daughter Marie continued to work with Mutsun descendants to enroll them in the 1955 census, and again in the 1972 census roll. She also continued Mutsun traditions that had been carried on by her mother Claudia Corona and her grandmother Ascension Solórsano. Marie continued to use traditional herbal remedies. Her daughter Martha M. Ketchum, who remembers J.P. Harrington working with Ascension Solórsano, today recalls her mother taking her to Sargent Ranch to explain which herbs could be used and which were dangerous. Martha said her mother was able to identify many herbs from the ranch, which she gathered and later used.¹⁰²

Marie also carried on the tradition of caring for and feeding less fortunate people. Like her grandmother and her mother, Marie fed people who came off the street and whom she had never met before. This is a tradition of Mutsun shamanistic obligation dating to aboriginal times and carried on through much of the twentieth century.¹⁰³

⁹⁹Joseph Mondragon, interview by E. Richard Hart, October 15, 2002, San Francisco. Also present were Irenne Zwierlein, chairperson of the Amah Mutsun Tribe, Jennifer Starks with Pillsbury Winthrop, Katherine Hicks, secretary of the Amah Mutsun Tribal Council, tape 2, transcript pp. 34–36. Joseph recalled his mother, María Dionisia, working to organize the Mutsun people.

¹⁰⁰Notes, attached to application file 8113, María Dionisia Mondragon (head of household), approved July 22, 1930, RG 75, entry 576, National Archives.

¹⁰¹Baker to Santos, March 5, 1931, in application file 8458, Santos Corona, approved in 1933, RG 75, entry 576, National Archives.

¹⁰²Melvin M. Ketchum, Martha M. Ketchum, and Harold M. Ketchum, interview by E. Richard Hart, with Irenne Zwierlein, May 26, 2004, Woodside, California.

¹⁰³Ibid.

The documentary record resulting from the claims cases on the 1851–52 treaties provides considerable evidence of Mutsun organization and leadership, but it also had a direct impact on the people's efforts to seek recognition. Some people who believed that enrollment would result in their recognition learned that this was not the case. Doing the necessary work to get Mutsun Indians of San Juan Bautista enrolled on the 1955 and 1972 census rolls led a number of members of the tribe to become more interested in genealogy. Some of them undertook fairly extensive genealogical research beginning in the 1950s and through the 1960s.¹⁰⁴ This work led directly to the tribal group's petition for recognition.

The records of the 1933 California Enrollment Census provide extensive evidence of non-Indian awareness of Mutsun Indians. In addition to the committee of Mutsun who witnessed applications, non-Indians spoke up to say that they knew individuals were of Indian descent. One of the most prominent citizens in San Benito County was the sheriff, Jeremiah J. Croxon. Prior to becoming sheriff, Croxon had been a book-keeper at the New Idria Mines and also owned a warehouse in San Juan village. He was active in community affairs, including the annual Mission San Juan Bautista Fiesta, which had been going on at least since the mid-nineteen century.¹⁰⁵ Sheriff Croxon submitted a letter with the application of Gerbacio P. López, identifying him as a San Juan Indian:

This will introduce to you Gerbacio P. Lopez. I have known him & his mother since 1874. His mother was of the San Juan Bautista Indians and always had the painted face. She died in 1906 in Los Banos, Merced Co. Was living with her son Isador Boyorques (the latter decease). . . . Gerbacio is a good man & of No. 1 habits is married & has one daughter besides a wife & five step children.¹⁰⁶

The application of Yriberto Herman also cited Sheriff Croxon as a witness.¹⁰⁷ Croxon, along with San Benito County Clerk

¹⁰⁴Mary Gilroy Beltran and Dolores Gilroy Quintana, interview by E. Richard Hart, with Irenne Zwierlein and Danise Quintana, May 20, 2004, Woodside, California.

¹⁰⁵Pierce, *East of the Gabilans*, 32 and 125.

¹⁰⁶Croxon to Baker, December 14, 1930, in application 8095, RG 75, entry 576, National Archives.

¹⁰⁷Application 8084, RG 75, entry 576, National Archives.

Elmer Dowdy, witnessed the application of four full-blooded San Juan Indians, including head of household Tomas Bojorques.¹⁰⁸

Other prominent non-Indian citizens who documented San Juan Indians included C.C. Zanetta and P.E.G. Anzar, who provided other important details of San Juan Indians, their background, culture, and family history.¹⁰⁹

The same body of documentary records provides substantial evidence of the Mutsun Tribe's continuing interaction with their aboriginal homeland, and particularly Rancho La Brea (the Juristac land grant, which became Sargent Ranch). On December 12, 1930, Fred A. Baker convened a meeting in the Hollister County Courthouse to consult with local Indians who wished to be enrolled on the California Enrollment Census. Baker used a committee of tribal elders and local officials to determine who was Indian.¹¹⁰ The record of sixty-two-year-old Yriberto (Billy) Herman appears on census application number 8084. Herman reported that he was the head of his household and was a one-half blood Mission Indian with ancestry from San Juan Bautista and Carmel. In a letter to Baker, Herman said he was a "thoroughbred California Indian" and that he had an aunt "who can remember before white people came here."¹¹¹ When questioned, he said that his tribe lost land in what are now Monterey and San Benito Counties. His application was witnessed by a prominent member of the Indian committee and also by important people in the non-Indian community: San Juan Bautista Constable C.C. Zanetta; the sheriff of Hollister; J.J. Croxon; and eighty-year-old Guadalupe Anzar from San Juan Bautista.¹¹² All three families, Zanetta, Croxon and Anzar, had been important in the San Juan Bautista community since at least the mid-nineteenth century.¹¹³

Herman reported that his father and grandfather on his father's side were from San Juan Bautista. At the hearing Baker asked him, "Did your father's father Juan German, have a

¹⁰⁸Application 8056, RG 75, entry 576, National Archives.

¹⁰⁹Application 8084, RG 75, entry 576, National Archives; application 8072, RG 75, entry 576, National Archives; Guadalupe Anzar to Baker, December 14, 1930, application 8095, entry 576, National Archives; and application 8084, RG 75, entry 576, National Archives.

¹¹⁰Baker to commissioner of Indian affairs, January 5, 1931, RG 75, Central Classified Files, 053-11626-1929, General Services, pt. 3, National Archives.

¹¹¹Yriberto Herman to Fred Baker, March 19, 1930, RG 75, entry 576, application 8084.

¹¹²Yriberto Herman, application number 8084, RG 75, entry 576, National Archives.

¹¹³California State Parks, *San Juan Bautista State Historic Park*, reports that Angelo Zanetta built the Plaza Hotel in 1858.

Spanish grant in California?" He answered, "No. But his father, Antonio German, had a grant by the name of Rancho La Brea, near Sargent Station. . . ." His own father, said Herman, was born in "Rancho La Brea."¹¹⁴ In a letter to Baker written in broken Spanish, Herman explained that his uncle was also born on Rancho La Brea, and Herman asked Baker if it might be that he still held rights to the land grant ranch.¹¹⁵

These documents support the proposition that Father Arroyo de la Cuesta hand-picked the grant recipients of the Juristac land grant because they were close to the Indians. In fact, the German (later spelled Herman) family intermarried with Mutsun. It is also interesting that the San Juan town dignitaries all identified the Hermans as being known in the community as San Juan Indians.¹¹⁶

Harrington's work documented use of Sargent Ranch through the early twentieth century.¹¹⁷ In contemporary interviews, Mutsun tribal members describe using Sargent Ranch throughout the remainder of the twentieth century. In fact, tribal members even continued to live at or near their old village site of Huristak well into the twentieth century.¹¹⁸

* * *

There could hardly be a more clear instance of the enduring impact of legal actions than that experienced by the Mutsun Indians. Both the Spanish policy of missionization of Indians and the Mexican policy of secularization of mission ranchos resulted in land grants of portions of Mutsun aboriginal territory. The Spanish and Mexican land grants of former mission ranchos led to litigation that began in 1851 and

¹¹⁴Yriberto Herman, application 8084, RG 75, entry 576, National Archives.

¹¹⁵Herman to [Baker], September 6, 1930, accompanying application 8084, RG 75, entry 576, National Archives; Bancroft, *History of California*, vol. 3 (1825–40), 755, suggested that the Germans lost the grant to unscrupulous whites, but it is more likely the cause of the legal system in place than of the Sargent brothers.

¹¹⁶Charles L. Sayers, *The Spirit-Soaring Drum* (San Jose, CA, 1993), 8–9, published selections of Harrington's papers, including a section in which Ascención Solórsano described the particular style of face painting and tattooing that was used by the Mutsun.

¹¹⁷Harrington, "Papers," the "San Juan Report" is found in rolls 58 and 59; Sayers, *The Spirit-Soaring Drum*, xxix and unnumbered appendix.

¹¹⁸Melvin M. Ketchum, Martha M. Ketchum, and Harold M. Ketchum, interview by E. Richard Hart, with Irenne Zwierlein, May 26, 2004, Woodside, California; Adela Gilroy, interview by E. Richard Hart, with Irenne Zwierlein present, May 24, 2004, Redwood City, California; Joseph Mondragon, interview by E. Richard Hart, October 15, 2002, San Francisco.

continued for decades. Just as that litigation was beginning, the U.S Senate sealed treaties that called for a cession of Mutsun land and establishment of reservations for the people. The eventual litigation stemming from those actions of the United States continued in the courts until the 1970s.

The policies and actions of the three nations directly resulted in lack of recognition of the Mutsun Tribe, but the records of legal proceedings initiated as a result of these actions (some over a century ago) continue to provide important evidence of cultural activity. The little-known records associated with these legal proceedings provide evidence bearing on Mutsun aboriginal territory, cultural continuity, genealogy, and outside recognition by the non-Indian community. Legal history sometimes provides considerable material for cultural history. The case of the Mutsun Tribe is a clear example of how legal history stretching back more than a century has an immediate impact and an important influence on the day-to-day lives of contemporary citizens.

Spanish and Mexican land grant records help to establish Mutsun aboriginal territory and village locations. They also provide evidence of continuing Mutsun interaction within their aboriginal territory. Mission records establish firm birth and death records, identifying tribal members and often providing the name of the individual's village or tribe. This documentary evidence can be used to produce genealogical charts and trees.¹¹⁹ The Mutsun are fortunate because Fr. Felipe Arroyo de la Cuesta not only kept meticulous birth and death records, but extensively documented Mutsun culture and language.¹²⁰ These records provide a cultural benchmark that facilitates research into later cultural continuity. Legal proceedings dealing with Spanish and Mexican land grants in the area indicate that ranchos were frequently located at or very near Mutsun village sites, and in fact were sometimes named for them, like "Juristac."¹²¹

¹¹⁹See note 36.

¹²⁰See note 37.

¹²¹For example, see the following, which when compared with mission records and other analyses, show rancho structures built at Indian village sites: "Diseño al Rancho de las Ánimas," ca. 1835, mss., Bancroft Library; land case map E-1442, "Juristac," A. & Faustin [sic] German, claimants, filed February 26, 1861, mss., Bancroft Library; land case map D-307, "Diseño for Rancho Juristac," mss., Bancroft Library; Hendry and Bowman, "The Spanish and Mexican Adobe," provided an analysis showing where early rancho structures were located.

Records of the Mission San Juan Bautista ranchos that became land grants, such as Juristac, Las Ánimas, and Ausaymas y San Felipe, indicate that throughout the first half of the nineteenth century at least some of the Mutsun Indians, who had been gathered and placed under the control of the mission, continued to be used as workers on the ranchos, which were within their traditional aboriginal territory. Demonstrating a strong attachment to their aboriginal territory, Mutsun also continued to work on and to use their aboriginal land after the mission was secularized.¹²²

United States records from the nineteenth- and twentieth-century legal proceedings described above provide abundant evidence to address questions of cultural continuity, tribal organization, and outside awareness of tribal existence, as well as language and genealogy. Documents from legal actions associated with the confirmation of eighteenth- and nineteenth-century Spanish and Mexican land grants and records of censuses related to the litigation on the unratified United States treaties with California tribes provide some of the best sources of documentary materials to test established federal recognition for the Amah Mutsun of San Juan Bautista.

¹²²Hendry and Bowman, "The Spanish and Mexican Adobe," 973, reported that the original La Brea grant petition discussed housing built in 1803 for the Indians working the mission ranch there; and p. 972 indicated similar housing for Indians on the Ánimas grant; Arroyo de la Cuesta, "Repuesta," 18, reported that Mutsun returned to their aboriginal lands to gather acorns and other traditional foods; Ross, *The Confirmation of Spanish and Mexican Land Grants in California*, 16-18, reported on the Indians working the mission ranchos, and after secularization returning to live in their aboriginal territory; Milliken, *Archaeological Test Excavations*, 77.

BOOK REVIEWS

The Problem of Justice: Tradition and Law in the Coast Salish World, by Bruce G. Miller. Lincoln: University of Nebraska Press, 2001; 240 pp., illustrations, bibliography, index; \$55.00, cloth, \$19.95, paper.

The Problem of Justice is the second title in the University of Nebraska Press series *Fourth World Rising*. An interesting and thought-provoking three-page introduction by the series editors explains the character and scope of this exciting project. A focus on contemporary issues such as class, gender, religion, and politics, an intended (though certainly not exclusive) audience of college students, and a desire to inform the contemporary and future political struggles of native people all emerge as important features of the series. This is followed by a second, more substantial section, written by Bruce Miller, which introduces the coast Salish (who live on both sides of the Canada/United States border and inhabit lands along the Pacific coast), explores more fully the issues to be addressed, and explains the structure of the main part of the text.

The first two chapters are titled "Foreground" and "Background." Potentially somewhat unsettling to many readers, this means that they are introduced to the most recent developments first, and only then to their historical roots. But, in fact, this organization works well and makes the connections between present and past clearer than they might otherwise have been. In particular, the reader gains an understanding of the legal, cultural, and economic factors affecting justice as it is approached in current Salish communities on both sides of the Canada/United States border; the difficulties and, at the same time, the centrality of constructions of the past; and some sense of the stresses and strains currently experienced by these communities. The next four chapters deal with justice in the Upper Skagit Community (Washington State); justice in the Stó:lo Nation (mainland British Columbia); excerpts from a 1998 dialogue between the two, concerning justice; and the South Island Justice Project (Vancouver Island). A concluding chapter brings out the salient features of the material presented earlier and underlines the main elements that emerge from it. The last word belongs to the series editors and appears in the form of a brief (six pages) "Afterword."

The book contains a wealth of information on approaches to justice among the Salish specifically, and, as is suggested by both Miller and the series editors, many things said of the Salish could equally be said of other aboriginal peoples. These points of general application (if one may so term them) are perhaps the most interesting matters explored in the book. The importance of family is one example: it is clear that the position of one's family and of one's place within that family profoundly affect the "justice" that one received in the past and is likely to receive in the present. A second example is the real importance of power within the community. As is the case with family, the power of individuals and groups is an important determinant in justice-related proceedings, although this is frequently ignored, if it is recognized at all. The way in which historical meaning is constructed is a third example. (I found the discussion at pp. 34ff. particularly useful.) Other matters, such as the significance of the Canada/United States border and Canada's federal legislation (Bill c. 31) with respect to aboriginal status, are of course more local in their significance. Miller's conclusions, that one must beware of seeing the past through rose-tinted glasses, that families present problems, that difficulties arise because of a particular concept of justice among Salish, and that problems ensue when one associates justice with a particular approach to spirituality and culture, make plain the pitfalls that await those who seek to establish a system for administering justice among the Salish.

As indicated, the strengths of the book are many. But other important matters could have been raised, especially if the intended audience is college students. One example is an explicit discussion of the relationship between law, justice, and social order. These ideas are nuanced in many important ways and, in my experience, can always be expected to present problems for students. A second example is a fuller discussion of the issues raised when members of an aboriginal community disperse—especially into an urban environment—and when non-community members are involved.

I did not find *The Problem of Justice* a particularly easy read, although this does not reflect any failing on the part of the book's author, but rather the fact that he presented a great deal of information that is interrelated in often complex ways. The result, then, is a book that is occasionally demanding but always interesting and stimulating, and that deserves a wide readership.

Ken Leyton-Brown
University of Regina

Railroads and American Law, by James W. Ely, Jr. Lawrence: University Press of Kansas, 2001; 365 pp., illustrations, notes, bibliography, index; \$39.95, cloth.

Despite the extensive historical literature devoted to American railroads, "there has been no comprehensive legal history of the rail industry" (p. viii). To correct this glaring omission, James Ely has produced a clearly written and encyclopedic work that undoubtedly will take its place among the standard reference books lining the shelves of railroad buffs and scholars, not to mention historians of law and business.

Broadly speaking, Ely's book addresses two separate but reciprocal themes: how law affected railroads and, in turn, how railroads affected law. Because the iron horse exercised such a powerful and pervasive influence in nineteenth-century American life, legislation and litigation involving railroads profoundly shaped the evolution of American law. As Ely suggests, this was particularly true in the critical areas of "corporate charters, industrial accidents, interstate commerce, eminent domain, the duties of common carriers, government promotion of private enterprise, labor relations, regulation of private property, the reach of federal judicial power, taxation of property, and the reorganization of insolvent businesses" (p. vii).

These and other important subjects are methodically addressed in thirteen chapters that deftly summarize the relevant secondary literature while drawing heavily upon Ely's own extensive reading of primary materials. All told, Ely cites no less than 167 state and federal cases, together with an impressive number of local, state, and federal statutes.

Ely pursues his many topics through four discernable eras of railroad history. In the formative period that preceded the Civil War, lawmakers and judges devoted most of their efforts toward encouraging private enterprise in its attempts to build and operate expensive rail lines. Following the Civil War, however, railroad promotion steadily gave way to regulation, especially at the state level.

During this second era, the federal government played catch-up with the states, as its role in crafting railroad law became increasingly important, given the rapid expansion of interstate commerce effected by rail transportation. Paralleling the earlier promotion-to-regulation trajectory traced by state laws and rulings, federal sponsorship of the transcontinental railroads was soon followed by *Munn v. Illinois* (1877) and the creation of the Interstate Commerce Commission (1887).

With construction of the nation's rail network essentially completed by 1900, Progressive reformers successfully transformed railroading into a federally regulated industry. Despite

continued regulatory efforts by the states, a succession of federal laws—beginning with the Elkins Act of 1903 and culminating with the Transportation Act of 1920—vastly expanded the supervisory powers of the Interstate Commerce Commission. Subsequent Supreme Court rulings generally confirmed the ICC's authority and established its primacy over state regulatory agencies.

Unfortunately for the railroads, the triumph of federal regulation coincided with the advent of automobile, truck, and air transportation. Faced with fierce new competition and saddled with strict government oversight, the railroad industry fell into a steady decline that was only briefly interrupted by World War II. By 1970, the ailing roads were in such poor shape that federal policymakers finally began to reverse course. Thus, between 1970 and 1980, a new wave of legislation ushered in the modern age of deregulation. Eventually, in 1995, Congress abolished the ICC altogether. According to Ely, "Deregulation opened a new era for America's railroad industry. Rail carriers regained a degree of prosperity and competed more effectively with other modes of transportation" (p. 279).

This happy conclusion is quite consistent with the "free market" and pro-industry bias that is palpable throughout Ely's work. Although he claims to eschew "grand theories" and is "reluctant to impose a thesis" (p. viii) on the untidy and complicated history of railroad law, it is clear that Ely is no neutral arbiter of the historical literature. Scholars who express skepticism of government regulation, such as Morton Keller and Albro Martin, are invariably quoted with approval. Meanwhile, their counterparts, like Leonard Levy, Gabriel Kolko, and others who "reflect the anti-railroad sentiment of the Progressives" (p. 237), seldom receive favorable mention.

The merits of Ely's general stance wax and wane, of course, depending on the particular topic at hand, but he clearly goes too far in some cases. Take, for example, his treatment of labor relations and personal injury law during the late nineteenth century. In his ongoing effort to show that corporate wealth did not unduly compromise the fairness of the legal system or sway the decisions rendered by judges, Ely points to cases in which injured rail workers successfully sued their employers and concludes that "railroads were vulnerable in personal injury litigation" (p. 216). But how vulnerable, really? There is no way to tell, because Ely does not provide sufficient contextual information. Of the thousands of railroad workers killed and injured on the job each year, what percentage of them (or their survivors) actually prevailed in court? Indeed, how many could even afford to go to court at all?

Because Ely's primary research rarely takes him beyond judicial decisions and legislative statutes, *Railroads and American Law* suffers from the same tunnel vision that limits the perspective of most traditionally written legal histories. Nevertheless, its indisputable value as a reference book provides more than ample compensation for its interpretive shortcomings.

Michael Magliari
California State University, Chico

Americanizing the West: Race, Immigrants, and Citizenship, 1890–1930, by Frank Van Nuys. Lawrence: University Press of Kansas, 2002; 294 pp., illustrations, notes, bibliography, index; \$35.00, cloth.

During the Progressive Era of Theodore Roosevelt and Woodrow Wilson, the melting pot, like almost everything else, became bureaucratized. Frank Van Nuys' story of the highs and lows of immigrant assimilation from the Mississippi to the Pacific is less about the West per se than the continuing inability of the West to keep the East from seeping in and creating a national culture. Americanization as an engine in that cause had both a wholesome side (Jane Addams and the settlement house movement) and a less-than-wholesome side (the repression and propaganda of the World War I years). Eventually, Americanization gave way to consumerism, a more powerful engine of mass culture as alive and well (if less dense) in the West as in the East. Even after decades of the "new western history," it remains arresting to read a study of the West where the wind mostly blows conformity and the principal actors are social workers and politicians, councils and bureaus, migrants and union men, corporate managers and federal bureaucrats, teachers and women's clubs.

Van Nuys includes chapters on "the importance of being white," the California Commission on Immigration and Housing, labor relations and "new" immigrants, citizenship classes, the Bureau of Naturalization, and the withering away of the Americanization movement. He favors a "kaleidoscopic" approach "with constantly shifting agendas and variations depending on time and location," and thus eschews "simple dichotomies" (p. xii). The result, however fascinating a story in its own right, lacks a compelling theme. Probably the closest thing to a central argument in this book is that racism and racialism as solutions to the headaches of diversity had more staying power than the Americanization campaign.

Progressive Era historiography, however, sees those approaches as complementary rather than mutually exclusive. A strain of progressivism not symbolized by Hull House pushed Americanization and exclusion simultaneously. What could not be kept out through the various forms of Jim Crow or the early twentieth century's closed-door immigration policy needed to be fixed, in other words, through such remedial devices as night-school citizenship classes.

Given Van Nuys' broad approach overall and such specific case studies as the so-called Wobblies of Big Bill Haywood's Industrial Workers of the World, he would have been well served to consult Department of Justice records at the National Archives. He reviewed Office of Education records and INS records, but skipped the files of the FBI's predecessor, the Bureau of Investigation, and also Justice's General Intelligence Division, headed by a young J. Edgar Hoover. In fact, Hoover and Bureau of Immigration chief Anthony Caminetti organized the infamous Palmer Raids of November 1919 and January 1920. More than a line or two in this book on such topics as federal surveillance of the Wobblies or the course of the Palmer Raids in the West would have been welcome. After all, as Van Nuys points out repeatedly, the federal Americanization bureaucracy functioned in a myriad of ways in the West, and spying was one of those ways—all the way down to recruiting informers to cover those night-school citizenship classes.

Kenneth O'Reilly
University of Alaska, Anchorage

ARTICLES OF RELATED INTEREST

Below we list articles recently published in journals of history, law, political science, and other fields that we believe may be of interest to readers. Although comprehensive, the list is not definitive, and the editor would appreciate being informed of articles not included here.

Alton, Stephen R. "From *Marbury v. Madison* to *Bush v. Gore*: 200 Years of Judicial Review in the United States." *Texas Wesleyan Law Review* 8 (2001).

Alverson, Bruce. "The Limits of Power: Comstock Litigation, 1859–1864." *Nevada Historical Society Quarterly* 43 (Spring 2000).

Bailey, James M. "The Udall Brothers Go to Washington: The Formative Years of Arizona's Sibling Politicians." *Journal of Arizona History* 41 (Winter 2000).

Buhai, Sande L. "One Hundred Years of Equality: Saving California's Statutory Ban on Arbitrary Discrimination by Business." *University of San Francisco Law Review* 36 (2001).

Butters, Gerald R., Jr. "'But I'm Only a Woman': Tiera Farrow's Defense of Clara Schweiger." *Kansas History* 25 (Autumn 2002).

Chapman, Samuel G. "How Reno Went to the Dogs: The Police Dog in Reno from Riot Control to Drug Detection." *Nevada Historical Society Quarterly* 45 (Winter 2002).

Coughlin, John J. "The History of the Judicial Review of Administrative Power and the Future of Regulatory Governance." *Idaho Law Review* 38 (2001).

Darcy, R. "Conflict and Reform: Oklahoma Judicial Elections 1907–1998." *Oklahoma City University Law Review* 26 (2001).

Edmondson, Linda, and Margaret Larason. "Kate Barnard: The Story of a Woman Politician." *Chronicles of Oklahoma* 78 (Summer 2000).

Evenden, Matthew. "Remaking Hells Gate: Salmon, Science, and the Fraser River, 1938–1948." *BC Studies* 127 (Autumn 2000).

Gomez, Laura E. "Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico." *UCLA Law Review* 49 (2002).

Gunther, Vanessa. "Indians and the Criminal Justice System in San Bernardino and San Diego Counties, 1850–1900." *Journal of the West* 39 (Fall 2000).

Haney-Lopez, Ian F. "Protest, Repression, and Race: Legal Violence and the Chicano Movement," *University of Pennsylvania Law Review* 150 (2001).

Hietter, Paul T. "To Encourage the Preservation and Sanctity of the Marriage Relation: Victorian Attitudes in Arizona Territory and the Murder Prosecution of Frank Kibbey." *Journal of Arizona History* 42 (Autumn 2001).

_____. "A Suprising Amount of Justice: The Experience of Mexican and Racial Minority Defendants Charged with Serious Crimes in Arizona, 1865–1920." *Pacific Historical Review* 70 (May 2001).

Homan, Anne M. "Some Transitional Alcaldes in Northern California." *Dogtown Territorial Quarterly* 42 (2000).

Kozinski, Alex. "Pulling the Plug: My Stand Against Electronic Invasions of Workplace Privacy." *University of Illinois Journal of Legal Technology & Policy* (2002).

Lansing, Ronald B. "The Tragedy of Charity Lamb, Oregon's First Convicted Murderess." *Oregon Historical Quarterly* 101 (Spring 2000).

Nash, Linda. "The Changing Experience of Nature: Historical Encounters with a Northwest River." *Journal of American History* 86 (March 2000).

Nelson, Dorothy W. "ADR in the Federal Courts—One Judge's Perspective: Issues and Challenges Facing Judges, Lawyers, Court Administrators, and the Public." *Ohio State Journal of Dispute Resolution* 17 (2001).

Okamura, Jonathan Y. "Race Relations in Hawai'i during World War II: The Non-internment of Japanese Americans." *Amerasia Journal* 26 (2000).

Pisani, Donald J. "Beyond the Hundredth Meridian: Nationalizing the History of Water in the United States." *Environmental History* 5 (October 2000).

Roness, Lori Ann, and Kent McNeil. "Legalizing Oral History: Proving Aboriginal Claims in Canadian Courts." *Journal of the West* 39 (Summer 2000).

Rymer, Pamela Ann. "How Big Is Too Big?" *Journal of Law & Politics* 15 (Summer 1999).

Schoell, Mark. "The Marine Mammal Protection Act and Its Role in the Decline of San Diego's Tuna Fishing Industry." *Journal of San Diego History* 45 (Winter 1999).

Simmons, Thomas E. "Territorial Justice under Fire: The Trials of Petere Wintermute, 1873–1875." *South Dakota History* 31 (Summer 2001).

Solove, Daniel J. "Access and Aggregation: Public Records, Privacy, and the Constitution." *Minnesota Law Review* 86 (2002).

Stelluto, Donald L., Jr. "A State of Law and Order: Legal and Constitutional History in Civil War Texas." *Journal of the West* 39 (Fall 2000).

Tamura, Eileen H. "Using the Past to Inform the Future: An Historiography of Hawai'i's Asian and Pacific Islander Americans." *Amerasia Journal* 26 (2000).

Thompson, Jerry. "'That's Just What Kids Did Back Then': Joe Lynch Davis, the Oklahoma Gang, and the Robbery of the Golden State Limited." *Journal of Arizona History* 42 (Winter 2001).

Tobias, Carl. "A Divisional Arrangement for the Federal Appeals Courts." *Arizona Law Review* 43 (2001).

Wasby, Stephen L. "The Work of a Circuit's Chief Judge."
Justice System Journal 24 (2003).

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