

## *A Vision of California?*

BY WENDY LASCHER

What if Southern California were not a collection of subdivisions and strip malls laced together by freeways? What if we could live on the land as it was a hundred years ago?

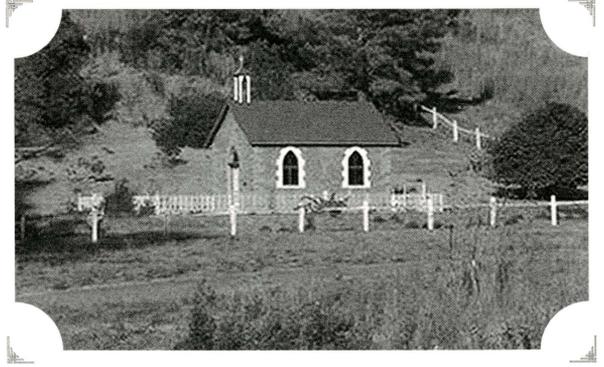
When the “June gloom” fog lifts, Santa Cruz Island offers a tantalizing suggestion. Beyond the oil platforms in the Santa Barbara Channel, the island boasts a 2,470-foot peak; “marine terraces; . . . rolling hills colored with the annual grasses; chalky white diatomaceous outcroppings; jagged canyons; soft, serene valleys; expansive white beaches; majestic Caribbean-like sea coves; meandering creeks; thick closed-cone pine forests; . . . massive cylindrical eucalyptus trees; . . . and along the majority of the coastline, steep volcanic cliffs rising vertically from the water.” So writes Santa Barbara attorney John Gherini, whose family owned the eastern end of the island for almost seventy years.

How could such a paradise survive only twenty-two miles offshore? Why wasn’t the island developed before the Coastal Commission came into existence? And why, in any event, is such a beautiful, isolated place featured in a newsletter focusing on legal history?

The title of Gherini’s recently reprinted book alludes to the answer: *Santa Cruz Island: A History of Conflict and Diversity*. This thoroughly researched chronicle of eight thousand years of island history discusses eight California Supreme Court decisions concerning the island’s contested ownership, not to mention six U.S. Supreme Court cases and a host of federal and state trial court and intermediate appellate decisions – all listed in an appendix. According to Gherini, a Santa Barbara estate planning and probate lawyer, “[t]he attraction of the island . . . routinely led people into conflict. . . . The modern history of the island would witness the passion to own it, to protect it, to use it, and to fight over it.”

Gherini’s report on island-related conflict goes back in history to a Chumash civil war legend and archeological finds that suggest combat among indigenous tribes long before the first Spaniards arrived. Conflict continued between the Chumash and Spaniards until the last of the Chumash left Santa Cruz Island in 1822, shortly after Mexico’s independence from Spain.

In 1839, Mexico granted all of Santa Cruz Island to Andrés Castillero, as a reward for having twice brokered peace between the Mexican government and the Californios from Monterey after the latter proclaimed the province of Alta California to be a sovereign state. The Treaty of Guadalupe Hidalgo, ending the



*Chapel built in 1891 by Ambrose Gherini*

Mexican-American War in 1848, left questions about land ownership in California. Congress required claims of California land under Spanish or Mexican title to be confirmed by the newly created Land Commission. The Commission upheld Castillero’s title to Santa Cruz Island in 1855. The federal government appealed the decision to the Supreme Court, unsuccessfully, in *United States v. Castillero*, 64 U.S. 464 (1860). (That was not the last claim made to ownership of the entire island. In 1984, Chumash natives asserted they they held “aboriginal title” superior to the land grant. The Ninth Circuit rejected the claim on the basis that the Chumash had failed to present a claim to the Land Commission in the 1850s. See *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 644 (9th Cir. 1986).)

In 1857, Castillero sold the island, which by then was largely devoted to sheep ranching. A few years later, it ended up in the hands of San Francisco investors who incorporated as the Santa Cruz Island Company. One of them, Justinian Caire, was author Gherini’s great-great-grandfather. When the other shareholders encountered business setbacks, Caire acquired their interests in the corporation. Under his management, in addition to wool, the island produced wheat, corn, potatoes, beans, barley, hay, alfalfa, tree fruit, olive oil, and wine. It was Caire’s kingdom. “[N]othing was done, changed, or performed in the least detail without his wish,” Gherini relates.

Caire wanted his six children to share equally in the island after his death, but – for reasons Gherini does not fully explain – Caire’s widow excluded two married daughters, Amelie Caire Rossi and Aglae Caire Capuccio, from ownership or control. These circumstances set off twenty years of litigation over ownership of the island, handled by Yale Law School graduate Ambrose Gherini, who had married Amelie’s daughter, Marie.

Over the course of sixteen years, the California Supreme Court heard five Caire family cases on the merits. The first set dealt with issues involving the cor-

porate ownership of the island. As a result of this litigation, the corporate charter was forfeited, a right to an accounting was established, and the corporation's assets were ordered distributed. A second set of cases involved partition of the land. A motivation all too familiar to today's bench and bar stoked the conflict: According to Ambrose Gherini, opposing counsel blustered that "his clients would rather pay their attorneys" than the Rossi and Capuccio families. No surprise, then, the issue of attorneys' fees also came before the California Supreme Court, twice.

The island was divided into seven parcels, with the two at the eastern end going to the Rossis and Capuccios (and Ambrose Gherini receiving a fractional interest as payment of his contingent fee). Justinian Caire's widow and his other four children received the other five original parcels, which constituted about ninety percent of the island.

Ambrose's wife, Marie Rossi Gherini, eventually acquired the balance of the Rossi and Capuccio interests. The Gherini family ended up owning the eastern end of the island when Ambrose Gherini settled a quiet title action brought by the heirs of his co-counsel and Aglae Caire Capuccio sold her interest to her sister Amelie's children, including Marie Gherini. The Gherinis continued sheep ranching for seventy years, flirted with the idea of residential development until Coastal Commission restrictions made it unfeasible, and finally sold their interests to the National Park Service. In 1937, the other owners sold their interest to Edward L. Stanton of Los Angeles. After even more discord and litigation among the Stanton family, the Nature Conservancy purchased part of the Stantons' nine-tenths of Santa Cruz Island and acquired the remaining portion upon Dr. Carey Stanton's death in 1987.

The possibility of creating a Channel Islands National Park was explored as early as 1933, and the environmental movement of the 1970s rekindled interest. Francis Gherini, one of Ambrose's children and the author's uncle, invoked his personal friendship with former California Supreme Court Justice William P. Clark, Jr., then serving as President Reagan's Secretary of the Interior, to try to speed acquisition of the Gherinis' parcels by the National Park Service. It was not until 1989, however, following the death of Ambrose's other son, Pier Gherini, that the Park Service began purchasing the Gherini parcels. After many years of complicated negotiations (and, of course, more lawsuits), the National Park Service now owns one quarter of Santa Cruz Island and the Nature Conservancy the other seventy-five percent.

John Gherini, who sacked many tons of wool during weekends and summers on the island, used a

treasure trove of family memorabilia, private correspondence, contemporaneous newspaper accounts, and scholarly literature to write in exhaustive detail about the history, geneology, ranching and agriculture, geography, weather, transportation and communications, and politics of the island. For more than thirty years, Pier Gherini kept notes of twice-daily radio transmissions to and from the island, filling thirteen notebooks with more than fifteen thousand entries logging the work and the workers on the island. John Gherini's law office shelves are lined with leather-bound Supreme Court reporters back to 1 Cal., bearing Ambrose Gherini's name stamped in gold on the spine. The walls are decorated with island maps, paintings, and photographs.

Author Gherini also made extensive use of probate and litigation files and court transcripts. This book demonstrates how valuable case files can be as original historical documents, an important point at a time when lack of storage resources at courts around California are leading to the destruction of these files. For example, Gherini found the inventory of personal property on the island on November 30, 1911, in the appellate briefs of the accounting case.

Gherini's thorough documentation of every fact gives *Santa Cruz Island* unique credibility, although the book's wealth of detail leaves the reader craving additional context and analysis. Over a pleasant Santa Barbara lunch, Gherini told me that the hardest aspect of writing the book was knowing when to stop researching and how to contain the details. He has many unwritten stories of Santa Cruz Island left to tell. Meanwhile, this history of conflict and diversity is a fascinating study about Southern California that raises yet another question for every answer it provides.

Gherini, John, *Santa Cruz Island: A History of Conflict and Diversity*. Spokane: Arthur H. Clark Company, third printing, 2005, 271 pages.

*Wendy Lascher is an appellate lawyer in Ventura. Her only prior knowledge about Santa Cruz Island stems from her involvement in the trial and appeal of People v. Roehler, 167 Cal.App.3d 353 (1985).*

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