

## NINE TREASURES:

*California Legal History Research in the Bancroft Library, University of California, Berkeley*

BY WILLIAM BENEMANN\*

The streets were filled with billows of acrid smoke and dust, and every time a dynamite charge was detonated the earth would tremble and the horses would shy and pull at their reins. For three horrifying days dozens of separate fires raged, consuming block after block of homes and businesses. Over 3,000 people were killed, nearly one hundred times that number were left homeless, and the entire northeast quadrant of San Francisco was reduced to blackened charcoal. Every major library in The City was damaged or utterly destroyed — except for one.

In April 1906, housed safely in a fireproof building at the corner of Valencia and Army Streets and therefore outside the burned zone, sat the newest acquisition of the University of California: the Bancroft Library. The library was the life's work of Hubert Howe Bancroft, who had arrived in San Francisco in 1852 as an eager young man of twenty with a shipment of books to sell. Four years later he opened his own bookstore, eventually assembling a specialized collection of books, manuscripts and pictorial items documenting the entire West Coast from Alaska to Panama, and from the Rockies to

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\* William Benemann is Archivist for the University of California, Berkeley School of Law, and formerly a librarian at The Bancroft Library.



THE BANCROFT LIBRARY AT 1538 VALENCIA STREET,  
SAN FRANCISCO, CIRCA 1890-1900.

*Courtesy of The Bancroft Library, University of California, Berkeley  
(call no. BANC PIC 1905.11574-FR).*

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the Pacific. At the core of his library was an unparalleled collection of Californiana, telling the story of the State from the very earliest period of its recorded history. Drawing on this superb collection, and augmenting it where needed by firsthand research, Hubert Howe Bancroft and his assistants over time produced a comprehensive thirty-nine volume history of the West.

On November 25, 1905, Bancroft sold his entire library to the University of California for a quarter of a million dollars, \$100,000 of which Bancroft would donate himself. Having narrowly escaped complete destruction in the 1906 Earthquake and Fire, the collection was finally moved out of San Francisco in early May and onto shelves and into cabinets on the third floor of California Hall on the Berkeley campus. The treasures were transported in prosaic moving vans by the Bekins Van Company.

Today the collection is housed in a newly-renovated, state of the art facility at the center of the Berkeley campus, and for over a century now the



HUBERT HOWE BANCROFT

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Bancroft Library has carried on Hubert Howe Bancroft's compulsive drive to document the history and culture of the Pacific Coast. Because of this academic obsession, anyone engaged in California legal history research will find a cornucopia of both core documents and unusual ephemera, rare manuscripts and online digital files, vintage photographs and raspy tape recordings, the quirkily odd and the astonishingly unexpected. This article

will focus on nine diverse (and somewhat random) items that demonstrate the variety of riches that await the researcher in the Bancroft Library reading room. It will attempt to place those items in their historical context, to demonstrate why they are significant to the legal history of California, and to suggest similar material for further research in the Bancroft's collections.

1. IGNACIO EZQUER. *MEMORIAS DE COSAS PASADAS EN CALIFORNIA: SAN LUIS OBISPO, CALIFORNIA, APRIL 29, 1878.*<sup>1</sup>

Realizing that a large portion of early California history was being lost as the elder *Californios* passed away, Hubert Howe Bancroft and his assistants traveled by carriage, stagecoach and horseback throughout the state conducting approximately 125 oral history interviews with Mexican and Anglo pioneers. The transcriptions of these interviews became known collectively as the Bancroft Dictations (or as the *Testimonios* or *Recuerdos*). While most of the dictations are in English, a few — such as that of Ignacio Ezquer — are in Spanish, and they provide eyewitness accounts of events in early California from the perspective of participants whose contributions would otherwise have been marginalized or entirely lost. They include first person narratives of some of the earliest governmental and legal landmarks in California history.

Ignacio Ezquer emigrated from Mexico in 1833 at the age of fifteen and settled in Alta California, eventually serving as Justice of the Peace in both Monterey and San Luis Obispo. In 1878 he was interviewed by Thomas Savage, one of Bancroft's research assistants. Savage wrote in an introductory statement, "The accompanying pages were taken down by me from [Ezquer's] lips in his own house in San Luis Obispo." Though hastily written as the old man spoke, with some deletions and insertions in the text, the narrative is still quite legible. (Scanned images of most of the Bancroft Dictations may be found on the University of California's website, called Calisphere.)

In his *recuerdo* the elderly Ezquer describes the secularization of the San Juan Capistrano Mission. He narrates in some detail the February 1845 revolt against the Mexican governor, Brigadier General Manuel

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<sup>1</sup> Call no.: BANC MSS C-D 77.

Micheltorena, who had been appointed by Mexico City to oversee Alta California, but who was resoundingly unpopular because of the depredations of the army of criminals and misfits he brought with him to enforce his authority. Many *Californios* and *extranjeros* took up arms against Micheltorena, forced his abdication, and selected Pio Pico in his place.

Ezquer describes the arrival in 1846 of John C. Frémont, who was supposedly on “una comisión científica,” but who instead rallied American settlers to rise up against Mexican rule in California. Ezquer speaks of his own relations with General Bennett C. Riley, the last military governor of California, who arrived in Monterey in April 1849 just as all governmental authority in the region began to splinter and collapse. Riley issued a proclamation calling for a convention whose delegates would write the first constitution for the State of California. Ezquer talks briefly about the events surrounding the Constitutional Convention, speaking from the point of view of a *Californio* whose government and culture were being supplanted by the new arrivals.

ALSO OF INTEREST: William R. Wheaton, *Statement of Facts on Early California History, 1878* (BANC MSS C-D 171); Joseph Webb Winans, *Statement of Recollections on the Days of 1849-52 in California, 1878* (BANC MSS C-D 178); Hiram C. Clark, *Statement of Historical Facts on California from 1851-1865, 1878* (BANC MSS C-D 59); John Currey, *Incidents in California: Statement by Judge John Currey for Bancroft Library, 1878* (BANC MSS C-D 63).

## 2. RICHARD B. MASON. *LAWS FOR THE BETTER GOVERNMENT OF CALIFORNIA = LEYES PARA EL MEJOR GOBIERNO DE CALIFORNIA.*<sup>2</sup>

Richard B. Mason arrived in California on May 31, 1847 to take up the position of Military Governor and Commander-in-Chief of the United States land forces. He found a territory in a state of flux and confusion, with an unstructured government loosely applying a vague system of legal control — part Mexican civil law, part English common law, part ad hoc reliance on

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<sup>2</sup> Call no.: xF865.M375. Published as: Richard B. Mason, *Laws for the better government of California, the preservation of order, and the protection of the rights of the inhabitants, during the military occupation of the country by the forces of the United States* (San Francisco: S. Brannan, 1848).

whatever the particular situation seemed to require at the moment. No one was quite sure who or what constituted governmental authority. In the words of Military Secretary of State Henry W. Halleck, "In the absence of positive law, we must be governed by custom and general usage in this country, and in the absence of both law and precedent, the laws and usages of other States and Territories, in like cases, should be referred to, to guide our decisions."<sup>3</sup>

When Commodore John D. Sloat issued his proclamation *To the Inhabitants of California* the previous year, declaring that the territory of California was now officially under the control of the United States government, he had called for a temporary continuation of the status quo. "With full confidence in the honour and integrity of the inhabitants of the country, I invite the judges, alcaldes and other civil officials, to retain their offices, and to execute their functions as heretofore that the public tranquility may not be disturbed, at least until the Government of the territory can be more definitely arranged."<sup>4</sup> Nearly a year after that ringing proclamation, little progress had been made in establishing a more Yankee-style government, and public tranquility was rapidly waning.

Stepping into the breach, Governor Mason took the extraordinary measure of drawing up his own code: *Laws for the Better Government of California: "The Preservation of Order, and the Protection of Rights of the Inhabitants," During the Military Occupation of the Country by the Forces of the United States*. In his code Mason explicitly allowed for the continuation of Mexican or Spanish laws in California, but only "so far as they are in conformity to, and do not conflict with these laws." In other words, the Mason Code was in reality intended to supersede the *mélange* of laws and to provide a single, coherent and explicit legal code for the inhabitants of California.

The code is redolent with provisions that evoke vivid pictures of this period of California history. Take, for example, Article I, Section 4, which prescribes that "any person convicted of stealing any horse, mare, colt, filly, mule, ass, neat cattle, sheep, hog or goat, shall be sentenced to receive not less than twenty, nor more than fifty stripes, well laid on his bare back, and be imprisoned not more than six months."

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<sup>3</sup> Quoted in Myra K. Saunders, "California Legal History: The Legal System Under the United States Military Government, 1846-1849," *Law Library Journal* 88 (1996), 497.

<sup>4</sup> Quoted in Woodrow James Hansen, *The Search for Authority in California* (Oakland, Calif.: Biobooks, 1960), 72.

In recognition of the bilingual culture then prevalent in California, Mason asked William Edward Hartnell to translate the new code into Spanish. Hartnell was an Englishman who had learned the language while working for a British company in Chile. Arriving in California in 1822, Hartnell quickly integrated himself into *Californio* society, converting to Catholicism, marrying the sixteen year-old daughter of Don José de la Guerra y Noriega, and changing his own name to Don Guillermo Arnel. In a letter to Joseph Folsom mentioning that he has arranged for a Spanish translation of his code, Mason refers to Don Guillermo as “Mr. Hartnell, the government interpreter.”<sup>5</sup> Hartnell/Arnel also provided the translation for the first California Constitution.

The Mason Code is perhaps the only codification of laws whose printer is more famous than its compiler. The code was printed by Samuel Bran-

nan, the Mormon pioneer who first brought the news to San Francisco of the gold discoveries at Sutter’s Mill, thereby launching the California Gold Rush. Brannan was the publisher of the *California Star*, the first newspaper in San Francisco, but Governor Mason later complained that he was unable to procure a complete print run of his code from Brannan “owing to the stopping of the presses upon the discovery of the gold mines, etc.”<sup>6</sup>

With the arrival on August 6th of news of the signing of the Treaty of Guadalupe Hidalgo, and the ceding of Alta California to the United States, Governor Mason assumed that his interim code was no longer needed, and the code was never promulgated. It is unclear how many copies of the Mason Code were published. Given Mason’s statement that he “did not succeed in getting [the code] printed” because of the gold discoveries, perhaps only proof copies were ever produced. The only other known copy of this code was acquired by the Huntington Library in 1923. The copy in the Bancroft Library is the sole known copy that includes both the English and the Spanish translation.



GENERAL  
RICHARD BARNES  
MASON,

*photographed by the  
U.S. Army Signal Corps*

<sup>5</sup> Quoted in Lindley Bynum, “Laws for the Better Government of California, 1848,” *Pacific Historical Review* 2:3 (September 1933), 285.

<sup>6</sup> *Ibid.*



### 3. *DISEÑO DEL RANCHO SANTA ANA Y QUIEN SABE, CALIFORNIA.*<sup>7</sup>

Under the 1848 Treaty of Guadalupe Hidalgo, the United States acquired for a bargain payment of \$15 million an expanse of territory totaling 525,000 square miles, including all of present-day California, Nevada and Utah, and much of what is now Colorado, Arizona and New Mexico. With the land came a perplexing problem: what should be done about the vast Spanish and Mexican land grants that already claimed prime real estate in the new territory? The treaty that was negotiated at the end of the Mexican-American War included a provision (Article X) that guaranteed recognition of those land grants, but the U.S. Senate deleted the article before ratifying the treaty. While it was customary to recognize existing property ownership arrangements when a new territory was acquired, many Americans believed that the Mexican land grants comprised the best — and perhaps the *only* productive — land in the new acquisition. The remainder was believed to be too mountainous or too arid to be of any real value, or was capable of supporting “only the weird life of the Apache, the cactus and the serpent.”<sup>8</sup>

In the nation’s capital a compromise was arranged that followed a middle ground between outright expropriation and maintenance of the status quo. The new senator from California, William M. Gwin, submitted a bill to Congress calling for the creation of a commission of three members to judge the validity of all Spanish and Mexican land grant claims. Under the Act of March 3, 1851, all claimants in the new territory were required to submit proof of ownership within two years. All lands not submitted to the commission within the two-year period would automatically be deemed in the public domain. On the West Coast the act was greeted with stiff opposition. In two cases argued twenty-three years apart before the California Supreme Court, *Minturn v. Brower* (1864) 24 Cal. 644, and *Phelan v. Poyor-eno* (1887) 74 Cal. 448, the Court ruled that land grant holders could *not* be compelled to submit their claims to the Board of Commissioners, and that the United States Congress did *not* have the power to impair or destroy perfect titles for failure to submit them for examination and judgment.

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<sup>7</sup> Call no.: Land Case Map B-1301.

<sup>8</sup> William W. Morrow, *Spanish and Mexican Private Land Grants* (San Francisco, Los Angeles: Bancroft-Whitney Co., 1923), 9.



The issue landed in the U.S. Supreme Court, where in *Botiller v. Dominguez* (1889) 130 US 238, the Court ruled that the powers of the Commission were not only valid, but were a necessity given the circumstances. In *Botiller* the Court held that “the United States were bound to respect the rights of private property in the ceded territory, but that it had the right to require reasonable means for determining the validity of all titles within the ceded territory, to require all persons having claims to land to present them for recognition, and to decree that all claims which are not thus presented, shall be considered abandoned.”<sup>9</sup>

The U.S. Supreme Court recognized that the procedures under which the land had been originally granted left the claims necessarily vague, contradictory and ripe for fraud. The grants were free gifts of the Spanish crown or the Mexican government, usually with no money exchanged, and with little effort made to furnish the petitioner with unambiguous proof of title. Lands were rarely surveyed, or were surveyed using a method that could not yield an accurate, replicable result. By tradition, two men on horseback would take a lariat that was fifty *varas* in length (about 137.5 feet). One man would begin at a stated landmark — the old oak tree at the edge of the dry creek, the big red rock at the top of the third hill — and drive in a stake. The second horseman would ride until the lariat was drawn tight, and drive in another stake. The procedure would then be repeated. If the lariat was drawn through wet grass, it might be stretched and lengthened, or on a hot day, dried and contracted. As a result, no two surveys of the same area ever matched, and descriptions of the land were frequently so vague that it was not clear what should be measured in the first place.

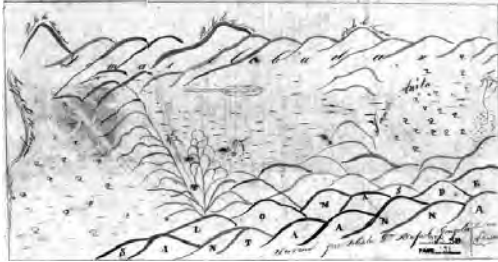
When conflicting claims were submitted to the Board of Commissioners, the resulting disputes were heard in the U.S. District Courts of California (Northern and Southern Districts), and the decision might be appealed to the U.S. Circuit Court (9th Circuit). Litigation often dragged on for years, and generated many folders of petitions and sworn testimony. The litigation documents of the land grant cases were placed on permanent deposit in the Bancroft Library in 1961. Researchers may consult the collection titled *Documents Pertaining to the Adjudication of Private Land*

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<sup>9</sup> Quoted in Morrow, *Spanish and Mexican Private Land Grants*, 14.

*Claims in California* to view this material. A finding aid is available via the Online Archive of California.

Among the documents are over 1,400 manuscript maps, or *diseños*, submitted as a visual representation of the property in dispute. Very few



DISEÑO DEL RANCHO SANTA ANA Y QUIEN SABE, CIRCA 1840S.

*Courtesy of The Bancroft Library,  
University of California, Berkeley  
(call no. Land Case Map B-1300).*

show high artistic merit (even trained surveyors seem to have made only a token attempt at aesthetic appeal), though some include careful hand-coloring and lettering. A typical example is the *diseño* for the Rancho Santa Ana y Quien Sabe in Southern California. The *diseño* is small — approximately 20 cm x 28 cm — and includes wave-like

mountains sketched in with an almost child-like hand. Hills, streams and neighboring ranchos are indicated. The locations of natural springs (*ojos de agua*) are indicated with stylized representations of watering holes. These manuscript maps may also be viewed on the Calisphere web site, with a search on the term “diseno.”

#### 4. SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851. *SAN FRANCISCO COMMITTEE OF VIGILANCE OF 1851 PAPERS, 1851–1852.*<sup>10</sup>

Despite the new government’s best efforts to provide for domestic tranquility, in the rough and tumble city of San Francisco violent crime was rampant — and it went largely unpunished. Robberies, arson and murders were committed on a regular basis with impunity. Finally, in June 1851 a group of San Franciscans formed a Committee of Vigilance to impose swift justice and restore order where the corrupt police and the inept courts had failed. On the evening of June 10th a man named John Jenkins

<sup>10</sup> Call no.: BANC MSS C-A 77.

allegedly committed a robbery. Before dawn on June 11th he was hanged. Far from slinking in the shadows after the lynching, the vigilantes — 183 of them in all — proudly published their names in the daily newspapers and announced their firm intention to continue to administer justice as needed.

For the next three months the executive committee met almost every day. In an effort to counter any suggestion that they represented mob rule, the Committee of Vigilance was punctilious about following highly formalized procedures, and they went to great lengths to preserve an accurate record of their activities. Minutes of meetings, reports of subcommittees, testimony and confessions were recorded and annotated with care, most of the proceedings handwritten on long sheets of heavy blue stationery.

The testimony was transcribed quickly as the witnesses were interrogated, and what the narratives lack in stylistic flow they more than make up for in raw immediacy. Take for instance part of the confession of James Stuart, a native of Brighton, England and one of the leaders of the so-called “Sydney Ducks,” former residents of British penal colonies in Australia whose criminal activities were the prime target of the Committee of Vigilance. Stuart testified on July 8, 1851 at 10:30 in the evening:

We then came to San Francisco — Edwards told us there was a vessel here with considerable money on board — Jim Burns alias Jimmey from town came down with us — Jimmey robbed a Spaniard of about 30 oz when we were coming down from Sac City — we divided the money between us — the same night we went on board the vessel and robbed her — I — John Edwards — Jim Brown George Smith, went on board — the vessel was the James Caskie — we had hard fighting the Capt became desperate — we left him nearly dead — in the fight the Capts wife came out with a sword I took it from her — I acted as Capt of our boys — we were all masked I left them in charge of Capt while I searched the Cabin — Capts wife gave me what money there was on board. . . . Capts wife begged of me not to take the Capts life I told her I did not want to do that if he would only be quiet — I then looked into the Cabin and saw a splendid Gold Chronometer Watch — she begged of me not to take it as her Mother gave it to her — I told her on those conditions I would not take it — the rest of my



“VIGILANCE COMMITTEE HANGING — JAS. STUART,  
SAN FRANCISCO, JULY 11, 1851.”

*Courtesy of The Bancroft Library, University of California, Berkeley  
(call no. BANC PIC 1963.002:0304-B).*

Company kicked up a row with me for not taking the watch — I told them they had made me master and I would act as such.<sup>11</sup>

Despite his full confession — or perhaps as a result of it — James Stuart was hanged on the wharf at the foot of Market Street.

An idea of the conditions that led to the formation of the Committee of Vigilance may be gleaned from a letter written on July 8, 1851, by a man named Charles Marsh, who had appeared as a witness in one of the earlier proceedings. “Having been called on last night,” Marsh reported, “and threatened by two of the City Police on account of my information concerning Goff, I wish to appear before Your Committee again and make a further Statement, and to claim your protection from the ruffianly intimidation to which I was last night subjected.”<sup>12</sup>

In 1919 the University of California Press published *Papers of the San Francisco Committee of Vigilance of 1851*, edited by Mary Floyd Williams. Williams provided complete transcriptions of nearly all the manuscripts

<sup>11</sup> *San Francisco Committee of Vigilance of 1851 Papers*, Box 2, folder no. 193.

<sup>12</sup> *Ibid.*, folder no. 190.

included in the collection, and consulted newspapers and other documentation of the period to enhance the reader's understanding of the proceedings. Her introduction and her annotations are particularly helpful in placing the documents in context, and in identifying partial names and obscure references. The index to the volume is extremely helpful if the researcher has a list of proper names to begin with; it is less helpful in tracking the prevalence of any particular crime.

While Mary Floyd Williams's transcriptions are a good place to start, the research process should not end there. The transcriptions are an excellent way to narrow down one's search and zero in on testimony of interest, but the blue sheets of paper should also be consulted. In some folders there are two versions of the testimony — one rough and colloquial, the other more polished. It appears that the first is an on-the-spot transcription complete with blots and insertions, and the second is a "fair copy" with some editorial smoothing. For the example given above of the confession of James Stuart, Williams chose to publish the more literary version. While the changes in the two transcriptions are minor (Stuart's "Sac City" becomes "Sacramento City"; his "her Mother gave it to her" becomes "it was a gift from her Mother"), the polished version loses some of the piquant flavor of contemporary speech.

Moreover, Williams performed silent blue-penciling of material she found inappropriate. "A few necessary expurgations have been made without further comment," she sniffs in her introduction. One wonders what was considered a necessary expurgation in 1919.

ALSO OF INTEREST: San Francisco Committee of Vigilance of 1856, *San Francisco Committee of Vigilance of 1856 Papers* (BANC MSS C-A 78).

## 5. UNITED STATES CIRCUIT COURT (9TH CIRCUIT). *U.S. CIRCUIT COURT (9TH CIRCUIT) RULE BOOK, 1855–1911.*<sup>13</sup>

The supplied title for this item is only partially accurate, given its date span. There was no Ninth Circuit in 1855. When this ledger was started, Congress had just established California as a separate, unnumbered circuit comprising

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<sup>13</sup> Call no.: BANC MSS C-A 144.

two districts, the Northern and the Southern, having both original and appellate jurisdiction. In 1863 the Tenth Circuit was formed, which included California and Oregon, and then in 1866 the circuits were renumbered, with California, Oregon and Nevada composing the new Ninth Circuit.

Once a bound ledger, but now a stack of disbound sheets tied together in manila paper by a length of string, this so-called “rule book” provides a spotty but curious view of the court now known as the Ninth Circuit as it functioned during the first few decades of its operation. Most of the entries in the volume are notations of subpoenas issued or demurrers filed, but in among the routine instructions to the Clerk are manuscript copies of correspondence transcribed into the official volume. One of the more intriguing letters concerns litigation over a very small piece of property that would eventually loom large in the history of jurisprudence in California: Alcatraz Island.

The story of the island’s ownership is tangled. According to official documents, on June 8, 1846, Mexican Governor Pio Pico granted the property to Julian Workman, a naturalized Mexican citizen. Workman was given Alcatraz (previously considered public property) on the condition that he erect “as soon as possible” a much-needed lighthouse to guide ships into San Francisco Bay. Workman did not build the lighthouse, but instead conveyed title to his son-in-law, Francis P. Temple, also a naturalized Mexican citizen. The following year Temple sold the island to John C. Frémont, who had been recently appointed as military commandant and civil governor of the territory. Frémont later explained that he had given “a bond for the purchase money in my official capacity as governor of California.”<sup>14</sup> The unauthorized purchase of Alcatraz was merely one of many charges brought against Frémont when he was court-martialed for refusing to give up his governorship to Brigadier General Stephen Kearny. He was found guilty of mutiny, disobedience of a superior officer, and conduct to the prejudice of good order and military discipline, but Frémont eventually had his sentence commuted by President James K. Polk, and later resigned his commission.

The complicated legal history of Alcatraz, however, did not stop there.

In 1850 President Millard Fillmore included the island on a list of properties in California which were to be reserved from public sale (indicating

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<sup>14</sup> Quoted in Erwin N. Thompson, *The Rock: A History of Alcatraz Island, 1847–1972* (Denver: Denver Service Center, National Park Service, [1979]), 7.



PICTURE POSTCARD,  
 "ALCATRAZ ISLAND — SAN FRANCISCO BAY," 1900.

*Courtesy of The Bancroft Library, University of California, Berkeley  
 (call no. BANC PIC 1999.011:019).*

that, as far as the president was concerned, Alcatraz at that point belonged to the United States government). Fillmore was perhaps relying on intelligence supplied by Major John Lind Smith, a surveyor sent to the Pacific Coast the previous year to reconnoiter the defense needs of the territory. Smith reported that all valid Mexican land grants included a provision that the grant could be rescinded if the property was later needed for public use. In the nimble and sometimes dubious juggling of Mexican and U.S. law in the new territory, here was a case where Mexican law apparently provided the President with exactly the justification he desired. In addition, the fact that Workman failed to complete the primary condition for his grant — the construction of a lighthouse — would seem to invalidate whatever rights he may once have held. But Frémont continued to insist that his purchase from Workman's son-in-law was indeed valid, and he subsequently paid Temple \$5,000 of his own money. "The island consequently reverted to me," Frémont insisted, "and has ever since been held by me to be my property."<sup>15</sup>

<sup>15</sup> *Ibid.*



Meanwhile, the United States Army began the arduous and costly process of constructing defenses on Alcatraz. Frémont in retaliation hired the San Francisco law firm of Palmer, Cook and Co. to bring an action of ejectment against the Army engineers, an action filed in the District Court, Fourth Judicial District. The engineer in charge of the Alcatraz construction work, who bore the marvelous name of Major Zealous B. Tower, notified his superiors that he was being personally sued by Frémont for trespassing on the island. The Secretary of War advised Tower to turn to the U.S. District Attorney in San Francisco for assistance with the litigation.

Here the *Ninth Circuit Rule Book* records a small, perhaps previously unknown, episode in the protracted Alcatraz drama. Col. Samuel W. Inge, the U.S. District Attorney in San Francisco, contacted his counterpart in Los Angeles, the also magnificently-named Pacificus Ord. (Ord was the elder brother of Major General Edward Otho Cresap Ord, for whom Fort Ord would be named.) On July 23, 1855, Ord responded with his best counsel on the matter. Ord suspected that the Alcatraz grant was one of the flurry of questionable land transactions that flowed from Governor Pico's pen as it became increasingly clear that California was slipping from Mexican control. Ord advised Inge to return to the very beginning of this hopelessly entangled chain in order to establish a clear title for the U.S. government:

From all the information I can gather about this and other suspected fraudulent grants made by Pio Pico, I believe that there is now but one Witness who can and will testify to the truth of these frauds, and that is C[ayetano] Arenas — son of Luis Arenas — living at the mission of San Buenaventura, Santa Barbara Co, who it is said acted as a Clerk for Pico, and wrote these antedated grants. Caution and tact are necessary to get this evidence. Father and Son are poor, and they are, like nearly all the Californians, averse to testifying against their Countrymen & friends, & in favor of the US. This Witness knows the value of his evidence to the U States, and I believe he would be, to say the least, a very slow one for the U States, unless he could be previously assured that he could in some way be the gainer, by appearing as a Witness for the Government, in this, and other very important heavy land claims.<sup>16</sup>

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<sup>16</sup> Pacificus Ord to Samuel W. Inge, July 23, 1855, transcribed in *U.S. Circuit Court (9th Circuit) Rule Book, 1855–1911*, 26.

It is perhaps a matter for speculation whether Ord's suggestion that Cayetano Arenas be assured of being "the gainer" as a result of his testimony on the Alcatraz grant should be viewed as one U.S. District Attorney encouraging another to bribe a witness.

ALSO OF INTEREST: California Court of Sessions (Solano County), *Solano County Court of Sessions Minutes, 1850-1853* (BANC MSS 98/171 c); United States District Court (California: Northern District), *United States District Court, Northern District, California Sales Books, June 2, 1851–November 4, 1887* (BANC MSS C-A 133); California Justice Court (Santa Barbara). *Justice Court of Santa Barbara Docket, 1850-1855* (BANC MSS C-F 151); California Justice Court (Colfax). *California Justice Court (Colfax) Records, 1873-1930* (BANC MSS C-A 357).

## 6. CALIFORNIA STATE PRISON AT SAN QUENTIN. DESCRIPTION OF PRISONERS RECEIVED AT THE CALIFORNIA STATE PRISON AT SAN QUENTIN, 1909–1912.<sup>17</sup>

California's current prison system began with a single ship. On October 8, 1849, the San Francisco Town Council approved the purchase of the brig *Euphemia* to use as a prison hulk, and the ship was docked at the wharf near what is now the corner of Battery and Sacramento Streets. In 1851, James M. Estell and Mariano Guadalupe Vallejo converted a bark named the *Waban* into a second prison ship, and leased the labor of prisoners from the State of California for a period of ten years. The ship was docked at Angel Island for one year, until prison inspectors ordered Estell and Vallejo to locate a permanent land-based prison site. The two men purchased twenty acres on Point San Quentin, and the institution we know today had its first incarnation.

The Bancroft Library's collections includes San Quentin prisoner registers from as early as 1851, but among the most fascinating records are four boxes of disbound pages covering the period 1909–1912. These records represent most of the tenure of Warden John Hoyle, who was appointed in 1907, and served until 1913. Warden Hoyle was an adherent of the Progressive

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<sup>17</sup> Call no.: BANC PIC 2008.060–ffALB.

Movement, the social revolution that swept through California in the early decades of the twentieth century, reaching its apex with the 1910 election of Governor Hiram Johnson. Hoyle was successful in improving the living and working conditions at San Quentin, doing away with striped prison uniforms and instituting a program of vocational education to ready inmates to become productive citizens upon their release. Despite supervising conditions that might be considered by most modern observers as decidedly grim, Warden Hoyle at the time was widely criticized for “coddling” his prisoners with his progressive reforms. Female inmates (it was alleged) were released for springtime walks to pick wildflowers on Mount Tamalpais.

The registers for the years 1909–1912 contain detailed information about each prisoner admitted, including most notably an evocative mug shot. The entry includes name, prison serial number, date of admission to San Quentin, the type of crime for which the individual was incarcerated, the county in which the crime was committed, and the number of years of the sentence. Biographical details include age, state or country of birth, and occupation. Physical descriptions include height, weight, eye and hair color, complexion type, shoe size and hat size. A free-text field titled “Marks, scars, moles” frequently gives a quite colorful and detailed description of the prisoner’s tattoos. Take, for instance, Harvey Wilson, who was booked on June 11, 1909. Wilson’s tattoos include an arrow piercing flesh on his left arm, “H.H.” and the outline of a star, bracelets inked on both wrists, a dagger piercing flesh on his right arm, the word “Pugh,” a star and moon on his left foot, and “Anna” on his right foot. Wilson had evidently had a rough life before reaching San Quentin: the entry notes that his broken nose leaned to the right and the middle finger of his left hand had been chopped off at the third joint. (In the following decade the prison physician at San Quentin would use plastic surgery to correct “flat noses, cauliflower ears and other criminal stigmata.”<sup>18</sup>)

The youngest prisoners in the ledgers were sixteen (two of them); the oldest was seventy-five. Most prisoners were white, and the race or

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<sup>18</sup> Quoted in Benjamin Justice, “A College of Morals?: Educational Reform at San Quentin Prison, 1880–1920,” *History of Education Quarterly* 40:3 (Autumn 2000), 297. See also Ethan Blue, “The Strange Career of Leo Stanley: Remaking Manhood and Medicine at San Quentin State Penitentiary, 1913–1951,” *Pacific Historical Review* 78:2 (May 2009), 210–41.

nationality of non-whites was specifically noted: Negro, Indian, Chinese, Japanese, etc. In among the men are included photographs of perhaps two dozen women. While female prisoners were segregated into a separate Women's Building at San Quentin, they appear in chronological order among the men in the registration ledgers' mug shots, oddly incongruous in their huge Victorian hats.

Only one famous person was admitted to San Quentin Prison during this three-year period: San Francisco's infamous "Boss" Abe Ruef. In the ledger his crime is listed as "Offering a Bribe," with a sentence of fourteen years. Perhaps nowhere else may one learn that Ruef was five feet, six and half inches tall, weighed 160 pounds, and wore size 6½ shoes. His occupation is listed as "Lawyer."

ALSO OF INTEREST: California State Prison at San Quentin, *Descriptive Registers of Prisoners, 1851-1940* (BANC MSS 79/18 c); August Vollmer, *Prisoner Portraits, 1895-1900* (BANC PIC 1957.022-PIC); San Francisco (Calif.) Police Dept., *San Francisco Police Dept. Records of Folsom Prison Convicts, 1924-1930* (BANC MSS 2007.244); Maynard P. Canon, *Folsom Prison Notebook, 1881-ca. 1949* (BANC MSS 2004/204 c); San Francisco (Calif.) Police Dept., *Wanted Posters Received, 1921-1925* (BANC MSS 91/146 c).

7. MARY E. GALLAGHER. *AN INTERVIEW WITH MARY GALLAGHER ON THE I.W.W. [AND] TOM MOONEY: ORAL HISTORY TRANSCRIPT.*<sup>19</sup>

The Bancroft Library's collection is strong in labor history, especially the history of the radical labor movements in California during the early twentieth century. Of particular interest is material concerning the California Criminal Syndicalism Cases, including the extensive Thomas J. Mooney Papers (82 cartons, 84 volumes and 37 scrapbooks, plus miscellaneous sub-collections), which document the central figure in the syndicalism trials.

On April 30, 1919, the Legislature passed the California Criminal Syndicalism Act which declared guilty of a felony anyone who "organizes

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<sup>19</sup> Call no.: BANC MSS C-D 4011.

or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage or persons organized or assembled to advocate, teach or aid and abet criminal syndicalism.” Aimed primarily at the Industrial Workers of the World (I.W.W.), the measure was a panicked response to a wave of labor actions that ranged from factory slow-downs to fatal bombings, and political organizing that included both opposition to U.S. involvement in World War I and support for the Bolshevik Revolution in Russia. From 1919 to 1924 there were 94 criminal syndicalism trials in California, involving 264 defendants.

Among the more interesting of the many resources available concerning the trials is an interview with Mary Eleanora Gallagher recorded in 1955 as part of the Regional Cultural History Project. Mary Gallagher had been working for the I.W.W. in Chicago, and closely following newspaper reports of the California trials, when she was surprised to read that she herself had been named in one of the proceedings. W.E. Townsend, a former member of the Chicago chapter of the I.W.W., had been called as a prosecution witness. In Gallagher’s estimation Townsend was “a stool-pigeon” — a government agent who had infiltrated the organization in order to collect incriminating evidence. Townsend claimed on the witness stand that Gallagher had instructed him in methods of industrial sabotage. When alerted to the allegation, the I.W.W. sent Gallagher to California to refute Townsend’s testimony.

During his time in Chicago, Townsend had shared many details of his personal life, and as a result of his indiscretion, Mary Gallagher was able not only to contradict his allegation that he had received instruction in violent labor tactics from her, but also to provide damaging details about his own past in an attempt to impeach his testimony. In her oral history Gallagher explains:

[F]or six different trials I tried to get this testimony in, that he had deserted from the Army and Navy nine different times and had also been in the insane asylum in Elizabethtown outside Washington, D.C. [*Gallagher here confused St. Elizabeth’s Hospital in Washington, D.C. with Elizabethtown, an earlier name for Quincy, California.*] I could never get that onto the record because his attorney would object. That never went into the record until I had made about six attempts at different trials.<sup>20</sup>

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<sup>20</sup> Mary E. Gallagher, *An Interview with Mary Gallagher: Oral History Transcript*, 57.

Not until Townsend was called to testify in a case held in Quincy, California, was Gallagher's damaging information admitted. Townsend's response was simply to agree to the accuracy of her statements. "He got up on the stand," Gallagher recalled, "and said, 'Why yes, I was as crazy as a coot. She's right.' And still they used him. It was most astonishing."<sup>21</sup>

Gallagher's oral history provides the type of personal anecdotes about the syndicalism trials that frequently are lost in the winnowing of historical detail. She recalls that during the various trials in California she was entitled to witness fees and transportation, hotel and meal reimbursements. "We had to turn in a bill and have it certified by the judge at the end of each trial so that we could collect our expense money. . . . The judge in each case always went over our expense accounts very carefully to see that we were not eating two-dollar meals when we should have been eating fifty-cent meals."<sup>22</sup>

ALSO OF INTEREST: Mary E. Gallagher, *Photographs Relating to American Socialism and Labor* (BANC PIC 1955.005 – PIC); Joe Murphy, *Industrial Workers of the World: Interview* (Phonotape 1557 C); Harold Haynes, *The Life History of Harold (Red) Haynes: Interview* (Phonotape 1388 C); Patrick Cush, *Patrick Cush Interviews and Songs* (Phonotape 3069 C:1-5); Cottrell Laurence Dellums, *International President of the Brotherhood of Sleeping Car Porters and Civil Rights Leader: Oral History Transcript* (BANC CD-236:1-7); Helen Valeska Bary, *Labor Administration and Social Security: a Woman's Life: Oral History Transcript* (BANC CD 612:1-12).

## 8 JOHN ALFRED SUTRO. *A LIFE IN THE LAW: ORAL HISTORY TRANSCRIPT.*<sup>23</sup>

Most histories of law firms are written to commemorate a particular milestone in the firm's history, or to acknowledge a significant partner upon his or her retirement or death. These publications tend to be puff pieces, intended to celebrate the law firm's many notable accomplishments. Among the extensive collection of oral histories available through the Bancroft Library is a group focusing on law firms in California. While these interviews were recorded with the full cooperation of the attorneys

<sup>21</sup> Gallagher, *An Interview*, 58.

<sup>22</sup> *Ibid.*, 58-59.

<sup>23</sup> Call no. BANC MSS 87/243 c.

involved — and at times at their own behest — and while they are certainly not in the category of rigorous exposés, the oral histories do explore the behind-the-scenes dramas of some high-profile California cases, discussed in a forum in which a neutral interviewer can ask probing questions and challenge questionable statements. In many cases they capture vignettes



JOHN A. SUTRO, SR.

about the practice of law in California that would otherwise have been irretrievably lost.

The venerable firm of Pillsbury, Madison & Sutro was founded in 1905, but its roots stretch back to 1874, when Evans S. Pillsbury opened a law practice in San Francisco. By the 1890s, Frank D. Madison and Alfred Sutro had been hired as associates in the firm, setting the stage for one of the oldest and most prestigious law firms in California.

In 1985, John A. Sutro, Sr., son of one of the founders, was interviewed for a series of oral histories focusing on PM&S. The senior Sutro was asked about beginning as an office boy in

his father's firm, and he related a story that is almost Dickensian in its archaic detail of how a law office in California once functioned:

That was back in, let's see, 1916 or '17. I think it was after the Panama-Pacific International Exposition, which was in 1915. . . .

One interesting thing, I don't know if I told you about this, but Mr. E.S. Pillsbury was very conscious of security and the lawyers keeping their relations with their clients confidential. The library of the firm, on the top floor of the 200 Bush, had a fireplace in it. Mr. Pillsbury required the office boys to go to every office before they went home in the evening, empty the wastebaskets and take the trash in and burn it up in the fireplace.<sup>24</sup>

After graduating from Harvard Law School in 1929, Sutro joined his father's firm. In his stories about his early years in practice he reveals

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<sup>24</sup> John A. Sutro, Sr., *A Life in the Law: An Interview*, conducted by Sarah Sharp (Regional Oral History Office, UC Berkeley, 1985–1986), 11.



colorful anecdotes about the law profession in California during the Depression and World War II. In one case that he handled, the California Artichoke Growers had hired the distinguished Philadelphia advertising firm of N. W. Ayer & Son to help promote the consumption of California artichokes nationwide. The campaign was effective, but the growers in the Monterey region felt that Ayer had favored growers in the San Francisco region over their own, so they blocked payment of the company's bill. Ayer hired Sutro to represent the advertising firm. It was necessary to serve each grower individually in order to give notice of the litigation, but all the growers simply ignored the summons and complaint. As a result, Sutro was able to get a default judgment in the United States District Court. Enforcing the judgment, however, proved to be another matter.

There was no practical way to collect the judgment by going to the individual growers. It would have been an impossible job, just to collect a few thousands of dollars. It occurred to me that most of the artichoke growers being Italian probably had a bank account at the Bank of America, which had been founded as you know by Mr. A. P. Giannini as the Bank of Italy.

I got a writ of execution and served it on the Bank of America to tie up the accounts of the artichoke grower defendants. In those days, if you served the principal office of a bank you attached or executed upon accounts at all the branch offices. That isn't true any longer today. So I served the headquarters office with a writ of execution. It turned out that I tied up several millions of dollars and the judgment was only for a few thousand. I was called upon by scores of artichoke growers who were really mad. I also got a call from the Bank of America, whose headquarters at that time was on the corner of Powell and Market Street. Would I please come out, because we had all the artichoke growers' accounts tied up?

So I went out there and they gave me a cashiers check for the amount of the judgment with interest and costs.<sup>25</sup>

The Pillsbury, Madison & Sutro Oral History Series includes eleven separate interviews with attorneys from that firm.

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<sup>25</sup> Sutro, *A Life in the Law*, 23-24.

ALSO OF INTEREST: Herman Phleger, *Sixty Years in Law, Public Service and International Affairs: Oral History Transcript* (BANC MSS 80/67 c); Edgar Sinton, *Jewish and Community Service in San Francisco, and Family Tradition: Oral History Transcript* (BANC MSS 79/28 c); Leon Thomas David, *California Lawyer and Judge: Oral History Transcript* (BANC MSS 90/118 c); Sharp Whitmore, *California Lawyer: Oral History Transcript* (BANC MSS 90/117 c). Ruth Church Gupta, *Oral History Transcript* (BANC MSS 87/251 c). George Yonehiro, *California Lawyer and Judge: Oral History [transcript]* (BANC MSS 90/119 c).<sup>26</sup>

## 9. ROSALIE RITZ. ROSALIE RITZ COURTROOM DRAWINGS, 1968–1982.<sup>27</sup>

When cameras were routinely barred from the courtroom, artists such as Rosalie Ritz provided the only visual record of some of the country's most important trials. Ritz began her career as a court artist in the 1950s working for the Associated Press, the *Washington Post* and CBS. She covered Senate and House Congressional hearings, including those of the House Un-American Activities Committee.

By the mid-1960s she had relocated to California, where she sketched a majority of the most significant California trials of that very turbulent era. A list of the defendants whose trials she illustrated is a Who's Who of the most important political and social figures of the time: Eldridge Cleaver, Juan Corona, Angela Davis, Bill and Emily Harris, the Hell's Angels, David Hilliard, Sara Jane Moore, Patricia Hearst, Daniel Ellsberg, the San Quentin Six, Sirhan Sirhan, the Soledad Brothers, Dan White, Wendy Yoshimura and Huey Newton.

In 1966 Bobby Seale and Huey Newton formed the Black Panther Party for Self Defense. In much the same way that the San Francisco Committee of Vigilance had been formed over



ROSALIE RITZ

<sup>26</sup> Editor's Note: The last four oral histories are published in the present volume of *California Legal History* (vol. 6, 2011).

<sup>27</sup> Call no.: BANC PIC 1991.012-B.

a century earlier to counter perceived corruption in the criminal justice system, the Black Panthers were founded to counteract perceived racism in the Oakland Police Department — and like their Vigilance predecessors, the Panthers' high ideals soon led to excesses. One of their most controversial activities was to institute armed citizens' patrols to intervene in encounters between the police department and African Americans. When on the evening of October 28, 1967, Oakland Police officers John Frey and Herbert Heanes attempted to disarm Newton during an encounter on the street, the incident led to gunfire. All three men were wounded, Frey fatally. In his initial trial Newton was convicted of voluntary manslaughter, but his conviction was overturned by the California Court of Appeal. Two subsequent proceedings ended in mistrials.

Rosalie Ritz was present for all three of Huey Newton's trials for the murder of Officer Frey, and her courtroom sketches present the most complete rendering of the proceedings — 151 drawings in ink and colored pencil. One of the most striking images from the first trial shows two separate sketches of Newton on the witness stand, appearing cool and composed, while Judge Monroe Friedman sits scowling, framed by the red and white stripes of an American flag. Another drawing gives a detailed portrait of each member of the jury. Ritz sometimes added captions to the verso of her work describing the event being depicted. A few suggest the compressed poetry of a haiku: "Emergency Room nurse testified Newton wasn't bad off with bullet hole in stomach."<sup>28</sup>

The Rosalie Ritz drawings have been recently digitized; a finding aid is available via the Online Archive of California.

**ALSO OF INTEREST:** Walt Stewart, *Walt Stewart Collection of Courtroom Drawings, ca. 1970–ca. 1990* (BANC PIC 2004.133).

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The collections of the Bancroft Library span the entire breadth of California history, and contain documentation in all imaginable formats. An intensive program of digitization is making large portions of the collection available online for remote research, and many users will find they can already pull

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<sup>28</sup> Rosalie Ritz. *Rosalie Ritz Courtroom Drawings, 1968–1982* [digital file], image cubanc\_39\_1\_00303530a.

up unexpected riches on their own laptop. Yet nothing can quite match the experience of sitting in the elegant Bancroft Library reading room, inhaling the musty scent and touching the rough sheets of blue paper on which, transcribed in faded, spidery penmanship, a poor soul in 1851 San Francisco pleads for his life before an unsympathetic panel that listens patiently, rope in hand.

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