

DEATH IN THE PASS: AN 1851 MELODRAMA

by John S. Caragozian

Murder. Domestic violence. Suborned perjury. Criminal gangs. The U.S. Cavalry. All were featured in 1851 criminal proceedings in Los Angeles against two brothers from the prominent Lugo family.

Family patriarch Antonio Lugo was a Californio, that is, of Hispanic descent born in Spanish (or, later, Mexican) California. In 1792, he enlisted in Spain's army in California. Upon his 1810 discharge, Antonio received a veteran's land grant in the present-day city of Lynwood, but lived in an adobe house at the Los Angeles pueblo.

After gaining independence from Spain in 1821, Mexico granted additional lands to Antonio in present-day Bell, Montebello, East Los Angeles, Watts, and Compton. Antonio named his consolidated 19,000 acres Rancho San Antonio. He and his family prospered by raising cattle and selling hides and tallow to U.S. merchants sailing along the California coast. The Lugos also raised horses, sheep, and other livestock for their own use. See Roy Whitehead, "Lugo: A Chronicle of Early California," 101, 119, 132, 141, 204 (1978).

In 1842, Antonio, three of his sons, and a nephew obtained an additional grant of 250,000 acres, or 390 square miles, in the San Bernardino Valley. The land was particularly valuable, with part of it watered by the Santa Ana River.

Indeed, the land previously had been a working rancho controlled by Mission San Gabriel. The California missions, however, were "secularized" in 1833: The Mexican government took almost all land from the missions and granted or sold it to Californios such as the Lugos. (My November 28, 2021 Daily Journal column, "Few Heroes," dealt generally with how Native Americans—the missions' ostensible beneficiaries—lost out from secularization.)

The Lugo sons and nephew moved to the San Bernardino rancho and continued ranching as California became part of the U.S. in 1848.

This transition to the U.S. and the 1849-1850 gold rush affected southern California less than northern California. San Francisco and the Mother Lode saw an influx of 100,000 people. By contrast, southern California remained pastoral. Its largest town, L.A., had a population of 1,610 in 1850 and was 90% Spanish speaking.

During these years, Native Americans repeatedly raided L.A.-area ranchos for livestock. In January 1851, Utes from the Great Basin took several hundred horses from the San Bernardino

Valley, mostly from the Lugos' rancho, and escaped north through Cajon Pass (now traversed by Interstate 15) into the Mojave Desert.

The Lugos organized 20 armed men, including two of Antonio's adult sons, two of his grandsons—brothers Chico and Menito, 18 and 16 years old, respectively—and several rancho workers, to pursue the Utes. On the first day of the pursuit into Cajon Pass, the Lugo party came across a camp of two teamsters, a white man named Patrick McSwiggen and a Native American from the Creek tribe named Sam. McSwiggen and Sam apparently gave the Lugo party directions to the fleeing Utes. On the third day, the Utes ambushed the Lugo party, killing one of the Lugos' men near today's Victorville. After the ambush, the party returned to the Lugos' rancho without recovering any of the horses. *See generally*, W. W. Robinson, "People Versus Lugo," 5-12 (1962).

A few days later, on January 29, 1851, a U.S. Army infantry detachment on separate business traveled north through Cajon Pass. The next morning, several Utes—apparently including the raiders' leader—entered the army camp and said that two men had been murdered nearby. Four soldiers investigated and found McSwiggen's and Sam's bodies. *See id.*, at 2-3.

The soldiers buried the bodies and reported the deaths to Los Angeles officials. (In 1851, San Bernardino was part of L.A. County. It became a separate county two years later.) A Los Angeles justice of the peace presided over a coroner's jury and heard testimony about the January comings and goings in Cajon Pass.

With one exception, none of the soldiers or other witnesses knew anything about who had committed the murders. The exception was Ysidro Higuera, who had been a member of the Lugo party pursuing the Utes. Higuera testified that he, brothers Chico and Menito Lugo, and another man killed McSwiggen and Sam after the Utes ambushed the Lugo party. Per Higuera, the motive was retaliation, because Chico and Menito believed that McSwiggen and Sam had deliberately directed the party into the ambush. *See Whitehead, supra*, at 356.

Based on Higuera's uncorroborated testimony, the justice of the peace issued arrest warrants for Chico and Menito, who were then jailed. The brothers' father and uncle sought a lawyer, Joseph Lancaster Brent, a Maryland native recently arrived in Los Angeles. Brent agreed to defend Chico and Menito after their father and uncle assured Brent that the brothers were innocent because they (the brothers) had never left the father's and uncle's sight during the entire pursuit and return. *See Robinson, supra*, at 11-13.

Lawyer Brent learned Higuera's testimony was suspect. Higuera himself had been accused of horse theft and jailed for a week when his jailer stated that Higuera could testify against Chico and Menito. The jailer was George Robinson, who was an enemy of the Lugo family. A year

earlier, in 1850, Robinson and his wife had journeyed overland into California through Cajon Pass and stayed at the Lugos' San Bernardino rancho. Robinson's wife had become friendly with the Lugos. When Robinson physically abused his wife at the rancho, the Lugos beat him. The Lugos were convicted of assault and fined, and Robinson's civil suit against Lugos was pending. Id. at 17-18.

With this evidence, Brent sought bail for Chico and Menito, arguing that Robinson sought revenge against the Lugo family by suborning perjury from Higuera.

During the various legal proceedings, L.A. grew divided over the Lugo case. Californios were convinced of Chico's and Menito's innocence; Anglos wanted the brothers hung for murder, perhaps without waiting for a trial.

This tension in L.A. deepened with the arrival of former Texas Ranger John Irving and his gang of 25. They were on their way to Mexico to steal silver. Apparently, Irving offered to break Chico and Menito out of jail for \$50,000 (according to L.A.'s newspaper), or \$10,000 (according to Brent's later recollection). Whether the Lugos accepted the offer was disputed. Id., at 21-22.

When a Los Angeles judge granted Brent's motion for bail – \$10,000 each for the brothers – Irving told Brent that he (Irving) was still owed the agreed-upon fee for freeing them. Irving threatened to kill the brothers if the Lugos refused to pay.

Brent worried that L.A.'s Anglos and Irving's gang would attack Chico and Menito when they were released from jail. Accordingly, Brent asked Californios to protect the brothers, and eventually 60 Californios arrived in town to do so. Too, Brent, along with an associate, the prosecutors and Irving were all armed with pistols in the courtroom.

A battle seemed inevitable until, by happenstance, a column of 50 U.S. Cavalrymen on a routine march from San Diego arrived in L.A. At the county sheriff's request, four cavalrymen were stationed inside the clerk's office adjacent to the courtroom, while the remaining cavalry were outside surrounding the building. Chico and Menito were released on bail without further incident, and the Californios safely escorted them to the Lugos' San Bernardino rancho. Id., at 21-31.

Irving vowed revenge against the Lugos. A few days later, he and part of his gang rode to San Bernardino and looted one of the Lugos' houses. Several of the Lugos' workers chased the looters into the mountains and killed Irving and all of his cohorts, save one. No one was prosecuted for these killings.

As for Chico and Menito, the case against them continued with some procedural wrangling until October 1852, when the court dismissed it for insufficient evidence. Brent's fee was rumored to be \$20,000, or almost \$750,000 today. *See id.* at 37, 40.

The murders of McSwiggen and Sam were never solved.

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