

## San Bernardino County's Legal Roots

By John W. Short



Don Antonio Lugo is widely recognized as one of the founding fathers of the San Bernardino Valley. Born in Spain, he came to California as a soldier. At his discharge from the military in 1810, Don Lugo received a Spanish Land Grant and became the owner of the San Antonio Rancho, located in and around present day East Los Angeles.

Early legal disputes during the Mexican occupation were often resolved by the owner of the ranch. In the more populated areas, the *alcalde* (similar to a mayor) would resolve the minor disputes. He would collect *dos reales* – early court costs – to pay for stationary and, if necessary, an *escribano* to report the case. The *alcalde* would listen to statements of the parties, consider the offered proof, inspect the premises or boundary lines, if necessary, or inspect an animal to consider and ascertain its “identity.” The decisions of the *alcalde* were considered final and were never appealed. Don Lugo, though he could neither read nor write, served as the *alcalde* of Los Angeles from 1816-1819, and as a *juez de campo* (“judge of the plains”) from 1833-1834.

The more significant legal issues of the time were taken up formally in court. The Mexican laws of 1837 established a judiciary for the Territory of California, which was divided into judicial districts. The “Court of the First Instance” was comparable to our present day Superior Courts. The Territory’s appellate court system consisted of four judges and was split similar to our present day Court of Appeal and Supreme Court. The four judges were divided into two benches: the junior judge sitting by himself on the second bench, known as the “Court of the Second Instance.” The three senior judges sat on the first bench, known as the “Court of the Third Instance.” Decisions of the Court of the Second Instance could be appealed to the Court of the Third Instance, and the latter decisions were final.

In 1842, Don Antonio Lugo purchased the Rancho San Bernardino, a Mexican land grant of approximately 35,000 acres located in the modern day San Bernardino and Yucaipa valleys. Don Lugo struck a superb deal, acquiring the property for a reported \$800 in hides and tallow. Don Lugo and his family built an adobe home near the present site of the Historic San Bernardino Superior Court on Arrowhead Avenue and at several other locations in the Valley. Rancho San Bernardino remained sparsely populated for the next 10 years.

In 1846, the United States conquered the Mexican Territory of California. The interim California Republic existed until California’s admission to the Union in 1850. Much of the existing court system broke down during this interim period and in 1849, the military governor of California called for the people to elect *alcaldes* to administer justice under Mexican law until a new court system could be established.

In 1851, members of the Church of Jesus Christ of Latter Day Saints (“LDS”) purchased 35,000 acres of the San Bernardino Rancho from Don Lugo for \$77,500. A large group of LDS members migrated from Salt Lake City and began building their community around Don Lugo’s adobe structure in “downtown” San Bernardino. By late November 1851, nearly 100 houses had been built. For greater security, the settlers built a massive fort encircling much of the community, reportedly the largest fort then erected in all of Southern California.

The LDS settlers spent their first two years focusing on the fundamentals to sustain themselves - food, water, and shelter - and then turned their attention to the greater needs of the community. During these early days of the settlement, legal disputes were generally resolved by the local church council.

In 1852, “San Bernardino County” did not exist - “it” was still part of San Diego and Los Angeles counties. In the general election of 1852, the LDS settlers elected one of their own, Jefferson Hunt, as a Los Angeles County representative to the California State Assembly. At this same time, another settler, Daniel Thomas, circulated a petition supporting the creation of San Bernardino County from the eastern part of Los Angeles County. Assemblyman Hunt picked up the cause and introduced a bill to effect this change. The full Legislature supported Hunt’s bill and with a speed unimaginable in modern times, the Legislature created San Bernardino County just months later on April 26, 1853. The legal community of San Bernardino County developed quickly thereafter.

The new county held a special election in June 1853, and elected the first county judge, Daniel Thomas. Judge Thomas had no formal training in the law, but was considered “educated” by the other settlers and, apparently, the electorate. Two other settlers, John Brown, Sr. and Andrew Lytle (though some reports name Valentine Herring as the third person), were appointed to serve as justices of the peace. These three members of the local judiciary comprised the County Court of Sessions, which also served as the governing body for the new county until the establishment of the Board of Supervisors in 1855.

The Court of Sessions tried all felony criminal cases except for capital offenses punishable by death. The Court of Sessions also impaneled the County Grand Jury. Any party appealing a decision of the Court of Sessions had the matter heard by the County Judge sitting alone. The County Judge also had exclusive jurisdiction of the probate calendar.

Judge Thomas served briefly, resigning his office in 1857; he returned to Salt Lake City with nearly 2,000 settlers at the request of Brigham Young for other Church business. A.D. Boren succeeded Judge Thomas and, like his predecessor, Judge Boren had no legal training, but was considered a man of fair education. Judge Boren served until he retired in January 1871. Henry M. Willis followed Judge Boren. Judge Willis then served as County Judge for eight years, until the State Constitution abolished the office of County Judge.

The County Judges were complemented by District Court Judges created by the California Constitution. The District Court was the highest local tribunal embracing both civil and criminal causes. The District Court heard capital offenses and matters involving conflicts by members of the Court of Sessions.

In 1853, San Bernardino County was part of the First Judicial District, which previously included Los Angeles and San Diego counties. Benjamin Hayes of Los Angeles served as the first district judge for San Bernardino County, sitting from 1853-1863. Judge Hayes rode the circuit on horseback, carriage, and by the little steamer, Senator. Judge Hayes, unlike the county judges, was considered a man of wide learning and actually practiced as a lawyer before sitting on the bench. He could read and write Spanish with such competence that he held court in both Spanish and English, though he admitted he could not speak fluent Spanish.

District Court judges were paid by the State. By an apparent oversight, the act creating the County of San Bernardino did not fix the salary of the county judges, so they were initially paid by the County. Until the Legislature addressed this omission in 1859, county judges were paid only \$500 a year. Indeed, both Judge Thomas and Judge Boren served as postmasters at the same time to make ends meet.

These early pioneer lawyers and jurists kept things going despite the odds. Then, on December 11, 1875, a group met and organized the San Bernardino County Bar Association – the Oldest Continuously Active Bar Association in California. And the rest, so they say, is history.

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