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# "*Pido y Suplico*": Women and the Law in Spanish New Mexico, 1697–1763

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ROSALIND Z. ROCK

In the kingdom of New Mexico women regularly sought redress of grievances before the law. Governors and local officials acting as the king's representatives extended royal protection to women as stipulated in the body of Spain's legal codes.<sup>1</sup> When adversity threatened her, whether from within her family or from the community at large, a woman could find ultimate recourse in the law. Regardless of her station in life officials were bound to give a woman's case a hearing. Archival evidence of such cases remaining from the era of Spain's rule in New Mexico reveals much concerning the lives women led in this northernmost province and gives insight into their survival on the Hispanic frontier. Such evidence includes cases of defamation of character, power of attorney, inheritance (estate management), mistreatment, adultery, and murder.

In the small, closed communities of colonial New Mexico gossip

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1. "*Pido y suplico* . . ." "I beseech and implore [you] . . .," a standard phrase ending most petitions for legal recourse, including those filed by women. Reference to this activity is made by Salomé Hernández, "Nueva Mexicanas as Refugees and Reconquest Settlers, 1680–1696" in Joan M. Jensen and Darlis A. Miller, eds., *New Mexico Women: Intercultural Perspectives* (Albuquerque: University of New Mexico Press, 1986), 56.

bred of envy could not be kept secret. Sometimes malicious envy led to confrontation. Such were the circumstances which brought about Juana Argüello's complaint against two sisters in the village of Santa Fe. On August 17, 1697 Juana Argüello, a widow living in Santa Fe, filed a complaint of defamation of character against two sisters, Ana María and Ysabel de Herrera. She was reacting to a claim made by the sisters upon the posting of the wedding banns for her daughter's marriage. That claim cast doubt on Juana's virtue.<sup>2</sup> The fiancé, Cristóbal Tafoya, withdrew from the engagement as a result of these accusations. When Juana confronted Tafoya, asking what reason he had for withdrawing from marriage with her daughter, the Herrera sisters assured Tafoya their claims against Juana were true. She was "una puta alcaquete" (a bawdy whore), they claimed, and her protests to the contrary would not stand up in a court of law. In time Cristóbal Tafoya's brother Juan and his wife became involved in the controversy. It was then that Juana Argüello felt moved to file her complaint of defamation of character against the Herrera sisters to prove publicly that she was what she claimed to be, an honorable solitary widow.<sup>3</sup>

*Alcalde Ordinario* Diego Arias de Quirós heard the case and after deliberation decided in favor of the complainant Juana Argüello. The Herrera sisters themselves were found to be of questionable virtue and were banished to Bernalillo. On further petition by Juana, the two sisters were also fined five pesos penalty for the damage done to her reputation. The fine was deposited in a fund to be used for public works in Santa Fe.<sup>4</sup> The Herrera sisters' implications concerning Juana Argüello's character impugned that of her daughter as well. According to Spanish law betrothals were made public. Public announcements were encouraged in an attempt to avoid marriage of persons closely related. It was done also to prevent a marriage in which the parties were ignorant of the other's character and origins. After a betrothal was made public anyone might come forward and file a petition with local officials raising doubt as to whether the marriage should take place.<sup>5</sup>

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2. Juana Argüello vs. Ana María y Ysabel de Herrera, Santa Fe, August 17-20, 1697, roll 3, frames 156-160, Spanish Archives of New Mexico, 2 (hereafter SANM 2). *Los Códigos Españoles Concordados y Anotados* (12 vols., Madrid: Antonio de San Martín, 1872), 3: título, 3, ley 1.

3. Argüello vs. Herrera, frames 156-60, SANM 2.

4. *Ibid.*

5. *Recopilación de las Leyes de los Reynos de las Indias* (3 vols., Madrid: Pedro Marín, 1772) 1: libro 4, título 7, ley 1; *Instituciones de Derecho Real de Castilla y de Indias* (4 vols., Guatemala: Ignacio Betata, 1819) 2: título 13, ley 1.

In Juana Argüello's case her character and thus the honor of her daughter and her entire family was placed in question. Punishment of banishment for false witness in such a case may appear harsh by twentieth-century standards, but at the time it would have been considered mild for the crime of destroying one's honor and reputation. Law and tradition dictated that a woman's character, like a man's word, was her bond. For a woman honor was linked to her chasteness, demureness, humility, and sense of shame.<sup>6</sup> When it was called into question her very livelihood could be threatened. This was especially crucial to a widow who could lose her husband's pension or claims to his estate if she were found guilty of loose living.<sup>7</sup>

The suit of Juana Argüello for defamation of character was by no means unique. Accusations raising questions pertaining to a woman's character were numerous throughout the period. In another instance, a case which began as defamation of character ultimately raised volatile emotions which changed its tenor entirely.

At the village of Santa Cruz in the summer of 1710 María de Benavides, widow of Alférez Diego González, filed a complaint with the *Alcalde Mayor*, Jacinto Sánchez, accusing Antonia de Moraga of defamation of character for spreading slanderous accusations about her.<sup>8</sup> Perhaps believing her vindication was close at hand, María de Benavides foolishly approached Antonia and her family in the street as they were on their way to the home of a friend. María told Antonia that she had filed a case against her because of her slanderous statements. Antonia vehemently denied having made them but María insisted that she had done so. Whereupon Antonia's daughter Josepha came to her mother's defense and said that she and not Antonia had made the accusations. Later, Antonia de Moraga's family and other witnesses told of Josepha pulling María from her horse after being struck by the former's riding crop and of the two scratching and beating each other.

After much confusion, the *Alcalde* caught up with the family to call Antonia to account for her alleged statements against María de Benavides. He was then given the full brunt of Moraga wrath. Antonia insulted the *Alcalde*, refusing to accompany "an Indian in long pants." More argument ensued, this time focusing on the insult given to an officer of the law. Eventually this case was heard by the governor in

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6. Ramón Gutiérrez, "Marriage, Sex and the Family: Social Change in Colonial New Mexico, 1690-1846" (doctoral dissertation, University of Wisconsin, 1980), 28, 45.

7. Argüello vs. Herrera, frames 156-60, SANM 2.

8. María de Benavides vs. Antonia de Moraga, Santa Cruz, July 12, 1710-August 7, 1713, roll 4, frames 897-98, SANM 2.

Santa Fe. Despite their solicitor's eloquent defense characterizing the fifty-year-old Antonia and her husband, a sixty-year-old blacksmith and carpenter, as "poor miserable wretches and incapable of any true malice" they were found guilty of failing in obedience to the law and its officials. They were fined ten *pesos* to be placed in the local church building fund, for payment of court and prison costs and admonished that if they ever committed the same offense again they would be punished severely.<sup>9</sup>

Abuse heaped upon the head of the *Alcalde Mayor* revealed contempt by those who considered themselves Spaniards for those deemed of Indian or mixed blood.<sup>10</sup> No mention was made of the accusation of slander filed against the defendants by María de Benavides. Her complaint became irrelevant in view of what was seen as the serious issue of obedience to officers of the law. Despite the outcome in some of these cases of defamation of character, women by and large were able to bring complaints defending their honor as a means of protecting themselves, not only from social ostracism, but from financial ruin as well.

Other laws protected women within the marriage bond. In both ecclesiastic and civil law the institution of marriage, with exact and detailed precepts concerning the union and its financial ramifications, was crucial to women. Ramón Gutiérrez, in his study "Marriage, Sex and the Family: Social Change in Colonial New Mexico, 1690-1846," would lead us to believe that before the 1776 *Caroline Marriage Pragmatic*, which compelled those seeking to wed to receive the permission of their parents or forfeit rights of inheritance, most laws dealing with marriage were ecclesiastical.<sup>11</sup> One has only to peruse the Spanish legal codes dating from earliest medieval times to find numerous and lengthy discussions of the civil ramifications of marriage. A woman inherited a portion of her parents' goods, her *parafernales*, which was hers to use and to will to any heirs she might have. If married, this property remained in her control and only if she gave this up legally could her husband gain access to it.<sup>12</sup> Some women found that in certain circumstances authority over their own goods would best be given over to

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9. *Ibid.*, frames 900-22.

10. *Ibid.*, frames 913-14, 915-17.

11. Gutiérrez, "Marriage . . .," 205-06, 250.

12. *Los Códigos Españoles*, 3: título 11, ley 1, ley 2, ley 7, ley 10, ley 11, ley 17; Mercedes Formica de Careaga, "Spain," in Raphael Patai, ed., *Women in the Modern World* (New York: Free Press, 1967), 180; José María Ots Capdequí, *Manual de Historia del Derecho Español en las Indias y del Derecho Propiamente Indiano* (2 vols., Buenos Aires: Instituto de Historia del Derecho Argentino, 1943), 1: 123-24.

their husbands or other male relatives. Several cases of power of attorney give insight into the use of this legal precept with regard to women in New Mexico.

One such case involved María de Castro, daughter of Miguel Roldarte and Juana Guerrero of Sombrerete. On July 17, 1697 María found the need to petition the *Alcalde Ordinario* for authorization for her husband, Sergeant Jacinto Sánchez, to act on her behalf in a situation involving her estate. Her aunt and uncle, Antonia de Castro and Gerónimo de Escobar, were executors of her deceased parents' estate. She petitioned to give authority for her husband to act on her behalf to press her claim to a bar of silver valued at 1,100 pesos which had belonged to her parents. The *Alcalde*, upon examination of the case, granted transfer of power over her estate from María to her husband to press her claim despite the absence of a will.<sup>13</sup>

Several cases reveal that health was sometimes a factor in a woman's decision to transfer her power of attorney. Catarina Varela y Losada had control over the estate of her son Cristóbal Domínguez, who died in Santa Fe in 1738. She found herself unable to travel from her home in San Felipe el Real to settle her son's affairs in Santa Fe. Therefore, Catarina asked that another of her sons, Julián, communicate with Báltasar Trujillo of Santa Fe, asking that he become an agent with power of attorney acting on her behalf.<sup>14</sup> Doña María Roybal's frail constitution also prevented her from carrying out duties as coexecutor of her husband's estate. She, as widow of livestock trader and breeder Joseph Reaño, along with her brother *Vicario y Juez Eclesiástico Bachiller* (Vicar and Ecclesiastic Judge, Baccalaureate) Santiago Roybal, were coexecutors of her late husband's estate owing to the minority of her son and heir Joseph Reaño. On several occasions in 1743 and 1744 the executors petitioned the governor for permission to grant power of attorney to various individuals to act for the estate in Santa Fe and Chihuahua.<sup>15</sup>

Spanish law specified that a woman was liable for any debts or obligations arising from property which belonged to her and not her

13. María de Castro, Petition for transfer of power of attorney to her husband, Jacinto Sánchez, Santa Fe, July 17, 1697, roll 3, frames 109–11, SANM 2.

14. Autos fechos a pedimento de d. Juan Gavaldon contra los Bienes quedaron por fin y muele del Cristoval Domingues, Santa Fe, 1738, roll 7, frames 974–78, SANM 2. No other mention of the mother is made. It is said [frame 988] that Truxillo is acting on behalf of Julian Domingues in the case.

15. Two Powers of Attorney given by doña María de Roibal and Bachiller don Santiago de Roibal, one to don Juan Gabaldón and the other to don Juan Joseph Moreno, Santa Fe, November 24, 1743–November 4, 1744, roll 8, frames 177–99, 764–68, SANM 2.

husband. If as a debtor, however, she transferred those goods to her husband their combined estate would be liable for any debts incurred.<sup>16</sup> Rosalía García de Noriega of Santa Fe found that her legacy kept in trust by her father was considerably diminished because of his poor business acumen. In order to salvage the remainder Rosalía petitioned to transfer her entire estate to her husband don Salvador Martínez. He was then to act on her behalf in all litigations whether civil or criminal. This included any cases concerning property, gifts, or grants.<sup>17</sup> On February 16, 1746 Governor Joaquín Codallos y Rabal granted the transfer of authority over her debt-ridden estate from Rosalía to her husband. It was stated that ". . . from now and forever the litigant [Rosalía García de Noriega] has desisted and parted with all her rights and accessions that she had to paternal and maternal goods. . . ."<sup>18</sup>

When a woman was widowed, by law she was entitled to one-half of all goods acquired during marriage, the remainder to be divided among other heirs.<sup>19</sup> On December 16, 1703 Governor Diego de Vargas ruled in favor of Agustina Romero, widow of Matheo Márquez. The deceased husband's stepfather, Captain Diego Arias de Quirós had refused to acquiesce in the matter of her children's inheritance. The governor now deemed that portion of the estate remaining after payment of debts, funeral and burial expenses was to be kept in trust for her children. She was to receive the horses belonging to her late husband and ten *pesos* annually for her son's education.<sup>20</sup> In this case, the guardian of the estate was overruled as a consequence of the pleas of a widow who believed her children were denied their legacy; the law serving as a protector of the weak and innocent.

By law a woman could not exercise control over the entire estate unless her husband specifically gave her permission to do so. In case of death, absence, or incapacitation a court official could grant her that permission.<sup>21</sup> In the summer of 1762 Ana María Ortiz of Santa Fe petitioned the governor concerning the management of her husband's

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16. *Códigos Españoles*, 3: título 11, ley 13.

17. Power of Attorney by doña Rosalía García de Noriega to her husband don Salvador Martínez, Santa Fe, February 16, 1746, SANM 2, roll 8, frames 641-42, 643, SANM 2.

18. Power of Attorney from García to Martínez, Santa Fe, February 16, 1746, roll 8, frame 643, SANM 2.

19. C. R. Boxer, *Women in Iberian Expansion Overseas, 1415-1815: Some Facts, Fancies and Personalities* (New York: Oxford University Press, 1975), 52-53.

20. Agustina Romero vs. Capitán Diego Arias de Quirós, Santa Fe, August 29-December 18, 1703, roll 3, frames 798-813, SANM 2.

21. *Recopilación*, 1: libro 5, título 3, ley 2, ley 3.

affairs. Four years earlier her husband, don Joseph de Reaño, son and heir of María Roybal and the elder Joseph Reaño, suffered a blow to the head in a campaign against the Comanche. Since that time he had not been in full command of his faculties and as a result sales were made and debts incurred which diminished both his property and business.<sup>22</sup> Consequently, Ana María Ortíz petitioned the governor to name a manager of her husband's affairs. Meanwhile she asked to be authorized to regain that property which her husband sold while not in his right mind.<sup>23</sup> On July 29, 1762 Governor Tomás Vélez Cachupín authorized appointment of Ana María's uncle, don Torivio Ortíz, *alférez* of the cavalry company of militia stationed in Santa Fe, to be co-administrator with her. This was to be in effect only until Reaño regained his health. All of the estate was inventoried, debts dealt with, and *partidos* reassessed.<sup>24</sup>

The following year Reaño appeared to regain his health, for at that time he traveled to the Presidio of San Sabá in Texas in the company of Antoio Matías Ortiz and several *genízaros*. After some time news came that these men never arrived at their destination and Reaño was presumed dead.<sup>25</sup> Ana María again petitioned to have executorship over her husband's estate. On October 18, 1763 the governor agreed to allow her to assume temporary control of her husband's property until his death was verified. Once again the wife was able to act on behalf of her husband in matters of business, payment of debts, and sale of livestock.<sup>26</sup>

The situation was different for the woman who lived alone. A society as male dominated and family oriented as that of Spain's left no place for such women. A lone woman had no protection and was fair game for any man. Worse still, married women viewed her uneasily as a temptation for their men. If she lacked attractiveness or was middle-aged, suspicions could arise about her being a witch. The only respectable alternatives open for the solitary woman were to enter a convent or become a domestic servant connected to a wealthy house.<sup>27</sup>

In remote New Mexico no convents were to be found at this time and a woman of very limited means would not be able to afford the lengthy journey entailed to reach one. Several women, however, did

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22. Case of Ana María Ortíz, Santa Fe, July 29, 1762–October 18, 1763, roll 9, frames 386–87, SANM 2.

23. *Ibid.*, frame 387.

24. *Ibid.*, frames 389–92.

25. *Ibid.*, frame 392.

26. *Ibid.*, frames 392–444.

27. Formica, "Spain," 177.

seek permission to go elsewhere. Luisa Navarro, on April 29, 1705, approached the governor for permission to go to El Paso to live with a brother for as a poor widow she could no longer continue to live as she was. Her petition was referred to the *cabildo* in Santa Fe. The members of the *cabildo* recommended that the governor grant her license to leave. Governor Francisco Cuerdo y Valdés promptly did so.<sup>28</sup> In 1715 another widow was granted permission to leave this jurisdiction. Despite the fact that she was the widow of a soldier and entitled to petition for a pension, María Canseco also wished to go to El Paso where she would be in the employ of General Antonio Valverde.<sup>29</sup>

There were those women alone who could not go to live with relatives or enter employment with the wealthy. For them one alternative presented itself which was neither honorable nor lawful. Desperation, in some cases, led to immorality. Punishment for adultery, which was considered a crime under law, was harsh. The maximum punishment could be death for the man and banishment to a convent for life for the woman with loss of any legal rights to her children or her property. If there was a reconciliation between husband and wife then no action would be taken.<sup>30</sup>

On October 4, 1701, in Santa Fe, a case of cohabitation was brought by *Alcalde Ordinario* Joseph Rodríguez against Luisa Varela and Agustín Sáez. Luisa was living openly with Sáez who was married. Despite admonishment by authorities the seven year liaison was not ended. Not only did Luisa Varela persist in remaining with Sáez but was alleged to have encouraged others to come to Agustín's house and commit illicit acts as well. Testimony was taken which corroborated these charges. This resulted in the *alcalde* ruling that Luisa be placed in the home of her sister, Catalina Varela, wife of *Alférez* Martín Hurtado. There she would remain until she could be sent to her brothers, Juan and Cristóbal Varela, who lived a distance from Santa Fe. For his commission of adultery, Agustín Sáez was jailed. Shortly thereafter, he and his wife, Antonia Márquez, were brought before the *alcalde*. Sáez was admonished by the official to renounce Luisa Varela and return to his wife and swear there would be no other women.<sup>31</sup>

In another case concerning adultery, Vicar and Ecclesiastic Judge

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28. Petition of Luisa Navarro, Santa Fe, April 29, 1705, roll 3, frames 1037-38, SANM 2.

29. Petition of María Canseco, Santa Fe, October 22, 1715, roll 5, frames 330-41, SANM 2.

30. *Códigos Españoles*, 3: título 9, ley 2; título 9, ley 12; 4: título 17, ley 8, ley 15.

31. Criminal proceedings against Agustín Sáez and Luisa Varela for cohabitation, Santa Fe, October 4-5, 1701, roll 3, frames 695-704, SANM 2.

Santiago Roybal filed a complaint against his sister-in-law Manuela (Beitia) Abeyta and a soldier of the Santa Fe *presidio*, Juan Márquez. After Márquez was jailed, his wife, María Magdalena Baca, came to his defense claiming he was with her at home as always on the night in question. She went on to say she believed both her and her husband's honor were denigrated by this calumny and that *Reformado Alférez Teniente* Juan Joseph Moreno was responsible for fostering such lies.<sup>32</sup> María Magdalena appealed to the governor's sensibilities and honor. The governor respected her wishes and referred her complaint against Moreno to Juan Páez Hurtado on August 20, 1740. Charge and countercharge followed.<sup>33</sup>

Subsequent testimony from soldiers and officials familiar with the parties involved only reinforced María Magdalena Baca's claim. No one could prove Márquez' alleged relationship with Manuela Abeyta. Even Company Lieutenant don Bernardo de Bustamante claimed the reason he had earlier sentenced Márquez to escort duty was not suspicions of an adulterous relationship with her, but for his harassment of a maid. While Márquez was fulfilling his escort obligations at Galisteo, his wife approached the lieutenant and asked why he was punishing her husband with this duty and pleaded for his return. Bustamante was so moved by her plea that he rescinded the sentence and permitted Márquez to return to her.<sup>34</sup>

The emphasis of the case changed subsequently when in early September testimony was taken from Moreno as well as from neighbors and relatives of husband and wife. The testimony revealed that on several different occasions María Magdalena Baca went to a friend and to her brother Antonio complaining of ill treatment at the hands of her husband. He beat her and had not given her his allotment from the *presidio*. On one occasion she threatened to file a complaint against him. When she discussed the matter with her brother he reminded her she was married and admonished her to try and make the best of it.<sup>35</sup> On September 26, 1740, Juan Páez Hurtado ordered that all new testimony accumulated since Moreno's latest countercharge was to be presented to María Magdalena Baca. By October 3, Páez had received her final statement and was organizing the pertinent documents in the case to present to the governor for a final ruling. Suddenly all activity

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32. Case of Manuela Beitia and Juan Marques, adultery, July 29, 1740–October 5, 1740, roll 7, frames 1064–68, SANM 2.

33. *Ibid.*, frames 1069–77.

34. *Ibid.*, frames 1077–85.

35. *Ibid.*, frames 1080–1102.

with regard to the case against Juan Márquez ceased. Márquez now found himself the center of another controversy. His wife was found dead and he was charged with her murder.<sup>36</sup>

On February 22, 1741, at six o'clock in the morning Lieutenant Bernardo Antonio Bustamante informed *Alcalde Mayor* Juan Páez Hurtado that on the previous evening María Magdalena Baca was found in her bed, strangled. A number of people were called upon to give testimony. An Indian woman servant, Antonia, who had grown up in the house of Captain Diego Montoya, María Magdalena's first husband, gave her story. Antonia testified regarding the ill-treatment the deceased received at the hands of her husband. She testified that Márquez insulted and threatened his wife on several occasions and that Manuela Abeyta was a continual point of contention between them. Márquez gave Christmas gifts, livestock, and other items he acquired to Manuela upon his return from the Río Abajo instead of to his wife. He gave the maize ration he received as his allotment from the *presidio* to her as well. His wife received little from him and had to support herself with weaving and dressmaking. Antonia further told of Márquez assisting Manuela Abeyta in a move to a house closer to his wife's before the murder.<sup>37</sup>

Also, a statement was obtained from Nereo Montoya, María Magdalena's son from her earlier marriage. This twelve year old stated that he witnessed the murder, casting considerable guilt on Juan Márquez. The boy was sleeping in his mother's bed and was restrained from helping her when a shadowy figure in a cape began strangling her. He overheard his mother gasp: "Juan, don't kill me, at least let me confess!" He identified a friend of Márquez and Manuela Abeyta, one Francisco Xavier Anaya, alias "el Jasque" as one of the attackers. According to Nereo Montoya, not only was a "woman with green petticoats" in the room, but his stepfather was there as well.<sup>38</sup>

Testimony by neighbors confirmed Márquez' mistreatment of his wife on account of Manuela Abeyta and on their connection with "el Jasque." On March 1, 1741, based on testimony concerning her role in creating tension between husband and wife and possible implication in the wife's murder, Manuela Abeyta was banished a distance of twelve leagues from Santa Fe for the duration of the term of Governor Gáspar

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36. *Ibid.*, frames 1104-06.

37. *Causa Criminal contra Juan Marques y Francisco Javier*, Santa Fe, 1741, roll 8, frames 1-46, SANM 2.

38. *Ibid.*

Domingo Mendoza. Several months later, on May 13, 1741 the governor pronounced sentence upon Juan Márquez and "el Jasque."

Since the only incriminating witness was a minor and the evidence circumstantial, Márquez was not punished for the murder of his wife. Instead, he was removed from the military roles for the crimes of public adultery and misuse of military stores, resulting from having given his allotment to Manuela Abeyta instead of his wife. He was banished from New Mexico for four years. "El Jasque," also charged by the same testimony and circumstantial evidence with the murder of María Magdalena Baca, and therefore under extreme suspicion, was banished for four years to the new settlement of Nuestra Señora de la Concepción de Gracia Real. He was escorted south and turned over to Nicolás de Chávez, official of the jurisdiction at San Felipe de Albuquerque on May 19, 1741.<sup>39</sup>

Unlike María Magdalena Baca, some wronged wives did file complaints against their husbands. In Santa Fe on July 20, 1744, Juana Martín filed charges against her husband Joseph de Armijo and his long time mistress Getrúdes de Segura. For over fifteen years Juana had suffered in silence while her husband gave his attention to Getrúdes, a poor *mulata* who was also supported by Armijo. Finally Juana complained to authorities that she and her children were deprived for his indulgence. After a lengthy investigation the case was referred to the governor for final judgment. Getrúdes was banished to El Paso for four years and Armijo was banished as well but to an undisclosed location. When apprised of her punishment Getrúdes, although wishing to comply, replied that her poor circumstances would not allow for such a trip. She appealed for the governor's mercy in the situation. Joseph de Armijo, when informed of the verdict, appeared accepting and repentant. But even before the governor ruled, Juana Martín had already petitioned for his mercy in the case. The plight of Getrúdes Segura was known to her. She pleaded for leniency, stating she had acted out of jealousy and vindictiveness in filing the complaint. In the end Getrúdes was permitted to serve out her banishment at Santa Cruz de la Cañada instead of El Paso. Juana reconciled with her husband.<sup>40</sup>

Perhaps when Juana realized that although life was difficult with him her situation as a lone woman with minor children would be even more intolerable. The exigencies of life in frontier New Mexico dictated her decision and played a large role in the rulings officials made in

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39. *Ibid.*, frames 44–46.

40. Complaint of Juana Martín against Joseph de Armijo, Santa Fe, July 20–September 26, 1744, roll 8, frames 279–92, SANM 2.

cases, which if consistently judged in favor of the woman's grievance, would have left her defenseless.

New Mexico officials, lacking advice of trained lawyers and judges, were instrumental in defense and final judgment in all litigation. For women the law represented by these officials provided protection in the absence of a male relative. *Alcaldes* on the local level were generally the first petitioned by women in search of redress of grievances, however, in many cases the governor was appealed to directly, not as a last resort.

Reconciliation appears to be the prevailing judgment in cases of adultery and mistreatment. In October, 1714, Juana Montaña escaped from the mistreatment of her husband to seek the protection of the governor. Earlier, Juana was courted by Nicolás de Chávez and had been seduced and abandoned by him. After intervention by the governor which brought marriage, she suffered extreme physical abuse at his hands. Redress from the governor was sought once again when she made a daring walk from Atrisco to Santa Fe. Despite testimony and evidence corroborating Juana's allegations, she was reconciled to her husband and eventually bore him many children.<sup>41</sup>

As in the litigation of Juana Montaña physical abuse was at the center of a case in the Bernalillo jurisdiction. Alejandro Mora was accused by his wife and Indian maidservant of extreme cruelty and abuse. The maidservant told of his advances and threats to punish both women on behalf of the inquisition for what he deemed to be their sins. Mora's wife, Feliciano de Miranda, told how he had abused and tortured her for allegedly coveting other men in her heart.<sup>42</sup> Governor Cachupín ruled in the servant's favor, removing her from Mora's household and placing her in another home. The wife, however, faced a fate similar to that of Juana Montaña. She was encouraged to return to her home despite the fact that under Spanish law a marriage could be dissolved if abuse and violence were proved. Her husband was required to swear

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41. Criminal Proceedings against Nicolás de Chávez, Santa Fe, July 10–20, 1714, roll 4, frames 1056–68, SANM 2; Juana Montaña vs. Nicolás de Chávez, Santa Fe, October 22–November 10, 1714, roll 4, frames 1106–11, *ibid.*; Book of Baptisms (B)2, reel 1, frame 304, Archives of the Archdiocese of Santa Fe (AASF), Albuquerque; Fray Angélico Chávez, *Origins of New Mexico Families* (Santa Fe: William Gannon, 1975), 233–34; geneological list of Nicolás de Chávez and his family compiled by Donald Dreeson, Geneologist, March, 1979.

42. Case against Alejandro Mora, Sandia, September 26, 1751–November 6, 1752, roll 8, frames 1032–47, SANM 2.

upon his honor as a former military man that he would never again abuse his wife.<sup>43</sup>

Physical mistreatment was not the only violent crime committed against women. It became evident from the case of María Magdalena Baca that murder was not unknown in Spanish New Mexico. In that case and the following one personalities and circumstances came into play which influenced the final outcome. At the Villa de Santa Cruz on April 20, 1713, at 7 o'clock in the evening, *Alcalde* Jacinto Sánchez was summoned to the home of Francisca Romero. There her daughter-in-law, Catalina de Valdés was found dead, a broken water jug beside her and deep wounds about her face and head.<sup>44</sup> After lengthy testimony and declarations by relatives, servants, and neighbors Governor Juan Flóres Mogollón expanded the investigation by naming a special investigator: Juan Páez Hurtado was appointed to take testimony in Santa Cruz and Santa Fe and conduct a further investigation into the murder acting as *Juez de Comision*.

Further testimony, especially that of Catalina's mother, doña María de Cabrera, and *Protector de Indios* Juan de Atienza, revealed that the deceased and her husband, Miguel Luján, had a life together that was not altogether harmonious.<sup>45</sup> Testimony of neighbors and servants was conflicting. Some said Luján was in the house when his wife's body was found and that his sister Juana pleaded with them not to say so. Others claimed he was gathering firewood and had to be called back to the house. It was discovered that on the day of the murder Luján exchanged his shoes, which were found to have blood on them, with a neighbor Francisco Herrera. Miguel Luján denied being in the house, but admitted the bloody shoes were his and that they got that way when he returned and went near to his wife's corpse which had been carried to another part of the house and laid out on a buffalo robe.<sup>46</sup>

Argument of the case on Luján's behalf was set in Santa Fe on June 28. *Ayudante* Cristóbal de Góngora was named *procurador* (solicitor) for Miguel Luján. Upon review of the entire case the governor determined that it should be heard by the *Sala del Crimen* (Viceregal Criminal Court) in Mexico. Whether this decision was rendered in light of the conflicting testimony of witnesses or as the result of political pressure

43. *Ibid.*, frame 1048.

44. Proceedings against Miguel Lujan, Villa de Santa Cruz, April 20, 1713, roll 4, frame 745, SANM 2.

45. *Ibid.*, frames 746-75.

46. *Ibid.*, frames 769-71.

brought to bear by the defendant's family the governor had spoken.<sup>47</sup> Miguel Luján, bound in chains, was being escorted to Mexico City by *Cavo* Bernardino Fernández and *Soldado* Luís Ortíz when he made his escape at San Francisco de Cuellar (modern-day Chihuahua). He slipped away from his escort and sought sanctuary at the church. Fernández continued on to Mexico City with copies of the case and letters for the Viceroy. Ortíz returned to New Mexico to report the incident.<sup>48</sup>

Shortage of men on the frontier coupled with lack of sufficient evidence contributed greatly to the governor's decision in such cases. Crimes of adultery and murder which generally bore harsher penalties carried sentences of banishment instead. In the cases of mistreatment, adultery, and murder reviewed here, decisions which may be deemed lenient on preliminary examination were arrived at only after a weighing of evidence. The particular circumstances of each case as well as the reality of life on the frontier played as great a role in a final decision as did the law itself. John Thomas Vance, in his study of the origins of Hispanic-American law addressed this difficulty.

While in general the law of Spain applied also in the colonies, the statutes of the latter and the conditions existing there made necessary adaptations, modifications and supplementary legislation. Special colonial regulations were devised to meet the requirements of the colonies without too great a deviation from the law that governed the mother country.<sup>49</sup>

Therefore, in all cases governors and local officials made decisions based on law and necessity. Women were protected as law and tradition dictated. In most cases pertaining to inheritance and defamation of character women found their causes vindicated. In cases of violence against women, however, the individual merits of each case coupled with frontier necessity brought about decisions which deviated from what was prescribed by law.

Women on the colonial New Mexico frontier lived a harsh life but could rely on the law to consider their grievances and, in a limited

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47. Chávez, *Origins of New Mexico Families*, 187, 213. Chávez relates that Juana founded the Gómez del Castillo family with her natural children.

48. Proceedings against Miguel Lujan, frames 801-26.

49. John Thomas Vance, *The Background of Hispanic-American Laws: Legal Sources and Juridical Literature of Spain* (New York: Central Book Co., 1943), 127-28.

way, provide a degree of redress and protection so necessary to their survival. When New Mexico women were observed by Anglos in the 1830s it was said: "In contrast [to Anglo women] a New Mexican woman retained her property, legal rights, wages and maiden name after marriage, like her Spanish ancestors. . . ."50 Such was the legacy of their grandmothers.

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50. Janet Lecompte, "The Independent Women of Hispanic New Mexico, 1821-1846," *Western Historical Quarterly*, 12 (January 1981), 19.



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