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Malcolm Ebright

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Advocates for the Oppressed: Indians, Genízaros and their Spanish Advocates in New Mexico, 1700–1786

MALCOLM EBRIGHT

Protection of the rights of indigenous people and the less powerful members of society has been a recurring theme in Spanish jurisprudence since the time of fray Bartolomé de Las Casas, the most famous advocate for the oppressed. Ever since the famous debate between Las Casas and Juan Ginés de Sepúlveda over whether the Indians of the Americas possessed souls and whether the conquest was legally justified—two opposing views that have affected litigation between Spaniards and Indians, or other oppressed minorities. Sepúlveda's view supported the right or duty of a "superior" people to subjugate and "protect" a weaker and "inferior" group, while Las Casas condemned the conquest as having no legal basis.¹ Peaceful and voluntary conversion of the Indians was the only justification of Spanish presence in the Americas, argued Las Casas, and since the Indians were rational beings equal to and in some respects superior to Spaniards, they could not be required to work for Spaniards and pay tribute, nor could they be deprived of their lands. Sepúlveda advanced arguments that included the idea that the conquest was the most efficient way to spread the faith, that the Indians were naturally inferior to the Spaniards, and that certain customs of the Indians were sins that justified the conquest in order to convert the Indians to more enlightened religious practices and to protect those who might be subject to them. Sepúlveda seemed to have won the debate, though there was no such formal declaration, since the practices he supported continued, but the moral force of Las Casas' argument found its way into the numerous laws and practices adopted by Spain to protect and

Malcolm Ebright is an attorney and historian who lives in Guadalupita, New Mexico, where he is president of the Center for Land Grant Studies. He is the author of *Land Grants and Lawsuits in Northern New Mexico* (University of New Mexico Press, 1994).

preserve Indian rights.² The observance of these laws depended in large part, however, on whether the Spanish system of justice provided for effective advocates to assert Indian rights in Spanish courts.

In the valley of Mexico where Spanish rule was imposed on the Aztecs, justice was first dispensed by the *audiencia* (highest court of appeals) established in Mexico City in 1528. Indian litigants there could rely on a small cadre of officials whose job it was to advocate on their behalf. A scribe versed in Nahuatl would take down the facts of a claim, then a translator would render the text of the plea into Spanish, and if the matter was not immediately resolved, the case would be handled by a lawyer. Since many cases were thrown out in these early stages, and since translations often distorted the meaning of the original Nahuatl, scribes and translators wielded considerable power in early Indian lawsuits before the Mexico City *audiencia*. In the next stage of the proceedings, lawyers would craft legal arguments to convince the *oidores* (judges) of the justice of the Indians' claims under Spanish or Aztec law and custom. *Procuradores* (lawyers with less legal training than *abogados*) handled this stage of a case by filing documents and petitions with the court. These lawyers, together with the scribes and translators, acted as intermediaries for the Aztecs, sometimes abusing their positions. In 1591, the *Juzgado General de Indios* (General Indian Court) was established to hear only Indian claims, as a result of recommendations of Viceroy Luis de Velasco II. Key among his suggestions was the appointment of a *protector* or *defensor de Indios* to be the sole attorney for indigenous claimants and to be paid a salary raised by an annual per capita tax on the Indians. Establishing the office of protector de indios helped end the abuses of the earlier system, where translators, scribes, and procuradores were able to parlay their status as intermediaries between Indians and the Spanish courts into excessive fees.³

Bartolomé de Las Casas' appointment as the first protector de indios established the precedent for appointing clergy members to protect native rights, but the extent of the protector's powers remained open to debate. The primary question was whether these officials could investigate Indian complaints of mistreatment, or whether they were limited to representing the natives in court. In 1575, Viceroy Francisco de Toledo issued a set of ordinances to regulate individuals who represented Indian claimants that was later codified into legislation under which the first protector de indios was appointed. By setting up a bureaucracy dedicated to the protection of Indian rights, the Spanish government allowed the Indians to limit Spanish dominance to some extent, but the capacity of the Indians to challenge colonial rule at its root was weakened when they became part of the system.⁴

The Incas, Aztecs, and Maya all became skilled at using the Spanish legal system to limit Spanish encroachment on their lands. In Peru during the 1590s, when a powerful landowner named Cristóbal de Serpa claimed vast areas owned by the village of Tiquihua, the villagers themselves traveled to Lima and obtained a decree from the viceroy keeping Serpa off village lands. In Guatemala, the Highland Maya learned to use documents they prepared in Spanish in order to force recognition of their claims, retaining Spanish lawyers to make use of Spanish laws adopted for the protection of the Indians. In New Mexico, as in other parts of the New World, the Indians' effectiveness depended to a large extent upon whether they had adequate legal representation, whether local *alcaldes* were sympathetic, and most importantly, whether the governor was fair and impartial in making his judgements.⁵

Prior to the Pueblo Revolt, it is difficult to find a case in which a Pueblo Indian is treated fairly in litigation against the Spanish, even when the Indians were represented by an advocate. The pueblos were caught between a church-state rivalry for power in seventeenth-century New Mexico, and in the ensuing battle for control of the province, Indian labor and land were its most valuable resources. Besides the power struggle on a political level, the clash of Indian and Spanish world views involved a spiritual struggle that often played out in the courts. Intolerance of Pueblo Indian religious practices and the ferocious attempts at eradicating sacred ceremonies of the Indians was one of the causes of what John Kessel has called the Pueblo-Spanish war. After the Pueblo Revolt, Indians and Spaniards reached an accommodation which has lasted to this day, whereby they bought and sold land, and competed for scarce land and water resources in the courts. If they were not always equals in this process, Indians and other oppressed groups like *genízaros* and poor Spanish settlers on community grants achieved major victories in court, often as a result of the assistance of advocates for their cause and sympathetic government officials.⁶

A protector de indios operated in New Mexico from the mid-1600s until 1717 and reappears as a Spanish official in 1810. During the interim, several self-appointed protectors like Felipe Tafoya and Carlos Fernández appeared in litigation as representatives of various pueblos. The first Spaniard to hold the position of protector de indios on a permanent basis in New Mexico was Alfonso Rael de Aguilar, one of Diego de Vargas' most trusted lieutenants. He took part in the Reconquest entradas of 1692 and 1693, later held the position of secretary of government and war under three governors, served as both *teniente general* (lieutenant governor) of the province, and *alcalde* of Santa Fe, as well as protector. Rael de Aguilar's résumé also included appointments as *alcalde* of Real de los Cerrillos, the silver-mining camp founded by Governor Vargas in 1695, and Santo Domingo Pueblo. A native of Lorca in the Spanish prov-

ince of Murcia, Rael de Aguilar had six children by Josefa García de Noriega, whom he married in El Paso in 1683. He is often confused with his son, also named Alfonso Rael de Aguilar, who was somewhat less of an upstanding citizen than was his father.⁷

In 1704, Rael de Aguilar argued two important cases that involved the property rights of San Felipe and San Ildefonso Pueblos, respectively. In both cases the need to determine the land owned by Pueblo Indians arose because Spaniards wanted land that was adjacent to pueblo lands. The extent of lands owned by the pueblos had never been clearly defined. Governor Vargas had promised the pueblos protection from Plains Indian raids as part of his effort to Christianize the natives, but no evidence of any official decree granting the pueblos specific property rights has been found. Nevertheless, an area of land measured a league (5,000 *varas*) from the center of the pueblo in each cardinal direction became the recognized norm in New Mexico for the land to which each pueblo was entitled. The San Felipe case was the first to mention this so-called pueblo league although a similar concept, the *fundo legal*, had existed in central Mexico since the mid-sixteenth century.⁸

The San Felipe case began when Cristobal and Juan Barela Jaramillo asked that the lands of San Felipe Pueblo at Angostura be measured because the Indians "have more [land] than the law allows and it is not fair . . . [that] we should have nothing."⁹ Governor Vargas ordered Rael de Aguilar ("the defender and protector I have named for the Indians"), alcalde Fernando Durán y Chávez, and Diego Montoya, secretary of government and war, to determine what lands the pueblo owned. After all three visited the land in question, Rael de Aguilar argued on behalf of the pueblo that the lands sought by the Jaramillos had been possessed by the Indians, "since they were founded" and they had planted grain and cotton there. The pueblo did not want the Jaramillos to receive a grant adjacent to pueblo lands because the Spaniards would bring their cattle and sheep and the livestock would damage Indian crops. In order to define what lands the pueblo owned, the protector de indios referred to the pueblo league as "granted by royal law to the pueblo Indians."¹⁰

Here the document ends with no response from Governor Vargas, who died six weeks later, leaving the genesis of the pueblo league in New Mexico somewhat of a mystery. Rael de Aguilar should get some credit, however, for being the first advocate to make use of the concept in New Mexico. It is curious that the San Felipe document is entirely in Rael's handwriting, except for the Jaramillos' petition and the governor's signature. Rael de Aguilar wrote the governor's order, though he was not serving as the governor's secretary at the time, and drafted the response for alcalde Diego Montoya, putting Montoya's statements in the first person and his own in the third person. He then signed the response himself since Montoya "could not do it . . . because he had a

sore arm on account of a fall, and captain Fernando [Duran] de Chaves . . . was not at his house." Whatever the reasons, the situation gave Rael de Aguilar an opportunity to put words in the mouths of Governor Vargas, alcalde Montoya, and the Jaramillo petitioners about the pueblo league, which would eventually become the standard for land ownership in New Mexico's pueblos.¹¹

Rael de Aguilar's involvement later that year in another lawsuit between a Spaniard and a pueblo shows why he was such a skillful advocate for pueblos. In September 1704, Rael de Aguilar represented San Ildefonso Pueblo in a dispute with the powerful Spaniard, Ignacio Roybal, over land on the west side of the Rio Grande opposite San Ildefonso Pueblo. Roybal had received a grazing grant for this land from Governor Vargas in March 1704, and he claimed ownership under this document. The local alcalde, however, had failed to make the customary investigation or to notify adjoining landowners, and give them an opportunity to object to the grant. If such an inquiry had been made, the grazing grant would have been found to encroach on land the San Ildefonso Indians had planted in squash and watermelons and irrigated by an acequia they had dug.¹²

In petitions presented to Lieutenant Governor Paez Hurtado, protector de los indios, Rael provided several reasons as to why the 1704 Ignacio Roybal grant was invalid. He pointed out that the grant to Roybal was void because of the failure to notify the pueblo "by the nine publications within the period of nine days." Not only was the protector familiar with the royal ordinance and with the custom that required that such notice be given, but he also had personal knowledge that the pueblo indeed had not been notified. At the time the Roybal grant was made, Rael was serving as secretary of government to Vargas and the grant was in Rael's handwriting. The second argument Rael de Aguilar urged upon the governor was that San Ildefonso Pueblo had been granted the land Roybal claimed before the Pueblo Revolt and that Spanish officials had set landmarks that showed the boundary of San Ildefonso. Under the *Recopilación de Leyes de Reynos de las Indias*, Indian lands were protected from Spanish encroachment, particularly lands that were farmed and irrigated by the Indians. But these laws were vague and inconsistent and were not strictly enforced. Most irrigable farmland along the Rio Grande had been in pueblo hands, and Spaniards routinely encroached on the pueblos prior to the Revolt. Vargas was caught between his duty to protect Indian lands and his promise to reward those who had helped him reconquer the province.¹³

The third argument advanced by Alfonso Rael de Aguilar was that San Ildefonso Pueblo was entitled by royal law to four square leagues of land (a league in each direction from the center of the pueblo), whether or not the Indians had planted the land or had received a prior grant.

This was the second case in New Mexico to mention four square leagues as an entitlement. Scholar G. Emlen Hall argues that the so-called pueblo league arose out of provisions in the *Recopilación* that established a minimum distance, or buffer zone, between Indian pueblos and Spanish settlements. What started out as a protective measure for Indian lands soon became a property right, Hall argues—a right claimed by the pueblos in the form of written grants from the Spanish crown; the infamous, and obviously forged, Cruzate grants. These two early eighteenth-century lawsuits suggest, however, that it was Governor Diego de Vargas and his protector de Indios, Alfonso Rael de Aguilar, who first established the norm of four square leagues as a property right for New Mexico Pueblo Indians.¹⁴

Though it became the norm, the pueblos seldom received the pueblo league in full measure. In the lawsuit between San Ildefonso and Ignacio Roybal, acting Governor Juan Paez Hurtado directed alcalde Cristobal Arellano to measure a league in each direction from the center of the pueblo. On the ground, however, the measurements were a league to the north, one-half league to the south, one-half league to the east, and one-half league to the west, because “there was no farming land on which to mark out the league in every direction, which is what the Indians were asking for, not woods, hills, not [land] which cannot be sown and cultivated.”¹⁵ Rael de Aguilar was careful to underscore in his initial petition the entitlement of the pueblo: “the Indians, my clients, shall be informed of the four leagues one to each point of the compass, according to the will of his majesty. The said pueblo of San Ildefonso shall mark out its boundaries and thereby disputes and litigations will cease.”¹⁶ For San Ildefonso, however, litigation did not cease. The pueblo was involved in three more disputes over its league during the eighteenth century. But Alfonso Rael de Aguilar’s involvement in litigation as an advocate had come to an end. He appears again as protector in other capacities in litigation over the next two decades, however.

In 1707, Rael de Aguilar appeared as protector de indios in Santa Fe at a general council of all the pueblos. But Rael’s report on the proceedings sounds too good to be true. According to Rael, the meeting came about at the behest of the elected leaders of all New Mexico pueblos, who wanted to be confirmed in their offices and to present any concerns they might have to Spanish officials. After four members of the Santa Fe *cabildo* (council) had assembled with the pueblo leaders at Rael de Aguilar’s house, each leader made a statement, either in Spanish or in their own language through an interpreter. Surprisingly, no one had any complaints; instead, the pueblo leaders took turns praising Governor Francisco Cuervo y Valdez in exaggerated terms. They said that Cuervo y Valdez had stopped raids on the pueblos by launching retaliatory expeditions whenever there was an attack so that the “pueblos and

frontiers had become quiet and pacified, and the Indian inhabitants had been avenged and satisfied with the useful spoils of war." It seems that the real purpose of the meeting was to promote the candidacy of interim Governor Cuervo y Valdez for permanent appointment as governor of New Mexico by Viceroy Duke of Alburquerque. As Cuervo y Valdez himself was adept at varnishing the truth regarding the founding of Albuquerque, so also Rael de Aguilar was not shy in helping him lobby the viceroy with exaggerated statements as to Cuervo's merits.¹⁷

Though Rael de Aguilar was an effective advocate for the pueblos, he did not always take their side. Since he held many important official posts in post-Revolt New Mexico, he was sometimes required to take action detrimental to the pueblos. While serving on the cabildo of Santa Fe, he also served as alcalde and militia captain for Pecos Pueblo. In this capacity, he was ordered by Governor Flores Mogollón to destroy the kivas at Pecos. Rael did this with ruthless efficiency, reporting back to the governor that the largest kiva was demolished so that "there remained not a sign or a trace that there had been on that site . . . any kiva at all."¹⁸

Rael de Aguilar did not serve in the official capacity as protector de indios after 1707, but he appears several times in a different capacity. In 1722, he was appointed *juez receptor* (commissioned judge) by Governor Juan Domingo de Bustamante in order to mediate a dispute between Santo Domingo and Cochiti Pueblos brought about by a lawsuit filed by Santo Domingo over a land sale from Juana Baca to Cochiti.¹⁹ On the issue of the location of the boundary between the pueblos, both pueblos trusted Rael de Aguilar to make a fair and binding decision. The erstwhile protector de indios had the authority to call the two pueblos together, conduct a hearing where he took evidence, and then issue an *auto declarato* (explanatory decree). Rael de Aguilar summoned Miguel Baca of San Juan Pueblo to testify to the location of the land his mother sold to Santo Domingo. Baca told Rael that the deeds in question described the land as lying on the west side of the Rio Grande. After examining a 1703 grant to Juana Baca from Governor Rodriguez Cubero, Rael de Aguilar determined that the Baca purchase was indeed on the opposite side of the river from the boundary dispute. As he had done in the San Ildefonso suit in 1704, Rael measured with a cordel 5,000 varas from the cemetery of the Santo Domingo church toward Cochiti and then did the same from Cochiti toward Santo Domingo. When the results of this measurement indicated a gap of some 1,600 varas between the two pueblo leagues, Rael de Aguilar split the difference and awarded each pueblo an additional 800 varas. He then set landmarks and gave each pueblo a certified copy of the results.²⁰

As he had done in the San Felipe and San Ildefonso cases, Rael de Aguilar recognized the pueblo league as the norm for the amount of land the Indians could claim as their own. This does not mean that all New Mexico pueblos were given this much land or that Spaniards were ousted from the pueblo leagues that were measured. Reference to a current map (figure 1) of lands owned by New Mexico pueblos shows that few, if any, ended up with exactly four square leagues (approximately 17,000 acres). But the Cochiti-Santo Domingo case established the principle that pueblos were entitled not only to four square leagues, but to additional land if possible.²¹

Rael de Aguilar was the most effective advocate for the pueblos during the early part of the eighteenth century. His legal arguments set high standards that were seldom matched by other advocates who worked during the first half of the eighteenth century. Several other individuals appeared as advocates for pueblos or for *genizaros* in other lawsuits during this time period, but with little success. One of these was Juan de Atienza, who acted in two cases as protector de indios. The first, in 1713, required him to defend the ex-governor of Picuris Pueblo, Jerónimo Dirucaca, against charges of witchcraft. Dirucaca denied charges of idolatry, cohabitation, and witchcraft, but even with Atienza as his advocate he must have felt his chances of acquittal were slim. Dirucaca worked out a deal with the governor whereby, in return for a promise of pardon, he agreed to reveal the location of a hidden silver mine. Escorted in handcuffs by four Spanish officials, the Picuris Indian took them to the Cañon de Picuris, where they found four veins of silver ore. The Spaniards were elated with the promise that finally a major silver mine would "provide complete relief for this wretched kingdom." Dirucaca was released to a Tewa Pueblo of his choice with his only penalty the payment of court costs. But Juan de Atienza had little effect on the outcome of this case. It was the quick thinking of Dirucaca that swung the balance in his favor.²²

Juan de Atienza again acted as protector de indios in 1715 on behalf of Pojoaque Pueblo in its lawsuit against several Spaniards. This was the only land-related case that Atienza argued in his capacity as protector, and it was never concluded satisfactorily. Atienza did not perform well and was criticized by one of the litigants for his handling of the case. It appears that Atienza's heart was not in it. The pueblo claimed that in spite of the fact that Pojoaque had purchased land that had once belonged to the pueblo from Spaniards, some of that land was still occupied by a Spaniard: Baltasar Trujillo. Pojoaque Pueblo was abandoned in 1700, and grants of former pueblo lands were made in 1701 to José de Quiros and Antonio Duran de Armijo by Governor Pedro Rodríguez Cubero (1697-1703). When the pueblo was resettled in 1707, the Indians repurchased both these tracts from Miguel Tenorio de Alba for a large

quantity of corn, some tanned buckskins, woolen blankets, and chickens. But in 1715, part of that land was occupied by Trujillo. Atienza argued that the land in question was irrigated and belonged to the pueblo after the Revolt.²³

The case was filed with Governor Juan Ignacio Flores Mogollón, who appointed Alfonso Rael de Aguilar as juez receptor to assemble the necessary documents and written statements and then forward them to the governor for decision. Unfortunately for the Indians, the sale from Miguel Tenorio de Alba to the pueblo was not based on a written document, although Tenorio's purchase from José de Quiros for 130 pesos was documented, as was the grant to Quiros by Governor Rodríguez Cubero. Without a written transfer to the Indians, however, the amount of the purchase price, or even whether it had been paid in full, were matters for debate and extensive testimony. Tenorio said the price was a fanega of corn and a blanket from each household in the pueblo and that only one Indian had given him a blanket. The Indians countered with an itemization of what had been paid in lieu of the missing blankets: thirteen chickens, as many as five buckskins, and the loan of two horses. In minute detail the Indians testified as to who paid what, and they stated that Tenorio had been satisfied. But since nothing was in writing, it was Tenorio's word against the pueblo's, and Tenorio had an ace up his sleeve. He produced a decree from Governor Peñuela (1707–12) compelling the pueblo to pay Tenorio the full purchase price.²⁴

The difficulty with the Peñuela decree was that Pojoaque Pueblo had not been notified of that lawsuit nor given an opportunity to present its side of the story. Instead, Governor Peñuela had taken Tenorio de Alba's word that the purchase price was 130 pesos and that the pueblo had paid only seven fanegas of corn and one blanket. As later testimony indicated, this was only part of the truth. The pueblo claimed that Tenorio was satisfied with the additional goods he had received, and agreed that the pueblo had paid in full. He had even given the pueblo a written deed, but later took it back.²⁵

Without witnesses to the transaction or written documents, Pojoaque Pueblo was at a distinct disadvantage and subject to Tenorio de Alba's every whim. Nor was the pueblo particularly well served by the advocacy of Juan de Atienza, who never made the kind of creative arguments Rael de Aguilar did. Instead, Atienza's petitions simply stated the claims of the pueblo (that it had purchased the land and had owned it prior to the 1680 Revolt) and asked the governor to do whatever he deemed just. Rather than vigorously asserting the position of the pueblo, Atienza blamed the Indians for delaying the proceedings, and he failed to defend himself when Tenorio de Alba attacked him for his lack of ability. To be sure, Atienza was hampered by the fact that neither Governor Flores Mogollón nor Governor Félix Martínez were particularly interested in

the case. By May 1716, when the lawsuit had dragged on for over a year, Alfonso Rael de Aguilar was the only official still on the case, though his authority had lapsed. Juez receptor Rael de Aguilar reported to Governor Martinez that Atienza had left Santa Fe, "not having been able to come to attend to [the case] as he should" and he sent the papers back to Governor Martinez.²⁶

This was the last appearance of an official protector de indios in New Mexico for almost a century. In the interim, advocates were commissioned on a case-by-case basis to defend the rights of specific pueblos or genízaros. For example, in 1733 Diego Padilla and Isleta Pueblo took issue over whether Padilla's animals were encroaching on the planted fields and common lands of the pueblo and whether the Indians owed Padilla for certain poles taken from his corrals at San Clemente. When the matter was referred to the pueblo, they executed a formal power of attorney and appointed Ventura de Esquibel as their defense attorney. Esquibel had appeared as a witness in the 1722 suit between Santo Domingo and Cochiti that Rael de Aguilar had mediated and may have learned something from Rael at that time about effective advocacy.²⁷

In the Isleta case, Esquibel filed a forceful petition that stated that Padilla's livestock had damaged the Indians' acequia, which the Spaniard had promised to repair but did not. Esquibel asserted that Padilla's livestock should be withdrawn from Isleta's lands both in summer and winter, because even in winter the animals ate the corn stalks and trampled the tilled fields, which made it difficult to plow in the spring. In response to Esquibel's strong answer, Diego Padilla capitulated without a fight and stated that he would keep his livestock off of Isleta's agricultural lands and would give up any claim for payment for his corral poles. Esquibel said that the pueblo was agreeable as long as Padilla actually kept his livestock away from Isleta's cultivated lands, but he wanted to be sure that the agreement was strictly observed. Esquibel told the governor that it was important that the horse herd have sufficient fodder since the horses were used for scouting in the mountains and in other capacities for the Spaniards in defense of the province. The governor's final decrees in this litigation adopted the agreed settlement, set the fines for violation of its terms, and set the fees to be charged for expenses. If any of Diego Padilla's livestock entered the cultivated fields of Isleta Pueblo, the pueblo could seize the animals and Padilla would have to pay two pesos a head to get them back. The expenses of the lawsuit came to twelve pesos, including two pesos for Esquibel's power of attorney, which was indicative of fees customarily charged in other cases in New Mexico.²⁸

Because governors in the first half of the eighteenth century were generally unsympathetic to the pleas of the various advocates for pueblos and genízaros, not many advocates appear in the documents.²⁹ Governor Gervasio Cruzat y Góngora in the 1730s and Governor Joaquín Codallos y Rabal in the 1740s were so preoccupied with Apache, Ute, and Navajo raids that they had little time or inclination to hear complaints from genízaro or pueblo litigants. When individuals or their advocates mustered up the courage to file a petition, they were often summarily rejected, as with the 1733 petition that involved one hundred genízaro Indians seeking their own land grant at Belen.

The petition was filed before Governor Cruzat y Góngora by an anonymous advocate who represented a group of genízaros who wanted to form a new settlement at Sandia Pueblo, abandoned since the Pueblo Revolt. These genízaros were scattered throughout New Mexico, some living in Spanish settlements and some in pueblos. They did not otherwise identify themselves, and said only that they did not include any servants of Spaniards. They signed their petition "los genízaros."³⁰

Genízaro Indians were a group comprised of various Plains Indian tribes. The Sandia group included Apache, Kiowa, Pawnee, Ute, and Jumano Indians whose social status in Spanish society ranked at the lowest level. Normally, Plains Indian tribes captured and exchanged genízaros in intertribal warfare and then sold them to the Spanish. During Cruzat y Góngora's term, the Spanish began to capture genízaros then sell them to friendly tribes, who would later sell the genízaros back to the Spaniards. Cruzat y Góngora prohibited this practice in 1732, but it was difficult to stop.³¹ The purchase of genízaros generally was condoned by the government since Spaniards were required to christianize genízaros during the time they were servants, and then emancipate them.

It was not until Tomás Vélez Cachupín became governor that land grants were made to genízaros, and genízaro property rights on Spanish grants began to be respected. Governor Cruzat y Góngora was certain to meet a genízaro request for land in 1733 with skepticism. To overcome the governor's resistance, these genízaro Indians who asked for a grant needed an advocate. We do not know why the advocate they picked chose to remain anonymous, but he seemed to realize that convincing the governor would not be easy. This mysterious advocate covered all the reasons these genízaros deserved a land grant; he even included a theology lesson to try to convince the governor that they had become good Christians.³²

The advocate began his case by expressing the gratitude of the genízaros for the many spiritual blessings they had received through baptism into the Church. He then moved into the temporal world, citing the need to satisfy physical needs such as food and clothing, which were necessary underpinnings of a spiritual life. He invoked the biblical

Adam and Eve story in order to demonstrate his point. In the Garden of Eden, where everything necessary for subsistence was provided, "our first parents, forgetful of so much good and benefit, lost the reins of their disordered desire," and "were expelled from Eden and forced to work the land for their livelihood, irrigating it with the sweat of their brow."³³

For this reason, the advocate continued, these recently Christianized genízaros were asking Governor Cruzat y Góngora for their own tract of land. He cautioned the governor that if their petition was not granted, some among them might fall prey to the temptations of the devil and revert to heathenism because of their hardships. He suggested that the genízaros' problems could not be solved simply by ordering them to live among the Pueblo Indians, for the latter were reluctant to take them in. Besides, said the advocate, there were so many back-sliders, idolators, and witches among the pueblos that they would be a bad influence on the genízaros. Here the advocate skillfully reiterated the same arguments used by Bartolomé de Las Casas almost two centuries earlier in Valladolid, Spain. Las Casas said that "no nation exists . . . no matter how barbarous, fierce or depraved its customs may be, which may not be attracted and converted [to Christianity]." This conversion should be voluntary, according to Las Casas, whereas Sepúlveda had argued it could be brought about forcefully by enslaving the Indians. The status of the genízaro in New Mexico was a compromise between these two views. Purchased as slaves, they were taught Christian doctrine, eventually given their freedom, integrated into Spanish society, and given the opportunity to own land. It was a bargain similar to that made between Spaniards and pueblos, whereby the Indians would receive economic benefits in return for accepting Spanish spiritual beliefs. The genízaros were saying, in effect, that they had converted to Christianity and therefore the Spanish had to live up to their end of the bargain.³⁴

Genízaros were recognized as having personal and property rights by the mid-1700s, but in 1733 they must still have been thought of as *indios barbaros*, the heathen enemy. The advocate in this case attempted to depict "los genízaros" as having stronger beliefs than the Pueblo Indians through his allusion to a scandalous witchcraft trial that had concluded a couple of months earlier at Isleta Pueblo. The Indian "el Cacique" admitted he was the leader of a coven of witches that was responsible for placing spells on the local priest and several members of the Spanish elite. According to the testimony, they made dolls that resembled their victims and then pierced them with pins. The group performed this ritual after donning special robes and anointing themselves with dust from a magical stone. As in other witchcraft trials in eighteenth-century New Mexico, the Spanish inquisitors acknowledged

the power inherent in these objects by insisting on confiscating them. But whether or not the references to witchcraft by los genízaros and their advocate was a good tactic can only be judged by the result achieved in the Sandia case.³⁵

Upon receipt of the petition signed by "los genízaros," Governor Cruzat y Góngora demanded that these Indians identify themselves in alphabetical order, citing their names and tribes. The anonymous advocate for the genízaros dutifully responded with a list of twenty-five: seventeen families and eight single males, far fewer than the 100 settlers mentioned in the petition. From this list, Governor Cruzat y Góngora learned the names and tribes of each of these individuals: six Apache, six Pawnee, six Jumano, three Kiowa, one Tano, and one Ute. Once the governor had the information he wanted, he wasted no time in denying the petition without providing a reason. Cruzat y Góngora simply ordered the petitioners to apply to him individually if they wanted to be assigned to various pueblos. Since the genízaros had already indicated that the pueblos did not want them, this was not a satisfactory solution for them. Genízaro Indians did not receive their own grant until Governor Vélez Cachupín made the Abiquiu grant in 1754, though certain genízaros from Belen claimed to have received a grant there in the early 1740s.³⁶

Governor Cruzat y Góngora was also strict when it came to petitions from the pueblos. In 1734, Santa Ana Pueblo attempted to purchase lands from Baltasar Romero, which the Indians claimed as traditional lands. Even though the Santa Ana Indians were willing to pay for land that once was theirs, Governor Cruzat y Góngora stepped in to nullify the sale, deeming it "against the dispositions of the royal laws of his majesty." How the matter was brought to the governor's attention is not clear, since there is no petition seeking cancellation of the sale. The governor apparently acted on his own, without a specific law prohibiting the sale, and in the face of a series of the pueblo's purchases from Spaniards beginning as early as 1709. If Santa Ana had had an advocate, the laws protecting Indian property rights might have been invoked to justify the sale, as Alfonso Rael de Aguilar had invoked them three decades earlier.³⁷

The judicial climate during the administration of Governor Codallos y Rabal in the 1740s did not improve with regard to Pueblo Indians or genízaros. In fact, it worsened. Codallos y Rabal seems to have been more concerned with keeping the pueblos and genízaros under control than with granting them new rights to land and water. By 1739, the Comanche had driven the Apache from the eastern plains and Spanish settlements came under unrelenting Comanche attack. The governor had his hands full trying to keep the pueblo auxiliaries loyal to the Spanish in defense of the province. In 1746, Governor Codallos y Rabal ordered

Taos Pueblo to cease all trade and other dealings with the Comanche on pain of death. Travel of more than a league from the pueblo without a license, even for so innocent a purpose as searching for stray livestock, was still punishable with the death penalty. During the term of Governor Codallos y Rabal, criminal charges were brought against Indians from Cochiti, Tesuque, and San Juan for conspiring with the Ute and other Plains Indians to incite an uprising. Throughout the term of Governor Codallos, few cases were brought by pueblos or genízaros on their own behalf seeking recognition of land and water rights.³⁸

Advocates like Isidro Sánchez, who tried to help poor people obtain redress, were told to stop. Sánchez was ordered to cease his petition-writing activities or suffer the penalty of a fifty-peso fine and fifteen days in the stocks. He was labelled "a quarrelsome and restless man who incites the poor citizens to file lawsuits by preparing petitions and conspiring with them" a year before Governor Codallos y Rabal ordered him to stop. Apparently, Sánchez kept filing petitions anyway, and he seems to have gained official acceptance later by acting as a scribe for alcalde Joseph Baca.³⁹

Whether or not Isidro Sánchez encouraged litigation, by cracking down on him the governor restricted the right to petition for redress of grievances, a right protected in New Spain from the first few decades of Spanish rule.⁴⁰ To see how far such rights were further restricted under Governor Codallos y Rabal, one needs to examine the lengthy lawsuit brought by Antonio Casados, a genízaro from Belen, against Governor Codallos y Rabal himself. Antonio Casados was a Kiowa who had been purchased by another genízaro named Miguelillo, a servant of Sebastian Martín. When Miguelillo died, Antonio Casados was sold to Alonso Rael de Aguilar II. Rael then sold Antonio to Francisco Casados, from whom Antonio took the Casados name. Francisco Casados put Antonio to work at a mine in Chihuahua, but Antonio soon ran away after a disagreement with Francisco. Eventually, Antonio Casados ended up at Belen in the house of Diego Torres upon the order of Governor Gaspar Domingo de Mendoza.⁴¹

At this point, there is a divergence between the Casados story and the story of Torres. The latter claimed to be the first settler at Belen when he was given a land grant there by Governor Mendoza in 1740. Casados, on the other hand, said that prior to the Torres grant, there existed a pueblo of genízaros at Belen and that he, Antonio Casados, had been elected their captain. He had made the long journey to Mexico City and asked the viceroy of New Spain to recognize the rights of this genízaro pueblo and to eject all Spaniards from their lands. The ostensible purpose of this lawsuit was to find out which story was true, or rather, which *parts* of each story were true. Even with an advocate repre-

Original Drawing by Glen Strock, 1996.



senting the less powerful party, however, learning the truth from conflicting stories was difficult in Hispanic litigation. In this case, it was next to impossible, primarily because Casados did not have a lawyer to represent him.

Casados had angered Governor Codallos y Rabal because he had traveled to Mexico City without a license. Casados presented his petition directly to the viceroy, who assumed for the purpose of making his decision that there was indeed a *genízaro* pueblo at Belen and that Antonio Casados was its captain. Worst of all from the governor's standpoint, Casados had passed himself off as a Pueblo Indian subject to all the protections afforded by royal law, when in fact he was a *genízaro*. The viceroy ordered the governor and *alcalde* to comply with his order or pay a 1,000-peso fine. Then as further affront, on the day set for the hearing, Casados appeared in Santa Fe escorted by seventy Pueblo Indians.⁴²

Codallos y Rabal lost no time in moving to regain the advantage that Casados had temporarily achieved. The governor took the initiative in the proceedings, fearing that he might have a revolution on his hands. Because of the "scandal that has been experienced, from clustering Indians with noise and trouble from the pueblos," the governor put Casados in jail. There Casados stayed, except when he was brought before the court. This certainly would have affected how Casados' testimony was received, for he must have been kept in chains and under guard during the proceedings. Added to this indignity was the fact that Casados was not allowed to testify in his own words, although he was fluent in Spanish (*ynteligente . . . en el ydioma Castellano*). Codallos y Rabal ordered Francisco Rendon to act as an interpreter for Casados in order to punish the latter for leaving New Mexico without a license.⁴³

Held in jail during both the trial and an indefinite post-trial period, unable to testify in his own words, Casados never had a chance. He lacked an advocate's assistance to help him frame his case as he did when he had gone to Mexico City to appeal directly to the viceroy. There, a lawyer named Francisco Cordova prepared his petition for him. In New Mexico, Casados had no one to help him. He was not even able to complete his statement in court before he was interrupted by a vigorous cross examination by the governor, who was supposed to remain neutral. When the proceedings concluded, the written record was sent to the viceroy for a decision while Casados remained imprisoned. No record of the viceroy's decision has been found and the Belen grant to Diego Torres remained in effect, though several settlements of genízaros remained on the grant. Not until the administration of Governor Tomás Vélez Cachupín were genízaro rights to land recognized on the Belen grant.⁴⁴

Governor Codallos y Rabal was probably no worse than many of his predecessors when it came to deciding cases that involved Indians and genízaros. In his favor, it should be said that he did perform a regular *visita general* (official visit) when he set aside a month to visit all the pueblos from Taos to Isleta where he listened to Indians' complaints and ordered restitution where appropriate.

In contrast to earlier advocates, Felipe Tafoya tried numerous lawsuits over his long career in which he represented both the elite and the oppressed. He began his career in the 1730s and by the 1750s–60s had achieved substantial prestige and competence, particularly during the two terms of Governor Tomás Vélez Cachupín. Tafoya was something of a jack-of-all-trades. He was active politically, serving as *alcalde* of Santa Fe; religiously, serving as a charter member of the confraternity of Nuestra Señora de la Luz; and professionally, practicing law and medicine, though lacking formal training and certification in either profession. While building his career, he was also busy establishing a large

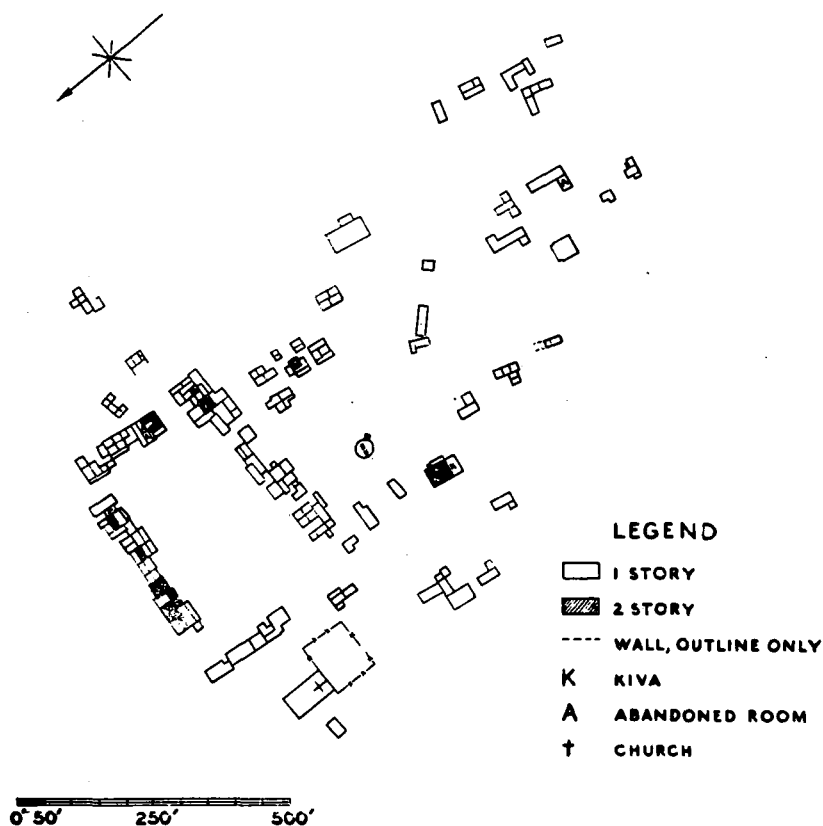
family. Tafoya had five children by his first wife, Margarita González de la Rosa, whom he married in 1728, and six more by his second wife, Teresa Fernández, whom he married in 1750. Tafoya first appears as a witness in several civil and criminal proceedings beginning in the 1730s; by 1755, he was serving as a *notario* (notary) in the ecclesiastical court of the vicar Santiago Roybal.⁴⁵

Tafoya is typical of a class of local officials who worked under Governor Tomás Vélez Cachupín during the 1750s–60s. Vélez Cachupín had a measurably different view of the administration of justice than did his predecessors, but it often took some time to impart these concepts to his subordinates. Once the governor got his message across, however, *alcaldes* and advocates serving under him became part of a team the governor could trust and who knew what he expected. Officials like Tafoya could then be effective, not only as competent advocates but also as part of a system that was functioning effectively to administer justice.⁴⁶

Prior to Vélez Cachupín there existed in New Mexico a network of *alcaldes* and other officials who often abused their positions by exploiting Pueblo Indians. Though charges might be brought against them and punishment meted out, the abuses continued. For example, *alcalde* Manuel Baca, his son Antonio Baca, and Antonio's son-in-law Francisco Trebol Navarro were all charged with official misconduct over a fifty-year period beginning in 1718. But this family network of local officials who abused their office was temporarily curtailed by Governor Vélez Cachupín, when he relieved Antonio Baca of his duties and appointed Miguel Lucero in his place. In addition, when the governor was forced to deal with *alcaldes* like Antonio Baca, he kept a close watch on their activities and made sure his orders were followed to the letter. For example, in February 1763, just a few months before he was ousted, *alcalde* Baca was sharply rebuked by Vélez Cachupín for deviating from the governor's explicit instructions.⁴⁷

Tafoya suffered a similar setback when he applied to Vélez Cachupín for a land grant to graze sheep on the Rio Puerco in 1766. The governor rejected his request, telling Tafoya that he should join one of the existing settlements on the Rio Puerco if he wanted to graze his sheep in the area. Tafoya had been representing litigants seeking relief from Vélez Cachupín for a decade—and-a-half, with some success, but the governor did not give Tafoya any special privileges, even though he was a member of the elite.⁴⁸

To see how this network of local officials was able to act together to advocate and implement better policies for the pueblos, one must examine cases like the 1763 lawsuit between San Ildefonso Pueblo, represented by Felipe Tafoya, and its Spanish neighbors. Tafoya instigated the lawsuit with a lengthy petition that cited encroachments on pueblo



San Ildefonso

Site plan of San Ildefonso Pueblo. Drawing previously appeared as figure 10 in Stanley A. Stubbs, *Bird's-Eye View of the Pueblos* (Norman: University of Oklahoma Press, 1950), 49. Reproduction by permission of University of Oklahoma Press.

lands by Juana Lujan, Pedro Sanchez, and his son-in-law Antonio Mestas, and Marcos Lucero. In spite of the measurement in 1704 of San Ildefonso's four square leagues, encroachments had occurred almost continuously ever since. In some cases, the Indians had protested when grants of adjoining lands had been made, but to no avail. Felipe Tafoya cataloged these problems, many of which had gone unresolved for over a half-century, in the name of the governor of the pueblo, Francisco Cata, the elders, and the common people. Tafoya identified himself as procurador for the villa of Santa Fe, but later in the litigation was dubbed the defender of the Indians.⁴⁹

Upon receipt of the petition, Governor Vélez Cachupín lost no time in resolving one of these problems. He ordered Lucero expelled from the lands he had been occupying "without the slightest recourse." Apparently Lucero had purchased land from an individual member of the pueblo, the pueblo had protested, and Governor Marin del Valle had ordered Lucero's money returned to him after which he was to vacate the land. Lucero had taken the money but refused to leave. Because Vélez Cachupín was familiar with the earlier decision, he acted swiftly in response to Tafoya's request without requiring further proof.⁵⁰

The governor's action was in sharp contrast to what transpired in earlier lawsuits like the 1715 Pojoaque Pueblo case that Juan de Atienza had handled. There, the Indians were required to testify interminably about what they had paid to Spaniards for land the latter still occupied, because advocates like Atienza were not particularly effective in arguing the Pueblo Indian's case.⁵¹ In the San Ildefonso case, Governor Vélez Cachupín was satisfied without further proof that Lucero had to leave, based on Tafoya's petition and on the visita of Governor Marin del Valle.

Tafoya's petition also achieved immediate results with regard to the claims against Antonio Mestas. Preemptorily, Vélez Cachupín ordered Mestas not to settle at the Aguaje del Rio Grande under penalty of a 200-peso fine. Vélez Cachupín's order was effective in keeping Mestas and his father-in-law, Pedro Sanchez, from encroaching on San Ildefonso land, but Marcos Lucero was another matter. He was still encroaching on San Ildefonso lands in 1786 when Governor Juan Bautista de Anza ordered him to leave. As we shall see, a new defender of San Ildefonso Pueblo (Carlos Fernández, the alcalde who accompanied Felipe Tafoya in the 1763 San Ildefonso case) was instrumental in obtaining an order against Lucero from Governor Anza.⁵²

When Governor Vélez Cachupín ordered Fernández to examine the title papers of Matias Madrid and Juana Lujan and to measure the San Ildefonso Pueblo league in 1763, the alcalde and Tafoya acted together to carefully follow the governor's instructions. Fernández measured the 100-vara cordel in the presence of Tafoya, the defensor of the pueblo, its officers, and leaders. Twenty-two cord lengths were then measured

to the east to reach the house of Matias Madrid and another sixteen--and-one-half to the house of Juana Lujan. The next day, the *alcalde* and the *defensor* measured a league to the north of the *pueblo* and reached the house of Marcos Lucero at 4,372 varas. On the same day, Fernández measured the league in a westerly direction in the presence of Tafoya and reached the house of Pedro Sanchez at 3,200 varas.⁵³

When the measurements were concluded, all the papers were delivered to Tafoya according to the instructions of Governor Vélez Cachupín. Tafoya responded several times and in great detail to the various Spanish claims. The claim on the east caused the most concern, since both Madrid and Lopez were within the *pueblo's* league. Tafoya argued that the Madrid and Lopez grants were invalid just as the Ignacio Roybal grant was. Tafoya made the same argument that Rael de Aguilar had made sixty years earlier, but by 1763 the theoretical right of a *pueblo* to four square leagues had been firmly established and the advocate for the *pueblos* could cite several cases to uphold that right. The arguments made by Spaniards who claimed valid titles to their land, however, had also gathered corresponding weight and force by virtue of the passage of time.⁵⁴

Juan Gómez del Castillo made those arguments to counter the *pueblo's* position. First, he said that whether Matias Madrid was earlier determined to be within the *pueblo* league or not, he was never ejected from the *pueblo* and therefore acquired good title simply by continuous possession. Secondly, Gómez del Castillo tried to interject a technicality. He argued that there was a law specifying a minimum number of Indians that must be living in a *pueblo* for it to be entitled to four square leagues. This point was never taken seriously, however, because Gómez y Castillo admitted he was not sure what the minimum was or whether, indeed, such a law existed. His final point was the most telling, for it was the unstated premise of every Spanish-Pueblo Indian land dispute since the Pueblo Revolt. Gómez y Castillo pointed out that his ancestors had helped conquer New Mexico and that he and his neighbors had served in the militia at their own expense to protect the province from Plains Indian attack. "It is a hard matter," Gómez y Castillo stated, "that we should become as pilgrims in this kingdom, and not as natives." Gómez del Castillo asserted finally that most residents of the villa of Santa Cruz de la Cañada lived within the leagues of one of the *pueblos*, and if San Ildefonso was successful in expelling him and the other Spaniards, this would force abandonment of the entire area by the Spanish, seriously weakening the defense of the province.⁵⁵

Tafoya reiterated his earlier arguments in a long reply, making two new points before returning the matter to Governor Cachupín for decision. He vigorously objected to the claim that Spaniards who were allowed to remain within the *pueblo* league gained title by virtue of their

possession of the land. Tafoya said that the Indians had objected to the grants to Ignacio Roybal, Matias Madrid, Juana Lujan, and Pedro Sanchez, and were generally vindicated, but the full pueblo league had not been measured and Spaniards were not expelled. Yet Spanish inaction should not be used as a basis for a Spanish title. Tafoya also cited laws from the *Recopilación* to counter Gómez del Castillo's vague citation, pointing specifically to Law 20, setting forth a zone of protection around the pueblos free from Spanish livestock grazing.⁵⁶

At that point, Governor Vélez Cachupín had the issue squarely in front of him. But his choice was an impossible one, since strictly upholding the pueblo league would mean evicting Spaniards with valid grants. The governor therefore referred the question to Licenciado Fernando de Torija y Leri, a Chihuahua lawyer, for an opinion. Almost a year later, the lawyer replied with a compromise that took the pressure off Vélez Cachupín. First, Torija y Leri stated his considered legal opinion that the rights of the Indians and of the Spaniards were about the same. The royal laws protected the pueblos from encroachment, but the rights of Spaniards like Juana Lujan who had legitimate titles also had to be respected since they were the ones most motivated to defend the province because they were also defending their own lands.

The compromise Torija y Leri suggested was to recognize the right of the pueblo to its four square leagues, but to allow Juana Lujan to remain on the land and measure additional land to the north and west in order to make up for the Pueblo's lost land. Since the rights of the Indians were about equal to those of the Spaniards, in Torija's view, this compromise would be fair to both parties "without opening the door to many cases which will arise to other pueblos under similar conditions."⁵⁷

Vélez Cachupín embraced the opinion wholeheartedly as if it were his own. It was the kind of compromise he favored in other cases, allowing him to give something to both sides, while validating the sometimes mutually exclusive principles each was endorsing. The advocacy of Tafoya helped achieve this result because of his persistent urging to adopt the pueblo league. Instead of a hollow victory such as Rael de Aguilar's 1704 vindication (in principle but not in fact), Tafoya could at least point to the defeat of the Pedro Sanchez grant and the Marcos Lucero claim, or so it appeared.

In fact, as mentioned earlier, Lucero was still on the land twenty years later when former Alcalde Fernández filed a petition on behalf of both San Ildefonso and Santa Clara requesting league measurements for both pueblos (Santa Clara on the north, San Ildefonso on the south). Since Lucero's claim was between the two pueblos, should their four square leagues overlap, his claim was in danger. Fernández appeared as advocate for both pueblos, like Alfonso Rael de Aguilar had in the 1722 dispute between Santo Domingo and Cochiti over the measurement of

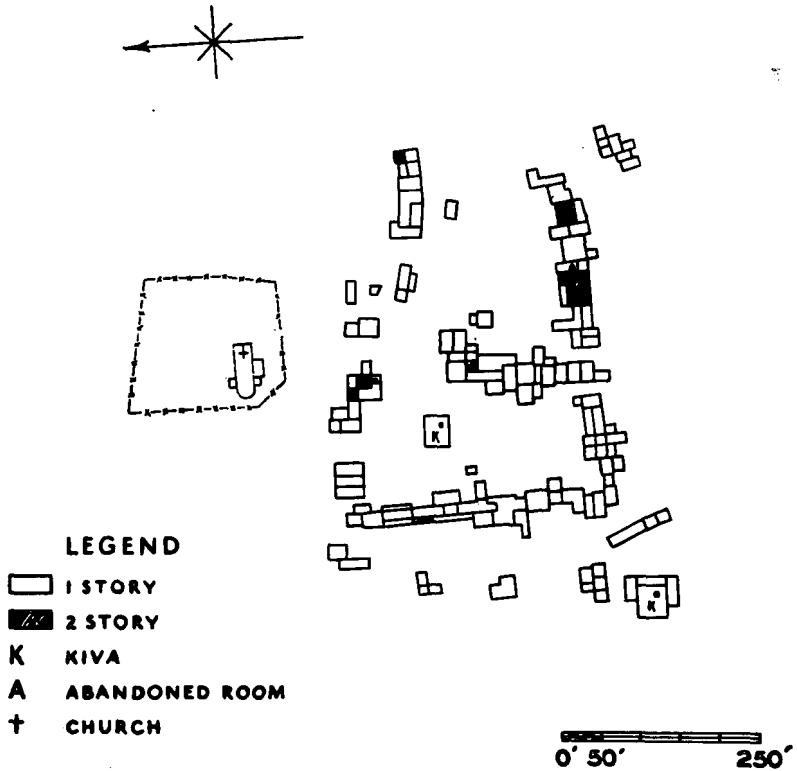
their leagues. But in the intervening years, procedures had developed to protect pueblo lands, like more precise measurements and better boundary markers of the pueblo league. Such practices had developed to a point where the advocate's job was easier. To see how this worked in a specific lawsuit, it will be helpful to examine the San Ildefonso/Santa Clara case and the role of Fernández in resolving it.

Born in Spain, Fernández served in several important positions in northern New Mexico local government. During 1762–63 he was both *alcalde* of Santa Cruz and *teniente* of the Santa Fe presidio. In the 1780s he became *alcalde* of Santa Fe, one of the most prestigious positions in New Mexico. He was also named *primer soldado distinguido* (most outstanding soldier) at the capitol's garrison. Fernández learned about the procedures involved with pueblo litigation in the 1763 San Ildefonso lawsuit, so by 1786 when he was appointed defender of San Ildefonso and Santa Clara Pueblos, he knew both the procedure and the facts connected with San Ildefonso litigation.

Fernández alluded to the long history of pueblo grievances that had given rise to the petition he was filing for both pueblos. Santa Clara Pueblo had not been involved in as many lawsuits as had San Ildefonso, so Santa Clara's need was greater, claimed Fernández. Santa Clara's four square leagues, which by the 1780s was well recognized as "the league which the king our lord . . . grants to each pueblo" had never been measured and Fernández wanted it done and done properly.⁵⁸

Governor Anza must have been aware that the method of measuring the league and of marking each pueblo's boundary was in question, for he specifically ordered that a "waxed cordel containing 100 varas" be used and boundaries marked with lime and rocks.⁵⁹ If lime was not available, then cedar stakes were to be firmly driven into the ground to form a circle or square roughly two varas around that was to be filled with four or five cartloads of stone. Anza's order indicates an awareness that the problem with landmarks in the past had been the ease with which they could be moved. The measurement proceedings were turned over to *Alcalde* José Campo Redondo, who was even more specific about how the measurement of the pueblo league should proceed. In the presence of Fernández and Lucero and his family, the cordel was soaked in water because no one could find any wax. Then *Alcalde* Campo Redondo appointed officials to hold each end of the cordel and make the measurement, and another official to count the fifty cordels it would take to reach 5,000 varas.

The first measurement started from the cross in the cemetery of the Santa Clara church. It headed in a direct southerly line to reach the 5,000 varas at a point where a landmark was placed. Then the same procedure was followed from south to north starting at the San Ildefonso church, reaching the Santa Clara landmark, and then overshooting it by



Santa Clara

Site plan of Santa Clara Pueblo. Drawing previously appeared as figure 9 in Stanley A. Stubbs, *Bird's-Eye View of the Pueblos* (Norman: University of Oklahoma Press, 1950), 45. Reproduction by permission of University of Oklahoma Press.

thirty-nine and three-quarter varas before reaching the full length of the 5,000-vara San Ildefonso league. The measurement completed, alcalde Campo Redondo returned the proceedings to Governor Anza, who then referred them to Fernández.⁶⁰

Fernández made the most of the situation when he argued passionately how incredible it was that any former New Mexico governor could make a grant of land between the pueblos when there was no excess land to be granted, but in fact a shortage. Any grant that was made had to be based on misinformation or outright fraud, he argued, but in any case, these grants to Spaniards were void, and no length of time of possession could change that. In fact, he argued, no one lived in the house that had been built on the Lucero ranch, and yet the Indians of Santa Clara continued to suffer from the Spanish presence because their livestock continued to damage the pueblo's acequias and planted fields. Therefore, concluded Fernández, Lucero and his relatives should be expelled.⁶¹

Then Lucero took his turn. First, he asked Governor Anza to give him some time to look for his grant documents. Then, in a somewhat inconsistent move, Lucero demanded that the pueblos produce their own grant documents. Even more confusing was Lucero's attempt to rely on the 1763 Vélez Cachupín litigation in order to establish his rights. Lucero said that a landmark had been located in the course of that lawsuit upon which the pueblos agreed which put his ranch 336 varas outside the pueblo boundary. In fact, the measurement of the San Ildefonso Pueblo league in 1763 placed Lucero 628 varas inside the pueblo boundary. Finally, Lucero challenged Campo Redondo's recent measurement. He said that the measurement had not commenced at the proper spot, that it was made with an old cordel that was not waxed but spliced together with straps, and that the Indians were trying so hard to stretch the cordel by pulling it that they broke it twice.⁶²

Based on Lucero's statement, Governor Anza ordered that the Santa Clara and San Ildefonso leagues be remeasured in strict conformity to his prior order. A waxed cord was to be used and the cordel was to be measured in full view of all the interested parties, a step that had been omitted during the earlier measurement. When the second measurement was made with the waxed cordel, instead of a forty-vara overlap, there was a gap of 236 varas between the boundaries of the two pueblos. Alcalde Campo Redondo measured the Santa Clara league twice and came up with the same result. Then he compared the cordel used in the first measurement to the one used in the second and found that the first one was longer "because the waxed cordel does not stretch and the unwaxed stretches very much."⁶³

Original Drawing by Glen Strock, 1996.



Fernández then had his chance to comment on the latest measurement. He had agreed with the first one, it being the most favorable to the pueblos, and he was still satisfied with the second, even though he believed that it was not customary to use a waxed cordel in New Mexico. He did acknowledge that the cordel used to measure the league in 1763 may have been flawed as it was “made of lariats, ropes, and leather straps,” but in both cases, the 1763 and the two 1786 measurements demonstrated that Lucero’s grant lay inside the San Ildefonso Pueblo league. Fernández touched on all previous points and concluded his three-page statement by referring to a law (presumably in the *Recopilación*) stating that land farmed by Indians in excess of their four square leagues was also protected from Spanish encroachment. Since the land between the San Ildefonso and Santa Clara Pueblo leagues was farmed by virtue of an Indian dug acequia, Fernández asked that this land (which Lucero also claimed) be granated to the two pueblos. This was the same result as occurred in the 1722 lawsuit between Santo Domingo and Cochiti Pueblos.⁶⁴

Lucero would have none of this, and in his response to Fernández, he came up with still another argument that proved to be simply a delaying tactic. Lucero charged Fernández with altering the second measurement by incorrectly measuring the cordel so that it was three-quarters of a vara longer than 100 varas, which resulted in approximately thirty varas over the 5,000–vara league. He also claimed that the witnesses who were present during the second measurement would corroborate his charges. But when Juan Ignacio Mestas and Cristobal Maese were questioned about Lucero's latest charge, they both testified that Fernández had measured the cordel after they had measured it, and all had agreed that the measurement was accurate.⁶⁵

By this time, Governor Anza had all the information he needed to make a decision. He approved the proceedings that led to the second measurement which showed a gap of 236 varas between San Ildefonso and Santa Clara, and he ordered that the pueblos each receive the land encompassed by these measurements. Finally, he ordered that Lucero limit himself to the 236 varas between the pueblos and if he should decide to sell, he must offer it first to San Ildefonso Pueblo.⁶⁶

Governor Anza was even more careful than Vélez Cachupín had been when he set forth all the reasons for his decision. Vélez Cachupín's decree, which Anza mentioned, was based on the Chihuahua lawyer's opinion, whereas Anza took the *Recopilación* off his bookshelf and referred directly to the royal laws. He cited the law that gave a league of commons to each pueblo, and another that provided protection to all lands farmed by Indians.⁶⁷

Fernández was unable to participate in the final step of this litigation due to illness. Instead, Juan Ignacio Mestas appeared on behalf of the pueblos to oversee the placement of permanent landmarks. As Governor Anza had ordered, a circle of cedar stakes was driven into the ground and three (not five) cartloads of stones were dumped into it. But the Indians had seen too many so-called permanent boundary markers moved, so they built a wall of stone and mud one vara in height as an additional landmark.⁶⁸

Fernández was instrumental in helping the pueblos achieve a favorable result in this protracted and sometimes dramatic litigation, so it is too bad he could not be present for the last act. His major accomplishment was the clear establishment of the pueblo league as the land to which a pueblo was entitled. Whereas Rael de Aguilar mentioned the pueblo league as early as 1704, it had generally been more honored in breach than in observance. Even in 1763, the Chihuahua lawyer had said that the rights of the Indians to the pueblo league were no greater than the rights of the Spaniards living within pueblo boundaries. By 1786, however, Anza was willing to tip the balance in favor of the pueblos. They owned the land within their league by virtue of royal law.⁶⁹

The laws in the *Recopilación* that defined and protected Pueblo Indian property had been cited by Rael de Aguilar, Tafoya, and Fernández, but encroachers like Lucero had ignored them. Lucero could do so because he was never penalized. Following Anza's ruling, however, Lucero was subject to a 100-peso fine if he failed to observe any part of the decree or attempted to move the landmarks that had been established. Another issue that Fernández was successful in laying to rest was whether the pueblos needed to show grant documents in order to establish their property rights. Lucero had made this argument in May 1786, but Fernández answered that "It is useless to ask that the Indians established in pueblos present the grants to the lands which they justly possess, because the same appear in the laws of our sovereigns. . . ." The rational tone of this response impressed even the otherwise obstreperous Lucero, who agreed that the pueblos did not have to have grant documents. Lucero said that he would accept the pueblos' leagues as long as they were measured properly.⁷⁰

Litigation between the pueblos and their Spanish neighbors continued until the end of Spanish rule in New Mexico and throughout the Mexican period. An official protector was again appointed in 1810 at the request of Cochiti Pueblo, whose representative, José Quintana, journeyed all the way to Chihuahua for action. Quintana recommended Felipe Sandoval for the job and the audiencia accepted. Sandoval appears to have been the stepson of Felipe Tafoya and must have gained considerable knowledge from his stepfather about how to represent Indian pueblos.⁷¹

The battles won by the eighteenth-century advocates discussed herein were built upon by the nineteenth-century advocates like Felipe Sandoval. The pueblo league was measured, landmarks were moved and reestablished, and the advocates for the pueblos presented increasingly sophisticated arguments.⁷² The issues presented by these advocates echoed the questions raised in the Las Casas/Sepúlveda debate: Were Indians and *genízaros* people with reason and Christian beliefs like the Spaniards, or were they idolatrous pagans whose property rights should be viewed as those of a conquered people?

In 1550, Spaniards had little direct knowledge of the New World Indians for whose souls they contested. Sepúlveda had never seen an Indian, and though Las Casas had studied them extensively, the ethnographic analyses he published were not widely read, if at all. Cortez had brought two Indians who were adept at juggling to Pope Clement VII in 1529, and in 1550 a group of fifty Brazilian natives performed mock warfare on the banks of the Seine for Catherine de Medici and her court.⁷³

Juxtaposed with these rather incongruous events that provided little basis for European understanding of New World natives are the lawsuits between natives and Spaniards in central Mexico and New Mexico similar to those discussed here. In central Mexico, judges like Alonzo de Zorita, who started his career as *abogado de pobres* in Granada, Spain, continued to study Indians based upon first-hand experience. Zorita believed, as did Las Casas, that in some character traits the Indians were equal, if not superior, to the Spaniards. Accordingly, his decisions in Indian/Spanish litigation were often sympathetic to the Indian position.⁷⁴

A similar attempt to understand the Indians of New Mexico occurred under Governor Vélez Cachupín, who described Pueblo Indians as "humble, docile, and very capable of cultivating their fields, raising livestock, and thrifty and respectable in their everyday dealings. . . ." Genízaros, on the other hand, were "perverse, lazy, and with such serious vices that they are most difficult to regulate and subdue, because they and their families love the life of the vagabond, moving from one place to another, causing much damage to the planted fields and livestock." But genízaros were better fighters than Pueblo Indians, and were capable of change with proper instruction, according to Vélez Cachupín.⁷⁵ Their views about Indians as either wild and unmanageable or rational and civilized moved out of this Aristotelian dichotomy into a more pragmatic viewpoint based on direct contact. They came to see Indians as did viceroy Mendoza, who said simply that they were "like any other people."⁷⁶

The work performed by Spanish advocates on behalf of pueblos and genízaros in the early part of the eighteenth century was not effective in protecting native rights. The post-Pueblo Revolt accommodation between Spaniards and pueblos proceeded erratically, depending on how the sitting governor viewed the notion of property rights for pueblos. By 1749, Governor Vélez Cachupín and his bureaucracy of local officials began to show more concern for protecting pueblo land and water. Procedures for measuring the pueblo league and for appraising and accounting for land sold to the pueblos by Spaniards were refined and expanded. The methods of measuring land and marking boundaries became more specific, including references to waxed cordels. The Indians became adept at preserving evidence and biding their time before bringing a lawsuit until a favorable result could be reasonably expected. They realized that landmarks were likely to be moved, so they sometimes placed a hidden landmark underground so that a boundary could be relocated even if the above-ground marker was moved. Such actions anticipated a practice followed today in northern New Mexico whereby state-funded brass-cap survey monuments, used as a starting point in most modern surveys, are protected from removal by having their location tied to a buried monument.⁷⁷

The effectiveness of Alfonso Rael de Aguilar, Felipe Tafoya, Carlos Fernández, and the other advocates for pueblo and genízaro Indians in eighteenth-century New Mexico is attested to by the fact that the accommodation between Spaniards, Indians, and genízaros that began in the early 1700s is still going on, with new lawyers representing the pueblos who use the arguments and facts carefully developed by those early Spanish advocates for the oppressed. Genízaros have largely disappeared as a group, and Anglos have replaced Hispanics as the conquerers. But the role of the advocate has remained constant, and it is to the credit of the Spanish system of justice that advocates were generally available to mediate social conflict in New Mexico.⁷⁸

NOTES

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1. Henry Wagner, *The Life and Writings of Bartolomé de Las Casas* (Albuquerque: University of New Mexico Press, 1967), 178–82. The best treatment of the Las Casas/Sepúlveda debate is still Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Boston, Massachusetts: Little, Brown and Company, 1965) and his *Aristotle and the American Indians: A Study of Race Prejudice in the Modern World* (Bloomington: Indiana University Press, 1959). The latter focuses on how both Sepúlveda and Las Casas accepted Aristotle's theory that some men are born to be slaves. For a comparison of Spanish theories justifying conquest, with those of other European powers, see Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain and France c.1500–c.1800* (New Haven, Connecticut: Yale University Press, 1995). For a recent analysis of the writings of the Spanish jurist Juan de Solórzano Pereira in this regard, see James Muldoon, *The Americas in the Spanish World Order: The Justification for Conquest in the Seventeenth Century* (Philadelphia: University of Pennsylvania Press, 1994).

2. The Leyes Nuevas reform ordinances of 1542 were the first laws adopted to protect Indians in New Spain. They provided for the abolition of the encomienda, forced labor, and tribute on the part of the Indians and placed them under the protection of the crown. Indian slaves were freed and advocates were to be named for them at royal expense where a Spanish owner was not required to show title papers. Wagner, *Las Casas*, 114–16. Bartolomé de Las Casas, *The Devastation of the Indies: A Brief Account*, trans. Herma Briffault (Baltimore, Maryland: Johns Hopkins University Press, 1992).

3. Constance Ann Carter, "Law and Society in Colonial Mexico: Audiencia Judges in Mexican Society from the Tello de Sandoval Visita General, 1543–1547" (Ph.D. diss., Columbia University, 1971), 12–13; Susan Kellogg, *Law and the Transformation of Aztec Culture, 1500–1700* (Norman: University of Oklahoma Press, 1995), 10–15; Charles Cutter, *The Protector de Indios in Colonial New Mexico, 1659–1821* (Albuquerque: University of New Mexico Press, 1986), 16–17. For a discussion of lawyers in sixteenth-century Castile, see Richard L. Kagan, *Lawsuits and Litigants in Castile: 1500–1700* (Chapel Hill: University of North Carolina Press, 1981), 52–78. The abuses of self-appointed protectors or defenders who took advantage

of the indigenous people led to the outlawing of these positions altogether in the audiencia of Quito. Woodrow W. Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (Berkeley: University of California Press, 1983), 79–91; Kellogg, *Law and Aztec Culture*, 13–21.

4. Cutter, *The Protector de Indios*, 12–20.

5. Steve J. Stern, *Peru's Indian Peoples and the Challenge of Spanish Conquest: Huamanga to 1640* (Madison: University of Wisconsin Press, 1982), 116; Robert M. Hill II, "The Social Uses of Writing Among the Colonial Cakchiquel Maya: Nativism, Resistance, and Innovation," in *Columbian Consequences: The Spanish Borderlands in Pan-American Perspective*, 3 vols. (Washington, D.C.: Smithsonian Institution Press, 1991), 3:294–95; Charles R. Cutter, *The Legal Culture of Northern New Spain: 1700–1810* (Albuquerque: University of New Mexico Press, 1995), 69–102.

6. One of the worst cases on record is that of fray Salvador de Guerra, who punished Indian Juan Cuna so severely that he died. Cuna's only offense was mimicking the priest. Although he was reprimanded by his superiors, Guerra was back in favor by 1661 when he became notary for fray Alonso de Posada, commissary of the Holy Office of the Inquisition. France V. Scholes, "Troubled Times in New Mexico 1659–1670," *New Mexico Historical Review* 12 (April 1937), 144–46; *New Mexico Historical Review* 12 (October 1937), 388; John L. Kessel, "Spaniards and Pueblos: From Crusading Intolerance to Pragmatic Accommodation," in *Columbian Consequences*, 1:127–38; Marc Simmons, "The Pueblo Revolt: Why Did it Happen," *El Palacio* 86 (Winter 1980–81), 11–15.

7. Cutter, *The Protector de Indios*, 76–77, 109 and *The Legal Culture of Northern New Spain*, 100–01; Fray Angélico Chávez, *New Mexico Families in the Spanish Colonial Period in Two Parts: The Seventeenth (1598–1693) and the Eighteenth (1693–1821) Centuries* (1954; Santa Fe, New Mexico: William Gannon, 1975), 263. In 1715, Rael de Aguilar, Jr. fatally stabbed Sergeant Francisco Tamaris from the Santa Fe presidio and then sought sanctuary in various mission churches. Alfonso Jr. may have been bailed out of this predicament by his father when the widow and son of Tamaris formally pardoned him, after pointedly mentioning the creditors who were hounding them to pay the debts of the victim. Criminal proceedings against Alfonso Rael for the death of Francisco Tamaris, Santa Fe, New Mexico, 14 December 1715–31 July 1716. Spanish Archive of New Mexico (hereafter SANM) II, no. 239. A government *indulto* (pardon) was secured from Governor Felix Martínez in return for serving in a military campaign against the Moqui (Hopi). Cutter, *The Legal Culture of Northern New Spain*, 129.

8. The *fundo legal* in central Mexico varied from 600 varas measured from the outskirts of the Indian town to a league measured from the church in the center of the town. It seems likely that New Mexico's pueblo league arose from this tradition. Woodrow W. Borah, *Justice by Insurance*; G. Emlen Hall, *Four Leagues of Pecos: A Legal History of the Pecos Grant, 1800–1933* (Albuquerque: University of New Mexico Press, 1984), 12–13.

9. "Tienen mas de lo que manda la lei i no es rason . . . [que] nosotros no tengamos nada." Petition of Cristobal and Juan Barela Jaramillo to Governor Vargas, Bernalillo [New Mexico], February 1704, SANM I, no. 78.

10. "Tiene conzedido por ley Real a los Pueblos de dhos naturales." Rael de Aguilar to Vargas, San Felipe [New Mexico], 23 February 1704, SANM I, no. 78. This language would seem to contradict Hall's assertion that until the mid-1700s the pueblo league was considered a zone of protection from Spanish encroachment rather than an area owned by the pueblos. Hall, *Four Leagues of Pecos*, 13.

11. "No pudiendo [h]azerlo . . . por estar mal de un brazo de una cayda [caída] y capn Ferndo de Chaves . . . no estaba en su casa . . ." An example of Rael de Aguilar making subtle changes in the words of others occurs when the Jaramillos

asked for a measurement of San Felipe Pueblo lands and Rael changed that to a request that the league of the Indians be measured. Petition of Cristobal and Juan Barela Jaramillo to Governor Vargas, Bernalillo, New Mexico, February 1704. and Report of Rael de Aguilar, San Felipe Pueblo, 23 February 1704, SANM I, no. 78.

12. This summary procedure was common in the early 1700s as also illustrated by the 1702 Jacona grant also made to Ignacio Roybal, but by the mid-1700s, failure to notify adjoining owners became a ground for rejecting a grant under Governors Vélez Cachupín and Mendinueta. SANM I, no. 1352, no. 1339.

13. Petition of Alfonso Rael de Aguilar on behalf of San Ildefonso Pueblo to Lieutenant Governor Juan Paez Hurtado, Santa Fe, New Mexico, 16 September 1704; and grant to Ignacio Roybal by Governor Vargas, witnessed by Rael de Aguilar, Santa Fe, New Mexico, 4 March 1704, SANM I, no. 1339; Recopilación, 4-12-12 and 6-3-20 (Spanish ranches not to be located near Indian communities) and 4-7-1 (Spanish communities not to be established where Indians' rights would be prejudiced). When Governor Vargas reconquered the province, he promised to those who accompanied him the lands they owned prior to the Revolt. Edict of Governor Vargas published at El Paso and surrounding communities, 20 September 1693. See John Kessell, Rick Hendricks, and Meredith D. Dodge, eds., *To the Royal Crown Restored: The Journals of don Diego de Vargas, New Mexico, 1692-94* (Albuquerque: University of New Mexico Press, 1995), 374-77.

14. For a list of references in which the four square league standard is mentioned, see William B. Taylor, "Colonial Land and Water Rights of New Mexico Indian Pueblos," unpublished report on file in *New Mexico v. Aamodt*, no. 6639, Federal District Court for New Mexico, 44. Cutter, in *The Legal Culture of Northern New Spain*, 38n, argues that "it was the repeated insistence that Spaniards live up to the 'rules of the game' that helped inscribe this territorial dimension as the norm in New Mexico." See also Hall, *Four Leagues of Pecos*, 12-14.

15. "Por no [h]aber tierra de labor en que," SANM I, no. 1339.

16. Petition of protector Alfonso Rael de Aguilar on behalf of San Ildefonso Pueblo, Santa Fe, New Mexico, September 1704, *ibid.*

17. Certification of Alfonso Rael de Aguilar, Santa Fe, New Mexico, 10 January 1706. Translation in Charles W. Hackett, ed., *Historical Documents Relating to New Mexico, Nueva Vizcaya, and Approaches Thereto, to 1773*, 3 vols. (Washington, D.C.: Carnegie Institution, 1923-37), 3:366-69; Rael de Aguilar certification, Santa Fe, New Mexico, 10 January 1706, in Hackett, ed., *Historical Documents*, 368. Regarding the stories about the founding of Albuquerque, see Marc Simmons, *Albuquerque: A Narrative History* (Albuquerque: University of New Mexico Press, 1982), 81-92.

18. Election of Alfonso Rael de Aguilar as alcalde ordinario of the Santa Fe Cabildo, Santa Fe, New Mexico, 1 January 1707, SANM II, no. 130 and Rael de Aguilar to Governor Flores Mogollón, Pecos Pueblo, New Mexico, 23 July 1714. See John Kessell, *Kiva, Cross, and Crown: The Pecos Indians and New Mexico, 1540-1840* (Washington, D.C.: National Park Service, 1979), 313-14.

19. Charles H. Lange, *Cochiti: A New Mexico Pueblo, Past and Present* (Albuquerque: University of New Mexico Press, 1959), 11.

20. Report of Alfonso Rael de Aguilar, Santo Domingo Pueblo, New Mexico, 8 June 1722, SANM I, no. 1343.

21. Other cases of land granted to pueblos beyond the pueblo league were the Valle de Espiritu Santo grazing grant jointly to Zia, Santa Ana, and Jemez by Governor Vélez Cachupín in 1776, both in Catron Collection, 16, box 1, folder 14; also a grant of land between San Felipe and Santo Domingo to those pueblos by Governor Mendinueta in 1770, NMLG-SG, no. 142 and recognition of the Ojo de Cabra as Isleta Pueblo common grazing land by the Departmental Assembly in 1845, SANM I, no. 1381.

22. Criminal proceedings against Jerónimo Dirucaca, 8 May 1713, SANM II, no. 192. Also discussed in Cutter, *The Protector de Indios*, 54-55, quote from 55.

23. Petition of Juan de Atienza on behalf of Pojoaque Pueblo to Governor Juan Ignacio Flores Mogollón, Villa Nueva de Santa Cruz, New Mexico, May 1715, SANM I, no. 7. Rodríguez Cubero was less protective of Pueblo Indians and *genízaros* than had been Governor Diego de Vargas, whose two terms as governor came before (1691–97) and after (1703–4) Cubero's term. For example, Vargas was accused in his *residencia* of returning Indian captives (*genízaros*) to the pueblos instead of giving them to the colonists as servants, but Cubero apparently reversed this policy. Rick Hendricks, "Pedro Rodríguez Cubero: New Mexico's Reluctant Governor, 1697–1703," *New Mexico Historical Review* 68 (January 1993), 28, 33; SANM I, no. 7.

24. Decree of Governor Flores Mogollón appointing Rael de Aguilar as *juez receptor*, Santa Fe, New Mexico, 12 June 1715. If the Pueblo failed to comply with the decree, Tenorio could sell the land to someone else, as long as he returned what was paid him to the Indians. Decree of Governor Peñuela, Santa Fe, New Mexico, 1 April 1712. Both in SANM I, no. 7.

25. Report of Alfonso Rael de Aguilar, Santo Domingo Pueblo, New Mexico, 8 June 1722, SANM I, no. 1343.

26. "Y no aver podido venir a si qirse como devira aserlo," Juan de Atienza to Governor Félix Martínez, Santa Fe, New Mexico, April 1716; Alfonso Rael de Aguilar to Governor Flores Mogollón, Santa Fe, New Mexico, 2 May 1716. Both in SANM I, no. 7.

27. Power of Attorney to Ventura de Esquibel, Pueblo of San Agustín de la Isleta, New Mexico, 16 May 1733, SANM I, no. 684, and SANM I, no. 1343.

28. Answer to Isleta Pueblo filed by Ventura Esquibel, Isleta Pueblo, New Mexico, May 1733; declaration of Diego Padilla, Río Abajo, New Mexico, [18] May 1733; answer of Ventura Esquibel on behalf of Isleta Pueblo, New Mexico, [19] May 1733; decrees of Governor Cruzat y Góngora, Santa Fe, New Mexico, 28 May and 23 June 1733. All in SANM I, no. 684. See also Cutter, *Legal Culture of Northern New Spain*, 90–91 and SANM II, no. 335.

29. Ventura Esquibel surfaced again in 1734 when he petitioned for his own land grant in the Santa Cruz area. Petition of Ventura Esquibel for the surplus lands of Diego Torres, report of alcalde Estévan García de Noriega, and decrees of Governor Gervacio Cruzat y Góngora, 23 January–13 March 1734, SANM I, no. 259.

30. Petition of los *genízaros* to Governor Cruzat y Góngora, April 1733, SANM I, no. 1208.

31. For a recent summary of definitions of *genízaros*, see Oakah L. Jones, Jr., "Rescue and Ransom of Spanish Captives from the indios bárbaros on the Northern Frontier of New Spain," *Colonial Latin America Historical Review* 4 (Spring 1995), 131–33; Bando of Governor Cruzat y Góngora, Santa Fe, New Mexico, 6 December 1732, SANM II, no. 378.

32. Malcolm Ebright, "Frontier Land Litigation in Colonial New Mexico: A Determinant of Spanish Custom and Law," *Western Legal History* 8 (Summer/Fall 1995), 211–14.

33. "Que olvidados [nuestros] primeros pes de tanto bien y beneficio, y soltando riendas a su desordendo deseo . . . regando la [tierra] con prolijo sudor de [Vuestro] rostro," petition of los *genízaros* to Governor Cruzat y Góngora, April 1733, SANM I, no. 1208.

34. *Ibid.*; Bartolomé de Las Casas, *Historia de las Indias*, Libro 3, capítulo 102, translated in Hanke, *Spanish Struggle for Justice*, 125; Fray Angélico Chávez, "Genízaros," in Alfonso Ortiz and William C. Sturtevant, *Handbook of North American Indians: Southwest*, ed. William Sturtevant, 20 vols. (Washington, D. C.: Smithsonian Institution Press, 1979), 10:198–99.

35. Proceedings in the trial of Isleta Indians for witchcraft, 11–19 February 1733, SANM II, no. 38. This case is also summarized in Marc Simmons, *Witchcraft in the Southwest: Spanish and Indian Supernaturalism on the Rio Grande* (Lincoln: University of Nebraska Press, 1974), 30–32. While the practices described in

this lawsuit would subject a Spaniard to prosecution by the Mexican Inquisition, Indians were exempt from its jurisdiction; this case was tried by civil authorities. See Fernando Cervantes, *The Devil in the New World: The Impact of Diabolism in New Spain* (New Haven, Connecticut: Yale University Press, 1994), 37.

36. Order of Governor Cruzat y Góngora, Santa Fe, New Mexico, 21 April 1733; list of genízaros [Alfonso Rael de Aguilar], [22] April 1733; order of Governor Cruzat y Góngora, Santa Fe, New Mexico, 23 April 1733. All in SANM I, no. 1208. The abandoned Sandia Pueblo was finally settled in 1748 with a grant to 441 Tewas who returned from the Moqui settlements. Proceedings by virtue of an order of the Viceroy Count of Fuenclara re. the complaint of Antonio Casados and Luis Quintana for a genízaro settlement at Belen, SANM I, no. 183.

37. "Contra lo dispuesto por su Magad en sus Leyes Reales." Order of Governor Cruzat y Góngora, Santa Fe, New Mexico, 1 March 1734, SANM I, no. 1345; Laura Bayer with Floyd Montoya and the Pueblo of Santa Ana, *Santa Ana: The People, the Pueblo, and the History of Tamaya* (Albuquerque: University of New Mexico Press, 1994), 77-79.

38. Oakah L. Jones, Jr., *Pueblo Warriors and Spanish Conquest* (Norman: University of Oklahoma Press, 1966), 116-17; order of Governor Codallos y Rabal, Santa Fe, New Mexico, 4 February 1746, SANM II, no. 495; inventory of cases turned over to Governor Tomás Vélez Cachupín by his predecessor, Governor Joaquín Codallos y Rabal, Santa Fe, New Mexico, 3 April 1749, SANM I, no. 1258.

39. "Es hombre cabiloso ynquieto qe ynsitta a algunos pobres Vecinos a que tengan pleitos haciendoles escriptos y cooperando a ellos . . .". Order of Governor Codallos y Rabal, Santa Fe, New Mexico, 1 March 1744, SANM I, no. 463. See also the petition of Albuquerque residents to sell wool, 16 June 1745, SANM II, no. 456A, cited in Cutter, *Legal Culture of Northern New Spain*, 101. Isidro Sanchez had been in trouble with the law almost a decade earlier for an alleged robbery. Pedro de Villasur, proceedings against Isidro Sánchez for robbery, Santa Fe, New Mexico, 25 March-April 1719, SANM II, no. 307; Francisca Salas v *alcalde Joseph Baca*, 16 May 1744, SANM II, no. 453.

40. Royal orders of 1521 and 1538 prohibited officials from placing any restriction on those who "wish to write and give an account of everything that appears to them to be convenient . . ." Lewis Hanke, *Spanish Struggle for Justice*, 9n.

41. Declaration of Antonio Casados, Santa Fe, New Mexico, 12 February 1746, SANM I, no. 183.

42. Order of Viceroy Count of Fuenclara, Mexico City, 20 October 1745; auto of Codallos y Rabal, Santa Fe, New Mexico, 11 February 1746. Both in SANM I, no. 183.

43. Auto of Codallos y Rabal, Santa Fe, New Mexico, 11 February 1746, SANM I, no. 183.

44. The plaza of Nuestra Señora de los Dolores de los Genízaros was comprised mostly of genízaros and the Belen plaza; number two contained a few genízaros. Steven Michael Horvath, "Genízaros at Belén" (Ph.D. diss., Brown University, Providence, Rhode Island, 1979), 130-33. Of the sixty-eight family heads listed at the genízaro plaza in 1790, twenty-seven were listed as genízaro and most of the indios and several of the mestizos were designated as genízaro in other documents. Malcolm Ebright, "Frontier Land Litigation in Colonial New Mexico," 211-14; SANM I, no. 183.

45. Richard Salazar, "The Felipe Tafoya Grant: A Grazing Grant in West Central New Mexico," *Center for Land Grant Studies Research Paper No. 28* (Guadalupita, New Mexico, 1994), 12; SANM II, no. 579; Fray Angélico Chávez, *Origins of New Mexico Families*, 291; Cutter, *Legal Culture of Northern New Spain*, 87-88; *Domingo Lujan v Cristóbal Jaramillo* for adultery, Santa Fe, New Mexico, 9-24 August 1755, SANM II, no. 531a.

46. Malcolm Ebright, "Frontier Land Litigation in Colonial New Mexico," 215-21.

47. Governor Tomás Vélez Cachupín ordered alcalde Antonio Baca to place the settlers of Carnuel in possession of their grant, giving them house lots fifty varas square. Instead, alcalde Baca gave some settlers lots thirty varas square and others larger lots. Vélez Cachupín shot back an order to Baca stating: "It is not within his authority to [make changes] and he shall be warned that in the future he shall not exceed his powers . . . "no son en mi Autoridad ponerlas y se le amoneste que en otra ocasion no se esoceda como secompreende lo hizo." Act of possession by alcalde Antonio Baca, San Miguel de Laredo [Carnuel], 12 February 1763; order of Governor Vélez Cachupín, 20 and 12 February 1763, all in SANM I, no. 202.

48. Order of Governor Vélez Cachupín, Santa Fe, New Mexico, 3 December 1766, SANM I, no. 688.

49. Felipe Tafoya alleged that San Ildefonso had suffered intrusions within their boundaries ever since the administration of Governor Pedro Rodríguez Cubero. Petition of Felipe Tafoya, Santa Fe, New Mexico, February 1763, SANM I, no. 1351.

50. Visita of Governor Marín del Valle, "sin admitirle el mas leve recurso," *ibid.*

51. Petition of Juan de Atienza on behalf of Pojoaque Pueblo to Governor Juan Ignacio Flores Mogollón, Villa Nueva de Santa Cruz, New Mexico, May 1715, SANM I, no. 7.

52. SANM I, no. 1354.

53. Measurements by alcalde Carlos Fernández, San Ildefonso, New Mexico, 17-18 February 1763, *ibid.*

54. Under the Spanish doctrine of prescription, title could be acquired to land through possession alone, and if the period was at least thirty years, title could be acquired even if the property was stolen. *Las Siete Partidas*, book 3, title 29, law 21.

55. "Es casa duro que . . . quedamos como peregrinos en este Reyno y no como naturales." Statement of Juan Gómez del Castillo, 1763, SANM I, no. 1551.

56. *Recopilación*, book VI, title 3, law 20. Que cerca de las Reducciones no haya estancias de ganado.

57. ". . . sin abrir la puerta a muchos ejemplares que resultaran alos de emas Pueblos en yguales terminos." Order of Vélez Cachupín, Santa Fe, New Mexico, 12 November 1763; opinion of Fernández de Torija y Leri, San Felipe del Real [de Chihuahua], 27 October 1764, SANM I, no. 1351.

58. "La lengua que el Rey Nuestro Señor . . . concede a cada Pueblo," Petition of Carlos Fernández to Governor Anza, Santa Fe, New Mexico [May] 1786, SANM I, no. 1354.

59. ". . . un cordel encerada qe contenga cien varas." Order of Governor Anza, Santa Fe, New Mexico, 6 May 1786, *ibid.*

60. Measurement proceedings by alcalde Campo Redondo, Santa Clara Pueblo, New Mexico, 10 May 1786; referral by governor Anza to Carlos Fernández, Santa Fe, New Mexico, 13 May 1786, *ibid.*

61. Statement of Carlos Fernández, Santa Fe, New Mexico, 13 May 1786, *ibid.*

62. Statement of Marcos Lucero, [18] May 1786, *ibid.*

63. Order of Governor Anza, Santa Fe, New Mexico, 19 May 1786; "por el enserado no da de si, y el no enserado da mucho." Measurement by alcalde Campo Redondo, Santa Clara, New Mexico, 23 May 1786. Both *ibid.*

64. ". . . un cordel compuesto de lanzos, cabrestos y coyundas." Statement of Carlos Fernández, Santa Fe, New Mexico, [29] May 1786; *ibid.*

65. Statement of Marcos Lucero, [Santa Fe], New Mexico, [2] June 1786; deposition of Juan Ignacio Mestas, Santa Fe, New Mexico, 8 June 1786; deposition of Cristobal Maese, Santa Fe, 8 June 1786, all *ibid.*

66. Decree of Governor Anza, Santa Fe, New Mexico, 10 June 1786, *ibid.*

67. This is evidence that a copy of the Recopilación existed in New Mexico at this time, for Anza says, "and having before me the royal laws" Decree of Governor Anza, Santa Fe, New Mexico, 10 June 1786, *ibid.*; Recopilación, book VI, title 3, law 8.

68. *Ibid.*

69. Decree of Governor Anza, Santa Fe, New Mexico, 10 June 1786, SANM I, no. 1354.

70. *Ibid.*; statement of Carlos Fernández, Santa Fe, New Mexico, [29] May 1786; statement of Marcos Lucero, [Santa Fe] New Mexico, [2] June 1786. All *ibid.*

71. Greater recognition of genízaro Indian property rights is evidenced by the fact that Felipe Sandoval's appointment as protector mentioned the genízaro settlement at Abiquiú as one of his protected clients. See Cutter, *The Protector de Indios*, 81–83. Sandoval was raised by vicar Santiago Roybal from whom he would have gained additional knowledge about legal procedures as they related to the church. Chávez, *New Mexico Families*, 283.

72. Post eighteenth-century land disputes involving Indian pueblos include Santa Ana and San Felipe in 1813 (SANM I, no. 1356), Taos in 1815 (SANM I, no. 1358); Santo Domingo and Cochiti in 1917 (SANM I, nos. 1361 and 1362). For Abiquiú as a protected pueblo, see SANM II, no. 2352, as cited in Cutter, *The Protector de Indios*, 82–3.

73. Hanke, *Aristotle and the American Indians*, 50.

74. Ralph H. Vigil, *Alonzo de Zorita: Royal Judge and Christian Humanist, 1512–1585* (Norman: University of Oklahoma Press, 1987), 37–38. Zorita even cited Aztec law as precedent for exempting the Indians of Mexico City from paying tribute. Benjamin Keen, *Life and Labor in Ancient Mexico: The Brief and Summary Relation of the Lords of New Spain by Alonzo de Zorita* (Norman: University of Oklahoma Press, 1994), 28–30, 42–43.

75. "Opinion of Vélez Cachupín in Abiquiú witchcraft trial, Santa Fe, New Mexico, 28 March 1764, University of California at Berkeley, Bancroft Library, Pinart collection P.E. 52:5,

76. Ebright, "Frontier Land Litigation," 206–26.

77. SANM I, no. 1351; White, et al. and New Mexico State Planning Office, *Land Title Study* (Santa Fe, New Mexico: State Planning Office, 1971), 101–04.

78. Cutter, *Legal Culture of Northern New Spain*, 99–102. For an example of a recent case in which modern lawyers for the pueblos used historical documents to their advantage, see *Pueblo of Santa Ana v. Baca* 844 Federal 2d 708 (10th Circuit Court of Appeals, 1988).