

U.S., Mexican Cultures Clash in California

By Joel Simon

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Dateline: Placerville, Calif. - During the eight months Ladislao Pastrana has spent in the El Dorado county jail here, he has been trying to remember exactly what happened on the night of May 11, 1989, when he nearly decapitated his friend Emilio Lopez with a machete.

"I remember getting drunk, joking around, and saying some words which maybe I shouldn't have said," he recalls, "But I can't remember how I got to jail."

The victim himself was also too drunk to remember how he got the gash on his head. But an eyewitness saw Mr. Lopez, the victim, leave his trailer with a kitchen knife. The witness heard the fight and saw Mr. Pastrana, a machete in his hand, standing over a prone Mr. Lopez.

But what appears to be a straightforward case of attempted murder is complicated by the fact that both Messrs. Pastrana and Lopez are Mixteco Indians from Oaxaca, Mexico. Despite spending at least part of every year for the past decade in the United States as migrant workers, they continue to live under the social, political and moral influence of their town in Mexico. The interpretation of guilt, responsibility and punishment among the Mixtecos differs sharply from the U.S. legal system. Mr. Pastrana has spent the last eight months ruminating about these differences.

"Here I understand there are different laws," he says. "But I think the reason I am still in jail is because they don't realize we are friends from the same village."

Mr. Pastrana sits in pumpkin-colored prison garb with a number stamped in black letters across his breast pocket. During a recent interview, he is friendly but nervous; his large, powerful hands, out of sync with his small frame, tightly grasp the arms of his chair as he speaks in simple, rustic Spanish.

If the crime had occurred in his town, says Mr. Pastrana, he would have been jailed a few days and made to pay a fine. This is because the fight took place while he was drunk.

Under the Mixteco moral system based on collective well-being and reciprocal relations, Mr. Pastrana was morally obligated to accept Mr. Lopez's invitation to drink. Because the fight took place while he was fulfilling this social obligation,

he is less responsible for his actions than if he were sober.

The U.S. system of justice, which emphasizes punishment and isolation, stands in stark contrast with the Mexico system.

"In the case of antisocial behavior among the Mixtecos, the community would be more concerned with restoring harmony and equilibrium than with punishing the offender," says Stefano Varese, an anthropologist at the University of California at Davis who has worked with the Mixtecos.

Mr. Pastrana sees his incarceration as a form of banishment. "The community can't banish people, because everyone is expected to serve the community . . . over here it's different because each person has their own property. There we have community property. When everyone serves the community, we are in harmony."

Many legal scholars assert the fact that Mr. Pastrana comes from another culture makes him no less guilty of his crime. To determine guilt and punishment based on the mores and values of another culture, they argue, would undermine a basic principle of the U.S. legal system - that of equal rights and responsibilities before the law.

"Being culturally sensitive does not require that we relinquish our own standards," says Alison Rentein, a professor of political science at the University of Southern California and an expert on cultural defense, the legal theory that asserts defendants should not be judged by U.S. law if they act according to the norms of their own culture.

Dierde Evans-Pritchard, an anthropologist at the University of California at Los Angeles, argues that the legal system historically has been used as a means of forcing immigrants to assimilate into U.S. society.

"Law in the United States functions on an individual basis," she argues, noting that it would be legally questionable to bring a community's standards into court in a criminal trial.

While recent immigration, especially, from Asia and Latin America, is changing the face of California, Professor Evans-Pritchard says that certain traditional American ideals will continue to be upheld in the legal system.

"Now everyone wants to be a hyphenated American, she says, referring to use of such identifiers as African-American and Asian-American. "Everybody is looking for roots." This, she says, has translated into more leeway for immigrants in the legal system. But, she argues, the American legal system will continue to stifle individual rights if they conflict with the perceived interests of society.

"Americans stick to the Protestant ethic and the Ten Commandments within a

capitalist framework, and this system will prevail," she says. "It would take a very clever lawyer to argue that rape should go unpunished" because the perpetrator was acting in accordance with the precepts of his own culture.

But while legal scholarship has focused on the courtroom, cultural differences may prevent a case from ever getting that far. In Mr. Pastrana's situation, a psychiatric evaluation by Shawn Johnston, a court appointed psychologist, determined that he was mentally retarded and therefore unfit to stand trial.

After a long interview and a number of psychological tests, Mr. Johnston concluded that Mr. Pastrana was severely retarded. He attributed his client's ignorance of the U.S. legal system to his retardation, rather than his nationality.

But Mr. Johnston's findings were challenged by Professor Varese and Pedro Lewin, an anthropologist at the University of California at Berkeley who has also done work with the Mixtecos. In a report submitted to the judge, the anthropologist noted, "It is useless to try and judge the intelligence of a Mixteco Indian peasant from rural Mexico with a tool designed to measure the performance of intellectual skills which are required in urban Western culture . . . Pastrana is completely normal within his Mixteco peasant cultural norms and value system."

Mr. Pastrana himself was also miffed by the psychiatrist's findings. "I'm not educated," says Mr. Pastrana, who has only two years of formal schooling. "But I'm not a fool."

The judge accepted the anthropologist's findings and declared Mr. Pastrana fit to stand trial. Had he accepted the psychiatrist's report, Mr. Pastrana would have been incarcerated indefinitely as a violent, mentally retarded person.

While the case never came to trial, cultural factors helped Mr. Pastrana obtain a favorable plea bargaining agreement.

According to his attorney, Pat Forrester of the county Public Defender's office here, the judge in the case was sent a letter written by the mayor of Ixtantepec Nieves, Mr. Pastrana's town, and signed by the whole community. The letter asserted that the man was a member in good standing who had fulfilled his communal obligations. In addition, the fact that Mr. Lopez had returned to Oaxaca, and was not willing to testify at the trial, convinced the district attorney that he would not be able to obtain a conviction for attempted murder.

Mr. Pastrana pleaded guilty to assault with a deadly weapon and will serve one year in the county jail with credit for the eight months he has already served.

Ultimately for Mr. Pastrana, though, justice will have to wait until he can apologize to Mr. Lopez: "When I meet Emilio on the trail, I will tell him that I'm

sorry, that I have nothing against him, but that what happened was because I was drunk."

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FROM LAOS TO CALIFORNIA

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When Kong Muoa kidnapped and then raped Xeng Xiong he was practicing "zij poj niam," or marriage by capture, as his Hmong forebears in Laos had done for generations.

But Mr. Muoa wasn't in Laos. Like 30,000 of his tribesmen who had fled their mountain home, he had settled in Fresno, California. Ms. Xiong, who was abducted from her high school, pressed rape charges against Mr. Muoa and won. But the judge in the case, after reading about Hmong marriage practices, reduced Mr. Muoa's sentence from 180 days to 90 days.

For Fresno's Hmong, the unsettled status of the cultural defense has meant that they have been held criminally liable for engaging in such traditional practices as opium smoking, polygamy, and butchering animals in their backyard.

John Haviland, an anthropologist at Reed College in Oregon who has worked with Mixteco Indian migrant workers from Mexico, notes that inadequate interpreters and cultural bigotry are problems faced by defendants from foreign cultures, but he notes that cultural defense offers little hope for redress.

"What anthropologists are often asked to do is argue an exotic cultural defense and try to convince the jury that people look at the world in such a different way that it dehumanizes them," he says.