

punished for the crime. However, some other homicides committed by whites display an even greater disregard for life, and yet they ended in complete acquittals. These cases illustrate another variable at work—race.

Prosecutors rarely charged white defendants who killed Indians; however, two exceptions illuminate the changing attitudes toward California Indians. In Sacramento County the James Hilan murder case provides a rare glimpse of the criminal justice system trying to overcome racial prejudice. On July 1, 1859, the bodies of two Indians were discovered two or three feet apart, one in a sitting position along the streambed of the Cosumnes River, near Michigan Bar close to the eastern border of the county. Evidence strongly suggests that Hilan shot and killed Elleck and Poolto, two California Indians, and then beat them in the head with a blunt instrument, probably a rifle barrel.⁷⁹ The victims' heads had been severely bashed in, and their brains were protruding from their skulls. Joshua Crouch, the constable who arrested Hilan, testified that he followed the killer's trail for seven miles and, after arriving at Hilan's cabin, matched the footprints with Hilan's boots. While the constable was bringing the alleged killer to Michigan Bar, Hilan told him, "[T]here [is] nothing but Indian testimony against [me] and that could not be used" in court.⁸⁰ Surprisingly, testimony given by an Indian woman who lived with Hilan corroborated the murder and was accepted in court.⁸¹ The woman told the constable that the rifle had been hidden under a mattress. Crouch retrieved the weapon. George Kingsley examined the rifle carefully and noticed that "it had the appearance of having been used in striking. There was fresh blood on the inside of the barrel," and it appeared that someone had "washed off the barrel."⁸²

The prosecutor who handled the Hilan case tried hard to gain a conviction but failed. Several whites testified that they had known the two Indian men for several years and attested to their quiet, peaceful demeanor and noted that they had worked at odd jobs for them from time to time. After the trial ended in a hung jury, the judge ordered a new trial. Sometime between the two trials a deputy sheriff took the rifle that was being held as evidence to a gunsmith and asked him to replace the broken stock. The gunsmith threw away an important piece of evidence. Sheriff John McCloy admitted that the gun had been left in his custody, but said he'd forgotten "what he did with the gun." After the first trial, the jailer became suspicious of Hilan's behavior. He entered the prisoner's cell and ordered him off of his bunk. Under the mattress the jailer discovered a big knife, and he noticed that a "bar across the window was partly sawed off." Hilan did not escape from the jail, but the second trial also ended with a hung jury.⁸³

It should come as no surprise that two all-white juries in Sacramento could not convict a white man for killing two Indians. These killings occurred in 1859, when whites exhibited a great deal of racial animosity against Native Americans.