Twelfth Annual
ERNESTO GALARZA
Commemorative Lecture
1997

The Political Integration of Racial and
Ethnic Minorities

Presented by

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Stanford Center for Chicano Research, Stanford University
In Memoriam
1905-1984

This lecture was named in honor of Dr. Ernesto Galarza, a Stanford alumnus, intellectual, visionary, and activist scholar who galvanized national attention on the plight of farm workers in the 1940s and 1950s, and who later focused on urban institutions that impeded the health, educational and socio-economic development of Chicana/os in the United States. The legacy of his contributions to civil rights include the founding of the Mexican American Legal Defense and Education Fund (MALDEF) and the National Council of La Raza (NCLR). A few years before his death, Dr. Galarza donated all of his files to Stanford. Several renowned scholars conduct research based on his materials in the special collections archive at Stanford University’s Green Library.

This portrait of Ernesto Galarza was painted by José Antonio Burciaga in 1979 as part of a series of portrait studies of Chicano heroes that eventually resulted in "The Last Supper of Chicano Heroes" mural at Stern Hall, Stanford University. The portrait was donated to the Stanford Center for Chicano Research by his wife Mae Galarza on 28 April 1995.
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WELCOMING REMARKS

Miguel Méndez
Adelbert H. Sweet Professor of Law

On behalf of the Chicano faculty, the staff of the Stanford Center for Chicano Research, and the members of the Advisory Board to the Center, I welcome all of you to the 12th annual Ernesto Galarza Commemorative Lecture.

The Galarza Lecture series was established in honor of Dr. Ernesto Galarza, a noted scholar and an activist on behalf of Mexican Americans, especially migrant laborers. Born in Mexico, Dr. Galarza migrated to the United States with his parents as a child. As a youth, he worked in the fields of Sacramento. Dr. Galarza graduated Phi Beta Kappa in 1927 from Occidental College and went on to a Master of Arts degree in Latin American History from Stanford University in 1929, and a Ph.D. in History from Columbia University in 1944.

Dr. Galarza is perhaps best known for his books on farm workers and agribusiness in California. His works include: Strangers in Our Fields (1956), Merchants of Labor (1964), Spiders in the House and Workers in the Fields (1970), Farm Workers and Agribusiness in California (1977), and Tragedy at Chualar (1977). He was also influential in the founding of the Mexican American Legal Defense and Education Fund and the National Council of La Raza. Before his death in 1984 his work focused on transforming those urban institutions that impeded the advancement of Latinos in education, health and the economy.

According to Professor Carlos Muñoz of the University of California at Berkeley, Dr. Galarza left "Chicano scholars with a vibrant intellectual legacy." Dr. Galarza's most cherished dream, Muñoz said, was that someday his people would indeed be the beneficiaries of democracy, freedom and justice.

The Stanford Center for Chicano Research (SCCR) was established in 1980 to promote cross-disciplinary research on Mexican American and
other Latino communities in the United States. The Center supports projects that examine the implications of the expanding presence of Latinos in California, in particular, and the United States in general, as well as the implications of increased diversity among Latinos. Current projects at the SCCR include: Cultural Citizenship; Latino Oral History, The Civil Rights Leadership; Meeting New Needs: Professional Development and Language Minority Children; Multi-Media Database Technology and Chicana/o Art; Pediatric AIDS and Infectious Diseases; and Understanding the Risk of Pesticides to Farm Labor Children.

José Padilla, the director of California Rural Legal Assistance, has been asked to introduce our Galarza Lecturer, Joaquín Avila. In a strange way, as I shall explain, it is fitting that a representative of CRLA introduce Joaquín. Twenty-five years ago, when I was the deputy director of CRLA, José was a student at Boalt Hall and Joaquín was in his last year at Harvard law School. One of my responsibilities was to recruit young lawyers for CRLA, which then, as now, was the preeminent legal services program in the country. We refused to interview applicants at law schools for fear of being overrun by the number of students seeking jobs with us. Instead, we would contact friends on faculties and invite a highly select group of students to interview away from campus. In the case of Harvard and the other East Coast students, we interviewed applicants at a hotel in New York City. Joaquín was one of the students my committee and I interviewed. We were so impressed with him that we engaged in a full court press to convince him to join CRLA, and to our delight, he agreed.

Sometimes however, we can't just leave a good thing alone. Prior to joining CRLA in 1972, I had been a lawyer with MALDEF. I was so taken with the work of that organization that as Joaquín left the hotel, I thought it only fair to tell him that he should consider interviewing with my former colleagues at MALDEF.

Joaquín confirmed his acceptance of our offer shortly after I returned to California. At that time, Joaquín was in Alaska where he was clerking for a justice of the Alaska Supreme Court. I shared the good news with other CRLA lawyers and staff, for I considered getting Joaquín the coup of the interviewing season. But so did my good friend Vilma Martinez, who at that time was on the MALDEF board and was about to become the next MALDEF General Counsel. She used her well known charm on Joaquín, and within a few weeks I got a "Dear Miguel" letter from Joaquín. He hated to break his word but thought that he could do more for Chicanos as a MALDEF lawyer than as a CRLA attorney.

I thought about calling Joaquín to pressure him into keeping his commitment to CRLA. But in the end, I discarded the idea, and in retrospect that turned out to be one of my best moves. Joaquín joined MALDEF where before long he became the country's leading reapportionment lawyer. Though the work we did in CRLA included political rights, as a CRLA lawyer Joaquín would not have had the same opportunities to specialize in one field. Of course, Joaquín's work also benefited our clients at CRLA. Far from being rivals, CRLA and MALDEF have always worked as partners on behalf of Chicanos and other Latinos. So in the end, Joaquín's decision to join MALDEF worked out best for our common cause, so well indeed that today it is especially fitting for a former CRLA deputy director and CRLA's present director to join in paying homage to an outstanding American, a courageous Chicano, and a brilliant MALDEF lawyer, who almost became one of us.
INTRODUCTION

José Padilla
Executive Director
California Rural Legal Assistance

I begin with two vibrant voices that I can assure you with unquestionable certainty will never, ever again be quoted in the same speech...two voices that pursued "revolution" and found it in the daily work of people living someone else's dream.

Inhabiting Hopes

From a fictional Nicaragua, writer Barbara Kingsolver's visionary character Hallie Noline articulated succinctly one social reformer's recipe for a fulfilling life:

"...the very least you can do in your life is to figure out what you hope for. And the most you can do is live inside that hope. Not admire it from a distance but live right in it..."¹

The second voice (now silent) quoted ten years ago I can only assume from some dusty little town in the middle of "Nowhere, Texas," the late Willie Velasquez said about grassroots revolution:

"When we got Mexican-American candidates saying, 'Vote for me and I'll pave the streets', goddammit, that's when the revolution started."²

Buenas tardes. I am honored to be in the presence of Mae Galarza, respected faculty, Stanford students, guests and our commemorative lecturer-Joaquín Avila. I ask you, what do the words and thoughts of a mountain woman writer and a deceased, Chicano grassroots organizer have in common? What does a statement about living inside self-defined hope have in common with a Chicano grassroots politic? The celebrated career of our lecturer is the thread -- a personal hope to be of
service became a career working "inside" the Willie Velasquez aspiration, the community's aspiration to be politically integrated. And Joaquín has lived in that community aspiration throughout his professional life.

This introduction will comment on three things: living out a hope while living in a hope; belligerence; and a word about heroes.

**Hopes of the Poor.** The eighteen years of public interest legal service now weaved into a single career has emblazoned at least one clear observation in my mind about the simple hopes of rural people in poverty. You ask a poor person if he or she harbors a dream, harbors hope. ¿A qué aspiran? ¿De qué sueñan? The consistent reply has been: "We want to own a home; we want our children to receive an education." I tell CRLA housing and education advocates that it is a sacred place to be when one's social activism is played out in delivering on someone else's hopes... when you inhabit another's dream.

**Inhabiting a Community's Vision.** A community, like a person, can carry within it a collective vision and a collective hope. If we are to believe Chicano-Latino activists and scholars, our collective community characterized as minority, marginalized and suborned in the economic and political sense, aspires toward such places of inclusion, that, so long as unattained, are driven by hope. Scholars like our own Professor Luis Fraga, call this collective aspiration, the aspiration of "political integration" or "political incorporation" contemplated in the passage of the Civil Rights Act of 1964. Professor Fraga states:

"...it cannot be denied that the Act had its origins in the hopes and dreams of many disenfranchised individuals who sought to realize the American 'promised land.' More than mere political incorporation, this meant full and equal enjoyment of all the economic opportunities and social benefits of common citizenship."3

Today's honored speaker has been an attorne

ey with one unselfish career aspiration- to obtain for Latinos the benefits of common and meaningful citizenship through electoral accountability coming from electoral redesign.

For an urban teen who almost went wayward into the gang oblivion of "Barrio Tres" in Compton, his uncle Edmundo's modeling of community service led him to broader personal migrations from there to Yale, to Harvard Law, to clerking in the Alaska Supreme Court, to California, to the Texas hinterland and back. With his family's support and great sacrifice—Joaquín told me theirs was a travel intended to be of short stays but converted to long term community fights for political inclusion — I like to think that he didn't go to find Chicano hopes in Texas and elsewhere, the community hopes found him.

For the Centennial High School valedictorian who wanted to be an astrophysicist because he loved science, to a law student who wanted to be an international tax specialist because he loved numbers, Joaquín Avila became instead the Chicano community's "legal cartographer" designing anew political geography by redesigning the voting maps of the Southwest. In doing so, he became not a legal cartographer, not a Latino cartographer, but a Democratic cartographer.

**Birth From Defeat** Joaquín tasted his first voting rights case in hard defeat here in California (against the city of San Fernando) in which the appellate court, for all practical purposes, created an "intentional discrimination" standard difficult to overcome. The Aranda case outcome led him to pursue advocacy in a less strict jurisdiction (the Texas 5th Circuit, undoubtedly with the help of Judge Justice) where MALDEF's voting rights work was five years in progress. But it was not as much a pursuit of vindication born from legal defeat that took him to and kept him in Texas; rather it was the people from the communities in the "Texas backwater" that solidified his conviction to make the electoral system accessible to Mexicano-Tejano communities. This exposure convinced him that his place was among the hundreds of unsung community activists in the 50's and 60's who ran election after election only to find
the taste of electoral defeat. He had found a place where white voters preferred to elect a dead white candidate than a live Latino one. Joaquín, as much as anyone, put he "j" back in democratic "Tejas," making local citizens of Mexicano extraction believe the vote and electoral victory was theirs too.

Mainstream Belligerence

Ernesto Galarza, in a speech commemorated by Antonio Burciaga in Drink Cultura, described "Chicano" this way: "He is ... a Chicano because of his posture in which belligerence, a particular quality of social awareness, a distinct kind of romanticism, is unmistakable." Unmistakably, Joaquín Avila has lived a belligerence intended to compel mainstream Americans (not so disposed) to live up to their democratic promises in their own backyard and, for good measure, their front yards también...

For 22 years, Joaquín has litigated and has led: eleven years as a MALDEF attorney and eleven as a private practitioner; and for three of the MALDEF years, he served as President and General Counsel. Joaquín's vitae describing his case work runs for ten pages with the more than fifty major voting rights cases in which he has participated. His Texas and California cases have challenged just about every map form that could be drawn by an entity intent on excluding Chicano communities from electoral participation — supervisory counties, county commissioner courts, rural towns, metropolitan cities, state legislatures, school, hospital and judicial districts.

For each case, there is a demand to participate by a community in whose name the plaintiff goes forward. The named plaintiffs read like a Calexico telephone directory: Aranda, Armenta, Arriola, Alcaraz, Aldasoro, Cardona, Garza, Martínez, Mendoza, Ramos, Reyes, Terrazas, Trujillo, Trinidad, Silva, Yrigollen, y sigue ... Of the more than fifty, he reports one in Arizona, twenty-seven in Texas, twenty-six in California and about 50% of the reported cases while in private practice!!!

Before the Supreme Court. But as honorable as it is to burden the political hope of a community, it is the utmost privilege as a legal advocate to carry forth the issues of common people, arguing for their political integration before the supreme tribunal of the land. Lawyers are differentiated between those who have argued before the United States Supreme Court and the rest. As Mr. Avila's career indicates, you may be listened to (or rejected without comment) in a writing by the Supreme Court, but for you to have the honor of presenting argument before the Court is a different matter and the pinnacle of any legal career. And of the many, four of his cases arrived but only the last one was heard. The first was Silvia v. Fitch, (1976) the second, City of Lockhart v. U.S. (1983); the third, Gómez v. City of Watsonville,(cert denied; 1989); the fourth López v. Monterey County. More importantly, all four of these cases resulted in legal victories for our community.

The MacArthur Honor. But Joaquín's personal honor has become both a public honor and our own honor. The MacArthur Foundation fellowship received last June was that and more — it saved the mortgage. The familial sacrifice to pursue the empowerment of a community through this work is, itself, a heavy burden. Selling furniture and hawking pamphlets to maintain the practice is not a myth. With no humility nor embarrassment, Joaquín will tell you it is the practical price of living inside a community's aspirations. This is litigation, he says, that costs $15,000 before an advocate can even determine if the case is worth opening; a minimum of $250,000 takes it to trial. CRLA, with Mr. Avila, fought one such case in Imperial County. CRLA's cost was more than $300,000, the school district's more than $1,000,000 - all expended to prevent the guarantee of one of five seats for a Latino in a school district with Latino student enrollment of more that 90%! 
In Honor of Daily Heroes

The ethnic heroes whose names become synonymous with social justice and the incumbent changes that are demanded and sometimes attained, share in this sacred habitation of the other’s dream. They share in the task of bringing their sisters and brothers to a once exclusive table for their hunger and hope to be served. César Chávez told the institution of American unions that farm workers could be organized to sit at the bargaining table of agriculture. Willie Velasquez by way of precinct organizing brought our community to the table of elected officials to join the civic discussion and democratic debate. Joaquín Avila, through his quarter century litigation of redistricting issues in Arizona, Texas and California, tells the institution of American democracy: Latino communities (wherever they exist) are enfranchised, their chosen representatives will be seated, will be heard at the same table set by Willie.

When asked of heroes, Joaquín told me his were his parents, Uncle Edmundo, "people who stick their necks out". But Joaquín Avila is the hero. Maybe unsung or not sung enough. One who is unsung, I’ve determined, is a face that never made it to the table of Burciaga’s Last Supper of Chicano Heroes. But had our cultural hero Tony Burciaga been here in the flesh this afternoon (qué en paz descanse) I am sure he would have said,

"...Este compañero es Joaquín... Y nos ha brindado/he has offered us..." ‘del mero corazón...’ that which comes from a bottomless heart...that which gives valor...that which supports the backbone...that which gives nerve...”9 to our communities.

I dare say, Joaquín, that with life and in due time, Tony would have brushed you onto that wall, somewhere maybe not between Che and César, but perhaps by your compadre, Willie Velasquez. Or, if Tony had read your heart, he would have instead painted you next to Lalo Mañana or Juan Carlos or any one of the other Stern Hall employees who toil in the daily evolution of our integration. As Burciaga explained, the spirit of the Supper was also to serve those heroes in the daily job, like our parents and grandparents, who "scrubbed floors, wept, and fought" so another could sit at tables like these and those, Joaquín, that you alone have set.

It’s been a great honor to introduce you.

Footnotes

2 "All These Guys Owe Willie," by Daniel Pedersen, Newsweek, March 16, 1987. pp. 30-31
3 Luis Fraga and Jorge Ruíz de Velasco, Controversies in Civil Rights (University Press of Virginia, forthcoming 1997).
5 Aranda v. Van Sickle, 600 F.2d 1267(9thCir. 1979) against the City of San Fernando.
8 The Imperial County case was Aldasoro v. Kennerson, Case No. 91-1410B (USDC, Southern District of California 1991).
The State of California is in the midst of a crisis. The crisis involves race relations. This crisis is due to the growing disparity between the benefits received by the Anglo community in California and those benefits received by racial and ethnic minorities. These benefits range from enrollment figures at the state's institutions of higher learning, the distribution of contracts by governmental agencies at the state and local levels, and the area of economic development, to the lack of any meaningful representation on elective governing boards. Quite simply the glaring reality is that the Anglo community receives a far greater share of benefits than suggested by its proportion of the State's population. This growing disparity is a recipe for social disaster in the near future.

Everyone in the state has a vested interest in insuring that our society will be socially cohesive. Such cohesiveness cannot be achieved, however, if economic, educational, and political representation disparities are not eliminated. If these disparities are not eliminated the state will continue to experience greater social unrest and political alienation. This unrest and alienation will not be conducive to the creation of a climate where economic development can occur and where local communities can prosper. On the contrary, this unrest and alienation will ultimately lead to a society which is self-destructive. To avoid such an outcome, strategies must be pursued and implemented to ensure a more equitable distribution of benefits.

I. Fairness

The use of fairness as a guide is a concept which no one should have difficulty in accepting. Yet, the differences in perceptions of fairness by racial and ethnic minority groups and the Anglo community have created divisions within our society that are becoming more difficult to heal. How-
ever difficult it is to understand these perceptions of fairness, we must nevertheless seek to examine this concept and define its various parameters as it relates to our current crisis.

As a neutral principle, fairness, at a minimum, dictates that similarly situated persons and communities should be treated in a similar fashion. The underlying assumption of this minimalist view of fairness is that persons and communities are similarly situated. Without this predicate, the model of fairness simply cannot be applied, since similar treatment to persons and groups which are not similarly situated would be unfair.

Determining the standards for assessing whether persons and communities are similarly situated will vary according to the economic, educational, political and social condition to be evaluated. Although these standards may vary when comparing educational experiences and levels of economic development, the standards to be applied in comparing individuals or groups within a given condition should be the same. Once such standards are articulated and applied, an assessment can be made as to whether an individual or a group is similarly situated.

Another component of fairness is outcome based. Fairness of results is an important ingredient in any fairness model. On a very fundamental level, an assessment of fairness cannot be made unless quantifiable comparisons can be measured. In this manner, disparities in the distribution of benefits can be determined and conclusions regarding fairness can be made.

This simplistic discussion on an abstract level usually results in a general agreement regarding the definition and hypothetical application of a fairness model. However, when applied to the current debate regarding affirmative action, this agreement quickly evaporates. The reason for this discord is that the fairness debate focuses exclusively on an individual perspective. Such a perspective is not consistent with the fairness model articulated above.

This inconsistency is dramatically illus-
enforced by homeowners, real estate agents, and by the state through its court system. The consequence of this explicit policy of segregation was in major part responsible for the creation of ghettos and barrios in California. Moreover, these restrictive deed covenants could be enforced in state courts. It was not until 1948 that such covenants were held to be nonenforceable in state courts by the United States Supreme Court in Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836 (1948).

As a result of this residential segregation neither municipal nor educational resources were distributed evenly. Accordingly, the schools in the predominantly minority communities lacked the equivalent resources with which to provide students with an equal educational opportunity. On the other hand, those students attending predominantly Anglo schools received greater resources and thus were better prepared to meet the challenges posed by standardized aptitude tests. In this respect, generally, an Anglo student with better grades and higher aptitude test scores benefited from the state's history of discrimination against persons of color. Thus the Anglo student secures greater benefits than the minority student and has a comparative advantage in the competition for an admission slot.

In such a scenario, the fairness model simply cannot be applied. The Anglo and minority student are not similarly situated and thus the application of a similar standard which rewards scholastic achievement and high aptitude test scores is unfair. In order to make the student admissions process more fair, action in affirmatively level the playing field must be taken. If the playing field is not leveled, we will begin to see a drop in the number of minority students admitted to institutions of public learning. Such a trend will make even more disparate the educational attainment results of minority and Anglo students.

II. Political Integration and Fairness

This discussion of fairness with respect to education is equally applicable to the political process. When the level of minority elected officials is compared to the minority community's population concentration within the state there is a severe level of under-representation. Out of approximately 2,476 city council members and mayors in California, 228 or 9.2% were Latino in 1996. Similarly, out of approximately 5,303 California school board members, 344 or 6.4% were Latino in 1996. Clearly, such results are not fair. This paucity of elected minority officials at the local level indicates the lack of Latino political integration. The political integration of the Latino community, as manifested by the exercise of the right to vote, is particularly important since such voter participation provides the needed legitimacy and support for the continued viability of our republican form of government. In such a representative democracy, the unfettered exercise of the franchise is critical in electing representatives who will decide the allocation of governmental resources. In addition, exercise of the right to vote serves to preserve other important rights. Although the right to vote is fundamental to our democratic system of government, the struggle to expand this privilege from Anglo propertied males has been long and arduous. However, the struggle is far from over. For the Latino community, racially polarized voting in the context of certain election structures, such as at-large election systems and gerrymandered election districts, continue to have a deleterious effect on Latino voter participation. This adverse impact on Latinos' right to vote only serves to further politically alienate this community from the body politic, and is not conducive to the creation of a more cohesive society.

A. The Importance of the Right to Vote

The exercise of the right to vote is important to the Latino community. This importance is not limited to fulfilling one's civic duty as a citizen. Exercise of the franchise has both a
direct and indirect impact in the distribution of resources and the establishment of local, state, and national policy. For example, the presence of elected representatives who are sensitive to the particularized needs of the Latino community can make a difference in the responsiveness of local school boards. A responsive school board may be more receptive to investing school district funds in literacy programs which seek to teach English to students who are not proficient in such language. The school board may also direct school resources toward reducing the high drop out rate among the Latino student body. Thus, the exercise of the right to vote can have a very direct impact on the responsiveness of local elected governing boards.

Similar impacts can be achieved on state and national elections. However, maintaining the same voter impact will be influenced by many factors, such as the degree of political party identification within the Latino community. Nevertheless, the impact of the Latino vote at all levels of government is becoming significant. As noted by the Southwest Voter Registration Education Project:

Latino voters turned out in record numbers in 1996. Five million Latinos cast their vote in the ’96 Presidential Elections - an increase of 19 percent from the ’92 elections ...


Moreover, Latino votes also carried State Assemblyman Cruz Bustamante to the Assembly Speakership and Assemblyman Antonio Villaraigosa into the Majority Whip posts - both firsts for California Latinos.


Apart from the selection of public officeholders and the impact on the distribution of resources, exercise of the right to vote is important because it creates opportunities for the development of leadership and institutions within the Latino community.

The development of leaders and institutions within the Latino community is critical for addressing present and future challenges. Institutions, as utilized in this lecture, refer to organizations, groups of organizations or people who have the ability to define a problem, to propose a solution to the problem, to develop a plan of action to address the problem, to identify those parts of the solution which the institution can address, to channel resources and to leverage other institutions to complete that part of the solution previously identified, and to develop a base of community support for future action and for the formation of other institutions. Institutions can provide the necessary resources for resolving equity issues. Institutions can also leverage other political, educational, and economic institutions to address problems confronting the Latino community.

Leaders play an important role in the development and maintenance of institutions. There are, of course, different types of leaders. Persons who have expertise in a given area and can assist in the articulation of an equity issue are leaders; persons who can manage resources toward a given objective are leaders; and persons who can provide guidance and command a following are leaders. The Latino community needs persons who can assume these leadership roles and thereby become involved in the process of building institutions.

For the Latino community, participation in the political process is one avenue for the development of leaders and institutions. Both successful and unsuccessful campaigns involve processes which are very similar to the creation and maintenance of institutions. Persons involved in campaigns have to realistically assess the political environment; they must determine where in the electoral district the candidate can receive the greatest support; they must then formulate plans to conduct media campaigns to publicize the candidacy; they must gather financial and other resources to implement their plans for the campaign; in local campaigns, they must organize groups of volunteers to register voters or to target voters for election day. Such a campaign process provides a unique opportunity for persons within the Latino community to acquire experiences and skills which can then be transferred to other projects.
Appointments to advisory boards and commissions provide another invaluable opportunity for the development of leadership. Appointments to such boards and commissions can serve as a training ground and can expand the network within a local Latino community. The skills which can be acquired by serving on these public boards include public speaking, conducting meetings, and managing available resources and time, among others. Board members can then transfer these skills to other community projects.

In summary, participation in the political process can encourage the development of leadership and institutions within the Latino community. By exercising the right to vote, the Latino community can provide an environment for potential community activists to become involved. These activists in turn can provide input into the creation and maintenance of institutions. By exercising the right to vote additional leadership can also be developed by applying pressure to state and local governmental entities to appoint Latinos to advisory boards and commissions.

The development of leaders and institution building is critical for effectively influencing the responsiveness of governmental entities at both the national and local levels. Since our form of national and local governments operate within the context of a system of checks and balances, the Latino community needs leaders and institutions not only to curb the potential abuses of majoritarian rule, but to create an environment in which the full potential of the Latino community can be utilized. As utilized in this lecture, the concept of checks and balances is not merely limited to the ability of coequal branches of our federal government to provide checks on their abuses. Rather, the concept applies to the ability of institutions within our society to restrain the dominance and abuses of other institutions. Thus, state and local governments may provide an effective restraint against particular policies of the federal government.

As a numerical minority, the Latino community has no alternative but to develop its own institutions, which can then serve to leverage other resources to promote the advancement of this Latino community, as well as to check the abuses of the majority. This strategy to create resources, to leverage dominant institutions, to develop leadership, and encourage the development of community institutions in order to effectively maximize the impact of the Latino community in these systems of checks and balances, is consistent with the founding principles of our republican form of government.

A fundamental principle embodied in the United States Constitution is the separation of legislative, executive, and judicial powers. The concept of checks and balances is an important corollary of this fundamental principle. The separation of powers and the accompanying checks and balances were initially incorporated in the colonial governments. Subsequently several of the independent states formulated constitutions based upon these principles. Thereafter, the framers of the United States Constitution also incorporated these principles into the Constitution. The basic purpose of these principles was to prevent an oppressive central government and a tyranny of the majority. Although the Constitution was viewed by many as an eloquent statement on the role of a central government, there were critics.

Moreover, some commentators feared that the excesses of the democratic process could result in a tyranny of the majority. Nevertheless, the concepts of the separation of powers and institutional checks and balances have continued to provide this country with the necessary mechanisms for restraining excesses in the exercise of power.

However, not all excesses have been restrained. These theoretical concepts are not self-executing nor absolute, since these principles involve mechanisms, not substantive rights. They operate within a societal climate which often determines the parameters of a permissible exercise of power. For example, despite all the noble language concerning equality in the Declaration of Independence, the equality ideals only referred to white males. Yet, as mechanisms, these concepts offer an opportunity to the Latino community to influence the responsiveness of the dominant political, educational, and economic institutions.
The concept of checks and balances is not limited to departments within the federal government. As previously discussed, the concept offers the opportunity for institutions within the Latino community to leverage other institutions to restrain the exercise of excessive governmental power. The Latino community can maximize this opportunity within the present societal climate.

Our society is undergoing tremendous changes. Various of these societal trends will have a significant impact on the Latino community. The shift to an information society and the continued decentralization of governmental influence are two major trends which provide an opportunity for the Latino community to utilize the mechanism of checks and balances to their advantage in its quest for equity in the distribution of resources and benefits.

In an information based society, information is power. Information is a resource which will have an important impact on the ability of the Latino community to secure access to the political process, equal educational opportunities, and economic development. Such a resource can serve as an essential check and balance against the exercise of excessive power. For these reasons, access to information is a critical equity issue for the Latino community.

The shift in influence from the national government to state and local governments is also of particular importance to the Latino community. The Latino community will have greater opportunities in leveraging state and local governments. Particular emphasis should be focused at the local government level. As noted by de Tocqueville many years ago:

Yet municipal institutions constitute the strength of free nations. Town meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions it cannot have the spirit of liberty.

In the context of these societal trends, the Latino community through the exercise of the right to vote can maximize its impact on the political process. To maximize such impact, however, the exercise of the right to vote must be effective. Effective exercise of the right to vote is not limited only to permitting Latinos the right to register and cast ballots. The right to vote can be denied when the election system permits the factor of race to defeat the choice of the minority community. There are many ways in which the election structure can operate to discriminate against the voting strength of the Latino community. However, as previously identified, the major obstacles are gerrymandered districts and at-large elections in the context of racially polarized voting.

Gerrymandered districts can operate in a discriminatory manner by either dividing the voting strength of the Latino community or by over-concentrating their strength in a given district. This, of course, assumes that the community is geographically concentrated within a given area of the political entity. In addition, the Latino community must be politically cohesive. Such cohesion is evidenced by demonstrating that the Latino community has voted for similar interests and candidates over a period of time. Finally, there must be racially polarized voting.

Gerrymandered districts in some Latino communities have prevented the election of minorities to public office. Perhaps the most significant challenge to a gerrymandered district was the successful litigation against the Los Angeles County Board of Supervisors. As a result of a joint effort by the United States Department of Justice, M.A.L.D.E.F., the A.C.L.U., and private attorneys, a Latina, Gloria Molina, was elected to the Los Angeles Board of Supervisors. Prior to the litigation, there was no Latino representation on the Board of Supervisors for over a hundred years. A similar result was obtained in Monterey County.

Presently, the major obstacle preventing the Latino community from having access to the political process is the use of at-large elections by municipalities and school districts. In an at-large election system, there are no districts. Thus, a candidate can reside anywhere within the political jurisdiction; moreover, everyone in the political jurisdiction can vote for the candidate. If the Latino community is a geographically concentrated numerical minority, and there is racially
polarized voting, the voting strength of the Latino community will invariably be canceled out. Since over 85% of the school boards, municipalities, and special election districts in California utilize at-large election schemes, this electoral device is clearly the most significant obstacle in preventing the political integration of the Latino community at the local level.

In this category, the most significant lawsuit challenging an at-large election involved the City of Watsonville. Watsonville is a small agricultural community in Santa Cruz County. Prior to the initiation of the lawsuit in 1985, Latinos comprised about 50% of the city's population. In the city's entire history, there had never been a Latino elected to the City Council despite many attempts. As a result of the Voting Rights Act and an appellate court ruling, the City of Watsonville had to implement a district based election system. There are now three Latinos serving on the City Council.

These recent court cases may suggest that efforts by the Latino community to secure access to the political process occurred within the recent past. In California, most of the litigation challenging at-large elections and gerrymandered districts did indeed occur after the filing of the Watsonville case in 1985. However, the struggles of Latinos seeking political integration commenced in the 1860s.

B. History of Latino Political Participation in California.

Despite the history of voting discrimination which started after the Treaty of Guadalupe Hidalgo in 1848 and the Gadsen Purchase in 1854, Mexican Americans were successful in some instances in both local and state elections during the 1800s. After the Mexican American War, Mexican Americans in the Southwest were first incorporated within the governmental structure of the United States, where they were "quickly conquered [and subjected to an ] alien political system in an alien culture." In California, the Gold Rush caused the Anglo population to increase at the expense of the Mexican Americans, reducing their political influence in California politics. Prior to the Mexican American War, the Mexican American population constituted nearly all of the population of California. With the gold rush, the percentage of Latinos during the time period of 1850-1870 dropped from fifteen percent to four percent. With this drop in population percentage, Mexican American statewide political influence also dropped. For example, in 1849, out of the 48 delegates who were charged with the responsibility of drafting the constitution, 8 were Mexican American. Yet, from 1850 to 1870, only four Mexican Americans served in the state legislature.

During the 1850s Mexican Americans in Southern California were successful in securing positions such as "...tax assessors, election referees, surveyors, court clerks, and translators; as party delegates and national committeemen; as town constables, councilmen, and mayors; as assemblymen and senators; as trial jurors and coroner's jurors; and as justices of the peace, judges of the plains, and district judges." Mexican Americans were also successful in areas such as Santa Barbara. Since the Mexican American population constituted a majority of the voters, they elected Mexican American representatives. Racial bloc voting usually occurred when Anglos sought public office. As noted by a local prominent Anglo:

The Americans have very little influence in the elections, but in a few years they will have all the power and they won't consult the Californians about anything... The Californians have a majority of the votes. When they are united [which was usually the case when an Anglo and Mexican candidate vied for the same position] they can elect whomever they wish.
However, this Mexican American dominance of political affairs in California was short-lived. In Santa Barbara and in Los Angeles, the substantial increase of the Anglo population resulted in a decrease in the Mexican American electorate. For Santa Barbara, a major turning point was the 1874 city elections which resulted in the first Anglo mayor and the political demise of the Mexican voting bloc.\textsuperscript{32} The Anglo political forces sought the reincorporation of the city. In an unusual twist, as part of the reincorporation effort, the method of election for the city council was changed from an at-large election scheme to a ward or single-member districting scheme. Under the at-large election scheme, the Mexican American community exercised greater control by selecting a greater number of city officials. However, under the new districting plan, the Mexican American community was relegated primarily to one district. Thus, the Mexican American community which previously had an impact on the selection of the entire city council was confined to the selection of one city council person:

The new wardship system brought to an end the influence Chicanos once wielded in local general elections; now they were able to elect only one city councilman, whose voting power was negated by a four-to-one margin.\textsuperscript{33}

A similar political disenfranchisement occurred in Los Angeles as a result of the influx of Anglos: "The decline in the number of Mexican voters, and an unstable electorate because of high rates of transiency, contributed to the loss of political influence."\textsuperscript{34} Apart from the demographic changes and changes in the manner of electing public officials, two other events may have also contributed to the political disenfranchisement of California's Mexican American community during the latter part of the 1800s. The first event occurred with the adoption of the California Constitution of 1879 which rescinded the requirement of publishing official documents in both English and Spanish. Initially the Constitution of 1849 mandated such a requirement. However, the Legislature and local governments soon ignored this requirement.\textsuperscript{35} Thus any documents relating to elections were not published in Spanish. The presence of an English only election process undoubtedly contributed toward the political alienation experienced by the Mexican American community. This alienation was further exacerbated by the adoption in 1896 of an English literacy requirement in order to vote. The literacy requirement was aimed primarily at the Asian population.\textsuperscript{36} According to historical accounts,\textsuperscript{37} the English literacy requirement was not used until the 1950s and 1960s when the requirement was directed against the Mexican American population. However, the absence of historical accounts does not automatically mean that the literacy requirement was not utilized in local elections during the late 1800s and early 1900s. Additional research into historical archives and local newspapers is required to ascertain whether the English literacy requirement was utilized as an additional tool in some communities to further disenfranchise the Mexican American population in California during this time period.

The English literacy requirement was successfully challenged in state court. Castro v. State of California, 2 C. 3d 223, 85 Cal.Rptr. 20, 466 P.2d 244 (Cal.Supreme Ct. 1970). However, the case only challenged the exclusive use of English for determining whether a potential voter met the literacy requirement. Castro did not involve a direct challenge to the literacy requirement itself. Thus literacy tests in Spanish were permissible under the Castro decision. Amendments to the Voting Rights Act in 1970 resulted in a five year suspension of all literacy requirements throughout the United States. The ban on literacy tests became permanent during the 1975 Amendments to the Voting Rights Act.

This cursory review of Mexican American...
political participation during the time period following the Mexican American War demonstrates that the Mexican American community was indeed very actively involved in local and state elections at a very early stage in this country's history. Electoral participation simply did not begin in the 1960s with the most recent civil rights movement. Rather, electoral participation by the Mexican American community at the state and local levels began when the governments were reorganized following the War. In California a combination of demographic shifts and changes in the manner of election, coupled with an English only election process, served to disenfranchise a once politically active community. This history demonstrates that non-participation by the Hispanic community during the latter 1800s and early 1900s was not due to either apathy or lack of understanding of the electoral process. On the contrary, there were barriers erected to prevent and discourage Mexican American political participation. This documented history further demonstrates that the Mexican American community was well aware that representation on local governing boards was important. Local governing boards back then, as in the present, perform many functions and exercise many responsibilities which have a direct impact on the Latino community.\(^\text{38}\)

This history of voting discrimination in California provides a useful context for the present impact of the Latino community on state electoral politics. At this stage in Latino political empowerment, there are two forces which will continue to increase the voting clout of Latinos: the growth in the eligible voter population and voting rights litigation. In California the Latino population has increased from 6.5% in the 1930 Census\(^\text{39}\) to 19.2% in the 1980 Census to 25.8% in the 1990 Census.\(^\text{40}\) The increase in the native-born Latino eligible voter population augmented by the substantial increase in naturalization rates by Latino resident aliens combined to produce a substantial impact on the 1996 elections. Another major factor in this increased political clout was the extensive registration drives sponsored by organizations such as the Southwest Voter Registration Education Project. According to figures provided by Southwest, this organization was responsible for adding 95,000 additional voters in nine southwestern and northwestern states.\(^\text{41}\) Presumably as more Latinos reach eligible voter status and more Latinos become naturalized and registered to vote, their level of political participation will increase.

This increase in Latino political participation will have a greater impact on federal and statewide elections than in local elections. Most of the local municipal, school district, and special election district elections are conducted on an at-large election basis. In comparison with the total number of such jurisdictions, there are a small number of jurisdictions which approach a fifty percent eligible voter population. Thus, increases of Latino registered voters will permit local Latino communities to increase their impact in local elections, but they will not be able to elect candidates of their choice if there is racially polarized voting present. Where racially polarized voting is a political reality, the only means available to remove a discriminatory at-large election system is through litigation conducted pursuant to the Voting Rights Act.\(^\text{42}\) This will provide meaningful access to the political process for local Latino communities.

C. Voting Rights Act Litigation in California.

Nationally, enforcement of the Voting Rights Act has been accomplished through private attorney enforcement. According to statistics provided by the Administrative Office of the United States Courts, a significant number of voting rights cases have been filed by private parties (see Table 1).

During this fifteen year period from 1977-1993, private cases comprised 91.7% of the total voting cases filed in federal courts. The statistics
presented in Table 1 encompass all voting rights cases. Consequently, some of these cases may represent actions to enforce the one person one vote principle, actions involving political parties, constitutional challenges involving independent candidacies, etc. However, a substantial portion of these cases represent cases filed to protect the voting strength of racial and ethnic minorities.

As noted in the table, private enforcement is the primary means of protecting the right to vote. In *Controversies in Minority Voting* (B. Grofman and C. Davidson, eds., The Brookings Institute, 1992), Gregory A. Caldeira, in his chapter titled "Litigation, Lobbying, and the Voting Rights Bar" (at p. 241) recognized the important role that the private voting rights bar had on enforcement of the Voting Rights Act:

> Members of the voting rights bar outside the federal government constitute perhaps 95 percent of these [voting rights] cases in any particular year. Enforcement of voting rights is, therefore, very much an activity of the private sector.

A "voting rights bar" has been directly responsible for the successful enforcement of the Voting Rights Act. Such a voting rights bar has consisted of government attorneys, private attorneys, expert witnesses, and advocates. As noted by Gregory A. Caldeira:

> Litigation has played a crucial part in the successful implementation of the Voting Rights Act. Indeed, litigation on voting rights has developed into something of a cottage industry, and I would argue that a 'voting rights bar' has sprung into being. This bar encompasses private attorneys, interest groups, attorneys for the federal government, expert witnesses, and consultants. It has enjoyed an impressive record of success, even in the face of federal courts that can be unreceptive to liberal causes. (*Controversies in Minority Voting*, supra, at p. 230).

Although such a voting rights bar may exist in other parts of the country, in California and in the states encompassed by the United States Court of Appeals for the Ninth Circuit, there is no private bar for voting rights cases. There is only a single private attorney with a practice consisting exclusively of representing racial and ethnic minorities in voting rights cases. The necessity for the development of a private voting rights bar in California and in the states encompassed by the Ninth Circuit cannot be overstated, since there are many racial and ethnic minority communities which need the services of a voting rights bar. Although the need for an active voting rights private bar is clear, the number of actions to enforce the Voting Rights Act at the local level in California has been minuscule. The first successful action against the City of Watsonville was completed (Gómez, supra, note 9) in 1988. Since then, there have been twenty-three actions to enforce the Voting Rights Act in California:

1) Armenia v. City of Salinas, Civ. Act. No. C-88-20567 WAI (N.D.Cal. 1988) (successfully settled at-large election challenge against the City of Salinas);

2) Reyes v. Alta Hospital District, Civ. Act. No. CV-F-90-620-EDP (E.D.Cal. 1990) (successfully settled at-large election challenge against the Alta Hospital District, a special election district);

3) Reyes v. City of Dinuba, Civ. Act. No. CV-F-91-168-REC (E.D.Cal. 1991) (successful at-large election challenge against the City of Dinuba);


(E.D.Cal. 1991) (successfully settled at-large election challenge against the Dinuba Elementary School District);


9) Martínez v. City of Bakersfield, Civ. Act. No. CV-F-91-590-OWW (E.D.Cal. 1991) (redistricting action against the City of Bakersfield was voluntarily dismissed without prejudice);

10) Ruiz v. City of Santa Maria, Civ. Act. No. 924879 JMI (SHX) (C.D.Cal. 1992) (at-large election challenge filed by M.A.L.D.E.F. against the City of Santa Maria; adverse ruling currently on appeal);

11) Trujillo v. State, Civ. Act. No. C-92-20465 RMW (EAI) (N.D.Cal. 1992) (challenge to the at-large election system used to select Judges to the Monterey County Superior Court was voluntarily dismissed without prejudice);

12) González v. Monterey County, 808 F.Supp. 727 (N.D.Cal. 1992) (successful action challenging the 1991 districting plan for the Monterey County Supervisor Districts);

13) Cardona v. Oakland Unified School District, City of Oakland, 785 F.Supp. 837 (N.D.Cal. 1992) (filed in 1991) (unsuccessful action to enforce the one person one vote principle);

14) Mendoza v. Salinas Valley Memorial Hospital District, Civ. Act. No. C-92-20462 RMW (PVT) (N.D.Cal. 1992) (at-large election challenge against the Salinas Valley Memorial Hospital District was subsequently voluntarily dismissed without prejudice);


16) Monterey County v. United States, Civ. Act. No. 93-1639 (CCR) (D.D.C. 1993) (defendant-intervenors in this Voting Rights Act declaratory judgment action filed by Monterey County seeking judicial approval of a series of judicial district consolidations for the Monterey County Municipal Court District; case was voluntarily dismissed);

17) Valenzuela v. Coalinga-Huron Unified School District, Civil Action Number Not Available (E.D.Cal. 1988) (successfully settled at-large election challenge to the Coalinga-Huron Unified School District);

18) Soria v. City of Oxnard, Civ. Act. No. 90-5239 R (C.D.Cal. 1990) (at-large election challenge against the City of Oxnard was voluntarily dismissed);

19) Pérez v. City of San Diego, Civ. Act. No. 88-0103 RM (S.D.Cal. 1988) (challenge to election system used to select City of San Diego council members; settled after passage of city measure);
20) Skorepa v. City of Chula Vista, 723 F.Supp. 1384 (S.D.Cal. 1989) (unsuccessful challenge to the at-large election system used to select members to the City of Chula Vista City Council);

21) Valladolid v. City of National City, 976 F.2d 1293 (9th Cir. 1992) (unsuccessful challenge to the at-large election system used to select members to the city council for National City);


In summary, there have been a total of 23 voting rights cases filed after the appellate decision in the City of Watsonville case in 1988 to the present. These were filed by private attorneys or civil rights organizations involving local jurisdictions in California. This total number only includes cases filed on behalf of racial and ethnic minorities to enforce their voting rights. Table 2 lists the number of these voting rights cases filed by year since 1988.

When compared to the total number of voting cases filed by private parties during the time period from 1988 to 1993 listed in Table 1, Table 2 dramatically illustrates the paucity of actions to enforce the Voting Rights Act at the local level in California: according to Table 1 there were 1,449 voting cases filed by private parties across the country compared to the 23 such cases filed in California. Private attorneys are simply not filing any voting rights actions in California.

There are several reasons for the reluctance of private attorneys to file voting rights cases in California. These cases are undesirable to attorneys because the voting rights actions subject both the clients and the attorneys to unfavorable publicity and in some instances to public ridicule. Nationally, the issue of enforcement of the Voting Rights Act is not a popular one. See, e.g., "Clinton's diversity enforcers are on the case in Arizona," George Will, S.J. Mercury News, March 13, 1995, p. 7B (efforts to enforce Section 5 in Arizona trial court elections subjects Deval Patrick, head of the U.S. Department of Justice, Civil Rights Division, to charges of extremism in the "politics of diversity-mongering").

Voting rights cases often result in a redistribution of political power. Such a redistribution in many communities is highly controversial and consequently these voting rights cases are often reported in the local and national media. Even a local voting rights action case filed against the Monterey County Municipal Court District made the editorials of the Wall Street Journal. "The Last Frontier," The Wall Street Journal, May 3, 1993, p. A16. Given the current climate against any programs which are perceived to provide preferential treatment to racial and ethnic minorities, voting rights cases and their resulting creation of minority electoral districts can subject attorneys to negative publicity. This adverse publicity contributes to the undesirability of voting rights cases.

Pursuing voting rights cases for minorities in California can subject an attorney to unfavorable publicity and name calling. For example, in the Alta Hospital District case, a federal court awarded attorney's fees for the successful settlement of an at-large election challenge. Although the case resulted in the implementation of a district based election system and an increased Latino representation on its governing board, the letters to the editors were not pleased with the award of attorney's fees. A letter written by Leroy Pollard from Rodeo, California, stated:

Lawyer Joaquin Avila of Milpitas has collected $280,000 for settling a suite (sic.) against Alta Hos-
pital in Dinuba. Does it surprise anyone that money-hungry Avila is back to take his loot from the school district?

Piranha shysters like Avila care nothing for the causes that feather their nests. As long as stupid or self-seeking characters follow, Avila will laugh all the way to the bank.

In America, we elect our representatives. The thugs in Dinuba want to introduce un-American vehicles. Reasonable citizens should never give in to scoundrels like lawyer Avila and MAPA. (Delano Record, January 30, 1992, p. 5A).

Numerous other articles questioned the motivation of attorneys seeking to enforce the Voting Rights Act. See, e.g., "Shafter to decide on district wards," The Bakersfield Californian, Sept. 19, 1992, p. B7 "My question was whether there was a real intent for the interests of the community or whether the real intent was financial" (statement by Mark Fabrizio, superintendent of the Dinuba public schools); "Dinuba voters' lawsuit marks wider trend in state," The Bakersfield Californian, Jan. 20, 1992, p. B2 "Are their interests really voters rights? Do they want what's best for the community?" Fabrizio asked. "No, they want their legal fees. Most people can see through that haze."

Filing cases on behalf of racial and ethnic minorities to enforce the Voting Rights Act can subject an attorney to negative and adverse publicity in the local community. For example in the López v. Monterey County litigation, the former Presiding Judge of the Monterey County Municipal Court District, Judge Alan Hedegard, filed a document with the Court which can at a minimum be characterized as unfair, inaccurate, and highly inflammatory. In his Proposed Brief Amicus Curiae and Exhibits, service dated March 25, 1994, Judge Hedegard accuses plaintiffs' attorney of holding Monterey County "...hostage by the cost factor of unconscionable attorney fees ..." Judge Hedegard continues, "Plaintiff's attorney has forced Monterey County to recommend a solution that violates the California Constitution using the threat of exorbitant attorney fees as persuasion. Judge Hedegard also accuses plaintiffs' attorney and Monterey County of "collusion". Finally, Judge Hedegard invokes God to protect Monterey County from plaintiffs' attorney voting rights lawsuits: "God save us from such an inspector."

Such negative criticism clearly is not conducive to encouraging local attorneys to file cases on behalf of racial and ethnic minorities to enforce the Voting Rights Act. Local adverse publicity can often affect the ability of local attorneys to maintain their private practice. In Monterey County, there have been several actions, apart from the present López action, to enforce the Voting Rights Act. In only one, the first case filed in 1988, did a local attorney in Monterey County actively participate as co-counsel. Armenta v. City of Salinas, supra. In subsequent cases, no local attorneys became involved because of the undesirability of voting rights cases (Trujillo, supra; González, supra; Mendoza, supra).

Local counsel in Monterey County view voting rights cases as undesirable because of the intense local adverse publicity associated with voting rights cases. As the 1994 past President of the Monterey County Bar Association stated, "It would be an understatement to say that these cases have generated intense hostility not only in the general community but even within our local community in Monterey County." Declaration of Luis C. Jaramillo, 5 (hereinafter cited as Jaramillo Decl.). Local counsel, particularly in challenges to the method of electing local judges, are reluctant to become involved because of the impact such a suit would have on their working relationship with the local judiciary and on the adverse impact such involvement would have on their ability to maintain a private law practice. Declaration of Philip J. McGuire, I4. This concern is forcefully stated by local counsel:

There is no doubt in my mind that these two
judicial cases [challenge to Monterey County Superior Court, Trujillo v. State, and challenge to Monterey County Municipal Court District, López] as well as other voting rights cases in Monterey County are unpopular and undesirable to the general public. Voting rights cases in Monterey County generate a lot of publicity. Much of this publicity is not conducive to building and maintaining a county wide client base and could adversely affect my law practice.

Id., 15. There are now no local attorneys in private practice who are willing to file voting rights cases in Monterey County. Local attorneys do not have the resources, technical expertise, or willingness to suffer adverse publicity generated as a result of filing voting rights cases in Monterey County. Id., I 6. See also Jaramillo Decl., f 6 ("Proper litigation of this type of case demands lawyering that is both expert and noble. The time, energy and resources required for the adequate presentation of these highly charged and technical issues to the Court requires a focus to the exclusion of other cases which are not only potentially more remunerative but also so much easier."). Although there continues to be a need for enforcement of the Voting Rights Act in Monterey County, there is no incentive for members of the local bar to initiate any such actions. Id., f 7 ("But for a serious passion for justice and a willingness to take seriously one's duty as an officer of the Court, one can find little to recommend accepting the tremendous responsibility for properly presenting this kind of intense, technical case while risking one's reputation and earning capacity.").

Voting rights cases are also undesirable because the issue of voting rights for racial and ethnic minorities in California is controversial. For example, when the Latino community disagreed with the appointment of a certain Latino to the Richland-Lerdo School Board and exercised their right under state law to challenge the appointment, the local Latino community was subjected to adverse editorials in the local newspaper. See, e.g., "Petition against Melero will cause division," Shafter Press, July 8, 1992 ("While the petition falls completely within the guidelines of the law, it smacks of a desire to circumvent the democratic process for the sake of gaining political clout and should be condemned as nothing more than a power play ... They (Latino leaders) are not concerned with rational, responsible dialogue as a means of solving specific problems ... Emotional blackmail is often one of their tools and the leaders of these groups are experts when it comes to exploiting the weaknesses of a community").

In Dinuba, California Latino parents attempted to persuade the Dinuba Elementary School District to settle a voting rights challenge to the at-large method of election, Reyes v. Dinuba Elementary School District, supra. However, the attempt resulted in a confrontation and several of the Latino parents were arrested. The parents claimed that excessive force was used. "Protestors charge Dinuba brutality," Visalia Times Delta, Jan. 8, 1992, p. 1A. At that time the efforts of local Latino parents to advocate a settlement to the voting rights litigation were unsuccessful. In protest, some parents initiated a boycott of local schools. This boycott was portrayed in a negative light by local newspapers (Editorial Cartoon, Fresno Bee, Jan. 11, 1992). The ensuing local marches revealed that the Anglo and Latino communities were polarized. At one such march, an Anglo counter-protester brought a large Rottweiler dog because the protester "... lived around Mexicans and knew they all had knives and guns." "Over 700 March Through Dinuba," Dinuba Sentinel, Jan. 16, 1992. Such a disparaging view of Latinos is not limited to this single Anglo counter protestor. In another context, Assemblyman Phil Wyman, from Tehachipi, used the term "wetback" in a discussion relating to reapportionment. "Wyman apologizes for using word 'wetback'," Bakersfield Californian, Oct. 10, 1991.

Voting rights cases are also undesirable because these cases often subject clients to unfavorable press coverage and actions by local government officials which seek to intimidate the clients into a dismissal of the litigation. For example, in an at-large election challenge to the
Cutler Orosi Unified School District (Espino v. Cutler-Orosi Unified School District, supra), the school superintendent sent out a letter to students, parents, and faculty, presenting a description of the litigation. The letter is a one-sided presentation of the litigation reflecting the opposition of the school district to the at-large election challenge. Although the names of the plaintiffs are a matter of public record, including their names in this letter and criticizing them by name only served to place the plaintiffs in a negative light and expose them to potential harassment without a corresponding opportunity to present the reasons why the litigation was filed. The superintendent was critical of the plaintiff's decision to initiate litigation: "Voting rights are very important! However, it is unfortunate that Mrs. Espino and Mrs. Rodríguez have chosen to file a lawsuit, instead of trying to work with the school board which would have cost little or nothing to the school district" (Superintendent Letter dated January 28, 1992). The superintendent's letter served notice to the Latino community that any future litigation against the school district would result in a similar letter.

Even federal judges have not escaped any criticism for issuing rulings which protect racial and ethnic minority voting strength. As noted in an editorial in the Shafter Press, June 29, 1994, p. 6A:

With increasing frequency, judges — usually those on benches in the City by the Bay — find it is their right, nay, their duty, to circumvent the democratic process by handing down a left-leaning ruling which would never see the light of day if put in the hands of voters.

It is unfortunate but true.

The real possibility exists that the mandate of the people will be ignored.

So much for democracy.

This summary of voting rights litigation in California presents a tragic paradox for the Latino community. On the one hand, the only avenue available for local Latino communities to eliminate discriminatory election systems is by litigation conducted pursuant to the Voting Rights Act. On the other hand, voting rights litigation is highly unrewarding. Such litigation is often complex and expensive. But more significantly, such litigation results in a barrage of adverse publicity which can affect a local attorney's ability to maintain a viable law practice. This adverse publicity can also result in the harassment of local clients. The result is the absence of a private voting rights bar which can institute litigation in the scores of communities where racially polarized voting exists. And the cycle of political underrepresentation continues.

III. Voting Rights Litigation Strategy.

The voting rights litigation strategy is fairly straightforward. Litigation challenges to discriminatory at-large election systems and racially gerrymandered election districts should continue. These challenges should include litigation against judicial districts and water and irrigation districts in the California central valley. The ultimate goal is to eliminate as many discriminatory at-large election systems as possible by the year 2012.

A. Continued Challenges Until the Year 2000.

For the remaining three years left in the decade of the 1990s, if any litigation to enforce the Voting Rights Act is initiated, it will more than likely involve a challenge to an at-large election district. Challenges to election districts, such as supervisor districts, are highly unlikely since most of the egregious gerrymanders have been litigated. Civil rights organizations in California should pool their resources and select 1 or 2 at-large election jurisdictions for potential litigation. Rather than initiating a series of lawsuits, civil rights organizations should conserve their resources in anticipation of the potential challenges following the
redistrictings after the publication of the 2000 Census. The concentration of these organizational resources in a few selected lawsuits will insure adequate resources to undertake the extensive research required for these at-large election challenges. In addition, funds should be set aside to advance fees to private attorneys who are willing to be trained as voting rights attorneys.\(^{45}\)

The primary objective of this training of private attorneys is to establish a voting rights bar. By gradually involving a private attorney in certain discrete projects, the attorney will gain a familiarity with voting rights cases. And by carefully selecting voting rights cases to increase the probability of success, the private attorney can collect attorney's fees which can be repaid to a civil rights organization to the extent that the organization had advanced fees. In order to create and maintain a private voting rights bar, financial incentives must be provided. If the financial incentives are insufficient there will be no voting rights bar. Hopefully both the private bar and the various civil rights organizations, along with community based organizations, will be creative in providing these financial incentives. Without these financial incentives there will be no private bar to provide assistance to local communities during the upcoming redistrictings of congressional, state senatorial, state assembly, county supervisorial, city council, school board, and other governmental election districts.

These challenges to at-large election districts should include judicial elections. Many of the municipal court judges and superior court judges are elected on a countywide basis. If racially polarized voting is present, there will be an absence of minority judges. A recent survey conducted by the California Judicial Council documented the alarmingly low representation of Latino judges serving as municipal court and superior court judges for the year 1993: 89.4% of the superior court judges are Anglo and 4.3% are Latino; 84% of the municipal court judges are Anglo and 6.8% are Latino (Draft Report to the Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1995, Appendix C). In some instances the lack of minority representation on the state's trial courts is the election structure and the failure of state governors to appoint minority judges.\(^{46}\)

The presence of minority judges is of special significance to the Latino community in California, the home state of the initiative process. The right of initiative and the increased computerization of the electoral process will result in the enactment of legislation which may not be in the best interests of the Latino community. The Latino community will need judges who are sensitive to their rights and who can provide protection against the tyranny of majority rule.

1. Initiatives and Computers

The initiative process permits individuals to secure the passage of specific legislation by means of an election. As envisioned by the proponents of this initiative movement, the initiative was an excellent device to promote the will of the people:

Its [initiative] fundamental aspect was a profound attachment to the principles of democracy, and its platforms consisted of certain specific measures calculated to make government more responsive to the popular will and others designed to implement the equalitarian doctrines of democracy. Into this general pattern the initiative and the referendum fitted perfectly and furnished concrete proposals which could readily be advocated most persuasively. Through these devices, so it was contended, "the people could rule." By the referendum, the people could veto acts of the legislature contrary to the public interest. Through the initiative, the people could enact laws denied them by legislators unresponsive to popular demands.\(^{47}\)

This device for the expression of the will of the people has been incorporated in many state constitutions.\(^{48}\)

Although promoted as a device to improve governmental responsiveness, the initiative has become in some instances a tool for the implementation of public policy which would have a discriminatory effect on minorities. In addition, the device is accessible only to those political groups
which have the financial resources to underwrite the costs of gathering the required number of signatures to qualify a particular measure for the ballot.

The initiative represents the best opportunity for the tyranny of the majority to suppress the rights of minorities. The classic example of such tyranny was Proposition 14 in the California elections for 1964. Proposition 14 sought to limit the effects of state laws which prohibited racial discrimination in the sale, rent, or lease of real estate. Proposition 14 would permit landowners to transfer such property to anyone the landowner "... in his absolute discretion, chooses." Thus Proposition 14 would permit racial discrimination in the sale, lease, or rent of property. The electorate in California approved the proposition. Fortunately, the California State Supreme Court and the United States Supreme Court invalidated the initiative. Similar expressions of popular will have resulted in declarations that bilingual ballots should be eliminated, that undocumented persons should be denied educational and social services, and that the state must eliminate affirmative action programs.

Recently these devices for expression of the popular will have been criticized because of the facility that well financed groups have in securing the requisite number of qualifying signatures. In fact, the initiative process in California has created an industry:

> Proposition 13 is the archetypical example of how the initiative has come to dominate the political process and of another phenomenon: the initiative as an industry with enormous financial stakes for those involved, such as professional signature-gathering companies, campaign consultants, advertising agencies, etc.

As a result of the expenses associated with this industry, the Latino community is not able to effectively compete within this electoral arena. Moreover, in a state as large as California, the medium of television is key toward forming and shaping public opinion. Thus, not only are Latinos in effect precluded from qualifying initiatives, they are also prevented from participating in campaigns directed against initiatives which will have a discriminatory effect.

The only possible recourse for the Hispanic community is to challenge the application of such initiatives in both state and federal judiciaries. The other possible check against the effects of the initiative would be through the local political process by either the presence of Latino elected officials who sit on the governing board of these governmental entities, or through the power of the ballot in selecting new representatives. However, this approach in California is limited since there are many governing boards which have little if any Latino representation. And if there is little Latino presence on the governing board, there is probably no substantial impact on the political process by the Latino community. For these reasons, the judiciary remains the most effective check at this time against the excesses of the initiative process.

Accelerating the increased usage of the initiative process by well-financed causes and organizations will be the computerization of the registration and voting process. Presently, the computerization of the electoral process has been limited for the most part to keeping and updating registration rolls and for tabulating election returns. However, in the not too distant future people will be permitted to register and vote by computer. Once registration and voter participation are computerized, it is a small step for the qualification of initiatives by computers. Such an extension could be justified by a concern to make the initiative process more accessible to groups who do not have the financial resources to gather signatures across the state. However, the immedi-
ate impact would be to secure the qualifications of more measures which may have a discriminatory effect on the Latino community.

Again, the Latino community would have no recourse other than to rely on other dominant institutions to serve as a check on any abuse of this form of political power. Perhaps by that date in the future, the Latino community will have more Latino political representation, more Latino leaders, and more Latino institutions that could leverage other dominant institutions to provide the necessary protection against the tyranny of the majority. But for the moment, the most realistic strategy is to secure a judiciary that will be more sensitive to the rights of minority communities. For this reason, challenges to discriminatory judicial election systems must remain a priority.

B. 2000 Redistrictings.

After the 2000 Census is published, governmental political subdivisions across the state will be redistricting their election districts. As a preliminary matter, civil rights organizations will need to upgrade their computer systems in order to make the redistricting process more accessible to minority community organizations. In addition, redistricting software and census data must be purchased.

As with the 1990 redistricting process, these organizations should distribute materials to minority community-based organizations that will be involved in the local redistricting process. Because of the successful at-large election challenges and other voluntary efforts to convert to a district-based election system, there will be many local jurisdictions which will be undergoing a redistricting of their election districts. These materials, as in the past, should explain the legal concepts, as well as the procedures for creating election districts. Conducting regional workshops is an excellent way of disseminating this information and developing community-based redistricting skills.

The objective of these redistricting efforts is to produce an election plan which provides the Latino community with access to the political process. In some instances, the existing contours of a minority district may provide a sufficient basis for creating a new minority district. In other instances, the community-based redistricting plan will be a substantial improvement over the existing election plan. The community-based plan should be presented to the governing body responsible for the redistricting of election districts. In this manner, should the governing board not adopt the minority community’s redistricting plan, the governing board will have to articulate reasons why the minority community’s plan is inferior. In some jurisdictions, the necessity to present reasons in rejecting the minority community’s election plan will often necessitate an adjustment of the governing body’s preferred plan to provide the minority community with greater access to the political process in order to avoid any litigation.

As in the previous redistrictings, litigation to enforce the Voting Rights Act will occur. Since these cases are expensive, civil rights organizations should coordinate their efforts and concentrate their resources on those redistrictings which result in a substantial violation of voting rights standards. Given that challenges to minority preferred redistricting plans will be initiated by Anglo voters, the governing board will be walking a fine line between facing litigation from minority communities for failure to create politically effective minority districts or facing litigation from Anglo communities for creating minority districts. These redistricting cases should be completed by the year 2004. Most of the congressional, state, and major urban area redistricting challenges should be completed in time for an abbreviated pre-election schedule leading up to elections of the year 2002.

C. 2012 Elections.

After the major redistricting cases are com-
pleted, litigation to challenge discriminatory at-large election systems should continue. During the time period of 2002 through 2010, an effort should be made to examine whether any at-large election systems have property requirements for voting in elections for water and irrigation districts. In the California central valley, the utilization and distribution of water will become an even more important issue. To date, minority communities have not been involved in the debate regarding water issues. For this reason, these special election districts should be examined to determine if their election systems have a discriminatory effect on minority voting strength.

This voting rights litigation should continue until the year 2010, when civil rights organizations will have to prepare for the upcoming redistricting. These particular redistricting will have a great potential for increasing the voting clout of the Latino community. If the redistricting are an improvement and provide the Latino community with greater access to the political process, then voter participation among Latino voters will increase. Usually the first election after a redistricting of election districts results in greater interest among Latino communities. If the redistricting results in a fair plan, then Latinos will see more opportunities for effective political participation. This greater political participation will be expressed in greater voter registration and higher voter turnout rates. Thus, the 2012 elections will be critical -- they will be the first elections after redistrictings.

The year 2012 is also a presidential election year. During presidential election years both of the major parties often provide resources for the registration of minority voters. Given the increasing role of Latino voters in key electoral college states, it is anticipated that the established political parties will be providing more resources and greater access to the internal political party machinery. As a result of this investment, Latino voters will be encouraged to participate in this presidential election.

The convergence of a presidential election and the first election after a redistricting occurs once every twenty years. Thus the 2012 elections will present a unique opportunity for the Latino community to secure greater representation on elective governing boards and to have a greater impact on national elections. Given the rarity of this convergence, civil rights organizations should devote their resources during the preceding decade to insure that Latinos will have the necessary tools and resources to develop fair redistricting plans which can guide governing boards during their redistricting deliberations. A similar opportunity will not be available until the year 2032.

IV. Conclusion

The political integration of the Latino community is in the vested interest of all communities in California. Such integration is indispensable for the creation of a more cohesive society. Moreover, such integration is the foreseeable consequence of developing and implementing election structures which provide a fair outcome to communities which continue to be excluded from the body politic. Providing a fair outcome will insure that the Latino community will have a stake in the future well-being of California. Only by pursuing a fairness model in this effort to politically integrate Latino communities, can we start the process of healing the racial divisions in our society.
The following sources were utilized to prepare this lecture: a research report prepared for the Mexican American Legal Defense and Educational Fund titled "Mexican American Political Participation"; declarations filed in federal court in voting rights cases; and original material.

For purposes of this lecture, race includes ethnic groups such as Latinos. Latinos are defined as those persons who have Mexican, Central American, and Latin American ancestry.


The total number of city mayors and council members is based upon an estimate provided by the League of California Cities for 1994. The total number of Latino city council members and mayors was obtained from the National Association of Latino Elected and Appointed Officials. N.A.L.E.O., 7996 National Directory of Latino Elected Officials at 16 - 27.

The total number of school board members is based upon an estimate provided by the California School Board Association. The total number of Latino school board members was obtained from the National Association of Latino Elected and Appointed Officials. N.A.L.E.O., 7996 National Directory of Latino Elected Officials at 16.

As the United States Supreme Court in the landmark case of Reynolds v. Simms stated:

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.


"City of Mobile, Ala. v. Bolden, 446 U.S. 55, 140-141, 100 S.Ct. 1490, 1539 (1980) (dissent, Justice Marshall) ("The American approach to government is premised on the theory that, when citizens have the unfettered right to vote, public officials will make decisions by the democratic accommodation of competing beliefs, not by deference to the mandates of the powerful.")."

"Reynolds, supra, note 5, 377 U.S. at 561-62, 84 S.Ct. at 1381:

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

See also Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 1071 (1866) (referring to the "political franchise of voting" as "... a fundamental political right, because preservative of other rights."); Mobile, supra, note 6, 446 U.S. at 141, 100 S.Ct. at 1539 (dissent, Justice Marshall) ("The American approach to civil rights is premised on the complementary theory that the unfettered right to vote is preservative of all other rights."); Cf., Plyler v. Doe, 457 U.S. 202, 217 n. 15, 102 S.Ct. 2382, 2395 n. 15 (1982) ("With respect to suffrage, we have explained the need for strict scrutiny as arising from the significance of the franchise as the guardian of all other rights.") (emphasis added).

"Mobile, supra, note 6, 446 U.S. at 103 - 104, 100 S.Ct. at 1519 - 1520 (dissent, Justice Marshall):

The American ideal of political equality, conceived in the earliest days of our colonial existence and fostered by the egalitarian language of the Declaration of Independence, could not forever tolerate the limitation on the right to vote to white propertied males. Our Constitution has been amended six times in the movement toward a democracy for more than a few, and this Court has interpreted the Fourteenth Amendment to provide that 'a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction ...'. (footnote omitted)
As noted by Justice Marshall, the Constitution has been amended six times: Amendment 15 (provided the right to vote to the newly emancipated black population); Amendment 17 (provided for the direct popular election of U.S. Senators); Amendment 19 (extended the right to vote to women); Amendment 23 (provided for presidential electors for the District of Columbia); Amendment 24 (eliminated the poll tax); and Amendment 26 (extended the right to vote to eighteen year old persons).


11 There are a variety of factors which influence electoral participation within the Latino community. Factors such as the candidate, educational attainment, occupation status, employment status, income level, age, the degree of bilingualism, and the level of political alienation as a result of racially polarized voting, all have an impact on state and national elections. In local elections, however, pressing issues, such as street drainage, better educational environment, and less crime may serve to offset the aforementioned factors and produce more of an impact on the electoral process.

12 Appointments to these advisory entities can also affect the distribution of resources at the local level. Representation on library boards can affect recommendations forwarded to a city council regarding the location of a new library, the expansion of existing libraries, the implementation of reading and cultural programs which emphasize the Latino culture. Similarly, representation on the parks and recreation boards can directly affect the amount of playground equipment available in parks located within the Latino community, the allocation of resources for maintenance of the park, the implementation of summer youth programs, and the hiring of Latino employees.

13 M.A.L.D.E.F. has recognized the importance of assisting the development of leaders at the local level. The purpose of their Leadership program is to provide leaders within a given community an opportunity to sharpen their skills and to seek their appointment to boards and commissions. The program has been implemented in various locales across the Southwest and the Midwest, and has been highly successful in securing appointments and establishing local networks among diverse elements of a given community. Program seminars cover a variety of topics ranging from public speaking, developing listening skills, negotiations, time management, goal setting and establishment of priorities, planning and conducting meetings, parliamentary procedure, consensus building, agenda planning, organizational analysis, political advocacy, structure of local and state government, structure of local and state advisory boards and commissions, media, ethics, budget and fiscal management, fund-raising techniques and strategies, networking, mentoring, to a discussion describing the functions of board members.

14 Participation in the political process is not the only avenue available to the Latino community for the development of leadership and institutions. State and private educational institutions and the business sector can also provide leaders and facilitate the development of institutions within the Latino community.

15 Benjamin G. Wright, Jr., "The Origins of the Separation of Powers in America," Económica, Vol. XIII, atp. 169 (May 1933) (The London School of Economics and Political Science). In his essay, Professor Wright indicated that indigenous experiences involving colonial governments and state constitutions were responsible for the incorporation of the principle of the separation of powers and its corollary of checks and balances into the United States Constitution.

Doubtless the writings of the English and French publicists who upheld the theory of separation of powers played a considerable part in consolidating and strengthening the American preference for government of this kind. ...For the most part references to their writings come after rather than before the constitutions were drafted. They seem, that is to say, to be quoted by way of explaining and justifying what had already been done. And, as I have previously pointed out, the Americans could not possibly have taken from these writings even the outlines of the forms which they described in their constitutions. In this, the first of the great periods of modern constitution writing, it was indigenous experience which determined the character of the fundamental law.

Id at p. 176.
In Federalist Essay Number Ten, the author expounded upon the dangers of a pure democracy.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention ....

16 In Federalist Essay Number Ten, the author expounded upon the dangers of a pure democracy.

Roy P. Fairfield, ed., The Federalist Papers, at p. 20, The John Hopkins University Press (1981) (hereinafter cited as Federalist). In a subsequent essay, James Madison referred to the separation of powers as an effective restraint against the abuses of governmental power. Essay Number 48, at p. 149 ("An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others."). See Essay Number 73, at p. 216 (Alexander Hamilton) (on the checks provided by a presidential veto) ("It [the veto] establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body."); and 78, at p. 229 (Alexander Hamilton) (on the independent role of the judiciary in interpreting the Constitution) ("The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."). See also, Marbury v. Madison, 1 Cranch 137, 180, 2 L.Ed. 60,74 (1803) ("Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument."); Frederick Kershner, Jr., ed., Tocqueville's America, The Great Quotations, at p. 38, Ohio University Press (1983) (hereinafter cited as Tocqueville's) ("Within these limits the power vested in the American courts of justice of pronouncing a statute to be unconstitutional forms one of the most powerful barriers that have ever been devised against the tyranny of political assemblies.").

17 See e.g., John Taylor, An Inquiry Into the Principles and Policy of the Government of the United States at p. 151, The Bobbs-Merrill Company, Inc. (1969) ("The executive power of the United States is infected, as we shall endeavour to show, with a degree of accumulation and permanence of power, sufficient to excite evil moral qualities.").

Tocqueville's, supra, note 15, at p. 18. As de Tocqueville noted in a classic observation:

In my opinion, the main evil of the present democratic institutions of the United States does not arise, as is often asserted in Europe, from their weakness, but from their irresistible strength. I am not so much alarmed at the excessive liberty which reigns in that country as at the inadequate securities which one finds there against tyranny.

When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority and implicitly obeys it; if to the executive power, it is appointed by the majority and serves as a passive tool in its hands. The public force consists of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain states even the judges are elected by the majority. However iniquitous or absurd the measure of which you complain, you must submit to it as well as you can.

In another context, Supreme Court Associate Justice William J. Brennan recognized the dangers in relying exclusively on a majoritarian process to establish national policy:

The view that all matters of substantive policy should be resolved through the majoritarian process has appeal under some circumstances, but I think it ultimately will not do. Unabashed enshrinement of a majority will would permit the imposition of a social caste system or wholesale confiscation of property so long as a majority of the authorized legislative body, fairly elected, approved.... The majoritarian process cannot be expected to rectify claims of minority rights that arise as a response to the outcomes of that very majoritarian process.


20 *Megatrends*, supra, note 18, at pp. 1 (Chapter 1 focuses on the changes from an industrial society to an information society), 103 (Chapter 5 discusses the increased role of state and local governments).

21 The exchange of information has long been recognized as an important resource in checking the abuses of centralized authority. Federalist Essay Number 84 (Alexander Hamilton). Hamilton viewed the exchange of information coupled with the state governments as providing protection from any abuses perpetrated by the newly formed national government:

> It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government; and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people.


22 The increased privatization of information has significant ramifications for the Latino community. As more census and other data is placed on computers files, communities which do not have access to such computer resources will not have access to information.

> The critics of the electronic census contend that census results are becoming less available to the public. Access to the information is now in the hands of organizations that have mainframe computers, the critics charge, in particular the large corporations that can afford the technology.

> ... [One such critic]... reports that the private data companies are buying census tapes, publishing the information on the tapes, and then charging a high price for the publications. 'Researchers, students, or curious citizens who want to see the data must be able to pay such firms the high prices they demand...'

> At stake ... are the principles embodied in the nation's public libraries and government information programs that presume a positive advantage for society at large if information is freely and readily available.


24 Under the Voting Rights Act, the right to vote is more than access to the registration rolls and polling place. Thornburg, supra, note 9, 478 U.S. at 47, 106 S.Ct. at 2764-2765:

> The essence of a Sec. 2 claim is that a certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.


26 The Supreme Court has consistently recognized the potential abuse of the at-large or multi-member election scheme. Thornburg, supra, note 9, 478 U.S. at 47,106 S.Ct. at 2764 ("This Court has long recognized that multimember districts and at-large voting schemes may 'operate to minimize or cancel out the voting strength of racial [minorities in] the voting population'.") See also footnote 13 of the opinion for an extensive list of commentators who have written about the discriminatory effects of at-large election schemes.

27 During this time period most of the Latino community was of Mexican ancestry.
28 David Weber, ed., *Foreigners in Their Native Land*, University of New Mexico Press, at p. 140 (1973) (hereinafter cited as *Foreigners*).

29 *Foreigners*, supra, note 27, at pp. 148-149.


By 1855 Anglos began to contest the political power arrangements of Mexican Santa Barbara. Through the columns of the *Gazette* the editors and other Anglos directed attacks against "bad city politics' and the Mexican practice of bloc voting. ... The 1855 city, county, and state elections are good examples of Mexican election control.... Although Anglos were able to elect representatives to the Common Council in 1857, they remained a subordinate political force in the city and county throughout the 1850s and early 1860s. (footnotes omitted)

32 *Society*, supra, note 30, at pp. 71-72.

33 *Society*, supra, note 30, at p. 71. As part of the continuing campaign to limit Mexican American political participation in Santa Barbara, Mexican Americans were excluded from participation in the county's Democratic Party convention in the early 1880s. Id., at p. 75.

34 *Society*, supra, note 30, at p. 111. See also *Decline*, supra, note 29, at pp. 274-275 ("In two years or so the population of Los Angeles jumped 500 percent, automatically transforming the electorate into an Anglo-American one.... What started out as a 'semi-gringo' town and a cultural backwash became practically overnight a booming Yankee commercial center and the best-known place in the entire West.").


36 Id., at p. 59.


There is every reason to suspect that the provision remained largely a dead letter: certainly it was not enforced among the Italians of San Francisco in the first decades of this century nor against Yiddish speaking Los Angeles Jews in the years after 1920, nor even against the newly naturalized Issei after 1952. The sole enforcement, and that largely sporadic, seems to have been against a group more native than the nativists themselves: the Spanish speaking Mexican-Americans whose recent increased political activity has resulted in the first significant use of the Gilded Age voting restriction.

38 Some of these responsibilities in Santa Barbara during the 1850s through the early 1870s involved the maintenance of traditional social customs of the Mexican American population. When the Anglo population took control,"[t]he city council, now Anglo dominated, lost no time in passing ordinances to restrict the traditional social customs of the Spanish-speaking." *Society*, supra, note 30, at p. 72.


40 U.S. Department of Commerce, Bureau of the Census, *Commerce News*, CB91-67 Table 1 at p. 3 (February 1991).

Other options are simply unavailable. For example, efforts to modify an existing election system by way of a local election will usually be defeated. Actions filed in state courts are unavailable since there is no equivalent state voting rights act. Finally, efforts to remove electoral impediments to Latino disenfranchisement have been unsuccessful in the State Legislature.

The voting rights cases filed after the 1982 amendments to the Voting Rights Act and prior to the appellate decision in the City of Watsonville case involved a successful redistricting challenge to the Los Angeles City Council, U.S.A., Carrillo v. City of Los Angeles, Civ. Act. No. CV-85-7739 JMI (JRX) (C.D. Cal. 1985), a successful redistricting challenge to the Los Angeles County Board of Supervisors, Garza v. County of Los Angeles, supra, note 9, an unsuccessful challenge to the city council election system for the City of Stockton, Badillo v. City of Stockton, Civ. Act. No. CV-87-1726-EIG (E.D. Cal. 1987), affirmed, 956 F.2d 884 (9th Cir. 1992), and an unsuccessful challenge to the at-large election system for the City of Pomona, Romero v. City of Pomona, 665 F.Supp. 853 (C.D.Cal. 1987), affirmed, 883 F.2d 1418 (9th Cir. 1989). Also, from 1988 to the present, there have been other voting rights cases filed to provide racial and ethnic minorities with greater access to the political process which have not involved local governmental entities: Benavidez v. Eu, 790 F.Supp. 925 (N.D.Cal. 1992) (congressional redistricting challenge filed against the State of California), reversed, 34 F.3rd 825 (9th Cir. 1994); League of United Latin American Citizens, et al., v. Legislature of the State of California, et al., Civil Action No. S-91-1106 EJG/GGH (E.D.Cal. 1991) (action challenging the use of unadjusted census data for purposes of formulating congressional and legislative districts was voluntarily dismissed); Alcaraz v. State of California, Civ. Act. No. C-88-20721 WAI (N.D. Cal. 1988) (action filed seeking to invalidate a statute which limited voting to ten minutes in the voting booth); Voting Rights Coalition, et al., v. Pete Wilson, et al., Civil Action No. C-94-20860 JW (PVT) (N.D.Cal. 1994), affirmed, 60 F.3d 1411 (9th Cir. 1996), petition for cert. denied, U.S. , 116 S.Ct. 815 (1996) (successful action challenging the failure of the State of California to fully implement the agency based voter registration requirements of the Motor Voter Act).

The number does not include other voting related cases such as challenges by Anglo voters to the creation of minority districts, see, e.g., Dewitt v. Wilson, 856 F.Supp. 1409 (E.D.Cal. 1994), aff'd in relevant part and dismissed in part, U.S. , 115 S.Ct. 2637 (1995) (Three Judge Court), or instances where a political subdivision sues itself in federal court to avoid any private litigation to enforce Section 5 of the Voting Rights Act, Board of Supervisors of Kings County v. Joan Bullock, as Kings County Clerk, Civil Action No. CV-F-92-5277 OWW (E.D.Cal. 1992) (Three Judge Court) or sues itself in state court for a similar purpose, Clark G. Channing, Civil Action 106309 (Superior Court, Merced County, California) (Peremptory Writ of Mandate filed Feb. 7, 1992).

A training program can be established that will introduce the private attorney to evidentiary issues and other complexities of a voting rights case and yet not disrupt the attorney's private practice.

For example, in Monterey County two Latino attorneys were unsuccessful in a 1986 municipal court election. The elections were conducted on a county wide basis and there was evidence of racially polarized voting. In addition, a Latino attorney was unsuccessful in a 1994 superior court election which also was conducted on a county wide basis. Prior to the initiation of the López v. Monterey County, supra, litigation, no governor had ever appointed a minority attorney to serve as a trial court judge in Monterey County. After the Latino plaintiffs secured an order requiring an interim judicial election based upon election districts, Governor Pete Wilson appointed three minorities to the municipal court. As a result of the appointments and special district elections, three minorities now serve on the municipal court: two Latinos and one African American woman.


Reitman, supra, note 49.

Proposition 38, California 1984 election.
Proposition 187, California 1994 election.

Proposition 209, California 1996 election.

The potential for such abuse was recognized at an early stage in the use of the initiative:

It appears that now well-financed interest-groups initiate measures more frequently than do spontaneously formed reform groups. This has resulted from two trends. The increase in the number of signatures required to qualify a measure for the ballot has made it difficult for any but the well-financed organizations to circulate petitions. Along with this tendency there appears to have been a decline in the reform spirit which was running strong in the heyday of the Progressive movement.

_Initiative_, supra, note 46, at p. 565.

Dan Walters, "California's Fringes Take the Initiative," _San Jose Mercury_, July 15, 1986, at p. 7B.

There is ample precedent stating that there are limits to the exercise of these devices:

The protection of constitutional rights is not to be approached either pragmatically or expediently, and though the fact of enactment of a constitutional provision by heavy vote of the electorate produces pause and generates restraint we can not, true to our oath, uphold such legislation in the face of palpable infringements of rights. Thus, state racial legislation would unquestionably enjoy overwhelming electorate approval in certain of our states, yet no one would argue that this factor could compensate for manifest inequality. It is too clear for argument that constitutional law is not a matter of majority vote. Indeed, the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority.


For example, the National Clearinghouse of Election Administration, which is part of the Federal Election Commission, is involved in establishing standards for the development of reliable computer programs and equipment for tallying votes.


The increased trend toward a computerized society does not make this idle speculation. The technology is reaching the point, if not there already, of developing methods for assuring that a person signing on to a computer would be identified by voice analysis, handprint, code number, etc., to prevent voter fraud. Voting by computer in the privacy of one's home would certainly be more convenient than waiting in line at a polling place. In addition, if there are the necessary controls and safeguards, the potential frauds committed through paper ballot mutilation or ballot box stuffing would be reduced. However this observation is premised on the assumptions that everyone will have access to a terminal and that there will be a form of identification lodged with the state. Given that minorities currently do not have access to computer resources, such an assumption is questionable. Edward B. Fiske, "There's a Computer Gap And It's Growing Wider," _N. Y. Times_, August 4, 1985, at p. 8E. However, computers may become more commonplace as the Information Age matures.

The fine line will be defined by existing redistricting standards. The most recent cases suggest that minority communities will have to focus on geographical compactness in creating their minority districts. See, e.g., _Bush v. Vera_, _U.S._, 116 S.Ct. 1941 (1996). There may be other standards by the year 2001, when the Census is published.
TABLE 1: Voting Cases Commenced in United States District Courts

<table>
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<tr>
<th>Year</th>
<th>U.S. Cases</th>
<th>U.S. Cases</th>
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TABLE 2: Voting Rights Cases Involving Local California Governmental Entities Filed After the 1988 Appellate Decision in the City of Watsonville Case

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The Stanford Center for Chicano Research (SCCR) was established in 1980 to promote cross-disciplinary research on Mexican American and Latino communities in the United States. The Center continues to promote interdisciplinary study and focuses on major issues of public policy through projects that examine implications of the expanding presence of Latinos in California and in the United States generally, as well as the implications of increased diversity among Latinos themselves.

One important goal of the SCCR is to enhance dialogue between the research community and the public. As concerned citizens and as researchers in academia, faculty want to contribute to the local, state and national discourse of public policy and promote effective long-term problem solving through their work at the Center.

In 1997-98, projects at the SCCR included: Environmental Poverty: Assessing the Risk of Pesticides to Farm Labor Children; Latinos, Voting Rights and the Public Interest; Pediatric AIDS and Infectious Diseases; Cultural Citizenship; Civic Capacity & Urban Education; Bay Area Latino Community Studies Project; The Uses of Languages Other Than English in the Court; and International Childhood Immunization Strategies.

The Center holds public forums, coordinates research seminars and presents the Annual Ernesto Galarza Lecture each spring. Research activities are published in the Center's newsletter, La Nueva Vision, and the SCCR Working Paper Series. In Conjunction with the Chicano/Latino Graduate Student Association, the SCCR sponsors a Colloquia Series that highlights the research of faculty, visiting scholars and graduate students.

Each spring, we call for summer research project proposals from the Stanford graduate and undergraduate student community. With funding from the Escobedo Commemorative Fund, students may create and original research project. The Center has also hosted the Latino Leadership Opportunity Program (LLOP), a one year national program of study and practicum designed for undergraduate Latina/o students interested in public policy and governance.

STANFORD CENTER FOR CHICANO RESEARCH