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# Access to the Political Process and the Development of Leadership: A Key to Future Social Cohesiveness<sup>†</sup>

Joaquin G. Avila<sup>‡</sup>

California is on the threshold of major changes. We often hear about the stunning achievements of the information and computer related industries, the tremendous advances in medical science and biotechnology generated by Silicon Valley and our medical research centers, and the breathtaking discoveries channeled through the Jet Propulsion Laboratories relating to the possibility of life on the moons of Jupiter. All of these changes herald the arrival of a new age – a new stage in our civilization with its promise of a better tomorrow for us and our future generations. In the past, we could only dream of next year's crops. Today, due to the dramatic impact that television and the Internet have brought upon us, our dreams are not as constrained or confined to the very few. We now know about the future possibilities and to them we must always look – for without hope in the present there is no future.

In looking to this future, we come to realize that the societal forces and circumstances of today will determine the contours of our future achievements. Our future achievements can only come to fruition if there is a solid societal foundation that will permit the economic and educational sectors of our society to flourish. Social cohesiveness and a strong system of checks and balances are the underpinnings of this societal foundation. Today, I will discuss the need to promote social cohesiveness and a system of checks and balances by leveraging of societal institutions through leadership at the local educational, economic and governmental levels.

When I started litigating voting rights cases in the early 1970s as a staff attorney at MALDEF (Mexican American Legal Defense and Educational Fund), my focus was on challenging discriminatory at-large election systems. In an at-large election system, the entire electorate in the political jurisdiction, such as a city or school board, votes for candidates who seek membership on the governmental entity's governing board. The problem with an at-large election system is the presence of racially polarized voting, which serves to discriminate against minority voting strength. Racially polarized voting results when members of the Anglo community do not support, in significant numbers, candidates that are preferred by a minority community. Thus, if the Latino community is a numerical minority in a political jurisdiction, and if the majority Anglo community votes on the basis of

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color, then the Latino community will not be able to elect a Latino candidate to office.

In my opinion, the at-large election system represents *the* major obstacle to the Latino community in obtaining greater access to the political process. In California, over 80% of municipalities, school districts, and special election districts utilize at-large elections to select its governing board. Thus, there is a widespread need for voting rights litigation.

Racially polarized voting occurs in many communities in California. Racially polarized voting is often a reflection of the differences existing in a given community, arising as a result of historical patterns of discrimination. For example, prior to the Supreme Court's decision in *Shelley v. Kraemer*,<sup>1</sup> many communities in California had enforceable racially restrictive covenants in deeds that prevented the sale or rental of property to Latinos. In preparation of the present case against the Monterey County Municipal Court,<sup>2</sup> where we<sup>3</sup> challenge the failure of Monterey County and the State of California to comply with the Section 5 preclearance provisions, we conducted an extensive analysis of Monterey County newspapers from the 1860s to the 1970s. We found advertisements in the real estate section of several of these newspapers in which homeowners seeking to sell their homes stated that "Mexicans need not apply." I suspect that the Mexican parts of town were created at first by the desire of Anglo settlers to avoid any mixing of the races, with racially restrictive covenants appearing much later to formally legalize and enforce the existing separation of the races.

In any event, separate Anglo and racial minority communities appeared in the early 1900s. These communities were often rendered unequal municipal and educational services, with minority communities receiving fewer resources. Minority communities had schools, parks, and other facilities that clearly did not match the Anglo facilities. These differences in the distribution of resources, coupled with a prevalence of racial stereotyping, resulted in the separation of racial and ethnic groups. As a result of this historical separation, we now have a racially polarized society, which manifests itself in voting patterns.

In the latter part of the 1970s, I moved to MALDEF's office in San Antonio, Texas. As part of my research into voting rights violations, I traveled throughout southern, western and northern Texas. It was during these trips that I developed a passion for voting rights litigation, realizing the importance it had upon enfranchising the Latino community. In some of these communities, my visits had been preceded by voting rights in which local Mexican Americans were harshly penalized for running for office. It struck me that it was the first time that an attorney represented the interests of these Latino communities.

In many of these communities, the problem was not discriminatory at-large elections but rather racially gerrymandered election districts. Racial gerrymandering results when election districts are divided in such a way as to fragment or over-

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1. 334 U.S. 1 (1948). In *Shelley*, the Supreme Court held that racially restrictive covenants in deeds were unenforceable.

2. *Lopez v. Monterey County*, 519 U.S. 9 (1996) and 525 U.S. 266 (1999).

3. Lead counsel for this case is MALDEF, Lawyers Committee for Civil Rights of the San Francisco Bay Area and myself.

concentrate the Latino vote. When the Latino community is fragmented into several election districts, it loses its majority voting power and is denied the opportunity to elect candidates of its choice, particularly where there is racially polarized voting. Another way to limit Latino power is to put most or all Latinos into just one district. Such unnecessary over-concentration of the Latino community into one election district is a form of gerrymandering that restricts the community's ability to elect more than one candidate of its choice.

In 1975, Section 5 of the Voting Rights Act<sup>4</sup> was extended to the State of Texas, which afforded us a very advantageous litigation strategy for combating the discriminatory gerrymandering of election districts. Under Section 5, a covered jurisdiction must seek federal approval<sup>5</sup> in order to enact any voting change<sup>6</sup> after a specific date, which in Texas is November 1, 1972. The most significant aspect of Section 5 is that the burden of proof falls upon the covered jurisdiction to establish that the change does not have a discriminatory purpose or effect. If the covered jurisdiction fails to meet this burden, the voting change is unenforceable and cannot be implemented in any election.<sup>7</sup>

In Texas, some county commissioner districts<sup>8</sup> had redistricted their election districts after publication of the 1970 Census. If the redistricting plan was enacted after November 1, 1972, Section 5 required the county to submit its plan for Section 5 approval.<sup>9</sup> Because many plans would have had a discriminatory effect on the voting rights of Latinos, such submissions often resulted in adverse determinations, or letters of objection, from the United States Attorney General. In some cases, these letters of objection caused the county to voluntarily ameliorate the discriminatory effects of its redistricting plan and adopt a plan that secured the requisite Section 5 approval.

However, many counties in Texas had never redistricted. Since there was no covered voting change, Section 5 was initially inapplicable. MALDEF's strategy to challenge discriminatory election plans in such counties was to bring "one person,

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4. 42 U.S.C. § 1973 (1975) (amended 1982).

5. The covered jurisdiction must submit its voting change proposal to the United States Attorney General or to a United States District Court for the District of Columbia. Since the administrative process before the United States Attorney General is cheaper than filing a Section 5 declaratory judgment action in Washington, D.C., close to 99% of all proposals are submitted to the Department of Justice for approval.

6. Examples of voting changes requiring federal approval are changes to candidate qualifications, voting constituencies of election districts, and polling place locations.

7. During this administrative approval process, comments from the public play a critical role in assisting the Attorney General make the Section 5 determination. Such comments often contain references to historical discrimination affecting the right to vote, demographic information demonstrating either the fragmentation of a politically cohesive minority community or its over-concentration, and election analysis demonstrating the existence of racially polarized voting.

8. A county commissioner district in Texas is the equivalent of a county board of supervisors in California.

9. Plans that were enacted prior to November 1, 1972, did not require Section 5 pre-clearance.

one vote" cases<sup>10</sup>. The one person, one vote principle requires that election districts be equally populated so that one person's vote will have the same weight as another person's vote. For example, if a county contains 1000 persons, and there are four election districts, the ideal district would contain 250 persons. However, if the county is malapportioned and district A contains 600 persons while district B contains only 100 persons, a person's vote in district A will have less weight than a person's vote in district B. A calculation is used in determining the population deviation, where the population of the least populated district is subtracted from the population of the most populated district and that figure is divided by the population of an ideal district. Thus, the deviation in this hypothetical is 200%.<sup>11</sup> Usually total population deviations under 10% are permissible; deviations between 10% and 20% are subject to scrutiny; and deviations over 20% are almost automatically unconstitutional. In our work, we uncovered clear examples of unconstitutional population deviations, ranging in the 70s, 80s, and in some instances, several hundred percents. Once a violation is established, the county has to cure the constitutional defect by submitting a redistricting plan. That redistricting plan then has to secure Section 5 approval.

This litigation strategy resulted in the filing of many one person, one vote lawsuits. As a result of the subsequent Section 5 review of the new redistricting plan, many Latinos were elected to county commissioner courts in Texas. These lawsuits also served to encourage counties to redistrict after a census in order to comply with the one person, one vote principle and not risk exposure to lawsuits. Accordingly, most of the counties in Texas redistricted after the publication of the 1980 Census. I don't believe that there is a county in Texas that did not redistrict after the 1990 Census.

I experienced the harsh reality of gerrymandered election districts in one of my visits to Rocksprings, a small town in rural Edwards County in central Texas in the late 1970s. Based on my research, Edwards County had not redistricted since the turn of the century. In 1978, Edwards County consisted of approximately 2,000 residents, close to 50% of which were of Spanish Origin. Although this county had a substantial number of Latino residents, there were no Latinos on the county commissioner courts. I found the absence of representation difficult to believe. I figured that with such a large population, there had to be a majority Latino district somewhere in the county. However, the commissioner districts were severely malapportioned. Considering that there were approximately 2,000 people in a county with 4 districts, one would expect that each district would contain about 500 persons in order to comply with the one person, one vote principle. Yet, this was not the case. The smallest district had 104 persons while the largest contained 1,541 persons, yielding a population deviation of 283% -- a clear constitutional violation.

MALDEF conducted a presentation before the county commissioner courts and informed representatives that unless the county was redistricted, it would initiate a lawsuit. The county redistricted, but the new plan itself had a discriminatory effect. In anticipation of a Section 5 administrative process, MALDEF staff visited

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10. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court applied the "one person, one vote" principle to state legislatures.

11. The application of the formula to the present example is:  $(600-100)/250 = 2$ , or 200%.

Rocksprings to secure evidence of historical discrimination. As part of our standard research inquiry, we visited cemeteries and discovered that many were segregated.

Upon learning of the existence of a segregated cemetery in Rocksprings, I located the director of the Rocksprings Cemetery Association. When I walked into his office, he initially thought I was going to buy a plot. However, when I told him who I was and the purpose of my visit, he became very upset and directed me outside his office. When we reached the street, he was so visibly upset that he stopped talking and then said, "If you are here to stir up trouble, you better get out of town before sundown." We left town, but we did not give up. We sued and won, and as part of the relief we secured an election district with an effective Latino voting majority for Edwards County.<sup>12</sup>

This experience opened my eyes to the widespread racial discrimination experienced by Mexican Americans in many of these Texas towns. It was interesting to think that while I could and did leave the City of Rocksprings, the local Mexican American community could not do so as easily. This was their home, where they had their jobs and families. In order to survive in such a community, Mexicans had to stay in their place. To "stir up trouble" would mean that there would be a heavy price to pay.

In the 1980s, I started to gain an appreciation for the larger picture. After litigating several cases like the one in Edwards County, I began to see the importance of voting rights litigation in our system of checks and balances. Such litigation is an effective avenue for eliminating the discriminatory obstacles that inhibits Latino access to the political process. I now began to think in terms of decades and began to appreciate the importance of promoting a cohesive society. What kind of society do we want for our future? And if present circumstances and trends continue what kind of society are we destined to have?

With this new vision, the existing circumstances and trends assumed greater importance. Statistics and trends show us that there is a growing gap between the have and have nots – a gap that is increasingly based upon color. When I look at the alarming rate at which Latinos drop out of high school, I become very concerned. Where are these kids going to be in five to twenty years? And what will this do to race relations and civility in our state and country? With respect to race relations, I am not just referring to relations between colored people and whites but also to the growing tensions between African Americans, Latinos and Asians. Such tensions were evident in the racial disturbances occurring in Los Angeles after the Rodney King verdict.

These disturbances clearly serve as a warning of things to come. Look, for instance, at Yugoslavia. When I was in law school in the early 1970s, I spoke to individuals who traveled to the Balkans. Upon their return, they commented that Yugoslavia was a good example of ethnic harmony because Christians and Muslims lived next door to each other and intermarriage was common between the two groups. Yet we have to come to realize that this ethnic harmony was only a façade. It had been the force of law that had held Yugoslavian communities together. The repressive communist regime had been the primary reason that relations between the various religious and ethnic groups did not manifest themselves into ethnic cleansing.

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12. *Cowsert v. Fred*, Civil Action DR-79-CA-26 (W.D. Tex. 1979).

What prevents California from becoming another Yugoslavia? We must first assess where we stand in terms of race relations. We must take polls in ghettos and barrios, and focus on junior high and high school age kids, including high school dropouts and gang members. Let's take a reading of their views on race relations. Such a poll is appropriate since these kids will become the young adults who will have children and will pass on their views to the next generation. Once we determine a benchmark of racial harmony, then we can gauge what progress is being made.

I believe that respect for other cultures and races is a step towards promoting a more cohesive society. In order for that to be possible, however, people must first respect themselves. In my many discussions with young people, it is evident that self-esteem is at an all-time low. Until such self-esteem and self-respect is accomplished, it is practically impossible to create an environment where there is respect for others.

All members of society must also have opportunity to achieve and become participating members of the community. When everyone, or more people than not, perceive a sense of opportunity, they develop a vested ownership interest. However, when you measure the various indices that provide a backdrop for creating this sense of opportunity, we clearly have some rough roads ahead. This is true in terms of educational achievement, the most important index. For example, poor minority children drop out of junior high and high school in great numbers, and many of those that do remain in school do not have access to qualified teachers, advanced placement courses, or adequate facilities.

Another important index is economic development. A vibrant and successful minority business community is important for a variety of reasons. First, minority businesses can provide greater economic stability in low-income communities. Second, these successful businesses will have a vested interest in assuring that our system of public instruction produces students who can continue to solidify the economic development in these communities. Moreover, these business owners can serve as examples of accomplishment, inspiring others to follow in their footsteps.

These factors will not manifest themselves unless their values are articulated. This is where the leveraging of political, educational, and economic institutions by leaders comes into play. Leaders can pave the way for creating social change and affecting the lives of hundreds or even thousands of people. Leadership is developed in a variety of ways. Some leaders are developed in educational institutions and take the form of teachers or other mentors. Other leaders may arise from economic institutions while still others will be found in the political process.

The demands on this new leadership will be contoured by our present circumstances and trends, which lead toward certain societal outcomes. We, as a people, are beyond the point where government and the private sector can make the necessary investments to reverse the trends at the individual student level. We simply do not have the resources to provide each student with the necessary individualized intervention that will be needed to change the course of his or her life. Instead, creative new strategies must be developed and pursued. The new leadership will need to become masters of leveraging other educational, societal, economic and political institutions in order to redistribute resources and provide a sense of hope to our youngest generation. Substantial investments in societal and educational infrastructures must be undertaken in order to build a foundation from which our young people will begin to have a sense of ownership in their future.

Voting rights litigation has played and will continue to play a critical role in developing leadership in the political process. When discriminatory election structures are removed, minority communities often sense that they can now effectively participate and elect candidates of their choice. In this political process, new leadership is created – and I am not only referring to the elected leadership. I am also referring to those individuals who become involved in campaigns and acquire management and community organizing skills. These experiences and skills can then be transferred to tackle problems confronting local communities.

The growing societal realities confronting all of us require us to see the big picture. This strategic viewpoint has caused me to set my sights to the elections of the year 2012. That year's elections will be the first after a redistricting of election districts. After a redistricting, there is usually tremendous interest in the minority community to participate in the political process. The year 2012 is also a presidential election year in which both political parties will invest resources in registering racial and ethnic minorities and in getting out the vote. Those two events have the potential to synergistically produce a large minority vote turnout and significant minority electoral success. Those two events only coincide every twenty years – an awesome opportunity to truly enfranchise the Latino community.

In conclusion, I hope I have shown you that voting rights litigation is simply not about getting more minorities elected to office. Rather it is about the preservation of our future – a future where all communities will have a vested ownership interest. By fostering a sense of opportunity, leadership and respect for others, we can promote a more cohesive society where our children can continue to develop and discover such stunning achievements as I mentioned earlier in this lecture.

However, for the moment, let me be clear about our present situation: our house is burning; we need to put out the fire; and we must use water, not gasoline, to put it out. Let us not continue to be reactive to the crisis confronting our communities. Rather let's aggressively pursue those strategies that will serve to provide a sense of hope for our young people. Because without hope in the present, we have no future.

