Ignoble Intentions and Noble Dreams: On Relativism and History with a Purpose

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IN 1980, immediately after the Southern Historical Association Convention at the Biltmore Hotel in Atlanta, historian Peyton McCrary and a bevy of voting-rights lawyers gathered together a group of historians to try to engage them as expert witnesses in voting-rights litigation. Earlier in 1980 in the case of *Mobile v. Bolden*, a plurality of the justices of the U.S. Supreme Court had decided that to sustain a claim of vote dilution under the Voting Rights Act or the Fifteenth Amendment, members of minority groups had to prove that the relevant law had been passed with a racially discriminatory *purpose*, not merely that it had a current racially discriminatory *effect*.[1] Since the ordinance requiring that the Mobile City Commission was to be elected at-large, rather than by single-member districts, had been passed (everyone thought at the time) in 1911, lawyers for the plaintiffs had no choice but to bring in the historians.[2] Because McCrary lived in Mobile and knew the lawyers who had filed the *Bolden* case, he took over the principal organizing task. Most of the historians present at the Biltmore seemed to respond favorably, and some ended up working in a few cases. Others, probably better advised, went back to their usual research and teaching.

I was less prudent than other historians who attended that conference. The Biltmore meeting changed my life. Although McCrary bore the main

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1. 446 U.S. 55 (1980).

2. The fullest review of the evidence of historical intent in *Bolden* is Peyton McCrary's "History in the Courts: The Significance of *Bolden v. City of Mobile*," in Chandler Davidson, ed., *Minority Vote Dilution* (Washington, D.C.: Howard University Press, 1984), 47–63.

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burden, I assisted him in doing the historical research for the retrial of the *Bolden* case, and after that, I was pretty much hooked. I largely pushed aside the research projects that I was then working on in order to devote large slices of my limited time over the next decade to analyzing local elections in such obscure places as Haywood County, Tennessee, and Bladen County, North Carolina, and to uncovering the motives of state legislators in Alabama, Georgia, and South Carolina, city charter commission members in Memphis and Santa Monica, Boards of County Supervisors in Los Angeles, San Diego, and Monterey Counties in California, and so on.[3] Instead of the quiet, sometimes fairly leisurely life of the academic, I began to have to meet the absurd demands and unreasonable deadlines of lawyers and judges, to suffer more or less in silence while overpaid and overbearing lawyers for the other side launched brutal and unwarranted assaults on my integrity, and to put up with colleagues who chided me for taking time away from "real scholarship" to devote myself to what they often considered politically incorrect tasks. Instead of publishing in historical journals, I began to publish in law journals and collections of essays.[4] Instead of finishing various book projects, I completed longer and longer reports for court cases.

Naturally, working in nearly a score of such cases has been interesting and rewarding. It is comforting to think that one had a part, however small, in reversing the effects of racial disfranchisement and vote dilution, not to mention the fact that the fees that I earned have helped to send my two children to college. But I want to argue in this paper that my and others' experiences have a good deal of significance, as well, for the study of history more generally. In a 1984 article in *The Public Historian*, I claimed that being an expert witness allowed me to "tell the truth and do good at the same time."[5] I now want to expand the claim by asserting that serving as an expert witness has forced me to think much more deeply and systematically about how to weigh evidence and to determine people's intentions; that it has underlined the importance of a belief in the possibil-

3. *Taylor v. Haywood County, Tenn. Commission*, 544 F.Supp. 1122 (W.D. Tenn., 1982); *Bladen County, N.C. v. U.S.*, No. 87-2974 (D.D.C., 1988); *Mobile v. Bolden*, 542 F.Supp. 1050 (S.D. Ala. 1982); *Moore v. Brown*, 542 F. Supp. 1078 (1982); *Brooks v. Harris*, (N.D. Ga., Civ. Action No. 1: 90-CV-1001-RCF, 1990); *Sumter County Council v. U.S.* (D.D.C. 1982); *U.S. v. City of Memphis* (W.D. Tenn., 1991); *Garza v. Los Angeles County Board of Supervisors*, 756 F.Supp. 1298 (C.D. Cal., 1990), affirmed, 918 F.2d 763 (1990); *DeBaca v. San Diego County Board of Supervisors* (S.D., Cal., Civ. No. 91-1282-R(M), 1992); *Gonzales v. Monterey County Board of Supervisors* (N.D., Cal., Civ. No. C-91 20736 WAI (PVT), 1992).

4. "The Undermining of the First Reconstruction: Lessons for the Second," in Davidson, ed., *Minority Vote Dilution*, 27–46; "Expert Witnesses, Rational Choice, and the Search for Intent," *Constitutional Commentary* 5 (1988), 349–73; "How to Determine Intent: Lessons from L.A.," *The Journal of Law & Politics* 7 (1991), 591–732; "The Voting Rights Act and the Two Reconstructions," in Chandler Davidson and Bernard Grofman, eds., *Controversies in Minority Voting: A Twenty-Five Year Perspective on the Voting Rights Act of 1965* (Washington: Brookings Institution, 1992), 135–76.

5. "Are Expert Witnesses Whores?" *The Public Historian* 6 (Winter 1984), 5–19.

ity of objective knowledge of the world, which it has recently become fashionable to doubt; and that it exposes as false the "radical" or "leftist" pose of some extreme relativists, from Charles A. Beard to the present. Contrary to Beard and Carl Becker, who thought that the traditional historical ideal of objectivity was inherently politically conservative,[6] I will contend that relativism is the natural handmaiden of reaction.[7] Only systematic research and thinking, subjected to the harshest criticism by oneself and others, can produce good history and can or should change the world. By contrast, the murky vaporings of recent relativists[8] do not move the study of history forward—indeed, they scoff at the notion of cumulative knowledge and even at the commonsense belief that one historical account may be judged superior to another—and they lend support to the status quo, often a racially and economically unjust status quo, by default.[9] Not only is there no contradiction between doing good, objective history and contributing to public policy, as naive objectivists thought,[10] but lessons learned in the public arena may make it easier to attain objectivity, and they may suggest ways to make our investigations of motives more precise and sophisticated.

Briefly, my arguments are as follows: First, I believe that historians can often objectively and reliably determine the intent of policymakers, but that we need to think more systematically about how to do so. Determining intent might be considered a difficult task, but if it can be done objectively and reliably, so can other historical assignments. And if one can attain objectivity while serving as an expert witness, the view that it is possible in more normal historical pursuits will be considerably but-

6. Peter Novick, *That Noble Dream: The "Objectivity Question" and the American Historical Profession* (Cambridge, Eng.: Cambridge University Press, 1988), 254. The weak correlation between political ideology and views on the objectivity question is one of the themes of Novick's book (see pp. 264–68, 423–25). Nevertheless, in the 1930s and, I believe, in the 1980s and 1990s, critics of the ideal of objectivity appear to have been more prevalent on the political left than on the right. For example, Eve Kornfeld offhandedly remarks that in graduate seminars on historical methods, "we can interrogate the students' desires for objectivity, ask which social groups are silenced under traditional claims to neutral truth, and explain that a threat to dominant white male power is indeed the point of many new methods." Kornfeld, "Gender and the the Politics of Teaching History," *OAH Newsletter* 20, no. 4 (November 1992), 4.

7. In *Tropics of Discourse* (Baltimore: Johns Hopkins University Press, 1978), 124, Hayden White asserts, on no evidence whatsoever, that the separation of history from fiction was part of the reaction against the French Revolution, thereby presumably making the distinction "rightist" from the beginning.

8. See, e.g., Dominick LaCapra, *Rethinking Intellectual History: Texts, Contexts, Language* (Ithaca and London: Cornell University Press, 1983), especially the introduction. When LaCapra refers to "historical 'reality' " he puts "reality" in quotation marks. See p. 25. In *History and Criticism* (Ithaca and London: Cornell University Press, 1985), LaCapra continues the attack on objectivism, decrying "historiography" as "a mythologized locus for some prediscursive image of 'reality' " (p. 10). Documents, he says a page later, "are texts that supplement or rework 'reality' and not mere sources that divulge facts about 'reality.' "

9. My observation is, naturally, not very original. See, e.g., Frederick Crews, "The New Americanists," *The New York Review of Books* 39 (September 24, 1992), 32–34.

10. Novick, *That Noble Dream*, 2.

tressed. Second, historians and other social scientists who want to help shape public policy must believe in the possibility of objectivity, because public policy research and argumentation always involve mixed questions of fact and value. Relativistic attacks on the nature of knowledge and scholarship are therefore inherently conservative and irresponsible, because they rob scholars of their reputation for objectivity, which is key, if my own experience is any indication, to their ability to contribute to public policy. To know an imperfect world is to want to change it; to deny the possibility of knowing it is to perpetuate error or wrong, or at least to leave their correction or persistence to others. A relativist liberal or radical is a living oxymoron.

I will try to demonstrate the plausibility of these arguments by discussing a legal case that dominated my life for 18 months. Four years ago, the Mexican-American Legal Defense and Education Fund, the American Civil Liberties Union, and the U.S. Department of Justice filed the case of *Yolanda Garza v. Los Angeles County Board of Supervisors* in federal district court, charging, among other things, that the supervisors had intentionally discriminated against Latinos in redistricting the boundaries of supervisorial districts. As the principal expert witness for the plaintiffs on the intent issue, I wrote what eventually became a 141-page paper on the subject, complete with 679 footnotes.[11] The intent issue, one that both sides downplayed or ignored at the beginning of the case, became, by the time it was appealed to the Ninth Circuit Court of Appeals, the heart of the matter. There, a three-judge panel, including one of the most able, but also one of the most conservative Reagan appointees to the bench, Alex Kosinski, ruled that the Board of Supervisors' boundary lines were intentionally discriminatory, and that the issue of discriminatory effect, which had taken up the vast majority of the time at the federal district court trial, could be largely ignored. The U.S. Supreme Court refused review. How did I prove intent to the satisfaction of several judges?[12]

11. "How to Determine Intent." Facts and analysis relating to the *Garza* case will be drawn, without further citation, from this article. As this instance illustrates, one need not shed scholarly habits when one operates outside the usual professional confines. Indeed, a scholarly mien and apparatus are necessary legitimating devices in court. Even more important, a great deal that can be assumed when addressing a collegial professional audience must be spelled out in court testimony or reports for cases, so more detail is necessary.

12. I do not mean to be excessively egotistical here. My experiences have no doubt differed from those of some other historians who have served as expert witnesses. Long before I began testifying in courts, I had written about the intentions of the framers of electoral rules and the effects of those rules on minority voters, and I had extensively employed "ecological regression" analysis, which is the key statistical technique in voting rights cases. I had also taught courses in and written about equal protection law. Thus, attorneys could afford to be less directive than they might have been if there had not been such an exceptionally close fit between my scholarly and courtroom areas of expertise.

Three other facts increased the leeway that I have enjoyed. First, in several cases, including *Garza*, I had more experience in voting rights litigation than some of the attorneys with whom I worked. Second, after the first few cases, I began to write increasingly long and painstakingly documented papers preliminary to my testimony. These reports are presented

During arguments over the extension of the Voting Rights Act in 1981–82, proponents of changing Section 2 of the Act to overrule *Bolden* charged that the plurality opinion in that case required proof of "subjective intent," which some people apparently assumed meant that members of the legislative body that passed the rule or law had to confess in direct, preferably oath-bound statements to having had a racially discriminatory motivation, probably a hostile one, for their actions. As the principal attorney for the American Civil Liberties Union in Atlanta, Laughlin McDonald, put it, "nothing short of a body buried in a shallow grave will meet the *City of Mobile* test."[13] In certain instances, particularly in the South in the 1950s and 60s, legislators openly expressed their racially discriminatory purposes in passing certain election laws. Indeed, by ferreting out such statements in connection with *Dillard v. Crenshaw County*,[14] Peyton McCrary revolutionized county governments all over the state of Alabama. But California politicians are generally a bit more careful and subtle about racial matters than those in Alabama, and the record in *Garza* contains no classic "smoking gun" statement. Instead, circumstantial evidence was determinative.

The most striking circumstantial evidence came from two maps, one of which depicted the growth of major concentrations of the Spanish-surname or Latino population in Los Angeles county from 1960 through 1980, and the other of which traced the extension during the same period of the boundaries of the Third Supervisorial District, which contained the largest percentage of the Latino population of any of the five districts in the country's most populous county government. I have superimposed one on the other in Figure 1. In 1960, the census tracts that were over 50 percent Spanish-surname were largely in unincorporated East Los Angeles and immediately adjacent areas. Over the 1960s and 1970s, the people of other ethnic groups largely left what is called the "Hispanic Core" of Los Angeles county around East Los Angeles, increasing the percentage of Latinos in the area. As more immigrants moved into the core, other Latinos moved east, out the San Gabriel Valley, and north, to another hub of Latino population centered on the city of San Fernando. The proportion of Latinos in the county's expanding population grew from less than 10 percent in 1960 to nearly 28 percent in 1980—well over the 11 percent theoretically needed to control a supervisorial district and rather heavily concentrated geographically.

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to the court and serve as the natural organizing structure for my testimony and for parts of the attorneys' "proposed findings of facts" briefs. The discipline of writing forced me to confront nearly all the questions and attacks that attorneys on either side would raise before or during trials. Third, the voting rights bar is perhaps particularly professional and correct toward expert witnesses, realizing that the best way to make witnesses feel comfortable with their testimony is for the witnesses themselves to shape it.

13. "Voting Rights Act: Hearings Before the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate," 97 Cong., 2 Sess., (1982), I, 371, hereinafter cited as "Senate Hearings."

14. 649 F.Supp. 289 (M.D. Ala. 1986).

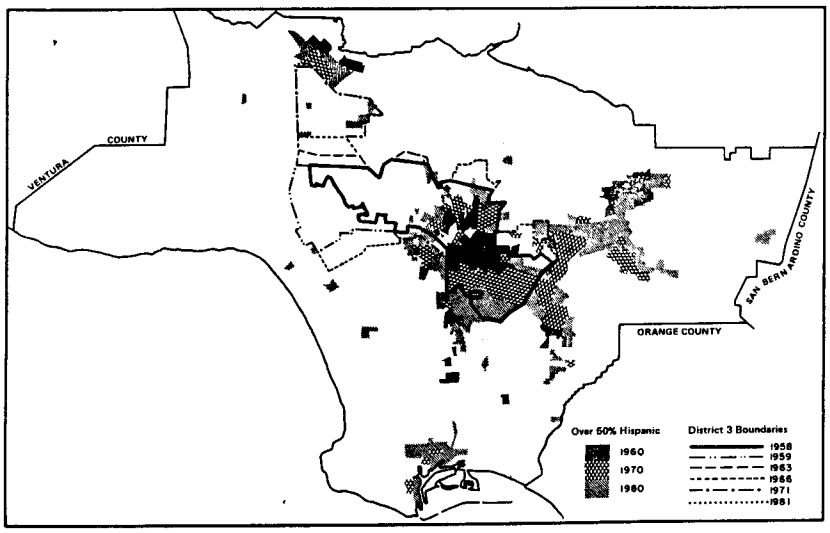

FIGURE 1: THE HISPANIC CORE MOVES EAST, WHILE THE THIRD DISTRICT STRETCHES NORTHWEST—MAJORITY LATINO CENSUS TRACTS IN LOS ANGELES COUNTY, 1960–80.

By contrast, the boundaries of the Third District strained, as it were, in the opposite direction. Only once did the invisible wall between the First and Third supervisorial districts in East Los Angeles move east, and then only barely. Instead, the Third District moved west, taking in Beverly Hills, West Hollywood, and West Los Angeles—a 2.6 percent Spanish-surnamed area, added to a 22.7 percent Spanish-surnamed district—and then north, up over the natural barrier of the Santa Monica Mountains into the San Fernando Valley, which was then nearly all white. Through 1981, it moved right up to the boundary of 50 percent Latino census tracts around San Fernando and then stopped cold. In the five redistrictings from 1959 through 1981, the areas added to the Third District were always substantially more Anglo than the district as a whole. These bare demographic and political facts present a *prima facie* case of intent, because again and again, the members of the Board of County Supervisors acted to "whiten" the district, to dilute the power of the Latino population in the most straightforward sense of the word *dilute*.

These maneuvers, which had a patently discriminatory effect, strongly suggested a racially discriminatory motivation. The suggestion was supported by a voluminous case record, including newspaper stories, minutes and a few transcripts of meetings of the Board of Supervisors and of their redistricting advisory committees, and the transcripts of 65 depositions, one 750 pages in length. Historians have long realized that trials preserve otherwise unavailable evidence. In this instance, the qualitative

data was rich enough to enable me to tell the redistricting story in considerable detail.

Part of the analysis rested on a simple narrative, on the historical context of the redistrictings. In 1958, six-term Supervisor John Anson Ford retired from the Third District seat. Three Los Angeles city councilmen and a member of that city's Board of Education contested the open seat. In something of an upset, Edward Roybal, the first Latino elected to the Los Angeles City Council in this century, made the runoff against Ernest Debs, a rather conservative Anglo Democrat. The runoff was extremely close, with Debs being declared the winner after four recounts. Many Latino voters were challenged at the polls and some were discouraged from voting, and there are people in Los Angeles today who will tell you that Roybal was counted out illegally.

After his inauguration as supervisor, a year before the census was to be taken, without any compulsion whatever from state law, Ernest Debs worked out a private agreement with Fourth District Supervisor Burton Chace that Chace would give him the three white western areas mentioned above. There were no other boundary changes, despite the fact that one supervisorial district, the First District, which was immediately to the east of Deb's district, was grossly overpopulated. The area that Chace deeded to Debs just happened to contain the residence of Chace's most potent prospective opponent, Los Angeles city councilwoman Rosalind Wyman, who was expected to run against Chace in 1960, but who would have had to move to do so after the 1959 boundary change. Debs obtained a very wealthy area that would obviously not be fertile ground for Roybal, who was not only a Latino, but also a former community organizer for Saul Alinsky. Although there were no blatant statements on the record about the exchange, and although the county refused to make Debs available for deposition or testimony, the conjunction of events was exceptionally suggestive. In ensuing years, Debs tried to unload East Los Angeles on other supervisors, refused to take adjacent eastern areas, and worked out complicated swaps with other supervisors to move his district north, instead of east. Every time they redistricted, the supervisors had before them options that they were either explicitly told or that they could easily determine from common observation would swell the Latino percentage in the Third District, and in nearly every instance, they chose other options. In 1971 and 1981, when Latinos organized specifically to increase their percentages in the Third and/or First Districts, the supervisors brushed their efforts aside, often patronizingly or even angrily. The pattern of events, the repetition of the same whitening, incumbent-protecting line-drawing year after year for more than two decades, presented with as much detail as I could muster, destroyed any possible unintended consequences hypothesis. The supervisors were told again and again what consequences would follow from their actions, and they chose, with foresight, to take actions that decreased the ability of Latinos

to elect candidates of their choice and increased the ability of Anglo incumbents to retain office.

In an attempt to systemize my own thinking about intent and to offer a guide to the ways in which judges in civil rights cases had thought about the subject, I suggested in the published version of my *Garza* testimony that evidence of intent in voting rights cases might be analyzed under nine headings, or, as lawyers like to refer to such analyses, under nine "factors." Four have already been mentioned above: "smoking gun" statements, demographic trends, the text of a law or the outlines of district boundaries, and the historical context of a decision. Another is basic models of human behavior or, in this case, of political behavior. Should we expect, on the basis of experience and our knowledge of the past, that politicians who redraw boundaries for their own or their bosses' or allies' districts are merely selfless, public-spirited citizens, seeking only, as Ron Smith, an extremely hard-boiled political consultant, testified in *Garza*, "to do a noble and good thing?" Or is reapportionment, like the making of sausages or love, something one should always avoid observing? Is it likely that Anglo pols fastidiously protect the rights of unrepresented minorities during redistricting—as the same consultant put it, that he and his Republican allies wanted only to "maximize Hispanic empowerment?" Or have most white politicians been discriminating against minorities in line-drawing since the first redistrictings involving areas where enough members of minority groups could vote to make a difference? Models of behavior should not by themselves determine the fate of hypotheses, or why look at evidence at all? But they do channel our research in one direction or another, and they do affect the attitude with which we receive information. In my case at least, I read the statements of Ron Smith with a skepticism that rapidly developed into incredulity.

Two basic political facts constitute the sixth factor in the order listed here: the number of members of minority groups elected, and the extent of racially polarized voting. If the favored candidates of African Americans, Latinos, or Asian/Pacific Islanders regularly win election in a jurisdiction in which their voters do not constitute voting majorities, it is difficult to argue that the electoral structure is discriminatory. In Los Angeles county, Latino voters clearly had difficulty electing the candidates that they most preferred. In fact, no Latino had been elected to the five-member Board of County Supervisors since 1874, although the county was, by 1990, 37 percent Latino. Analyses of elections involving Latino against Anglo candidates, moreover, showed a good deal of ethnic polarization. Too few Anglos would vote for Latino candidates to enable them to win in majority-Anglo jurisdictions. For blacks, the evidence was more ambiguous. Although Kenneth Hahn, who represented the South-Central Los Angeles Second Supervisorial District from 1952 to 1992, was white, he was clearly the choice of the black community. In 1968, for instance,

he beat a popular black Los Angeles city councilman 2–1 even in Watts in a supervisor's race, and he never again attracted serious opposition. On the other hand, the effort of a brilliant and attractive black "cross-over politician," Yvonne Burke, to win the Fourth District seat to which Gov. Jerry Brown had appointed her failed in a virulently racist campaign in 1980 masterminded by the same Ron Smith whose unctuous statements about his motives in redistricting I quoted earlier.[15]

How do the number of people elected and the extent of racially polarized voting fit into an examination of intent? If one can show that these facts are widely known and well understood by political activists, particularly by those who helped draw the lines, then the clear implication is that that knowledge at least partially conditioned the delineation of the boundaries. In Los Angeles in 1972, for instance, City Councilman Ed Edelman worked very hard to draw a seat for that body in which Latinos made up about three-fourths of the population—and which contained the residence of an Anglo foe of Edelman's, a wily politician who managed barely to survive several tough campaigns against him by Latino populations. When Edelman succeeded Ernest Debs in the Third District of the County Board of Supervisors, he obviously knew how to draw a Latino seat, he must have recognized the degree of racially polarized voting, and he manifestly understood that, because the Latino population in the area was young and disproportionately made up of noncitizens, the population would have to be substantially more than 50 percent Latino to defeat a competent, well-financed Anglo incumbent. When he led the reapportionment of the County Supervisors in 1981, Edelmen could calculate the political effects of adding or subtracting Latino areas to his and other districts with almost scientific precision.

The seventh and eighth factors are the backgrounds of key decisionmakers and other actions taken by them. Two members of the Supervisorial Boundary Commission in 1981, Ron Smith and Allan Hoffenblum, had managed extremely controversial victories by Anglo candidates over black and Latino politicians. In a recent case involving the Monterey County, California, Board of Supervisors, Michal Moore, the prime mover in that county's 1981 reapportionment, had first won election by defeating a much better-known and better-financed African-American candidate. Moore was an outspoken opponent of affirmative-action plans, and, although much of his constituency was urban, he led efforts to cut social services in the county after the 1978 passage of the property-tax–cutting initiative, Proposition 13. One of the chief proponents of the runoff and designated post laws in Memphis in the 1950s and 60s was the late Henry Loeb, who built his very successful local political career on opposition to

15. After Hahn retired, Burke won a very close contest to replace him, beating African-American State Senator Diane Watson by less than one percent of the vote. Among registered voters, the predominant group in the Second District was black.

integration and whose staunch refusal to compromise with the sanitation workers in 1968 brought Martin Luther King, Jr. to Memphis.[16]

Protestations by such men that their intent is racially benevolent or that racial considerations played no part in their efforts to redraw electoral regulations ring hollow. Similarly, it is at least questionable that a political body that denies representatives of minority groups the opportunity to participate meaningfully in the process of drawing up new boundaries or laws truly takes the interests of those groups into consideration. Assuming that people act with some degree of consistency, their backgrounds and actions on related issues allow inferences about their motivations in the matters in question.

State policies and formal and informal institutional rules constitute the ninth factor. How much choice in electoral structures or procedures does a locality have? If they have a range of options, and choose ones least favorable to minority groups; or if they depart from normal procedures or apply criteria inconsistently in a manner that harms minority groups, then their actions support an inference of discriminatory purpose. In Monterey county, for instance, the Board of Supervisors in 1991 set a public goal of not splitting cities, but it divided two adjacent cities in which blacks and Asians are concentrated among four of the five supervisorial districts, fragmenting their numbers and diminishing their potential political power. In Haywood county, Tennessee, the Road Commission had been elected by districts for four decades, until a black won a seat, after which the county fathers of the majority-white county decided to switch to at-large elections. Choice, foresight, and action with a discriminatory effect are three important elements in nearly all of the nine factors.

Naturally, those attempting to determine intent in different matters will take into account somewhat different factors. The process of subdividing the overall question into manageable pieces, arraying the evidence under each heading, and weighing what judges have referred to as "the totality of the circumstances,"[17] however, should be basically similar to the instance of vote dilution. The keys are self-consciousness and care in the task of explanation.

Are we warranted in asserting that the conclusions reached through this process of subdivision, self-consciousness, and care are "objective"? As historians have become aware since the publication of Peter Novick's fascinating and provocative book *That Noble Dream*, the "objectivity ques-

16. Where several officials are elected to the same body at-large, rather than by districts, they may be elected to designated posts (such as Commissioner of Public Works or Judge of Court Number Three) or all may go on the same ticket, with the top two or three or some other number being elected. The latter or "free-for-all" system may allow large minorities to obtain some representation on the board by casting fewer than the maximum number of votes that they could cast. See Kousser, "Was Memphis's Electoral Structure Adopted or Maintained for a Racially Discriminatory Purpose?" Caltech Social Science Working Paper #807 (August 1992).

17. *White v. Regester*, 412 U.S. 753 (1973).

tion" has agitated American historians throughout the twentieth century. There are many points of agreement between all but the most naive objectivist and most extreme relativist points of view. Surely few historians any longer believe that they begin with blank slates; that their models and methods do not affect the questions they ask, the data that they can examine, and the conclusions that are within their reach; or that they are merely perfect conductors for the unobtrusive transmission of raw facts. Furthermore, tastes and circumstances obviously affect the historian's choice of topics—southerners often tell about the South, thesis advisers channel their students, a newly discovered or newly opened document collection or a new method of analyzing old materials leads people to certain subjects, and nearby sources invite convenient attention. Objectivists would agree, too, that the frailties of individual historians, including themselves, may prevent any one account from being definitive. A lack of imagination may cause a scholar not to formulate a correct hypothesis, and deficient comprehension may result in a faulty analysis of evidence. Objectivism must allow for imperfection, just as relativism must allow for quotidian objectivity, for the importance of getting names, dates, places, the provenance of documents, the representativeness of a sample, or the use of a statistical procedure right.

On the other hand, the views of some subjectivists are so extreme that they may be ignored. A few historians or critics—Hayden White is the foremost example—so strongly believe that reality is chaotic and/or that humans are inveterately inconsistent that any explanation or even coherent narrative is inherently false or fundamentally untestable.[18] After so much argument over the "objectivity question," the real points of disagreement have sharpened, as they have generally narrowed.

For most historians, the assessment of competing hypotheses probably contains the crux of the problem of objectivity. Does the historian inevitably select and weigh the facts to fit her case? This was the logical centerpiece of the Becker/Beard attacks on objectivism in their American Historical Association presidential addresses in the early 1930s, and it is the fundamental point of attack in every cross-examination of an expert witness in a trial.[19] It is here that my experience in testifying in legal cases most reinforces the standards of the best analytical and social scientific history. The surest approach to truth, whether considered as a correspondence with reality, a coherent account, or a view that compels consensual agreement within a conversational community, lies in a rigorous adherence to "scientific" principles. Most importantly, as casework underscores, no historical analysis is complete without posing and examining other potential competing explanations. No empirical argument is fully acceptable unless other hypotheses are explicitly considered and refuted.

18. White took this view at a panel on narrative at the 1983 convention of the American Historical Association. I was, physically at least, on the same panel.

19. Novick, *That Noble Dream*, 260–62.

The legal environment at once encourages and impairs the full and unbiased evaluation of other theories. It encourages such an evaluation because opposing experts and attorneys or judges and their clerks will surely try to account for the evidence in some other way, and they are generally clever enough to come up with a range of alternatives. The legal environment impairs evaluation because one may become psychologically committed to a particular explanation and may therefore try to explain away contradictory evidence rather than abandon one's interpretation. Of course, this happens in "normal" scholarship in every field from physics to literary criticism. Indeed, the tendency for a scholar to hold to a staked-out position may be greater in controversies *within* than *outside* the academy, for in career terms, merely "academic" matters are much more important than those involved in consulting work. Still, a trial is usually somewhat more overtly combative than most seminars or convention sessions. It therefore furthers the search for truth to set down contending theses in print and to consider the evidence for and against them before the trial or deposition, while there is time for reflection, instead of only dealing with them in the heat of battle.

But what can we say after comparing the merits of opposing hypotheses? Can we announce that we have discovered a truth that can never be overturned, that no rational person can disagree with? Is this what objectivity amounts to? I think not, for humans are frail and may be mistaken and illogical, or someone may subsequently discover new evidence or methods. The right question, and the only one, it seems to me, that objectivists need answer is this: *On the available evidence, analyzed with care, using the most appropriate methods, is this the best warranted explanation of any that one can think of for the act or event or structure at issue?* Every device, every technique, every form of organization or argument that enables the historian to answer this question should, in my view, be encouraged and adopted, and all that do not should be discouraged and discarded. It follows that flights of fancy, unselfconscious narratives, a lack of documentation, unclear prose, and conclusions hedged to avoid controversy or bad reviews should be abandoned in all forms of history and in all forums in which it is presented. There is plenty of room for creativity in devising theories and organizing information to test them.

If this argument and definition are correct, one of the most striking responses to Novick's book, that of Richard G. Hewlett, the distinguished historian of the Atomic Energy Commission, in *The Public Historian,* is misleading. Claiming that "the Beard-Becker defense of relativism" laid "the intellectual foundations of the public history movement," Hewlett contends that "in trying to describe events in the recent past, public historians are usually more aware than are their clients that they are not presenting objective truths that will stand for all time. The obvious scarcity of perspective and the sure knowledge that events of next year or the next decade may cast an entirely new light on what they are writing makes

any pretense of objectivity fatuous."[20] Hewlett, who certainly both practices and preaches what he calls "honest history," seems to me to confuse objectivity with omniscience.

Not only has serving as an expert witness led me to reflect on what makes good historical practice, it has also forced me to consider what counts as a motive and what are the connections between empirical and value judgments. Those in the civil rights community who were most concerned about the *Bolden* "purpose" standard, as against "effects," in the early 1980s probably had three primary concerns: First, that anti–civil rights judges would set such an unreasonable threshold for proving purpose that one would never be able to demonstrate it.[21] Second, that if jurisdictions or their lawyers came up with any nonracial motive for an electoral law change whatsoever, judges would grasp it and defer to the legislature.[22] Instead of a racial motive tainting one or more nonracial ones, the reverse would happen. Third, that judges would demand nonexistent evidence of motives[23]—for example, clear statements of racial purpose by a majority of the 1874 Alabama state legislators who passed the Mobile City Charter.

For the most part, these fears have not been borne out. As to the first concern, for every *Irby v. Fitz-Hugh*,[24] in which judges interpreted the evidence unfairly, there is at least one *Garza*. As to the second, lawyers have certainly come up with some inventive arguments about justificatory motives. During the Appeals Court phase of *Garza*, for instance, the attorneys for Los Angeles County conceded that the supervisors had drawn the lines to protect their own seats and those of their ideological allies, and claimed that the adverse effect on Latino political fortunes was purely incidental. In the recent Monterey County case, attorneys contended that it was permissible to fragment the black and Asian/Pacific Islander communities in order to reduce the workload of an Anglo Supervisor.[25] These and similar examples demonstrate the importance of concentrating on foresight, interconnected motives, and available evidence in any inquiry into intent. If a person is aware that her action will cause something to occur, and if she goes ahead with it, then she wills the

20. Roundtable, " 'The Ideal of Objectivity' and the Profession of History," *The Public Historian* 13 (Spring 1991), 10–14.

21. "Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary, House of Representatives," 97th Cong., 1st sess. (1981), 2042–43 (testimony of Armand Derfner).

22. Ibid., 2054 (testimony of Armand Derfner). This was allegedly referred to by Mr. Justice Rehnquist as the "straight-face test." In Derfner's summary: "If the city or county can advance a justification without actually laughling while it says so, that would be accepted."

23. "Senate Hearings," 372 (testimony of Laughlin McDonald).

24. 692 F. Supp. 610 (E.D. Va. 1988), 693 F. Supp. 424 (E.D. Va. 1988), 889 F.2d 1352 (4th Cir. 1989).

25. The irony of trying to justify discrimination against minorities on the grounds that it allowed whites to work less hard apparently has yet to occur to these supervisors or the County Counsel.

occurrence, whether she would have most preferred something else to happen or not. In Monterey County, for instance, two Democratic supervisors somewhat reluctantly voted to continue the fragmentation of the African-American and Asian-American communities in order to draw two seats where Latinos would have good chances to elect candidates of their choice. I think their actions indicate a racially discriminatory intent. In *Garza*, the only way for the Anglo supervisors to retain their seats was by ethnically conscious gerrymandering. Since the motives were so intermingled that one cannot effectively distinguish them, both must count.

In regard to the third concern, that of incomplete evidence of motives, that is simply a condition of existence. Historians would almost always like to have more evidence of what happened, but we must be satisfied with doing the best we can with existing evidence, and it would clearly be unreasonable to require more. For us, the past is effectively what remains of the past, and an objective view is objective in relation to those remains, not to what has ceased to leave traces, which we can obviously never completely recapture. Moreover, although we should attempt to regularize procedures for fixing causes as much as possible, it is not possible to reduce the search to pure mechanics, for each situation will differ in many particulars. Investigating different cases reaffirms the historian's twin concerns for generalization and specificity.

One final point. I obviously believe in the protection of minority voting rights, and one of the chief reasons that I spend time on such cases is to try to insure that those rights are enjoyed fully. But the best way for us to act to protect them is to be as clear-headed, skeptical, and unbiased as we can. There is no contradiction between pursuing our desires for public policy and remaining unbiased in our scholarship. On the contrary, unless scholars constantly strive both to be and to appear objective, we will and should be treated as mere purveyors of opinions—no more worthy of being listened to than anyone else with a point of view, however ill-considered or unsubstantiated it is. Fulfilling our value-laden noble dreams, then, requires our adherence to the noble dream of the profession—objectivity.